

THE QUEST FOR SCHOLARSHIP: THE LEGAL WRITING PROFESSOR’S PARADOX

Susan P. Liemer*

Copyright © 2002 University of Oregon; Susan P. Liemer

* Assistant Professor and Director of Lawyering Skills, Southern Illinois University School of Law. B.A., Princeton University; J.D., University of Virginia School of Law. I am grateful to Mary Beth Beazley, Linda H. Edwards, Jan M. Levine, Pamela Lysaght, Suzanne Rowe, Melissa Shafer, Sheila Simon, and Craig Smith for their encouragement and suggestions for this article.

[*1007]

I

Prologue

Today I am in writing nirvana. I am in a roomy, well-lit law library carrel. There are no windows to distract my gaze, there is plenty of desk space, and there is a plug for my laptop. As long as my travel cup has a lid on it, this library’s rules allow me to enjoy a cup of coffee as I type. I am 1,100 miles away from my office, and I do not know a soul in the building. There is no phone to ring, and nobody is going to be knocking on the door every fifteen minutes. My one acquaintance at this law school, where I have gotten permission to use the library carrel, does not even know I am here yet. n1 My family is about ten miles away at the relatives’ home we are visiting for the summer, busy with their vacation activities. I have no courses to teach for the next two months, which means no lesson plans, no classroom teaching, no student conferences, no papers to critique. My summer administrative duties are streamlined, thanks to eleven years of experience in my line of work. And perhaps most important, I earned a decent enough salary during the nine-month academic [*1008] year to save some money for summer expenses, plus my law school is providing me with a summer grant for scholarship. n2 So I am not worrying about making ends meet. Finally, I have the time to write.

II

Inquiring Minds Want to Know

This article really started three years ago, when I worked at a different law school. I attended the annual membership meeting of the Association of Legal Writing Directors (ALWD) in June 1998, where I heard Professor Grace Tonner and Professor Jan Levine speak on the importance of legal writing professionals pursuing scholarship. n3 As they spoke, they stated the reasons legal writing professors sometimes gave for not writing and then debunked each of those rationales seriatim. n4 I knew they were right. I needed to write. But my inner voice kept asking, “When? When in an already full work day, which often includes doing work at night after the kids are asleep, can I find the time to write?” A few months later, I came across Professors Tonner and Levine’s ideas on the topic again, in a published essay summarizing their conference presentation. n5 Again I struggled to harmonize my total agreement of their view and the seeming impossibility of doing myself what they encouraged all legal writing professionals to do: produce more scholarship. n6 It is not that I had never done any scholarship of my own, n7 but the amount produced compared to my years teaching full time was pretty slim. [*1009] Even at that, producing it had been a struggle, cutting hours off my sleep frequently enough to make me wonder about the long term effect on my life span. n8

In truth, I had heard this call to write before, n9 but it previously was so alien to expectations about my job communicated to me by the academy at large, that I had considered it only half-heartedly. n10 I had assumed that legal scholarship was someone else’s primary responsibility. Somehow, though, the repetition of the call finally started to sink in enough to cause me to look at the matter head on, albeit with discomfort.

About the same time my colleagues' call to write was causing this frustration, I began to notice a parallel in another major aspect of my life, in my parenting. As my children approached school age, I knew my primary excuse for not getting regular exercise would soon wear thin, and I began to wonder how I would find time for that important activity. I was participating in a highly unusual listserv for alumni from my undergraduate alma mater, which focused on issues relating to parenting. n11 This [*1010] group's cultural backgrounds and approaches to parenting diverged in all directions; what they had in common was a profound commitment to doing a good job of it and a willingness to share their ideas and encouragement with respect, despite sometimes huge disagreements. There was no topic, no detail pertaining to parenting that was off limits for this group, even quite personal ones.

So I asked on this parenting listserv how others juggling careers and parenting found the time to exercise. n12 The reply that seemed craziest to me was from a parent who asserted the best way was to wake up at 4:30 a.m., to complete a full exercise work-out and be dressed for work before anyone in her family woke up. In that particular year of my life, whenever I was conscious at 4:30 a.m., I was either rocking a sick toddler back to sleep or critiquing the last few papers due back before a grading deadline. I did make mental notes of the exercise scheduling suggestions that seemed more plausible for mere mortals, for the not-too-distant future when both my children would be in school all day.

By sheer coincidence, that same week a colleague posted a message on a listserv for legal writing professionals, n13 aptly praising Professors Tonner and Levine for their article on the importance of producing scholarship. n14 The legal writing listserves, while quite naturally not nearly as personal as the parenting listserv to which I subscribed, provide a very supportive forum for frank discussions among legal writing professionals. So I decided to see if I could collect as wide a variety of potentially useful suggestions from there on how to find the time to write as I had received from the other listserv on finding the time to exercise. I posted the following message to both LEGWRI-L and DIRCON:

I too particularly appreciated the article by Jan Levine and [*1011] Grace Tonner about LRW n15 scholarship in the last Perspectives. n16 There's one point I'd like to ask others about. Jan recommends setting aside an hour a day to write. This approach is so frustrating for me, because just when I finally locate a promising cite to pursue or get a paragraph drafted, my hour will be up. It can take me a whole eight-hour work day to research and draft one footnote. Yet I rarely get that kind of time block. I'd be curious to find out how other busy LRW profs carve out time for writing. Does everyone write an hour a day? Wait until summer? Just say no to everything else? n17

As I had hoped, I received a wide variety of responses. Several colleagues helped me put short blocks of time in perspective. Indeed, Professor Levine clarified, "I think we had in mind the small blocks of time that one can invest after there's a rough draft, and after you know what you want to say. Shorter pieces ... can find a beginning in an hour of writing (after days of prewriting, cogitation ... of course)." n18 One colleague indicated a couple of hours could be used "to polish"; n19 another confessed, "I could never get anything done in an hour." n20 I found these responses very reassuring; apparently I had been mistaken. I was [*1012] not the only LRW professor who was unable to research and draft a full-length scholarly article from scratch using the hour-a-day method.

Not surprising, the general consensus was that large blocks of uninterrupted time were needed to draft a full-length article or book. Among the LRW professors who underscored the importance of large blocks of time, Professor Seligmann at the University of Arkansas at Fayetteville stated, "having the block of time was critical - I wrote in the AM, mostly at home, and then only went to the office after I got to a spot [where] I could stop and still know what the next section of the piece would be." n21 Professor Maureen Kordesh at the John Marshall Law School explained a similar approach: "I try to block out one day [or] afternoon/morning per week." n22 Professor Levine expressed the need for even longer uninterrupted time periods: "For longer, more involved projects, I tend to work in blocks... . When I get going, I can lose myself for hours. My real productive times are in the summertime and between semesters." n23 It was easy to imagine a sigh coming from Professor Charles Calleros at Arizona State University as he wrote, "alas, except for proof-reading, I mostly have to wait until summer." n24 And Professor Neal Feigenson at Quinnipiac College shared a similar experience: "In the days when I was spending half or more of my time teaching/directing legal writing, I did most of what little scholarship I managed to accomplish during the summer" n25 These LRW professors expressed a need for a half-day block of time once a week during the semester for scholarship and whole summers to devote to scholarship. Their responses seemed sensible to me, in line with what I imagined it would take to pursue scholarship more fully than I had previously.

There was also, however, a more disturbing undercurrent in some of the responses I received. Some colleagues gave me the impression they had to become professional jugglers to accomplish [*1013] their scholarship. For example, Professor Terri LeClerq at the University of Texas indicated she could edit or rewrite in short spaces of free

time, so she saved those tasks for hours when she was accessible to students with questions. n26 Presumably those were office hours, when she was likely to be interrupted. I could picture Professor LeClerq fitting expert editing of her own sophisticated work around her students' novice inquiries, opening and closing various mental windows as surely as if she were multi-tasking on the computer. This multi-tasking method of ensuring enough time for scholarship also echoed the suggestion by others that scholarship was a task squeezed onto an already full plate. The weight of that plate n27 was evident when Professor Feigenson stated that in his LRW days, "sometimes I did a little during winter break (after reading all the student papers). (Spring break was always completely taken up with student papers and course administration.)" n28

III

What's the Problem Here?

