

On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)

Teri A. McMurtry-Chubb

I. Introduction

The literature on the effectiveness of Standard 405(c) in providing security of position and protection against gender discrimination for faculty who teach legal writing has largely ignored the ways that provision affects scholars of color who teach writing in the legal academy.¹ According to the annual survey conducted by the Association of Legal Writing Directors (ALWD) and the Legal Writing Institute (LWI) in 2014 (hereinafter the ALWD/LWI Survey), approximately 77.5% of professors who teach legal writing are women.² Moreover, approximately 10% of legal writing professors are people of color.³ Although the ALWD/LWI survey does not disaggregate the data collected by race and gender, one need only attend the national meetings of ALWD or

Teri A. McMurtry-Chubb is an Associate Professor of Legal Writing at Mercer University Walter F. George School of Law. She serves as President of the Association of Legal Writing Directors, 2015-2016. The author thanks God for his mercy and grace; her husband, Mark Anthony Chubb, for his unflagging patience and unwavering support; and the community of legal writing faculty of color who suffer and thrive in silence. I see you.

1. See, e.g., Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law School's Dirty Little Secrets*, 16 BERKELEY WOMEN'S L. J. 3 (2001); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997). But see Lorraine K. Bannai, *Challenged X3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014) (considering the multiple marginalizations that female legal writing professors of color face); Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009) (discussing the convergence of race, gender, and status and its negative impact on legal writing professors of color).
2. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY I (2014), <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf> [<https://perma.cc/V8V3-Q5GK>] [hereinafter ALWD/LWI 2014 SURVEY].
3. *Id.* One hundred seventy-eight respondents answered the question with respect to race. Of that number, 17 (9.6%) responded that they identified racially as something other than Caucasian.

LWI, respectively, or review the membership of either organization's diversity committees to observe that the majority of scholars of color who teach legal writing are also women. Statistics collected by the American Bar Association (ABA) in 2013 show that of all faculty of color occupying 405(c) status, 14.7% (154 faculty) are women of color, as compared to the 13.8% (85 faculty) who are men of color.⁴

As noted in numerous studies, women of color and white women do not experience discrimination in the same manner.⁵ While both groups are women, women of color are also people of color, who are discriminated against on the basis of both race and gender simultaneously.⁶ Furthermore, in the legal academy 405(c) female faculty of color occupy not only a marginalized position vis-à-vis their white female colleagues,⁷ but also vis-à-vis female faculty of color who are tenured or on the tenure track.⁸ However, despite these differences, studies that seek to demonstrate gender discrimination against women whose job status is categorized as 405(c) insist on treating white women and women of color 405(c) as the same,⁹ and fail to take into account how status also affects these women differently than their tenured and tenure-track colleagues of color.¹⁰ This essay analyzes the inability of 405(c) to provide security of position and to protect women of color from discrimination on the basis of race, gender, and status.

4. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LAW SCHOOL FACULTY & STAFF BY ETHNICITY AND GENDER (2013), http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down to "Longitudinal Charts; then click on "Law School Faculty & Staff by Ethnicity and Gender" to open the spreadsheet) [hereinafter 2013 ABA FACULTY ETHNICITY & RACE SURVEY].
5. For foundational readings on the intersection of race and gender *see generally* Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, in CRITICAL RACE FEMINISM: A READER 27 (Adrien Katherine Wing ed. 1997) [hereinafter CRITICAL RACE FEMINISM]; PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT (2d ed. 2009); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42 (1988); bell hooks, FEMINIST THEORY: FROM MARGIN TO CENTER (new ed. 2015).
6. *See* sources cited *supra* note 5.
7. 2013 ABA FACULTY ETHNICITY & RACE SURVEY, *supra* note 4. The statistics indicate that white faculty comprise 84.1% of all female 405(c) faculty.
8. *Id.* Some 34.5% (252) of female faculty of color at ABA-accredited law schools are on the tenure track, as compared with 63.5% (464) Caucasian female faculty; 22.6% (399) female faculty members of color at ABA-accredited law schools are tenured, as compared with 76.7% (1353) Caucasian female faculty.
9. *See, e.g.*, Stanchi, *supra* note 1; Stanchi & Levine, *supra* note 1; Durako, *supra* note 1; Arrigo, *supra* note 1.
10. *See generally* Leland Ware, *People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention*, 20 B.C. THIRD WORLD L.J. 55 (2000); Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843 (1997).

