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Lorraine K. Bannai

Seattle University School of Law

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Challenged X 3:

The Stories of Women of Color Who Teach Legal Writing

Lorraine K. Bannai[†]

INTRODUCTION

Much of what has been written concerning the experience of women of color in the legal academy has focused on tenured or tenure-track women of color who teach doctrinal courses. I speak from a somewhat different place—as a woman of color who teaches Legal Writing and who, like most faculty who teach Legal Writing, is untenured.¹ Of course, I nod my head with recognition as I read the stories shared by tenured or tenure-track women of color who teach doctrinal courses, including challenges they face from students and colleagues.²

[†] Lorraine K. Bannai is Director of the Fred T. Korematsu Center for Law and Equality and Professor of Legal Skills at Seattle University School of Law. This article is based on a presentation made at the symposium sharing perspectives on the book *Presumed Incompetent: The Intersections of Race and Class for Women in Academia*, sponsored by the *Berkeley Journal of Gender, Law & Justice* on March 8, 2013, at the University of California, Berkeley, School of Law. I wish to thank the *Berkeley Journal of Gender, Law & Justice* for organizing that symposium, Carmen González for encouraging my involvement in the symposium, and Blake Kumabe and Damon Pang for their valuable research assistance. I am also indebted to my colleague and friend Anne Enquist for her work regarding the status of Legal Writing faculty, and to her and Kathryn Bannai for their support and assistance in the writing of this essay.

1. Few authors address the unique experience of women of color who teach Legal Writing. I am grateful to Teri McMurtry-Chubb for her ground-breaking article discussing the experiences of women of color who teach Legal Writing. See Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009). This essay is intended to build on her work in that article. Other authors have also noted the unique challenges faced by women of color who teach Legal Writing. See, e.g., Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75, 92-94 (1997); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 258-60 (1997) (noting that both white and minority women are more likely than men to teach skills courses).
2. See, e.g., Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-So-Post-Racial World*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 224 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012) [hereinafter PRESUMED INCOMPETENT]; Angela Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT, *supra*, at 142; Ruth Gordon, *On Community in the Midst of Hierarchy (and*

At the same time, I also know (1) that untenured women of color who teach Legal Writing face additional challenges because of their lower status in the academic hierarchy; (2) that those additional challenges are often invisible to, or ignored by, others, even those who might be allies on issues of race and gender; and (3) that their lack of status can demean and silence them, as well as prevent their institutions from benefiting from all they can contribute as scholars, teachers, and colleagues.

In this essay, I share some of the voices of women of color who teach Legal Writing to illuminate the ways in which their status as skills faculty combines with their status as women of color to affect their experience within the legal academy. In doing so, I hope to remind us that, as we seek to challenge systems that devalue women of color in the academy based on their gender and race, we should also challenge systems of status that impact and marginalize this often overlooked group in the academy.³

Part I situates this essay in my own experience and explains my purpose in writing it. Part II addresses ways in which women of color who teach Legal Writing can experience multiple marginalizations, based on their status as skills faculty as well as their race and gender, and shares some of their voices to illustrate those experiences of marginalization. In Part III, I explore some ways to address the barriers that undermine women of color who teach Legal Writing and to be more inclusive of them as respected colleagues in the academy.

I. MY PATH AND THE PURPOSE BEHIND THIS ESSAY

I approach the task of sharing the experiences of women of color who teach Legal Writing with some trepidation because they and their experiences are, of course, diverse and not easily subject to generalization. Further, I know that I view issues of marginalization through my own unique lens. My perspectives and the way I understand others are informed and shaped, perhaps even limited, by my own background, including my own ethnicity and experiences in the academy. Thus, I feel it important to explain where I come from in writing this piece.

Hierarchy in the Midst of Community), in PRESUMED INCOMPETENT, *supra*, at 313; Adrienne Katherine Wing, *Lessons from a Portrait: Keep Calm and Carry On*, in PRESUMED INCOMPETENT, *supra*, at 356; Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of "Doing" Gender and Race in the Classroom*, in PRESUMED INCOMPETENT, *supra*, at 164; Elvia R. Arriola, "No hay mal que por bien no venga": A Journey to Healing as a Latina, Lesbian Law Professor, in PRESUMED INCOMPETENT, *supra*, at 372; Katherine L. Vaughns, *Women of Color in Law Teaching: Shared Identities, Different Experiences*, 53 J. LEGAL EDUC. 496 (2003); Merritt & Reskin, *supra* note 1; Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 U.S.F. L. REV. 747 (1997); Deborah J. Merritt & Barbara F. Reskin, *Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992).

3. "[W]hile we often discuss gender and race, we do not much discuss class and hierarchy within our ranks." Gordon, *supra* note 2, at 315.

I am a third-generation Japanese American woman raised in Southern California; English is my first language. I started working in the legal academy as a director of academic support in 1979. At that time, there were very few faculty of color, let alone women of color, in the legal academy. During most of the 30-plus years since then, I have taught legal skills courses, including Legal Writing, all the while employed on contracts subject to periodic review and renewal. I was not eligible to apply for tenure until three years ago, when, in 2011, my law school became one of the few schools nationally to allow Legal Writing faculty to apply for tenure. I applaud this path-breaking movement toward equal status; however, I have opted to not apply for tenure at this stage in my career.

I have been fortunate to work in environments that have supported both my professional and personal growth. However, while I truly value the opportunities I have been given, I recognize ways in which my different statuses—as a woman, as a person of color, as a teacher of Legal Writing, and as a woman of color teaching Legal Writing—have, at times, negatively affected both how I have been perceived and my ability to flourish.

