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Student Evaluation of Teacher Performance and the "Legal Writing Pathology": Diagnosis Confirmed

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Pathology: all the conditions, processes, or results of a particular disease. Any abnormal variation from a... proper condition. 2

Mention the topic of student evaluations during the coffee break at a national or regional legal writing conference and you will likely hear something along these lines: "students don’t like writing and they take it out on us in the evaluations," or "students rate legal writing lower than doctrinal courses at our school." 3

Merely post the topic of student evaluations on the legal writing director listserv and you will set off a flurry of responses from around the country describing the negative responses from students on legal writing evaluations. 4 Many legal writing teachers

1 The term "legal writing pathology" can be attributed to Professor Penelope Pether, Associate Professor and Director of the Legal Rhetoric and Writing Program at American University, Washington College of Law. The term was first introduced at a faculty forum on legal writing at Southern Illinois University School of Law.

* Melissa Marlow-Shafer is an Assistant Clinical Professor of Law at Southern Illinois University’s School of Law. A special thanks to my current and former legal writing directors, Sue Liemer and Penny Pether, for their stellar editorial reviews and tremendous support. Thanks also to other colleagues for their valuable contributions including: Alice Noble-Algire, Brannon Denning, Judy Fischer, Terrence Harders, Patrick Kelley, Sheila Simon, Wenona Whitfield, research assistant Lisa Mills, and all the legal writing directors throughout the country who donated their valuable time to completing the survey, without which this article would not be possible. Finally, to my parents, Stephen and Nancy Marlow, for their total dedication and commitment to any personal or professional successes I have achieved.


3 Anecdotal evidence gathered from informal conversations with legal writing colleagues at various national and regional legal writing conferences over the last four years.

4 The topic was born out of the low student evaluations professors teaching in our legal writing program received in the 1998-99 academic year. The former director of our program, Professor Penelope Pether, became particularly concerned with the status of our student evaluations and thus closely followed a series of postings to the legal writing director listserv which dealt with student evaluations in legal writing courses. In a meeting of legal writing faculty at Southern Illinois University, Professor Pether summarized the listserv discussion which went on for several days, with postings from across the country. Legal writing faculty commented that they believed course content alone was a contributor to lower student evaluations in legal writing courses. The consensus from this listserv discussion was that this was a topic ripe for scholarship and one that particularly touched upon the teaching of legal writing na-
claim their evaluations contain degrading comments and are lower than doctrinal law professors. They further claim that doctrinal law professors receive lower evaluations when they teach legal writing than when they teach a doctrinal law course.  

Do student attitudes toward the subject of legal writing truly influence student evaluation results? Put another way, is there a general dislike for the subject matter of legal writing which affects students' ability to effectively evaluate the teaching methods of writing teachers? Is this perceived negativity towards legal writing merely imagined or is it, in fact, real, and can it be documented? In his recent article David Walter stated:

The course and subject matter, for example, may affect evaluation results. Legal writing evaluations frequently contain comments indicating that students aptly distinguish between the course and the teacher: (1) 'Prof. does a great job — the course on the other hand, needs some work; 2) 'As good as could be expected considering subject matter;' and 3) 'Boring material — made it ok.' Certainly, some students do not distinguish between the course and the teacher, either in their thoughts or in the actual marking of their evaluations, which may thus result in biased marks and comments (both favorable and unfavorable) in the quantitative and qualitative portions of the evaluation.

This article attempts to explore the question of whether course content, specifically legal writing, negatively affects student evaluation of teacher performance results. Throughout the article, I will use the term "course content" as a basis for differentiating between courses which center on the skills of legal writing and analysis in comparison to doctrinal non-skills based law courses which focus on particular areas of law such as Contracts, Torts, or Property. While there may be some debate about what constitutes traditionally. See Penelope Pether, Discipline and Punish: Despatches from the Citation Manual Wars and Other (Literally) Unspeaking Stories, 10 Griffith L. Rev. (forthcoming 2001) (manuscript at 8, on file with the author). Professor Pether notes that "the traffic on the listerserves informed me that across the country fundamental skills teachers were having the same kind of experience."

5 Summary of postings of legal writing directors during the 1998-99 academic year, to the DIRCON listserve, formally provided by Chicago-Kent College of Law.

6 David D. Walter, Student Evaluations — A Tool for Advancing Law Teacher Professionalism and Respect for Students, 6 J. Legal Writing Inst. 177, 187-88 (2000). Walter notes that during an eight-year period at his institution, his legal writing evaluations as well as those of his colleagues were ten to twenty percentage points lower in the first-year legal writing course than in the second-year legal writing course they instructed. He concludes that it is unclear whether this difference is due to course content, student characteristics, or another variable.

7 See Peter Bayer, A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics, 39 Duq. L.
a "doctrinal law course," I will use this definition to avoid ambiguity.

In exploring this question, it is also hoped that there will be some resolution to the current dispute between non-legal and legal literature on the issue of how periodic feedback prior to the student evaluation impacts the results. Specifically, social science research has found that "students definitely favor frequent tests over infrequent tests as indicated by both objective ratings of their instructor as well as by subjective comments." However, Richard Abel first challenged this finding by researchers Fulkerson and Martin over ten years ago when he countered "yet first-year legal research and writing courses, which often are the only ones providing periodic evaluations, also frequently receive the lowest ratings."

Student evaluation of teacher performance is a question of particular interest to those who teach in the field of legal writing, but it should also be a question of concern to the academy given the fact that evaluation results can impact promotion, tenure, and merit pay as well as the fact that one of the goals of student evalu-

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8 Frank E. Fulkerson & Glen Martin, Effects of Exam Frequency on Student Performance, Evaluations of Instructor, and Test Anxiety, 8 Teaching Psychology 90, 91 (1981) (Fulkerson and Martin designed an experiment which would "investigate relationships between exam frequency and (a) the students' evaluation of their instructor as well as (b) student text anxiety.").


