



Security of Position Toolkit

Prepared by LWI's Professional Status Committee

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Description of this toolkit:

This Toolkit on security of position compiles resources that the Legal Writing Institute's (LWI's) Professional Status Committee (PSC) expects will be helpful to our members in negotiating security of position issues (*e.g.*, moving from short-term to long-term contracts, converting positions to tenure-track, *etc.*). It includes (1) a summary of publicly available information that is potentially relevant, without vouching for the accuracy of those sources; (2) a brief description of non-public information that is available upon request from the PSC; (3) a discussion of strategic considerations and concerns to consider in crafting arguments; and (4) a list of PSC members willing to provide further support or serve as a sounding board on security of position issues.

If you have feedback on this Toolkit, including any information that you think should be added to a future version, please contact PSC committee co-chair Mary Bowman at mary.n.bowman@asu.edu with that feedback.

1. Publicly available information

1.1 Surveys/empirical data

1.1.1 The ALWD/LWI joint survey

Since 1999, LWI and the Association of Legal Writing Directors (ALWD) have jointly sponsored a survey of legal writing programs. The results of those surveys are available at <https://www.lwionline.org/resources/surveys> and <https://www.alwd.org/resources/survey>. The most current survey results available are from the 2018 survey; there are also results available from 1999-2015 and 2017. The Survey Report from 2018 is available at <https://www.lwionline.org/sites/default/files/Final%20ALWD%20LWI%202017-18%20Institutional%20Survey%20Report.pdf>.

The following questions of the current version of the survey deal with security of position issues:

- Q.4.4: (re. staffing models that schools that students use for their LRW programs);
- Q 4.10 (more detail re. staffing models at schools with “complex hybrid” staffing models);
- Q4.11 (re. status of full-time faculty teaching LRW)
- Q6.5 (re. the statuses of professor(s) who teach various types of required LRW courses);
- Q7.6-7.7 (re. status(es) of faculty teaching elective LRW courses);
- Q8.2 - 8.4 (re. responding schools that employ faculty of various statuses);
- Q8.5 & 9.5#2 (re. status of LRW directors);
- Q10.17 (re. whether faculty of varying statuses have opportunity to teach non-LRW courses);
- Q11.2-11.3 (re. “caps,” *i.e.* limits on number of years contract faculty can teach at a school);
- Q11.5 (re. typical length of annual contract, *e.g.* 9 months or 12 months);
- Q11.6 - 11.7 (re. who has the authority to hire new LRW faculty);
- Q11.8 - 11.11 (re. evaluation of LRW faculty for promotion, tenure/retention);

- Q11.12 - 11.32 (re. standards for promotion and retention of LRW faculty, including comparisons to standards for non-LRW faculty);
- Q11.33 - .37 (re. scholarship standards & expectations);
- Q11.39 - 11.53 (re. hiring, evaluation, promotion of LRW directors);
- Q 18.4 (re. security of position for Writing Specialists); and
- Q 19.2 (re. whether there have been major changes in the current academic year or approved for future year regarding security of position issues like number of full-time faculty, status of director, and status of non-director LRW faculty).

1.1.2 Professional Status Committee survey

The PSC also surveyed LWI's membership about a variety of status issues in 2016 and 2018 and will do so again in 2020.¹ Members of the PSC presented the results of these surveys at the 2016 and 2018 LWI conferences; the PowerPoints from these presentations are available on the PSC's webpage at <https://www.lwionline.org/resources/status-related-advocacy>. The survey includes the following questions about security of position:

- Q2: "Which of the following entries best describes the current terms of your employment?" (The answers include adjuncts, different types of contract statuses, and different types of tenure).
- Q10: "In the last 18 months . . . have there been any changes (or discussions about changes) in the terms of employment (see question 2) for legal research and writing faculty at your school?" The answers include options for both improvements in status and decreases in security of position.
- Q 14 & 15 deal with reductions in the number of people teaching legal writing at respondents' schools.

¹ Unlike the ALWD/LWI joint survey, the PSC's survey allows for multiple individuals from the same school to respond. So do not assume that each response to the PSC survey represents a different school. For example, six respondents to the 2018 survey indicated that they have become eligible for travel or professional development funding after being ineligible in the past, but that does not mean that six schools made these changes.

1.2 Best practices for compliance with Standard ABA 405(c)

The PSC supported a project to articulate Best Practices for compliance with ABA Standard 405(c). That project culminated in a symposium of articles in 2017 in Volume 66:3 of the *Journal of Legal Education*. Melissa H. Weresh wrote the lead article, cited below, which was endorsed by LWI, ALWD, and the Society of American Law Teachers (SALT). The article is linked to the PSC webpage, and the full citation is included below. Companion essays were written by Linda L. Berger, Ann C. McGinley, Teri A. McMurtry-Chubb, Richard K. Neumann, Kathryn M. Stanchi, and Kristen K. Tiscione. The full symposium issue is available on the *Journal of Legal Education* website at <https://jle.aals.org/home/vol66/iss3/>.