As a preliminary matter, I also wish to be explicit about the scope and intended purpose of this essay. I began exploring this topic when, while preparing for the March 8, 2013, Berkeley symposium on the excellent book *Presumed Incompetent*, I posted on the national Legal Writing listserv a request for reflections on the experiences of women of color teaching Legal Writing. A number of women immediately contacted me to share their insights and stories. I was struck by their openness, frankness, and willingness to share. I was also struck by a concern that some of these women saw no forum in which they could share the thoughts they expressed to me—not within their schools, the larger community of faculty of color, or even the larger Legal Writing community. That concern, in particular, motivated me to write this piece.

In this essay, I have used quotes from women of color who teach Legal Writing, some from those who wrote me directly and others from previously published sources, to illustrate the real and personal nature of the concerns expressed here. I have not sought to conduct any scientific survey or sampling, and the points I make and the quotes I use are not intended to be broadly representative of the experiences of women of color who teach Legal Writing. I seek simply to identify some of the issues these women may face and to provide a forum for some of their voices. I have also sought to preserve the anonymity of the women who shared their stories.⁴ I am deeply grateful for their candor and confidence.

4. I have identified the women quoted only when their comments have previously been published in other sources with the speakers identified by name.

II. THE MULTIPLE MARGINALIZATIONS OF WOMEN OF COLOR WHO TEACH LEGAL WRITING

At the same time that their experiences are shaped by their gender and race, women of color who teach Legal Writing within the legal academy also subject to an academic hierarchy that diminishes them because of what they teach. As faculty who teach Legal Writing, they often work with limited or no job security; they are paid much less than others on the faculty; they are excluded in many ways from full citizenship within their institutions; and they are relatively powerless to protect, much less advance, themselves.⁵ They are subject to a “triple threat”: for many of these women, their race, gender, and lower faculty status converge in ways that negatively affect perceptions of their teaching and scholarship, their interactions with other faculty, and, consequently, their perceived value to their institutions. This section seeks to shed light on these multiple dimensions of the experience of women of color who teach Legal Writing.

A. Demographics: Legal Writing as “Women’s Work”

Prior to examining the lived experiences of women of color who teach Legal Writing, it is helpful to understand the environment in which they work. Women of color who teach Legal Writing work in a field predominantly made up of women. As of 2013, 73% of full-time faculty who teach Legal Writing are women.⁶ In contrast, in 2009, only 37.3% of all law faculty were women.⁷ Women are, therefore, significantly overrepresented among Legal Writing faculty—the group of faculty with the lowest status, pay, and job security in the legal academy.⁸ Given the large concentration of women in the ranks of Legal

5. See *infra* at II.B.2.

6. ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., ALWD/LWI 2013 SURVEY REPORT v. 68 (2013), available at <http://www.lwionline.org/uploads/FileUpload/2013SurveyReportfinal.pdf> [hereinafter ALWD SURVEY]. One hundred ninety North American schools responded to the survey. *Id.* at i.

7. ASS’N OF AM. LAW SCHS., 2008-2009 AALS STATISTICAL REPORT ON LAW FACULTY (2009), available at <http://www.aals.org/statistics/2009dlr/gender.html> [hereinafter AALS STATISTICAL REPORT].

8. Many scholars have written about the gendered nature of Legal Writing, including the systems and assumptions that funnel women into Legal Writing and maintain their lower academic status. See, e.g., Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004); Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293 (2004); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 3 (2001) [hereinafter Stanchi & Levine, *Dirty Little Secrets*]; Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551 (2001); Nancy Levit, *Keeping Feminism in its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775 (2001); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J.

Writing faculty, it is not surprising that Deborah Merritt and Barbara Reskin found that “women of color were significantly more likely than white or minority men with similar credentials to teach skills courses, an unfortunate result given the disfavored status of these subjects.”⁹

Further, Legal Writing faculty are overwhelmingly white. In 2013, 89% of Legal Writing faculty were identified as Caucasian.¹⁰ Only 4.9% (fifty faculty members) were identified as African American; 1.9% (nineteen) Hispanic; 2.5% (twenty-five) Asian American; .5% (five) Native American; .5% (five) Multi-racial; and .7% (seven) “other.”¹¹

These figures indicate the multiple facets of the experience of women of color who teach Legal Writing. They are part of a larger class of women whose work environment is highly gendered and, as discussed further below, they are also part of a larger class of faculty marginalized by the low status accorded the course they teach. Indeed, gender and status loom large in the lived realities of their work. At the same time, women of color who teach Legal Writing are such a small minority in the legal academy that the ways they experience multiple axes of marginalization may not be noticed or heard. In particular, the ways in which race affects their experiences may become invisible in the dialogue about status and gender issues concerning Legal Writing faculty. Further, conflating treatment based on gender and status with treatment based on race fails to recognize the profound ways in which marginalization based on race is different from that based on gender and status.¹²

B. The Voices of Women of Color Who Teach Legal Writing

Women of color who teach Legal Writing can be marginalized as women, as women of color, and as faculty members teaching a course almost universally less valued in the academy. Their “presumed incompetence,” to use the title of the book that inspired this essay, can arise in all three realms. What follows are some of the ways in which women of color who teach Legal Writing describe

LEGAL EDUC. 562 (2000); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997); Edwards, *supra* note 1.

