

WRITING AT THE MASTER'S TABLE: REFLECTIONS ON THEFT, CRIMINALITY, AND OTHERNESS IN THE LEGAL WRITING PROFESSION*

*Teri A. McMurtry-Chubb***

The alert came over the university email one Friday afternoon. There had been a rash of burglaries in the vicinity of the university where I was employed as a legal writing professor. The culprits? Two finely dressed thirty-something women, and a white male in his mid-fifties. These well-heeled bandits gained entrance into various buildings and offices through trickery and deceit. Asking for fictional persons, they were given access to offices where they stole valuables from unsuspecting occupants. Of particular interest to me was that one of the offenders was described as a nicely dressed Black woman in her early thirties.¹ I was nicely dressed, though not yet thirty, a woman, and definitely Black. I was a suspect.

* Copyright © 2009, Teri A. McMurtry-Chubb. All Rights Reserved.

** Director of Legal Analysis & Writing and Assistant Professor of Law, University of La Verne College of Law. J.D. University of Iowa (1998). M.A. University of Iowa (1998). Thanks to Spelman College, Dean Cynthia Neal Spence, Dr. Dalila De Sousa Sheppard, and Dr. Tiffany Patterson for continued support, mentorship, and guidance in post-modern theory, intersectionality, and critical legal studies. Also thanks to the Legal Writing Institute for the opportunity to present a draft of this article at the 2004 Biennial Legal Writing Conference in Seattle, and to Melissa Weresh, Adrien K. Wing, and Diane Klein for their comments on multiple drafts of this work. Dean Allen Easley and the University of La Verne College of Law, through its institutional support, were instrumental in bringing this work to press. Special thanks to my husband, Mark A. Chubb, who moved us away from Revolutionary Road, and to God whose love abounds and who gives me my determination. This piece is dedicated to my mother, Dorothy L. McMurtry, my grandmothers, Ruth McMurtry and Evelyn Gibson, and to my great-grandmother Ruth Gibson for giving me my voice.

1. The email alert read as follows:

Please Note: We have received notice that there has been some recent crime activity in nearby downtown office buildings. This involves individuals who will come into a building, asking for a fictional person, or trying to deliver an envelope or package to someone not in the building. If they get by the receptionist they will wander through a work area, and when not being watched will take purses or other personal items that are in plain sight. Descriptions of some of the suspects:

* White female, early thirties, blonde hair, nicely-dressed [sic]

* Black female, early thirties, nicely dressed

* White male, mid-fifties, medium build/height, gray hair

There are probably more persons than these involved.

The [City] Police Department has been contacted and offer [sic] the following suggestion:

One week prior to the alert, I joined the law faculty at Private Midwest University Law School as the only woman of color. I was the first full-time black woman faculty member ever to be hired in Private Midwest's Legal Research and Writing (LRW) Program and only the second to be hired at the law school.² Although the twenty-five faculty members of the law school had been introduced to me at the first faculty meeting, only a few went out of their way to come to my office for an informal welcoming chat. As the only new hire for that academic year, I was new to campus. I did not know many people or the locations of most campus buildings. What if I were mistaken for one of the perps? My fears were neither misplaced nor outside of reality. Perceived Black criminality infuses every aspect of American life.

From the time African-Americans perched cautiously on the precipice overlooking emancipation, perceptions of Black criminality have colored American social thought and legal jurisprudence. Perceived Black criminality, particularly the belief that African-Americans were predisposed to commit theft, was prevalent in the antebellum South. In his article *'That Disposition to Theft, with Which They Have Been Branded': Moral Economy, Slave Management, and the Law*, Alex Lichtenstein pos-

*Be aware of strangers walking through the building.

*Immediately call the [City] PD at [xxx-xxxx] if you notice any suspicious activity.

*Keep all personal items out of plain sight or locked in a drawer in a file cabinet.

*Ask for identification.

*Do not divulge personal information about employees or coworkers.

*If they say they are here to meet 'John' and there is a John in your office, do not allow them to go to his work area. Rather, have John come up front to meet them. We have always encouraged meeting outside guests personally, and this only enforces the wisdom of this policy. If at all possible, do not leave this person unattended.

*Be able to give a description of the suspect if asked.

Following these steps and being more conscious of outside persons in our building will make the office safer for everyone.

Thank you for your cooperation.

In the interest of privacy, I have neither divulged the name of the university nor its location. Instead, I refer to it as Private Midwest University Law School.

2. Legal Research and Writing programs have many names. Some are called Legal Methods programs, Legal Skills programs, Legal Analysis programs, etc. I have chosen to name the Program at Private Midwest University Law School a Legal Research and Writing Program because the faculty in the Program taught both legal research and legal writing during my time there.

its that slave theft on plantations was part of a continuing struggle between masters and slaves “to define the parameters of power.”³ Lichtenstein argues that theft created a tension between the slaves and their masters in defining “conflicting notions of authority, property and customary rights.”⁴

When viewed in historical context, my very presence at that university at that particular time in its history was also about defining the parameters of power. My hiring highlighted conflicting notions about my authority over my classroom, my ownership of my knowledge or true intellectual property, and academia’s exclusion of professors of color. This conflict was brought into sharper focus by my position as a member of the legal writing faculty. As many LRW scholars have emphasized, legal writing occupies a marginalized space within the legal academy.⁵ Professors of color, particularly women of color, already occupy a marginalized space within the academy. The convergence of both marginalizations makes the field of legal writing, in its current configuration, bad ground for women of color to “invest their resources of education, intelligence, time and talents so as to produce a fruitful yield.”⁶ If women of color continue to invest their resources elsewhere, the consequences for current and future law students will be considerable. These students will continue to engage in legal

3. Alex Lichtenstein, *That Disposition to Theft, with Which They Have Been Branded: Moral Economy, Slave Management, and the Law*, 21 J. SOC. HIST., 413, 414 (1988).

