Legal Writing as Office Housework?

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Much has been written, in this symposium and elsewhere, about the gender disparities between legal writing faculty and non-LRW faculty, as well as the unequal status of legal writing faculty in terms of salary, security of position, workload, and other status issues.[1] This essay explores those status issues faced by legal writing faculty[2] through the lens of the distinction in Joan Williams's work between "glamour work" and "office housework."[3]

Williams defines "glamour work" as the types of assignments that "can set you up for promotion and skyrocket you to the top of your company."[4] On the other hand, "office housework" assignments are "necessary but unsung," including both actual housework like cleaning up after meetings and "the unsung operational or administrative work that keeps the company rolling

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1. The initial essay in this symposium, by Professors Weresh & Tiscione, provides a helpful introduction to these issues and citations to a number of important sources on these issues. *See generally* Melissa H. Weresh & Kristen K. Tiscione, *Building Bridges Across Curricular and Status Lines: Gender Inequity Throughout the Legal Academy*, 69 J. Legal Educ. 3 (2019).

2. I do not want to suggest that legal writing faculty are the only ones dealing with these status challenges. Clinicians at some schools face similar issues, and librarians and academic support professionals often face status challenges at least as serious as those facing legal writing faculty. *See, e.g.*, Carol A. Parker, *The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians*, 103 L. Libr. J. 7 (2011); Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 Cap. U. L. Rev. 1, 26 (2012). These experiential roles are, like legal writing positions, often filled by women, creating a gendered dynamic to the doctrinal/skills divide. *See* Renee Nicole Allen et. al., *The "Pink Ghetto" Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. Det. Mercy L. Rev. 525, 526 (2019). While I would like to explore the way that these issues play out for these other groups within the academy, that discussion is beyond the scope of this essay.

3. *See, e.g.*, Joan C. Williams & Marina Multhaup, *For Women and Minorities to Get Ahead, Managers Must Assign Work Fairly*, Harv. Bus. Rev. (Mar. 5, 2018), https://hbr.org/2018/03/for-women-and-minorities-to-get-ahead-managers-must-assign-work-fairly [https://perma.cc/3WLH-G3NY] [hereinafter *Assign Work Fairly*].

4. *Id.*

along."[5] More generally, office housework involves tasks that are not valuable for career advancement, even if they are helpful or even necessary for the operation of an organization.[6] For example, Williams notes that in academia (and elsewhere), committee work is a type of office housework, given that it takes up far more time than the value it brings to the people doing that work.[7]

Williams's research across a variety of industries shows significant gender and racial disparities in access to glamour work compared with the burdens of office housework. Across industries, white women and women of color are more likely to report less access to glamour work assignments than white men.[8] Similarly, white women and women of color report carrying heavier burdens of office housework. For example, in a recent study by the ABA, almost fifty percent of white female lawyers and forty-three percent of female lawyers of color reported playing unsung administrative roles more often than their colleagues, compared with twenty-six percent of white male lawyers and twenty percent of male lawyers of color.[9] While all relatively junior employees must handle unsung ministerial tasks, Williams stresses that "people often assume that women [of all levels] are a perfect fit for these tasks," while men face no such assumptions.[10]

The unequal distribution of office housework has real-world consequences for organizations generally and women in particular. Women are less likely than men to get credit for doing office housework and are more likely than men to face backlash for refusing to do it.[11] That dynamic "creates one of the hidden barriers that can keep women from ascending to more senior leadership roles."[12] In law firms, excessive burdens of office housework reduces the amount of billable time that lawyers can report, hurting their compensation and careers.[13] Similarly, in academia, legal writing as a form of office housework harms legal writing faculty by reducing the time they have for other contributions to the academy

5. *Id.*

6. *Id.*

7. Joan C. Williams & Rachel Dempsey, What Works for Women at Work: Four Patterns Working Women Need to Know 108 (2018).

8. *Assign Work Fairly*, *supra* note 3 ("Female engineers of color were 35% less likely than white men to report having equal access to desirable assignments; white women were 20% less likely. For lawyers, the findings were remarkably similar: Women of color were almost 30% less likely than white men to say they had equal opportunity to high-quality assignments, and white women were 18% less likely.").