It is noteworthy that most of the colleagues who responded to my inquiry held tenure track or tenured appointments. They had enough experience with pursuing serious scholarship agenda, while also teaching LRW, to have advice to offer. Of course there are LRW professors off the tenure track who write too, n29 but most often they are not given the kinds of terms of employment that foster fat scholarship portfolios. The LRW professors who are on the tenure track or tenured are much more likely to have terms of employment that include expectations of and support for scholarship. n30 And they were the ones with the most [*1014] advice for me.

In contrast, I was previously employed at law schools that did not routinely provide summer scholarship support for any legal writing professors, and these schools were in no way exceptional in this practice. n31 Indeed, many law schools allow LRW professors to teach summer courses to make up some of the difference between LRW salaries and those of the "regular" faculty. n32 This [*1015] set up was always presented to me as some kind of beneficence extended to me on the part of my previous employers. From my perspective, it simply meant if I taught for the eight-week summer session, I would be able to meet my family's living expenses over the summer if we maintained a frugal lifestyle. n33 In other words, the summer course I was allowed to teach made it possible for me to stay in this line of work; without the summer course, my annual income from teaching at a law school would have been too low to support my family, and I would have had to seek another type of job altogether.

In addition to a lack of summer support, many law schools do not routinely provide LRW professors with the type of academic-year support required for pursuing scholarship. Particularly important for LRW professionals is a reasonable teaching load, i.e., a reasonable student-to-faculty ratio. n34 During the academic year, in addition to time spent preparing for class and actually teaching in the classroom, a typical LRW professor invests up to an extra hour per student each week providing individualized feedback and instruction. n35

By way of example, consider that in May 1998 (just weeks before Professors Tonner and Levine exhorted their LRW colleagues to write), I graded 102 appellate briefs written by first-year law students. Grading papers in a legal writing course is quite different from grading papers in another type of law school [*1016] course or grading blue-book exam answers. n36 I have done plenty of the latter, and 102 blue books would take me one steady week of work to finish. In a legal writing course, however, grading requires reading each paper with extra care, so as to diagnose weaknesses in all aspects of the writing, such as organization, expression, and use of legal authority. n37 Grading legal writing papers also requires a detailed written critique, both in the margin of each page and at the end of each paper, explaining to each student what was most effective in their writing (and why), what was least effective (and why), and what they might strive to do the next time they draft a similar document. n38 It is through this type of individualized feedback that LRW professors do much of [*1017] their teaching. n39 Grading 102 appellate briefs in this manner was a full-time job for me for a month.

After I finished that marathon task and handed in the grades, I was feeling neither creative nor analytic. I was so burnt out from examining in detail the writing process and product of 102 fledgling legal writers that there was little excitement about writing of any kind left within me. n40

Not that I had time to really think about a writing project of my own, even though there was a two week break between the spring semester and the summer session. Like most law professors, I was not on the payroll at all during those two weeks, so my family of four had no income during the intersession. Unlike many tenure-track and tenured doctrinal professors, however, I worked every day tying up administrative loose ends from the [*1018] spring semester n41 and preparing the teaching materials for my summer course, a course in Advanced Legal Writing. Unlike tenure-track and tenured professors, I did not enjoy an academic-year income that would make it easy to weather two weeks

without pay. n42 I do not mean to whine by pointing out these inequities; I only mean to highlight that legal writing professors are expected to make a commitment beyond what is expected of other legal academics.

The irony never escaped me that I spent several summers teaching an advanced writing course, working with some of the more talented law students on fairly sophisticated aspects of legal writing, yet I never had time to apply my expertise in my own work. n43 Instead I critiqued my advanced students' drafts every week through the summer, and I shared with them information and strategies for writing that many pretty decent practicing attorneys do not have at the ready. I labored to empower my students as skilled legal writers, n44 while I lacked the power to secure the support I needed to do my own writing. I never stopped wondering why the experts in teaching legal research, legal analysis, and legal writing, the LRW professors, are not required or even expected to actually do legal research, analysis, and writing. "The tragic irony here is that what is taught in modern legal writing courses - written legal analysis and synthesis ... defines the soul of legal scholarship, even the most theoretical and [*1019] abstruse." n45

I can think of no other skill in which masters of the craft who teach it are not expected to pursue their own work in the field. Indeed, in most fields, the experts are recognized as desirable teachers because they practice their skill so expertly. An aspiring cellist is not likely to take a master class from a teacher who rarely plays the cello and never performs. A police department recruit is not going to feel confident about firearm lessons from a so-called sharpshooter who rarely practices at the firing range and never uses firearms in the line of duty. And in every academic field from Archaeology to Zoology, the professors actually undertake the activities about which they profess.

Yet law schools regularly hire LRW professors with the expectation they will not be practicing and applying their expertise; they will not be writing and publishing regularly. Indeed, many LRW appointments are structured so as to make pursuing legal scholarship and other legal writing projects practically impossible. As Professor Maureen Arrigo pointed out when she co-directed an LRW program:

Law schools ... structure the typical LRW job so that it consumes significant amounts of the time and energy one could otherwise use for producing the type of in-depth analytical scholarship traditionally respected by the academy. A LRW teacher with responsibility for creating teaching materials is already researching and writing each semester in order to produce new course materials. Once the semester is underway, the LRW teacher grades papers and consults with students for countless hours. These demands persist year after year, regardless of how many times the course has been taught. A doctrinal teacher, with fewer required office hours and little to no grading during the semester, can devote time left over after classroom teaching and lesson preparation to his or her own scholarly activities. Few LRW instructors know the meaning [*1020] of "leftover time." n46

Furthermore, because of their academic year workload and the lack of even inexpensive support (such as research assistants) at many law schools, n47 in addition to the need to teach in the summer to make ends meet, many LRW professors have to use the summer to research and write problems for their fall semester course. n48 In contrast, "doctrinal faculty usually have an unencumbered summer in which to write." n49

[*1021] In fact, compared to the typical LRW professor, the typical doctrinal law professor has the equivalent of two summers in which to write annually. All law professors spend time preparing for class, teaching in the classroom, and participating in activities ranging from first-year orientation to graduation ceremonies. The typical LRW professor, however, spends some twenty hours a week providing individualized teaching for students, by critiquing papers, holding conferences, and generally answering questions. n50 This twenty hours per week, multiplied over two fourteen-week semesters during the academic year, equals fourteen forty-hour work weeks. So during the academic year the typical doctrinal law professor may have the equivalent of fourteen forty-hour work weeks to spend on scholarship, while for the typical LRW professor that same amount of time becomes student contact hours.

These LRW jobs are the polar opposite of writing nirvana; they are writing purgatory. n51 You submerge yourself daily in teaching about a process you love but rarely have the opportunity to undertake. Naturally, the mind wanders while reading 102 mediocre appellate briefs, generating a plethora of exciting ideas for future scholarly exploration. Yet the opportunity to go exploring never arrives.

IV

It's Not Rocket Science

Just imagine the flow of writing that could be produced by the many talented legal writing professors at law schools in the United States if they had the same kind of support for scholarship that other law professors enjoy. n52 A law school trying to [*1022] upgrade the quantity and quality of its faculty's publication list has no more reliable

investment than the people already on its faculty who are true experts at writing. It would be difficult to find a full-time legal writing professor who does not love to write and who is not a “word person.” n53 Given the nature of the typical LRW job, LRW professors have to really love every aspect of writing to labor at their jobs for the length of time that many of them do. n54 And LRW professors have to understand the process of writing n55 at expert levels to succeed at teaching it to novices. It defies logic for law schools not to expect these people to use their expertise to create scholarship for the good of the academy and the legal profession.