9. Merritt & Reskin, *supra* note 1, at 263; *see also* Gordon, *supra* note 2, at 324-25 (noting that faculty who teach Legal Writing fall within the lower ranks of the law school hierarchy, “a broader community where race and especially gender loom large”).
10. ALWD SURVEY, *supra* note 6, at vi, 68. In contrast, in 2009, white faculty accounted for 71.4% of all law faculty. AALS STATISTICAL REPORT, *supra* note 7.
11. ALWD SURVEY, *supra* note 6, at vi, 68. The survey warns that the race data is incomplete. However, it is clear that “the profession has been and continues to be overwhelmingly Caucasian.” *Id.* at 68.
12. *See* Armstrong & Wildman, *supra* note 2, at 225 (“Although women of color and white women both face a presumption of incompetence, it operates differently across racial lines and other identity categories The existence of presumed incompetence that affects both women of color and white women should provide a basis for deeper understanding, sisterhood, and alliance But women can only forge that bond by acknowledging—rather than ignoring—the differences in the presumption’s operation.”).

their experiences.

1. Stereotyped on the Basis of Race and Gender

Like other women of color in the legal academy,¹³ women of color who teach Legal Writing speak of being stereotyped and more vulnerable to challenges of authority because they are women, of color, or both. For many of these women, colleagues and students draw conclusions about them and their abilities based on their gender and race, rather than any real appreciation of their knowledge and experience.

For example, an Asian American professor who teaches Legal Writing shared how one student constructed her as foreign, despite the fact that she was born and raised in California:

On the first day of class last semester, a White male student . . . approached me after class. He said, “Professor, I don’t mean to be rude, but I just can’t understand you.” He had been sitting in the back of class, so I thought he meant that he could not hear me. I suggested he sit in front of the room for our next class. He explained, “No, Professor, that won’t help. I can’t understand what you’re saying,” [suggesting, I believe, that he could not understand my accent.] I was born and raised in the United States; I grew up in Southern California. I have no discernible “foreign” accent.¹⁴

An African American professor who teaches Legal Writing explained the clash between the stereotype of the “angry black woman” and the “nurturing Legal Writing teacher”:

There’s a bias against strong black women. There’s a stereotype of the angry black woman, and media have perpetuated that stereotype. “She’s strong and better not cross her, difficult to get along with,” a “my way or the highway” mentality, irrational . . . and impossible to control. That stereotype, which is untrue, can fly in the face of the expectation of the nurturing Legal Writing teacher.¹⁵

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13. See, e.g., Vaughns, *supra* note 2, at 499-500 (quoting Emma Coleman Jordan, *Images of Black Women in the Legal Academy: An Introduction*, 6 BERKELEY WOMEN’S L.J. 1, 10 (1991) (“There is evidence that women of color bear a double burden and are particularly harmed by the ‘unflattering images that undermine our effectiveness as teachers and scholars.’”)).
 14. For a similar story, see Linda Trinh Võ, *Navigating the Academic Terrain: The Racial and Gender Politics of Elusive Belonging*, in PRESUMED INCOMPETENT, *supra* note 2, at 93, 102.
 15. See Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 129 (2009) (observing that Legal Writing faculty are expected to play a motherly role, acting as “mini-psychologists and emotional soothers for their troubled students”); see also Angela P. Harris & Carmen G. González, *Introduction* to PRESUMED INCOMPETENT, *supra* note 2, at 1, 3 (stating that students may want their “black women professors to be more ‘motherly’”).

As Angela Harris and Carmen González explain, when an academic woman of color thwarts stereotypes by being a “serious intellectual rather than a mascot, cheerleader, or seductress,” she may find herself the victim of microaggressions—“subtle or blatant attempts at punishing the unexpected behavior.”¹⁶

In addition to experiencing specific gendered or racialized stereotypes of the kind described above, women of color who teach Legal Writing may be subject to the same generalized presumption of incompetence experience by other women of color in the academy. As Sylvia R. Lazos explains, “[r]esearch shows that both minorities and women are presumed to be incompetent as soon as they walk in the door.”¹⁷ Those presumptions of incompetence are compounded for faculty who are women and of color.¹⁸

Consequently, an understanding of the experiences of women of color who teach Legal Writing needs to be grounded in an understanding that their race and gender, separately and in combination, subject them to biases and stereotypes that can be undermining. These challenges, when combined with the lower status accorded faculty who teach Legal Writing, create unique hurdles for these members of the legal academy.

2. The Lower Institutional Status Accorded Faculty Who Teach Legal Writing

In addition to the challenges they face because of their gender and race, women of color who teach Legal Writing face added difficulties based on their marginalized job status within the academy. Many scholars have written about the status of faculty who teach Legal Writing.¹⁹ In this section, I seek to summarize the highlights of that body of work in order to provide a better understanding of the unique experiences of women of color who teach Legal Writing.

The overwhelming majority of faculty who teach Legal Writing have little

16. Angela P. Harris & Carmen G. González, *supra* note 15, at 3 (citing Elizabeth Pleck, *The Unfulfilled Promise: Women and Academe*, 5 SOC. F. 517 (1990)); Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

17. Lazos, *supra* note 2, at 177.

18. See Angela Harris & Carmen González, *supra* note 15, at 2 (stating that women of color in full-time faculty positions “find themselves in a peculiar situation[,] . . . entrenched in byzantine patterns of race, gender, and class hierarchy that confound popular narratives about meritocracy”).

19. See, e.g., Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. REV. 253 (2004) [hereinafter Durako, *Dismantling Hierarchies*]; Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who is Doing the teaching (Three Years Later)*, 9 SCRIBES J. LEGAL WRITING 113 (2003-2004); Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, J. ASS’N LEGAL WRITING DIRECTORS 12 (2002); Jo Anne Durako, *A Snapshot of Legal Writing Programs at the Millennium*, 6 LEGAL WRITING: J. LEGAL WRITING INST. 95 (2000); Edwards, *supra* note 1.

or no job security. At most schools, faculty who teach Legal Writing serve on term-defined, although generally renewable, contracts.²⁰ This arrangement subjects them to perpetual review, no matter how long they have worked at their institutions. Consequently, as explained by one woman of color in her first year of teaching after fifteen years of law practice, faculty who teach Legal Writing remain constantly concerned about the future:

My experience in academia thus far has been very welcoming. [I teach a combination of legal writing and doctrinal courses] . . . I am extremely grateful to the University . . . for giving me the opportunity to teach. . . . Without tenure or even the possibility of tenure, however, I remain deeply concerned about my future career.