1.3 Full Citizenship Project

In 2015, LWI adopted the following statement:

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.

Both ALWD and the Society of American Law Teachers (SALT) have also adopted this statement. To date, these organizations have collected over 570 individual signatories as well. See <https://www.lwionline.org/resources/status-related-advocacy> for more details.

1.4 Other Professional Status Committee resources

The PSC's webpage, <https://www.lwionline.org/resources/status-related-advocacy>, has additional resources that may be helpful:

- In response to a request from a member in Fall 2016, the PSC compiled information about the standards and processes used at 21 schools in

implementing the “presumptively renewable” contract language for 405(c) contracts. Schools provide a variety of approaches, and this summary may be useful in advocating for minimizing the process required for renewal of 405(c) contracts.

- The PSC’s webpage also contains links to a list of schools where LRW faculty are eligible for tenure and a list of schools with autonomous LRW programs (*i.e.* programs that do not have a director). Those documents may be helpful in advocating for status changes.

1.5 Relevant books and articles

This section contains books and articles that are relevant to security of position issues. These sources are included in the more comprehensive bibliography of status-related sources that is posted on the PSC’s webpage,

<https://www.lwionline.org/resources/status-related-advocacy>.

Books

- ABA Section of Legal Educ. & Admissions to the Bar, SOURCEBOOK ON LEGAL WRITING PROGRAMS (Eric B. Easton ed., 2d ed. 2006) (the third edition is expected to be published in 2020).
- Meera Deo, UNEQUAL PROFESSION: RACE AND GENDER IN THE LEGAL ACADEMY (2019).

Articles

- Renee Nicole Allen, Alicia Jackson & DeShun Davis, *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525 (2019).
- Marina Angel, *Women of All Colors Steered to Contingent Positions in Law Schools and Law Firms*, 26 CHICANA/O-LATINA/O L. REV. 169 (2006).
- Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997).

- Lorraine K. Bannai, *Challenged 3X: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014).
- Peter Brandon 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. REV. 329 (2001).
- Mary Beth Beazley, *Riddikulus!": Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 7 SCRIBES J. LEG. WRITING 79 (2000).
- Linda L. Berger, *Rhetoric and Reality in the ABA Standards*, 66 J. LEG. EDUC. 553 (2017).
- Mary Nicol Bowman, *Legal Writing as Office Housework?*, 68 J. LEG. EDUC. __ (forthcoming 2020),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491965.
- Comm'n on Women in the Profession, ABA, *Elusive Equality: The Experience of Women in Legal Education* (1996).
- Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988).
- J. Lyn Entrikin, Lucy Jewel, Susie Salmon, Craig T. Smith, Kristen K. Tiscione & Melissa H. Weresh, *Treating Professionals Professionally: Requiring A Security of Position for All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) and Eliminating 405(d)*, 98 OREGON L. REV. 1 (2020),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3524592.
- Jo Anne Durako, *Second Class Citizens in the Pink Ghetto*, 50 J. LEG. EDUC. 562 (2000).
- Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC. L. REV. 253 (2004).
- Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine Skills Divide*, 64 J. LEGAL EDUC. 181 (2014).
- Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31.1 COLUM. J. GENDER & L. 111 (2015).

- John A. Lynch, Jr., *Teaching Legal Writing After a Thirty-Year Respite: No Country for Old Men?*, 38 CAP. L. REV. 1 (2009).
- Deborah Maranville, Ruth Anne Robbins & Kristen K. Tiscione, *Faculty Status and Effectiveness*, in BUILDING ON BEST PRACTICES & CARNEGIE'S EDUCATING LAWYERS: LEGAL EDUCATION IN A CHANGING WORLD (Maranville, Sedillo Lopez, Bliss, & Kaas, eds., 2015).
- Mitchell Nathanson, *Dismantling the Other: Understanding the Nature and Malleability of Groups in the Legal Writing Professor's Quest for Equality*, 13 J. LEG. WRITING 79 (2007).
- Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS'N LEGAL WRITING DIRECTORS 12 (2002).
- Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004).
- Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law School's Dirty Little Secrets*, 16 BERKELEY WOMEN'S' L. J. 3 (2001).
- Kristen Konrad Robbins (now Tiscione), *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal Writing Faculty*, 3 J. ASS'N LEGAL WRITING DIRECTORS 108 (2006).
- Kristen K. Tiscione, *Gender Inequity Throughout the Legal Academy: A Quick Look at the (Few) Numbers*, 68 J. LEG. EDUC. __ (forthcoming 2020).
- Kristen Konrad Tiscione, *"Best Practices": A Giant Step Toward Ensuring Compliance with ABA Standard 405(c), a Small Yet Important Step Toward Addressing Gender Discrimination in the Legal Academy*, 66 J. LEG. EDUC. 566 (2017).
- Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. OF GENDER & L. 46 (2015).
- Melissa Weresh, *Stars upon Thars: Evaluating the Discriminatory Impact of ABA Standard 405(c) Tenure-Like Security of Position*, 34 LAW AND INEQ. 127 (2016).