It does not defy logic, however, to surmise that law schools quite purposely hoard scholarship resources far from the reach of LRW professors, given that: “Scholarship ... is ‘the hallmark of [*1023] intellectual worthiness’ in the academy... . The ‘importance of scholarship to the careers of law teachers is difficult to overestimate.’ Intellectual satisfaction, prestige, promotions, increased salaries, and opportunities to move laterally all depend as much upon writing, and as little upon teaching, as does tenure.” n56 Indeed, “professional reputations are usually decided not by teaching writing skills to others, but by producing scholarly articles.” n57 Not sharing with LRW professors the resources supporting scholarship, and hence not sharing the opportunity to gain scholarship’s rewards, has serious ramifications. The terms of employment of typical LRW jobs disserve the bench, the bar, and the public, while simultaneously discriminating against the largest concentration of women in the law professorate. n58 These same terms of employment enjoy the approval of the agency empowered to accredit law schools in the United States, the American Bar Association (ABA). n59 The ABA Commission on Women in the Profession, however, recognized that when LRW professors want to produce scholarship, “financial constraints are commonly used as an excuse” for decisions not to provide the types of jobs that support scholarship. n60 “This problem could [*1024] be overcome if the [law school] administration chose to do so.” n61

We know that “the process of writing is in fact the process of problem-solving and thinking.” n62 We also know that “writing is used not only to communicate knowledge, but also to generate knowledge.” n63 So why does the legal academy not eagerly support the problem-solving, thinking, and knowledge-generation of its own writing experts, the LRW professors? Perhaps supporting scholarship by LRW professors requires fully acknowledging that LRW professors are experts at problem-solving, thinking, and generating knowledge, areas of expertise previously claimed as the exclusive province of doctrinal faculty. The claim of exclusive expertise, of course, justifies the claim to exclusive reward. If the scholarly potential of LRW professors were fully acknowledged, proffered justifications for not supporting that scholarship would lose their underpinnings, and it would become obvious it is simply a question of resource allocation. An efficient allocation of resources would dictate giving writing experts the resources to write. In this light, the mainstream legal academy looks particularly self-serving for not sensibly allocating its resources as it fulfills its public mission.

Of course, job descriptions for LRW teaching positions require strong legal writing skills. n64 To retain the skill level with which LRW professors enter their teaching jobs, they should be expected and encouraged to publish. To have real credibility as writing experts in the eyes of both students and other faculty, LRW professors should be expected and encouraged to flex their writing muscles regularly. n65 To delve further into the ideas and [*1025] intricacies of their field, LRW professors should receive terms of employment that allow them the time and mental space to think broadly and deeply about their work, to delve into research, to undertake sophisticated analysis, and to write. n66

An hour a day won’t cut it. “Carving” out time or “stealing” time from teaching overloads and administrative work n67 (which often are uncompensated and uncredited to begin with) n68 will not suffice either. Having to teach every summer just to make ends meet also will not do. Legal writing jobs should be structured like others in the legal professorate, with sufficient pay and other support to allow time for writing. n69 LRW professors are arguably more deserving of this luxury than professors who teach doctrinal law courses, because LRW professors practice, refine, and keep current in the exact skills they teach every time they pursue their own scholarship.

And yes, a summer with pay and no teaching load in which to [*1026] write is a luxury for anyone. It makes practicing attorneys who wear suits and produce billable hours in summer’s 90 degree heat green with envy. This time in which to cogitate, mull over ideas, delve into primary sources, draft and redraft has been a cornerstone of university appointments in the United States since the beginning of the twentieth century. n70

Indeed, the Association of American Law Schools (AALS) has declared, “law professors have a responsibility to engage in their own research and publish their conclusions. In this way, law professors participate in an intellectual exchange that tests and improves their knowledge of the field, to the ultimate benefit of their students, the profession, and society.” n71 The AALS does not appear to exempt LRW professors from this responsibility. In addition, the American Association of University Professors (AAUP) lists scholarship first in its Statement on Professional Ethics:

1. Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. n72

The AAUP does not appear to exempt LRW professors from this responsibility either.

Curiously, the ABA does excuse LRW professors from scholarship [*1027] expectations. n73 Thus, to receive ABA accreditation, law schools do not need to support the scholarship of their LRW professors. n74 Simply by changing the relevant accreditation standards, the ABA could solve the problem in one fell swoop. If the accrediting agency were to require law schools to provide LRW professors with terms of employment that enable them to fulfill their ethical responsibilities as scholars, then law schools would have to allocate resources accordingly. The LRW community has not been shy about expressing its concerns to the ABA; n75 the response has been cautious. n76

The LRW community has recognized support for scholarship as so crucial, that in the summer of 2001 the Association of Legal Writing Directors (ALWD) began its own scholarship grant program, awarding two \$ 5,000 stipends to legal writing professors who were not given summer scholarship support at their own law schools. n77 ALWD plans to continue this scholarship grant program annually. n78 Hopefully, as law schools come to see what [*1028] their legal writing professors are capable of given the proper support (i.e., the same type of support other law professors traditionally enjoy), more schools on their own will begin to contribute their fair share to the scholarly pursuits of their legal writing professionals.

Suppose that most law schools in the United States have, on average, four or five people on their faculties who are legal writing professionals, and so summer and other support for their scholarship could translate to four or five additional publications to the school's credit every year. A law school could have four or five additional entries every year for the glossy publication list it sends out to law professors across America in anticipation of the latest U.S. News & World Report law school rankings. n79 The conventional wisdom is that higher rankings lead to increased prestige for the law school, n80 which in turn leads to a better applicant pool and more financial support from private donors. n81 Via their scholarship, LRW professors are fully capable of contributing their fair share to their law schools' academic reputations in the current U.S. News rankings and any subsequent upgrades, n82 if they are given a fair chance. Even the ABA, in response to the [*1029] nay-sayers, has recognized that "given a realistic student/faculty ratio, the usual research assistance and stipends, and summers without teaching, a legal writing teacher will be able to satisfy publication requirements." n83

While some LRW professors quite naturally write on topics relevant to LRW, a law school need not worry that it will only end up with "bar journal" type articles to its credit. Historically, those LRW professors who have been able to pursue scholarship have produced their share of traditional law journal articles, covering the full range of possible inquiries in the world of law. n84 After all, significant legal practice experience is a requirement for full-time legal writing jobs, n85 so every legal writing professor developed one or more areas of legal expertise in their previous practice career before joining the academy. Students and colleagues sometimes seem surprised that I know my way around issues arising from law as diverse as the Administrative Procedures Act n86 and the Berne Convention. n87

Indeed, in the United States to date, only one legal writing professor has tried to attain tenure by relying on scholarship that focused solely on legal writing n88 (fortunately this professor succeeded). [*1030] Every other tenured legal writing professor in the United States has a scholarship portfolio that includes articles or books on other legal topics. n89 In addition, most of the scholarship that does focus on LRW per se is not about how to write; much of it is as theoretical and envelope-pushing as any other legal scholarship. n90 There is a doctrine of Legal Writing. When a Civil Procedure professor writes about process, it is considered a doctrinal article. Similarly, when a Legal Writing professor writes about process, the article is a doctrinal piece. n91

Examples abound of the intellectual depth of contemporary scholarship about legal writing. At the Colloquium on Legal Discourse, which has been held twice now at the University of [*1031] Notre Dame School of Law, a cadre of experienced scholars from several disciplines have presented their work, n92 while works-in-progress by more junior scholars also received encouragement. As explained in the Colloquium brochure, "these theoretical underpinnings for the discipline of legal writing are the subject of a vibrant scholarship of legal discourse. Strains of this scholarship include such topic areas as narrative theory, literary theory and criticism, rhetoric, modes of legal reasoning, and lawyering theory." n93 One regional LRW conference was devoted entirely to serious scholarship by LRW professors. n94 And some national conferences for LRW professors have included presentations and discussions of scholarship. n95

In sum, LRW professors have done everything humanly possible to find the time to write. They have stolen time from other work, n96 they have taken political action seeking better terms of employment, n97 they have funded their colleagues' scholarship to give a few others the time to write, n98 they have written about the [*1032] problem in their own scholarship, n99 they have discussed it at their own conferences for many years, n100 and they have even lost sleep over it. n101 LRW professionals have proven their commitment to scholarship. Some law schools have recognized and supported this commitment. When will the rest of the legal academy give their writing experts, the LRW professors, the time to write?