10 Sixty eight percent of legal writing directors responding to the survey reported that at their institution promotion, tenure, or merit pay are based to some degree on student evaluation scores. See also Robert E. Haskell, Academic Freedom, Tenure, and Student Evaluation of Faculty: Galloping Polls in the 21st Century, 5 Education Policy Analysis Archives 6 (February 12, 1997) available at <http://www.olam.ed.asu.edu/epaa> ("As Cashin (1996), Director of the Kansas State University, Center For Faculty Evaluation and Development, notes, 'The higher education rhetoric is almost universal in stating that the primary purpose of faculty evaluation is to help faculty improve their performance. However, an examination of the systems, as used, indicates that the primary purpose is almost always to make personnel decisions. That is, to make decisions for retention, promotion, tenure, and salary increases.' Herein lies the problem."); John D. Copeland & John W. Murry, Jr., Getting Tossed from the Ivory Tower: The Legal Implications of Evaluating Faculty Performance, 61 Mo. L. Rev. 233, 242 (1996) ("Student evaluations do not carry as much weight in the faculty evaluation process as
Ation is to provide useful information for teaching improvement.\textsuperscript{11} There is no doubt that legal writing faculty are disadvantaged due to the gender composition of the profession\textsuperscript{12} and the status

\textsuperscript{11} See Walter, supra note 6, at 177 (citing Paul T. Wangerin, \textit{The Evaluation of Teaching in Law Schools}, 11 \textit{J. Legal Educ.} 87, 100-01 (1993) ("Advancing law teacher professionalism depends in part upon two fundamental tasks: evaluating our teaching and then using those evaluation results to improve our teaching. We can use a number of methods to evaluate our teaching, including self-evaluations, peer evaluations, supervisor evaluations, and student evaluations."). Walter further states that student evaluations are valuable and can assist law teachers in improving their teaching. Additionally, if there is bias in student evaluations due to course content, there may be a real danger posed to legal writing faculty who adjust their instructional methods or styles in order to achieve higher evaluations. In other words, legal writing faculty may be ignoring sound pedagogical theories in order to improve their evaluations. See Richard S. Markovits, \textit{The Professional Assessment of Legal Academics: On the Shift from Evaluator Judgment to Market Evaluations}, 48 \textit{J. Legal Educ.} 417, 427 (1998) ("Although many of my colleagues insist that no law school teacher adjusts his teaching to improve his student evaluations, my belief to the contrary is based on empirical observation as well as on the predispositions of an economist.").

\textsuperscript{12} See Pamela Edwards, \textit{Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy}, 4 \textit{Cardozo Women's L.J.} 75 (1997); Richard K. Neumann, Jr., \textit{Women in Legal Education: What the Statistics Show}, 50 \textit{J. Legal Educ.} 313 (2000); Kathryn M. Stanchi & Jan M. Levine, \textit{Gender and Legal Writing: Law Schools' Dirty Little Secrets}, 16 \textit{Berkeley Women's L.J.} 3, 4 n.3(2001). ("Unlike any law firm or corporation, the legal academy has an explicit and de jure two-track system for its lawyers: a high-status, high-pay professorial track made up overwhelmingly of men, and a low-status, low-pay 'instructor' track made up overwhelmingly of women. Seventy-four (74) percent of tenure-track, doctrinal law teaching jobs - the high-status, high-pay track - are held by men. Seventy-three (73) percent of the non-tenure track, legal writing jobs - the low-status, low-pay track - are held by women.") Stanchi and Levine further concluded that the "disparate treatment of faculty based on gender is most obvious in law schools when one looks at the faculty teaching legal writing," and that while legal writing "requires intensive labor," the faculty are "severely underpaid." \textit{Id.} at 4. See also Jan M. Levine & Kathryn Stanchi, \textit{Women, Writing, & Wages: Breaking the Last Taboo}, 7 \textit{Wm. & Mary J. Women & L.} 551, 574, 578 (2001) ("Thus, legal writing salaries start low regardless of the teachers' practice experience, and remain low despite the teachers' seniority in their field or even among other faculty in their schools... Not only do law
accorded to them at their respective law schools, but does the very nature of the subject they teach disadvantage them in ways never before contemplated?

In the fall 2000 semester, I conducted a faculty workshop schools pay legal writing teachers substantially less than their colleagues in academia, they also pay them much lower salaries than those earned by the law school graduates of the class of 1998.

Stanchi & Levine, supra note 12, at 24 (Hiring women to teach legal writing "allows law schools to see legal writing teachers - who are mostly women - as fungible, disposable, and subordinate."); Neumann, supra note 12, at 347 ("Legal writing is overwhelmingly female, and it holds the lowest status of any field of law school teaching.") "Table 7: Female Percentages of Law School Faculty, According to Status, Averages for 1996—99 Academic Years" Id. at 322. During these years, women constituted 9% of law school deans, 26% of conventionally tenured and tenure-track faculty, and 68% of women faculty were not on a conventional tenure-track. Neumann goes on to comment about the status of legal writing faculty and states, "When one looks at the legal writing field, the same pattern appears there as well. In fall 1998, 70 percent of legal writing teachers were women." Id. at 326. In terms of tenure, he reports that, "[w]omen on tenure track gain tenure at lower rates than men." Id. at 336. Neumann concludes that "everywhere in legal education - among deans of various ranks, among faculty, in libraries - men predominate at the top ranks of employees, while women predominate at the bottom." Id. at 345; Jenny B. Davis, Writing Wrongs Teachers of Legal Prose Struggle for Higher Status, Equal Treatment, 87 A.B.A.J. 24 (August 2001) (discussing the current controversy of status for legal writing professionals within the academy, highlighting Professor Molly Lien's plight at Chicago-Kent).

A writing professor at Columbia University, Ben Marcus, recently discussed the dilemma that teaching writing and gaining positive student evaluations poses for the writing instructor:

Students...would like to feel some degree of mastery when a class ends. This could make sense for an engineering course, but in my field, creative writing, which rarely churn out polished 21-year-old writers, it is trickier to provide the results that the career-minded student craves. A creative writer might graduate with only a sharper sense of just how hard it is to write professionally. Some students suck it up and meet the challenge. Others look around wildly for someone to blame, and the teacher is often the closest person at hand.

Marcus goes on to describe how he improved his student evaluations in writing: They loved me because I agreed that writing should be easy. The deception involved telling the students what they wanted to hear and praising them however much they floundered...I know other teachers who have done the same thing: teach your heart out to the teachable but be sure to please the unteachable, to keep your ratings high, like a politician trying to improve his poll results. Ben Marcus, Graded by My Students Through Some Dubious Teaching Techniques, I've Learned to Win Good Evaluations From My Classes, TIME, Jan. 8, 2001, at 51.

As a caveat, my position is evaluated according to a Clinical Faculty Operating Document, which provides for student input in the form of student evaluation forms and interviews. Similar to our institution, many legal writing teachers work under a director and are rated on items in evaluation forms over which they have no control. For example, I have been rated by students for four years on items on which my director has the final decision, such as "Organization of the Semester" and "Choice of Course Context."

Faculty workshops were instituted by the members of our outstanding Ad Hoc
with my colleagues to brainstorm the topic of course content and its affect on student evaluations. I was struck by the fact that both legal writing and doctrinal faculty acknowledged the problem legal writing teachers face in student evaluations and many called for a review of the entire student evaluation process at our institution, including designing a special evaluation form for legal writing courses. It is hoped that this article will generate similar responses throughout the academy.