4. *Id.* at 415.

5. See Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 121 (1997) [hereinafter Arrigo, *Hierarchy Maintained*] (“[T]he majority of full-time LRW positions do not enjoy full academic status or the professional respect that accompanies it and, functionally, these jobs, like women’s jobs generally, suffer from exhausting working conditions, low pay, job insecurity, and low promotional opportunities.”); Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 225, 227 (1999) (indicating that “[i]n most cases, the perception of legal research and writing teachers still is that they lie at the edge of the academic faculty in their institutions; this despite the widespread recognition among practitioners and judges that legal research and writing are among the most important skills for a young attorney to possess”); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 3, 4–5 (2001) [hereinafter Stanchi & Levine, *Dirty Little Secrets*] (noting that LRW positions remain marred by low status, intense labor, and short durations).

6. See Arrigo, *Hierarchy Maintained*, *supra* note 5, at 121 (The author asks, “Is this field of legal writing ‘good ground’ in which women can invest their resources of education, intelligence, time, and talents so as to produce a fruitful yield?”).

analysis within a pedagogical framework that largely ignores the significance of difference.

This Article considers the convergence of race and gender marginalizations in the legal writing profession, a profession comprised almost entirely of women. Its content seeks to deepen the discussion introduced by Kimberlé Crenshaw in her seminal work on race and gender intersections, which argues that a single-axis framework of analysis that examines race and gender discrimination separately is insufficient to deal with the overlapping oppressions women of color face.⁷ Thus far, the literature on how legal writing programs discriminate against women lacks this intersectional dimension. The following discussion draws on the narrative traditions of Critical Race Theory and Critical Race Feminism to examine issues of race, gender, and status three dimensionally within the racialized, gendered, and elitist structure that is the legal academy.⁸ The theoretical framework is provided by Adrien K. Wing's multiplicative theory and praxis of being, in which Wing describes women of color as indivisible persons with multiple race and gender consciousnesses.⁹ In what follows, I

7. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

8. See generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1st ed. 1997) [hereinafter CRITICAL RACE FEMINISM] (examining the multiple race and gender consciousnesses of women in various legal and educational contexts); Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersections of Race and Gender*, in *id.* at 297 (exploring the legal and status implications for African Americans who choose to wear their natural hair texture); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991) (detailing her experience as a black woman law professor within academic and legal realms that seek to ignore, elide, or control that identity); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (using fables and dialogues to explore the enduring nature of racial inequality).

9. Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, in CRITICAL RACE FEMINISM, *supra* note 8, at 27, 30–31. See also Delese Alford Washington, *The Anatomy of a "Pantsuit": Performance, Proxy and Presence for Women of Color in Legal Education*, 30 HAMLIN J. PUB. L. & POL'Y 605 (2009) (utilizing the tenets of intersectionality and identity performance to discuss how proxies for power, such as the pantsuit, operate differently for white women and women of color in the legal academy); Symposium, *Race and Gender in the Law Review*, 100 NW. U. L. REV. 27 (2006) (following the evolution of the Northwestern University law review, its slow inclusion of race and gender issues, and its lack of inclusion of critical race theory and feminism scholarship); Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305 (2006) (urging a professional-education pedagogy that incorporates a critical-race-feminism framework); Robert S. Chang & Adrienne D. Davis, *The Adventure(s) of Blackness in Western Culture: An Epistolary Exchange on Old and New Identity Wars*, 39 U.C. DAVIS L. REV. 1189 (2006) (presenting an exchange through letter writing which develops a discourse on the trajectory of critical race feminism); Angela Onwuachi-Willig, *Symposium: The Future of Critical Race Feminism – Foreword: This Bridge Called*

examine the multiple race, gender, and status consciousnesses of women of color who are legal writing professionals.

Part I highlights the precarious position of women of color in the legal academy and in the legal writing profession. Part II examines the characteristics of LRW programs that deter women of color from seriously considering legal writing instruction as a profession. Part III explores how the low number of LRW faculty of color affects how all law students are taught legal writing and reasoning skills. Finally, Part IV proposes some solutions.

I. THE PRECARIOUS POSITION OF WOMEN OF COLOR IN LRW PROGRAMS

Early in my career, my professional mentors unanimously warned me not to take a job as a legal writing professor. "To take such a position," one said, "would mean career suicide." She added: "What law school would want you as a doctrinal faculty member after you have taught in a legal writing program?" Still another said, "Because you are a Black woman, any law school faculty will not think that you are as capable and intelligent as they are. Why make life more difficult for yourself by taking a short-term contract position with no chance of tenure that carries the perception of inferiority?" These warnings were not just the musings of overly paranoid individuals. Statistical studies have shown that women of color in tenure-track positions, generally considered the preferred position to occupy in legal academia, have suffered discrimination as a result of their race and gender intersections.¹⁰

Our Backs: An Introduction to "The Future of Critical Race Feminism", 39 U.C. DAVIS L. REV. 733 (2006) (summarizing the different approaches to critical race feminism that scholars take); Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329 (2006) (charting the history of critical race theory and its future); Symposium, *Subversive Legacies: Learning from History/Constructing Legal Moments*, 12 TEX. J. WOMEN & L. 197 (2003) (discussing the importance of viewing the law through the lenses of race, class and gender); Mary Jo Wiggins, *Foreword: The Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 677 (2001); Leila Hilal, *What is Critical Race Feminism?*, 4 BUFF. HUM. RTS. L. REV. 367 (1998) (describing the differences between critical race feminism and critical race theory).

10. Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 213 (1997) [hereinafter Merritt & Reskin, *Sex, Race, and Credentials*]. This study has been hailed as "the first comprehensive empirical study of the effects of sex and race on tenure-track hiring at accredited law schools." *Id.* at 199. In their study, the authors examined tenure-track law professors who began their

In general, minority women in tenure-track positions enter the academy at lower ranks than their male counterparts and are often given low-status teaching assignments, specifically in legal writing.¹¹ If women of color face this type of discrimination in tenure-track positions, positions that offer the opportunity of job security and academic freedom, then what possible long-term professional benefit could they derive from employment solely in LRW programs (tenure-track or non-tenure-track), which languish at the edges of the so-called legitimate academy?¹² As marginalization played out in my

first academic job at accredited law schools from the fall of 1986 to the spring of 1991. *Id.* at 207. The number of professors who met these criteria was 1094. *Id.* at 210. Reskin and Merritt excluded lateral hires, clinical faculty, and legal research and writing faculty from their study. *Id.* at 207-10. The data was measured using institutional prestige, initial tenure-track rank, and courses taught as dependant variables; race and sex as independent variables (male vs. female, white vs. minority, and the interaction of race and sex); and educational characteristics, work experience, and personal characteristics as control variables. *Id.* at 211, 220, 222. In the portion of the study entitled "Intersection of Sex and Race" the authors conclude that:

Our findings sharply illustrate the interaction of sex and race effects in the job market. Women of color often fared differently than either white women or men of color in our analyses The experiences of minority women are particularly telling in the debate over whether affirmative action is necessary simply to insure equal opportunity. Even with affirmative action programs nominally in place, women of color suffered sex bias on several outcomes—and never experienced an offsetting advantage. It is troubling to consider how poorly minority women might have fared had schools not endorsed any affirmative action goals. These distinctive, detrimental outcomes for women of color suggest that employers should implement affirmative action programs with stronger attention to the success of minority women. White women and men of color enjoyed an advantage in law school hiring that women of color did not share. The intersection of sex and race biases may have rendered minority women particularly unattractive to law school hiring committees; if so, schools should work harder to eliminate that bias.

Id. at 290-91 (citations omitted). See also 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, 2322 (1992) [hereinafter Merritt & Reskin, *The Double Minority*].

11. Merritt & Reskin, *The Double Minority*, *supra* note 10, at 2322. Although this study predates the publication of the 1997 study, the information for both studies was compiled simultaneously, and used the same basic research parameters with slight variations. *Id.* at 2302-06.

12. See 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, 533-38 (1995) (arguing that legal institutions have recognized the legitimacy of LRW and have created more tenure-track or "tenure eligible" positions). But see Mariana Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 2 (2000) [hereinafter Angel, *The Glass Ceiling*] (noting that LRW faculty remain at the bottom of the legal academy); ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2008 SURVEY REPORT 54-59 (2009), available at http://www.alwd.org/surveys/survey_results/2008_Survey_Results.pdf [hereinafter 2008 ALWD/LWI SURVEY] (demonstrating the continued pay and status inequities that exist for LRW professionals); Stanchi & Levine, *Dirty Little Secrets*, *supra* note 5, at 9, 16-20 (arguing that despite the strides LRW professionals have made, LRW faculty are paid less than doctrinal faculty and suffer from job instability created by employment caps and short-term

own experience, I felt as if I were the victim of a mugging. I had been “mugged” of my validity as a law professor by virtue of my race, gender, and status within the academy as a LRW faculty member. I was mugged not only by the perception of LRW faculty by doctrinal faculty but more definitively by the terms of employment and high-work demands inherent in the structure of my LRW program.

LRW programs are structured in a manner that creates employment instability and places burdensome demands on LRW faculty. Despite the existence of several models for LRW programs, the non-tenure-track, contract-based instructor is the most common model.¹³ Law schools employing LRW instructors under a contract model will usually issue contracts for short or long terms that are renewable at the discretion of the university.¹⁴ Due to the insecure nature of contract employment, these instructors are not afforded the same status or opportunity to participate in the academy as tenure-track faculty members. LRW faculty are often denied the vote at faculty meetings, the title of “professor,” and respect by students and tenure-track colleagues.¹⁵ During my time as a LRW fac-

contracts); Jan M. Levine & Kathryn M. Stanchi, *Women Writing and Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 560 (2001) [hereinafter Levine & Stanchi, *Breaking the Last Taboo*] (arguing that LRW faculty, who are primarily women, are at the bottom of the pay scale in the legal academy, which constitutes gender discrimination). At least women of color in tenure-track doctrinal positions begin with greater institutional prestige and earn larger salaries than those who enter the profession as legal writing faculty.

13. 2008 ALWD/LWI SURVEY, *supra* note 12, at i. The survey results show that of the 181 respondents to the survey (out of 197 solicited) most LRW programs (103) utilize full-time non-tenure track LRW professors or adjuncts. According to the survey, fifty-nine LRW programs employ LRW professors with one-year contracts, nineteen have LRW professors with two-year contracts, and fifty-six have LRW professors with contracts of three years or more. These positions are in addition to part-time and adjunct LRW positions. Only thirty-five LRW programs have LRW professors in tenured or tenure-track positions. *Id.* at 50. See also Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1087 (1999) [hereinafter Levine, *Leveling the Hill of Sisyphus*].

