

William & Mary Journal of Race, Gender, and Social Justice

Volume 7 (2000-2001)
Issue 3 *William & Mary Journal of Women and
the Law*

Article 2

April 2001

Women, Writing & Wages: Breaking the Last Taboo

Jan M. Levine

Kathryn M. Stanchi

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Law and Gender Commons](#), and the [Legal Profession Commons](#)

Repository Citation

Jan M. Levine and Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & L. 551 (2001), <https://scholarship.law.wm.edu/wmjowl/vol7/iss3/2>

Copyright c 2001 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/wmjowl>

WOMEN, WRITING & WAGES: BREAKING THE LAST TABOO

JAN M. LEVINE & KATHRYN M. STANCHI*

I. INTRODUCTION

One of the last American taboos prohibits discussion of salary. Although it is commonplace for sexual and family dysfunction to be discussed on afternoon television, most people still consider asking about salary to be rude and intrusive. American competitiveness may be the reason for the strength and longevity of the taboo. Information is power; the amount of money a person earns can be a measure of success, personal worth and even masculinity. Information about money is especially powerful and dangerous.

Even though the strength of the taboo in the business world is largely dependent on employees adhering to the code of silence, it is employers who reap the primary benefit of the taboo. An employer is empowered when employees will not discuss salary among themselves. By shielding employers from scrutiny decisions about salary, the taboo frees employers to set salaries using whatever criteria they choose. Thus, the taboo can free the employer to discriminate—even on unlawful bases. If there is a discriminatory salary differential in an institution, but nobody knows about it, the

* Jan M. Levine is an Associate Professor & Director of Legal Research & Writing, James E. Beasley School of Law of Temple University. Kathryn M. Stanchi is an Associate Professor, James E. Beasley School of Law of Temple University. The authors thank Dean Robert J. Reinstein and our colleagues at the James E. Beasley School of Law of Temple University for supporting this research; for having the vision to recognize the benefits of having secure, well-compensated legal writing professionals join them as members of the faculty; and for their courage to implement a legal writing program reflecting that vision. Our current and former colleagues Susan DeJarnatt, Ellie Margolis and Michael Smith gave critical help collecting the data reported in this Article. We also thank our student assistants, Peter Isajiw, Christopher J. Spizzirri and Herb Pinder for their invaluable help with statistical analysis and legal research, and we thank Mary Arnold, Information Systems Coordinator at the Beasley School of Law, for her help with the graphs in the Appendices. Roslyn Gorin, a Statistical Operations Manager at Temple University, was of great help to us; our gratitude to her is incalculable. We also thank the members of the Association of Legal Writing Directors (ALWD) for the opportunity to present a report of the preliminary analysis of our data at the ALWD Conference held in July 1999 at the New England School of Law.

This Article would not have been possible without the willingness of so many of our colleagues teaching legal writing at other schools to break the silence that is central to the survival of the taboo concealing their salaries and we owe them a debt of gratitude. It is to them that we dedicate this Article.

differential simply does not exist for anyone outside of the institutional decision-makers.

This Article breaks the silence that shields American law schools' decisions about salaries for legal writing teachers and offers explanations of how we arrived where we are today. It explores the history of data collection efforts in the field of legal writing with a focus on changes in program design and salary reporting, and suggests that the admission of women into law schools in the 1970s, and the mid-1980s boom in law school admissions, may have triggered the phenomenal growth of second-class status legal writing faculty positions. This Article is the first compilation that analyzes salary data based on an individual professor's law school graduation date, the number of years the professor has been teaching legal writing, gender and whether the law school is public or private. It is the only compilation that adjusts salaries based on the cost of living in the city in which the law school is located (or the closest metropolitan area). This Article is also the first to directly compare the salaries of legal writing professors with those paid to professors of doctrinal courses, and to compare the legal writing salaries to the prevailing salaries paid to new law school graduates in the cities in which the employing schools are located.

There are three goals of this Article: (1) to expose just how shamefully low some legal writing salaries actually are, (2) to demonstrate the links between the existence of the field of legal writing, the low salaries paid and the predominant gender of writing teachers and (3) to empower legal writing professors to negotiate for (and receive) salaries that more closely reflect their work and merit. Moreover, by publishing the salaries and their bases in the gender politics of the legal academy, this Article takes a step toward making law schools accountable for inequitable and discriminatory decisions. The result, we hope, will be a turn toward greater fairness and equality in the teaching profession.

II. THE HISTORY OF SURVEYS OF LEGAL WRITING PROGRAMS AND FACULTY¹

The earliest reported survey of legal writing courses and teachers appeared in 1959.² The survey reported the results of questionnaires sent to eleven law schools in the academic year 1957-1958.³ The numbers of "full-time instructors"⁴ at nine of the schools ranged from one to six.⁵ The reported yearly salaries for full-time teachers ranged from \$2,500 to \$6,000, with some schools reporting a range of \$1,500 between the highest and lowest paid teachers.⁶ The average of the reported figures, using the highest salary from each school reporting a range, was \$4,036.⁷ These salary figures or ranges were, in all cases, virtually identical to the "approximate local or regional salary paid by law firms for men of the same training and caliber."⁸ Few of the jobs offered fringe benefits,⁹ but

1. Various titles have been used for the persons who teach legal writing. In this Article, when describing prior surveys, we tried to use the titles that were in use at the time of the surveys, such as "instructor." When we wanted to be more generic, we used the more general term "teacher." In our discussion of the current status quo, however, we use the term "professor" because it is the most commonly used title at this time. See, e.g., ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2000 SURVEY RESULTS, 28 (Question 68), www.alwd.org. (last visited Apr. 9, 2001). The 2000 ALWD/LWI survey reports detailed responses from 137 law schools, and Question 68 asked about the titles given to full-time legal writing faculty members. The report notes that twenty-six schools used the standard terms "professor, associate, or assistant professor," twenty-three used those terms joined with the suffix "of legal writing," three used the standard terms plus the preface "visiting," six used the standard terms plus the suffix "clinical," seventeen used "lecturer or senior lecturer," thirty-seven used "instructor" and fifteen used some other title (including two who were titled "director" and two titled "assistant or associate dean"). *Id.*

Titles also reflect gender. Writing program directors who are women tend to have less prestigious titles; only fifty-nine percent of females report having some form of "professor" in their titles, compared to seventy-six percent of male directors who can claim the title. J.A. Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 51 J. LEGAL EDUC. (forthcoming 2001) (on file with authors).

2. Donald B. King, *A Survey Dealing with Legal Research and Writing Instructors*, 11 J. LEGAL EDUC. 406, 406-10 (1959). King was identified as an "instructor" at the University of Washington School of Law. *Id.* at 406.

3. *Id.* (identifying the surveyed schools as University of California, University of Chicago, Harvard University, University of Illinois, University of Michigan, University of Nebraska, New York University, Northwestern University, Rutgers University, Stanford University and University of Washington).

4. Full-time teachers reportedly worked anywhere from forty to sixty hours per week. *Id.* at 407. Part-time teachers reported working fifteen to twenty hours per week, or just "half-time." *Id.* The number of students per teacher ranged from twenty to eighty. *Id.*

5. *Id.* at 406.

6. *Id.* at 407.

7. The calculations were done by the authors of this Article and are not in the original report.

8. King, *supra* note 2, at 408.

9. *Id.* at 407.

approximately half the teachers were given the opportunity to work toward an advanced degree¹⁰ and spent about ten hours a week on research.¹¹ Few of the teachers continued with academic careers.¹² Most of the instructors were either right out of law school or had only one or two years of experience.¹³

The same year, another article reported that, "[p]erhaps ideally, all faculty members would devote the major portion of their time to teaching writing, research and analytical skills to each student individually. Needless to say, this would be a more time-consuming program than most faculties would tolerate."¹⁴ Graduate teaching assistants were mentioned as the more common type of teacher, but the "prevailing wage" for "able young graduates" who could teach legal writing was reported as \$5,000, which was characterized as beyond the means of most law schools.¹⁵

The first major national survey of legal writing programs was conducted over thirty years ago by Professor Marjorie Rombauer.¹⁶ Professor Rombauer, who is widely regarded as the founder of modern legal writing programs and pedagogy, reported on data collected by four different questionnaires she mailed in 1970 to law schools and persons listed in the 1968-1970 Association of American Law Schools (AALS), *Directory of Law School Teachers*.¹⁷ Although Professor Rombauer addressed the question of who taught the courses,¹⁸ finding that twelve of the sixty-three schools responding used "short-term instructors" who were apparently not on a tenure-track,¹⁹ she did not discuss the salaries paid to those teachers. The primary focus of the questionnaires, and the article itself, was on the content of the courses and the teachers' reactions to the subject and workload. Because most of the legal research and writing

10. *Id.* at 408.

11. *Id.*

12. *Id.* at 409. One school stated that none went into teaching as a career, one said "very few," one reported twelve percent, three said fifteen percent, one said twenty-five percent, two reported thirty-three percent, one reported fifty percent and one said that all later went into teaching as a career. *Id.*

13. *Id.* at 408-09.

14. Stewart Macaulay & Henry G. Manne, *A Low-Cost Legal Writing Program—The Wisconsin Experience*, 11 J. LEGAL EDUC. 387, 388 (1959) (describing a program in which upper-division students taught legal writing under the supervision of faculty).

15. *Id.* at 388-89.

16. Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973).

17. *Id.* at 543.

18. *Id.* at 543-46.

19. *Id.* at 543-44 (reporting that these were "persons hired to teach in a legal research and writing program for a short term, that is, recent law school graduates hired for one or two years as 'instructors,' 'fellows,' or 'associates'").

teachers in 1970 were either "doctrinal"²⁰ law professors or law librarians,²¹ Professor Rombauer did not address the status of short-term instructors in any fashion other than the most cursory.²² In addition to not addressing salary, she did not report on the gender composition of any of the groups teaching legal writing. The "doctrinal" faculty who responded to Professor Rombauer thought that the legal writing course required them to do more work than teaching other courses and that the work was "less stimulating."²³ It is not surprising that many were not interested in teaching it again.²⁴

In 1975, another commentator reported that, "[r]egardless of the size or prestige of the schools, the people who are most highly qualified to teach legal analysis and writing skills, the primary faculty, are in short supply. . . . Yet, well-supervised graduate or student teaching assistants can do a creditable job."²⁵ The only staffing models discussed by this commentator were those that used the "doctrinal" faculty (usually in some shortened semester or temporarily in lieu of other courses), graduate teaching assistants or student teaching assistants.²⁶

Almost a decade after her initial study, Professor Rombauer revisited the subject of who should be teaching legal writing. She reported on the unfortunate demise of an experimental legal writing program at the University of Washington, wherein the school attempted to hire tenure-track faculty to teach legal writing.²⁷ After

20. Throughout this piece, we place the word "doctrinal" in quotes when it is used to describe traditional, tenure-track professorships, usually reserved for courses that are categorized as teaching primarily legal doctrine, such as Torts and Contracts, and to distinguish those professorships from skills and clinical positions, which teach not only doctrine, but also a host of lawyering skills. We put the word in quotes for a number of reasons. While we recognize that the distinction has a long tradition in the legal academy, we reject that distinction as both superficial and artificial and, more important, as one that is used, without any basis, to support what we believe to be a discriminatory hierarchy of law school courses and faculty. In addition to being irrelevant and supportive of a baseless hierarchy, the distinction is inaccurate—most "doctrinal" professors, by their own definition of what they teach, teach "skills" (e.g., "thinking like a lawyer") and most "skills" teachers teach a good deal of doctrine.

21. *Id.* at 543-46.

22. Professor Rombauer noted that "one of the positive features" of a well-publicized effort to teach legal writing at the University of Chicago was "that it contemplated its own staff of teaching fellows," which she saw as a sort of "apprentice staffing." *Id.* at 542.

23. *Id.* at 546-47.

24. *Id.*

25. Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218, 223 (1975).

26. *Id.* at 241, 242-56.

27. Marjorie Dick Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392, 404-05 (1980).

discussing in heart-breaking fashion all of the problems and pitfalls encountered in the program, she concluded that "doctrinal" faculty would not teach, for long, a legal research and writing course for first-year students.²⁸ The workload and perceived status issues, even for tenure-eligible faculty, were too great a burden for the professors hired at the University of Washington.²⁹ There was a change in the offing, however, at the time she reported that "individuals who have a long-range interest" in teaching legal writing "are rare" and that "a strong self-image is necessary to prevail against the insecurities generated by marching to this different drummer."³⁰ Law schools were admitting women in record numbers, and women were bringing with them the seeds of change to both the practice of law and the face of legal education.³¹

In 1982, Professor Anita Morse reported on the research and writing components of the curriculum employed in most of the nation's law schools.³² She reviewed—and lamented—the repeated failures of American law schools to implement a curriculum that addressed a century's worth of critiques of the long-standing failure to teach research and writing skills.³³ She then reported that "few schools" that responded to her survey "could report the actual cost of research, writing, skills or advocacy programs, and those who did . . . were usually reporting the costs of LL.M. programs or salary costs of non-tenured instructors."³⁴ Professor Morse reported that:

[N]on-tenure instructors . . . represent a costly way of running the program. The school must determine whether to use funds for faculty slots or instructor slots; instructors do not come as

28. *Id.* at 410.

29. *Id.* at 410-11.

30. *Id.*; see also Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298, 320 (1980) ("[T]here is also no reason to suspect that highly talented and motivated people will long remain in a devalued specialty for which the professional and financial rewards are, respectively, few and small."). Nonetheless, Professor Rombauer's experiment found support from at least one commentator, who, discussing the problems with the three time-honored instructional models (regular faculty, graduate assistants and students), suggested that schools hire faculty who were "specialists in legal writing," and that "once a school has made a commitment to faculty teaching, it must ensure that its legal writing instructors are integrated into the faculty—treated as regular members of the institution, with identical opportunities in terms of salary, benefits, tenure, and promotion." Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 CHI.-KENT L. REV. 23, 28 (1985). Boyer, however, could not report on any schools that had taken such a step after the failure of the Washington experiment. *Id.*

31. See *infra* notes 122-31 and accompanying text.

32. Anita L. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 L. LIBR. J. 232 (1982).

33. *Id.* at 232-48.

34. *Id.* at 251-52.

cheaply as graduate students. It is assumed with tenure slot teachers that the school is investing in a long-term teacher and researcher, whereas instructors are trained for another school or for practice.³⁵

Unfortunately, she did not report on those schools' budgets, the gender of the legal writing teachers or the salaries paid to non-tenure-track legal writing teachers. Professor Morse did note, however, that "[t]he real issue is who should bear the cost of providing each of the skills essential to lawyer competency."³⁶

It was not until the 1990s that the Legal Writing Institute (LWI) began to conduct regular surveys of legal writing programs across the country.³⁷ These LWI surveys asked questions about program structure, program content, staffing models, number of students and resource allocation.³⁸ Their apparent purpose was to provide a broad picture of the aggregate and to describe the types and models of legal writing programs. As Professor Ramsfield, the reporter of the LWI surveys, pointed out, "[t]he questions were designed to elicit information about the structure and design of programs, their relationship to the rest of the curriculum, the status and salary of those teaching in the programs, and trends from 1990 to now."³⁹ A close examination, however, reveals that there was no systematic effort to gather specific information about the individual people who taught legal writing, even though the three surveys had a high response rate of about eighty percent.⁴⁰

The only salary data for legal writing teachers compiled by the three LWI surveys were the mean salaries for entry-level legal writing positions. The 1994 LWI survey asked for the average years of law practice experience of the legal research and writing teachers

35. *Id.* at 260 n.151.

36. *Id.* at 250. As we shall see, that training and those costs are being borne—disproportionately—by experienced female attorneys who entered law school in record numbers beginning in the late 1970s and who have few, if any, guarantees of job security or academic freedom. See *infra* notes 121-30 and accompanying text.

37. Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images: A Survey of Legal Research and Writing Programs*, 1 LEGAL WRITING 123 (1991) [hereinafter Ramsfield, *Twenty-First Century*]; Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 LEGAL WRITING 1 (1996) [hereinafter Ramsfield, *A Sharper Image*]. LWI conducted a survey in 1990 that is reported in Ramsfield, *Twenty-First Century*, *supra*, at 161-73. The follow-up article, Ramsfield, *A Sharper Image*, *supra*, reports on a comparison of all three surveys, which were conducted in 1990, 1992 and 1994.

38. Ramsfield, *Twenty-First Century*, *supra* note 36, at 123; see also Jo Anne Durako, *Snapshot of Writing Programs at the Millennium*, 6 LEGAL WRITING 95, 95 n.2 (2000) (describing the LWI surveys).

39. Ramsfield, *A Sharper Image*, *supra* note 37, at 3.

40. *Id.*

in a program,⁴¹ not for individual histories. The survey asked for the salary range for "full-time contract-track" legal writing teachers,⁴² not for individual salaries. It also asked respondents to speculate about the "difference between the mean salaries of faculty members and [legal writing] teachers."⁴³ Finally, the survey did not link any individual responses to gender; instead, it asked about "the percentage of female legal writing teachers,"⁴⁴ and whether "female and male legal writing teachers [are] paid the same salary for equivalent years of employment as legal writing teachers."⁴⁵

Although the LWI surveys in 1990, 1992 and 1994 provided a wealth of information about legal writing programs across the country, significant gaps in our knowledge remained about comparative salaries in legal writing and in our understanding of a significant change that had taken place almost unnoticed by those teaching legal writing. In hindsight, it is apparent that in the two decades since Professor Rombauer had examined who taught legal writing, something revolutionary had happened: full-time teachers on contract had become the predominant model of staffing and instruction. The LWI Surveys did not address what lay beneath this paradigm shift in instructional models that resulted in a new and quite large class of full-time, non-tenure-track, or contract, teachers who taught legal writing. They merely reported the status quo for the time period covered by the surveys without comparing the models to what had existed in the past and, over the four years covered by the LWI surveys, they reported a small increase in the percentage of schools employing full-time, non-tenure-track teachers.⁴⁶

Notwithstanding the apparent increases in tenure-track appointments for program directors and other legal writing teachers,⁴⁷ most legal writing teachers are still contract-track⁴⁸ and

41. *Id.* at 56.

42. *Id.*

43. *Id.* at 57.

44. *Id.* at 58.

45. *Id.*

46. Compare *id.* at 13 (reporting that sixty-three percent of schools used five or more full-time teachers, up from the fifty-eight percent of schools using five or more full-time teachers in 1990; the number of schools with at least one full-time LRW professor also increased); with Jan M. Levine, *Legal Research and Writing: What Schools Are Doing and Who Is Doing the Teaching*, 7 SCRIBES J. LEGAL WRITING 51, 55 (2000) (reporting that in 1998, sixty-six percent of all law schools used full-time teachers of legal writing).

47. Ramsfield, *A Sharper Image*, *supra* note 37, at 12 n.92 (acknowledging that the LWI surveys did not differentiate "between those positions created especially for legal writing and those occupied by a faculty member previously awarded tenure in a non-legal writing field") (citing Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 536 (1995)).

48. *Id.* at 15.

"stay only three to five years."⁴⁹ The phenomenal growth of the contract-track staffing model, which by the early 1990s dwarfed all other models combined,⁵⁰ was linked in the published reports only to the intellectual and methodological growth of the field,⁵¹ based on "work done by composition theorists and linguists on discourse communities,"⁵² the next "logical step" being the decision "to hire more experienced faculty and to keep them longer."⁵³

We are no longer certain this is true, and the reasons for this widespread myopia within the field are not clear. We suspect that, in large part, the myopia may be attributed to the newness of many of those teaching legal writing in the mid-1980s. These teachers were new and trying to grapple with issues of pedagogy while bearing great workloads.⁵⁴ A significant number of the teachers who entered the field at this point and remained teaching legal writing ended up as directors, and most had little time for scholarly research into the genesis of their own field.⁵⁵ Many were not even permitted to produce articles about legal writing in their quest for tenure;⁵⁶ in many ways, they were simply fighting to survive in the law school world. Few had any time for reflection until they were secure and able to join national organizations that provided mutual

49. *Id.* at 14.

50. The other models are the use of adjuncts, students, graduate law students, librarians, tenure-eligible legal writing faculty or doctrinal faculty to teach legal research and writing.

51. Ramsfield, *A Sharper Image*, *supra* note 37, at 15.

52. *Id.*

53. *Id.* One of the authors of this Article suggested at the same time that the sudden growth of tenure-eligible legal writing appointments was based on benign forces:

Although legal writing teachers have certainly been pushing their schools for changes in status, and many have written about the status issues, several external factors probably provided a fertile context in which the seeds of change could germinate. First of all, over the last two decades more public attention has been paid by the bench and bar to law graduates' shortcomings in lawyering skills, including deficits in research and writing. Writing has been more significant in the college curriculum, and writing process theory has become part of the mainstream. As legal writing professionals began to gain more security, they remained within the field longer, and many took advantage of the opportunity to publish, and to create better legal writing programs. . . . Tenure-track appointments for LRW teachers may simply be an idea whose time has finally come.

Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 538 (1995).

54. *Id.* at 542 (noting that of thirty-two legal writing professors on the tenure-track, "[t]wenty-eight received the primary law degree between 1972 and 1985; 20 were graduated from law school between 1978 and 1982"). As discussed *infra*, another piece of the puzzle was also noted: the ratio of females to males in this group was two to one. *Id.* at 543.

55. *Id.* at 544-45.

56. *Id.* at 545.

support.⁵⁷ The reasons for the growth of the contract-track staffing model may be found, however, in the fields of economics and demographics, as we shall see in Part IV.

As far as their salaries were concerned, most full-time legal writing professors not on a tenure-track knew—or suspected—from anecdotes or from published advertisements for jobs,⁵⁸ that they were being paid less by their law schools than the school was paying the “doctrinal” law professors on a tenure-track. Professor Ramsfield reported that the salaries of legal writing professors increased over the four years covered by the LWI Surveys,⁵⁹ but that they were not keeping pace with the salaries paid to other law professors.⁶⁰ For example, she reported that “most” legal writing professors made between \$25,000 and \$40,000,⁶¹ but that the most common salary for legal writing teachers, including directors, was between \$40,000 and \$50,000.⁶² Professor Ramsfield also reported that legal writing salaries appeared not to be based on “years out of law school,”⁶³ even though the legal writing professors covered by the survey had “an average range of four to seven years’ practice experience before coming to teaching.”⁶⁴ However, she did not publish all of the data supporting that conclusion.

Finally, Professor Ramsfield reported that the “salary gap” between legal writing professors and other law professors increased over the four years covered by the LWI surveys. In 1994, fifty-one percent of schools reported a gap of \$30,000 or more, an increase from twelve percent of the schools reporting such a gap in 1992.⁶⁵ This report, while perhaps an accurate reflection of reality, is hard to prove without resorting to other data sources.⁶⁶ First, the published reports of the LWI surveys do not compare the number or percentage of responses to this question from 1992 to 1994.⁶⁷ We do not know if there were simply more people answering that question

57. *Id.* at 549. These organizations are the Legal Writing Institute and the Association of Legal Writing Directors, neither of which existed fifteen years ago.

58. Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FL. ST. U. L. REV. 1067, 1094-99 (1999) (reporting content of advertisements).

59. Ramsfield, *A Sharper Image*, *supra* note 37, at 15.

60. *Id.* at 17.

61. *Id.* at 16.

62. *Id.* at 17 n.122.

63. *Id.* at 18.

64. *Id.*

65. *Id.* at 17.

66. This Article uses salary data gathered independently by the Society of American Law Teachers (SALT) to make just such a comparison. See *infra* note 143 and accompanying text.

67. See Ramsfield, *A Sharper Image*, *supra* note 37, at 71 graphs 17 & 18 (presenting only the compiled responses).

the second time it was asked and, worse, we do not know the basis for any of the reported gaps.

Discovery of law school faculty salaries has never been easy, but only in part because of the social taboo about discussing salaries. There have also been institutional and legal constraints on gathering such information. For many years, the American Bar Association (ABA) collected faculty salary data in conjunction with its role as the agency accrediting law schools.⁶⁸ The data included salary ranges, and averages or medians, for each school at each academic rank, but the data was not publicly available; the ABA shared it only with law school deans on a confidential basis.⁶⁹ Faculty salaries at public institutions might have been reported in the press or in government reports as part of a state budget disclosure, but by and large most faculties did not disclose or discuss salary. The ABA's practice of collecting salary data for accreditation purposes was halted in 1996 as part of a consent decree resolving an antitrust suit brought against the ABA by the United States Department of Justice.⁷⁰

So, unless a respondent to the LWI surveys had access to publicly-reported data on the full gamut of a public law school's salaries, there were probably only two bases for answering the question about the salary gap. Respondents could answer based on their own salaries as tenured or tenure-track faculty members, or might base the response on the only other salary that might be common knowledge: the typical salary paid to entry-level, tenure-track law professors. It is likely still true that most law professors, except those in the dean's office or on a salary committee do not know—or do not want to know—their colleagues' salaries.

The LWI surveys did address gender by pointing out that there was a "female ghetto" in legal writing.⁷¹ Over the four-year span encompassed by the surveys, the number of law schools reporting a majority of female teachers in their legal writing programs increased from sixty to seventy-five percent.⁷² No hard data,

68. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2157-74 (1998).

69. *Id.*

70. See *United States v. ABA*, 934 F. Supp. 435, 436 (D.D.C. 1996) (prohibiting the ABA from "collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees [and] . . . using law school compensation data in connection with the accreditation or review of any law school"). The Department of Justice felt that the salary data being collected was used unlawfully to ratchet up faculty salaries. *Id.*

71. Ramsfield, *A Sharper Image*, *supra* note 37, at 19.

72. *Id.* at 19 n.135.

however, was reported on the overall percentage of women teaching legal writing, and the only linkage of faculty gender to the other data gathered was found in a comparison of the law schools' faculty gender percentages and law school rankings, the latter done using the *U.S. News and World Report* tier structure.⁷³ It was not until very recently that hard evidence surfaced regarding the extent of the disparate treatment of legal writing teachers based on gender.

In 1997, the Association of Legal Writing Directors (ALWD) conducted a detailed survey of legal writing programs, specifically focusing on the status and workload of legal writing program directors.⁷⁴ The ALWD Survey, conducted by Professor Louis J. Sirico, drew finer lines in the classification of program designs, using a range of program models identified by the ABA Communication Skills Committee.⁷⁵ ALWD released a report based on responses from ninety law schools, a response rate of about fifty percent of all ABA-accredited law schools.⁷⁶ The model of full-time, contract-track teachers appeared in sixty-two percent of the surveyed schools; it was used exclusively in thirty-seven law schools, and in another nineteen it was combined with other models.⁷⁷

One year later, ALWD and LWI collaborated on a broader survey,⁷⁸ expanding the past year's effort by adding questions about non-director compensation.⁷⁹ The responses in 1998 came from seventy-six schools, a return rate slightly above forty percent.⁸⁰

73. *Id.* at 76 tbl. 8.

74. ASS'N OF LEGAL WRITING DIRS., 1997 SURVEY RESULTS (on file with authors).

75. The survey relied on the taxonomy used in RALPH L. BRILL ET AL., AM. BAR ASS'N, SOURCEBOOK ON LEGAL WRITING PROGRAMS 59 (1997) (Am. Bar Ass'n ed., 1997). The *Sourcebook* identified these models:

- A. Tenure-track teachers hired specifically to teach legal writing;
- B. Tenure-track teachers hired to teach legal writing and other courses;
- C. Tenure-track teachers who teach legal writing as part of their first-year doctrinal courses;
- D. Many doctrinal tenure-track teachers teaching legal writing to small groups of students;
- E. Full-time nontenure-track teachers with long-term or short-term contracts;
- F. Adjuncts;
- G. Graduate students;
- H. Students; and
- I. A complex hybrid of the above models or some other model.

ASS'N OF LEGAL WRITING DIRS., *supra* note 74, at 5.

76. *See infra* note 136.

77. ASS'N OF LEGAL WRITING DIRS., *supra* note 74, at 5-6.

78. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 1998 SURVEY RESULTS (on file with authors). The survey results were again reported by Professor Louis J. Sirico. *Id.* at 1.

79. *Id.* at 4.

80. *Id.*

Forty-one of the responding schools used the full-time contract teacher model exclusively,⁸¹ while another sixteen schools used the model in combination with other models.⁸² In total, seventy-five percent of the responding schools employed the full-time contract teacher model,⁸³ a result that was not inconsistent with the past year's report.

The survey reported that the average yearly salary of a full-time entry-level teacher of legal writing was \$38,590.⁸⁴ It must be noted, however, that this question covered all full-time teachers, including both tenure-track professors and contract-track professors,⁸⁵ so the data is probably skewed at the high range and at the mean. The minimum reported was from one person earning \$14,000.⁸⁶ Nine teachers were reported earning between \$20,001 and \$30,000.⁸⁷ Seventeen earned between \$30,001 and \$40,000.⁸⁸ Nine earned between \$40,001 and \$50,000.⁸⁹ Six earned between \$50,001 and \$60,000.⁹⁰ Not one person reported a higher salary, but the significance of that was not discussed in the report. Furthermore, the survey reported on the salaries by region,⁹¹ and by urban versus suburban and rural settings,⁹² but did not equalize them for cost of living. Entry-level legal writing teachers at private schools were reported to earn more on average, \$40,118, than their counterparts at public institutions, who earned on average \$35,536.⁹³

In 1999, ALWD and LWI sent out a revised survey, this time under the oversight of Professor Jo Anne Durako.⁹⁴ The 1999 survey report addressed responses from 117 law schools,⁹⁵ a

81. *Id.* at 5.

82. *Id.* at 6.

83. *Id.* at 5.

84. *Id.* at 48. Seventeen respondents reported they were paid a salary for twelve months, twenty-six reported being paid over less than twelve months and three chose "not applicable" when asked the salary period. *Id.* at 51.

85. *Id.* at 48.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 49.

92. *Id.* at 50 (reporting the average entry-level salary for legal writing teachers in urban schools as \$40,659, at suburban schools as \$34,954 and at rural schools as \$34,625).

93. *Id.* at 50-51.

94. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 1999 SURVEY RESULTS, www.alwd.org (last visited Apr. 18, 2001).

95. *Id.* at 1.

response rate of about sixty-five percent.⁹⁶ Professor Durako reported that sixty-four schools exclusively employed full-time, non-tenure-track teachers,⁹⁷ with another eighteen schools employing full-time, non-tenure-track teachers in a hybrid program with other professors, adjuncts, students or graduate students.⁹⁸ Eighty-two schools, or seventy percent of those responding, used full-time non-tenure-track teachers.⁹⁹

The average entry-level legal writing professor's salary was \$39,731; the minimum reported was \$20,000 and the maximum \$78,500.¹⁰⁰ Four entry-level teachers earned \$20,000 to \$29,999, forty-six earned between \$30,000 and \$39,999, seventeen earned between \$40,000 and \$49,999, eight earned between \$50,000 and \$59,999 and four earned between \$60,000 and \$69,999.¹⁰¹ The 1999 survey also reported the base salary range for full-time teachers.¹⁰² The low-end average was \$39,698 (with reports from \$20,800 to \$78,500); the high-end average was \$47,452 (with reports from \$24,500 to \$115,000).¹⁰³ As in the prior year, these figures included all types of full-time teachers, such that the results at the high end and the mean are likely skewed to the high end. The 1999 report, however, did break out the data for full-time non-tenure-track professors: the average was \$38,892, with a low of \$27,000 and a high of \$78,500.¹⁰⁴

Professor Durako did not have data on the actual salaries paid to experienced legal writing teachers (who were not directors) or direct data on the gender composition of legal writing faculty other than directors. She provided further analysis, however, based on the gender of the legal writing directors and, for the first time, reported significant differentials in salary based on the gender of those running law school writing programs.¹⁰⁵ She found that schools employing male directors tended to pay more money, not only to their male directors,¹⁰⁶ but to their full-time teachers as

96. *Id.*

97. *Id.* at 2.

