

TEACHING LEGAL WRITING AS WOMEN'S WORK: LIFE ON THE FRINGES OF THE ACADEMY

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INTRODUCTION¹

As early as the mid-1980s, commentators, such as Richard H. Chused, warned that teaching legal writing was "on its way to becoming a 'woman's job.'"² This prediction has materialized. The recently issued Report on the Status of Women in the Legal Profession, published by the American Bar Association Commission on Women in the Profession,³ shows that the position with the second highest percentage of women professionals (67%) employed in law schools is in the Lecturer/Instructor category.⁴ Although the Sta-

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² Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 548 (1988) (reporting the results of a study examining the departure rates of women and minority law professors from the Academy between 1981 and 1987). Chused sent surveys to all law schools belonging to the American Association of Law Schools. See *id.* at 537. He received responses from 149 law schools, constituting 85% of the American law schools, from which he made observations, and formulated statistics about "patterns in the hiring, retention, and firing of [minority and women] faculty. . . ." *Id.* at 538. See generally Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 557, 572 n.43 (1995) (suggesting techniques that create a stable and effective legal writing program).

³ See ABA COMM'N ON WOMEN IN THE PROF., UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR: REPORT ON THE STATUS OF WOMEN IN THE LEGAL PROFESSION (1995) [hereinafter ABA STATUS REPORT] (finding that, although the number of women in the legal profession increased, discrimination still exists). The ABA Status Report found that, although there has been an influx of women into the legal profession, there is still discrimination in pay and advancement, sexual harassment, and hostility towards the needs of the family. See *id.* at 5. Discrimination in the workplace was found in law firms, corporate legal departments, the public sector, and in the judiciary. See *id.* at 10-17. In addition, women were treated hostilely in law schools where both female students and professors expressed that they have felt the effects of discrimination. See *id.* at 6-7.

⁴ See *id.* at 8 (table). The category with the largest percentage of women is that of Assistant Dean, with 69% women. See *id.*

tus Report does not isolate legal writing teachers from other teachers in this category, the numbers indicate that the percentage of women legal writing teachers⁵ has not increased as a percentage of all legal writing teachers.⁶ This does not, however, affect the implication of Chused's prognosis. Although women constitute a minority of law teachers, the majority of legal writing teachers are women. As a basis for comparison, in the 1994-95 academic year women constituted 28.5% of all law faculty.⁷

⁵ This article uses the term "legal writing teachers" to encompass tenured and tenure-track faculty members, as well as contract status non-tenure-track faculty members who teach legal writing, regardless of the term used by individual law schools for these faculty members.

Although legal writing teachers most commonly are hired on a contract basis, there are a number of tenured and tenure-track legal writing teachers. In 1990-91, there were 31 full-time legal writing teachers on tenure track. See Joseph Kimble, *Plain English: A Charter for Clear Writing*, 9 T.M. COOLEY L. REV. 1, 6 (1992) (discussing that, at the time, there were 352 full-time legal writing teachers at ABA-approved schools). At the end of 1994, there were 32 confirmed tenured or tenure-track legal writing teachers; approximately 20% of ABA-accredited schools had recruited tenure-track legal writing teachers or program directors. See *id.*; see also 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, 537 (1995) [hereinafter *Voices in the Wilderness*] (analyzing survey responses from tenure-track legal writing faculty confirming the recent recognition of the need for legal writing professors, which recognition has enabled these teachers to gain tenure-track status and provided legitimacy to the field and the professors who teach it).

⁶ As of the 1986-87 academic year, 68.4% of legal writing teachers were women. See Chused, *supra* note 2, at 557 (table 2). In the 1980-81 academic year, this percentage was 48%. See *id.* In the 1986-87 year, 15.9% of tenured and tenure-track teachers were women; whereas, in the 1980-81 year, this percentage was 10.8%. See *id.* (calculating the percentage of women in tenure or tenure-track positions from the material in table 2). The breakdown of this calculation follows.

1986-87

	<u>Women</u>	<u>All Faculty</u>	
Classroom faculty			
tenured	368	3354	
tenure track	276	817	
Clinical faculty			
tenured	14	95	
tenure track	35	86	
Total	693	4352	(15.9%)

1980-81

	<u>Women</u>	<u>All Faculty</u>	
Classroom faculty			
tenured	165	2836	
tenure track	240	1021	
Clinical faculty			
tenured	7	53	
tenure track	17	59	
Total	429	3969	(10.8%)

⁷ See Richard A. White, *The Gender and Minority Composition of Law School Faculty*, The Newsletter, Feb. 1995, at 7 (examining the increased percentages of women and minorities in law school faculties). "Full-time faculty includes deans, associate and assistant deans, head librarians, visiting professors, lecturers and instructors, and emeriti faculty, as well as full, associate, and assistant professors." *Id.* See also Richard A. White, *The Gender and Minority Composition of New Law Teachers and AALS Faculty Appointments Register Candidates*, 44 J.

Due to the high turnover rate for legal writing teachers,⁸ these numbers show that, as was true in the 1980s, "[w]omen are [still] entering law school teaching in non-tenure-track contract positions to teach legal writing at very high rates. . . ." ⁹ As one feminist scholar noted, "[l]egal writing, with its low pay, second-class faculty status, minimal job security and reduced opportunity to do research, has become a job for women. . . ." ¹⁰ More disturbing, however, are indications that "some [law] schools 'track' women into lower status legal writing jobs rather than into classroom or clinical work, pay them less than they are worth, and then let them go." ¹¹

This Article will address "[t]he institutionalized contempt for legal writing as a law school course," ¹² the marginalization of legal writing teachers by law school administrators, law students, and non-legal writing teachers, ¹³ and implications for all women in the Academy. In Part I, this Article examines the status of legal writing teachers in the Academy today. ¹⁴ This section analyzes the institutionalized contempt for legal writing and legal writing teachers. Furthermore, this part discusses the lowered salaries paid to legal writing teachers and reduced resources allocated to legal writing programs, as a result of this institutionalized contempt. Part II discusses the implications that this lowered status of legal writing

LEGAL EDUC. 424, 427 (1994) (stating that the number of new women law professors has increased to about half of all new law teachers, and that the AALS faculty appointments register shows that they have an easier time than men in securing positions). Although the number of women law professors has increased 28% in the last twenty years, only 19.3% of tenured law faculty are women. See ABA STATUS REPORT, *supra* note 3, at 7 (citing ABA COMM'N ON WOMEN IN THE PROF., WOMEN IN THE LAW: A LOOK AT THE NUMBERS (1995)).

⁸ See *infra* pp. 95-96 and accompanying notes (examining the high turnover rate for legal writing professors, and the factors contributing to such turnover).

⁹ Chused, *supra* note 2, at 539. Although tenured and tenure-track legal writing teachers existed at the time, they were not identified in this survey. See *supra* note 5 and accompanying text; see also *infra* notes 89-98 and accompanying text (discussing tenure-track legal writing instructors).

¹⁰ Anita Bernstein, *A Letter to a Female Colleague*, 68 CHI-KENT L. REV. 317, 318 (1992) (discussing the failure of female lawyers and law professors to achieve at the same rate as their male counterparts).

¹¹ Chused, *supra* note 2, at 554. Chused was unable to test this hypothesis. See *id.*

¹² Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298, 320 (1980) (advocating that legal writing is a vital course which should be included in law school curricula). This phrase accurately describes an attitude shared by many law schools.

¹³ This article uses the term "non-legal writing teachers" to refer to tenured and tenure-track law professors who do not teach legal writing courses. See *supra* note 5 (defining the article's use of the term "legal writing teachers").

¹⁴ For a history of legal writing instruction, see, e.g., Marjorie Dick Rombauer, Comment, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973) (summarizing a survey testing the validity of research and writing courses and collecting data about the evolution of programs at various law schools). See also Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997) (providing a historical overview of legal education and legal writing instruction, and analyzing the current lack of respect for legal writing courses by the academy and the diminished salaries and status of legal writing instructors).

professors has on women in the Academy. This section examines the tracking of women into low-paying, low-esteemed legal writing positions, and the additional bias faced by minority women in the Academy on the basis of their gender. In conclusion, this section posits that teaching legal writing is not an effective first step to acquiring a position as a substantive law professor, and that the turnover rate for legal writing teachers is among the highest in the Academy. Part III analyzes the ways in which law students perceive legal writing programs and women legal writing instructors. Part IV examines a current trend, in which law schools are increasingly granting tenure-track status to legal writing teachers and expanding their legal writing programs to provide students with the appropriate training.

I. FACULTY ATTITUDES TOWARD LEGAL WRITING INSTRUCTION

While giving lip service to the importance of legal writing, law schools, as a whole, grant low status to legal writing teachers,¹⁵ and usually devote a low level of resources¹⁶ to legal writing instruction. The following passage, although excerpted from an article published in the early 1980s, succinctly summarizes the current state of legal writing instruction:

Although much can be said for the view that legal writing courses should be considered among the most important law school offerings and that the resources devoted to it, the credit given, and the skill of the instructors should reflect this belief, in many schools the opposite is true. Frequently, the curriculum contains only one legal writing course, which is awarded few

¹⁵ See Arrigo-Ward, *supra* note 2, at 591 & n.88.