14. Levine, *Leveling the Hill of Sisyphus*, *supra* note 13, at 1087.

15. Arrigo, *Hierarchy Maintained*, *supra* note 5, at 150. Arrigo notes that:

In especially disheartening institutions, LRWs are increasingly subject to ongoing petty indignities. Anecdotes abound. For instance, LRWs may be denied even the “honorary” title of “professor” that is accorded other members of the faculty. Thus, while all of the other law teachers are addressed as “Professor So and So,” LRWs are addressed as “Mr./Ms. So and So,” or more commonly, by their first names. LRWs may be denied faculty office space, or are relegated to windowless cubicles in basements or libraries where they can remain separated physically from ongoing intellectually-sustaining interactions with the “real” faculty LRWs typically have no vote at faculty meetings. Voting or not, they frequently feel they are denied real voice because, having little to no power, their views are deemed unworthy of notice

ulty member at Private Midwest Law School, my title was “Assistant Professor of Legal Writing,” and my voting status was never clarified.¹⁶ My office was located in the career services suite of the law school, on the opposite side of the building from where the doctrinal law faculty was housed. It was clear that I was not “one of them.”

LRW courses, unlike most non-skills-based (doctrinal) courses, require extensive student-faculty interaction and the grading of multiple drafts of student writing assignments throughout the year.¹⁷ In 2008, the Association of Legal Writing Directors (ALWD) and Legal Writing Institute (LWI) conducted a survey that included a question on LRW teaching workloads. The 181 LRW programs that responded reported that during the Fall 2007 semester, their faculty taught an average of 41.65 students weekly, spent 3.75 hours in-class teaching per week, gave an average of 3.14 major assignments and 3.72 minor assignments, read an average of 1,483 pages of student work, and spent an average of 49 hours in student conferences, 35.16 hours preparing major research and writing assignments, and 69.17 hours preparing for class (excluding those hours spent on preparing research and writing assignments).¹⁸ The Spring 2008 semester was equally grueling, with 41.09 students taught weekly, 3.49 hours of in-class teaching per week, 2.59 major and 2.83 minor assignments given, 1,524 pages of student work read, plus 45.31 hours in student conferences, 35 hours preparing major research and writing assignments, and 65.39 hours preparing for class (excluding those hours spent on preparing research and writing assignments).¹⁹ The work has been described as “exhausting and demanding work, almost always inadequately rewarded, and

by the voting faculty. They may find themselves being ignored, interrupted, or attended to with benign tolerance bordering on indifference These institutional pressures against people who select (or find themselves in) the field of LRW can be debilitating.

Id.

16. The Dean at Private Midwest Law School never clarified for the LRW faculty our voting status. At faculty meetings, we would raise our hands tentatively if at all. We were never sure if our votes were counted or disregarded.

17. See Levine, *Leveling the Hill of Sisyphus*, *supra* note 13, at 1071-73.

18. 2008 ALWD/LWI SURVEY, *supra* note 12, at 62-63.

19. *Id.*

universally underappreciated by the members of the law school academy who are not themselves law students."²⁰

Obviously, these elements of LRW courses place large time demands on LRW faculty. While none of this information is new to those who have studied LRW programs, the problems created by this course structure are compounded for professors of color who already suffer crushing time demands mentoring and counseling students of color and who experience lack of respect from tenure-track and tenured faculty members and students. Given all of the directions in which they are pulled, the workload robs LRW professors of color of the quality of academic life enjoyed by their (overwhelmingly white) doctrinal colleagues.

In their seminal study on the work lives of minority law professors in the late 1980s, Derrick Bell and Richard Delgado found that these professors experienced greater time demands and job stress than their white colleagues.²¹ Of the professors who participated in the study, many commented that they felt time pressure from counseling and being otherwise available to students of color.²² Compounding these pressures was the perception of some white law faculty and students that professors of color lacked the right or qualifications to be members of the academy.²³ The Bell-Delgado study abounds with such examples. One black professor recounted how a white student catalogued that professor's "deficiencies" and then proceeded

20. Levine, *Leveling the Hill of Sisyphus*, *supra* note 13, at 1073.

21. See Derrick Bell & Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989) [hereinafter *The Bell-Delgado Survey*]. Bell and Delgado circulated a four-page questionnaire, which was answered by 106 minority law faculty. The law faculty's answers to the survey formed the basis of the article. *Id.* at 353-55. See also Peter C. Alexander, *Silent Screams From Within the Academy: Let My People Grow*, 59 OHIO ST. L.J. 1311, 1324 (1998) [hereinafter Alexander, *Silent Screams*] (speaking generally about the extra burdens minority faculty carry).

22. *The Bell-Delgado Survey*, *supra* note 21, at 355. See also Donna E. Young, *Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching*, 11 BERKELEY WOMEN'S L.J. 270, 282 (1996) [hereinafter Young, *Two Steps Removed*].

23. Alexander, *Silent Screams*, *supra* note 21, at 1312-13 ("I feel an obligation to tell the stories to challenge the notions that women professors and professors of color are token appointments, affirmative action appointments, or diversity appointments (all codes for 'not qualified')."); *The Bell-Delgado Survey*, *supra* note 21, at 361-62 (recounting that "[t]he chair of the appointments committee, in considering a black candidate, said he had never seen a 'qualified' black teaching or tenure candidate," and noting that faculty diversity may not be as universal a goal for law schools as it was prior to their study); Young, *Two Steps Removed*, *supra* note 22, at 274-75 (detailing perceptions about Black female law professors' competence as members of the academy).

to give suggestions on how the professor could improve.²⁴ The student's justification for his behavior was "that he had unfortunately been assigned to the black professor and so was bent on making the best of the situation."²⁵ Still another professor of color told of a contingent of students who came to his office and "advised him that since he was new they wished to acquaint him with their objectives in taking the course and the manner in which they would like for him to teach."²⁶ While these anecdotes are not exhaustive, they are nonetheless illustrative of the types of student-professor interactions that faculty of color experience even in elite institutions.