98. *Id.* at 3.

99. The authors believe this percentage is slightly high. See generally Levine, *supra* note 45 (surveying the status of LRW professors).

100. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 94, at 14.

101. *Id.* at 15.

102. *Id.* at 16. Professor Durako noted that she believed some directors' salaries were erroneously reported in the responses to this question. *Id.*

103. *Id.*

104. *Id.* This average takes into account the responses to Question 38 and groups them by using Question 4. *Id.*

105. *Id.* at app. A.

106. *Id.* at A-1. Professor Durako reported that seventy-four percent of the directors were

well.¹⁰⁷ By every measure, the base salary range paid to entry-level legal writing faculty members (regardless of status) was lower in programs directed by women.¹⁰⁸ Salaries paid to legal writing faculty in programs directed by women ranged from seventy-two to ninety percent of the salaries paid to teachers in programs directed by men.¹⁰⁹

Although the 1999 survey signaled a turning point in the focus of legal writing surveys, it explicitly did not encompass the salary or status of legal writing professors whose primary responsibility was teaching as opposed to administration. Questions intended to further explore the relationship between salary and status were added to the 2000 ALWD/LWI survey.¹¹⁰

Another survey was conducted in 1999-2000 by one of the authors of this Article to determine the program design and faculty status of all legal writing teachers at all ABA-accredited law schools.¹¹¹ That survey reported that 122 of 185 schools, or sixty-six percent, use full-time legal writing teachers,¹¹² that ninety-five, or fifty-one percent, do not place contract caps on the time in service or place the legal writing teachers on a tenure-track¹¹³ and that about fifty percent of all full-time legal writing teachers are either on a tenure-track or have multi-year contracts under ABA Standard 405(c).¹¹⁴

III. THE ROLES OF DEMOGRAPHICS, ECONOMICS AND GENDER

Any analysis of the salary of legal writing professors in American law schools must be understood in the historical context in which the development of the legal writing field took place. The appearance of a cadre of low-pay, low-status positions in skills courses is temporally related to two major events in law schools: a boom in general law school enrollment in the 1970s and early 1980s; and an influx of women into law schools in the mid-1970s.

women. *Id.* On average, female directors received only eighty-four percent of the salaries paid to men. *Id.* This discrepancy was consistent regardless of the program design. *Id.*

107. *Id.* at 4.

108. *Id.* Measures included calculating the low-range average salary, the lowest salary in the low range, the highest salary in the low range, the high-range average salary, the lowest salary in the high range and the highest salary in the high range. *Id.*

109. *Id.*

110. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 1.

111. Levine, *supra* note 46.

112. *Id.* at 56.

113. *Id.*

114. *Id.* at 57.

There was a boom in overall law school admissions in the 1970s and 1980s, as well as a substantial increase in the number of law schools in the United States.¹¹⁵ For example, in 1970, total law school enrollment was roughly 80,000 students; by 1980, there were roughly 125,000 law students, a growth rate of more than fifty percent.¹¹⁶ By 1990, the total law school enrollment was at a high of 132,000 students, who flooded a market already saturated with lawyers.¹¹⁷ Although the number of law schools in the United States had also increased from 146 in 1970 to 171 in 1980, the number of new law schools was not enough to accommodate the huge rise in students, which inevitably led to larger law school classes, especially in the required courses.¹¹⁸

The growing class size in American law schools posed a particular problem for legal writing, a course that relies on multiple drafts of papers, intensive individual critique by professors and individual meetings between student and professor. While vast increases in class size tend to have only a marginal impact on lecture courses, the impact of such an increase on writing classes—and their teachers—is substantial.¹¹⁹ The large increase in students was also accompanied by increased pressure from the bench and bar to provide adequate skills training to young lawyers, especially in the areas of writing and research.¹²⁰ Thus, from the early 1980s to the 1990s, law schools were admitting record numbers of students and were being pressured to provide them with writing and research training. However, because of the large number of new students, writing became a course that few law

115. AM. BAR ASS'N, GUIDE TO APPROVED LAW SCHOOLS 454 (Rick L. Morgan & Kurt Snyder eds., 2001).

116. *Id.*

117. *Id.*; see also Elaine P. Dine, *Displaced Lawyers Regain Bearings by Charting Trends of the Profession*, N.Y. L.J., Mar. 4, 1991, at 47 (acknowledging the instability of the legal profession with the collapse of the merger boom and offering ways attorneys can avoid the pitfalls by adapting to the changes and demands of the market); *Legal Profession Feels Squeeze, Finds Recession Isn't Its Strong Suit*, LOUISVILLE COURIER J., Dec. 27, 1991, at 2B (noting that the legal profession is not recession proof); Claudia MacLachlan, *Once Immune, Firms in D.C. Now Struggle*, NAT'L L.J., Aug. 26, 1991, at 1 (commenting on the District of Columbia's increasingly saturated legal market in the face of a recession).

118. David H. Vernon, *Anatomy of Legal Education (Report of the Tunks Committee): The Way We Were and the Way We Are*, 60 WASH. L. REV. 571, 578 (1985).

119. Robert J. Connors, *Overwork / Underpay: Labor and Status of Composition Teachers Since 1880*, 9 RHETORIC REV. 108, 111-15 (1990); Jan M. Levine, "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, 618 (1995); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 79-81 (1994).

120. Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 119 (1997).

professors wanted to teach: the demanding work was time-consuming and cut deeply into time usually reserved for scholarship and other activities.¹²¹ Law schools had a dual problem: many more students to teach in writing courses and few professors who wanted to teach those courses.

Another phenomenon occurred in American law schools at roughly the same time. Beginning in the 1970s, women were entering law school in increasing numbers. In 1970, roughly eight percent of matriculated law school students were women; by 1976, this percentage had more than tripled, with women comprising roughly twenty-five percent of all law school students, and in 1980, approximately thirty-three percent.¹²² As a result, the face of the practicing bar changed: in 1975, roughly 6.1% of lawyers were women.¹²³ By 1985, the percentage of female lawyers admitted to the bar had more than doubled to 13.9% and by 1990 had tripled to 18.6%.¹²⁴ For deans and other law school administrators, this increase in the number of female students created some additional pressures, but also created a larger labor pool with which to solve their staffing problems.¹²⁵

Women perfectly filled the void created by the combined forces of increased student enrollment, pressure for writing courses and decreased (male) professorial desire to teach the ever-more

121. Rombauer, *supra* note 16, at 546-47. For example, in her legal writing survey, Rombauer reported that the "regular" faculty tapped to teach legal writing found it to be more work and "less stimulating" than teaching other courses. *Id.* Many were not interested in teaching it again. *Id.*; see also Connors, *supra* note 119, at 108-09, 116-17 (describing a similar phenomenon in undergraduate composition teaching, which began as the exalted field of rhetoric, but changed dramatically with the influx of students to undergraduate institutions in the late nineteenth century). This influx of students transformed rhetoric and composition from "academic desideratum" worthy of the most honorable academic chairs to "grim apprenticeship[s]" taught by a "badly paid, ill-used and secretly despised" underclass. *Id.* at 108.

122. CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 53 (2d ed. 1993); AM. BAR ASS'N, *supra* note 114, at 454.

123. Marc Galanter, "Old and in the Way:" *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1114.

124. *Id.*

125. We presume that the increase in student admissions yielded a commensurate increase in law school resources with which to pay the salaries of these new hires. We acknowledge that private law schools may have had greater resources than public institutions during the peak of the boom years and that public law schools did not have a corresponding increase in state appropriations until after the boom. We cannot, at least at this time, re-create historical and school-by-school changes in legal writing staffing patterns during the boom years, but suspect, from our experience and anecdotal information, that private law schools (or well-funded public ones) were at the forefront of the movement to hire full-time legal writing professors. We believe that most of the shift toward hiring full-time legal writing teachers on uncapped contracts is now taking place at public institutions.

demanding and time-consuming writing courses.¹²⁶ Although women had broken the barrier to law school admissions, they were still not entirely welcome in the legal market and had great difficulty obtaining the more desirable and higher paying jobs.¹²⁷ Relegated to lower paying, lower status legal positions, it would seem that many women became the "second-wage earners" in families, which in turn often meant that all family members were tied geographically to the place of the primary breadwinner's job.¹²⁸ Moreover, as "second-wage earners" whose jobs necessarily were subordinated to the primary breadwinner's when the demands of family intervened, women also likely gravitated toward the flexible hours of legal education.¹²⁹ Many women were probably also attracted to legal writing because of its emphasis on individual attention,¹³⁰ as compared with doctrinal courses taught in the combative and aggressively male Socratic method.¹³¹

126. In his comprehensive 1988 article on women and minorities on law faculties, Professor Richard H. Chused posited that "[t]he dramatic appearance of large numbers of women in contract legal writing positions suggests that a historically typical 'women's job' pattern is emerging." Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 553 (1988). Chused also noted that the data suggested that "some law schools may be 'tracking' women qualified for a regular teaching job into legal writing positions." *Id.*

127. Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 9 (1991). See generally Connors, *supra* note 118 (discussing gender discrimination as hindering the progress of women entering graduate schools in the 1970s); Donna Fossum, *A Reflection on Portia*, 69 A.B.A. J. 1389 (1983) (pointing out the initial difficulty female attorneys faced in obtaining equal work, much less equal pay, with men in the legal profession); Janice Fanning Madden, *The Persistence of Pay Differentials: The Economics of Sex Discrimination*, in WOMEN AND WORK: AN ANNUAL REVIEW 76, 89 (Laurie Larwood et al. eds., 1985) (arguing that differences in earnings between men and women result in part from discriminatory hiring, resulting in artificially large labor supplies for work considered "appropriate" for women, devaluation of jobs performed primarily by women and paying women "unequal pay for equal work"); Myra H. Strober, *Toward a General Theory of Occupational Sex Segregation: The Case of Public School Teaching*, in SEX SEGREGATION IN THE WORKPLACE: TRENDS, EXPLANATIONS, REMEDIES 144 (Barbara F. Reskin ed., 1984) (hypothesizing that contributions to wage differentials between sexes include employer assumptions about family status and women's mobility).

128. See Strober, *supra* note 127, at 149 (explaining that women who are "often geographically immobile and/or excluded from other higher-paying occupations have a less wage-elastic supply curve than men and, therefore, can be retained at a lower wage"); see also sources cited *supra* note 126 (compiling articles about the difficulties women faced in entering the legal profession).

129. See Connors, *supra* note 119, at 121 (explaining that women took jobs teaching composition because "[m]any women chose to marry, and raising children was seen as the woman's job; full-time scholarly competition was difficult for active mothers of young children").

130. *Id.*

131. See Arrigo, *supra* note 120, at 154 (hypothesizing that women may be drawn to LRW for many reasons, including a desire to help students find their own voices, a key factor missing from the LRW instructor's law school experience); Christine Haight Farley, *Con-*

From the perspective of the law schools, women provided an excellent labor pool—they were qualified lawyers, geographically less flexible than male counterparts, nearly shut out of the private legal practice market and pushed by sex discrimination in both law practice and American culture to take legal jobs of whatever salary and status they could get. Thus, while in 1958, when law school teachers were overwhelmingly male, legal writing instructors in eleven schools surveyed were paid salaries commensurate with the salaries “paid by law firms for men of the same training and caliber;”¹³² by 2000, legal writing instructors were composed overwhelmingly of women who made far less than anyone of the “same training and caliber” in law practice or legal education.

IV. THE TEMPLE SURVEY

A. Methodology

Beginning in the Spring of 1997 and continuing into the Fall of 1998, the five full-time legal writing professors at the James E. Beasley School of Law of Temple University began the process of collecting salary data on full-time non-tenure-track legal writing teachers in American law schools, covering the 1997-1998 academic year. We wanted to fill the information gap left by the various legal writing surveys, as well as gather information in support of a request for higher salaries for four of the writing professors at Temple, each of whom had extensive law school teaching experience

fronting Expectations: Women in the Legal Academy, 8 YALE J.L. & FEMINISM 333, 335 (1996) (discussing the difficulties associated with female law professors using the characteristically male Socratic method, which contributes to the current teaching paradigm's reinforcement of gender stereotypes); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education* or “The Fem-Crits Go to Law School,” 38 J. LEGAL EDUC. 61, 77-78 (1988) (arguing that use of the Socratic method discourages feminist consciousness raising through dialogue concerning the diverse personal experiences of women); see also Connors, *supra* note 118, at 121 (pointing out that “the close contact work of freshman composition, time-consuming though it is, seems to have been appealing to women in a way it was not to male PhDs”); Janet Riskin, *Teaching Mediation: A Feminist Perspective on the Study of Law*, in GENDERED SUBJECTS: THE DYNAMICS OF FEMINIST TEACHING 96, 97 (M. Culley & C. Portuges eds., 1985) (claiming that the Socratic method is “a pedagogy which supports and reinforces the male paradigm of law”).

132. King, *supra* note 2, at 407-08.

and had graduated law school many years prior.¹³³ As noted, the existing surveys focused on entry-level teachers.¹³⁴

Our first step was to send our survey, via e-mail, to the subscribers of two internet e-mail listservs: the ALWD listserv (DIRCON) and a more general listserv run out of Chicago-Kent College of Law (LEGWRI-L). The listservs were the best way to reach the maximum number of legal writing professionals in a short period of time. At the time, DIRCON had over two hundred subscribers, all of whom were responsible for the design, implementation and supervision of legal writing programs at law schools (1) accredited or provisionally accredited by the American Bar Association, (2) members or fee-paid members of the Association of American Law Schools or (3) Canadian accredited schools.¹³⁵ LEGWRI-L had more than four hundred subscribers, covering the other legal writing teachers in the nation and abroad. Our survey was quite simple. We asked directors and teachers of legal writing to report:

- the actual 1997-1998 academic year salary of full-time non-tenure-track legal writing professors (rounded up to the nearest thousand dollars, pro-rated over the standard nine-month period if paid for a twelve-month year and not including summer grants or other support);
- the date each of those professors graduated from law school;

133. At Temple, the director of the legal writing program is a tenured member of the faculty who has taught legal writing for more than fifteen years, and has directed programs at several other law schools. The four full-time professional legal writing professors have contracts that would comply with ABA Standard 405(c): the legal writing faculty are on long-term contracts, vote on all faculty matters (but for awards of tenure and promotion of those on the tenure track) and have all the perquisites and responsibilities commensurate with regular faculty status, such as being eligible for summer research grants, teaching upper-division courses and serving on faculty committees. All of these legal writing professors were hired after they had taught legal writing at other schools, and all have produced scholarship in the field of legal writing.

We limited ourselves to full-time non-tenure-track teachers for three reasons. First, a more detailed survey of all experienced people employed in all program models would have been a lengthy and overwhelming undertaking, well beyond our resources, and we felt it was something better undertaken by the upcoming ALWD/LWI surveys. Second, the ALWD/LWI surveys adequately covered the issue of tenure-track legal writing professors. Third, we wanted to have data that would most easily enable us to compare salaries of non-tenure-track legal writing teachers with salaries paid to doctrinal law faculty and new law graduates; we wanted to be able to compare apples to apples.

134. See *supra* Part II.

135. See *Bylaws of the Association of Legal Writing Directors*, ASS'N OF LEGAL WRITING DIRS., at <http://www.alwd.org/bylaws.htm> (July 2000) (providing qualifying definitions of "Legal Writing Directors" and "accredited law schools").