V

Epilogue

There were two responses to my listserv inquiry about finding the time to write that I have not yet shared here. These were more difficult responses for me to understand in light of my own experiences.

One came from Professor Deborah Hecht at Touro College Law Center. She suggested that writing an hour a day would allow me to retain the writing rhythm needed for a long term project. n102 I was never able to be a conscientious student of the hour-a-day method, n103 yet once I had the unencumbered summer in which to write, the writing rhythm came back immediately.

And finally, I received one particularly vexing response to my listserv inquiry. Professor Jill Ramsfield, at Georgetown University, reported: "4:00 in the morning works well, Generally, I work when no one else does or when they are sleeping" n104 I received this advice the very same week I received the advice to wake up at 4:30 a.m. for daily exercise. Of course my first reaction was just how can one body pursue two such activities at the same time? And why is our society in general [*1033] and the typical legal writing professor's job in particular structured so as to require even contemplating such a strategy?

I am happy to report that I am fast asleep these days at 4:30 a.m. Although my youngest child has completed the first grade, I still have not gone back to exercising regularly. But now I have a tenure track legal writing job. And I finally have time to write. As all legal writing professors should.

FOOTNOTES:

n1. I would like to thank Professor Leslie C. Levin, Director of the Lawyering Process Program at the University of Connecticut School of Law, for making the arrangements for my summer carrel, and the University of Connecticut Law Library for being so accommodating.

n2. I would like to thank Southern Illinois University School of Law for providing the summer grant that made it possible for me to have time to write this summer. Without that grant it is likely I still would not have had the time to write about finding the time to write. Southern Illinois University School of Law regularly awards summer grants to all its tenure-track and tenured professors who produce scholarship.

n3. Jan M. Levine & Grace C. Tonner, Panel Remarks at the ALWD Annual Membership Meeting (June 16, 1998).

n4. Id. ("My workload is too high and I have no time," was the reason that rang true to me.).

n5. Jan M. Levine & Grace C. Tonner, Legal Writing Scholarship: Point/Counterpoint, 7 Persp.: Teaching Legal Res. & Writing 68 (1999).

n6. Id. ("Legal writing professors not only can but should produce scholarship...."). Professors Levine and Tonner even urged legal writing professors to write if only to respond to their article. Id. at 70. I finally have time to do that now.

n7. See Susan P. Liemer, Understanding Artists' Moral Rights: A Primer, 7 B.U. Pub. Int. L.J. 41 (1998); Susan P. Liemer, Memo Structure for the Left and Right Brain, 8 Persp.: Teaching Legal Res. & Writing 95 (2000).

n8. See Maureen J. Arrigo, Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs, 70 Temp. L. Rev. 117, 167 (1997) (describing many legal writing professors' efforts to write as "prohibitively costly, both financially and personally") (emphasis added).

n9. Just the year before, I had read an announcement for the 1997 Atlantic Region Legal Research and Writing Conference, which focused entirely on “The Scholarship of Legal Research and Writing.” E-mail from Michael R. Smith, Assistant Professor, Legal Writing & Analysis, Mercer University Law School, to Jan M. Levine, Associate Professor & Director, Legal Research & Writing Program, Temple University, James E. Beasley School of Law (July 10, 2001) (copy on file with author). I also had attended a national conference which presented discussions about legal writing scholarship, the 1997 ALWD conference held in Chicago. See Steven D. Jamar & Linda H. Edwards, *What Scholarship Means in Our Discipline: Strategic Scholarship, and Nuts & Bolts of Scholarship, and Concurrent Scholarship Seminars, Breakout Sessions, Program Brochure, ALWD First Biennial Conference (1997)*. In addition, I had read Jill L. Ramsfield & J. Christopher Rideout, *Scholarship in Legal Writing*, in *The Politics of Legal Writing: Proceedings of a Conference for Legal Research and Writing Program Directors 74* (Jan M. Levine et al. eds., 1995), available at <http://www.alwd.org/conferences.htm> (last visited Jan. 23, 2002).

n10. Indeed, even the national conferences of the Legal Writing Institute (“LWI”) that I attended earlier, in 1992 and 1996, contained no formal programming about scholarship by legal writing professionals. See *Teaching Legal Writing, A Conference for People Who Teach in or Administer Legal Writing Programs, Program Brochure, LWI Biennial Conference (1992)* (copy on file with author); *Learning from the Disciplines, A Conference for People Who Teach in or Administer Legal Writing Programs, Program Brochure, LWI Biennial Conference (1996)* (copy on file with author).

n11. One of many topic-specific, closed listserves provided as an alumni service by Princeton University for its graduates to discuss matters in which they have a common interest is parent-net@lists.tigernet.princeton.edu.

n12. Unfortunately, that listserve has no archives of messages posted to it before 2000, so I cannot cite more specifically to the described thread.

n13. E-mail from Mary Beth Beazley, Associate Professor of Law, Ohio State University College of Law, to LEGWRI-L & DIRCON listserves (July 12, 1999) (copy on file with author). LEGWRI-L is a listserve for all legal writing professionals; DIRCON is the official listserve of the Association of Legal Writing Directors. Messages frequently are cross-posted to both listserves.

n14. Levine & Tonner, *supra* note 5.

n15. In the legal academy, the field is generally known as “LRW,” which stands for “Legal Research and Writing,” because most professionals in the field have all or part of their teaching load in the first year required skills courses that cover both legal research and legal writing, as well as legal analysis and other fundamental lawyering skills. Treating legal research and legal writing as separate courses in the first year curriculum is fast becoming an anachronism in United States law schools. The 2001 ALWD/LWI Survey shows that in reply to the question, “how do you teach legal research in your program,” 101 out of 143 respondents checked off “integrated with writing.” Only thirty-two out of 143 respondents checked off “taught separately from writing.” Jo Anne Durako, 2001 ALWD-LWI Survey, at question 18, available at [http://www.alwd.org/downloads/surveys/2001/sections 1-4.pdf](http://www.alwd.org/downloads/surveys/2001/sections%201-4.pdf) (last visited Jan. 23, 2002) [hereinafter Durako, 2001 Survey]. Because the wording of the question leaves room for schools that teach research and writing in the same course, in some co-ordinated but not fully integrated fashion, to answer “taught separately,” the current number of law schools in the United States with entirely separate first year courses for legal research and legal writing probably is smaller than thirty-two.

n16. Levine & Tonner, *supra* note 5.

n17. E-mail from Sue Liemer, to LEGWRI-L & DIRCON listserves (July 12, 1999) (copy on file with author).

n18. E-mail from Jan M. Levine, Associate Professor & Director, Legal Research & Writing Program, Temple University, James E. Beasley School of Law, to LEGWRI-L & DIRCON listserves (July 13, 1999) (copy on file with author).

n19. E-mail from Susan Susman, Assistant Professor, Legal Writing, Brooklyn Law School, to Sue Liemer (July 12, 1999) (copy on file with author).

n20. E-mail from Neal R. Feigenson, Professor & Director, Legal Skills Program, Quinnipiac University School of Law, to Sue Liemer (July 12, 1999) (copy on file with author).

n21. E-mail from Terry Seligmann, Associate Professor & Director of Legal Research & Writing, University of Arkansas, Fayetteville, Leflar Law Center, to Sue Liemer (July 13, 1999) (copy on file with author).

n22. E-mail from Maureen Straub Kordesh, Associate Professor & Director, Lawyering Skills Program, John Marshall Law School (July 12, 1999) (copy on file with author).

n23. E-mail from Jan M. Levine, *supra* note 18.