In addition, faculty who teach Legal Writing are commonly paid much less than tenure-track or tenured doctrinal faculty.²¹ As of 2013, the median of reported median salaries of Legal Writing faculty is \$75,000.²² According to the 2012-2013 Society of American Law Teachers Salary Survey, the median of reported median salaries for non-Legal Writing law faculty is \$101,178 for Assistant Professors; \$109,211 for Pre-tenure Associate Professors; and

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20. In 2013, 141 law schools reported Legal Writing faculty serving on term-defined, although generally renewable, contracts: fifty-eight programs reported having one-year contracts; twenty programs reported having two-year contracts; and sixty-three programs reported having contracts of three years or more. ALWD SURVEY, *supra* note 6, at x, 63 (figures do not include the status of faculty who serve as Legal Writing program directors). Only forty-two programs reported that Legal Writing was taught by tenured or tenure-track faculty. *Id.* Fifty-nine programs reported faculty with ABA Standard 405(c) status, which is a status accorded clinical faculty that must be “reasonably similar to tenure.” *Id.*; *see also* AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 405(C) 32 (2012), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf [hereinafter ABA STANDARDS]. Eighteen programs reported faculty on the ABA Standard 405(c) track. ALWD SURVEY, *supra* note 6, at x, 63. This status, accorded to faculty who teach Legal Writing, requires only the level of job security necessary to “attract and retain . . . well qualified” faculty and to “safeguard academic freedom.” ABA STANDARDS, *supra*. The ABA is currently considering changes to these standards. Charles Huckabee, *ABA Panel Favors Dropping Tenure as a Law-School Accreditation Standard*, CHRON. HIGHER EDUC. (Aug. 12, 2013), <http://chronicle.com/blogs/ticker/aba-panel-favors-dropping-tenure-as-law-school-accreditation-standard/64529> (noting that proposal to provide greater job protections to Legal Writing faculty “found little support”). It is difficult to get a clear picture of the employment status of faculty who teach Legal Writing because employment models for Legal Writing faculty vary. For example, some law schools have hybrid programs in which Legal Writing is taught by both tenure/tenure-track and contract faculty, and some have tenured/tenure-track faculty who teach doctrinal, as well as Legal Writing, courses. In the ALWD survey, when asked the employment status of their Legal Writing faculty, law schools were able to mark multiple categories.
21. For a discussion of salary issues that face faculty who teach Legal Writing, *see, e.g.*, Stanchi & Levine, *Dirty Little Secrets*, *supra* note 8, at 9-13.
22. ALWD SURVEY, *supra* note 6, at 71. The salary figure does not include salaries for Legal Writing program directors.

\$142,191 for tenured professors (Associate and Full).²³

One woman of color, who was hired to teach Legal Writing in a tenure-track position, described how disturbed she was to learn that she was paid less than a man hired to teach doctrinal classes:

In reflecting on some of these questions, the very first thing that comes to mind is pay disparity. After I was hired, I learned (by accident) that I was being paid 20K less than the male casebook faculty colleague who I came in with. . . . I grew to resent this knowledge over time, as I saw how much work I was doing and how much value I brought to the institution. I have no doubt in my mind that the combined reasons for the pay differential was that I am a woman and that I was hired, in part, to teach legal writing. . . . [I]t took a few years for me to build the courage to ask for the raise. I know that this sounds like an incredibly selfish and material issue to focus on, especially as we are so lucky to do the work that we get to do, but it did bother me for a long, long time. Actually, I suppose it still does as I am writing to you about it!

In addition to lack of job security and lower pay, the lower status of Legal Writing faculty is expressed and experienced in other ways as well. For example, at most schools, faculty who teach Legal Writing do not have the same voting rights as other faculty. Of the 153 schools that report that Legal Writing faculty can attend faculty meetings, thirty-two do not allow Legal Writing faculty to vote; seventy-seven allow them to vote on all matters except hiring, promotion, and tenure; and only forty-four allow them to vote on all matters.²⁴

The lack of job security, lower pay, and other differential treatment experienced by faculty who teach Legal Writing send them the message that they, and what they do, are not valued or respected by their institutions. Indeed, many women of color who teach Legal Writing speak of being acutely aware of a lack of respect for what they teach in the classroom.

3. Lack of Respect from Faculty Colleagues

The general concern that female faculty of color are viewed as less competent²⁵ is compounded for women of color who teach Legal Writing. Several women of color who teach Legal Writing commented that they do not feel respected by doctrinal faculty, particularly because they teach skills, not

23. See 2012-13 SALT Salary Survey, SALT EQUALIZER (Soc'y of Am. Law Teachers, St. Paul, Minn.), May 2013, at 1-3, available at <http://www.saltlaw.org/userfiles/SALT%20salary%20survey%202013.pdf>. Sixty-eight (34%) of 200 schools surveyed responded (non-tenure-track legal writing faculty not included). *Id.* at 1-2.

24. ALWD SURVEY, *supra* note 6, at 83. These figures do not include the voting rights of Legal Writing program directors.

25. See, e.g., Harris & González, *supra* note 15, at 1-3.

doctrine.²⁶ For example, one woman stated:

Although I've always been on tenure-track, the vast majority of doctrinal professors don't view me as an equal. They're inheriting the traditional biases that exist in the legal academy that theory/doctrine are superior to skills and in most institutions, not taught by tenure-track faculty, so they're less demanding and less rigorous.