II. Race, Gender, Status, and Tenure as Job Security

Because tenure is the reference point for the tenure-like status referred to in 405(c), it is necessary to discuss assumptions made about tenure as they relate to women of color. White supremacy and patriarchy both explicitly and implicitly create hierarchies in the elite space that is academe. These hierarchies are reinforced through the tenure process. Perceptions of quality, worth, and merit drive tenure awards in the legal academy. Unfortunately, the terms quality, worth, and merit are not constructed outside of racialized and gendered contexts that inform the definitions of each. In the context of law school hiring, “quality” is about educational pedigree or where a person went to school and the grade-point average she or he attained there.¹¹ A person’s pedigree often acts as a proxy for her/his perceived quality as a faculty member, or whether she/he is qualified to perform the rigors of an academic appointment.¹² For example, Richard Redding’s 2003 study of law faculty credentials revealed that 86.2% of all law faculty hired from 1996-2000 into tenure-track positions came from the schools ranked in the top twenty-five of the *U.S. News & World Report* 1999 rankings.¹³ Thirty-three percent of those hires came from Harvard and Yale alone.¹⁴ This hiring practice persists across racial lines.¹⁵ Although the gatekeepers of the academy, law school hiring committees, allow professors of color with the “right” credentials to enter, those same credentials cease to act as proxies for excellence that translate into an award of tenure. ABA statistical findings on law school tenure awards to female faculty indicate that women of color are tenured at a rate of 22.6% as compared with 76.7% of their white female colleagues who hold that rank.¹⁶ Anecdotes abound detailing how minority faculty are viewed as “affirmative action” hires inferior to their white colleagues, regardless of how they are credentialed.¹⁷

11. Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN’S L. REV. 171, 178–85 (2013); Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155 (2008).
12. See sources cited *supra* note 11.
13. Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 600 (2003).
14. *Id.*
15. *Id.* at 606–07.
16. 2013 ABA FACULTY ETHNICITY & RACE SURVEY, *supra* note 4.
17. See, e.g., Yolanda Flores Niemann, *The Making of a Token: A Case Study of Stereotype Threat, Stigma, Racism, and Tokenism in Academe*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 336 (Gabriella Gutiérrez y Muhs et al., eds., 2012) [hereinafter PRESUMED INCOMPETENT]; Elvia R. Arriola, “No Hay Mal Que Por Bien.No Venga”: *A Journey to Healing as a Latina, Lesbian Law Professor*, in PRESUMED INCOMPETENT at 374; Sherri L. Wallace et al., *African American Women in the Academy: Quelling the Myth of Presumed Incompetence*, in PRESUMED INCOMPETENT at 421, 426; Peter C. Alexander, *Silent Screams from Within the Academy: Let My People Grow*, 59 OHIO ST. L.J. 1311 (1998); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 201–03 (1997); Jennifer M. Russell, *On Being a Gorilla in Your Midst, or the Life of One Blackwoman in the Legal Academy*, in CRITICAL RACE FEMINISM, *supra* note 5, at 110, 110–11; Linda

Worth is judged by the value a faculty member is assigned in comparison to her colleagues in the legal academy. Scholars have written about how certain subjects in the academy that are viewed as “masculine” (e.g., constitutional law, corporations, etc.) are assigned a higher value than subjects viewed as feminine in the academy (family law, legal writing, etc.).¹⁸ If a subject is viewed as masculine and given a higher value, then the perception is that men should teach it and therefore men are worth more as faculty members than those who do not teach these subjects. Similarly, if a subject is viewed as feminine, then the perception is that women should teach it and therefore women are worth less than those who do not teach these subjects. Such sentiments are best summarized by the title of feminist scholar Kathyn M. Stanchi’s article, *Who Next, the Janitors?*, which was the response given by a male law school dean when told that professors who teach legal writing should be treated with the same respect as professors who do not.¹⁹