n24. E-mail from Charles Calleros, Professor, Arizona State University College of Law, to Sue Liemer (July 12, 1999) (copy on file with author).

n25. E-mail from Neal R. Feigenson, *supra* note 20.

n26. E-mail from Terri LeClercq, Senior Lecturer, University of Texas School of Law, to Sue Liemer (July 12, 1999) (copy on file with author).

n27. See *infra* Part III and accompanying footnotes.

n28. E-mail from Neal R. Feigenson, *supra* note 20.

n29. “Indeed, the hundreds of articles, books and other works that have been produced by [legal] writing teachers attests to their love of intellectual inquiry and their determination to join the community of scholars even under adverse circumstances.” Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 *Duq. L. Rev.* 329, 382 (2001); Ralph L. Brill et al., *ABA Sourcebook on Legal Writing Programs* 149-74 (1997); see also George D. Gopen & Kary D. Smout, *Legal Writing: A Bibliography*, in 1 *Legal Writing* 93, 94-122 (1991).

n30. According to the 2001 ALWD/LWI Survey, with 143 United States law schools responding, only forty LRW directors (twenty-nine percent) are required to produce scholarship, while another twenty-four are expected to produce scholarship although they are not required to do so. Some fifty LRW directors are neither required nor expected to produce scholarship. For LRW faculty who are not directors, at only twelve schools are they required to produce scholarship, at fourteen more they are expected to produce scholarship even though they are not required to, and at seventy-three schools they are neither required nor expected to produce scholarship. Durako, 2001 Survey, *supra* note 15, at questions 62, 81; see also Jo Anne Durako, *Professor Durako Presents 2000 ALWD/LWI Survey Highlights*, 15 *Second Draft* 13 (January 2001).

Legal writing program directors, those more likely to have scholarship expectations among their terms of employment, are also more likely to be on the tenure track or tenured than non-directors: “Forty-four schools, or 24% of all law schools ... have decided that the legal-writing professional in charge of the program should be eligible for tenure, and about 8 law schools treat all or some of their other full-time legal-writing teachers in the same way.” Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching*, 7 *Scribes J. Legal Writing* 51, 56 (1998-2000).

For tenure-track positions:

[T]he institution makes clear that writing is a key component of the job. It is expected. It is required.

The senior faculty take seriously their responsibility to nurture the scholarly efforts of junior faculty.

Senior faculty will encourage - if necessary, even hound--junior faculty to keep up with their scholarship. The administration structures salaries so faculty members can spend summers writing, not moonlighting... . Naturally, LRW jobs could also be structured to support and encourage scholarship, but they are not.

Arrigo, *supra* note 8, at 167.

At my home institution, Southern Illinois University School of Law, the faculty formed an Ad Hoc Committee on Scholarship to make sure this type of encouragement takes place. The Committee is less formally referred to as the “All Carrots Committee,” because its tactics are “all carrots, no sticks.” It is noteworthy that the law professors at Southern Illinois with clinical and library appointments are routinely among the active participants at workshops held by the All Carrots Committee, and that their appointments include expectations of clinical scholarship. (Unfortunately, as is true at most law schools, their appointments do not include summers with both time off and grants for writing.) I am grateful to the committee chair, Professor Patrick Kelley, and the committee members, Professors Cheryl Anderson, Eugene Basanta, and Edward Kionka for their “all carrots” encouragement.

n31. The 2001 ALWD/LWI Survey shows that, out of 143 schools responding, only fifty-two provide LRW faculty with summer grants, averaging \$ 6,435. Durako, 2001 Survey, *supra* note 15, at Question 76.

n32.

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

Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & L. 551, 577 (2001) [hereinafter Levine & Stanchi, *Wages*]. Contributing to this salary discrepancy for LRW professors, "unlike their tenured and tenure-track colleagues [at law schools the] annual raises given to legal writing professors do not reflect seniority, either in teaching or practice experience." *Id.* at 580.

n33. I even subscribed to *The Tightwad Gazette*, a monthly newsletter with tips on how to maximize a modest income. Although no longer published as a newsletter, its editions have been compiled into a book. Amy Dacyczyn, *The Complete Tightwad Gazette: Promoting Thrift As a Viable Alternative Lifestyle* (1999).

n34. The American Bar Association recommends a student to faculty ratio of forty-five to one for LRW programs. Brill et al., *supra* note 29, at 46.

n35. See Jan M. Levine, *From the Podium, Scrivener*, Summer 2001, at 2 [hereinafter Levine, *Podium*] ("The math should be sobering to anyone.").

n36. One doctrinal professor who added a paper assignment to her course just once, described the difference between grading papers and exams quite vividly:

"The grading almost crushed me... Unlike the mind-numbing, routine, and rhythmic grading of blue books, these papers required my full attention. Each one represented hours of human effort. I could not approach them with indifference. I did not know how to take their words lightly, and so had to bear them heavily, subject to the earth's terrible pull of gravity.... It was a desperate feeling, to watch the hours of each day slip away, paper by paper. I felt as if I were moving through molasses, and no matter how diligent I intended to be, the time allowed was never enough ..."

Arrigo, *supra* note 8, at 164 (quoting Louise Harmon & Deborah W. Post, *Cultivating Intelligence: Power, Law, and the Politics of Teaching* 96-97 (1996)) (emphasis added); see also Marjorie D. Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Courses: A Post Mortem*, 44 Alb. L. Rev. 392, 409 (1980) (suggesting timing of grading papers in mid-semester, out-of-step with the rest of the faculty, is part of the problem).

n37. "This intensive paper grading, of hundreds of papers per semester - this crushing work, harder than bluebook grading, this work requiring full attention - is precisely the work done by LRW instructors for every law school that employs them." Arrigo, *supra* note 8, at 164.

n38. See Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 Legal Writing 145 (1996). When asked about the extent of comments on major legal writing assignments used in their LRW programs, 143 law schools responded as follows:

1. "Comments written on the paper itself and in margins" (133);
2. "General feedback memo addressed to all students" (91);
3. "Feedback memo written specifically for the individual student" (72);
4. "Short comments written at the end of the paper" (108);
5. "Comments in person during conference" (114);
6. "Grading grids or score sheets" (81).

Durako, 2001 Survey, *supra* note 15, at question 24. One LRW professor described the typical feedback process this way:

Every aspect of students' memoranda must be critiqued in detail: the cogency of reasoning; the clarity of sections, paragraphs, sentences and particular words; the organization of both arguments and discrete discussions within arguments; the choice of legal materials and the tone of the prose. These and many other facets must be discussed fully with each student in a series of individual conferences

and elucidated through meticulous explanations written by the teacher on the face of each memorandum.

Bayer, *supra* note 29, at 379-80 (citation omitted).

n39. See Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 Fla. St. U. L. Rev. 1067, 1072 (1999) [hereinafter Levine, *Sisyphus*] (“The heart of our teaching is found in the written critiques of our students’ writing and in the individual conferences we hold with our students to discuss their work and our reactions to their work product.”); Brill et al., *supra* note 29, at 45-46

(Good critiquing provides something not found anywhere else in the law school curriculum: the student makes a record, in writing, of his or her thinking, and a teacher goes through it, discovering what the student does not understand and showing the student how to improve both thought and its expression.);

Philip N. Meyer, “Fingers Pointing at the Moon”: New Perspectives on Teaching Legal Writing and Analysis, 25 Conn. L. Rev. 777, 783-84 (1993); Richard K. Neumann, Jr., *A Preliminary Inquiry Into the Art of Critique*, 40 Hastings L.J. 725 (1989).

n40. “Every single article about legal writing programs and faculty - regardless of any other point the authors make - reports on the overwhelming physical and mental demands of the teaching involved” Levine, *Sisyphus*, *supra* note 39, at 1081 n.50. Indeed, most LRW professors would agree that “grading was a physically exhausting and mentally draining exercise.” Ilhyung Lee, *The Rookie Season*, 39 Santa Clara L. Rev. 473, 486 (1999) (reporting on the author’s one-year as a legal writing professor before becoming a doctrinal professor). One legal writing professor compared grading papers to penance:

First, ... the most painful of all the tasks: I read the students’ papers, forty to fifty of the same memoranda and briefs, usually multiple drafts, about three times each semester. And, as I said, I diligently edited these papers - every sentence, every line - as if my life depended upon it. I wrote out page after page after page of comments and precious feedback... . But it was painful work... . The same thing over and over and over. Like penance. I counted them like the repetitions of soul-building exercises

Philip N. Meyer, *Confessions of a Legal Writing Instructor*, 46 J. Legal Educ. 27, 38 (1996).

n41. In many law schools, the LRW director is the only faculty member who does not receive a supplemental stipend or teaching load reduction to compensate for their significant administrative work load. Arrigo, *supra* note 8, at 183 (“Many schools view the administrative part of the directorship as *de minimis*, giving too little reduction in teaching load to permit the same type of scholarship demanded of non-LRW teachers and non-administrators or affording little to no credit toward tenure for administrative work.”) (citation omitted). Indeed, often this extra work is “rewarded” with a salary far lower than that of most of the law faculty. Levine & Stanchi, *Wages*, *supra* note 32, at 577.

n42. One year I even received unemployment compensation during the intersession. I suspect my students and colleagues would have been surprised to learn I was both eligible for and in need of such compensation.

n43. Apparently I was not alone in this predicament:

After designing research and writing assignments, holding individual conferences, and grading papers, there was little time for anything else. Until the very last paper was graded, ... I had no opportunity to conduct independent research or to produce a scholarly work... . Ironically, my own research and writing projects came to an abrupt halt when I became a legal research and writing instructor.

Lee, *supra* note 40, at 487-88.

n44. See Arrigo, *supra* note 8, at 154 n.165.

n45. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 Berkeley Women’s L.J. 3, 23 (2001) [hereinafter Stanchi & Levine, *Secrets*]. Indeed, when teachers of doctrinal courses turn their scholarly interests toward the reasoning skills covered in most legal writing courses, their work appears in the nation’s most prestigious law journals. With the appropriate credentials, a legal scholar can thus convert the contents of a legal writing skills course into respected legal science simply by lending his name to the inquiry.

Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 Ariz. L. Rev. 105, 123 (1998) (citation omitted).

n46. Arrigo, *supra* note 8, at 176 (citation omitted); see also Eichhorn, *supra* note 45, at 140.

Scholars with ready-made reputations can write about writing and have their work published. Surely those who teach in the field have something to add to this scholarly conversation. Unfortunately, those who teach in the field also are likely to have crushing teaching loads and little support for scholarly endeavors.

Id. (citation omitted).

n47. According to the 2001 ALWD/LWI Survey, LRW professors at just sixty-one law schools received “sufficient funding for all reasonable requests” for research assistants, while twelve other law schools funded research assistants for LRW professors with on average \$ 2,335. Durako, 2001 Survey, *supra* note 15, at question 80.

n48. “A more expansive and creative definition of scholarship could, of course, be instituted - a definition that would enable anyone producing course materials to ‘count’ them as scholarship.” Arrigo, *supra* note 8, at 176 n.246.

The work of producing traditional legal scholarship and LRW course materials alike requires:

creating new knowledge or understanding; clarifying, critically examining, weighing, and revising the knowledge, claims, beliefs or understanding of others and oneself; connecting past knowledge to other knowledge; preserving, restoring, and reinterpreting past knowledge; arguing knowledge claims in order to invite criticism and revision; making specialized knowledge publicly accessible and usable, ... helping new generations to become active knowers themselves, ... applying aesthetic, ethical, political or spiritual values to make judgments about knowledge and its uses.

Id. at 184-85 (quoting *Recognizing Faculty Work: Reward System for the Year 2000*, at 116 (Robert M. Diamond & Bronwyn E. Adam eds., 1993)).

Of course all good law professors do some updating and preparatory work over the summer. Few doctrinal professors, however, have to do what LRW professors sometimes describe as the equivalent of researching and writing the textbook every year, and then teaching from it. See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 89 (1994) [hereinafter *Rideout & Ramsfield, A Revised View*] (“writing assignments are the ‘textbook’ for the course”).

Where such work does count as scholarship, it should be compensated accordingly, not shoe-horned into a summer of teaching required to make ends meet. In ideal LRW positions, the academic year workload and the support for creating both teaching materials and scholarship are structured to allow for the pursuit of all these activities. Unfortunately, the average LRW director recently reported spending just seven percent of their work time on scholarship. Durako, 2001 Survey, *supra* note 15, at question 53.

n49. Levine, *Sisyphus*, *supra* note 39, at 1088.

n50. Levine, *Podium*, *supra* note 35, at 2, 9.

n51. The title of Professor Jan Levine’s article, *Leveling the Hill of Sisyphus*, implied these jobs resemble the task of Sisyphus, who in Greek mythology was cursed to roll a heavy boulder uphill perpetually. Levine, *Sisyphus*, *supra* note 39. Professor Ilhyung Lee quoted scripture to convey the effort through which legal writing has “endured,” Lee, *supra* note 40, at 473, 501 (quoting 2 Timothy 4:7 (“I have fought the good fight, I have finished the course, I have kept the faith.”)). It is telling that more than one writer was drawn to the weight of an ancient text to convey the magnitude of the challenge. Note also how closely these descriptions parallel Professor Philip Meyer’s sense of LRW work as “soul-building exercises.” Meyer, *supra* note 40, at 38. No LRW professor enters the field seeking a rigorous religious experience, although I do know one LRW director who left the field to enter the seminary and join the clergy.

n52. As one scholar put it: “In recent years scholarship in legal writing has grown greatly... . But only ... as more schools create ... positions that encourage legal-writing scholarship ... will we see the full impact that legal-writing professors can have on the practice of law.” Mary Beth Beazley, “Riddikulus!”: Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe, 7 *Scribes J. Legal Writing* 79, 86 (1998-2000).

n53. One of the reasons the listserves for LRW professors are so active may well be because LRW professors are so comfortable with and adept at using the written word as a medium for communication. As for myself, I have long self-identified as a writer, much more than as a lawyer and even more than as a teacher. As an undergraduate, I majored in Comparative Literature, studying words as an art form, across time periods, genres, cultures and languages. Even as I worked in the medium of the written word, the content of my work focused on the use of that medium.

After I graduated from college, I spent four years earning my living as a writer in the highly-competitive, commercial world of advertising and marketing. Then, when I entered law school, I had unpleasant conversations with the second-year law student assigned to teach me legal writing, because I had to explain to him why the ways he “corrected” my work turned grammatical sentences into incorrect ones. My written work product was praised at the large law firms in which I clerked as a summer associate, and after graduation I was assigned to write the most important appellate briefs for the state government agency at which I chose to work.