¹⁶ What constitutes a "low level of resources" is relative. Articles about legal writing programs usually address the "expense" involved in teaching legal writing. See generally *id.* at 559 n.11 (suggesting that "[a]dministrative resentment at the resource allocation [devoted to an effective legal writing program] may account for the strong demand that the [writing] program keep everybody happy."); 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) [hereinafter *Directing*] (noting that "[g]ood legal research and writing programs are expensive in terms of staff costs. . . ."); *Voices in the Wilderness*, *supra* note 5, at 549 (suggesting that "[l]egal writing teachers, of any status, are usually given too few resources to do the job well. . . .").

The articles that discuss the expense of legal writing programs usually compare these courses to the cost savings inherent in the Socratic method used in the doctrinal courses of the first year of law school. See generally *Directing*, *supra*, at 617-18.

This article uses the term "doctrinal" to refer to courses, such as contracts, torts, constitutional law, and civil procedure, that are typically taught to large groups of students during the first and second years of law school. Reasons why the use of this term to describe such courses is preferable to the term "substantive," and a discussion of the dichotomy between skills courses and substantive courses are discussed below. See *infra* notes 37-40 and accompanying text.

credit hours, is ungraded, receives a small portion of the law school budget, and is not taught by a "real" law professor. Instead, it is often taught by second and third year law students, outside writing consultants who may or may not be lawyers, or teaching fellows. When taught by regular faculty, a disproportionate number of those perceived to have the lowest prestige, the women faculty, are the teachers.¹⁷

Unlike their approach to other courses, law schools have focused on trying to provide legal writing instruction at the lowest possible cost.¹⁸

A. *Institutionalized Contempt for Legal Writing Instruction*

In particular, "top tier" or "elite" law schools have traditionally shown institutionalized contempt for legal writing as a course by, among other tactics, devoting scant resources to legal writing instruction.¹⁹ In a recent article, two scholars examined the reasons for this situation and the consequences of the position taken by these schools.²⁰ J. Christopher Rideout and Jill J. Ramsfield analyzed five "traditional views of legal writing" that have hindered full acceptance of legal writing programs, and legal writing teachers, at the so-called "elite" law schools.²¹ These views are as follows:

¹⁷ Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 880 (1983) (discussing the correlation between what women teach and the way in which they are perceived as teachers and scholars).

¹⁸ See Arrigo-Ward, *supra* note 2, at 559-60 n.11 (citing articles which describe "economical" legal writing programs).

¹⁹ See *Voices in the Wilderness*, *supra* note 5, at 539 (examining the inverse correlation between the likelihood of a school's hiring tenure-track legal writing teachers and that school's rankings).

²⁰ See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 40-48 (1994) (espousing the view that inadequate legal writing training is the result of short-term and short-sighted programs which do not teach law students the conventions of legal writing, and substantive course faculty's misunderstanding of the necessity of legal writing courses).

²¹ See *id.* at 41.

- (1) [T]here is no significant difference between legal writing and other forms of writing;²² thus, any "legal writing" course must be remedial in nature;²³
- (2) [L]egal writing is a talent which cannot be taught;²⁴
- (3) [L]egal writing is a skill, separate and distinct from legal analysis;²⁵
- (4) [L]egal writing is synonymous with legal drafting and should be taught, post-law school, by legal employers;²⁶ and
- (5) [L]egal writing is a skill, and as such, is "anti-intellectual."²⁷

The sad irony is that these views²⁸ have persisted throughout the years in the face of cogent analyses that refute them. In 1980, one legal scholar, in setting forth comprehensive plans for law schools to develop effective legal writing programs, began by addressing the above views and "justifying" the need for such programs.²⁹ Mary Ellen Gale sets forth several reasons why law schools should train law students to write.³⁰ These include:

²² See *id.* at 42-43; see also Gale, *supra* note 12, at 305.

A list of some major classifications of legal writing displays some of the differences between it and other kinds of writing:

- (1) Argumentative presentations of law or intertwined facts and law, as in legal briefs, points and authorities, portions of judicial opinions and administrative rulings.
- (2) Analytical, narrative, descriptive, prescriptive, and interpretive presentations, ranging from law review articles, legal treatises, and legal encyclopedias to legal office memoranda.
- (3) Explanatory discussions designed to support a particular result, as in judicial and administrative opinions.
- (4) Constitutions, statutes, regulations, and other legislative writings.
- (5) Advisory statements, as in letters of advice to clients.
- (6) Dispositive writings, such as commercial contracts, wills, and deeds.
- (7) Pleadings and other litigative documents.

Id.

This position was also articulated in an essay on the wisdom of allowing law school faculty to teach writing. See Willard Pedrick, *Should Permanent Faculty Teach First-Year Legal Writing? A Debate*, 32 J. LEGAL EDUC. 413, 414 (1982) (questioning whether law schools should "hire relatively high-salaried legal specialists to teach basic writing skills . . . [when there were people] in the university who regularly teach writing . . . [who were] rewarded at a much lower level of compensation than [were] law teachers."). Considering that legal writing teachers are also rewarded at a much lower level of compensation than are non-legal writing teachers, one may wonder whether law schools have not adhered to the spirit, if not the letter, of Pedrick's advice. See *infra* notes 78-82 and accompanying text (discussing the salary differential between legal writing and non-legal writing teachers).

²³ Rideout & Ramsfield, *supra* note 20, at 41-43.

²⁴ *Id.* at 43-44.

²⁵ *Id.* at 44-46.

²⁶ *Id.* at 46-47.

²⁷ *Id.* at 47-48.

²⁸ See *supra* notes 22-27 and accompanying text (setting forth the traditional views that have hindered the full integration of legal writing into many law school curricula).

²⁹ See Gale, *supra* note 12, at 300-04.

³⁰ See *id.* at 298.

- (1) [L]egal writing helps law students develop "essential skills" in analyzing legal authorities and communicating this analysis to others;³¹
- (2) [S]atisfaction of the "expectation" that law school graduates will be able to produce "high level" writings in legal documents;³² and
- (3) [P]ractice has disproved the theory that good students will "discover on their own how to research and write in the law."³³

These points have been made repeatedly, and have been steadfastly ignored by influential areas of the Academy.³⁴ Simultaneously, criticism of the inadequacy of law schools' preparation of graduates to practice law has grown. This criticism is illustrated by the recommendation made in a 1992 ABA Report (the "MacCrate Report")³⁵ that law schools increase "skills" training in order to better prepare law school graduates for law practice.³⁶ It is undisputed

³¹ *Id.* at 300-01 (stating that a lawyer who can neither use legal language and materials nor communicate to others about the law in a precise and persuasive manner cannot practice law effectively).

³² *Id.* at 301 (proclaiming that legal employers expect lawyers to have a high level of writing performance, and that it has been observed that new lawyers are deficient in this category).

³³ *Id.* at 302 (asserting that law schools are best equipped to teach techniques of good writing).

³⁴ See, e.g., Norman Brand, *Legal Writing, Reasoning & Research: An Introduction*, 44 ALB. L. REV. 292, 294 (1980) (citing scholarly articles by Achtenberg, Germaine and Macauley and Manne, which articles have reflected the low esteem in which legal writing courses have been traditionally held); Rideout & Ramsfield, *supra* note 20, at 41 (stating that "[w]ithout fully understanding the epistemic, social, and process dimensions of legal writing, law schools do not assign the proper resources to developing good legal writers[, i]nstead they use traditional definitions to prevent legal writing programs from developing. . . .").

³⁵ See *infra* note 36 (defining this report as The MacCrate Report, and discussing the aims and conclusions of the report).

³⁶ See ABA SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS & THE PROFESSION: NARROWING THE GAP (1992) [hereinafter THE MACCRATE REPORT]. The Task Force was created in 1989 to conduct an in-depth study of the skills necessary for a lawyer to assume the professional responsibility involved in handling legal matters. In 1990, the Task Force examined the curriculum development and skills training available at ABA-approved law schools. The MacCrate Report was the result of the Task Force's inquiries. The report concluded that

The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career. Legal educators and practicing lawyers should stop viewing themselves as separated by a "gap" and recognize that they are engaged in a common enterprise — the education and professional development of the members of a great profession.

Id. at 1. However, this was not the first ABA report stressing the need for increased legal writing instruction. See ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR — LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15 (1979). This report concluded that

that practitioners expect law school graduates to have good legal writing and research skills.³⁷

At times, however, it seems that criticism of the poor legal writing skills of law school graduates has reinforced several of the negative attitudes discussed above. For example, the discourse surrounding the criticism contained in the MacCrate Report and in other sources has focused on a perceived dichotomy between "skills" courses and "substantive" courses.³⁸ Under this dichotomy,

[Substantive courses] are regarded as courses in which "the law" is taught and "legal analysis" is learned, while ["skills" courses] are regarded as courses in which some quasi mechanical ability is practiced. Courses such as Torts, Contracts, and Property are considered "substantive," while legal writing is considered a "skills" course. From the mere statement of the dichotomy it becomes evident that "skills" is a pejorative term and that scarce faculty resources should be devoted to "substantive" courses and not wasted on "skills" courses.³⁹

This false dichotomy ignores the relationship between legal analysis and expression of that analysis.⁴⁰ In fact, writing is a crucial part of the thought process.⁴¹ As part of the fallout following the MacCrate Report, some members of the Academy again advocated the position that teaching doctrine should take precedence over teaching application.⁴² These educators disregard the opportunity legal writing provides for further development of the student's analytical

Law schools can do a better job than they presently do in: (a) developing some of the fundamental skills underemphasized by traditional legal education; (b) shaping attitudes, values and work habits critical to the individual's ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fields of lawyer practice. . . .