9. Joan C. Williams, et al., You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession 18 (2018), https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf [hereinafter You Can't Change What You Can't See; *Assign Work Fairly, supra* note 3.

10. Williams & Dempsey, *supra* note 7, at 110.

11. *See, e.g.*, Deborah M. Kolb & Jessica L. Porter, "*Office Housework" Gets in Women's Way,* Harv. Bus. Rev. (Apr. 16, 2015).

12. *Id.*

13. You Can't Change What You Can't See, *supra* note 9, at 18.

(like scholarship) and hindering their status. Additionally, these dynamics harm organizations, including law schools. "If the glamour work and the office housework aren't distributed evenly, you won't be tapping into the full potential of your workforce."[14] The gendered way that office housework provides a barrier to advancement may be one factor that helps explain the "decades-long, high correlation between women and law faculty with low status and little or no security of position."[15] Thus, the office housework paradigm can be helpful in thinking about how to improve the status of legal writing faculty.

The first section of this essay explores types of office housework that seem particularly relevant to legal writing faculty generally and legal writing program directors more specifically. It then offers some suggestions for strategies to help overcome the barriers to improved status for legal writing faculty. These strategies and the office housework framework underlying them obviously will not solve all status challenges faced by legal writing faculty, but they still may provide some methods for progress.[16]

1. Three Types of Office Housework Particularly Relevant to Legal Writing Teaching and Program Direction

Williams gives three examples of types of office housework that seem particularly relevant to legal writing faculty and program directors.

First, the most relevant category of office housework for legal writing faculty involves the type of "important but undervalued" assignments that must "get done by *someone,* but . . . isn't going to make that person's career."[17] For legal writing faculty, much of what we do may fall into this category. For example, legal writing teaching is labor-intensive frontline work involving significant amounts of formative assessment and working with students to develop their skills over a long period.[18] While schools may praise the importance of the labor-intensive and individualized work with students, that type of work often

14. *Id.*

15. Weresh & Tiscione, *supra* note 1, at 5.

16. This essay provides my preliminary thoughts on these issues; I intend to explore these concepts more deeply in future scholarship.

17. *Assign Work Fairly, supra* note 3.

18. *See, e.g.*, Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know about Learning Outcomes & Assessments*, 16 J. Legal Writing Inst. 605, 621, 631 (2010) (noting the ways that traditional legal writing teaching methods are consistent with the assessment movement coming to law schools). Additionally, many schools require at least two semesters of legal writing, sometimes more, while doctrinal courses are often just a single semester.

leaves legal writing faculty with less time to produce scholarship, which is more clearly valued for purposes of tenure and promotion. The treatment of legal writing within the ABA Standards on legal education reflects this disparity. Legal writing is one of only a few required curricular components under the ABA Standards,[19] but those same ABA Standards require far less security of position for legal writing faculty than they do for clinical or doctrinal faculty.[20]

A second relevant type of office housework involves "emotional labor ('He's upset—fix it.')."[21] For legal writing faculty, this may sound familiar in terms of our frontline role in dealing with student emotions. Legal writing faculty are often the first to give students grades and negative feedback. While obviously not everyone can be at the top of the class, legal writing faculty are often the first ones to signal to students where they might fall in the law school class ranking, and many students are understandably upset. Additionally, the combination of the small size of legal writing classes and the individualized feedback legal writing faculty provide may make students more prone to show their negative emotions to legal writing faculty than to non-LRW faculty.

The third type of office housework, which is particularly relevant to legal writing program directors, involves work that might sound impressive but is undervalued for salary or promotion purposes. Williams includes in this

19. Am. Bar Ass'n Section of Legal Educ. and Admission to the Bar, *Program of Legal Education*, *in* ABA Standards and Rules of Procedure for Approval of Law Schools, 2019-2020 (2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf (requiring at least two credit hours of professional responsibility, one writing experience in the first year and at least one additional writing experience after the first year, and at least six credits of experiential learning).