Problematizing these issues of worth is the value assigned to women of color in the academy. Scholars have described the work of teaching, advising and mentoring students, and service to students, peers, and the institution, as low-value “women’s work.” Legal writing, with its disproportionately heavy teaching, mentoring, and advising loads, has been described almost exclusively as women’s work.²⁰ However, not all women’s work is created equal. African-American, Latinx, and Asian-American women have both historical and contemporary relationships to labor that place them in subservient roles to middle- and upper-class white women.²¹ African-American women in the academy are often viewed as Mammy figures, asexual housekeepers who are meant to serve white colleagues and all students.²² Latinas are often viewed as academic maids or free immigrant labor, despite their actual country of origin, by white colleagues and students.²³ Similarly, Asian and Asian-American women in academia are assigned the roles of immigrant, foreigner, and docile

S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, in CRITICAL RACE FEMINISM, *supra* note 5, at 88, 88–89.

18. Merritt & Reskin, *supra* note 17, at 258–68.

19. Stanchi, *supra* note 1, at 467 n.*.

20. See generally Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN’S L.J. 75 (1997); Sue Ellen Holbrook, *Women’s Work: The Feminizing of Composition*, 9 RHETORIC REV. 201 (1991).

21. See generally JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY, FROM SLAVERY TO THE PRESENT (2d ed. 2009); YEN LE ESPIRITU, ASIAN AMERICAN WOMEN AND MEN: LABOR, LAWS, AND LOVE (2d ed. 2008); Camille Guerín-Gonzales, *Conversing Across Boundaries of Race, Ethnicity, Class, Gender, and Region: Latino and Latina Labor History*, 35 LAB. HIST. 547 (1994); Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, 18 SIGNS 1 (1992).

22. Sherrée Wilson, *They Forgot Mammy Had a Brain*, in PRESUMED INCOMPETENT, *supra* note 17, at 65, 66; Wallace et al., *supra* note 17, at 423.

23. See, e.g., Carmen R. Lugo-Lugo, *A Prostitute, a Servant, and a Customer-Service Representative: A Latina in Academia*, in PRESUMED INCOMPETENT, *supra* note 17, at 40, 49.

servant.²⁴ These employment relationships to peers and students work to devalue women of color and recreate them as keepers of the academic house rather than producers of knowledge who drive its innovation.²⁵ Consequently, their worth is viewed primarily in terms of adding to the visual diversity of law schools, rather than the diversity of perspective and inclusion into various decision-making processes at their respective schools. Such perceptions of these women are especially damaging in evaluating their contributions in the areas of scholarship, teaching, and service for tenure purposes. Women of color in academia report being given teaching loads larger than those of their white female colleagues.²⁶ They are also given no tenure credit or other recognition for mentoring students of color and helping out with diverse student organizations in addition to regular advising loads and committee assignments. Additionally, their scholarly work considered outside of the mainstream and/or that focuses on issues involving communities of color is excluded from the sphere of scholarly work acceptable for tenure.²⁷

Peers and students who challenge their authority and competence in the classroom further diminish the value assigned to women of color in the academy. Female faculty of color have reported that regardless of what they teach they are consistently viewed as inferior teachers and scholars by their peers and students alike.²⁸ This phenomenon is exacerbated by the intersection of race, gender, and status, and perceptions of which subjects and their professors are accorded more or less value on the curricular landscape. Because teaching writing is considered women's work in the academy, and women of color occupy positions in the academic labor market that are subordinate to white women who perform this work, teaching writing for women of color becomes even more difficult to navigate. Not only are they deemed expendable and less valuable because of what they teach, but they are also presumed incompetent to convey the basics of legal literacy. Literacy in any disciplinary context is about access and power.²⁹ Historically, the academy has derided persons of color as illiterate, inarticulate, and incapable of shaping disciplinary literacies.³⁰ Although no formal studies exist that detail the classroom experiences of

24. Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177 (1997).