Id.

³⁷ In a survey of law firms in a large city, 90% of the respondents indicated that they expect law graduates to have good writing and library skills. See *Figuratively Speaking*, ABA J., Apr. 1996, at 16 (providing statistics to demonstrate what Chicago area law firms expect their new lawyers to know prior to beginning employment); see also Anne Stein, *Job Hunting? Exude Confidence*, ABA J., Nov. 1993, at 40 (stating that 90% of Hiring Partners expect new associates to learn the art of written communication in law school); Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 CHI.-KENT L. REV. 23, 24 (stating that "[g]rades in substantive courses help students obtain starting positions, but it is research and writing skills which make careers.").

³⁸ See Brand, *supra* note 34, at 295.

³⁹ *Id.*

⁴⁰ See *id.* at 296 ("[T]o pejoratively label legal writing a 'skill' in order to separate it from 'substantive' areas is to misunderstand its role in applying and learning doctrine.").

⁴¹ See Rideout & Ramsfield, *supra* note 20, at 45-46 & nn.29-33 (discussing articles that analyze the role writing plays in the cognitive process).

⁴² See *id.* at 48 n.37.

ability.⁴³ Contrary to the fear of some educators, placing greater emphasis on legal writing would not convert law schools to “trade” schools.⁴⁴ Preparing law students for the practice of law is not necessarily contrary to teaching advanced legal doctrine.⁴⁵

Under-emphasizing legal writing does a disservice to all law students, even those students who excelled in their endeavors prior to law school. The traditional view that casts legal writing either as remedial or as unteachable fails to take into account the nature of legal writing.⁴⁶ The view that legal writing is “no different” than other forms of writing ignores the unique characteristics and requirements of legal writing. Legal writing is one stage in the legal analysis process. As Rideout and Ramsfield suggest:

Such a [writing-is-writing] view fails to explain . . . why some of the worst law school papers and exams are written by previously published authors and scholars, or why, even when grammar mistakes are repeatedly corrected, students’ legal writing does not improve. . . . Legal writing is the reflection of a complex series of problem-solving decisions; it is the battle among disparate ideas; it is the effort of a creative mind trying to work within the rhetorical confines of the discourse. These complex analytical requirements can interfere with the [law student’s] previous command of writing in another context.⁴⁷

Thus, even those individuals whose backgrounds, by virtue of their previous success as writers in other fields, would seem to guarantee them success in law school, frequently have difficulties with legal writing.⁴⁸ The “writing-is-writing” view, and its corollary that legal writing is remedial, exacerbates the sense of failure and frustration these students experience in law school.⁴⁹ Similarly, the view that legal writing is a talent which cannot be taught ignores the fact that, although teaching legal writing is difficult, English writing methodologies suggest that it is not impossible.⁵⁰

Whatever the reason for the lack of support for legal writing instruction in top-ranked schools, the failure of these schools to

⁴³ See *id.* at 48 (stating the traditional views of legal writing have failed to prepare law students for practice and scholarship).

⁴⁴ See *id.* at 47-48.

⁴⁵ See *id.* at 48 (stating that “[w]ith a revised view, both legal writing courses and law curricula at large schools will be able to more fully and effectively acculturate students into the legal profession”).

⁴⁶ See *id.* at 42-43.

⁴⁷ *Id.*

⁴⁸ See *id.* at 42 (noting that “some of the worst law school papers and exams are written by previously published authors and scholars. . .”).

⁴⁹ See *id.*

⁵⁰ See *id.* at 43-44 & n.24 (suggesting a five-stage legal writing development course).

recognize the importance of legal writing echoes throughout the Academy, since these schools produce the majority of tenured and tenure-track faculty throughout all law schools.⁵¹ The failure of these faculty members to fully support legal writing programs thus extends beyond these feeder schools to all law schools.⁵²

B. You Want Me to Teach What?

Non-legal writing teachers' disdain for teaching legal writing has been frequently suggested by scholars.⁵³ This sentiment has only been partially borne out by scientific data. The Rombauer Study, a survey of tenure track faculty members done in the early 1970s, confirmed a bias against teaching legal writing.⁵⁴ Although most of the respondents (70%) indicated that choice played a part in the decision that they were to teach legal writing,⁵⁵ approximately 50% of the respondents who also taught other courses indicated that they found legal writing less intellectually stimulating, but more demanding, than doctrinal courses.⁵⁶

The Rombauer Study also surveyed short-term legal writing teachers about their teaching experience.⁵⁷ Less than 20% of these teachers responded that they found teaching legal writing to

⁵¹ These feeder schools are: Harvard, Yale, Columbia, Michigan, Chicago, New York University, Georgetown, Texas, Virginia, Berkeley, Pennsylvania, Wisconsin, Northwestern, Stanford, Iowa, Illinois, Minnesota, Cornell, Duke, and George Washington. See Jon W. Bruce & Michael I. Swygert, *The Law Faculty Hiring Process*, 18 Hous. L. Rev. 215, 243 & n. 150 (1981) (listing these schools in order of "productivity"). Harvard, Yale, Columbia, Michigan, and Chicago produced 33.2%, and the remaining feeder schools educated 25.7% of the full-time law professors. See *id.*; see also Robert J. Borthwick & Jordan R. Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 226-36 (1991) (providing a breakdown of the feeder schools for law faculties using the 1988-89 AALS Directory of Law Teachers). See generally Bruce Comly French, *A Road Map to Achieve Enhanced Cultural Diversity in Legal Education Employment Decisions*, 19 N.C. CENT. L.J. 219, 258 n.345 (1991) (citing Bruce & Swygert, *supra*).

⁵² See Bruce & Swygert, *supra* note 51, at 243 (stating that "20 'national' law schools produced almost 60 percent of the nation's law teachers").

⁵³ See, e.g., John D. Feerick, *Writing Like A Lawyer*, 21 FORDHAM URB. L.J. 381, 385 (1994). The Dean of Fordham University School of Law acknowledged the reluctance of non-legal writing teachers to teach legal writing. "Professional reputations are usually decided not by teaching writing skills to others, but by producing scholarly articles." *Id.* See also Arrigo-Ward, *supra* note 2, at 558 & n.7 (stating that after "working in the legal writing field . . . some of your professional colleagues will question your judgment for choosing a career in legal writing rather than moving into a 'real' area of legal academics").

⁵⁴ See Rombauer, *supra* note 14, at 543-52 (discussing the results of the surveys the author sent to all legal writing teachers listed in the 1968-1970 Directory of Law School Teachers).

⁵⁵ See *id.* at 545.

⁵⁶ See *id.* at 546. The survey elicited responses to the question whether teaching legal writing was, as compared to other courses (1) more stimulating, (2) more challenging, or (3) more work. See *id.* at 546 n.37.

⁵⁷ See *id.* at 546 n.37. These short-term teachers were primarily recent graduates who were hired under one- or two-year contracts.

be "[a]n intellectually stimulating and challenging experience."⁵⁸ The other respondents rated the experience on a scale from, at best, "[s]ometimes stimulating and challenging [and] sometimes drudgery" to, at worst, "[s]heer drudgery."⁵⁹ More than 40% of these respondents would not repeat the experience "under any circumstances."⁶⁰

Although the sentiment is not universal among non-legal writing teachers, over the years commentators have voiced warnings and made dire predictions about the wisdom of having these faculty members teach legal writing. Adherents of this position have posited:

Commitment of the full-time faculty to instruction in elementary legal writing should be reduced and not enlarged. Investing a very substantial segment of faculty time and energy in a legal-writing instruction program is unwise. First there is the matter of the self-image the law teacher holds as respects his proper functions. This self-image is characterized by a vision of the law teacher before a relatively large class teaching in some version of the Socratic method, à la Professor Kingsfield, having an accompanying function of legal research (commonly in the law library) and spending many hours in writing for consequent publication in the law journals. That self-image is reinforced by the generally accepted criteria for promotion and tenure. . . . Under the circumstances, it is not surprising that the young law teacher sees assignment to legal writing instruction as a kind of second-level assignment and one that represents a real threat to success in achieving genuine legitimacy as a law teacher in the accepted image. The disinclination of older and established teachers . . . to take on legal writing instruction . . . confirms the judgment that this is not really the kind of thing that a law teacher is properly expected to do. . . . There is a finite limit to the time and energy which full-time faculty are able to give to their profession. . . . In the end, a law school that invests a heavy segment of faculty time in legal writing instruction will pay a price in terms of the productive scholarship of its faculty.⁶¹

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* Rombauer attributes this result to the percentage of these short-term instructors who did not plan a career teaching law school. *See id.* That group gave a negative response more often than those teachers who hoped for a law school teaching career. *See id.*

⁶¹ Pedrick, *supra* note 22, at 413-14. Two responses accompanied Pedrick's essay. *See* N. William Hines, Essay, 32 J. LEGAL EDUC. 415 (1982) (articulating two objections to Pedrick's approach: (1) the trivialization of the proposed reform, and (2) Pedrick's failure to present an objective cost-benefit analysis); William A. Reppy, Essay, 32 J. LEGAL EDUC. 421 (1982) (criticizing that Pedrick's proposal to teach research and writing skills to third-year students only "would preclude students from utilizing the benefits of such instruction during summer clerkships").