Such denigrated status is devastating for women of color who already struggle for recognition as full faculty members in the legal academy, *even* when they secure tenure-track positions. According to Professor Linda S. Greene:

[Women of color's] limited presence [in the legal academy] visually politicizes the past and present by reminding students, faculty, alumni, and others of the rationales for our historical and current exclusion. Our demand *to profess*, to authoritatively declare and critique society's norms, is at odds with our historical roles and status. . . . The ubiquitous white male law professor arouses no curiosity or attention based solely on his presence. Yet we are the object of curiosity and scrutiny whenever we are present, and the subject of rationalizing explanations when we are not. In this context, the occasional African American female law professor becomes less an individual and more a symbol or a sign with ambiguous meaning. As a result, it is impossible to have any meaningful discussion of our roles and role choices without a careful analysis of the context in which we teach.²⁷

24. *The Bell-Delgado Survey*, *supra* note 21, at 359.

25. *Id.*

26. *Id.* at 360.

27. Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, in *CRITICAL RACE FEMINISM*, *supra* note 8, at 88, 88-89 [hereinafter Greene, *Tokens, Role Models, and Pedagogical Politics*]. For more on this perspective see, e.g., Jennifer M. Russell, *On Being a Gorilla in Your Midst or the Life of One Blackwoman in the Legal Academy*, in *CRITICAL RACE FEMINISM*, *supra* note 8, at 110. Russell argues:

The presence of the blackwoman faculty member is a daily reminder that the law school as an institution has been adjudicated a practitioner of racial and gender dis-

The “context” in the wider legal academy is the disrespect that black women law professors experience from white students and colleagues, and the constant challenging of our intellectual capabilities or “right” to be a member of the academy.²⁸ As Greene states, “[African-American women law professors’] presence as . . . law professors is inextricably bound up in the race and gender power politics of legal intellectual authority.”²⁹ Twelve years later, Greene’s observations are not only still relevant, but shed light on the experiences of women of color in LRW programs. In such programs, a LRW professor’s validity as a professor is already “bound up” in the gendered politics of legal intellectual authority.³⁰ These politics render LRW faculty academic Pinocchios engaged in an elusive quest to become “real” members of the legal academy with the authority to profess. Although I had worked as a civil litigator in the same community where my law school was located and possessed extensive writing experience, students constantly challenged my ability to teach them legal writing. They ignored my interpretation of cases until white professors covered the same substantive law concepts in their doctrinal classes, and took issue with my comments on their papers. Until legitimized by their doctrinal professors, I was

crimination, an immoral act of rank order. Her presence symbolizes the institution’s contrition. Her presence also evokes an ugly history of subordination from which white males (and females), directly and indirectly, purposely and fortuitously benefited. Presented daily with such a burdensome history, many colleagues of the blackwoman faculty member are awash in guilt and shame.

Id. at 111.

28. See Cheryl I. Harris, *Law Professors of Color in the Academy: Of Poets and Kings*, in *CRITICAL RACE FEMINISM*, *supra* note 8, at 101, 104 (“[S]tudents have assumed and asserted that neither my intellectual qualifications nor my teaching abilities could match those of my white male counterparts.”).

29. Greene, *Tokens, Role Models, and Pedagogical Politics*, *supra* note 27, at 92.

30. See generally Angel, *The Glass Ceiling*, *supra* note 12 (highlighting the diminished status associated with LRW positions); Arrigo, *Hierarchy Maintained*, *supra* note 5 (indicating that most of the women employed in the legal academy occupy low-ranking LRW positions); Jo Anne Durako, *Second Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000) (arguing that law schools create a “pink ghetto” by channeling women into lower status legal writing positions, and that legal writing programs discriminate against the women directors of these programs through low status and pay); Levine, *Leveling the Hill of Sisyphus*, *supra* note 13 (stressing the importance of legal writing positions, which are predominantly occupied by women and often undervalued); Levine & Stanchi, *Breaking the Last Taboo*, *supra* note 12 (utilizing salary data to demonstrate the devaluation of legal writing professors, the majority of whom are women); Stanchi & Levine, *Dirty Little Secrets*, *supra* note 5 (arguing that law schools discriminate against women faculty members as illustrated by their treatment of legal writing professors).

viewed by my students as engaging in a type of identity theft: impersonating a law professor. They did not see me as a real member of the academy, but alternatively as a servant “writing coach” both necessary to complete their legal education and the main obstacle to it.

II. FOR COLORED GIRLS WHO HAVE CONSIDERED LRW AS A PROFESSION . . .

The organization and implementation of LRW programs by LRW Directors exchanges the theft of the minority female law professor’s intellectual authority with the burden of perceived incompetence. Many LRW Directors opt to closely supervise programs by choosing the book that all of the faculty members will use, developing the curriculum and master syllabus, developing the same or similar assignments with the same page requirements, and standardizing grading to ensure uniformity among the various LRW sections that are taught.³¹ LRW Directors justify this practice by citing the high turnover rate of legal writing instructors and the need for centralized governance to ensure uniformity.³² While maintaining stability and consistency in primarily adjunct-staffed programs or programs with short-term contract faculty is a sound managerial decision, structuring LRW programs staffed with primarily tenure-track or long-term contract faculty in this manner prevents faculty invested in the institution from maturing as teachers and scholars. Consequently, the latter type of LRW professors must sacrifice the intellectual autonomy assumed in the doctrinal legal classroom and fall in line with the LRW Director’s vision for the program.³³ This structure relegates LRW teachers to the position of staff, not fully vested members of an intellectual community who can create a curriculum that highlights their strengths and teaching styles.