My skill and experience in writing was a primary qualification for my first job in the legal academy, as an LRW program director. Indeed, that year on my resume I subdivided my previous work experience under headings for “legal experience” and “writing experience.” Little did I know then, except for an occasional hour stolen from other responsibilities or sleep, it would be ten years before I really would have time to write again.

n54. More than 150 LRW professors are known to have taught in the field for more than ten years. Ass’n of Am. Law Schs., *The AALS Directory of Law Teachers 2000-2001*, at 1336-37 (2000).

n55. See Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 *U. Pitt. L. Rev.* 719 (1997); Rideout & Ramsfield, *supra* note 48.

n56. Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 *Minn. L. Rev.* 705, 751 (1998) (citations omitted).

n57. John D. Feerick, *Writing Like a Lawyer*, 21 *Fordham Urb. L.J.* 381, 385 (1994).

n58. Stanchi & Levine, *Secrets*, *supra* note 45; Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 *J. Legal Educ.* 562 (2000); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 *J. Legal Educ.* 313, 347 (2000); Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 *Cardozo Women’s L.J.* 75 (1997); Arrigo, *supra* note 8.

n59. See ABA Standards for the Approval of Law Schools standard 405(d) (2001), available at <http://www.abanet.org/legaled/standards/chapter4.html> (last visited Jan. 23, 2002) [hereinafter ABA Standards].

n60. ABA Comm’n on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education* 33 (1996) [hereinafter *Elusive Equality*]. At one law school, “when the Dean talked about hiring people to teach legal writing, he would say out loud, ‘well we can get education for cheap because we can hire people on the mommy track.’” *Id.* The content and tone of that dean’s comment does not seem to contemplate that “the mommy track” will include the “intellectual satisfaction, prestige, promotions, increased salaries,” etc., which depend on writing for their procurement. Schiltz, *supra* note 56, at 751; see also Levine & Stanchi, *Wages*, *supra*, note 32, at 578 (“Our data leaves no question that there are two tracks in legal academia: one low-salary, low-status track composed overwhelmingly of women and one higher salary, tenure-track composed overwhelmingly of men.”); Hope Viner Samborn, *Legal Writing Instruction: The Pink Ghetto of Academe*, *Persp., For & About Women Law.* (Spring/Summer 2001), at 8.

n61. *Elusive Equality*, *supra* note 60, at 33; see also Bayer, *supra* note 29, at 353 (“Most law schools impose on legal writing professors a wide assortment of conditions distinctly and deliberately less desirable than those enjoyed by other full-time law teachers.”) (emphasis added).

n62. Rideout & Ramsfield, *A Revised View*, *supra* note 48, at 45.

n63. *Id.* at 55.

n64. See, e.g., AALS Placement Bull. No. 9596-4, at 6-9 (Feb. 9, 1996); AALS Placement Bull. No. 9697-2, at 11-12 (Sept. 27, 1996) (job announcements describing ideal LRW candidates as those with “extensive legal research and writing experience” and “demonstrated legal research and writing ability”). Unlike job announcements for other law teaching positions, announcements for LRW jobs usually request submission of a writing sample with the initial application. *Id.*; see also Levine, *Sisyphus*, *supra* note 39, at 1101-06 and accompanying footnotes (describing career-foreclosing faux pas in cover letters written by applicants for legal writing positions).

n65. To give just one small example, one day in class my first-year students challenged my advice for complying with a strict word limit I had imposed on their trial briefs. They already knew from prior experience in the course that the challenging word limit would force them to make decisions about what was most important to include and to edit their wordy prose. The sense of relief and validation was visible on their faces as I explained my experience just the day before, when an editor had informed me of a similarly challenging word limit and I had to slash entire paragraphs from

an essay. I was able to report to my students with confidence how much this editing improved the final draft, and for the rest of the lesson they took my advice to heart willingly. See Sheila Simon, Yikes - The Students Are Editing My Writing, 15 Second Draft 16 (June 2001) (“Students see that you are an active writer, and that builds respect.”); Toni M. Fine, Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors, 5 Legal Writing 225, 227 (1999) (“One way to reduce the view of legal writing instructors as being of secondary importance to legal education is for those instructors to engage in scholarly research and publication.”).

n66. [T]his field cries out for scholarship. Academics are people who apply research to problems. They evaluate the problem, propose solutions, and test those solutions with further scholarship. The problems in professional legal writing are severe, and the calls for help come from many sources... . If the law schools are honestly committed to solving these problems, then they should create ... positions that will spur needed scholarship.

Beazley, *supra* note 52, at 81-82 (footnotes omitted).

n67. See Christian C. Day, In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having It Published, 6 Legal Writing 229, 251 (2000) (“I seem to write best on days when I am not teaching and when I have no administrative duties.”).

n68. See *supra* note 41 and accompanying text; Bayer, *supra* note 29, at 366 (“Schools often exploit writing professors by assigning them additional work without added compensation, enhanced job security, or even thanks.”).

n69. One oft-cited article outlines fifty ways law schools can support faculty scholarship. James Lindgren, Fifty Ways to Promote Scholarship, 49 J. Legal Educ. 126 (1999).

n70. See Roger L. Geiger, To Advance Knowledge: The Growth of American Research Universities, 1900-1940, at 72-77 (1986). From 1890 to 1920, “the view that all university teachers were entitled to the chance to do research gradually gave rise to the notion that they all had the responsibility to be productive scholars,” *id.* at 74, and university teaching jobs across the United States were re-organized to allow time for significant research. *Id.* at 67-77; see also Frederick Rudolph, The American College and University: A History 404 (1962) (“By the late nineteenth century at the University of Pennsylvania professors who insisted on pouring time and energy into teaching at the expense of research were told to go elsewhere.”); Robert H. Knapp, Changing Functions of the College Professor, in The American College 290, 291-97 (Nevitt Sanford ed., 1962).

n71. Ass’n of Am. Law Schs., Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities, Responsibilities as Scholars, available at <http://www.aals.org/ethic.html> (last visited Jan. 23, 2002).

n72. Amer. Ass’n of Univ. Professors, Statement on Professional Ethics, available at <http://www.aaup.org/statements/Redbook/Rbethics.htm> (last visited Jan. 23, 2002) (emphasis added); see also Lindgren, *supra* note 69, at 126 (“We owe our institutions, our students, and ourselves the same commitment to the advancement of knowledge that other parts of a university expect.”).

n73. For accreditation purposes, most full-time LRW professors (i.e., those without tenure track or clinical appointments) are characterized as “additional teaching resources” rather than full-time law professors, and each one counts as only seven-tenths of a professor when calculating a law school’s student-faculty ratio. ABA Standards, *supra* note 59, at standard 402(c), interpretation 402-1(1)(A)(ii), & standard 405(d). I cannot help but wonder, does the missing three-tenths represent the unacknowledged (and unsupported) scholar within each LRW professor? It is really no secret that

the disparate contractual treatment of legal writing professors occurs with the knowledge and, indeed, the express approval of the American Bar Association, the institution of legal professionals entrusted to set the standards for both minimal excellence and ethical practice that all law schools must maintain to be academies of legal education... . The ABA underscores and legitimizes the prevailing institutional prejudice that legal writing faculty are not to be accorded the ... opportunities due all other full-time faculty members.

Bayer, *supra* note 29, at 360-62.

n74. *Id.*

n75. See, e.g., Ass’n of Legal Writing Dirs. & Legal Writing Inst., Quality Legal Writing Instruction and ABA Accreditation Standard 405: Report and Recommendations, available at <http://www.alwd.org/cm/ap-pendices/alwd->

sc500.pdf (last visited Jan. 23, 2002); Stanchi & Levine, *Secrets*, supra note 45, at 17 n.75, 18 n.85 (noting the large number of LRW professors who testified before the ABA Standards Review Committee in 1999, 2000, and 2001).

n76. Stanchi & Levine, *Secrets*, supra note 45, at 16-20; Jenny B. Davis, *Writing Wrongs*, 87 A.B.A. J. 24, 24-25 (2001).

n77. See Ass'n of Legal Writing Dirs., ALWD Summer Research Grant Program, available at http://www.alwd.org/resources/summer_research_grants.htm (last visited Jan. 23, 2002).

n78. *Id.*

n79. I agree with the scholar who noted:

based on my own concededly unscientific survey of the contents of my office mailbox ..., I conclude that there has been a positive correlation between the increased attention given to law school rankings (U.S. News in particular) and the amount of promotional literature I have received from schools that obviously are trying to make their move.