25. Wilson, *supra* note 22, at 66.

26. Niemann, *supra* note 17, at 344-45.

27. *Id.* at 344-46; Arriola, *supra* note 17, at 377-78.

28. See, e.g., Adrien K. Wing, *Lessons from a Portrait: Keep Calm and Carry On*, in PRESUMED INCOMPETENT *supra* note 17, at 356; McMurtry-Chubb, *supra* note 1, at 51; Richard Delgado & Derrick Bell (Introduction), *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L.REV. 349, 359-60 (1989).

29. Teri A. McMurtry-Chubb, *Toward a Disciplinary Pedagogy for Legal Education*, 1 SAVANNAH L. REV. 69, 73, 79 (2014).

30. For foundational reading on non-white cultural and discursive epistemologies and literacies, see Jacqueline Jones Royster, *Foreword*, in AFRICAN AMERICAN RHETORIC(S): INTERDISCIPLINARY PERSPECTIVES ix (Elaine B. Richardson & Ronald L. Jackson, II, eds. 2007).

women of color who teach legal writing; female academics of color who teach writing and literature have discussed the incredulousness of their students when presented with a scholar of color who claimed expertise and mastery in the areas of reading and writing.³¹ Likewise, legal writing professors of color have discussed similar experiences of rejection by peers and colleagues.³²

III. Merit and the Tenure/“Like Tenure” Divide Exacerbated by 405(c)

Merit is a determination of what is deserved in relationship to who is deserving. Like its close kin quality and worth, it is not exempt from racialized and gendered interpretations. In “traditional” academia, merit is a legitimate claim to quality and worth that leads to a reward, or an award of tenure. However, clinical and legal writing faculty categorized as 405(c) faculty are something other than those faculty deserving of tenure; they have no legitimate claim to it. 405(c) implicitly embeds race and gender hierarchies present in the tenure process and codifies them to create a different status of job. In its text, 405(c) refers to “a form of security reasonably similar to tenure,” which by its own definition is something different and lesser than tenure as commonly understood.

For legal writing professors of color, 405(c) status places them, quite literally, in subservient positions to their white female colleagues. This stratification within an already marginalized community reinforces the subordination of female legal writing professors of color. Legal writing programs are structured primarily like departments in the undergraduate and graduate realm. There is a director, or department head, who answers to the associate dean of the law school.³³ These positions are held overwhelmingly by white women; approximately nine women of color serve as legal writing directors in the United States, and only four occupy such positions outside of law schools at historically black colleges and universities.³⁴

Further embedding race and gender hierarchies are the supervisory responsibilities and evaluative processes commonly assigned to legal writing directors. Directors are responsible for legal writing curricula, which are often organized into legal writing programs. Directors of legal writing programs, primarily white women, are either tenured or on the tenure track,³⁵ have 405(c)

31. See, e.g., Mary-Antoinette Smith, *Free At Last! No More Performance Anxieties in the Academy 'Cause Stepin Fetchit Has Left the Building*, in PRESUMED INCOMPETENT, *supra* note 17, at 408, 415-16.

32. Bannai, *supra* note 1, at 283-84, 286-87; McMurtry-Chubb, *supra* note 1, at 47-48, 50-52.

33. ALWD/LWI SURVEY, *supra* note 2, at 35 (reporting that of the 178 responders to the question about legal writing program directors, 134 replied that their programs had directors and 44 did not).

34. As a former director of color, I have been in personal contact with all of these women at one time or another; those in our ranks have developed an informal communication network.