31. 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, 573 (1995); Jan M. Levine, *Response: “You Can’t Please Everyone, So You’d Better Please Yourself”: Directing (Or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 611, 618-20 (1995) [hereinafter Levine, “You Can’t Please Everyone”].

32. Levine, “You Can’t Please Everyone,” *supra* note 31, at 618-20.

33. *Id.* at 630-31 (“Such centralized direction calls for the teachers within the program to ‘buy into’ the director’s vision of the program (in fact, they must accept the notion of a program at the most fundamental level), and to sacrifice their own freedom to determine their courses’ content.”).

The centralized approach also serves to further lower the position of women of color, who are commonly perceived by their white colleagues and students as being less qualified and less capable of fully contributing to the law school curriculum by virtue of their race and gender. According to a 2004 survey whose results were reported in the 2006 ALWD/LWI Survey, only fifty-two African Americans (8%), twenty-six Hispanics (4%), seventeen Asian Americans (3%), and one person of color with the designation of "other" (0.6%) were hired in the previous five academic years in 178 LRW programs responding.³⁴ In 2004, there were 531 whites (almost 85%) employed in LRW programs over the past five years.³⁵ In the 2008 ALWD/LWI Survey, the 167 schools responding to the question on the race and gender composition of their LRW faculty reported that of the new LRW faculty hires for the 2007-2008 academic year, only 8.4% were African American, 1.8% were Hispanic, and 1.8% were Asian.³⁶ The dearth of people of color in the LRW profession as teachers or directors reinforces the popular notion that women of color do not have the intellectual ability to develop their own courses but must be guided by their more intellectually capable (white) colleagues. My legal writing students almost always assumed that I did not have the academic credentials of the white faculty members, and that I was incapable of constructing my own curriculum for the LRW Program, because a uniform curriculum was administered by the white male LRW Director.

Furthermore, such employment trends also highlight a troubling, unspoken practice among law schools: using people of color in low-status, temporary contract positions as advertisements for law school-faculty diversity. In the law school where I was employed, two of the three minority faculty members (all African-American, the only minority group represented) were employed under presumptively renewable yearly contracts. Both contract faculty members were em-

34. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2006 SURVEY REPORT 49 (2007), available at http://alwd.org/surveys/survey_results/2006_Survey_Results.pdf. Please note, the survey data on this question for the 2006 Survey were excluded due to unreliability. *Id.* Questions dealing with the overall racial composition of LRW programs no longer appear on the ALWD/LWI Survey.

35. *Id.*

36. 2008 ALWD/LWI SURVEY, *supra* note 12, at 52. Seventeen people (10.2%) were designated as "unspecified" and one person (0.6%) was designated as "other."

ployed as skills professors: I was a LRW professor, my colleague was employed in the legal clinic.

III. THE ABSENCE OF WOMEN OF COLOR LRW FACULTY AND ITS EFFECT ON STUDENTS

The absence of people of color from LRW also imposes unique harms on law students. Legal writing, at its essence, is about teaching students to “think like lawyers.” This process necessarily involves teaching students how to approach a problem from various perspectives, but within the limited structure of distinguishing legal facts and issues from non-legal ones through a formal and logical reasoning process devoid of emotion and partiality.³⁷ As Wendy Leo Moore argues in her 2008 book, *Reproducing Racism: White Space, Elite Law Schools and Racial Inequality*, the process of teaching students how to “think like lawyers” within this structure, a structure already historically organized around the analytical processes of elite white male judges, leads directly to the replication of a racist and elitist legal structure.³⁸ This structure in turn forces its adherents, lawyers, to engage in legal reasoning and analysis producing laws that ultimately, intentionally or unintentionally, protect white power and privilege.³⁹

The structure and racial composition of LRW programs makes it more likely that LRW faculty will not problematize the process by which lawyers and jurists analyze and reason. Although there may be some white LRW faculty who integrate discussions of white power and privilege into the legal writing assignments they create and into their analyses of legal authority, the very existence of LRW faculty of color is the physical embodiment of a challenge to that power and privilege. If the traditional legal analytical process is normalized and passed off as objective, both in the content of the legal writing curriculum and in the body of the person teaching the curriculum, most students unwittingly will continue to replicate rac-

37. See generally Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 *LAW & SOC'Y REV.* 11 (1978) (discussing the socialization process of legal education and its impact on student career choices in public interest).

38. Wendy Leo Moore, *REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY* 38, 48–49 (2008).

39. *Id.*

ist and elitist legal structures as they learn the very process of legal reasoning and analysis in law school and as they undertake the practice of law.⁴⁰

LRW professionals should teach students how to approach legal problems from the perspectives of judges, opposing counsel and parties, and clients—often all of different racial and ethnic backgrounds. Scholars have noted that people of color experience the world differently than those who belong to racially and culturally dominant groups.⁴¹ These experiences influence how people of color view the law and its implementation, and have the transformational potential to problematize the teaching of legal reasoning and analysis and expose its subjectivity. Women of color experience the world simultaneously as women and people of color, as people celebrated (and sometimes denigrated) by their communities, and as people marginalized by the dominant group which values neither their race nor gender.⁴² If LRW programs continue to be structured in a manner that makes them the less desirable choice in the academy for people of color, students will lose access to these diverse perspectives—these different ways of knowing and experiencing the world. Without knowledge of these experiences, students will absorb the process by which legal institutions protect white privilege and power without consciousness of this process as such. Accordingly, they will face the danger of forming unexamined assumptions about people of color, rooted in the seemingly objective process of legal reasoning and analysis, which influence their construction and communication of legal arguments as lawyers and jurists.⁴³

40. *Id.* at 49 (arguing that the legal reasoning process in law schools is presented as “objective,” when in actuality it is rooted in the justification and protection of white power and privilege).