David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 *Suffolk U. L. Rev.* 249, 261 (1997). I cannot cite to the titles of the mailings I have received or offer assurance that they are "on file with the author," because I always file them in the mail room recycling bin. Of course U.S. News has yet to ask me to participate in its survey, but that is likely attributable to my status as an LRW director rather than my conscientious recycling.

n80. See Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek - or The New Yorker*, 60 *Ohio St. L.J.* 1097, 1098 (1999) ("Some law schools use the rankings as an outside measure of how 'good' they are - especially according to the 'academic reputation' component of the rankings."). But see Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 *Tex. L. Rev.* 403 (1998) (suggesting law school rankings properly funnel the best law students to the most desired law jobs and rankings based on scholarship encourage more scholarship, ultimately benefitting the public).

n81. See Yamada, supra note 79, at 251-52 ("At a time when law schools vigorously compete for students and financial support, these rankings have taken on a considerable amount of importance.").

n82. Since the U.S. News & World Report rankings appear to be here to stay, perhaps LRW programs should have separate rankings, as Intellectual Property and Environmental Law programs already do. Such publicity for the academic reputations of LRW programs would encourage law schools to allocate additional resources to both LRW teaching and LRW scholarship.

n83. Brill et al., supra note 29, at 62.

n84. Linda H. Edwards, *A Bibliography of Publications by Legal Writing Faculty*, available at <http://www.alwd.org> (forthcoming 2003) (showing sixty-two percent of scholarship by LRW professors is not about LRW) (copy on file with the author); Linda H. Edwards, *Scholarship by Legal Writing Teachers: An Empirical Study*, Presentation at the LWI Bi-ennial Conference (2000). For a description of the transformative possibilities of scholarship by LRW professors, i.e., its potential to transform both legal scholarship and legal education, see Philip Meyer, *The Exploding Frog: A Legal Writing Teacher's Dream*, 20 *Legal Stud. F.* 137, 144 (1996). For a description of the transformative dynamics of scholarship from previously unheard voices, generally, see Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 *U. Pa. L. Rev.* 1349, 1369-72 (1992).

n85. AALS Placement Bulletin, supra note 64 (listing announcements for LRW jobs requiring "significant legal experience" or stating "prior experience in the practice of law ... is essential"); see also Levine, *Sisyphus*, supra note 39, at 1105 (quoting Schiltz, supra note 56, at 760-62) ("Virtually every legal writing program wants professors with significant law practice experience, quite unlike the attitude held by many law schools, particularly the elite law schools, when hiring doctrinal faculty.").

n86. 5 U.S.C. 551-559 (1994).

n87. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, Treaty Doc. No. 27, 99th Cong., 2d Sess. 40 (1986).

n88. A survey of thirty-eight tenure-track and tenured LRW professors revealed:

Almost every respondent said that scholarship related to legal research and writing would count, or had counted, toward tenure. But several hinted that they did not know that for sure, and were not likely to assume that legal writing scholarship would count toward tenure - highly ironic, if scholarship is supposed to feed into teaching. Although five said it likely would be weighed less than more traditional scholarship... . Three said they had no plans to produce any scholarship related to legal research and writing.

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, 545 (1995) [hereinafter Levine, *Wilderness*]. Indeed, “some schools have even forced tenure-track legal-writing professionals to develop another area of specialization by refusing to accept legal-writing scholarship as part of the tenure-review process.” Beazley, *supra* note 52, at 84 (emphasis added). This discounting of LRW scholarship is not without parallels elsewhere in the legal academy. See Delgado, *supra* note 84, at 1350 (focusing on “two groups of insurgent scholars, Critical Race Theorists and radical feminists”). But the ABA has warned:

Once a school decides to grant tenure-track status to legal writing teachers, it would be anomalous to then say that scholarship in the field will not be accepted for tenure and that writing teachers will be required to publish in doctrinal areas. Such a decision would undermine the significance of granting tenure-track status to writing teachers and place a burden on them that is far more onerous than that for any other tenure-track teacher.

Brill et al., *supra* note 29, at 62-63.

Unfortunately for legal writing professors who do write about their field, “the student law review editors at elite schools are likely to share the faculty views and to reject articles about legal writing.” Levine, *Wilderness*, *supra* at 540.

n89. See generally Edwards, *supra* note 84.

n90. For earlier bibliographies of scholarship about legal writing, most of which was produced by legal writing professors, see Brill et al., *supra* note 29, at 149-74, and Gopen & Smout, *supra* note 29, at 94-122. For more recent LRW bibliographies, see Donald J. Dunn, *Legal Research and Writing Resources: Recent Publications, Persp.: Teaching Legal Res. & Writing (1992-2001)* (a regular feature at the end of every issue). See generally Mary Beth Beazley & Linda H. Edwards, *The Process and the Product: A Bibliography of Scholarship about Legal Scholarship*, 49 *Mercer L. Rev.* 741 (1998).

n91. After all, “what self-respecting tenured professor would dream of writing an article that is virtually devoid of doctrinal content?” William R. Slomanson, *Legal Scholarship Blueprint*, 50 *J. Legal Educ.* 431, 437 (2000) (emphasis added).

n92. Among the presentations at the Colloquium on Legal Discourse have been: Professor David Caudill, *Representing Jurisprudence: Traditions and Contemporary Perspectives*; Professor Lisa Ede, *Collaborative Writing and the Concept of Authorship*; Professor Linda Flower, *Composition Theory and Legal Writing*; Professor Peter Goodrich, *The War of Texts: Rhetoric and the Force of Law*; Professor L.H. La Rue, *An Overview of Contemporary Jurisprudence*; Professor Steven Mailloux, *Rhetoric and Legal Hermeneutics*; Professor Martha Nussbaum, *Narrative and the Law*; Professor Jack Sammons, *The Ethics of Legal Rhetoric*; Professor Thomas L. Shaffer, *On Teaching Legal Ethics with Stories*; and Professor James Boyd White, *The Desire for Meaning in Law and Literature*. See *Colloquium on Legal Discourse, Program Brochures (1998 & 2000)* (copies on file with the author).

n93. *Id.*

n94. See e-mail from Michael R. Smith, *supra* note 9. During that Spring 1997 Atlantic Region Legal Research and Writing Conference, the presentations included: Mary Lu Bilek, *Working Undercover: A Writing Teacher Infiltrates the Larger Academy*; JoAnne Durako, *Collaboration in Scholarship: A Cautionary Tale and a Model*; Diane Penneys Edelman et al., *The Nuts and Bolts of Publishing an Article*; Michael R. Smith, “Skills” *Scholarship in Legal Research and Writing in the Future*; and Marilyn Walter, *Clinical Theory and Rhetorical Context - Two Sides of the Same Coin*. *Id.*

n95. See, e.g., Lucia A. Silecchia, *Bridging the Gap Between Scholarship and Teaching*; Suzanne Ehrenberg, *Written Words Remain: The Revered Role of Writing in the American Legal System*; and Eric B. Easton, *The Process of Legal Scholarship: A Journal*, Program Remarks at the ALWD Second Biennial Conference (1999), available at <http://www.alwd.org/downloads/misc/Moving%20Into%20the%2021st%20Century.pdf> (last visited Jan. 23, 2002); see also Jamar & Edwards, *supra* note 9.

n96. See supra notes 21-22 and accompanying text.

n97. See supra notes 75-76 and accompanying text.

n98. See supra note 77 and accompanying text.

n99. See supra notes 5, 90, 95 and accompanying text.

n100. See supra notes 9, 92, 94 and accompanying text.

n101. See supra note 8 and accompanying text; infra note 104 and accompanying text.

n102. E-mail from Deborah Hecht, Director, Writing Resources Center, Touro College, Jacob D. Fuchsberg Law Center, to Sue Liemer (July 12, 1999) (copy on file with author).

n103. Professor Hecht also noted this method grew out of the theories of writing luminary Peter Elbow. *Id.*; see also Peter Elbow, *Writing With Power: Techniques for Mastering the Writing Process* 20-24, 139-45 (1981).

n104. E-mail from Jill Ramsfield, Professor & Director, Legal Research & Writing, Georgetown University Law Center, to Sue Liemer (July 12, 1999) (copy on file with author). I mean no criticism of Professor Ramsfield; indeed I am in awe of anyone who can follow her suggested approach on a regular basis. I am reminded of the medieval monastics who rose before dawn to begin their days of manuscript writing, and I question yet again why the LRW field alone in the legal academy must routinely exact such a degree of devotion.