20. Am. Bar Ass'n Section of Legal Educ. and Admission to the Bar, *The Faculty*, *in* ABA Standards and Rules of Procedure for Approval of Law Schools, 2019-2020 27 (2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter4.pdf (requiring a policy on academic freedom and tenure under Standard 405(b) and granting clinical faculty "a form of security of position reasonably similar to tenure" under Standard 405(c) while providing for separate treatment for "legal writing teachers" (rather than legal writing faculty) under Standard 405(d)). The interpretations for Standard 405(b) and (c) clarify how these protections will be provided. *Id.* at 27-28 Interpretation 405-3 (requiring written criteria and procedures for tenure and promotion); Interpretation 405-6 (giving more explanation about the various protections required under 405(c) to ensure the "reasonably similar to tenure" standard is met); Interpretation 405-8 (guaranteeing full-time clinical faculty the right to participate in "faculty meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members"). However, the only Interpretation note for 405(d) explicitly authorizes schools to provide far fewer protections to legal writing faculty. *Id.* at 28 Interpretation 405-9 ("Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.").

21. *Assign Work Fairly*, *supra* note 3.

category such tasks as chairing a diversity committee.[22] Many legal writing faculty carry heavy service obligations, including work on assessment or curriculum committees. Many duties of legal writing program directors also fall within this category; though directors may have titles and even stipends for this work, schools may not appropriately recognize the long-term value provided by this work.[23] For example, legal writing program directors often work with career legal writing faculty to ensure some level of programmatic consistency, shared teaching goals or grading practices, etc. Additionally, legal writing program directors often find, train, and supervise new or contingent faculty (adjuncts, visitors, or fellows). Similarly, legal writing program directors often work with academic deans on course planning to ensure adequate numbers of sections to accommodate variation in class size each year while maintaining reasonable class sizes to facilitate the kinds of individualized feedback and assessment discussed above. Schools may provide some recognition of the value of these kinds of work, but from the legal writing faculty perspective at least, these tasks are often unsung, particularly when non-LRW faculty do not have to perform these tasks.

2. Preliminary Thoughts on Strategic Solutions

Williams doesn't suggest that we get rid of "office housework," and I certainly don't suggest eroding the valuable ways in which legal writing faculty facilitate student learning. Instead, my suggestions follow Williams's approach of identifying how office housework and glamour work are currently distributed and changing assignment systems for both types of work.[24] These general strategies could lead to several specific approaches within the law school and legal writing context.

2.1 Law schools should look for opportunities for non-LRW faculty to take on more of the office housework portions of teaching and service.

One key strategy involves looking for ways to more evenly share the burdens of office housework.[25] Williams notes that coming up with some system, rather

22. *Id.*

23. Ass'n of Legal Writing Dir. & Legal Writing Inst., Report of the 2017-2018 Institutional Survey 64-72 Q.9.11-9.16 (2019), https://www.alwd.org/images/resources/ALWD-LWI-2017-18-Institutional-Survey-Report.pdf [hereinafter ALWD/LWI Joint Survey] (discussing the salary and stipend benefits that legal writing directors may receive). However, legal writing program directors at thirty-nine schools report earning lower compensation (salary plus any stipend) than the salaries of most or all non-LRW faculty with similar status and years of service. *Id.* at 74, Q9.17#2.

24. *Assign Work Fairly*, *supra* note 3. *See* You Can't Change What You Can't See, *supra* note 9, at 19 (noting that fair allocation of the glamour work and the office housework are two separate problems and can be addressed separately or together).

25. You Can't Change What You Can't See, *supra* note 9, at 19 (recommending using systematic surveys to identify within an organization what is the office housework, what is the glamour work, and who is doing what and changing the workplace's system for assigning office housework, glamour work, or both).

than just relying on volunteers, is key.[26] Then hold everyone accountable for following the system. "If there's someone on your team who never gets asked to do mundane tasks because he's 'just not a details guy,' that's a performance problem. It should be addressed like any other performance issue."[27]

In the law school context, these strategies could apply to such functions as formative assessment and working with struggling students to improve performance. For example, law schools sometimes rely for formative assessment on legal writing faculty and non-LRW faculty who volunteer to give midterms. Instead, a school could require at least one midterm in the first semester of the 1L year and rotate which course must give the midterm in a given year. Faculty could choose to give a midterm in the years they were not required to, and legal writing faculty would continue to provide formative assessment, but a rotation system could help share the burdens of formative assessment and could open up opportunities for more faculty to provide support to struggling students before the end of a course. Then law school administrations should make these tasks part of faculty's yearly performance evaluation process and hold all faculty accountable for adhering to the rotation.