Although the current discourse on legal writing instruction focuses less on its importance and more on legal writing pedagogy, few non-legal writing teachers would be likely to articulate this statement,⁶² a view that still resonates throughout law school faculties.

A contrary view has been adopted by some participants in the discourse on the appropriateness of non-legal writing teachers teaching legal writing. These scholars have advocated the exclusive use of legal writing specialists.⁶³ In light of the pedagogy and scholarship that has developed, legal writing scholars are adopting the position that it is unwise to employ non-legal writing teachers to teach legal writing.⁶⁴

C. *Burdens of Teaching Legal Writing*

One legitimate reason for non-legal writing teachers to be hesitant about teaching legal writing is the burdens inherent in teaching the subject.⁶⁵ Teaching legal writing requires substantially more time than teaching doctrinal courses.⁶⁶ Throughout the semester, legal writing teachers create assignments, critique students' papers, and confer with students.⁶⁷ This process is repeated for every assignment during the semester, thus creating more peak periods than in doctrinal courses, where there are usually only one or two peaks per year during student exams.⁶⁸ In

⁶² In fact, one commentator questioned whether Pedrick was completely serious in his essay. See Hines, *supra* note 61, at 417.

I hesitate to dispute [Pedrick's] assertion that greater faculty involvement in law students' efforts to master basic lawyer skills imperils the formation of a proper self-image by young teachers. My fear is that Pedrick, long noted for his clever humor, is simply having fun with us on the theory that no sensible person could take such an argument seriously.

Id.

⁶³ See, e.g., Gale, *supra* note 12, at 320 & n.80 (quoting Professor Blaustein as stating that legal writing teachers be given "the same authority, the same salary, the same everything, to teach those subjects that we give to those who teach torts or contracts, etc."). In this context, the term "legal writing specialists" refers to faculty members who primarily teach legal writing.

⁶⁴ See *Voices in the Wilderness*, *supra* note 5, at 532-34.

⁶⁵ See Boyer, *supra* note 37, at 28 (stating that "[t]he [legal writing] instructor's workload is both substantially greater and differently paced"); see also Rombauer, *supra* note 14, at 547 (stating that 55% "of regular faculty members found teaching [legal writing] . . . to require more work than teaching other courses. . .").

⁶⁶ See Boyer, *supra* note 37, at 28 (explaining that one problem in using non-legal writing teachers to teach legal writing is that legal writing "is not precisely interchangeable with other courses"); see also Rombauer, *supra* note 14, at 547 (stating that "the number of students in a research and writing class has a direct relation to the amount of work required, whereas the number of students in a traditional course has much smaller impact on the workload. . .").

⁶⁷ See Boyer, *supra* note 37, at 28; see also Rombauer, *supra* note 14, at 547 ("There are peaks for drafting problem assignments for critiquing the students' papers, and for conferring with the students. . .").

⁶⁸ See *id.*

addition, since legal writing teachers must create several new assignments each year, the time demands are greater than in doctrinal courses where teachers can refine and re-use classroom hypotheticals from year to year.⁶⁹ In discussing different models for staffing legal writing programs, one commentator mentioned that having non-legal writing teachers teach legal writing would restrict the number of courses these teachers would be able to teach during the semester.⁷⁰

D. "Cost" of Legal Writing Instruction

Although this may change as law school enrollments decline and schools become more cost-conscious, legal writing has historically been the only first-year subject in which the cost of administering the course has been a major factor considered by law schools,⁷¹ which have used a variety of techniques in attempting to minimize the cost of legal writing programs.⁷² One law school dean was quoted as saying that law schools can get legal writing teachers "for cheap because we can hire people on the mommy track."⁷³ This is yet another example of women being used as a source of "cheap" labor.

One of the most pervasive techniques used by law schools to lower the cost of legal writing instruction is devaluing the contributions of legal writing teachers,⁷⁴ thus justifying lower salaries for these teachers than for other faculty members.⁷⁵ This devaluation often takes the form of pejorative comments by non-legal writing

⁶⁹ See *Directing*, *supra* note 16, at 632-33 n.68 (noting that the creation of new assignments every year is equivalent to the creation of a new course every year).

⁷⁰ See Boyer, *supra* note 37, at 30. Because of the greater work involved in teaching legal writing, faculty members who are assigned this course will be limited in the number of other courses they can teach. See *id.* at 31.

⁷¹ See Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: First Images*, 1 J. LEGAL WRITING INST. 123, 125 (1991) ("Historically, the driving force in creating [legal writing and research] programs has been to find the cheapest, not the best, structure and method."); see also Brand, *supra* note 34, at 294 (discussing articles that focus on ways to minimize the cost of legal writing instruction). "I am not aware of any articles . . . on 'Cheap Contracts Courses,' or 'Civil Procedure for Mere Pennies.'" *Id.*

⁷² See, e.g., Boyer, *supra* note 37, at 24 (comparing the costs of various models of staffing legal writing programs). See generally Arrigo-Ward, *supra* note 2, at 559-60 n.11 (citing articles that describe low-cost legal writing programs).

⁷³ ABA COMM'N ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION 33 (1996) [hereinafter *ELUSIVE EQUALITY*].

⁷⁴ See Arrigo-Ward, *supra* note 2, at 591-92 & n.89 ("[T]he school can try to convince the [legal writing] professors that their contribution to the school, while valuable, is less valuable than that of 'real' faculty members, and thus they deserve to receive less money for their work.").

⁷⁵ See *id.*

teachers about legal writing⁷⁶ or legal writing teachers.⁷⁷ Among faculty members, "a long-term commitment to legal writing and research makes [the legal writing teacher] suspect as an incompetent or a borderline crackpot."⁷⁸ In addition to derogatory comments, the low esteem in which law school faculties and administrations hold legal writing teachers is demonstrated in numerous ways, including: (1) using different titles for legal writing teachers; (2) omitting the pictures, educational achievements, or any mention of legal writing teachers from law school catalogs; (3) having legal writing teachers share offices; and (4) giving legal writing teachers windowless, basement offices.⁷⁹

Although the cost of employing dedicated, full-time legal writing teachers has been decried,⁸⁰ the salaries paid to legal writing teachers are relatively low compared to other faculty salaries.⁸¹ A survey taken in the early 1990s showed substantial differentials between the salaries paid to legal writing teachers and those paid to non-legal writing teachers at the same schools.⁸² At 36% of the schools that responded to this survey, this differential was greater than \$35,000.⁸³ A recent American Bar Association report by the Commission on Women in the Profession examining women in the Academy indicates that this differential stills exists.⁸⁴

⁷⁶ See generally *Directing*, *supra* note 16, at 616 & n.17 (1995) (contrasting the respect non-legal writing teachers show each other with "explicit or implicit faculty disdain or disparagement" legal writing teachers face).

⁷⁷ See *supra* pp. 83-86 (examining law school faculty bias against legal writing teachers).

⁷⁸ Arrigo-Ward, *supra* note 2, at 573 n.45 (citing Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 MIAMI L. REV. 218, 226 (1975)).

⁷⁹ See *Directing*, *supra* note 16, at 637 n.84. This list is not exhaustive. For a more extensive list, see *id.* See also Arrigo-Ward, *supra* note 2, at 591 (stating that some law schools make legal writing professors "feel guilty about the expense of paying them").

⁸⁰ See Boyer, *supra* note 37, at 34. "Non-tenure instructors . . . represent a costly way of running the [legal writing] program. The school must determine whether to use funds for faculty slots . . . ; [and] instructors do not come as cheaply as graduate students." *Id.* (quoting Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 LAW LIB. J. 232, 260 n.151 (1982)).

⁸¹ See Chused, *supra* note 2, at 552.

⁸² See Rideout & Ramsfield, *supra* note 20, at 37 n.5 ("Salaries for most legal writing professors average less than \$35,000, much less than for professors and clinicians at the same schools.").

⁸³ See *id.* Of the 126 ABA-accredited law schools that responded to the 1992 Legal Writing Institute's survey, 77 responded to the question concerning faculty salaries. See *id.* The breakdown of the salary differentials is as follows:

\$20,000 or less:	28 schools (36%)
\$20,000 - 35,000:	21 schools (28%)
more than \$35,000:	28 schools (36%).

See *id.*

⁸⁴ See ELUSIVE EQUALITY, *supra* note 73, at 33. The report is based on oral and written comments from organizations for women and minority students and faculty the Commission received in 1994 and 1995. See *id.* at 5.

Once a law school has established a legal writing program, regardless of the efficacy of the program design, inflated expectations often arise concerning the results that the program will produce, or how the program will be conducted.⁸⁵ These unmet expectations reinforce negative attitudes and lead to unmasked contempt.⁸⁶ The following exchanges, typical of those regularly taking place throughout the Academy, illustrate this form of institutionalized contempt legal writing teachers face daily.⁸⁷ The participants are members of a law school faculty. Teacher A is a non-legal writing teacher and Teacher B is a legal writing teacher. The exchanges occur during a social event held at the law school:

Teacher A: How is your semester going?

Teacher B: Fine. Right now, I'm in the process of grading papers for my legal research and writing class.