Another woman felt the need to continually establish her legitimacy.

I went to a top 10 law school and clerked for a [Circuit Court] judge. I have—either inadvertently or purposefully—relied upon my pedigree to be taken seriously which is unfortunate. It does seem that those of us of color (and especially in legal writing) feel the need to remind our colleagues that we are just as legitimate as anyone else.²⁷

Yet another woman was discouraged by the lack of support from even the more liberal members of her faculty:

I am most often reminded about differences in status when I interact with tenured doctrinal faculty. With the exception of a few faculty members who “get it,” I am weary of the hypocrisy of doctrinal faculty. Even those who embrace the importance of skills education have rarely taken a stand on our behalf—and the faculty as a whole has not insisted on equal status for skills faculty. The doctrinal faculty at my school consists of many liberal-minded folks, yet they tolerate and participate in maintaining inequity. They vigorously protect the status quo.

Women of color who teach Legal Writing can thus labor not only under the presumption of incompetence imposed on them as women of color, but also subject to a lower status based on the unfounded belief that the courses they teach are not as rigorous or legitimate as doctrinal courses. They can find themselves with little support, especially from doctrinal faculty who may be heavily invested in the very institutional hierarchy that marginalizes faculty who

26. See, e.g., J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 47 (1994) (explaining that one traditional view of Legal Writing is that it is “not intellectual” and that “[l]urking within this view is also the fear that the ‘trade-school’ mentality will prevail and that students will learn more about the practical side of their careers and not enough about the theoretical . . .”); see also Edwards, *supra* note 1, at 84; Mary Beth Beazley, “Riddikulus!” *Tenure-Track Legal Writing Faculty and the Boggart in the Wardrobe*, 7 SCRIBES J. LEGAL WRITING 79, 80-81 (2000); Arrigo, *supra* note 8, at 148, 150.

27. Legal Writing faculty across the country come to their positions with sterling credentials, as well as equal demonstrations of scholarly potential. See Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383, 404-05 (2008) (explaining that professors of color “carry the same core credentials held by law professors generally”).

teach skills courses.

4. Lack of Community

The demeaned status of Legal Writing faculty can cause some women of color who teach Legal Writing to feel isolated within their institutions. In addition, their unique experiences as women of color may make them feel separated from other faculty who teach Legal Writing at their schools.²⁸ One woman of color who teaches Legal Writing expressed that she lacks an academic “home,” explaining that she does not feel supported by her faculty colleagues, her Legal Writing program, or the broader communities of Legal Writing faculty, faculty of color, or women of color in the legal academy. As someone who teaches Legal Writing, but who writes outside of the area, she feels personally isolated and lacking in natural opportunities for mentorship. She is left to find and forge her own way in a hostile environment:

Colleagues more than students question my competence. I’m not like my Legal Writing colleagues because I write outside of Legal Writing pedagogy. Legal Writing is not my community . . . I sometimes feel invisible and have no academic home. Not within the community of women of color in [the] academy. Not within the legal writing community. I get asked, “When are you going to be applying for [a] doctrinal position?” . . . The whole system seems designed to make me feel that I’m not as good as; I don’t belong there. But I refuse to wear that and don’t let it define my day to day existence.

Another woman, however, has received valuable support and advice from others within the Legal Writing community and other women of color in the academy:

With regard to coping strategies, networking helps. I have benefitted from building relationships within the LRW community. Conversations with skills faculty at other schools about the challenges that they have faced have given me ideas about how to handle adverse situations at my own school. Also, it is comforting and self-affirming to talk to colleagues who understand the slights and petty indignities that we as skills faculty endure. I have also found it helpful to network with other women faculty of color—skills and doctrinal—because they understand how it feels to be treated differently, how it feels to not be given the benefit of the doubt, how it feels to work someplace where your baseline competence is not presumed.

28. In discussing the experience of women of color in the legal academy, Professor Taunya Banks wrote, “We are misfits, not fully accepted by the Black or White community, and as women, we still are not full members of the feminist community.” Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY WOMEN’S L.J. 46, 48 (1990); see also Grillo, *supra* note 2, at 750 (“Microaggressions are particularly hard to tolerate because we don’t have others around us to share our pain and confusion.”).

These narratives underscore the value of understanding the unique issues that face women of color who teach Legal Writing and the importance of reaching out to them in order to address those issues. If organizations that provide community within the academy have a better understanding of the issues that face women of color who teach Legal Writing and provide greater outreach to them, there will be more avenues to help these women thrive, and the organizations, in turn, will be enriched by their involvement.

5. Lack of Respect from Students

Faculty who teach Legal Writing, particularly because so many are women, are sometimes not viewed as “real” professors and are vulnerable to disrespectful criticism from students.²⁹ This vulnerability may be heightened for women of color teaching Legal Writing. Teri McMurtry-Chubb speaks of being viewed as an “imposter” because of her race, gender, and the non-doctrinal nature of the Legal Writing course she taught:

[Women of color who teach Legal Writing are rendered] 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 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.³⁰

One woman of color echoed Professor McMurtry-Chubb in noting that students do not view Legal Writing as a “real” course. She further commented on how her teaching is affected by both her need, as a woman of color, to establish credibility and her need, as an untenured teacher, to receive positive course evaluations:

The students seem to view their doctrinal classes as their “real classes.” Some will even use this term in front of me when referring to their doctrinal classes,

29. See, e.g., Edwards, *supra* note 1, at 97 (commenting that students “are more likely to challenge their legal writing teachers than other law teachers, both in and out of the classroom”). One male professor wrote to me, sharing his observation of disparate treatment based on gender when he taught Legal Writing: “I . . . saw the profession at its most gender imbalanced, often being the only male in the department and hearing that students said things to their female legal writing teachers that I knew they would never say to me.”