Law schools should similarly look for ways to equalize the burdens of service. For most legal writing faculty nationally, law school service is either required or expected, even for those in lower-status positions.[28] Of legal writing faculty who are full time and on long-term contracts without 405(c) status, nearly seventy-five percent reported being required or expected to do service; for those on short-term contracts, sixty-four percent reported the same requirement or expectation.[29] Anecdotally at least, many legal writing faculty who lack security of position have told me privately in my role as co-chair of the Legal Writing Institute's Professional Status Committee that they have trouble saying no when asked to take on new service obligations.[30] Law schools should do more to avoid disproportionally burdening legal writing faculty who lack security of position by empowering them to say no to requests. Law schools should also hold all faculty accountable for sharing service burdens more equally.

26. *Assign Work Fairly*, *supra* note 3 ("It doesn't really matter which system you choose—whether it's alphabetical by last name or chronological by astrological sign—as long as people take turns. Everyone on the team should do a task before someone does it twice.").

27. *Id.*

28. ALWD/LWI Joint Survey, *supra* note 23, at 82 Q.10.8 (215 respondents indicated that service was required or expected; only eighteen respondents answered "unknown" or responded that service was not allowed for legal writing faculty). Unsurprisingly, LRW faculty in higher-status positions (unitary tenure/tenure track, programmatic tenure/track, or 405(c) tenurelike protection) almost universally reported that service was required or expected. *Id.*

29. *Id.*

30. Faculty who feel unable to say no might still want to look for opportunities to negotiate while saying yes. *See* Williams & Dempsey, *supra* note 7, at 115 (recommending asking for something else to be taken off their plate when saying yes to a new request); Kolb & Porter, *supra* note 11 (advocating for turning requests into negotiations for other benefits without removing something from their plate). This strategy might not always be appropriate, but legal writing faculty who feel overburdened might find some opportunities to use these strategies.

2.2 Law schools should avoid mixed messages about the value of legal writing.

One common piece of advice in the office housework literature is that organizations need to avoid mixed messages.[31] "Communicate to everyone what your company values—and then make sure your systems bear it out. If your company encourages activities like mentoring and serving on the diversity committee, make sure those things count when the time comes for promotions and raises."[32]

Legal writing faculty sometimes hear non-LRW colleagues or law school administrators talking about the value of legal writing courses and faculty. Those words, however, should be backed up in terms of security of position, salary, and voting rights. It's not enough to say that legal writing is valued; the current status issues facing legal writing faculty at many schools provide a mixed message.[33] Legal writing faculty should be valued for the crucial role they play in shaping student learning in the 1L year, for the crucial role they play in helping the students develop the writing skills that are needed for bar passage, and for preparing students to succeed in law practice.

2.3 Law schools should make room for legal writing faculty who want to take on "glamour work" to do so.

In legal academia, scholarship is often considered the glamour work; legal writing faculty need opportunities to engage in this work and to receive the benefits of doing so. At many law schools, legal writing faculty produce excellent scholarship, but they do not always reap the same rewards as their non-LRW colleagues, while at other schools legal writing faculty face various barriers that prevent them from doing scholarship in the first place.

Williams notes that workplaces need to "consider *all* eligible employees [for glamour work], not just the ones who come to mind first or who ask to do it."[34] The recent ABA report similarly urges employers to revisit assumptions that only a small number of people are capable of handling the glamour work.[35] Law schools should not assume that legal writing faculty cannot or do not want to produce scholarship, and law school faculty and administers should read and engage with the scholarship being produced by many legal writing faculty around the country.[36]

31. *Assign Work Fairly*, *supra* note 3; You Can't Change What You Can't See, *supra* note 9, at 20.

32. *Assign Work Fairly*, *supra* note 3.

33. *See, e.g.*, ALWD/LWI Joint Survey, *supra* note 23, at 58, Q8.2 (108 respondents indicated that their law schools employ legal writing faculty on either short-term contracts or long-term contracts that do not meet 405(c). None of those respondents indicated that they had full voting rights at their institutions. *Id.* at 79, Q10.2.).