Teacher A: That reminds me. I always meant to ask you folks what you cover in the first year legal research and writing course. My clinical students are weak on their research skills. Don't you folks cover how to use looseleaf services to find labor law cases?

As Teacher B responds that looseleaf services are discussed, but may not be a major focus of classroom discussion in a first year research course, another clinical teacher comes over and starts a conversation with Teacher A. After a while, the two clinical teachers say farewell to Teacher B and walk away. Shaking her⁸⁸ head, Teacher B walks away and encounters Teacher C, a tenure track non-legal writing teacher who rarely teaches first year students.

Teacher C: I'm glad I ran into you. Maybe you can answer a question for me.

Teacher B: Well, I'll give it my best shot. What's the question?

Teacher C: Why don't you cover objective writing in legal writing?

Teacher B: Well, that depends on what you mean by "objective" writing. During the year, we assign students different types of legal documents to draft.

Teacher C: The students in my Federal Courts seminar recently submitted the first drafts of their term papers. Although the third year students' papers were good,

⁸⁵ See generally Rideout & Ramsfield, *supra* note 20, at 88 (discussing schools that restructure their legal writing programs every year or two).

⁸⁶ See *supra* pp. 78-86 (examining institutionalized contempt against legal writing).

⁸⁷ The following is a composite of conversations the author has had with legal writing and non-legal writing teachers.

⁸⁸ Considering the relative percentages of women legal writing teachers and men legal writing teachers, use of the feminine pronoun here is not a "politically correct" act.

the majority of the second year students did not seem to be able to explain, in a scholarly fashion, choice of law issues involved in multi-state class action cases. Their analyses seemed muddled and they didn't seem to understand the relevant concepts. I don't understand it.

Teacher B: Well, maybe they didn't understand the relevant concepts. Have you asked any of the professors who taught first year Civil Procedure last year whether they covered these issues?

Teacher C: Of course not. Why would I do that? Anyway, that wouldn't do any good. This happens every year I allow second year students to take this seminar in the fall semester.

Substitute the subject matter descriptions, and any legal writing teacher will be able to supply the names.

II. THE PINK COLLAR GHETTO

Contributing to the low status accorded to legal writing teachers is the predominance of women as legal writing teachers.⁸⁹ The recent ABA study of women in the Academy illustrates the continuing marginalization of tenured and non-tenured women law teachers.⁹⁰ Equally telling is the perception that "the majority of legal research and writing directors are male and a number of them do not even teach research and writing."⁹¹ If true, this is in keeping with the relative lack of women in "power" positions in the Academy. Even if this perception is false, its mere existence reveals how women generally, and legal writing teachers specifically, are perceived within the Academy.

A. *Tracking Women into Legal Writing Instruction*

Some schools appear to be tracking women into legal writing positions.⁹² The Chused Study⁹³ showed a correlation between the

⁸⁹ For a discussion of law students' bias against women law teachers, see *infra* pp. 96-99 and accompanying notes.

⁹⁰ See *ELUSIVE EQUALITY*, *supra* note 73, at 25-32.

⁹¹ *Id.* at 33. This is based on anecdotal evidence. There is, however, empirical evidence to the contrary. See *Voices in the Wilderness*, *supra* note 5, at 543 ("The field of legal writing may or may not be a 'pink ghetto,' but the ratio of females to males among the teachers at the 31 schools [that have tenure-track legal writing teachers] is about 2 to 1, whether one looks at all teachers or just directors."). There is no empirical evidence that this percentage varies in the remaining ABA-accredited law schools.

⁹² See Chused, *supra* note 2, at 553 ("The data . . . suggest that some schools may be 'tracking' women qualified for a regular teaching job into legal writing positions.").

⁹³ See *supra* note 2 and accompanying text (discussing the Chused Study).

percentage of women non-tenure-track legal writing teachers and the percentage of tenure-track non-legal writing teachers.⁹⁴ Those schools with the highest percentage of women legal writing teachers on their faculties had the smallest number of women in tenure-track positions.⁹⁵ Although Chused felt that there was insufficient data to reach a definite conclusion as to whether law schools were deliberately tracking women into these positions,⁹⁶ this proposition is supported by research done by other scholars. After studying the numbers of women hired for tenure and non-tenure-track positions from 1975 to 1980, two scholars reached the conclusion that "[w]omen still are significantly over represented in non-tenure-track hiring," including for legal writing positions.⁹⁷ According to this study, 24% of all women faculty members (tenure and non-tenure-track teachers) taught legal writing.⁹⁸

It has been suggested that women seek low-status, non-tenure-track jobs, such as teaching legal writing, because those positions are most compatible with their domestic and child-rearing responsibilities.⁹⁹ This supposition has neither been specifically tested, nor borne out by empirical evidence.¹⁰⁰ The results of a survey of men and women who began tenure-track law school positions be-

⁹⁴ See *id.* at 553-54.

⁹⁵ See *id.* The Chused Study covered the 1986-87 academic year. See *id.* at 553. During the year, 63 law schools had contract status legal writing programs. See *id.* Of these 63 schools, 11% had approximately the same number of women legal writing teachers and tenure-track (or tenured) non-legal writing teachers. See *id.* at 553-54. Another 11% of these schools had more women legal writing teachers than women tenure-track (or tenured) non-legal writing teachers. See *id.* at 554. In all of these schools, women constituted less than 13% of the tenure-track (or tenured) faculty. See *id.*

Furthermore, those schools in which women constituted more than 75% of the legal writing faculty were more likely to have low percentages of tenure-track (or tenured) women than those schools in which women constituted less than 75% of the legal writing faculty. See *id.*

⁹⁶ See *id.* at 554 (explaining that "[t]he lower pay and prestige of the contract legal writing slots, together with the low rate of hiring for traditional teaching positions, creates an impression that some schools 'track' women into lower status legal writing jobs rather than classroom clinical work, pay them less than they are worth, and then let them go").

⁹⁷ Zenoff & Lorio, *supra* note 17, at 873 (examining whether the percentage of women professors varies with tenure-track status).

⁹⁸ See *id.* at 880 (discussing a 1983 study which indicated that the percentage of women tracking legal writing had increased from 20% to 24%); see also *infra* notes 104-10 and accompanying text (examining a study which showed that women of color who entered the Academy between 1986 and 1991 were significantly more likely to teach legal writing).

⁹⁹ See Deborah J. Merritt, Barbara F. Reskin, and Michelle Fondell, *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 Wis. L. Rev. 395, 438-41 (analyzing the authors' regression analysis, which revealed that family ties did not significantly reduce women's ranks, contrary to a substantial body of evidence that suggests that single and childless women fare better than married women and mothers in the labor market); see also Chused, *supra* note 2, at 554 (suggesting women may opt for the more temporary legal writing positions "to follow spouses . . . who have obtained 'good' jobs in a new location" or to fulfill their childcare role).

¹⁰⁰ See, e.g., Chused, *supra* note 2, at 554.

tween 1986 and 1991 showed no correlation between familial obligations and the positions women law teachers received.¹⁰¹ However,

[I]t is possible that women with family ties disproportionately fill nontenure-track positions at American law schools, while male academics and women without families are more likely to have advanced out of these positions or avoided them. Indeed, the disproportionate number of women without partners or children in our tenure-track population lends some support to this hypothesis.¹⁰²

Even if it turns out that a disproportionately high percentage of women legal writing teachers have partners or children, this still would not explain whether these women accept non-tenure-track legal writing positions, as opposed to tenure-track positions, by choice or as a result of law school tracking.

B. *Women of Color: The Double Burden*

Recent articles have detailed the impact of the "double standard" that women of color¹⁰³ face as "double minorities" in the Academy, not only as law students but also as law teachers.¹⁰⁴ Minority women law teachers face bias in the Academy not only because of their gender, but also because of their race.¹⁰⁵ In looking at the careers of people of color who entered the Academy between the fall of 1986 and the spring of 1991, it becomes apparent that women teachers of color do not enjoy the "mythical benefits of being a double minority" that supposedly accrue under affirmative action.¹⁰⁶ Women of color who entered the Academy "during this

¹⁰¹ See Merritt, Reskin, and Fondell, *supra* note 99, at 440-41.

¹⁰² *Id.* at 440.

¹⁰³ This article uses the terms "minority" and "people of color" interchangeably.

¹⁰⁴ See, e.g., Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992) [hereinafter *Double Minority*] (reporting the results of a study comparing the progress of women of color and men of color in the Academy).

¹⁰⁵ See ABA STATUS REPORT, *supra* note 3, at 6. This report concluded that "even though certain assumptions of incompetence or weakness are leveled at women generally, or at minority males, neither group has to weather both sets of stereotypes the way multicultural women do." *Id.* (citing ABA MULTICULTURAL WOMEN ATTORNEY'S NETWORK, *THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER*, 17 (1994)).