41. See Jon C. Dubin, *Faculty Diversity as a Clinical Legal Imperative*, 51 HASTINGS L.J. 445, 456 (2000) (arguing that people of different races and ethnicities experience the world differently, which affects their views on “legal doctrine and policy”).

42. See Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, in CRITICAL RACE FEMINISM, *supra* note 8, at 96, 97–98 (arguing that Black women’s life experiences influence their perspectives); Lani Guinier, *Of Gentlemen and Role Models*, in CRITICAL RACE FEMINISM, *supra* note 8, at 73, 75 (“Multiple consciousness provides intellectual camouflage and emotional support for the outsider who always feels the threeness of race, gender, and marginality.”).

43. Lorraine Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 4–7 (2003).

As Lorraine Bannai and Anne Enquist argue in *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, “[u]nexaminated assumptions are obviously an unreliable foundation for legal argument. Legal argument should be the result of a deliberative process, a careful construction made up of relevant authorities as they apply to a given set of facts.”⁴⁴ It is this deliberative process that LRW professors attempt to teach, and it is this process that determines whether a legal writer critically examines and challenges legal authority or blindly contributes to the assumptions that maintain legal authority and consequently the power of (white) majority groups, both male and female. One of the biggest challenges that LRW faculty face in the legal writing curriculum is teaching students how to synthesize relevant legal authority into a coherent whole for the purpose of understanding and applying legal precedent. Legal, intellectual, and moral battles are fought and won at the synthesis stage, where the writer determines those legal “truths” that will stand as precedent. How the writer molds and shapes those truths is directly related to how the writer views the law (as objective or subjective) and how the writer views those who create it and are affected (negatively or positively) by it.

If the LRW professional who teaches the process of synthesis is a beneficiary of legal precedent constructed by an “objective” view of legal authority, then that teacher will necessarily teach the law narrowly based upon commonly held unexamined assumptions about the law’s objectivity. Simply, a teacher who is a member of a majority group often lacks the perspective of those outside of their shared experiences as majority group members. Minority group members do not have this luxury because they must exist simultaneously within their communities and majority communities for survival.⁴⁵ Their occupancy of these multiple spaces gives them unique perspectives of the world. The power of perspectives, the varied and beautiful diversity of legal perspectives, is that they challenge closely held norms and create, and re-create, different legal truths. The absence of female LRW professionals of

44. *Id.* at 2.

45. See generally W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (Candace Ward ed., Dover Publ’ns, Inc. 1994) (1903).

color virtually ensures that successive generations of legal writers will maintain "objective" perspectives of the law and enshrine those legal truths that systematically work to the disadvantage of women of color and other underrepresented groups.

IV. PROPOSED SOLUTIONS AND THEIR INADEQUACY FOR WOMEN OF COLOR LRW FACULTY

The solutions to the challenges underscored in this article are the same as those advocated for by the LRW community at large.⁴⁶ These solutions include job stability, academic freedom, and the demarginalization of LRW programs. While gains have been made to demarginalize the LRW profession in the wider legal academy, much work remains to ensure the inclusion of women of color in the LRW community without continued severe personal and career costs. To this end, renewed energy and focus must be devoted to de-marginalizing the position of LRW programs (and thus de-stigmatizing them). As long as LRW programs occupy a lesser position in the legal academy, they will be doubly undesirable for women of color. The convergence of multiple oppressions makes it impossible for women of color to participate in the LRW community without unreasonable sacrifice.

In its accreditation function, the American Bar Association (ABA) is slowly acknowledging the burdens on LRW professionals, and has adopted standards for law schools that attempt to create job stability and academic freedom for LRW faculty positions. However, the revised ABA standards (Standards) may not be dynamic enough to address the problems of marginalization discussed in this article. At its June 2005 meeting, the Council of the Section on Legal Education and Admissions to the Bar approved changes to Section 4 of the ABA Standards for Approval of Law Schools and Interpretations.⁴⁷ Of particular importance to LRW professionals are sec-

46. See Stanchi & Levine, *Dirty Little Secrets*, *supra* note 5, at 20-23 (proposing that law schools value LRW by committing greater resources to it and offering LRW faculty at least the same amount of job stability and intellectual freedom as clinical legal faculty).

47. Am. Bar Ass'n (ABA), *Report No. 3 of the Section of Legal Education and Admissions to the Bar*, 130 ANN. REP. A.B.A. 2005 469, 486 (2008).

tions 405(c) and (d) and Interpretations 405-6 and 405-9.⁴⁸ These sections are as follows:

Standard 405. Professional Environment

* * *

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

* * *

Interpretation 405-6: A form of security of position reasonably similar to tenure track includes a separate tenure track or a program of renewable long-term contracts. Under a separate tenure track, a full-time clinical faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical program.

Standard 405. Professional Environment

* * *

(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to pro-

48. ABA, *Standards for Approval of Law Schools and Interpretations*, Standard 405. Professional Environment, available at <http://www.abanet.org/legaled/standards/standards.html> (click "Chapter 4: Faculty") [hereinafter *ABA Standards*].

vide legal writing instruction as required by 302(a)(2), and (2) safeguard academic freedom.