- the number of years (not counting the current academic year) each professor had been teaching legal research and writing;
- whether the law school was public or private; and
- the gender of each professor.

We compiled our list of American law schools from the ABA web site,¹³⁶ which lists all ABA-accredited schools, and from the AALS web site,¹³⁷ which lists all AALS member and fee-paid law schools. We separated out the schools with full-time non-tenure-track teachers and divided the list of schools among the five of us; each of us took responsibility for contacting the legal writing professionals who did not respond to the general posting. We tried first by direct e-mail to those teachers; if we did not receive responses, we phoned them. We also continued posting general inquiries, imploring people to respond. We assured respondents of the confidentiality of any individual names and salary information, and announced our intention to publish the data in a form that would not permit identification of any respondent. Once we had a response, we confirmed the data by checking items such as gender and graduation date in the AALS Directory of Law Teachers. By the time our data collection effort was completed, we had 216 complete responses from individual teachers, comprising 1997-1998¹³⁸ salary reports from seventy law schools in every geographic region of the United States, a response rate of at least seventy-one percent of all schools using full-time legal writing teachers.¹³⁹ Sixty-three of our

136. See *Approved: Main Page for List of Approved Law Schools*, AM. BAR ASS'N, at <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Jan. 26, 2000).

137. See *AALS Member Schools*, ASS'N AM. LAW SCH., at <http://www.aals.org/members.html> (last visited Jan. 26, 2001).

138. It is possible that a few of the salaries reported to us late in the survey, in the Fall of 1998, were for the new 1998-1999 academic year, but as we will show, the slight increases possible from those few cases were so minimal that they would have had no appreciable effect on the meaning of our data.

139. There are, as of Spring 2000, full-time legal writing professors (not including directors) at approximately 122 of the 185 law schools that are fully—or provisionally—ABA-accredited, or which have applied for accreditation. See Levine, *supra* note 46, at 56. The number of schools and the number of schools with full-time teachers were lower in 1998 because the full-time teacher model has been increasing steadily in dominance, which would yield a better response rate than we claim. We tried to recreate the capped or uncapped nature of the contracts at those schools, relying on one of the author's recollection of the changes over the past two years. We had at least one response from each of fifty-five schools with uncapped contracts in 1998, which was a response rate of seventy-one percent of the schools using that employment model. We had at least one response from each of the fifteen schools with capped contracts in 1998, which was a rate of 71.4% of the schools using that employment mode. Because there was such a narrow range of salaries reported by the writing professors at every one of the schools with multiple respondents, we treated a response from one legal writing

responses were from men (29.44%) and 151 were from women (70.56%), mirroring the field's gender composition reported by others.¹⁴⁰

Once the data was collected, we entered into a spreadsheet the law school name, closest city, public or private status of the school, the legal writing professor's salary, year of the professor's law school graduation and the number of years the teacher had been teaching legal research and writing. We then obtained the cost of living adjustment factor for the closest urban area for each law school responding to the survey,¹⁴¹ and added two columns to the spreadsheet that recorded the cost of living factor and the adjusted salary.¹⁴² Finally, we compared our data to data reported by the Society of American Law Teachers (SALT) on the 1997-1998 median

professor at any school as representative of all the unreported salaries of his/her LRW colleagues at that school.

140. Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 328 (2000). See generally Durako, *supra* note 37 (noting the disparity between the number of female writing teachers and male writing teachers in law schools); Ramsfield, *A Sharper Image*, *supra* note 36 (same); Ramsfield, *Twenty-First Century*, *supra* note 37 (same).

141. To make our adjustments, we used the American Chamber of Commerce Cost of Living index. AM. CHAMBER OF COMMERCE RESEARCH ASS'N, ACCRA COST OF LIVING INDEX (First Quarter 1998). That was the latest report available at the time we collected the bulk of the data; it reflected the relative cost of living for the respondents in the Spring semester of 1998. The American Chamber of Commerce Research Association (ACCRA) explains that its reports are a "useful and reasonably accurate measure of living cost differences among urban areas." *Id.* at i. The index measures consumer expenditures for "midmanagement households," examining "relative price levels for consumer goods and services." *Id.* (emphasis in original). "The average for all participating places, both metropolitan and nonmetropolitan, equals 100, and each participant's index is read as a percentage of the average for all places." *Id.* (emphasis in original). ACCRA cautions that "index data from different quarters cannot be compared" and that the index does not include tax burdens. *Id.* We used the data for the urban area housing each law school responding to our survey; but because each quarterly report does not include all urban areas, and because a handful of responding schools were not located in a listed urban area, we used the index data for the closest in-state urban area for those schools.

142. The adjustments were very simple. Essentially, the reported salary for a teacher was divided by the cost of living factor (first multiplied by .01) for the city or closest in-state urban area in which the school was located and then rounded up to the nearest dollar. Thus, for locations with a cost of living of ninety, the salary was divided by .90. This allowed us to keep the answer in dollars. For example, a reported salary of \$50,000 in a cost of living area with a factor of ninety was handled in the following way: $\$50,000/.9 = \$55,555$. Similarly, a salary of \$50,000 in a location with a factor of 120 was adjusted as follows: $\$50,000/1.20 = \$41,667$.

ACCRA suggests this formula for using the index data to compare job offers in different locales:

Assume that City A has a composite index of 98.3 and City B has a composite index of 128.5. If you live in City A and are contemplating a job offer in City B, how much of an increase in your after-taxes income is needed to maintain your present midmanagement lifestyle? $100 * [(City B - City A) / City A] = 100 * [(128.5 - 98.3) / 98.3] = 100 * (.3072) = 30.72\%$, or about a 31% increase.

AM. CHAMBER OF COMMERCE RESEARCH ASS'N, *supra* note 141, at ii.

salaries for all three academic ranks for faculty at American law schools¹⁴³ and to the salaries of new law school graduates from the National Association for Law Placement (NALP).¹⁴⁴

B. Internal Statistical Analysis and Resulting Conclusions

1. In General

Overall, the salaries of legal writing professors across the country—even before comparison to other salaries—tell a story. One part of the story is that the date of graduation from law school—a strong salary indicator in both legal practice and academic jobs—proved to be of statistically low relevance in predicting legal writing salary levels.¹⁴⁵ This implies that legal writing professors receive no credit for their years of legal experience, although such experience is critical to proficiency in teaching legal writing, which is a skills-based course. Ironically, the close link between legal writing and the practice of law (as opposed to legal theory) is a typical reason given for the second-class treatment of legal writing.¹⁴⁶ Thus, the data reveals the first layer of arbitrary discrimination: legal writing is a low-salary job because it is practice-oriented rather than theory-oriented, but practice experience carries only minor statistical relevance to setting writing teacher salaries.

Another part of the story is revealed by the clustering of graduation dates. Ten percent of our respondents obtained a law degree during the 1970s and fifty percent during the 1980s.¹⁴⁷ The

143. 1997-1999 SALT Survey, SALT EQUALIZER, Mar. 1999, at 1, 2-7. "The survey represents the median salaries for each of the three faculty ranks, in alphabetical order by school, in each of seven regions. Information was received from 94 schools; in other words, nearly one-half of our nation's law school deans have declined to participate." *Id.* Society of American Law Teachers (SALT) describes itself as the "oldest and largest organization of law professors." *Id.* For more information on SALT, visit its website, <http://www.scu.edu/law/salt>.

144. NAT'L ASS'N FOR LAW PLACEMENT, JOBS & J.D.'S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 1998, at 18-19 (1999).

145. We used *Statistical Package for the Social Sciences* (SPSS) version 10 for our statistical analyses, based on spreadsheets first created in *Corel Quattro Pro* versions 8 and 9. In a stepwise, listwise linear regression, the variable "Years Since Graduation" (YSG) was excluded by SPSS at the .05 significance level. A linear regression is a statistical model that tests independent variables, such as YSG or "Years of Experience" (EXP), for their ability to predict a dependent variable, in this case the adjusted salaries of legal writing professors. The YSG variable was found to have a correlation of .251 with legal writing salaries. Correlation figures can range from 1 (a perfectly linear positive relationship) to -1 (a perfectly linear inverse relationship). A correlation of $\pm .251$ is considered a weak relationship.

146. Rideout & Ramsfield, *supra* note 119, at 47-48.

147. These figures are percentages of the valid responses; that is, responses that included the respondents' law school graduation dates. We had 218 total cases, but only 205 had

clustering of dates between the 1970s and 1980s, the years in which women entered law school in striking numbers, lends support to our hypothesis about the historical and demographic basis for the growth in full-time legal writing teaching positions.

Moreover, the number of years of experience teaching legal writing has only moderate statistical significance, accounting for only 15.3% of the variation of LRW salaries.¹⁴⁸ The low statistical correlation of seniority and salary for legal writing stands in stark contrast to salaries for doctrinal tenure-track professorships, in which seniority is traditionally rewarded with raises and promotions. The low statistical correlation is likely due to the presence of "caps" on time in service—legal writing positions are singled out in the academy for these caps, which force legal writing teachers to leave their positions after a short number of years.¹⁴⁹ That there is any correlation at all is probably due to annual percentage-based increases, which will raise legal writing salaries slightly with time. But, because legal writing salaries start so low and raises in the academy are traditionally by percentage, these percentage increases raise the salary levels only marginally. Again, this tells us that legal writing is singled out for disparate second-class treatment within the legal academy and that second-class treatment is continued by the practice of percentage-based raises.¹⁵⁰ 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. Finally, we found no significant evidence of gender-based salary discrimination within the ranks of legal writing teachers.¹⁵¹

information on graduation dates. The percentages stem from those 205. The percentages of total figures are nine percent and forty-seven percent, respectively.

148. In a stepwise, listwise linear regression, the variable EXP was found significant by SPSS. The EXP variable was found to have a moderate correlation of .396 with legal writing salaries and an Adjusted R2 of .153. Adjusted R2 measures the proportion of variation in the dependent variable that is explained by the variation of an independent variable.

149. See Levine, *supra* note 46, at 55-57; ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., QUALITY LEGAL WRITING INSTRUCTION AND ABA ACCREDITATION STANDARD 405: REPORT AND RECOMMENDATIONS 7 (2000), www.alwd.org (last visited Apr. 18, 2001).

150. As one law school Dean candidly told us: "5% of nothing is still nothing."

151. Our analysis suggested that women received about \$360 (adjusted for a cost of living of 100) more than men, an amount that was not statistically significant. Our initial hypothesis was that male legal writing teachers earned more than their female counterparts. In an independent T-test for equality of means, however, in which equal variances could not be assumed, the one-tailed significance was .3955; in other words, the probability that this difference in means can be applied to the entire population of legal writing professors is 60.45%. That figure must be .05 or less (ninety-five percent probability or greater) in order to be considered statistically significant.

Men and women teaching legal writing at any particular school appear to be treated

2. Comparison to Tenure-Eligible Law School Salaries

The most striking gender disparity revealed by the data is the difference between tenure-track, doctrinal jobs (held overwhelmingly by men) and contract-status, legal writing jobs (held overwhelmingly by women). The direct comparison of salaries paid at the thirty-six law schools yields sobering, if not shocking, data.¹⁵² After calculating the average, or the mean, salaries for legal writing professors at each school,¹⁵³ we compared our data to the SALT salary survey reporting tenure-eligible faculty salaries for the same time period.¹⁵⁴ Law school deans supply the data for the SALT survey.¹⁵⁵ It covers the three customary faculty ranks and reports median salaries in almost all cases.¹⁵⁶ It appears from the SALT survey that schools reported only the salaries of tenure-eligible faculty.¹⁵⁷

similarly—poorly—when it comes to salary determinations. This is not unusual for men who choose to work in “female ghettos.” See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 73 (1987) (“That some men find themselves in a similar situation [when they occupy traditionally female jobs] doesn’t mean that they occupy that status as *men*, as members of their gender. They do so as exceptions, both in norms and numbers.”) (emphasis in original).

We tried to determine if the cost of living was a factor in the salary levels, but our analysis of the unadjusted salaries and gender did not support a second hypothesis that men were likely to be overrepresented in areas with a higher cost of living. Our analysis suggested that women in areas with a high cost of living received about \$1,400 (in nominal, unadjusted wages) more than men. An independent T-test for equality of means, in which equal variances could not be assumed, revealed the one-tailed significance to be .1645. This means that the probability of the obtained T-value to occur by chance under the null hypothesis that the salaries are equal is greater than the alpha level (.05 is typically used) and the null hypothesis is accepted, and the result is not statistically significant. See FREDERICK D. HERZON & MICHAEL HOOPER, *INTRODUCTION TO STATISTICS FOR THE SOCIAL SCIENCES* 226 (1976).

152. See *infra* app. A. The figures represent a sampling of twenty percent of all ABA-accredited law schools. The schools in the chart come from all geographical regions of the country and academic ranks.

153. The mean of any data grouping is the most commonly used method of comparing a particular feature between different groups, but it can be misleading because of its sensitivity to potentially extreme values in the set. Depending on how the data is distributed, either the mean, median or mode might be used to represent the data. If the data is normally distributed in a “bell curve,” the mean, median and mode are all equal.

154. 1997-1999 SALT Survey, *supra* note 143, at 1.

155. *Id.*

156. *Id.*

157. *Id.* at 2-7. There was no explanation for SALT’s reporting of median salaries as opposed to mean salaries, but we suspect it was to reduce the sensitivity to extreme salary differences within ranks. We felt comfortable comparing SALT’s median salaries to mean LRW professors’ salaries. Even if some schools had writing professors off the tenure-track, but reported legal writing teachers’ salaries in their calculation of a median salary (which we felt was unlikely), such reporting would tend to lower the median figure for that rank and

Appendix A, Graph 1, shows the range of faculty salaries at thirty-six law schools for which we had data permitting comparisons of the pay of legal writing professors and tenured or tenure-track faculty.¹⁵⁸ Those salaries are ordered from lowest to highest, by rank.¹⁵⁹ Appendix A, Graph 2, permits comparisons of salaries within each of the thirty-six schools.¹⁶⁰ Appendix A, Graph 3, shows aggregate legal writing salaries at these schools as a percentage of salaries paid to other law professors.¹⁶¹ Appendix A, Graph 4, shows the dollar gap between aggregate legal writing salaries and other faculty salaries.¹⁶²

The salary figures reflect woefully low wages paid to a group that is composed of seventy percent women, while the higher wages are paid to a group that is seventy-four percent men.¹⁶³ In reviewing the data, one must remember that the typical assistant professor is a relatively new law school graduate, often only three to five years out of school, and has been teaching for only about three years. We assumed that the typical associate professor probably has about five to eight years of legal teaching experience, and that the typical full professor probably has at least a dozen.¹⁶⁴ The average experienced

bring the SALT median figure and our legal writing mean closer together. From the consistency of the reported SALT data at each rank across the nation, the clear gaps between ranks and the strikingly lower legal writing salaries at virtually every school, we concluded that it was unlikely that any school would have had higher salaries within any tenure-eligible rank that would effectively cancel the much lower salaries reported by our respondents.

Furthermore, the legal writing salaries at each school were remarkably consistent, regardless of experience or graduation date of the respondents. From the data we received, we believe that the lowest tenure-track, assistant professor salary constitutes a "glass ceiling" through which the legal writing salaries cannot pass. At only two schools was the ceiling even approached.

158. See *infra* app. A.

159. See *infra* app. A.

160. See *infra* app. A.

161. See *infra* app. A.

162. See *infra* app. A.

163. See, e.g., ASS'N OF LEGAL WRITING DIRS., *supra* note 74, at 12-17; ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 78, at 12-17; ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 94, at 5-8; ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 1, at 29-35; Neumann, *supra* note 140, at 347.