¹⁰⁶ *Double Minority*, *supra* note 104, at 2301. It has become part of the discourse on affirmative action that "the dynamics of the marketplace favor women and minority group members with strong academic backgrounds over other similarly qualified job applicants." Bruce & Swygert, *supra* note 50, at 254. Studies show that this "marketplace" preference has not translated into significant numbers of women of color gaining tenure. See Deborah Jones Merritt, *The Status of Women on Law School Faculties: Recent Trends in Hiring*, 1995 U. ILL. L. REV. 93, 102 (stating that preferences in hiring and affirmative action are not responsible for the increase of women on law faculties, the improvement of women's teach-

period began teaching at significantly lower ranks than the minority men, obtained positions at significantly less prestigious schools, and were significantly more likely to teach *low-status courses* like legal writing.¹⁰⁷ This is particularly telling in light of the exclusion of most legal writing teachers from the study.¹⁰⁸ The differences between men and women of color were statistically significant even after controlling for variables such as the difference in credentials, work experience, and personal characteristics.¹⁰⁹ Thus, although affirmative action policies have generally granted women access to law school faculties, "affirmative action [has] worked least well for [those who face] both race and sex discrimination: women of color."¹¹⁰ Women of color have always known this — there is now empirical evidence substantiating this view.

The proposition that women law teachers of color face continuing discrimination on both racial and sexual grounds is supported in a 1994 survey of Ohio law students and faculty (the "Ohio Faculty Survey").¹¹¹ Respondents were asked whether women teachers and teachers of color had a more onerous burden of proving themselves to students, "because students come to law school with an expectation of a competent law professor being male [white]."¹¹² Of the minority women respondents, 73% agreed with the statement about women law teachers and 81% agreed with the statement about law teachers of color.¹¹³

ing assignments, or bias in rank. Instead, the increase of women on law faculties was due to their augmented presence in the hiring pool and their credentials).

¹⁰⁷ *Double Minority*, *supra* note 104, at 2301 (emphasis added).

¹⁰⁸ This study looked only at faculty hired for tenure-track positions. *See id.* at 2304 nn.19-21 (explaining the authors' reasons for excluding "marginal" positions such as legal writing). The survey excluded "professors whose titles included 'legal writing' or who exclusively taught skills courses like legal writing. . . ." *Id.* at 2304. As a rule, tenure-track faculty members who teach legal writing were not recruited by their schools specifically to teach this course. *See Voices in the Wilderness*, *supra* note 5, at 536. Approximately "20 percent of all ABA-accredited schools have specifically recruited legal writing professionals as tenure-track faculty. . . ." *Id.* at 537.

¹⁰⁹ *See Double Minority*, *supra* note 104, at 2321-28.

¹¹⁰ Merritt, *supra* note 106, at 102 (discussing a revised analysis of the survey data results of the study described in *Double Minority*, *supra* note 104).

¹¹¹ *See* Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 324-27 (1994). This survey explored whether there was gender unfairness in Ohio's nine law schools which could affect attitudes or practices in the courts and profession, and determine whether gender-based problems were large enough to warrant action. *See id.* at 311-12. The findings concluded that difference in treatment impeded the education and professional progress of women. *See id.* at 312.

¹¹² *Id.* at 327 (citing a student survey provided by the nine law schools); *see also* ABA STATUS REPORT, *supra* note 3, at 6 (stating that minority women lawyers have to prove their abilities continuously).

¹¹³ *See* Krauskopf, *supra* note 111, at 327. 18% of the male respondents and 48% of female respondents agreed with these statements. *See id.*

This is also borne out by anecdotal evidence. In an essay, one woman law teacher of color related that she was the only tenure-track professor of color in her law school.¹¹⁴ She recounted not only having her colleagues frequently "peering" into her classrooms while she was teaching, but also being told that one of her students considered her "'pretty good,' . . . [considering that] as a black woman, she probably wasn't qualified' [to teach]."¹¹⁵ Pointing out that people of color enter the Academy with credentials that are comparable to¹¹⁶ (or "better" than)¹¹⁷ non-minority candidates would have been lost on this student.¹¹⁸

Few legal writing teachers are people of racial minority. In 1981, two out of eighty-nine (2.2%) legal writing teachers were people of color.¹¹⁹ By 1986, this number had grown to seven out of two-hundred and twelve (3.3%).¹²⁰ There are no indications that this number has increased significantly in the intervening decade. In the 1992-93 academic year, people of color constituted only

¹¹⁴ See Cheryl I. Harris, *Law Professors and the Academy: Of Poets and Kings*, 68 CHI-KENT L. REV. 331, 337 (1992) (articulating the story of one woman of color who, in 1990, became the first person of color on Chicago-Kent's full time tenure-track law faculty).

¹¹⁵ *Id.* at 346.

¹¹⁶ See *id.* at 338 n.18 (citing Michael A. Olivas, *Latino Faculty at the Border*, CHANGE, May/June 1988, at 6-7) (comparing the credentials of the new law teachers hired in 1986-87).

¹¹⁷ See *id.* (citing Leslie Espinoza, *Colloquy: Masks and Other Disguises: Exposing Legal Academia*, 103 HARV. L. REV. 1878, 1882 n.21 (1990), which discussed differences between the credentials of minority and nonminority law school faculty candidates in 1987 and 1988).

¹¹⁸ See *id.* at 338 n.18. The question of whether the criteria law schools use to hire new faculty should be changed is beyond the scope of this Article. However, there has been discourse evaluating the effect of the criteria and questioning their continued use. See, e.g., *id.* at 337-38 n.16; French, *supra* note 51, at 259-61 (discussing law schools' hiring practices in light of the current Supreme Court's employment discrimination jurisprudence). French proposes that law schools should incorporate diversity goals within professorial job descriptions. See French, *supra* note 50, at 263. A similar proposition was advanced by Duncan Kennedy in an "[a]rticle . . . about affirmative action in legal academia." Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 705. In the discourse on affirmative action in law schools, Kennedy, as a white male, is a member of the "preferred" class. In his article, Kennedy acknowledges his "disagree[ment] with [his] . . . school's institutional application of the merit standard. . . ." *Id.* at 712 n.22. Kennedy continues, "most law school faculties give too much weight to paper credentials, over-value old-boy connections, make bad intuitive judgments based on interviews, and tend to misevaluate the substantive quality of presentations and written work when applying formally colorblind standards." *Id.* (emphasis added).

¹¹⁹ See Chused, *supra* note 2, at 556 (table 1).

¹²⁰ See *id.* In 1981, there was one African-American legal writing teacher and one Latino (or Latina). See *id.* In 1986, there were five African-American legal writing teachers and two "other" people of color. See *id.* This study did not cross-reference the data on gender and race; that is, the data was tabulated by either race or gender. The gender data was not sub-divided by race, and the race data was not sub-divided by gender. However, given the small number of people of color involved in teaching legal writing, any additional statistical manipulation would be pointless.

12.1% of law school lecturers and instructors,¹²¹ women of color constituted a mere 6% of faculty members with professor titles.¹²²

C. *Legal Writing Positions: First Rung on the Career Ladder?*

The Chused Study also disputed the myth that teaching legal writing is an effective first step to a law teaching career.¹²³ On the contrary, the vast majority of legal writing teachers who leave their positions leave teaching entirely.¹²⁴ As noted by the ABA Commission on Women in the Profession, "[e]ven if a writing instructor . . . wants to produce the scholarship and meet the expectations necessary to be a regular 'classroom' faculty member, many schools will not consider promoting anyone from these positions to a tenure-track position."¹²⁵ Although this quote came from a law teacher at a large southern school, it holds true for schools throughout the nation.¹²⁶

D. *Legal Writing Turnover*

The turnover rate for legal writing teachers is among the highest in the Academy.¹²⁷ This high turnover rate is attributable to several factors, not the least of which is the low status accorded to

¹²¹ See White, *supra* note 7, at 425.

¹²² See *id.* These titles include: professor, associate professor, and assistant professor. See *id.* 6% of these faculty members are men of color; 53% are non-minority women. See *id.*

¹²³ See Chused, *supra* note 2, at 553. Chused observed that [Legal writing] positions create a track into 'regular' teaching slots for a very small number of people, and to the extent this career path functions at all, it works better for men than for women. Just under one-fifth of the contract legal writing teachers left their institutions and found other legal education positions or obtained tenure track jobs without moving.

Id.

¹²⁴ See *id.* at 553 & n.79. The majority of those few legal writing teachers who left legal writing positions for tenure-track positions between 1981 and 1986 were men. See *id.* at 553. This observation pertains to legal writing teachers who are hired on a non-tenure-track contract basis, not to tenure-track legal writing teachers. The Chused Study did not separately look at tenure-track legal writing teachers. There is, however, little reason to believe that the turnover rate for tenure-track legal writing teachers should be significantly higher than the turnover rate for other tenure-track faculty. Presumably, many of the problems that cause non-tenure-track legal writing teachers to become dissatisfied have been resolved for tenure track legal writing teachers.

The turnover of tenure-track legal writing instructors may be an area for future study as more legal writing teachers attain tenure. See ELUSIVE EQUALITY, *supra* note 72, at 32 (discussing demoralization among women tenured faculty members). There is already some dissatisfaction among tenured and tenure-track directors of legal writing programs regarding the lack of accommodation for the administrative workload of these positions, and regarding the uncertainty of whether (or how) this administrative workload will count for tenure. See *Voices in the Wilderness*, *supra* note 5, at 546-47.

¹²⁵ ELUSIVE EQUALITY, *supra* note 73, at 33.