30. McMurtry-Chubb, *supra* note 1, at 51-52.

without realizing what they have said. . . . This “credibility gap” can affect my ability to earn the respect of certain students, who question (sometimes overtly, sometimes subtly) whether I am qualified to teach them and whether I know what I am talking about in class. . . . I am well aware that one of my tasks in the early weeks of every semester is to build credibility with my students, some of whom may never have had an African-American female teacher in their lives. . . . [W]hen students need a stern hand, I think twice about it. As a non-tenure track professor, I must always teach with my course evaluations in mind, which means that the kinder, gentler approach will sometimes have to take precedence over setting the highest standards and other pedagogical concerns. . . . If I do not do this, I have found out the hard way that my teaching evaluations will suffer.

Criticism and lack of respect from students pose particularly high risks for women of color who teach Legal Writing because they have no job security and the renewal of their contracts can be largely dependent on positive student evaluations. While they need positive student evaluations to keep their jobs, they are more prone to receive negative student evaluations because they are women of color and because they teach Legal Writing. Faculty who teach Legal Writing may receive lower student evaluations because students often receive feedback in Legal Writing class before their other doctrinal classes; because Legal Writing may be viewed as requiring too much work for the few credits offered; and because students may perceive mixed messages regarding the value of Legal Writing and the professors who teach it, providing students more license to give negative evaluations.³¹ The potential for lower evaluations is only compounded for women of color.³² Consequently, women of color who teach Legal Writing can find themselves vulnerable if they do not perform according to student expectations, reasonable or unreasonable.

6. “Set Up to Fail”

Between class preparation, office hours, and critiquing and grading student memos and briefs, the teaching responsibilities of Legal Writing faculty are demanding.³³ In addition, many faculty members who teach Legal Writing engage in scholarship, either because they are expected to write or because they

31. See Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology”*: *Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115, 122-23 (2002).

32. See, e.g., Lazos, *supra* note 2, at 182-85; Kathryn Pourmand Nordick, *A Critical Look at Student Resistance to Non-Traditional Law School Professors*, 27 W. NEW ENG. L. REV. 173, 174-75 (2005); 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, 278-80 (1996) (explaining the greater difficulty professors of color face to gain student respect); Onwuachi-Willig, *supra* note 2, at 149 (explaining that previous evaluations may not count).

33. See, e.g., Edwards, *supra* note 1, at 86-87 (discussing the heavy workload of Legal Writing professors); Durako, *Dismantling Hierarchies*, *supra* note 19, at 270-71 (same).

want to write.³⁴

Women of color who teach Legal Writing carry that same workload, along with other responsibilities that often fall to faculty of color. For example, many faculty of color feel a particular responsibility to mentor and support students of color at their institutions, and faculty of color bear a disproportionate responsibility for representing the “diversity” perspective on committees and for being the face of school diversity to the public.³⁵ The workload has led one woman of color who teaches Legal Writing to be concerned that she has been “set up to fail”:

It’s difficult producing the scholarship, acting as director, teaching, and grading. My mentor has said that my faculty has set me up to fail. Not intentionally or in bad faith, but in result. I’m expected to do too much to be able to write. Preparing [for] class, faculty committees, office hours, grading papers, preparing problems, etc. Some schools don’t provide legal writing faculty research assistants or research stipends if they want to produce scholarship, even if it will enhance [the] school’s reputation and their teaching. [It c]reates a second class citizenship situation.

Law schools should take stock of the explicit, as well as unspoken, expectations of their entire faculty. Pertinent to this essay, however, law schools should recognize and assign value to the sometimes multiple and diverse responsibilities of women of color teaching Legal Writing, who to teach time-intensive skills classes and, in addition, take on additional institutional and mentoring work as faculty of color. In doing so, institutions can better support this group of faculty members who are uniquely unable to protect themselves from crushing expectations.

7. “Career Suicide”

As a result of the low status accorded to Legal Writing faculty, women of color are counseled to avoid—or asked why they want to continue—teaching Legal Writing. This advice, although well-intentioned and given in the spirit of

34. In 2013, forty programs reported that their non-director Legal Writing faculty were “required” to produce scholarship, fifty-six reported that these faculty were “expected” to produce scholarship, and 115 reported that these faculty were “encouraged” to produce scholarship. ALWD SURVEY, *supra* note 6, at 81. In some programs, the scholarship requirements are not the same as for tenure-track faculty. Thirty-eight programs responded that non-director Legal Writing faculty are expected to produce scholarship of the same quality and quantity as tenure-track faculty. *Id.* Thirty-four programs responded that it was not expected that the quantity and quality be the same as for tenure-track faculty, and fifty-one programs did not specify whether the standards for scholarship were the same or different from the standard for tenure-track faculty. *Id.*

35. Wing, *supra* note 2, at 357 (discussing how the author became inundated with requests for support from black students on campus); Young, *supra* note 32, at 281-82 (acknowledging, as well as critiquing, the role model responsibilities of faculty of color).

good mentoring, reaffirms the low status and dead-end nature of Legal Writing positions. Further, it discourages bright and talented individuals from teaching a course they may truly want to teach and may also perpetuate the lack of racial diversity among Legal Writing faculty.

One woman related the advice she was given not to teach Legal Writing:

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?”³⁶

A dilemma results. On the one hand, few mentors would want to encourage a capable mentee to pursue a low-status, dead-end position. On the other hand, when more senior faculty reaffirm that low status and disrespect, they perpetuate the low status and disrespect experienced by women of color who teach Legal Writing.