35. ALWD/LWI SURVEY, *supra* note 2, at 35 (finding that thirty-two directors were tenured and ten were on the tenure track).

or long-term contract status,³⁶ or are on a 405(c) “track” designed to lead to “a form of security reasonably similar to tenure.”³⁷ Most directors have greater security of position than those who staff their programs, even when those professors have the same status under 405(c).³⁸ The reason is that directors are in supervisory positions over professors in their programs, which gives them sole or shared responsibility with a committee or dean to evaluate professors in the programs for contract renewal or clinical tenure under 405(c).³⁹ This stratified status within the program structure reinforces presumptions of incompetence for female legal writing professors of color among colleagues and students, because no explicit pecking order of this type exists among faculty outside of clinical and legal writing programs. The existence of a supervisor within the limited context of skills classes sends the message to students, staff, and non-skills faculty that skills professors are something less than professors who do not require oversight. For legal writing professors of color, this perception is heightened.

Still other law schools exclude the legal writing director from evaluating faculty members in their charge altogether, even though the director is obligated to retain, promote, or dismiss faculty in accordance with these evaluations.⁴⁰ Such exclusion complicates the role of directors of color. It undermines the scope of their already contested authority⁴¹ among the professors they supervise by requiring them to make employment decisions that may or not be based on the director’s opinion of a professor’s work performance. These decisions have the potential to disrupt and damage work relationships among the legal writing faculty, which the director of color is left to navigate primarily alone.

The evaluation procedures for legal writing professors as well as the delegation of someone to conduct those evaluations are problematic not only for the reasons previously discussed, but also because professors who teach legal writing have more onerous workloads than those who do not. Writing instruction involves multiple types of formative assessment. Legal writing professors devote their time to class preparation, developing in-class exercises, developing case files for student writing work, grading papers, and

36. *Id.* (indicating that forty-five directors were not on the tenure track, suggesting that they had 405(c) or long-term contract status.

37. *Id.*

38. *Id.* at 64. Forty-two directors were on the tenure track, compared with sixty-two with 405(c) status, twenty on a 405(c) track leading to clinical tenure, sixty with contracts of three or more years, eighteen with two-year contracts, and sixty with one-year contracts.

39. *Id.* at 66. At eight schools, the director alone did the evaluation; at fifty-one schools, the director and a committee performed the evaluations; and at twenty-seven schools, the director and the dean of the law school evaluated the legal writing faculty.

40. *Id.* at 66. Forty schools exclude the director.

41. Gail M. McGuire & Barbara F. Reskin, *Authority Hierarchies at Work: The Impacts of Race and Sex*, 7 *GENDER & SOC'Y* 487 (1993). The authors state definitively: “Exploratory studies confirm that African-American women enjoy little genuine authority at work.” *Id.* at 489.

holding individual conferences with students.⁴² To require the same or similar performance by these professors as their non-405(c) colleagues is inequitable across the board—although most if not all rise to the challenge—and carries an increased burden for legal writing professors of color. Given the invisible workloads of serving students of color and laboring under presumptions of inadequacy, legal writing professors of color face significant hurdles to surviving evaluation processes by students who judge them more harshly and peers who have little understanding of the systemic inequities that they face in performing their daily job functions. While white female directors may recognize gender discrimination and how it affects student evaluations, scholarship production, and service, most are not cognizant of intersecting race and gender discrimination. Neither ALWD nor LWI, the national sister associations responsible for the primary professional development of legal writing professors, has institutionalized programming on diversity and inclusiveness for legal writing directors.⁴³ To date, neither has devoted any programming specifically to educating directors about intersecting oppressions or to mentoring directors and professors of color. Without attention to this aspect of professional development, barriers to both diversifying the ranks of legal writing professionals and shaping leadership that is inclusive will persist.

Likewise, academic freedom in a director-led legal writing program is limited. Directors set the curriculum for legal writing programs, which often translates into choosing the book that all professors will use and writing the case file that students will use as the basis for their legal writing assignments. Matters as simple as using diverse names in problem sets or focusing on issues that involve the poor and communities of color can be a point of contention between a faculty member of color and a legal writing director. Perhaps most important, the inability to make curricular decisions further undermines legal writing professors of color as legitimate members of the academy with the authority and skill to profess.⁴⁴