¹²⁶ This quote is from a 60-year-old law professor from a large southern law school. See *id.*

¹²⁷ See Chused, *supra* note 2, at 543 (table 1). According to the Chused Study, turnover rates between 1980 and 1987 were as follows:

legal writing teachers. That legal writing "salaries are low and professional status substandard"¹²⁸ is a truism. In addition, hiring legal writing teachers on short-term legal writing contracts is the predominant staffing model.¹²⁹ This staffing model makes it difficult to establish sound legal writing pedagogy within individual law schools.¹³⁰ These factors result in legal writing teachers becoming demoralized and leaving teaching.¹³¹ From a law school's perspective, under this model, a significant percentage of its legal writing faculty will be inexperienced at any given time.¹³² Given these circumstances, it is not surprising that legal writing programs generate complaints from several quarters, including law students.¹³³

III. LAW STUDENT PERSPECTIVES

Law schools send mixed messages to law students regarding legal writing, both as a course and as a skill. Although legal writing is a required course in all ABA approved law schools,¹³⁴ legal writing does not enjoy the full support of the Academy.¹³⁵ Law schools' institutionalized contempt toward legal writing teachers

Group	Still at original school	Gone from original school	Gone, but at new school
Tenured	75.1%	18.8%	6.1%
Tenure track	55.1%	31.9%	13.5%
Clinical contract	33.1%	58.9%	8.0%
Legal writing contract	7.0%	76.0%	17.0%
Other (classroom teachers, librarians, etc.)	37.1%	50.1%	12.8%

Id. See also Gale, *supra* note 12, at 320 (adding that the high turnover rate is heightened by the use of second or third-year law students as legal writing teachers).

¹²⁸ Arrigo-Ward, *supra* note 2, at 573.

¹²⁹ See, e.g., Rideout & Ramsfield, *supra* note 20, at 87. "Staffing models contribute to turnover. The two most popular models for staffing legal writing programs are the full-time non-tenure-track model and the adjunct model." *Id.* The "full-time non-tenure track" model usually involves contracts with terms of three-years or less. See *id.* at 38 n.8. "Of 71 schools that employ full-time non-tenure-track legal writing professors, 57 give only one-year contracts, 7 offer two-year contracts, 4 offer three-year contracts, and only 3 offer contracts that are five years or over." *Id.*

¹³⁰ See *id.* at 88.

¹³¹ See Arrigo-Ward, *supra* note 2, at 573 (stating that the prospect of becoming a legal writing professor will discourage professors due to low salaries and substandard status and working conditions); see also Rideout & Ramsfield, *supra* note 20, at 87 (stating that low salaries, imposed limits on contracts, and being excluded from faculty votes results in legal writing professors staying three or fewer years).

¹³² See Rideout & Ramsfield, *supra* note 20, at 87 (contemplating that, with frequent turnover, legal writing programs are unable to develop, and professors are not able to gain the experience necessary to be most effective).

¹³³ See *infra* Part III (discussing law student bias toward legal writing teachers).

¹³⁴ See Rideout & Ramsfield, *supra* note 20, at 36 n.2 (stating that "[a]ll of the 176 accredited law schools have legal writing programs").

¹³⁵ See *supra* pp. 78-84 and accompanying text (examining institutionalized contempt for legal writing and legal writing instructors).

and instruction is transmitted to law students who react in various ways.

A. *Law Student Bias Toward Legal Writing Teachers*

Students are more likely to challenge their legal writing teachers than other law teachers, both in and out of the classroom.¹³⁶ This is due in part to the predominance of women as legal writing teachers, because studies have shown that students are more likely to complain about women teachers than their male counterparts.¹³⁷ Male law students have "challenged women faculty's substantive interests, teaching techniques, and credentials."¹³⁸ A report of the results of a survey of Ohio law schools (the "Ohio Faculty Survey") supports this position.¹³⁹ The survey showed that both female students and faculty members perceived that "female faculty have a heavier burden [than males] to prove their competence."¹⁴⁰ Social science research has substantiated the existence of student bias against women professors.¹⁴¹ The resulting student bias leads to their tendency to rate women law teachers more harshly on student evaluations than their male counterparts.¹⁴² It

¹³⁶ See generally Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 145 (1988) ("There is . . . evidence of hostility toward female professors by younger white males, at various schools. One student referred to a female professor as a 'liberal bitch.'"); Krauskopf, *supra* note 111, at 330-31 ("Perceptions of women and men differ widely on the question of students' views of teachers' competence. Almost twice as many female faculty (38%) as male faculty (20%) report encountering hostility from students." (citing the Ohio Faculty Survey)).

¹³⁷ See Krauskopf, *supra* note 111, at 330-31.

¹³⁸ Carl Tobias, *Engendering Law Faculties*, 44 U. MIAMI L. REV. 1143, 1149 (1990) (discussing the ways in which male cultural norms and role definitions negatively impact junior female faculty).

¹³⁹ See Krauskopf, *supra* note 111, at 330-31.

¹⁴⁰ *Id.* at 331. Krauskopf was the chair of a committee created in 1991 to study gender unfairness in Ohio law schools. See *id.* at 311. The Committee surveyed both law students and faculty members in an attempt to quantify the extent of gender unfairness, and to determine whether the percentages of women students and faculty who perceived gender-based problems were large enough to warrant some action by legal educators to minimize the disadvantages of gender difference. See *id.*

The surveys showed that 48% of the women law student-respondents and 73% of minority women law student-respondents believed that female faculty members did indeed have more of a burden of proving their competence. See *id.* at 313. Only 18% of male student-respondents shared this belief. See *id.* at 314 (table 1). Among the faculty respondents, only 15.4% of the female respondents, versus 55.8% of the male respondents, agreed with the statement that "[s]tudents at [their] law school assume that all female teachers are competent to teach." *Id.* at 329 (table 2). However, 56.4% of the female respondents, and 15.5% of the male respondents, disagreed with this statement. See *id.*

¹⁴¹ See Zenoff and Lorio, *supra* note 17, at 879 n.44 (listing social science sources indicating that there is a preference for male teachers).

¹⁴² See *id.* at 879 n.43 (discussing a study that showed that female law teachers at the beginning of their careers at New York University received lower student evaluations than male law teachers).

appears that women are evaluated in this critical way when they fail to meet gender stereotypes.¹⁴³

Classroom challenges by students sometimes take unexpected forms. The following encounter occurred in the classroom of a female African-American legal writing teacher.¹⁴⁴ She had given her legal writing students a closed universe¹⁴⁵ assignment involving an issue that was unsettled in the relevant jurisdiction. The students were to analyze the given authority and then draft a memorandum explaining the relevant law and predicting how courts in the jurisdiction would decide the case if faced with the issue.¹⁴⁶ After grading her students' assignments, the teacher discussed the problem in class and asked the students to rewrite the memorandum, incorporating, *inter alia*, the points mentioned in the classroom discussion.¹⁴⁷ Several weeks after submitting his rewrite, and during a discussion of another assignment, a white male student challenged the teacher's comments regarding his prediction that the courts would ignore existing local precedent and public policy in favor of contrary foreign precedent.¹⁴⁸ In his attempt to make the point that the courts would expand existing law, he asked a question about the strategy used by the NAACP Legal Defense Fund in *Brown v. Board of Education*.¹⁴⁹ Apparently trying to show that courts reach decisions that expand existing law, the student chose this seminal civil rights case to confront the legal writing teacher.¹⁵⁰ In the process, the student ignored the fact that the purpose of the assignment was to explain the jurisdiction's existing law and public policy and to predict the court's action based on those criteria, not to argue that the courts should expand the law. One wonders whether this student would have used this same tactic had his teacher not been an African-American woman.

Studies also have uncovered evidence of hostility among young white male students toward minority and women law teach-

¹⁴³ See Krauskopf, *supra* note 111, at 315, 329. Women law teachers are "disadvantaged by administration reaction to female aggressiveness . . . for displaying behavior that is a valued characteristic of the legal profession and for which their male colleagues are rewarded." *Id.* at 332.

¹⁴⁴ This encounter occurred at a medium size, third-tier law school in the Northeast that will remain nameless to protect the questionable.

¹⁴⁵ A "closed universe memorandum" is one in which students are given all of the authorities which they are to use in their analysis.

¹⁴⁶ See *supra* note 144.

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ 349 U.S. 294 (1955).

¹⁵⁰ See *supra* note 144.

ers.¹⁵¹ For example, in the Ohio Faculty Survey, 38% of women faculty respondents indicated that they had encountered student hostility and only 20% of the men faculty respondents reported hostility.¹⁵² This hostility has manifested in forms ranging from classroom challenges to comments made in student evaluations.¹⁵³ As the number of women and minority law teachers increase, this hostility and bias will hopefully dissipate.¹⁵⁴

B. You Want Us to do What for Only Two Credits?

Students often perceive, frequently correctly, an imbalance between the workload in legal writing and the credit hours the course carries.¹⁵⁵ Although students typically spend many hours outside the classroom researching, analyzing, and drafting legal writing assignments, first year legal writing courses usually carry only two or three credits.¹⁵⁶ Unlike doctrinal courses in which students typically are passive for most of the year, legal writing requires active participation from students throughout the year.¹⁵⁷ Students deal with this imbalance in several ways. Student resentment of the time they must spend in the first year legal writing course may account for some of the complaints law school administrations field about these courses.¹⁵⁸ Other students get the message that the skills taught in these courses are relatively unimportant, and consequently do not put in the time and effort necessary to develop effective legal writing and researching skills.¹⁵⁹ At times, the message is explicit — non-legal writing teachers have been known to “warn” students about spending “too much” time on legal writing while

¹⁵¹ See, e.g., *ELUSIVE EQUALITY*, *supra* note 73, at 25-26, 32 (attributing hostility towards female professors to anger generated when women law teachers do not meet the “nurturing” role expected of women); Krauskopf, *supra* note 111, at 330 (discussing the differences between experiences of female and male law professors).