This article seeks to explore the hypothesis that due to course content alone, legal writing professors receive lower student evaluations than doctrinal law professors. In testing this hypothesis, I conducted a national survey via e-mail of legal writing directors. Approximately 57 directors teach legal writing as well as a doctrinal course, and therefore, are capable of giving their personal student evaluation statistics as a basis of comparison. In particular, I will provide: 1) a discussion of current literature on the topic and set out the many variables which have been shown to impact student evaluation of law teacher performance; 2) a description of the hypothesis and the national survey exploring the undocumented variable of course content; 3) a discussion of the survey results; 4) a listing of possible explanations for the phenomena of lower student evaluations of legal writing faculty; and 5) a call for reform within law schools in the way evaluations are conducted, including specific recommendations for change.

**DOCUMENTED VARIABLES AFFECTING STUDENT EVALUATION OF LAW TEACHER PERFORMANCE**

While many variables affecting student evaluation of teacher performance have been addressed in either the legal or social science literature, there is a gap in terms of course content and its affect on evaluation results. Legal writing teachers certainly be-

\[\text{Research committee including: Patrick Kelley, Chair, Cheryl Anderson, Gene Basanta, Brannon Denning, Ted Kionka, and Mark Lee.}\]

\[\text{17 Many thanks to my friends and colleagues at Southern Illinois University School of Law who generously contributed their expertise in survey design, data interpretation, and publication placement. I received many useful ideas on how to isolate the variable, course content, which the article discusses.}\]

\[\text{18 Association of Legal Writing Directors Legal Writing Institute 2000, Survey Results, available at <http://www.alwd.org>, Question 56.}\]

\[\text{19 Legal literature has addressed the role gender, race, timing, and class size play in evaluation results. While the variables of gender, timing, and class size have been studied in the legal context, Pamela Smith points out that "there are no specific studies that particularly reveal actual student bias in terms of the racial presumption of incompetence. Yet, consistent anecdotal data support the conclusion that professors}\]
lieve that this variable exists and negatively impacts the comments and scores they receive on their semester evaluations. However, this theory and its origins have not been documented in current literature, leaving many in the legal academy without the knowledge necessary to interpret student evaluations of legal writing teachers and factor this into decisions which are based in part on these evaluation statistics. Additionally, the lack of attention to this specific topic, causes the same types of performance measurements to remain in place. As a result, those teaching in the legal writing field are left at a distinct disadvantage for improving the courses they teach.

Gender

A study of student evaluations in the law school context, by Christine Haight Farley, documented the differences in student evaluations for male and female professors who taught doctrinal law courses. This study excluded faculty who taught seminars, clinics, and legal research and writing courses. Farley documented the differences in student evaluations for male versus female professors, concluding that “generally, students do not evaluate female professors as positively as they evaluate male professors[,] and that . . . the content of these evaluations is different for men and women.”

Recently, a study dealing with gender and student perception of competence at nine Ohio law schools indicated:

Fifty-six percent of the female faculty (but only 16 percent of the male faculty) disagreed with the statement ‘Students at this law school assume that all female teachers are competent to teach.’ Forty-eight percent of the female students (compared to 18 percent of the male students) agreed that ‘[f]emale faculty have [a]
heavier burden than males to prove competence.'23

Additionally, Zenoff and Lorio discussed the effect gender plays in students' perception of competence, noting:

[a]necdotal data suggest that at some law schools women are perceived as less competent by students, at least at the beginning of their career. To what extent this is a pervasive reaction to all women teachers or solely to women law teachers is unknown, but evidence reveals that some university students consider women teachers in general less able than men. . . One plausible explanation offered is that students expect a 'real' law professor to be a man and are angry when a woman appears instead. Another suggestion is that some students believe that hiring standards are lower for women than for men; thus, they perceive women as less competent.24

Timing

Social science research has addressed the variable of timing and "proven a correlation between the grades students suspect they will receive from a professor and the negative evaluations they will give a professor to retaliate."25 Stumpf and Freedman documented field and laboratory experiments indicating that "grades bias instructor ratings. Higher actual or expected evaluations (grades) of oneself by others have been shown to lead to higher ratings of those others."26 Nimmer and Stone also confirmed the affect timing of grades has on student evaluation, concluding:

[Schuh and Crivelli] argued that students will 'mirror back' the evaluations that they receive from instructors. Moreover, for students who perform poorly and get low grades their evaluations of professors will be attributable to criticism that is based on prejudice or ill will. In effect, such students will 'retaliate' against the professor through their responses to items in [student ratings]. . . [S]tudents who get low grades in courses protect their sense of self-esteem by attributing their poor performance to the instructor. The blame manifests itself in the way that such students complete items in [student ratings]. . .

23 Neumann, supra note 12, at 348 (citing Joan M. Krauskopf, Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. LEGAL EDUC. 311, 329 (1994)).
24 Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don't Know About Women Law Professors, 25 ARIZ L. REV. 869, 879 (1983).
25 Smith, supra note 10, at 168; Nimmer and Stone, supra note 19, at 207.
Individuals who receive poor evaluations from such a feedback source (e.g., a professor) retaliate by devaluing the performance of the source of the evaluations, rather than attributing their poor performance to motivation and/or ability deficits.27

Pamela Smith documented the existence of evaluative hostility in the law school context through her study of student ratings.28 In her first-year property class, Smith distributed student evaluations before giving her mid-term exam. At that time, students "enjoyed learning various aspects of Intellectual Property. The pace of coverage was fine. Some liked the overheads, others did not... [T]he informal evaluative measures were fairly decent."29 After the mid-term examination, another evaluation was conducted and Smith writes:

Once I graded their midterm exams, students had the opportunity to exercise evaluative hostility. ... [S]tudents began evidencing either express hostility through negative responses or implied hostility through uncertain responses. ... Before the midterm exam, 97% of students enjoyed learning the subject matter. After midterm grading, students apparently experienced evaluative hostility and no longer enjoyed their time in Property law.30

In terms of timing and its impact on legal writing faculty, Barbara Fines states that "research confirms the suspicion of legal writing instructors that their early and frequent evaluation of students impacts their teaching evaluations more directly and negatively in comparison to their colleagues who do not distribute grades until after student evaluations are completed."31

Class Size

In 1998, Hativa studied the effect class size has on student evaluations in law schools.32 The results of this in-depth study revealed that students consistently rate large classes lower than small

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27 Nimmer and Stone, supra note 19, at 207-08, 211.
28 Smith, supra note 10, at 167-200.
29 Id. at 172.
30 Id. at 184-85, 191.
31 Barbara Glesner Fines, Competition and the Curve, 65 UMKC L. Rev. 879, 889 (1997); See also Abel, supra note 9, at 419 ("Students who did as well as or better than they expected rated the instructor higher than those who did worse. Most law school courses offer few grades during the semester. Those that do (such as legal research and writing) might find a great dispersion of student evaluations and perhaps a lower overall evaluation caused by disappointment.").
32 See Nira Hativa, Teaching Large Law Classes Well: An Outsider's View, 50 J. LEGAL EDUC. 95, 96 (2000) (where teachers who had been rated high as well as low were observed. Many teachers and students were interviewed).
classes. A "large" class was defined as thirty or more students, and a "small" class was defined as fewer than twenty-two and usually fewer than twelve students.