164. Interestingly, we found that the ABA does not collect data on the experience levels of professors at various ranks. E-mail from Rick Morgan, ABA, to Jan M. Levine, Director of Legal Research and Writing, James E. Beasley School of Law of Temple University (Apr. 9, 2001) (on file with authors). The AALS does not have that data in easily accessible form, because finding it would require extensive research of existing biographical data. Telephone interview with Richard White, AALS (Apr. 9, 2001). However, it is fair to assume that in most law schools, professors should have tenure (or have departed teaching) by their seventh year, and that many would be promoted at that point. Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 767-68 (1998).

legal writing professor in our survey has 3.97 years of teaching experience and is 10.49 years out of law school; over 8.33% of the group has ten or more years of teaching experience.

In dollars adjusted for the hypothetical location with 1998's average cost of living of 100, nation-wide LRW faculty were paid, on the average, fifty-seven percent of the median salary paid to assistant, tenure-track professors of doctrinal subjects; this is a difference of \$28,973. In adjusted dollars, they are being paid fifty-one percent of the average median salary paid to associate professors; the difference is \$34,470. They are paid, in adjusted dollars, forty percent of the average median salary paid to full professors; this difference is \$56,550.

At the rank of assistant professor, the greatest salary difference was found at a school that paid the average legal writing faculty member 36.11% of the median salary paid to assistant professors; the other end of the spectrum was a school where the legal writing professors were paid 98.06% of the assistant professor median salary.¹⁶⁵ For the associate professor rank, in the worst case, the mean legal writing salary was 35.27% of the median associate professor salary; at the "best" school it was 88.54%.¹⁶⁶ For the full professor rank, the largest discrepancy was at a school that paid a mean legal writing salary that was 27.85% of the median salary paid to full professors; the other end of the spectrum was at a school that paid legal writing teachers 63.89% of the median full professor salary.¹⁶⁷

Moreover, standard percentage-based pay increases for LRW teachers are woefully insufficient to remedy the underlying inequities. Using the mean LRW adjusted salary of \$37,675 for our respondents, we calculated that it would take about twelve years of yearly five percent pay raises to bring that hypothetical LRW professor to the average 1998 median salary of a tenure-track assistant professor, a salary of \$66,648. It would take an additional two years to reach the equivalent average 1998 median salary for an associate professor, \$74,479. It would take a total of nineteen years of five percent annual raises for that LRW professor to match the average 1998 median full professor salary level, \$94,225. In other words, the overwhelmingly female pool of legal writing professors must teach for twelve years to reach the assistant professor salary as it was at the time they were hired, fourteen years to reach the

165. *Infra* app. A.

166. *Infra* app. A.

167. *Infra* app. A.

associate professor salary and nineteen years to reach the full professor salary. Such figures are measured by *teaching* experience only; adding the legal writing professors' years out of law school increases the years substantially. Our data leaves no question that there are two tracks in legal academia: one low-salary, low-status track composed overwhelmingly of women and one higher salary, tenure-track composed overwhelmingly of men.¹⁶⁸ And the two tracks never meet.

3. *Comparison to the Law Firm Market*

Not only do law 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 1998.¹⁶⁹ The disparity is especially glaring when one considers the graduation date of the legal writing teachers. Although similar disparities might exist between the highest salaries being paid by law firms and the equivalent salaries paid to "doctrinal" tenure-track faculty, the difference between legal writing salaries and the median salaries paid by firms is striking. We compared legal writing teacher salaries directly to the salaries for new graduates, in United States Census Bureau regions¹⁷⁰ and in individual cities.

168. Chused, *supra* note 126, at 553. Our data supports Professor Chused's 1988 hypothesis. Unfortunately, we did not have access to the data that would allow for an analysis of gender and salary across the board for all faculty at all law schools. The ABA no longer collects salary data. See *supra* note 70 and accompanying text. SALT does not collect gender information with salary data. See *supra* note 143.

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

170. We divided the reported salaries by the United States Census Bureau Regions, as used in the NALP report:

New England (NE)—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Mid-Atlantic (MA)—New Jersey, New York, Pennsylvania.

East North Central (ENC)—Illinois, Indiana, Michigan, Ohio, Wisconsin.

West North Central (WNC)—Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.

South Atlantic (SA)—Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia.

East South Central (ESC)—Alabama, Kentucky, Mississippi, Tennessee.

West South Central (WSC)—Arkansas, Louisiana, Oklahoma, Texas.

Mountain (M)—Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming.

Pacific (P)—Alaska, California, Hawaii, Oregon, Washington.

NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 144, at 23-24; *infra* app. B, graphs 5 and 6 (comparing salaries by region).

Appendix B, Graphs 5 and 6, compare the legal writing salaries paid at all our responding law schools and the salaries paid to new law school graduates in those cities; the data is listed by region.¹⁷¹ Appendix B, Graphs 7 through 15, permit this comparison city-by-city within each region.¹⁷² We used the National Association for Law Placement (NALP) mean salary figures for salaries paid by law firms to graduates of the class of 1998.¹⁷³ After adjusting for cost of living, the average salaries paid to legal writing teachers in almost every city and region were approximately \$10,000 to \$15,000 below the median of the market-driven law firm salaries for new graduates.¹⁷⁴ However, there are some areas with marked departures from the market forces. Legal writing teachers in some areas with a particularly high cost of living were in a worse position than predicted¹⁷⁵ and those in some areas with a lower cost of living were being paid better than expected.¹⁷⁶

These salary comparisons implicate social factors that are related to gender, but because NALP does not appear to collect, report or analyze the gender of law firm associates, we cannot address the gender factor in the associate salaries or in their relationship to our legal writing data. We suspect, however, that in high cost of living areas, law firm life is profit-driven and inconsistent with family and child-care duties.¹⁷⁷ Women overwhelmingly bear responsibility for child-care and other family duties.¹⁷⁸ Thus, it appears that law schools are taking advantage of

171. See *infra* app. B.

172. See *infra* app. B.

173. If a law school location did not have a corresponding match on the NALP charts, we used the lowest reported in-state mean salary for any reported city in that state.

174. NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 144, at 74.

175. See *infra* app. B.

176. *Infra* app. B.

177. Law firms are not run to accommodate the time demands of raising children. For example, part-time work is often viewed as incompatible with the service-oriented focus of the practice of law and is inconsistent with the push for increased billable hours. The result is that while more law firms say they allow part-time work, most of their lawyers do not work part-time, in part because the unwritten policy of the law firm discourages part-time schedules. See Julia D. Gray, *Many Offer Part-Time, Few Accept*, N.Y. L.J., Mar. 4, 2001, at 15; *WBA Report: Some Firms Fail to Support Part-Time Female Attorneys*, METRO. CORP. COUNS., Feb. 2001, at 48; *Women Lawyers' Exodus: Attorneys Cite Long Hours, Inflexibility at State's Top Practices*, BOSTON GLOBE, Dec. 4, 2000, at A1.

178. W. Jean Yeung et al., *Children's Time with Fathers in Intact Families*, 63 J. MARRIAGE & FAM. 136, 136 (2001) (noting that women still shoulder the "lion's share" of parenting). See generally Terry Arendell, *Conceiving and Investigating Motherhood: The Decade's Scholarship*, 62 J. MARRIAGE & FAM., 1192 (2000) (reviewing theories about motherhood). Here, obviously, we are talking about a subset of women in "traditional" family situations—heterosexual, married and, probably, mothers. The women in these situations often became "second-wage earners," whose jobs necessarily were subordinated to the primary

the inhospitable atmosphere of law firms by offering women low paying, but time-flexible, legal writing teaching positions.

V. CONCLUSIONS

Analysis of our data yields several important conclusions. First, legal research and writing professors occupy a low-pay sub-class within the American legal educational system. Legal writing professors are paid substantially less than the lowest ranked doctrinal professors at law schools, regardless of how long they have been teaching or what year they graduated from law school. Perhaps most important, unlike their tenured and tenure-track colleagues annual raises given to legal writing professors do not reflect seniority, either in teaching or practice experience. Although the salaries of tenure-eligible assistant professors in law schools increase significantly at the associate or full professor ranks, the salaries of legal writing professors tend to stagnate or rise only nominally.¹⁷⁹

However, the statistics showing a clear sub-class of legal writing professors demonstrate more than the legal academy's irrational bias against legal writing. This class of poorly paid contract teachers is composed predominantly of female lawyers—a stunning seventy percent of legal writing professors are women, as compared with the twenty-six percent of women who are tenured or tenure-track law school professors of doctrinal subjects.¹⁸⁰ Superimposed, the data reveals two tracks in the legal academy: the "woman track," which is a low-paying, non-tenure-track legal writing position, and the "man track," a higher-paying, tenure-track doctrinal teaching position.¹⁸¹ Adding what we know about the effects of women entering and graduating from law school, a picture emerges—that of a deliberate creation of lower status, low-pay positions in the legal academy, absorbing the large number of women seeking to enter the pool of potential teachers and perpetuating gender discrimination in the academy.

breadwinners when the demands of family intervened.

179. We should note here that female lawyers still have not gained pay (or status) equity in the legal workplace. See, e.g., Irma D. Herrera, *Fair Play Means Equal Pay: More Women Lawyers Doesn't Necessarily Mean Equality in the Profession*, RECORDER, May 3, 1996, at 7 (noting that, despite the increase in the number of women attorneys, the pay disparity continues).

180. See, e.g., Neumann, *supra* note 140, at 328, 336.

181. The small numbers of men in legal writing and women in doctrinal positions do not change this conclusion. See MACKINNON, *supra* note 151, at 73.

It is difficult to surmise any legitimate justification for the wholesale treatment of legal writing as a second-class position, especially now when there is substantial pressure from the bench and bar for *more* skills-related training.¹⁸² The gender issues implicated by the very significant salary differentials should give any fair-minded person pause. To assume that the gender of the occupants of the legal writing positions is mere coincidence is naive, if not willfully obtuse. To dismiss the gender disparity as illusory ignores the facts. Finally, to say that women "want" to teach in these lower-status, lower-pay positions because of the difference in teaching style begs the question.¹⁸³

It is time for law school deans, doctrinal professors and law school alumni, as well as those charged with monitoring the hiring practices of law schools, such as the ABA, to take a hard look at this data.¹⁸⁴ It is time for law schools to pull away from the irrational historical bias against skills training—a bias that no longer has any merit (if it ever did). It is time for law schools and the legal community to acknowledge that law school hiring practices take advantage of, and perpetuate, gender discrimination in the legal field. It is time for law schools to account for their salary decisions and correct them. Fairness, justice and the future of the legal profession demand no less.

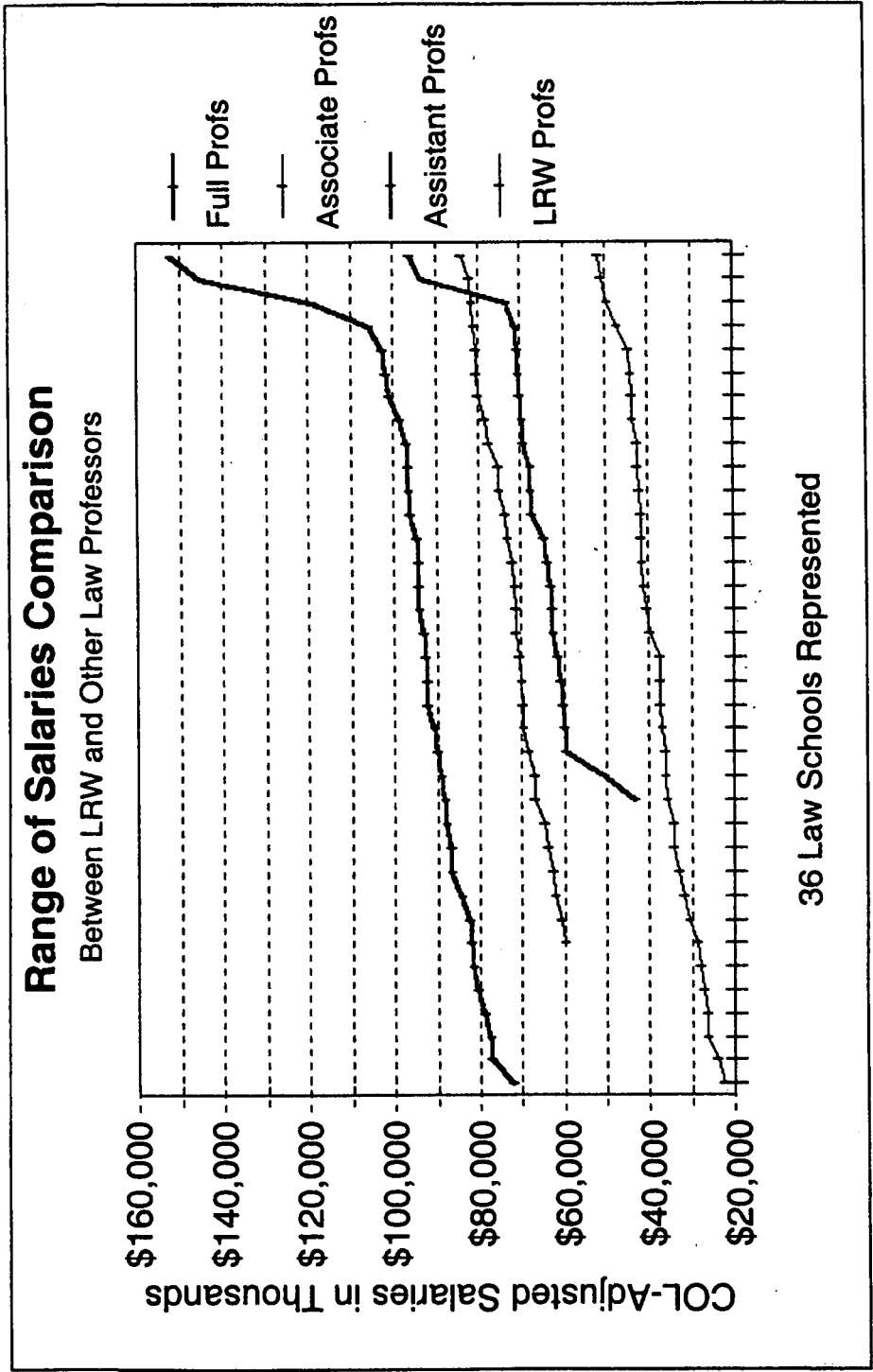
182. See, e.g., Harry T. Edwards, "Another Postscript" to *The Growing Disjunction Between Legal Education and the Legal Profession*, 69 WASH. L. REV. 561, 563, 571 (1994); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH L. REV. 34, 62-63 (1992); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH L. REV. 2191, 2212-17 (1993); Harry T. Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285, 288-89 (1988); Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1468-69 (1995).

183. See Kathryn M. Stanchi and Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 7 BERKELEY WOMEN'S L.J. 3, 8 & nn.27-28 (2001).