- Melissa Weresh, *Best Practices for Protecting Security of Position for ABA Accreditation Standard 405(c) Faculty*, 66. J. LEG. EDUC. 538 (2017).

1.6 Other relevant materials

Current data on the percentage of faculty by gender and security of position are hard to find. The ABA has a link on its [Statistics Archives page](#) to a document under the heading Longitudinal Data entitled [Law School Faculty & Staff by Ethnicity and Gender](#). The document is also [here](#). Although difficult to decipher and quite old, it gives a general sense of the gender segregation across status lines from tenured to skills and librarian faculty. To our knowledge, this is the only data either the ABA or AALS publishes (the AALS links to the same document on its website).

2. Summary of information available upon request

The PSC has gathered some information that is more sensitive, so while it is not publicly posted on our committee's webpage, it is available upon request to LWI members who agree to treat this information confidentially. Please contact committee co-chair Mary Bowman at mary.n.bowman@asu.edu if you would like to receive the following information:

- We have the detailed results from the PSC surveys in 2016 and 2018 regarding security of position issues. Specifically, the survey results detail the survey respondents' individual security of position (*e.g.* adjunct, short-term contract, 405(c), tenure-track), whether respondents' schools have discussed or made changes to security of position for legal writing faculty, whether the number of people teaching legal writing has been reduced, and if so, how those reductions occurred (*e.g.* retirements, layoffs).
- We also have some documents that can be shared privately regarding standards and processes for renewing presumptively renewable contracts, as mentioned in section 1.4 above and explained in the document on that topic posted on the PSC's webpage, <https://www.lwionline.org/resources/status-related-advocacy>. That additional material includes excerpts of faculty codes from some schools and some school-identifying information.

3. Strategic concerns and considerations

As you think about using the sources described above to craft arguments, consider the following issues that can affect security of position arguments:

- *Pursuing incremental change versus major improvements* (it's hard to make major improvements to security of position without a solid base in terms of voting rights, integration into the full life of the law school through committee work and scholarship by at least some legal writing faculty, reasonable workload structures, etc. It's often helpful to focus on other facets of status improvements before working on security of position, or at least think strategically about how they all fit together. It can also be helpful to try to get long-term contracts before trying to move to tenure-track, although that's not necessarily true at all schools);
- *Agreement over model for security of position* (e.g. do legal writing faculty want to move to unitary tenure with the same scholarship obligations as doctrinal faculty? Do legal writing faculty prefer programmatic tenure that often comes with lower scholarly obligations? Will everyone need to go forward into the new structure, or can/should some current legal writing faculty be "grandfathered" into the current structure without scholarly obligations while other faculty and perhaps new hires will take on the increased security of position and increased obligations that go with it?);
- *National search or not* (many schools have required current faculty members to go through a national search to move to tenure-track, but in those situations, many excellent legal writing faculty have lost their jobs. There are arguments to be made that current members of the faculty are not similarly situated as outside candidates and that it is inappropriate to require current faculty to compete for their own positions if they have a track record of doing the work; instead, they should have the opportunity to put in a tenure file and have their work evaluated in terms of whether they have met the school's tenure standards when they have already been doing the necessary scholarship);
- *Workload and mentoring support* (when moving from contract to long-term contract or from long-term contract to tenure, consider/try to develop workload conditions that will support the transition and are the same or similar to the

support that tenure-track faculty who don't teach legal writing get. For example, do they get pre-tenure course release, formal or informal reviews to ensure that they are on track with scholarship, etc.? These things are relevant when legal writing faculty take on scholarship obligations regardless of specific security of position);

- *Looking for an opportunity* (many schools that improved security of position for legal writing faculty did so when there was a specific opportunity to do so. Some opportunities include a new dean coming in, positive changes for other members of the law school community (e.g. clinicians), and major steps forward at “aspire-to” or “peer schools.” Try to be on the lookout for those opportunities and ready with your arguments and allies when they arise);
- *Key allies* (who are the key people within your law school who can help you move things forward? Look for opportunities to develop allies who will vocally support you and who will help work behind the scenes. In doing so, think about the specific arguments that will resonate with each ally); and
- *Role of the dean* (the dean will likely play a key role in both getting approval for status improvement within the faculty and then working on implementation/university approval more broadly unless you are part of a stand-alone law school).

4. People you can contact

The following members of the PSC are happy to serve as resources on issues related to security of position:

- Mary N. Bowman, Clinical Professor of Law, Sandra Day O'Connor College of Law at Arizona State University, mary.n.bowman@asu.edu
- Kristen K. Tiscione, Professor of Law, Legal Practice, Georgetown University Law School, kkt7@georgetown.edu
- Melissa H. Weresh, Dwight D. Opperman Distinguished Professor of Law, Drake University Law School, melissa.weresh@drake.edu

If any LWI members who are not on the PSC would also like to serve as resources for other members who are working on security of position issues, please contact Mary Bowman at mary.n.bowman@asu.edu to have your name included on future versions of this Toolkit.