EXPLORING THE HYPOTHESIS: THE UNDOCUMENTED VARIABLE OF COURSE CONTENT

Methodology

The hypothesis on which I chose to base my research is as follows: Due to course content alone, legal writing professors receive lower student evaluations than doctrinal law professors. In exploring this hypothesis, I conducted a survey which targeted legal writing directors since these faculty members frequently teach both legal writing and doctrinal law courses. These faculty were uniquely qualified to provide the most accurate information concerning my hypothesis. For example, if legal writing directors receive substantially lower student evaluations in their legal writing courses as contrasted with their doctrinal law courses, all other things being equal, the hypothesis gains credibility.

In April 2001, the survey questionnaire was posted to the legal writing director's listserv, "dircon." The questionnaire contained eight questions with several questions having sub-parts. Six of the eight questions called for open-ended responses in narrative form. The purpose of the survey questionnaire was to develop both quantitative and qualitative data which would then be used to investigate the anecdotal evidence of lower student evaluations that legal writing professionals have consistently reported through informal and listserv discussions.

The survey of legal writing directors did not specifically address the timing of the evaluations or whether the doctrinal course taught by the legal writing director was a first-year or upper-level

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33 Id. at 97. ("Table 1 shows that the rating on the global item 'instructor's overall teaching effectiveness' is consistently lower, for each of the fourteen teachers, in the large class than in the small class.").
34 Id.
35 See Association of Legal Writing Directors Survey Results, supra note 18.
36 This survey questionnaire was approved by Southern Illinois University's Human Subjects Committee. A copy of the survey questionnaire is available from the author by request.
37 LANI GUINIER, MICHELLE FINE, & JANE BALIN, BECOMING GENTLEMEN 31 (1997) ("Qualitative data have become central to the work of social scientists, enabling them to produce more context-specific explanations of social life by collecting evidence on the perspectives and understandings of research informants.").
38 Abel, supra note 9, at 418. ("Student ratings of teaching quality vary directly with year in college, becoming increasingly favorable each successive year. This suggests
Consequently, I did not examine the correlation between these factors and student evaluation of teacher performance. These variables would certainly be worthwhile areas of future study.

Survey Results

While there are over 240 members of the Association of Legal Writing Directors, only fifty-seven of those directors teach both a legal writing and a doctrinal law course according to the 2000 ALWD Survey Results. I received responses from twenty-four directors and 87% of those directors responding taught both a doctrinal and a legal writing course at their respective institutions. Since there is some evidence that students rate elective courses higher than required courses, the survey was specifically tailored to measure this additional variable. Thus, Table 1 illustrates how directors who taught a required doctrinal course reported the results of their student evaluations in comparison to their legal writing evaluations:

that law schools should look for systematic variation between first-year and upper-class courses. . .

Another variable, which was not specifically addressed in the survey, was whether the writing course was graded or pass/fail. In other words, will a legal writing course, which is graded on a pass/fail basis, remove evaluative hostility? However, ALWD statistics indicate that most legal writing courses are graded with grades that are included in students' grade point average. See Association of Legal Writing Directors Survey Results, supra note 18, Question 15.

Id., Question 56.

See William Roth, Student Evaluation of Law Teaching, 17 Akron L. Rev. 609, 612 (1984); Donna L. Ali & Yvonne Sell, Issues Regarding the Reliability, Validity and Utility of Student Ratings of Instruction: A Survey of Research Findings, Univ. of Calgary (April 27, 1998) ("The literature supports the belief that elective courses are rated more highly than required courses.").
Table 1

<table>
<thead>
<tr>
<th>Legal writing evaluations were lower than required doctrinal course</th>
<th>Legal writing evaluations were higher than required doctrinal course</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 (86%)</td>
<td>1 (14%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal writing evaluations are always lower</th>
<th>Legal writing evaluations are mostly lower</th>
<th>Legal writing evaluations are seldom lower</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal writing evaluations are substantially lower than doctrinal evaluations</th>
<th>Legal writing evaluations are somewhat lower than doctrinal evaluations</th>
<th>Legal writing evaluations are slightly lower than doctrinal evaluations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 2 displays similar data for those legal writing directors teaching an elective doctrinal course in addition to a legal writing course.

Table 2

<table>
<thead>
<tr>
<th>Legal writing evaluations were lower than elective doctrinal course</th>
<th>Legal writing evaluations were higher than elective doctrinal course</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 (86%)</td>
<td>2 (14%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal writing evaluations are always lower</th>
<th>Legal writing evaluations are mostly lower</th>
<th>Legal writing evaluations are seldom lower</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>7</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal writing evaluations are substantially lower than doctrinal evaluations</th>
<th>Legal writing evaluations are somewhat lower than doctrinal evaluations</th>
<th>Legal writing evaluations are slightly lower than doctrinal evaluations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

42 One respondent omitted answering the final sub-part to this question.
43 One response indicated that the legal writing evaluation was between the categories “mostly lower” and “seldom lower.”
44 Again, another response indicated that the legal writing evaluation was between the categories “always lower” and “mostly lower.”
45 Two responses indicated that the legal writing evaluations were between the categories of “substantially lower” and “somewhat lower.”
46 Once again, some respondents omitted answering all the sub-parts to this question and simply indicated whether the legal writing evaluation was higher or lower than the elective doctrinal course they taught.
47 One response to the survey indicated that the legal writing evaluations were between the categories of “mostly lower” and “seldom lower.”
Table 3 represents the responses to the following question: “To your knowledge, do professors teaching legal writing at your school generally receive lower student evaluation rankings than professors teaching required doctrinal law courses?”