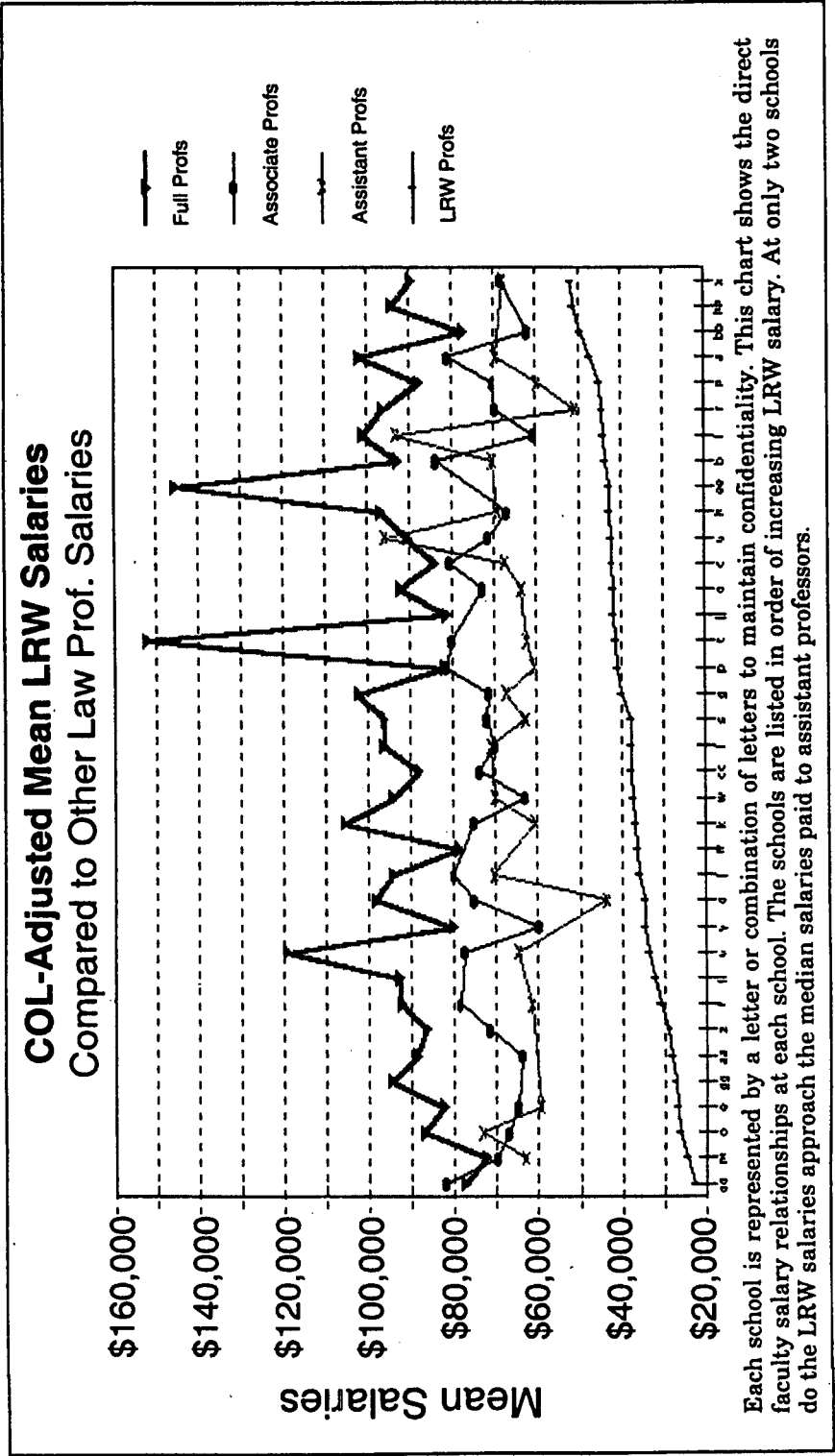
184. See generally *id.*

APPENDIX A: LRW PROFESSORS' SALARIES V. OTHER LAW PROFESSORS' SALARIES

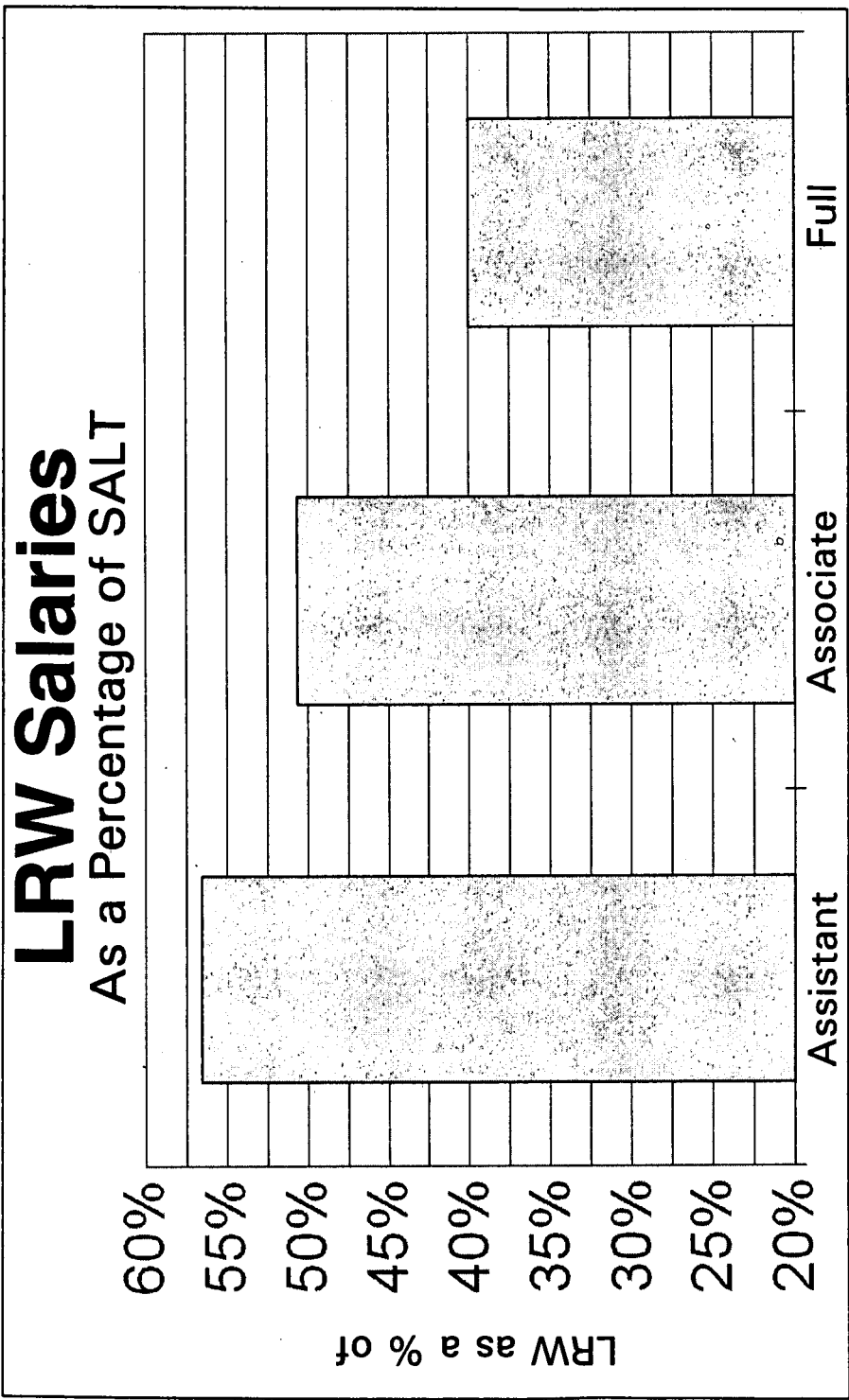
GRAPH 1: SALARY COMPARISON BETWEEN LRW PROFESSORS AND OTHER LAW PROFESSORS



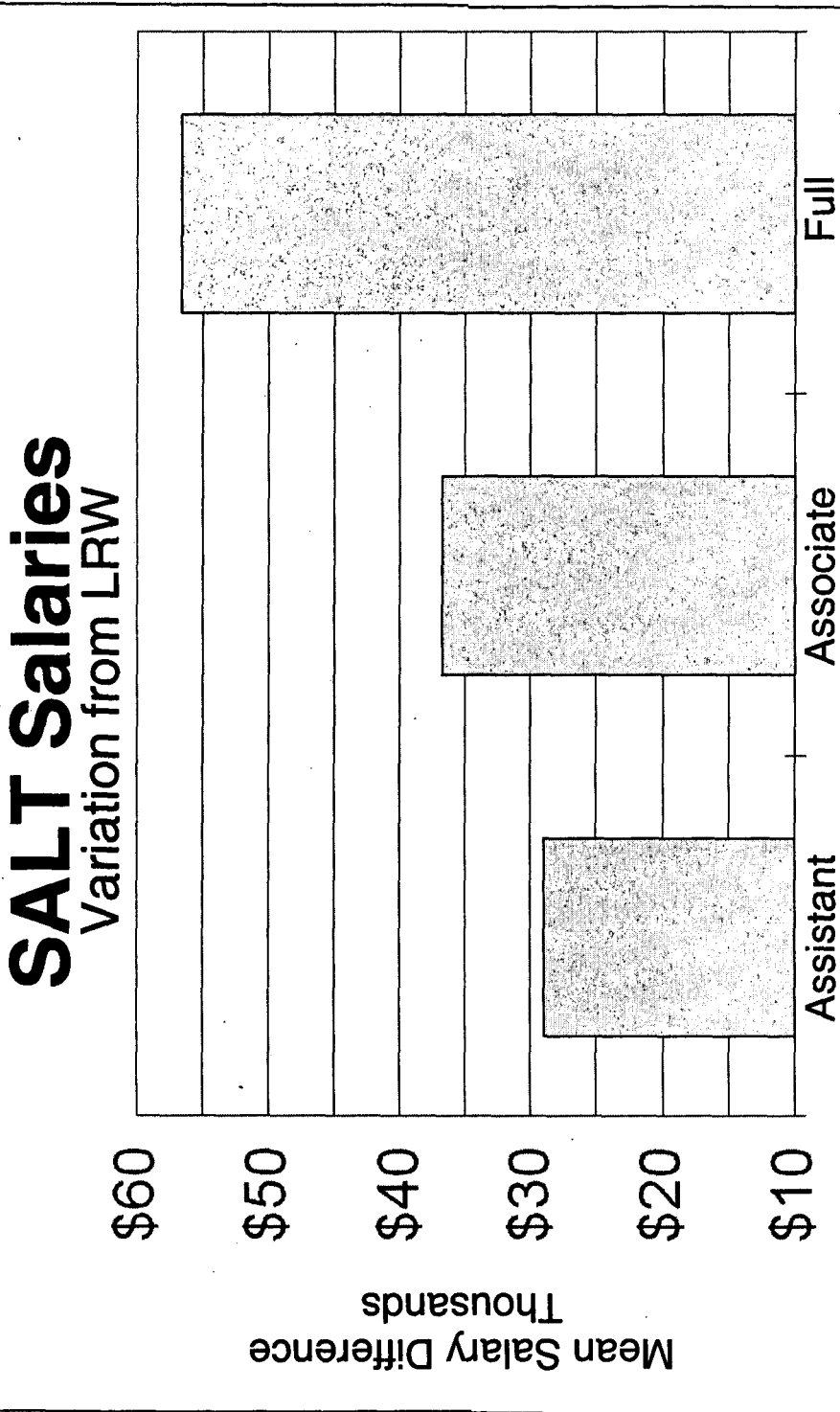
GRAPH 2: COL-ADJUSTED MEAN LRW PROFESSORS' SALARIES COMPARED TO OTHER LAW PROFESSOR SALARIES