42. See, e.g., ALWD/LWI SURVEY, *supra* note 2, at 12-17; McMurtry-Chubb, *supra* note 1, at 48-49.

43. Until August 1, 2016, I was the only person of color to serve on the ALWD Board of Directors. I began service on the Board in 2011. I became the first person of color to lead the organization as president when I took office in Aug. 2015. To date three people of color have served on the LWI Board of Directors; the first was elected in 2012. The first person of color to serve as LWI president, Kim Chanbonpin, took office in July 2016. I served as the chair of the LWI Diversity Initiatives Committee shortly after it was created and remained in that position for four years. Currently I manage the Listserv for that committee. I have also attended every ALWD conference since 2009 and every LWI conference since 2010. During this time, no consistent programming or formal professional development opportunities have been specifically geared to people of color. See also Bannai, *supra* note 1, at 293 (“... more can and should be done to both recognize the experiences of faculty of color in the Legal Writing community and to promote their inclusion within the broader community of law faculty.”).

44. McMurtry-Chubb, *supra* note 1, at 50-54.

IV. The “Othering” Aspects of 405(c)

As mentioned in the other sections of this essay, white supremacy and patriarchy create explicit and implicit hierarchies in the academy that are replicated in the tenure process and codified in 405(c). These hierarchies influence relationships among faculty of color. In his groundbreaking work on “covering,” or toning down a disfavored identity to fit into the mainstream, Kenji Yoshino argues that those who are set apart based on difference engage in a series of choices about assimilating into dominant cultures in order to become more acceptable.⁴⁵ As an assimilation strategy, those who are different tend to enhance traits and characteristics that are rewarded when interpreted by dominant cultures, and minimize those that are punished.⁴⁶ As previously discussed, professors of color who are tenured and on the tenure track occupy a marginalized position in the academy. Thus, if aligning oneself with the majority who marginalize legal writing professors is rewarded because it reaffirms the culture of the elite space and maintains the status quo, then doing so becomes a strategy to minimize difference. Adding another layer of complexity is the concept of “confirmation bias,” or an interpretation of minority behavior made by a member of a dominant/majority group that confirms a stereotype about the minority.⁴⁷ If legal writing is deemed a marginal discipline that is women’s work performed by lesser faculty, then either engaging in that work or forming ally networks with those who do it will confirm the bias that faculty of color are not fit for the academy.

Both covering and confirmation bias as they relate to intraracial interaction in the academy have devastating effects on legal writing professors of color. These professors have reported that vital mentorship networks of color at their respective schools or nationally are closed to them due to status.⁴⁸ Because mentorship is an integral piece of professors’ success in academia, the inability of professors of color to access mentors of color at their respective institutions or nationally is a significant hurdle to professional development.⁴⁹ Although people of color are not the only viable mentors for professors of color, connecting with those who share the experience of discrimination and strategies to overcome it can be an invaluable tool for professional success.⁵⁰ As minority professional groups in the legal academy (e.g., the Association of American Law Schools Minority Law Professors listserv, the Society of American Law

45. Kenji Yoshino, *Covering*, 111 YALE L. J. 769, 771-74 (2002).

46. *Id.*

47. See generally Carolyn B. Murray, *Estimating Achievement Performance: A Confirmation Bias*, 22 J. BLACK PSYCHOL. 67 (1996).

48. Bannai, *supra* note 1, at 283-85.

49. Wallace et al., *supra* note 17, at 423-24; Chastity Q. Thompson, *Recruitment, Retention, and Mentoring Faculty of Color: The Chronicle Continues*, 143 NEW DIRECTIONS FOR HIGHER EDUC. 47 (2008).

50. Ruth Enid Zambrana et al., “Don’t Leave Us Behind”: *The Importance of Mentoring for Underrepresented Minority Faculty*, 52 AM. EDUC. RES. J. 40 (2015).

Teachers (SALT), regional People of Color Scholarship Conferences, etc.) have learned about inequities that exist for legal writing professors of color, they have worked to provide a more welcoming and inclusive atmosphere for these professors, as well as the opportunity to present at national conferences and engage in scholarship around issues of difference. However, the politics of othering that occur on individual law school campuses remains a hindrance to change.