34. *Assign Work Fairly*, *supra* note 3.

35. You Can't Change What You Can't See, *supra* note 9, at 21.

36. For example, during the panel discussion, I recommended that attendees to our session also attend the "New Scholars Showcase" for legal writing faculty the next day at AALS and that

To provide more legal writing faculty with access to scholarship as glamour work, however, law schools should also try to reduce the barriers that prevent legal writing faculty from engaging in this work. For example, law schools need to set reasonable expectations about teaching loads for legal writing faculty; many schools fail to follow the guidelines for teaching loads found in the ABA Sourcebook for Legal Writing Programs.[37] Additionally, many schools currently fail to provide scholarship support to legal writing faculty through programs like research grants, travel funds, and stipends, particularly for those faculty who have minimal security of position.[38] For example, legal writing faculty with unitary or programmatic tenure report nearly the same access to scholarship and research stipends as their non-LRW colleagues, but only thirty-two percent of legal writing faculty on short-term contracts report this same access to these stipends.[39] Law schools should even consider potential accountability measures for those in charge of faculty workloads and assignments to incentivize them to take active steps to level the playing field for legal writing faculty.[40]

Additionally, law schools should provide development opportunities for legal writing faculty who are interested in producing scholarship but are not yet doing so.[41] Schools often provide this type of support for new non-LRW faculty, but legal writing faculty may be either excluded from or discouraged from participating in these programs. The idea here is not that all legal writing

they try to read the exciting new scholarship being done by legal writing faculty on such topics as narrative theory, rhetorical and cognitive approaches to persuasion, as well as on a variety of more traditional "doctrinal" topics.

37. For example, the ALWD/LWI Joint Survey indicated a mean section size of 22.1 students for required legal writing courses focused on objective writing, with a maximum section size of sixty students. ALWD/LWI Joint Survey, *supra* note 23, at 27 Q6.8. Many legal writing faculty teach multiple sections. The ABA Sourcebook on Legal Writing Programs states that contract legal writing faculty should have "no more than 30-45 students per semester, assuming professor is not teaching any other course. Smaller numbers are better, permitting the professor to devote more time to each student, to produce scholarship, and to engage in service. Loads of more than 35 legal writing students become counterproductive, especially if highly desirable features such as individual student conferences and multiple revisions with feedback are an integral part of the curriculum." Am. Bar Ass'n Section of Legal Educ. and Admission to the Bar, Sourcebook on Legal Writing Programs 95 (Eric B. Easton ed., 2006).

38. ALWD/LWI Joint Survey, *supra* note 24, at 84 -89, Q10.12-10.16 (discussing various ways that professional development support for legal writing faculty differs from that provided to non-LRW faculty at many schools).

39. *Id.* at 85, Q10.12.

40. You Can't Change What You Can't See, *supra* note 9, at 20 ("Have the supervisor track his or her allocation of glamour work going forward to measure progress. Research shows that accountability matters.").

41. *Id.* at 21 ("Identify what skills or competencies an employee needs to be eligible for the high-profile assignments work and develop a plan to help the employee develop the requisite skills.").

faculty should have to do scholarship, and certainly not on top of already high workloads. But a fairer assignment system can improve job satisfaction across organizations.[42] Additionally, "[a]n equitable assignment system means that companies will be tapping into a broader talent pool—one that has been right under their nose the whole time, stocked with overlooked expertise."[43] Legal writing faculty teach *writing,* and law schools that fail to tap their scholarly potential fail to capitalize on that expertise.

Conclusion

Legal writing faculty have faced inequities in status for many years, and work to overcome those inequities will require a multifaceted approach.[44] But Williams's work, and the work more broadly on office housework versus glamour work, provides both a helpful lens through which to reexamine some of these persistent inequities and some strategies for reducing them.

42. *Assign Work Fairly*, *supra* note 3.

43. *Id.*

44. I noted in the presentation the lively debate within the legal writing community about whether "going directorless" (i.e., eliminating the legal writing director position) helps or hurts legal writing faculty achieve equal status within their law schools. That is a complicated issue best saved for another day.