GRAPH 3: LRW PROFESSORS' SALARIES AS A PERCENTAGE OF TENURE-TRACK DOCTRINAL SALARIES

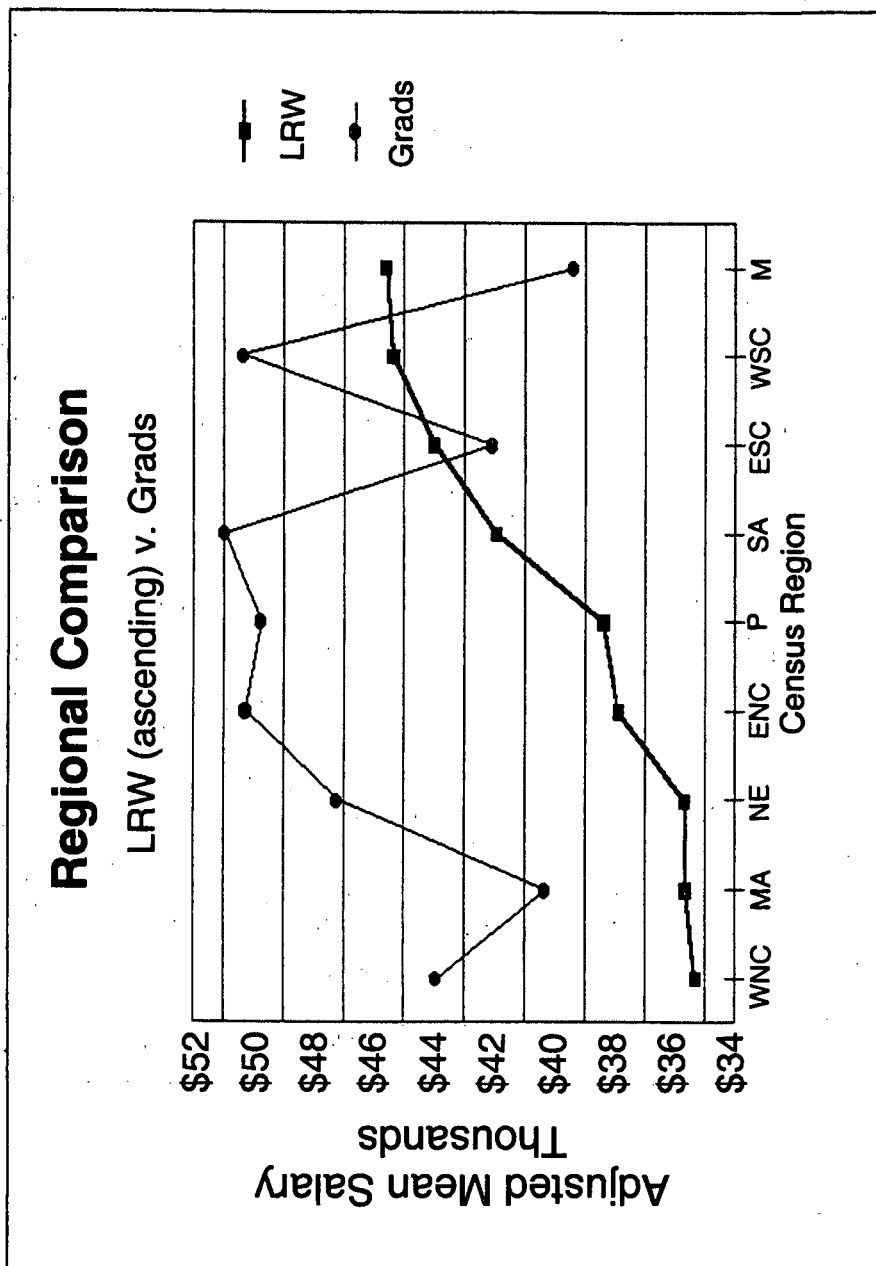


GRAPH 4: MEAN SALARY DIFFERENCE BETWEEN LRW PROFESSORS AND TENURE-TRACK
DOCTRINAL PROFESSORS

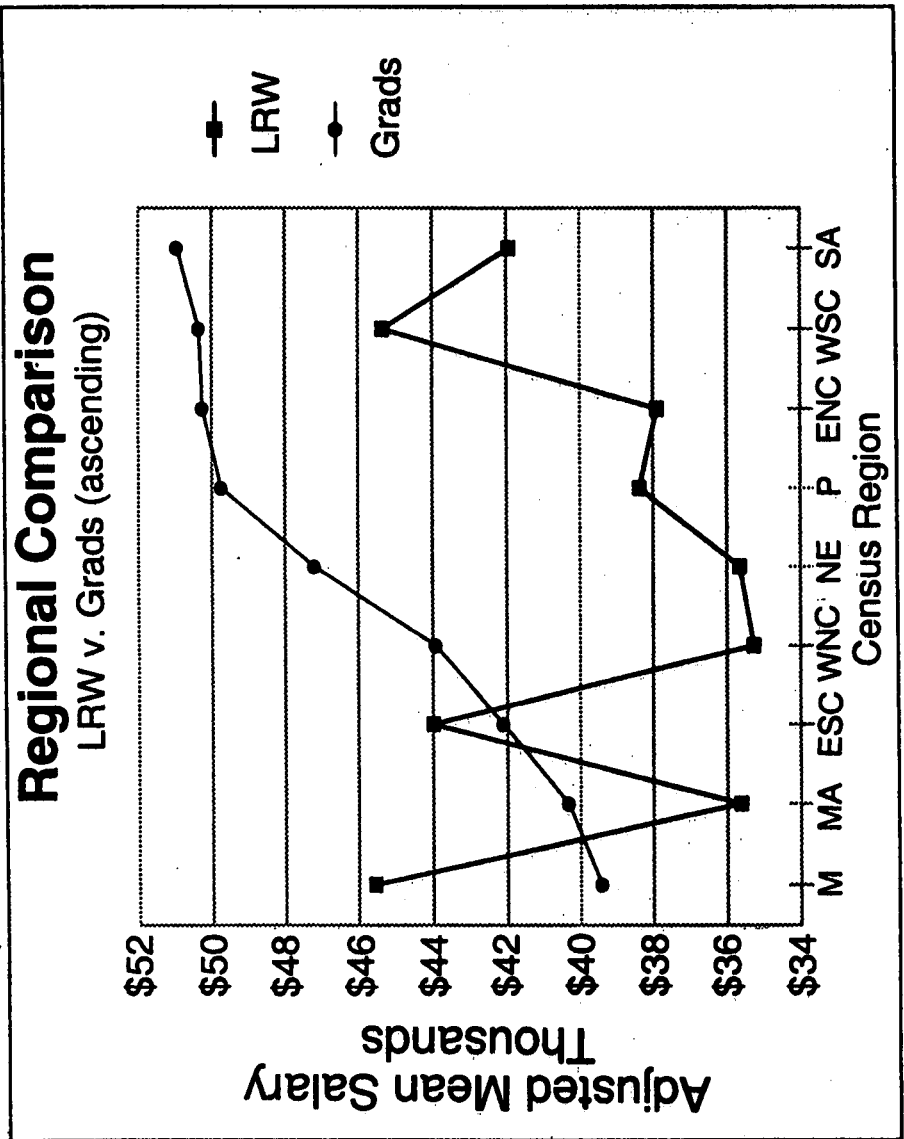


**APPENDIX B: LRW PROFESSORS' SALARIES V.
NEW GRADUATE SALARIES**

**GRAPH 5: LRW PROFESSORS' SALARIES (ASCENDING) V. NEW GRADUATE SALARIES
ACCORDING TO REGION IN 1998**

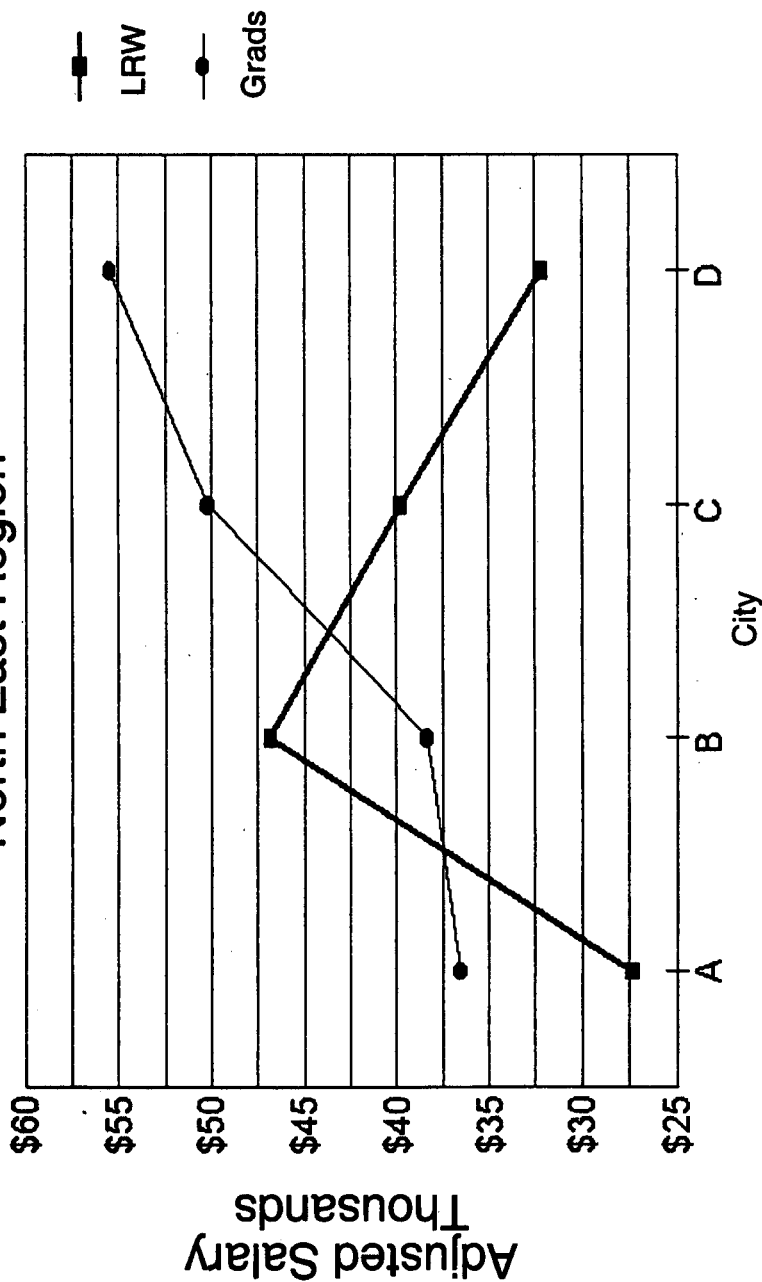


GRAPH 6: LRW PROFESSORS' SALARIES V. NEW GRADUATE SALARIES
(ASCENDING) ACCORDING TO REGION IN 1998



GRAPH 7: NORTH EAST REGION

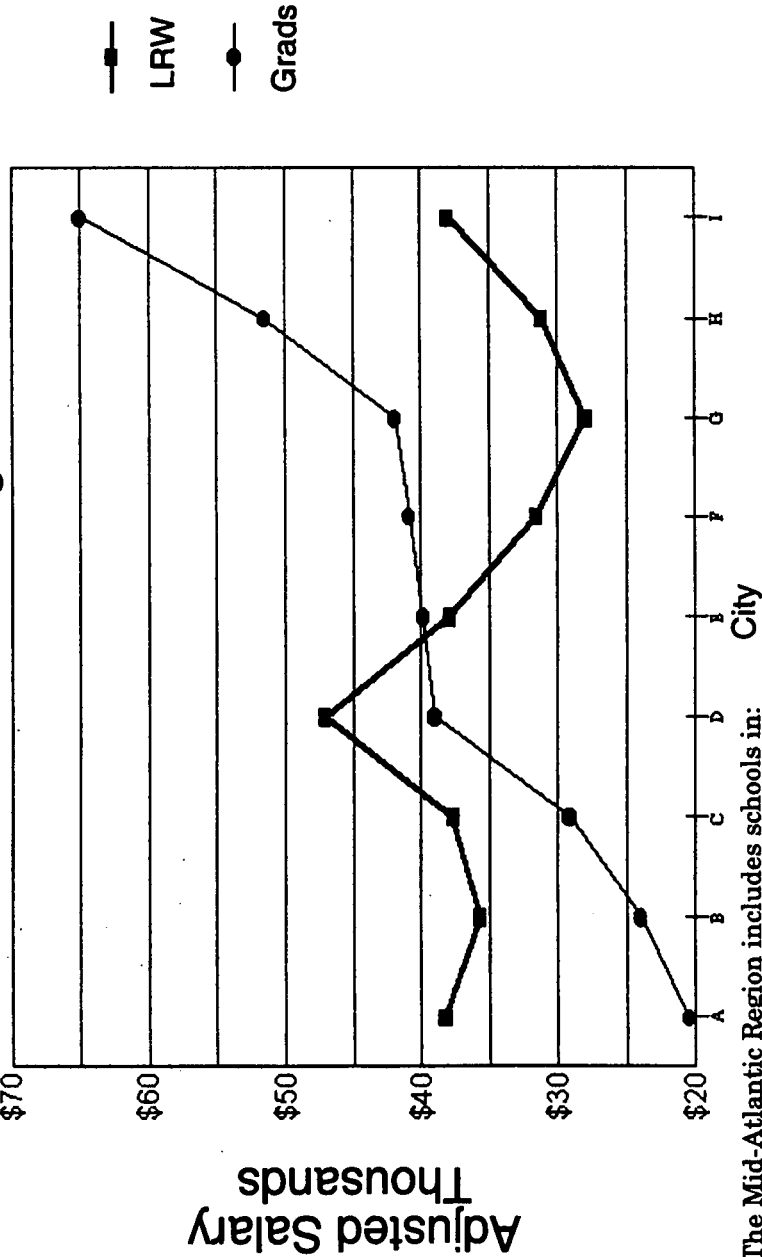
City-by-City Comparison North East Region*



*The North East Region includes schools in: Boston, Fitchburg, Hamden and Hartford.

GRAPH 8: MID-ATLANTIC REGION

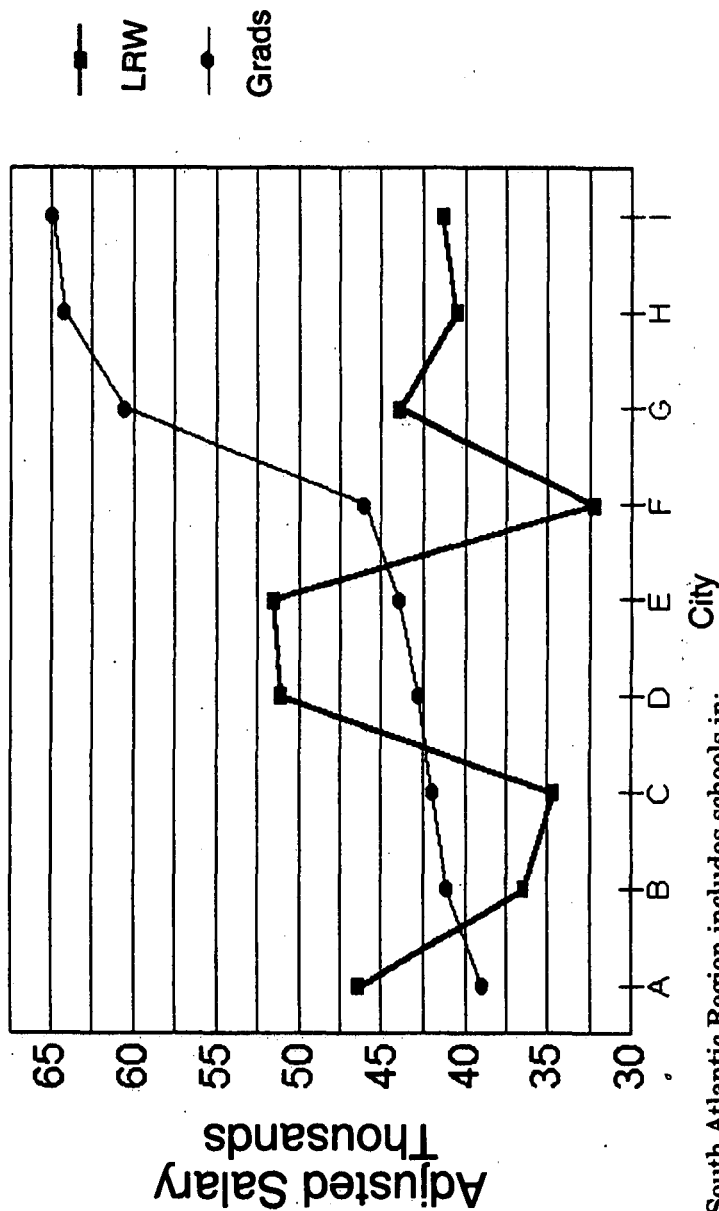
City-by-City Comparison Mid-Atlantic Region*



*The Mid-Atlantic Region includes schools in: Albany, Buffalo, Camden, Hempstead, Ithaca, Jamaica, New York, Philadelphia and Pittsburgh.

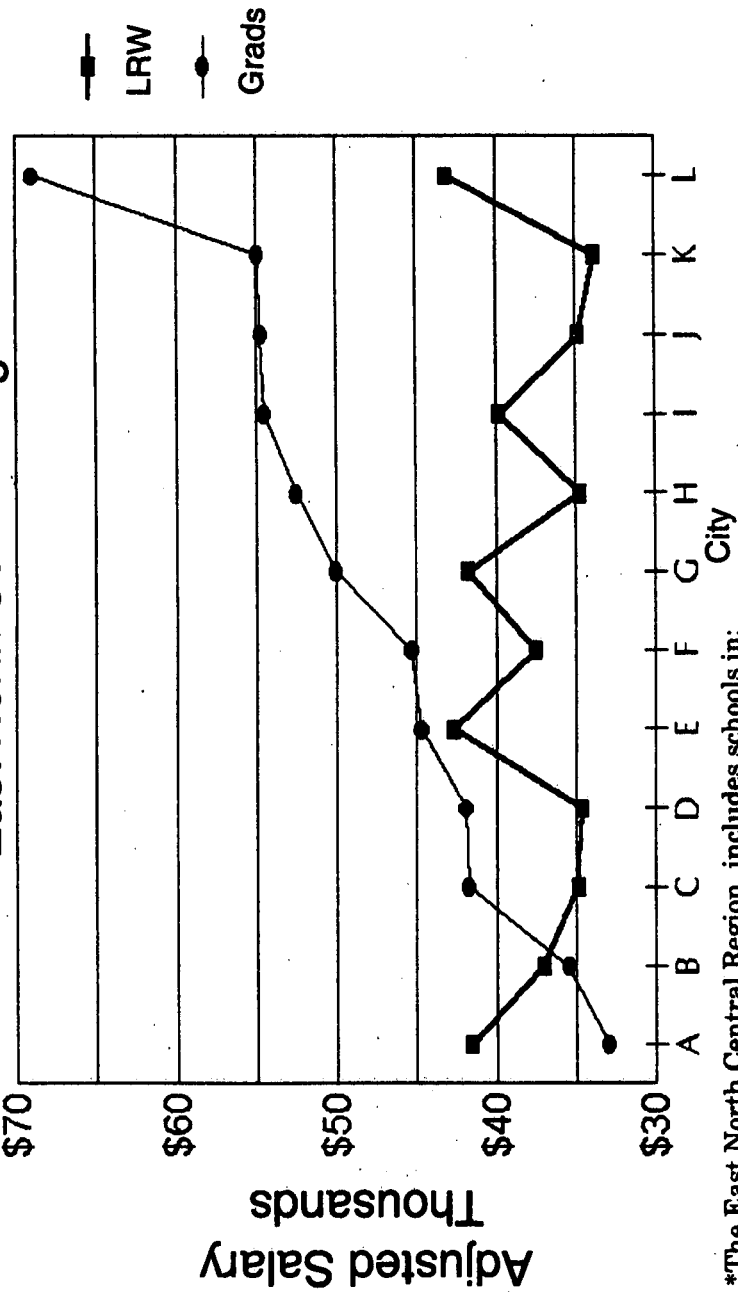
GRAPH 9: SOUTH ATLANTIC REGION

City-by-City Comparison South Atlantic Region*



*The South Atlantic Region includes schools in:
Atlanta, Ft. Lauderdale, Morgantown, St. Petersburg, Tallahassee, Washington D.C.,
Wilmington and Winston-Salem.