<table>
<thead>
<tr>
<th>Yes, the legal</th>
<th>No, the legal writing teachers do not receive lower evaluations than the doctrinal teachers</th>
<th>I have no knowledge</th>
</tr>
</thead>
<tbody>
<tr>
<td>writing teachers</td>
<td>receive lower evaluations than the doctrinal teachers</td>
<td></td>
</tr>
<tr>
<td>10 (42%)</td>
<td>3 (12%)</td>
<td>11 (46%)</td>
</tr>
</tbody>
</table>

Table 4 represents the responses to the following question: “Is your promotion, tenure, or merit pay based on your student evaluation scores to any degree?”

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 (68%)</td>
<td>3 (14%)</td>
<td>4 (18%)</td>
</tr>
</tbody>
</table>

Interpretation of Results and Possible Explanations

While the survey sample was perhaps limited given the small number of faculty who teach both a legal writing and a doctrinal course, the data indicates that the belief that legal writing faculty receive lower student evaluations based on course content is not imagined. The vast majority of legal writing directors received lower student evaluations when they taught a legal writing course as opposed to a doctrinal course. Almost half of these directors reported that the legal writing faculty at their institution received lower evaluations for their writing course than did those faculty teaching doctrinal courses.

While the predominantly female composition of legal writing faculty may play a role in causing lower student evaluation results for legal writing classes, it is hard to ignore the fact that legal writing directors across the country report lower student evaluations for legal writing irrespective of gender. Additionally, even for

48 Two respondents omitted the answer to this question.
49 See supra notes 12 and 13.
50 Farley, supra note 10, at 352-57.
those directors who are women, the evaluations are still lower for the courses they teach in legal writing. In essence, gender is factored out of the equation when the exact same woman in front of the classroom receives lower student evaluations in her writing course in comparison to the doctrinal course she teaches.

Hatova's study on class size found that faculty teaching smaller classes tended to perform better in terms of student evaluation than those faculty teaching larger classes. Yet, even though legal writing faculty typically teach smaller classes, they still tend to score lower on student evaluations in comparison to doctrinal law teachers.

And, so we are left to answer the question why this trend exists. Are the lower student evaluations of legal writing faculty directly attributable to the fact that legal writing faculty are typically evaluated after they have given grades to students? In other words, are lower student evaluations for legal writing faculty a direct result of evaluative hostility or are other factors particular to legal writing courses at play here? The qualitative data from legal writing directors suggests that factors other than evaluative hostility are present.5

One reason may simply be stress. In her article of advice to first-year law students, Suzanne Rowe comments about legal research and writing courses:

First, LRW is time consuming. . . One of the greatest challenges facing legal writings students is accepting constructive criticism. . . Another source of stress is that, in addition to learning analysis, research, and writing skills, students must follow tedious rules in submitting papers. Your LRW professor may follow court rules for documents; these rules prescribe the maximum length of a document, the number of lines that can appear on each page of a document, the margins of each page, and the size font used. Court rules, and LRW classes, also have strict rules about timeliness of documents. Few students are accustomed to the sensitivity to detail required by court rules or by LRW classes. Losing points for this minutiae can cause you great stress since your future jobs may be determined by your first-year grades. . . Perhaps the biggest source of stress is the fact

51 Additionally, the qualitative data received from directors closely tracks the reasons Jan Levine identified in 1995 as explanations for student criticism in legal writing courses. See Jan M. Levine, Response: "You Can't Please Everyone, So You'd Better Please Yourself": Directing (or Teaching In) A First-Year Legal Writing Program, 29 VAL. U.L. REV. 611 (1995) (identifying extensive written feedback to students, status of writing instructors, student workload, and the active learning nature of legal writing courses as contributors to student complaints).
that most students receive their first law school grades in LRW.\textsuperscript{52}

A sampling of comments from legal writing directors offered in their responses to the survey which touch upon how the element of stress can impact the student evaluations of legal writing faculty are as follows: (recognizing, of course, that these narrative responses describing why legal writing directors believe their student evaluations are lower in legal writing may involve some overlap of various reasons)

- My theory is that most evaluations gauge the ‘warm and fuzzies’ the students have toward the course and/or teacher, and students do not feel warm and fuzzy when they have to work so hard doing things that are inherently difficult, no matter who guides them through the process. The reality in my school is that, generally speaking, the easier the course is (which really means the easier and less demanding the professor is), the higher the evaluations.

- Much is pure venting and lack of understanding that there is no one way to write, that writing is hard, and that even if 1Ls got good grades on other kinds of writing, they may not get good grades on legal writing.

In fact, the former director at my institution recently commented that, “first-year skills courses generally produce a great deal of anxiety in, and attract a great deal of hostility from, first-year law students; this anxiety/hostility plays itself out in a range of ways that make teaching such a course fit somewhere on the continuum of difficult via paranoia-inducing to harassing.”\textsuperscript{53}

Another reason may be that legal writing is “different.” Doctrinal law courses center on analysis, and in legal research and writing students “weave analysis into research and writing and learn to practice law.”\textsuperscript{54} Legal writing directors commented on how the “different” nature of a legal writing course can impact course evaluations:

- This is the first course (perhaps the only course) that requires that the student produce something and receive feedback on it throughout the semester.

- I believe my scores were lower for legal writing because students have some resistance to the legal writing course. They do not like having their writing closely critiqued. [S]ome are not particularly interested in writing and language and find the course a struggle. [S]ome students expect to have everything spoon-fed to them, and they resent a professor who will not provide pat answers but makes them think and then critiques


\textsuperscript{53} Pether, supra note 4.

\textsuperscript{54} Rowe, supra note 52, at 1194.
them on their expression of that thinking. Some students resent having to learn citation format and they take that resentment out on the professor.

- LRW is a course whose work is totally unlike the work of the other classes (substantive courses, mostly). Also because LRW requires constant hard work, where other classes only have one exam at the end of the term.
- Students feel legal writing is different and the grading is more subject. It does not look like any of the other first-year courses.
- Legal writing teachers require active learning, as opposed to the largely passive learning of the other first-year classes. In other words, we require lots of hard work. Further, we give feedback during the semester, some of which is negative; in the other classes, the students get no feedback.
- I wish our dean and other faculty understood how personal writing is for most students and how offended many are when you critique their writing. This is often what shows up on negative evaluations. Other professors don't have this problem.
- I think people come in thinking they know a lot about this already and that I can't teach them much about it... When in fact, I think there's a lot they don't know and even if they're accomplished writers, there's always benefit to more reflection on the subject.
- Usually the comments relate to the course itself: 'This course is a waste of time.' I believe this does relate to the subject matter and reflects a basic lack of understanding about what will be important to the students when they get out.