8. Demeaned and Silenced

For women of color who teach Legal Writing, race, gender, and lack of status can converge in ways that can make them feel demeaned and excluded.³⁷ Professor McMurtry-Chubb explains:

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 During my time as a LRW faculty member at Private Midwest Law School,

36. McMurtry-Chubb, *supra* note 1, at 45.

37. Although some women of color who teach Legal Writing feel that their race, gender, and status converge in inseparable ways to affect their experience, some feel more marginalized by their status as Legal Writing faculty than by their race or gender. For example, one respondent to Michael L. Seigel and Kathi Miner-Rubino’s study of collegiality among law faculty stated: “The stress at my workplace, and the experiences I’ve seen with a lack of collegiality appear to be related more to ‘class’ than to race or sex, and this survey does not address that.” Michael L. Seigel & Kathi Miner-Rubino, *Some Preliminary Statistical, Qualitative, and Anecdotal Findings of an Empirical Study of Collegiality Among Law Professors*, 13 WIDENER L. REV. 1, 17 (2006). In a conversation with me, another woman who teaches Legal Writing concurred: “I see the legal academy as a condensed and exaggerated version of elitism in our society. For some reason, it is tolerated in ways that we are challenging in other spheres. More than my race and ethnicity, I am bothered by the classism that seems acceptable.”

my title was “Assistant Professor of Legal Writing,” and my voting status was never clarified. 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.”³⁸

Another woman of color explained how the marginalization has silenced her: “My confidence has definitely been diminished since becoming a skills professor. I am almost always quiet in faculty meetings, as well as in faculty workshops and colloquia.” For another woman, the marginalization she has experienced because of her status as a Legal Writing professor has become too painful to bear after a lifetime of experiencing second-class citizenship as a woman of color:

I am an African-American female, and I have taught LRW for over 10 years. I have given much thought to whether I would make the same choice if I had the opportunity to begin my academic career anew. Unfortunately, I am sorry to say that I would *not* make the same choice. Although I still love [teaching] LRW, . . . teaching it is too painful. The second-class (and sometimes third-class status) of being an LRW professor is too close to the other “isms” that I have faced throughout my life. The feelings triggered by being treated differently in this job (having less status, less job security, less academic freedom, lower pay, less respect from students and other faculty) are too close [to] the feelings evoked by the other discrimination that I have experienced.

While the women of color to whom I spoke expressed a range of experiences, all of them addressed how their gender, race, and institutional status, separately or in combination, affect their work lives in complex and generally negative ways. They are women working in an area defined by gender stratification and subordination, while simultaneously laboring under a presumption of incompetence that undermines women of color in the academy. And because their numbers are few and many may have no status from which to speak, they and their experiences can be invisible. It is thus incumbent on others to join them in partnership to ensure that they are neither marginalized nor exploited, and to enable them to flourish in their professional lives.

III. POTENTIAL SOLUTIONS

The marginalization of women of color who teach Legal Writing both harms them and deprives their institutions of the full benefit of what they can contribute as teachers and colleagues.³⁹ Law schools and organizations of law

38. McMurtry-Chubb, *supra* note 1, at 46-48.

39. *Id.* at 54-57 (discussing how status issues may deter women of color from teaching Legal Writing, consequently harming students who will “lose access to . . . diverse perspectives,” a key to developing solid analytical skills).

faculty can do much to dismantle demoralizing status distinctions; to create work environments that value and embrace, rather than punish, diversity; and to recognize these women as the full-fledged, talented, and capable professionals that they are.

A. Improve the Status of Faculty Who Teach Legal Writing

The circumstances of women of color who teach Legal Writing will improve if the status differentials that separate them from the rest of their faculties are eliminated.⁴⁰ They should be hired onto tenure track or made eligible for tenure under the same terms and conditions that apply to all other faculty members. At the very least, law schools should provide Legal Writing faculty members with some security of position that protects their academic freedom and adequately reflects the value of these faculty members to their institutions. One possible solution would be to provide Legal Writing faculty members the level of job security granted to clinicians under Standard 405(c), that is, a form of job security “reasonably similar to tenure,” which may include a separate tenure track or renewable long-term contracts.⁴¹

Law schools should also explore avenues outside the area of job security to raise the status of Legal Writing faculty.⁴² Law schools should reassess their pay scales to ensure that Legal Writing faculty members are paid commensurate with the value they bring to their institutions. In addition law schools should examine committee structures and voting rights to ensure that faculty members who teach Legal Writing are able to meaningfully participate in faculty governance. Legal Writing faculty offices should not be separate from other faculty offices. Isolating Legal Writing faculty can send a message that they are not like other faculty and can also create barriers to establishing collegial relationships and mentorship opportunities. Further, Legal Writing faculty should be entitled to receive faculty development funds, like those received by other faculty, so that they can present at and attend conferences that will enhance their teaching and scholarship. When referring to Legal Writing faculty members, law schools should use a form of “professor” instead of “lecturer” or other similar terms that diminish status. Finally, law schools should proactively search out and correct other ways in which Legal Writing faculty have been separated from the rest of the legal academy.

40. For other discussions of solutions to the status issues that face faculty who teach Legal Writing, see, e.g., Stanchi & Levine, *Dirty Little Secrets*, supra note 8, at 9-13.

41. ABA STANDARDS, STANDARD 405(C), supra note 20. Interpretation 405-6 provides that “[a] form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts.” *Id.* at 36. See also McMurtry-Chubb, supra note 1, at 57-60 (discussing the need for increased job security for women of color who teach Legal Writing).

42. Syverud, supra note 19, at 19 (suggesting that deans address “factors that communicate caste to the community,” such as titles and invitations to faculty workshops and meetings); Edwards, supra note 1, at 101-02.