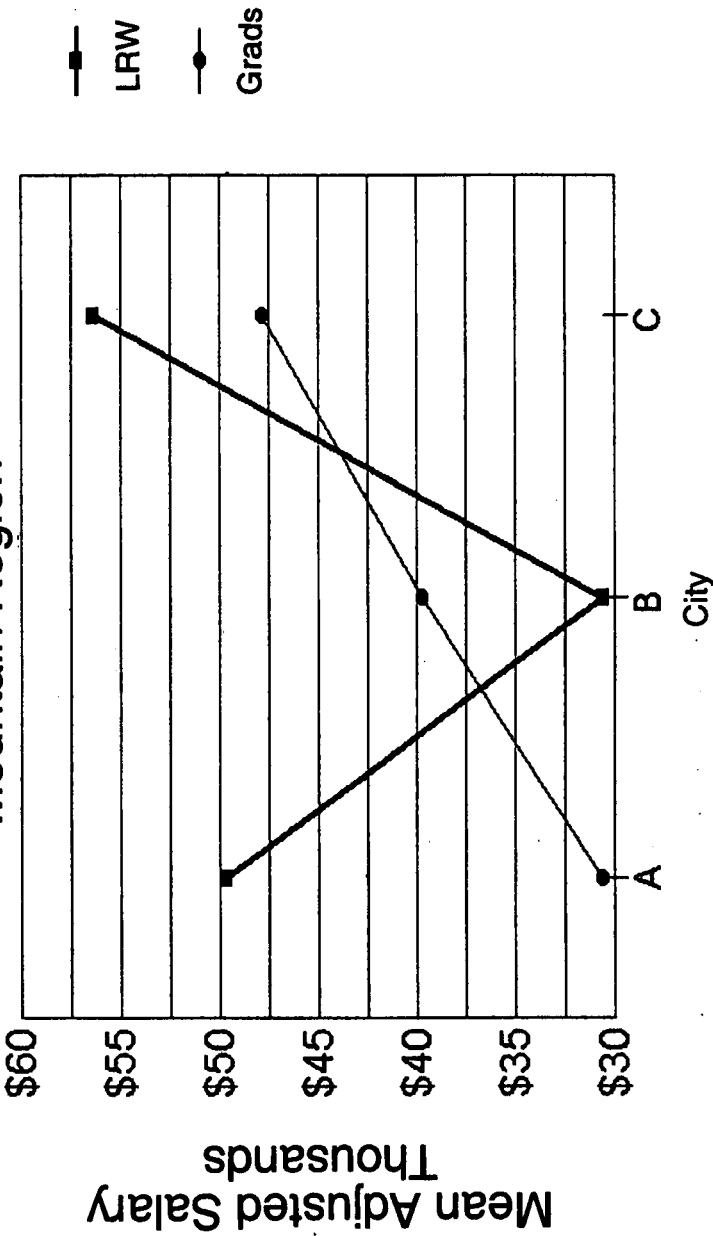
City-by-City Comparison
East North Central Region*



*The East North Central Region includes schools in: Ann Arbor, Bloomington, Champaigne, Chicago, Cincinnati, Cleveland, Dayton, Detroit, Indianapolis, Rockford and St. Louis.

GRAPH 11: MOUNTAIN REGION

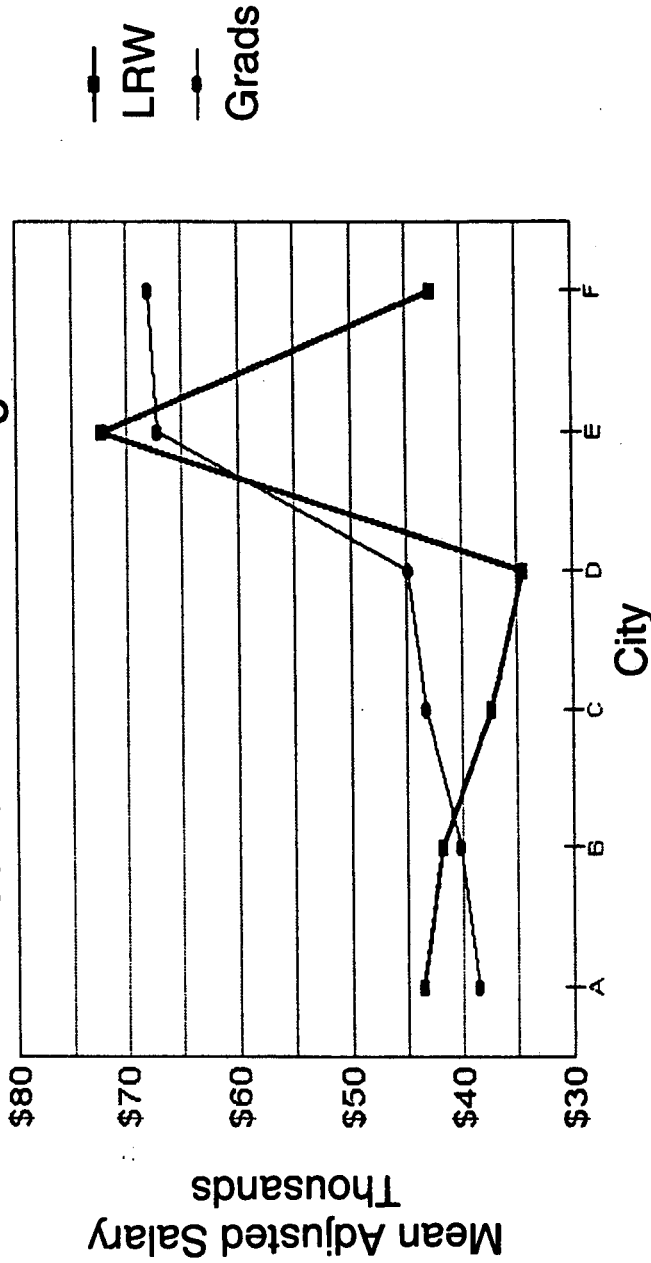
City-by-City Comparison
Mountain Region*



*The Mountain Region includes schools in: Boulder, Missoula and Salt Lake City.

GRAPH 12: WEST SOUTH CENTRAL REGION

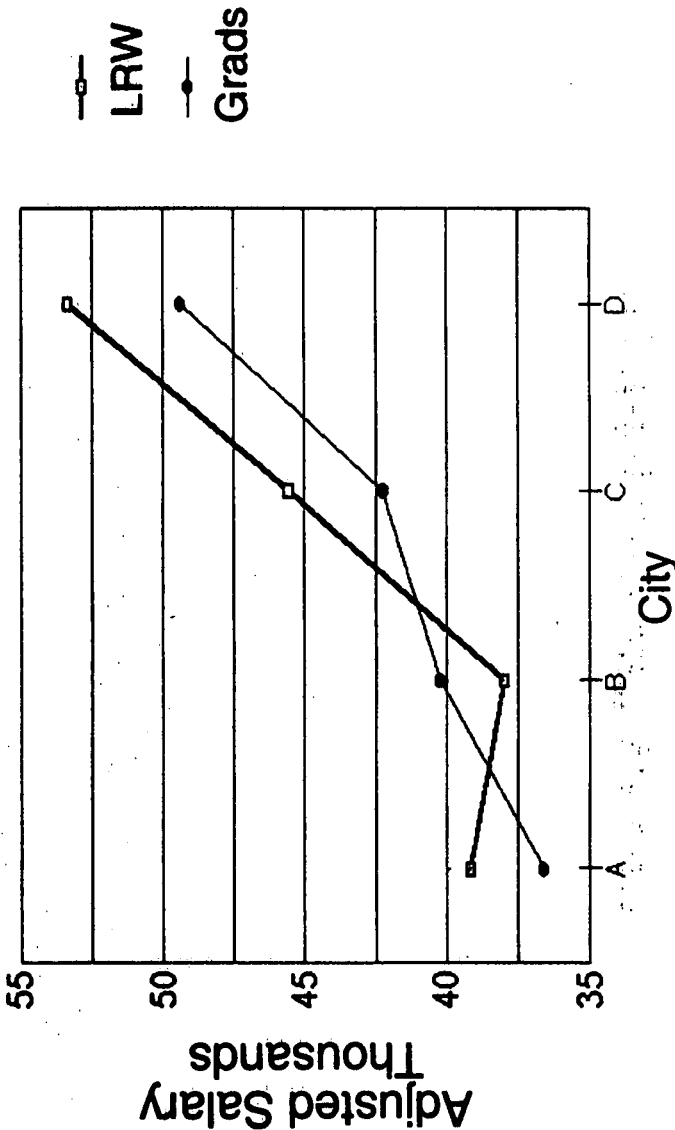
City-by-City Comparison West South Central Region*



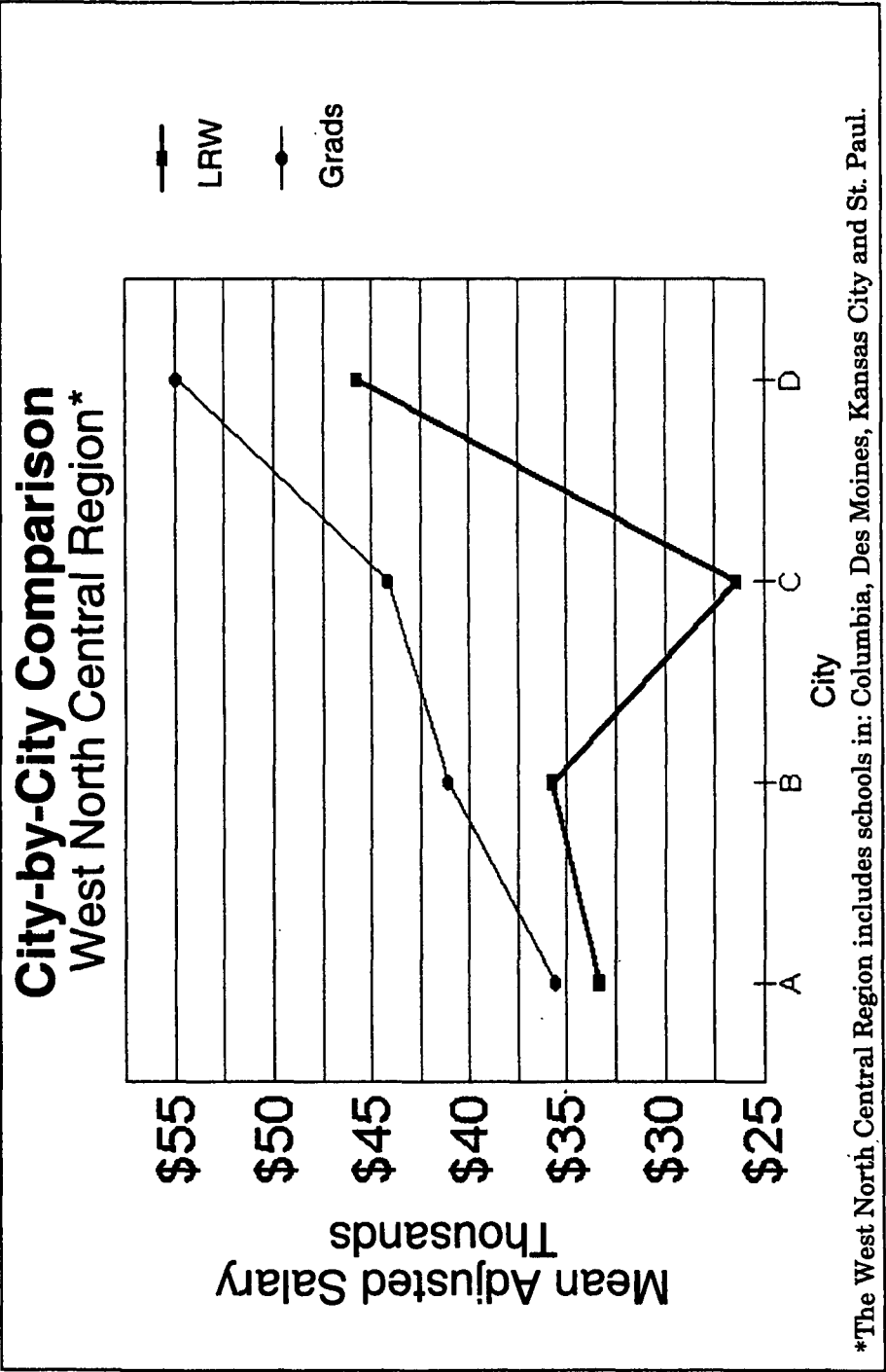
*The West South Central Region includes schools in: Austin, Baton Rouge, Fayetteville, Houston, Little Rock and Oklahoma City.

GRAPH 13: EAST SOUTH CENTRAL REGION

**City-by-City Comparison
East South Central Region***

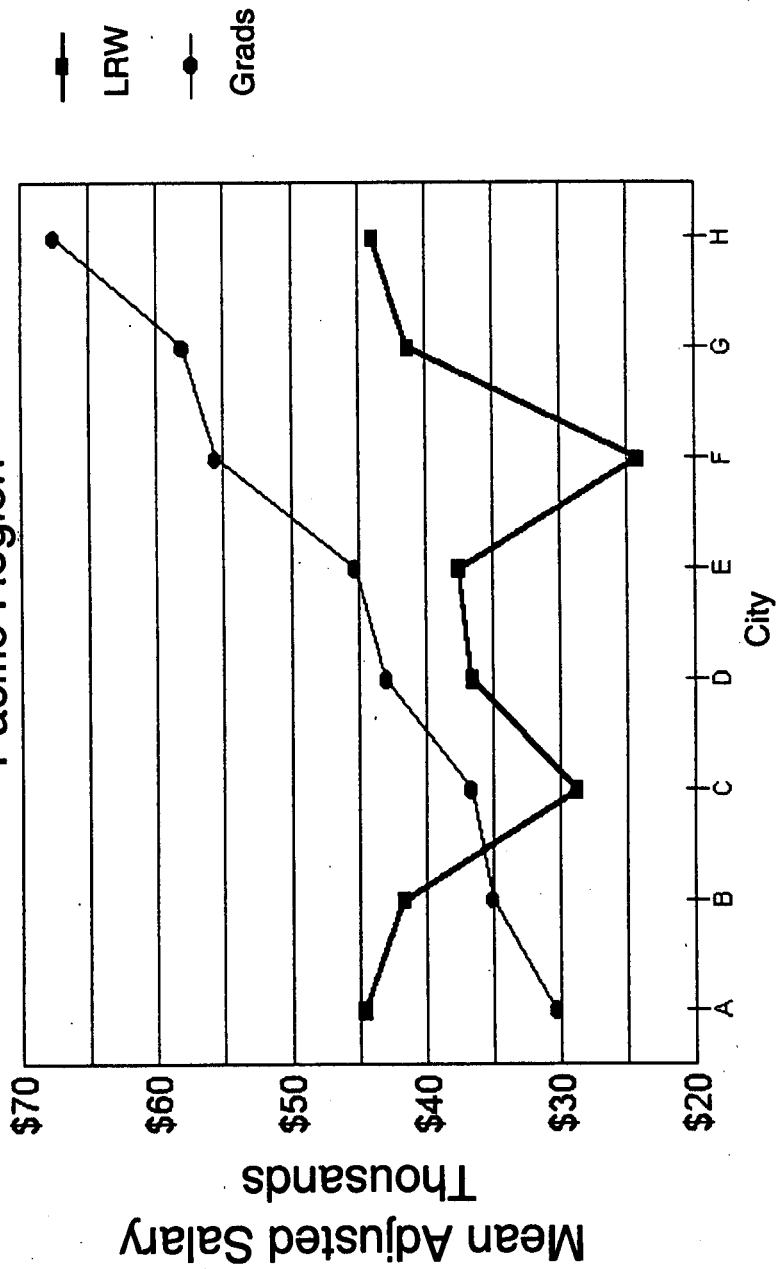


*The East South Central Region includes schools in: Highland Heights, Jackson, Oxford and Tuscaloosa.



GRAPH 15: PACIFIC REGION

City-by-City Comparison Pacific Region*



*The Pacific Region includes schools in: Eugene, Los Angeles, Portland, Sacramento, Salem, San Francisco, Seattle and Spokane.