A further reason may be the already documented affect that timing of grades has in relation to the evaluation. Most doctrinal courses use a final examination to test at the end of the semester, while a “sound writing program consists of numerous graded assignments of increasing degrees of complexity.” As such, students begin receiving grades in their legal writing courses many weeks before they are even tested in their doctrinal law courses. Peter Bayer discussed the impact that the timing of grades can have on legal writing courses:

Most students, even those who excelled in college, receive 'Cs' or 'Bs' in legal writing, possibly the first such grades they have seen in years. For some students, the demands of numerous and difficult assignments coupled with the dismay of receiving less than exemplary grades generates a degree of discontent, even hostility, towards legal writing faculty. Although many stu-

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55 ABA Sourcebook on Legal Writing Programs (Section of Legal Education and Admissions to the Bar), 13-15 (1997) (discussing the nature and number of documents in an effective legal writing program).
students accept grades and accompanying detailed assessments of their work with grace and a professional interest in improvement, others become angry, confused, and even resentful. Rather than accept their own need to improve, they blame the quality of instruction.

Wishing for a vulnerable target of authority upon which to vent their anxiety, students often direct the accumulated hostility of the entire semester toward the only teachers from whom they have received grades, and who, by coincidence, are the least prestigious faculty, thereby all the more accessible scapegoats. Thus, writing professors absorb the brunt of student bewilderment and disorientation that is inherent in introductory legal studies.\footnote{Bayer, \textit{supra} note 7, at 364.}

Legal writing directors commented on the aspect of timing:

- We're the first teachers to tell the 1Ls that they won't be at the top of their law school class, and they hold it against us without seeing that their other grades later on confirm exactly what we said about their written work.
- 1Ls are tougher graders, especially after they get lower grades on their writing than they thought they would. Writing is more personal so students make more personal comments.
- Students receive feedback from writing courses more frequently than they do in substantive courses. If they are unhappy with the comments, it's reflected in the evaluations. Substantive courses do evaluations before giving grades in the course.

Time is a precious commodity to first-year law students and the time-consuming nature of many legal writing tasks could be a contributing factor to lower student evaluations of the course. In fact, Markovits really hints at the dilemma legal writing teachers face when he comments, "I suspect that if student evaluations were given less weight, teachers would increase the percentage of class time they devote to subjects or activities that students tend not to like... ; would assign more work; and would demand that students prepare better for and participate more in class."\footnote{Markovits, \textit{supra} note 11, at 427.} Legal writing directors reported that students make negative comments in their evaluations about the time-consuming nature of legal writing assignments as well as the course credit awarded for writing:

- LR & W requires more work.
- [The negative comments relate to the fact that] this is only a 2-credit course but requires as much work as a 3-credit course.
They also complain that I am too demanding or make them work too much for a 2-hour credit course.

Finally, the issue of "status" in the legal academy may play a role in lower student evaluations for writing faculty. A number of legal writing professionals have commented on the status of legal writing faculty within the academy. There is no question that "[l]ibrarians, clinicians, and legal writing teachers are now well-established categories in legal education. All three, regardless of their importance to the educational mission of law schools, are at the bottom of the legal education hierarchy. And all three groups are predominantly female." The status of legal writing faculty is certainly communicating something to first-year law students about the relative "status" of legal writing as a course in their legal studies. Farley recognized that status could negatively impact student evaluations in legal writing, commenting:

More often than not, a woman legal Research and Writing instructor is the first woman professor a student has in law school. It is their first chance to evaluate a woman law professor. What conclusions can they draw from this exposure? I argue that this gendered structure reinforces negative stereotypes. It sends the message that this group, which is dominated by women, is not as competent as that group, which is dominated by men, because... this group has low status and uses a devalued feminine teaching style.

The reality is that, as my students discover all too soon, Legal Research and Writing has the least prestige in law school. First, hardly any resources are devoted to it. Second, students usually receive few credits (usually one or two) for course completion. But more importantly, it is nearly universally regarded as less intellectually challenging and therefore less prestigious.

More recently, Peter Bayer stated that there is a disparate treatment of legal writing faculty. In regards to status and its effect on student perception, Bayer comments that "[d]isrespect from the faculty and administration, coupled with observable discrepancies of status, send a resolute message that students need not accord their writing professors the same regard as they do other

58 See supra notes 7, 12, and 13.
59 Marina Angel, The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure, 50 J. LEGAL EDUC. 1,2 (2000) (discussing the 1999 ALWD Survey Results which reported information on status, title, committee service, and upper-division teaching for directors, and on salary for both directors and legal writing teachers and stating that "[w]omen were at the bottom of each status and salary category."). Id. at 5-6.
60 Farley, supra note 10, at 354-55.
In their survey responses, legal writing directors noted status as a contributing factor to lower student evaluations:

- Writing faculty are viewed as having less status and are easier to attack as an outlet for the great amount of stress and anger that many 1Ls have.
- Unfortunately, the first professors to tell students that they may not be A students in law school are the professors with the lowest status. Without any other feedback to confirm the legal writing professor’s feedback, I think students have a natural tendency to develop a ‘consider the source’ attitude about their legal writing professor. I think that attitude continues to develop throughout the semester and is reflected in evaluations.
- Legal writing professors are more accessible and less ‘god-like’. This I believe makes us more vulnerable to negative student comments.

### Call for Reform

**Specific Recommendations for Change**

The quantitative results of this survey coupled with the qualitative data received from legal writing directors nationwide suggest that the legal academy should rethink the process of student evaluation of teacher performance in legal writing courses. To counter the bias that is inherent in student evaluation of legal writing faculty, institutions should:

1. Tailor the evaluation form to measure what legal research and writing courses teach. Legal writing faculty teach students how to acquire fundamental lawyering skills as opposed to how to be a legal scholar. In teaching students how to acquire fundamental lawyering skills, legal writing faculty critique student work, hold office conferences and engage in a number of other interactive learning mechanisms, which the traditional law school evaluation form simply does not measure. This suggestion is in line with the ABA Communication Skills Committee’s statement that the evaluation form used in legal writing courses should be different from those used in doctrinal classes because of the uniqueness of the

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61 Bayer, supra note 7, at 363. (“When faculty and administrators denigrate the importance of legal writing as a curriculum and writing professors as professionals, students respond to such indicia of disrespect. They feel free to criticize legal writing for any number of perceived deficiencies.”). Id.