These status differentials should be addressed, because there is no principled reason to treat skilled, talented faculty members differently based on the content of the courses they teach. Women of color who teach Legal Writing should be accorded respect as valued members of their faculties because of the contributions they make to their institutions.

B. Seek to Increase the Numbers of Faculty of Color Who Teach Legal Writing

Increasing the number of women of color teaching Legal Writing can provide support to those women already teaching, as well as diversify the ranks of Legal Writing faculties and law faculties in general. At many law schools, Legal Writing faculty members are hired outside the normal faculty hiring process, by program directors or small committees. Steps should be taken to ensure that these hiring processes, although less formal, still include affirmative outreach to potential applicants of color. Recruitment strategies could include aggressive outreach to faculty, alumni, and national and local minority bar associations.

C. Rethink Control over Legal Writing Curriculum

Many law schools, including those that have directors who coordinate their Legal Writing programs and those that do not, prescribe the curriculum taught by their Legal Writing faculty. Professor McMurtry-Chubb criticizes Legal Writing programs that require faculty members to follow a set curriculum, depriving them of their autonomy:

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. . . . 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.⁴³

While Professor McMurtry-Chubb advocates against programs that prescribe curricula, another solution would be to find a balance that provides some program uniformity in terms of basic course goals and coverage, on the one hand, and faculty autonomy, on the other. This solution should limit the quantity of prescribed material, and the amount that is prescribed should be the product of consensus among the faculty members who teach Legal Writing. Outside those areas of consensus, faculty members should be able to structure

43. McMurtry-Chubb, *supra* note 1 at 52, 60.

their classes in the ways they believe are most appropriate.

D. Be Inclusive of Women of Color Who Teach Legal Writing

Conferences and scholarship designed to shed light on the experiences of women, faculty of color, and women of color in the legal academy have no doubt provided invaluable support to countless faculty members and increased diversity within the legal academy.⁴⁴ However, it is important that these efforts are inclusive of the experiences of women, faculty of color, and women of color who teach Legal Writing. These faculty members are part of the legal academy, but, as discussed above, their experiences are often left out of conversations about issues facing the legal academy. There is some movement toward change however: organizations such as the Society of American Law Teachers have addressed issues facing faculty who teach Legal Writing;⁴⁵ Legal Writing conferences have included the experiences of Legal Writing faculty of color;⁴⁶ some conferences of faculty of color have included Legal Writing faculty in their sessions; and faculty of color who teach Legal Writing have begun to create their own networks.⁴⁷ While these efforts show progress, more can and should be done to both recognize the experiences of faculty of color in the Legal Writing community and to promote their inclusion within the broader community of law faculty.

CONCLUSION

Women of color in the legal academy have been cast as less smart, less capable, and less worthy of respect because of their gender and race. Women of color who teach Legal Writing face a third dimension of their presumed incompetence because of the status hierarchies that are deeply embedded in the

44. *See, e.g.*, Onwuachi-Willig, *supra* note 2, at 149 (relating that her dean's awareness of the challenges faced by women of color in the legal academy enabled him to provide her valuable support during her pre-tenure review); Gordon, *supra* note 2, at 322-23; Arriola, *supra* note 2, at 381-82 (discussing the ways in which faculty of color have provided valuable support to each other through, for example, LatCrit).

45. *See* Letter from Jackie Gardina and Ngai Pindell, Soc'y of Am. Law Teachers, to Professor Jeffrey E. Lewis, Chair, Standards Review Comm. (Jan. 15, 2013), *available at* [http://www.saltlaw.org/userfiles/01_15_2012_Standard_405_SALT_Comments\(2\).pdf](http://www.saltlaw.org/userfiles/01_15_2012_Standard_405_SALT_Comments(2).pdf).

46. *See, e.g.*, Lorraine K. Bannai, Charles Calleros, Luellen Curry & William Chin, Panel Discussion at the 2010 Biennial Legal Writing Institute Conference: Surviving and Thriving: The Experiences of Legal Writing Professors of Color Inside and Outside the Classroom (June 30, 2010).

47. For example, the Legal Writing Institute has developed a Diversity Initiatives Committee to "foster and support diversity among legal writing faculty by supporting legal writing faculty of color, GLBTQ legal writing faculty, legal writing faculty with disabilities, and the inclusion of diverse perspectives in the classroom." *Committees and Reports*, LEGAL WRITING INST., http://www.lwionline.org/committees_and_reports.html#diversity (last visited Apr. 27, 2014).

legal academy.⁴⁸ If we are truly committed to challenging hierarchies built on stereotypes and assumptions, rather than ability and value, we should question the structures and practices that diminish the experiences of women of color who teach Legal Writing.⁴⁹ Dismantling those hierarchies will enable these women to be seen as the skilled, experienced colleagues that they are, which will in turn enrich the ability of our schools to carry out their educational missions.

48. “Regrettably, the culture of academia overall remains not only remarkably blind to its own flaws, but deeply invested in a thoroughgoing denial. . . . The culture of academia, ultimately, is impervious to change because its power structure is designed to reproduce itself.” Harris & González, *supra* note 15, at 7.

49. Ruth Gordon comments that, “What is more interesting is that many of us spend our professional lives contesting hierarchy and exclusion—whether on the basis of race, gender, or class—but when it comes to academia—and I would suggest especially legal academia—we appear to have finally found a hierarchy we can believe in.” Gordon, *in* PRESUMED INCOMPETENT, *supra* note 2, at 326-27. While Professor Gordon was speaking in reference to faculty investment in law school rankings and standings, her comment might apply equally to faculty investment in systems that stratify faculty by what they teach.