* * *

Interpretation 405-9: Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.⁴⁹

According to the 2008 ALWD/LWI Survey, LRW faculty in just forty LRW programs had achieved 405(c) status, and faculty members in thirteen LRW programs were on a 405(c) track.⁵⁰ Together, both of these groups constitute only fifty-three LRW programs out of the 181 survey respondents (29%).⁵¹ Although 405(c) and Interpretation 405-6 grant clinical faculty members security more closely approximating tenure, 405(d) only requires that law schools grant LRW faculty job security to the extent needed to recruit and retain persons qualified to teach legal writing and safeguard academic freedom.⁵² Interpretation 405-9 goes even further in allowing law schools the continued usage of short-term contracts for LRW faculty.⁵³ Arguably, 405(d) and Interpretation 405-9 could be read together to mean that the ABA considers academic freedom protected under short-term contracts for non-405(c) LRW faculty and deems short-term contracts not necessarily a deterrent to attracting and retaining qualified LRW faculty without 405(c) status. Such an interpretation would further stigmatize and marginalize the majority of LRW professionals who are non-405(c) or 405(c) track. It would also stall the ABA's examination of LRW programs within a single-axis framework where race is neutral (or White), gender and academic status take center stage, and women of color are invisible.

49. *Id.*

50. 2008 ALWD/LWI SURVEY, *supra* note 12, at 50. According to the definitions section of the Survey, full-time LRW and clinical faculty who have at least a three-year renewable contract and the right to vote on most issues before the law faculty hold 405(c) status. *Id.* at 1. A LRW faculty member is on a 405(c) track if after a probationary period he or she will be promoted to 405(c) status on an identifiable date. *Id.*

51. *Id.* at 50.

52. ABA Standards, *supra* note 48.

53. *Id.*

As LRW programs begin to offer greater job stability and opportunities on par with those available to doctrinal faculty, women of color will be penalized less than they are presently for choosing LRW as a profession. An interpretation of the Standards that would support this goal would be a reading of 405(c) in tandem with 405(d).⁵⁴ An exploration of the relationship between the two sections would raise important questions about the protections of academic freedom for holders of short-term-employment contracts, especially in light of LRW professors' lack of autonomy in curricular decisions, and challenge the adequacy of recruitment and retention efforts for qualified LRW faculty of color.

Discussions about protecting academic freedom for all LRW faculty must include a focused analysis of how authority in the classroom and the ability to make curricular choices is crucial to the legitimacy of LRW professionals of color. This discussion is necessarily linked to proposals calling for the eradication of short-term contracts and adjunct positions for LRW faculty and replacing them with long-term contracts or tenure-track positions. The more stability a LRW program has, the less justification is available for LRW Directors refusing to grant LRW teaching faculty autonomy in curricular decisions. Giving LRW faculty greater autonomy over their curriculum and classroom would allow women of color to use their unique perspectives and experiences to shape the writing curriculum and minimize negative perceptions about their quality as faculty and scholars. The alternative is for women of color LRW professors to continue their walk in the contested space between criminality and legitimacy, to be branded as others in a segment of the profession that is already "othered."

My experience is illustrative. Unwilling to be further "othered" and disregarded, I temporarily declined to remain a LRW professional in the legal academy.⁵⁵ Leaving was my only strategy to steal back my legitimacy as a scholar and my

54. *Id.*

55. During my absence from the legal academy, I taught in an interdisciplinary undergraduate program designed to help people from underrepresented groups achieve admission to law school. In that program, we incorporated legal research and writing into the curriculum. While working with undergraduates, problematizing the structure of the legal academy and teaching them to operate within it was rewarding, I genuinely missed engaging with 1Ls. I especially missed working with 1Ls who were struggling with law school and legal writing. Believing that I could make a difference in the lives of these students and a contribution to the legal academy, I made the conscious decision to return to law teaching.

authority to profess. In this sense, I became one of the perps by gaining entrance into the legal academy by trickery and deceit only to commit theft. I was posing as a person willing to endure the insecurity of a contract position, when ultimately I sought a position that was stable and that valued my choices, freedom, and legitimacy as an academic. I “stole” the year I remained in the position, and used it to hone my teaching skills and scholarship interests so that I could return more experienced to the academic job market.

However, the trickery and deceit I used was not conscious or of my own making but rooted in racial and gendered perceptions of my ability and on assumptions that I would be content on the margin and not aspire to a place in the center. Perched cautiously on my own precipice overlooking the legitimate legal academy, I leapt into the unknown, abandoning, for a time, the struggle to define the parameters of power in law teaching. As a tenure-track Assistant Professor of Law and Hegemony Studies, I taught in an interdisciplinary undergraduate program designed to help people from underrepresented groups achieve admission to law school. I designed and taught classes in that program and in the regular curriculum that firmly rooted the law and law school curriculum in a framework that actively acknowledged and problematized white supremacy and its role in shaping the law. By leaving the LRW profession, I ended (at least temporarily) the conflicts surrounding my authority as a law teacher and used my intellectual property to sow seeds that have produced a fruitful yield. Many of my students have gone on to law school and have learned not only to question the law, but also to question the process by which they are taught the law.

Strengthened by my students and an environment that nurtured me as a teacher and a scholar, I returned to the LRW profession. I returned to the struggle. I did not return because the environment for LRW professors had drastically changed, but because I learned that how the legal academy treats its LRW professionals is no measure of the importance of LRW in the law school curriculum. Despite the institutional inequality that plagues the LRW profession, LRW professionals work tirelessly and with dignity toward one main goal: making law students competent and ethical attorneys. I am honored to be part of such a community, and hope that it will work with me to create good ground for all who desire to plant their seeds of

education, intelligence, time, and talent there. This article is for those women of color LRW professionals who continue to fight alongside me and make the sacrifice to stay. Perhaps in time, we and our students will demand a place at the Master's table, the legal academy, as our birthright. Until then, we will challenge common perceptions with our presence . . . with otherness.