62 This recommendation was provided in a number of the survey responses as a way to improve the current system for student evaluation of teacher performance in legal writing courses. An example of a student evaluation form tailored to a legal writing course would be that used by the legal writing faculty at Temple University.
teaching method and goals of the legal writing course.\textsuperscript{63}

2. Use written comments as opposed to numerical ranking systems in evaluation forms.\textsuperscript{64} The danger of using numerical rankings has been discussed at length in the legal literature. Markovits pointed to the risks involved in numeric systems of evaluation:

In practice, however, law faculties rely almost exclusively on the average numerical evaluation a teacher receives from all students who return a class evaluation...on the average evaluation of the direct consumers of the pedagogic service... So, they rely on the average of those evaluations to assess teaching performance. They ignore the variance of the distribution, and they pay virtually no attention to the students' written comments. They make no systematic effort to solicit the more detailed assessment of thoughtful students whose judgments may deserve more weight... In short, most law schools have substituted numerical 'market evaluations' by direct consumers of teaching for faculty assessment of teaching quality.\textsuperscript{65}

In his discussion of the disadvantages of quantitative ranking systems and the benefits of qualitative measures, Richard Abel stated:

Students should not be asked for quantitative ratings... There is considerable evidence that students do not use common standards in making their judgments and that their criteria differ from those of the faculty... Averages mask disagreement among students. Furthermore, faculty grossly misuse the numerical results, calculating means several decimal places beyond the significant figures and disregarding standard deviations. Qualitative responses have several inherent advantages. They require students to give reasons for their judgments. Students cannot simply assign a 1 or 9 to an instructor; they must state why and in what respect the instructor is especially good or bad. Faculty then can make an independent judgment about whether student criteria are appropriate and student judgments consistent. Indeed, faculty must engage in interpretation: qualitative responses cannot be averaged; they must be scrutinized for recurrent themes, the distribution of opinions, and the persuasiveness of the supporting reasons.\textsuperscript{66}

3. Perform some type of evaluation after students have

\textsuperscript{63} See generally, ABA Sourcebook, supra note 55.

\textsuperscript{64} See Abel, supra note 9, at 432-33. (discussing the results of his study and noting that while most schools seek written comments, only 51 percent use those comments in personnel decisions). \textit{Id.} at 413.

\textsuperscript{65} Markovits, supra note 11, at 420-21.

\textsuperscript{66} Abel, supra note 9, at 452-53.
clerked, to determine whether their legal writing course prepared them for the experience. How can a first-year law student, not yet acculturated to the profession, judge the skills of someone teaching them the tools necessary to be a lawyer? After clerking over the summer, law students are in a much better position to assess the teaching of legal writing.⁶⁷

4. Time evaluations to be given after students receive their grades in all courses. Courses, such as legal writing, which involve periodic assignments with multiple assessments are at risk of lower student evaluations due to evaluative hostility. A recent study found that 94 percent of law schools perform an in-class evaluation and 98 percent of those were conducted at the end of the semester.⁶⁸ Presumably, performing an in-class evaluation requires students to be in attendance, and thus these evaluations occur before examinations are taken or grades posted in courses other than legal writing. Institutions should put into place measures to reduce the impact timing can have on the evaluations, including conducting evaluations of teacher performance after grades have been posted in all courses.

5. Make the anonymous student evaluation forms non-anonymous⁶⁹ and conduct focus-groups or student interviews.⁷⁰ One legal writing director commented that “[f]ocus-group feedback might also be helpful, delivered in a situation where a group facilitator can ask follow-up questions and other students can act as a check on the unbridled comments of the disgruntled.”⁷¹ Also,

⁶⁷ Professor Sue Liemer, Director of Lawyering Skills at Southern Illinois University School of Law, has often suggested that we conduct a follow-up evaluation of our legal writing students after their first summer clerking experience. See Abel, supra note 9, at 429-30 (“Few undergraduates make much conscious use of the knowledge they acquire in college. Furthermore, unless they do graduate work in the same field, they are unlikely to encounter inconsistent information or alternative interpretations. By contrast, law graduates (and even students), immediately use much of what they have learned and encounter many other authorities who may confirm or contradict that knowledge, such as colleagues, superiors, adversaries, judges. It would be important to test the stability of lawyer evaluations during the first few years after graduation.”).

⁶⁸ Abel, supra note 9, at 412-13.

⁶⁹ Pether, supra note 4, manuscript at 3-4 (describing the ‘perversions of American free speech culture’ as the “phenomenon that means, among other things, that U.S. law students are much more prone than their Australian counterparts to tell one exactly what they believe, especially if their opinion is trenchantly critical, especially if the topic is at the center of one’s professional expertise, but only if they can do so in the anonymous context of the student evaluation of one’s teaching.”).

⁷⁰ See Abel, supra note 9, at 414 (only 27 percent of schools interview students in the teacher performance evaluation process.)

⁷¹ Narrative response of a legal writing director via the survey.
interviews by faculty of "students whose judgments they have special reason to trust"\textsuperscript{72} could assist institutions in "prob[ing] the depth and basis of student feelings."\textsuperscript{73} Likewise, one legal writing director noted that "candid assessments by conscientious students really can help. . . I have changed some of my teaching methods/strategies based on thoughtful, intelligent student suggestions (although most such suggestions come in face-to-face meetings and not from formal evaluations)."\textsuperscript{74}

6. Change the perception of legal writing within the academy. If students frequently report in their evaluations that "legal writing is a waste of time," then an institution should work to correct that misunderstanding. Similarly, if students consistently report that the workload in legal writing is out of proportion to the credit hours awarded, then institutions should increase the number of credit hours devoted to the legal writing course.

7. Make distinctions between legal writing and doctrinal courses, as well as tenure-track and contract employees.\textsuperscript{75} If administrators studied student evaluation statistics and compared data in different ways, perhaps trends could be identified. If disadvantages appeared to exist, institutions could offer "allowances" to even out the impact of bias resulting from course content or instructor status.

8. Train students, faculty, and administration.\textsuperscript{76} Students need some brief training on evaluation before completing an as-

\textsuperscript{72} Markovits, \textit{supra} note 11, at 420.

\textsuperscript{73} Abel, \textit{supra} note 9, at 453.

\textsuperscript{74} Narrative response of a legal writing director via the survey.

\textsuperscript{75} Abel, \textit{supra} note 9, at 422. ("Among the eighty-one law schools that calculate means or medians, only three make any distinctions between status categories when they compare individual instructors with the entire faculty."). Abel's study also documented that a majority of law schools make no distinction between courses in determining the faculty median or mean. \textit{Id.} at 413, 418. Perhaps distinctions should be made for professional responsibility courses as well. See Steven H. Goldberg, \textit{Bringing The Practice to the Classroom: An Approach to the Professionalism Problem}, 50 J. Legal Ed. 414, 419 (2000) ("Most PR teachers will confirm, with regret, that even if students do not think of the course as a 'joke,' they are uninterested at best, and they hate it at worst. They take PR because it is required, which they resent. . . They resent the MPRE too. The result is a group of students, ranging from discontented to aggravated, who will resist with inattention and silence anything beyond black letter recitation calculated to help them successfully traverse the MPRE.").