¹⁵² See Krauskopf, *supra* note 111, at 330.

¹⁵³ See generally *ELUSIVE EQUALITY*, *supra* note 73, at 26 (providing examples of comments made by students demonstrating hostility in the classroom).

¹⁵⁴ See Banks, *supra* note 136, at 145 (attributing the hostility to the under-representation of women and minority law teachers in the Academy).

¹⁵⁵ See *Directing*, *supra* note 16, at 616 (“[S]tudents resent continual demands on their time because the legal writing class is a pedagogic anomaly in the first-year curriculum. The credit hours allocated to legal writing courses may not reflect either the actual or perceived student workload.”).

¹⁵⁶ See, e.g., Gale, *supra* note 12, at 322-23 (discussing the message law schools send students by under-valuing first year legal writing courses).

¹⁵⁷ See, e.g., *Directing*, *supra* note 16, at 616 (comparing the active learning that occurs in legal writing courses with the passive learning that occurs in other courses).

¹⁵⁸ See *id.* (attributing complaints to the time commitment required to be made by students, and to the newer and lower-status professors teaching legal writing).

¹⁵⁹ See, e.g., Gale, *supra* note 12, at 322.

ignoring their "important" doctrinal courses.¹⁶⁰ All of these strategies have the same result — law students fail to develop adequate legal writing and research skills.¹⁶¹

The Rombauer Study¹⁶² elicited responses from short-term legal writing specialists and tenure-track teachers who taught both substantive and legal writing courses, with regard to their perceptions of student attitudes toward the legal writing program.¹⁶³ The teachers indicated that at least half of their students thought the course was:

- (1) "relevant;" but
- (2) "required too much time;" for
- (3) "too little credit;" and
- (4) was under-appreciated by other faculty members.¹⁶⁴

Rombauer reached no conclusions about whether there was a general faculty bias against legal writing.¹⁶⁵

IV. PROGRESSIVE TRENDS

Several currents in the Academy may help improve the status of legal writing teachers. For example, the presence of tenured and tenure-track legal writing teachers should eventually prove to

¹⁶⁰ See generally *Directing*, *supra* note 16, at 616 & n.17 (stating that non-legal writing teachers "may convey to students a disdain for the legal writing program and jealousy of the hours spent on such an 'unimportant' course").

¹⁶¹ See Gale, *supra* note 12, at 322-23 (stating that "students taught to think of writing and research as second-level tasks will perform them as if they are[, and their] work will then indeed be second-rate").

¹⁶² See *supra* notes 54-60 and accompanying text (discussing the Rombauer Study of teaching experiences).

¹⁶³ See Rombauer, *supra* note 14, at 549.

¹⁶⁴ See *id.* at 549 n.43. The survey showed the following results:

(1) Course relevance: 16% of the teachers believed that approximately one-half of their students thought it was relevant, 54% believed that most of their students thought the course was relevant, and 21% believed that all of their students shared this view.

(2) Time requirements: 17% of the teachers thought that approximately one-half of their students thought that the course took too much time, 41% thought that most of their students thought that the class took too much time, while 25% thought that all of their students shared this view.

(3) Credit hours: 11% of the teachers thought that approximately one-half of their students thought that the course carries too few credits, 32% thought that most of their students thought that the course carries too few credits, while 34% thought that all of their students shared this view.

(4) Faculty appreciation: 30% of the teachers thought that approximately one-half of their students thought that other faculty members "did not sufficiently appreciate the course," another 30% thought that most of their students shared this view, while 5% thought that all of their students shared this view.

Id. Rombauer suggests that the response to the question about faculty appreciation of the course reflected the teachers' perceptions of the "general faculty attitudes toward [the] course." *Id.* at 550.

¹⁶⁵ See *id.* at 550.

the Academy that treating legal writing teachers as peers will not dilute its standards. This is not likely to occur, however, until all law schools, not only those in the "bottom" tiers, realize the importance of strong legal writing programs.¹⁶⁶

A. *Tenure-Track Legal Writing Teachers*

A growing number of schools are granting tenure-track status to its legal writing teachers.¹⁶⁷ Some of these schools have created separate tenure tracks for legal writing teachers, while other schools review legal writing teachers using the same criteria as for their other tenure-track faculty.¹⁶⁸ Those schools with separate tracks tend to restrict legal writing teachers to teaching legal writing, while those with undifferentiated tracks tend not to have such restrictions.¹⁶⁹ Most law schools do not permanently limit the course selection of other tenure-track faculty members.¹⁷⁰

Although concern over whether legal writing instruction allows sufficient time for scholarship, scholarship is still the primary criterion for tenure, and few schools have modified tenure requirements in light of the time constraints connected with teaching legal writing.¹⁷¹ There is, however, an open question of whether, and how, schools will consider legal writing scholarship toward tenure.¹⁷² Obviously, if these schools discount the value of legal writing scholarship, they will place legal writing teachers at a significant disadvantage in the tenure process.

The job security provided by long-term contracts is no substitute for tenure-track status.¹⁷³ As one scholar has stated, "[l]ong-term contracts fail to grant legal writing teachers the full collegial respect of the other faculty; they are not likely to be accompanied by full faculty voting rights; and they do not protect teachers who

¹⁶⁶ For example, a recent law review article illustrates that those law schools who have tenured or tenure-track legal writing teachers are more likely to be in the bottom half of the U.S. News and World Report law school rankings. See *Voices in the Wilderness*, *supra* note 5, at 539.

¹⁶⁷ See *id.* at 532.

It now appears that a number of schools have recognized the value of [the] experience and study [gained by law students in legal writing programs], and are willing to maximize the value by giving the responsibility for designing writing programs and teaching legal writing to new tenure-track members of the faculty who want just such a role.

Id.

¹⁶⁸ See *id.* at 544.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² See *id.* at 546.

¹⁷³ See Rideout & Ramsfield, *supra* note 20, at 38 n. 8 (indicating that only 3 of 71 law schools offered their legal writing teachers long-term contracts of five years or longer).

take positions at odds with those of the administration and other faculty."¹⁷⁴ Although more job security is preferable to less job security, the marginalization of legal writing teachers and legal writing instruction cannot be solely mitigated by long-term contracts.¹⁷⁵

Although improvement in the status of legal writing teachers may not translate directly into improvement in the status of women in the Academy, granting tenure (or tenure-track status) to a large segment of women in the Academy would be a step in the right direction. Over the course of time, increasing the number of female tenured law teachers will reduce the marginalization of women in the Academy.¹⁷⁶

B. *Expanded Legal Writing Instruction*

John Feerick, Dean of Fordham University School of Law and former President of the Association of the Bar of the City of New York, recently wrote an article advocating that law schools place greater emphasis on legal writing.¹⁷⁷ Before the status of legal writing teachers improves, more deans and faculties must reach this conclusion. They must realize that legal writing is not "anti-intellectual" or only for students who need "remedial" assistance.¹⁷⁸ Law schools must provide an appropriate level of resources, including the entire faculty's support for the efforts of a school's legal writing teachers. One question law school faculties and administration must ask themselves is whether the "primary responsibility [of their school] is to teach doctrine [or]. . . . [t]o teach analytical reasoning and critical thinking."¹⁷⁹ Several law school faculties have concluded that their primary responsibility is to teach analytical reasoning and critical thinking, and consequently have expanded their legal writing and research programs.¹⁸⁰

¹⁷⁴ *Voices in the Wilderness*, *supra* note 5, at 532-33 (examining the substitute of long-term teaching contracts for tenure).

¹⁷⁵ See Boyer, *supra* note 37, at 28 ("[O]nce 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.").

¹⁷⁶ See generally *Elusive Equality*, *supra* note 73, at 25 ("[I]n order to create a supportive environment, a critical mass must first be achieved.").

¹⁷⁷ See Feerick, *supra* note 53, at 384 ("At the law school level, legal writing must be given greater emphasis. . . . [b]ecause good writing is necessary to meet the standards of the legal profession. . . .").

¹⁷⁸ See Rideout & Ramsfield, *supra* note 20, at 47; see also *supra* notes 20-27 and accompanying text (discussing traditional views of legal writing).

¹⁷⁹ Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountaintop*, 29 VAL. U. L. REV. 641, 648 (1995) (setting forth the process law school faculties should engage in to evaluate curriculum reform).

¹⁸⁰ See *id.*

CONCLUSION

Until legal writing teachers are accorded full status in the Academy, and as long as the majority of legal writing teachers are women, the marginalization of women law teachers will continue. However, as illustrated by the continuing marginalization of tenured women faculty members, and women faculty's scholarship, gaining tenure is not the panacea for legal writing teachers. Nonetheless, as long as law schools maintain their current culture, legal writing teachers cannot gain full status in the Academy until and unless they are offered the opportunity to gain tenure. The Academy must acknowledge the crucial role legal writing instruction plays in teaching law students legal analysis, and communicate this importance to law students.