\textsuperscript{76} See Ali & Sell, \textit{supra} note 41. ("McKeachie (1997), one of the leading scholars in student evaluations research. . . , points out that researchers 'need to study what teachers can do to help students become more sophisticated raters.' Most importantly, McKeachie argues for more research 'on how to train members of personnel committees to be better evaluators, and research is needed on ways of communicating the results of student evaluations to improve the quality of their use.").
essment of teacher performance since "training students, even for a very brief period (such as half an hour), can significantly increase the reliability of their judgments." Faculty who sit on promotion and tenure committees as well as administrators evaluating legal writing teachers for raises or merit pay should attend workshops on bias in student evaluations as well as become familiar with the relevant literature on bias in evaluation.

9. Alternatively, abandon the use of student evaluation statistics or significantly reduce their importance. This suggestion is not without its supporters.

77 Abel, supra note 9, at 432.
78 Smith, supra note 10, at 202-03. (This recommendation is in line with Pamela Smith's suggestions to institutions to combat racial bias in student evaluations. Smith recommends that "all members of promotion and tenure committees, as well as all administrators who make decisions about faculty advancement, are familiar with key research findings about the potential for gender and race bias in evaluation processes.").
79 Markovits, supra note 11, at 417, 421, has argued that "[t]he willingness of law faculties to defer to student evaluations of teaching manifests the professors' doubts about their own pedagogic expertise and the value of what they have to teach; their belief that students are consumer sovereigns or that a (liberal) university is obligated to treat its students as if they were sovereigns- their failure to realize that an important obligation of educators is 'to force students into experience'; and their implicit assumption that the goal of a law school's pedagogy is to maximize the sum of its individual students' narrowly defined professional self-interests. Although these factors may account for the legal academy's shifting from personal to market evaluations of teaching, they clearly do not justify it." Id. at 422-23. Additionally, psychologist Robert Haskell has argued that student evaluations are a "serious unrecognized infringement on academic freedom... [student evaluation of faculty] is not simply a salary, promotion, and tenure issue- as important as these are for individual faculty; nor is the issue simply that students evaluate faculty. As the findings of this paper suggest, [student evaluations] are not the benign instrument they may appear to be or may once have been. Their primary impact goes to the core of academic freedom and to quality of instruction." Haskell, supra note 10. "In this regard, Alan Dershowitz... believes that the administrative use of [student evaluation of faculty] is a direct threat to academic freedom and to quality education. After teaching on a controversial subject and receiving negative feedback from students, he says he 'realized how dangerous it would be for an untenured professor' to teach about such subjects." Id. Haskell notes that there is a shortage of data on how student evaluations affect academic freedom, and cites the following as possible reasons: "(1) there has been little professional mention of [student evaluation of faculty] as an infringement on academic freedom, (2) some faculty are embarrassed to admit that student evaluations may influence their professional behavior in the classroom, (3) to question the right of students to evaluate faculty may be considered unprofessional if
10. A final recommendation for institutions, which does not specifically relate to student evaluation of teacher performance, calls for a more precise dialogue between faculty and administration in evaluation standards. Specifically, almost twenty percent of legal writing directors had no knowledge whether student evaluation results were used in decisions regarding their promotion, tenure, or merit pay. It goes without saying that a law school faculty should always be apprised of the specific criteria by which administration will evaluate their performance.

CONCLUSION

If the student evaluation process is inherently unfair due to the subject matter of the course or other factors identified in previous literature, including gender or timing of evaluation, decisions that impact promotion, tenure, or salary increases should not be based on student evaluation of teacher performance. Equally important is the concern that if students are incapable of providing an unbiased assessment of legal writing courses with the current structure for evaluations, legal writing teachers are not receiving valuable feedback necessary to improve the courses they teach. In essence, the current process for student evaluations prevents those teaching in the field from doing their best and reaching their potential as legal writing professionals.

Additionally, gender has already been shown to negatively impact student evaluations and the results of this article’s survey lead to the conclusion that course content has a detrimental affect as well. Does all this mean that the plight of those in the “pink ghetto” is worse than we imagined? In other words, do women not undemocratic, (4) to question the right of students to evaluate faculty may be seen as self serving, and (5) [student evaluation of faculty] tends not to be high status research.” Id. Haskell points out that faculty are influenced by student evaluations, stating that “[w]hile formal surveys of faculty views on this issue are relatively rare, one study found that at least one third of faculty respondents reported lowering their grading standards and course level in response to their student evaluations. . . Another study found that 64.8% of respondents believed that ‘student evaluation forms are responsible for lenient grading.’ According to another study, 39% of accounting administrator respondents admitted being aware of faculty who altered their instructional behavior in order to improve evaluation scores.” Id. See also Nimmer and Stone, supra note 19, at 212, reflecting on the results of their study of student evaluations declared, that “the fairness, validity, and perhaps the legality of using [student ratings] for administrative decision-making purposes appear questionable. . .”

teaching legal writing not only have the gender factor to overcome, but also the negative effect of course content? Since legal writing is largely a female profession and course content causes lower student evaluations, which has implications for promotion, tenure, and merit based salary increases, then law schools must heed the call to reform the student evaluation of teacher performance process.

In ending, I would like to go back to the beginning and the title's reference to the "legal writing pathology." Legal writing professionals truly suffer from some type of disease within the legal academy. Lower student evaluations, due at least in part to course content, are yet another symptom of this "pathology." Lower pay, status, and respect have already been documented as symptoms of the disease. Yet, it is too early to tell how these many forces interrelate and whether one is causing another. In other words, could lower pay and status cause lower student evaluations, or are lower student evaluations playing a role in pay and status issues? These are all questions beyond the scope of this article but ones that those of us in the legal writing field ponder. But the end result for the academy in terms of student evaluations and the findings of this survey are threefold: 1) Administrators need to be aware that course content alone may impact student evaluation results for legal writing teachers; 2) Student evaluation forms should be tailored to measure what we teach in legal writing in order to provide the most accurate feedback, not only for the administration but for the legal writing professionals who teach the course so they can improve the way they deliver instruction; and 3) To the extent student evaluations in legal writing disadvantage an already disadvantaged group of women teaching this subject, a rethinking of the role these evaluations should play in the promotion, tenure, and merit pay processes. The time has come that we, as legal academics and administrators, do something to stop the spread of the disease that legal writing professionals have come to know as the "legal writing pathology."

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81 See Farley, supra note 10, at 337. ("Furthermore, these evaluations can be used against women in promotion decision because negative evaluations can be used to affirm preconceived assessments of women faculty.").