

SPRING 2023: UNENDING CONVERSATIONS

STETSON LAW REVIEW FORUM

MARGINALIZATION MATTERS: DISCIPLINE-BUILDING IN THE LEGAL WRITING COMMUNITY

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I. INTRODUCTION

When Kevin Bennardo's essay *Legal Writing's Harmful Psyche*¹ first came out it made a splash, and not in a positive way. Bennardo's thesis is that the academic legal writing community suffers from a sense of victimhood which has stymied scholarly growth and that it is time to stop writing about equity issues and focus instead on more public critique of disciplinary scholarship.² Many in the legal writing community reacted negatively to the essay, finding it to be presumptuous and offensive. Bennardo's essay minimized the history and struggle of legal writing professors to gain a foothold in the academy and develop as a scholarly discipline. It felt like punching down at a community that has long been marginalized within the legal community.

Amy Soled's *Unending Conversation* essay, *The Legal Writing Community's Bonds Enable It to Flourish*,³ responds to Bennardo's essay, arguing that Bennardo neither supports his argument about the need to abandon a focus on status, nor fully examines the relationship between the equity issues and legal writing scholarship.⁴ In her essay, Soled points out flaws in Bennardo's analysis, including cherry-picked examples, inaccurate claims, and unsupported logical leaps. Her essay highlights flaws in Bennardo's underlying reasoning and suggests that his proposed solutions are not warranted. Soled cautions that following Bennardo's advice could undermine the advances the discipline has made in recent years, and she concludes that the legal writing discipline should "continue on the path they have pioneered," pointing to the many successes and increasingly rich body of scholarship in the field.⁵

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¹ Kevin Bennardo, *Legal Writing's Harmful Psyche*, 105 MINN. L. REV. 111 (2020).

² *Id.* at 111–12.

³ Amy H. Soled, *The Legal Writing Community's Bonds Enable It to Flourish*, 5 STETSON L. REV. F. 1 (2022).

⁴ *Id.* at 4.

⁵ *Id.* at 12.

While Soled's analysis provides an excellent critique of Bennardo's essay, for me it doesn't quite get at what is so troubling about the essay and why it felt like a perpetuation of the forces that have served to keep the legal writing discipline marginalized, rather than a critique from within about how we can continue to advance as a discipline. As a relatively new discipline, developing in sometimes infertile soil, the work of building a scholarly legal writing community has been intentional and often challenging. The profession has made significant progress, yet there have been and continue to be very real impediments to developing a deep body of legal writing scholarship.

Because of the very real status distinctions which Soled aptly documents,⁶ legal writing faculty at many schools do not have the support of the home institutions to produce scholarship. In addition, the lack of faculty status often means that legal writing scholars who do write have difficulty getting the kind of recognition in the broader academy that gets the attention of law review editors and leads to placement in more prestigious journals. Legal writing as a subject of scholarly inquiry is often dismissed, precluding even the opportunity of publishing in certain journals.

In addition, the effects of the gender and race dynamics within the patriarchal, hierarchical structure of law schools cannot be overlooked when considering the scholarly culture of the legal writing community. The academic community of legal writing professors is overrepresented by women⁷ within a legal academy that is disproportionately white and male.⁸ Legal writing professors are also predominantly white,⁹ but women of color are overrepresented in lower status jobs like legal writing compared to their representation in the academy as a whole.¹⁰ Thus, legal writing scholars face the intersectional marginalization of identity and job status.

Bennardo's essay suggests that focusing on the obstacles is counterproductive and that we should act as if we are past them.¹¹ He suggests we should stop thinking like victims and move ahead with the business of developing rigorous scholarship.¹² However, in doing so, his essay uses language that reinforces the institutional barriers legal writing scholars continue to face.

As someone who has devoted a substantial part of my career to developing legal writing as a valid academic discipline and a subject of scholarly exploration, I do not

⁶ *Id.* at 1, 9–10.

⁷ The latest ALWD/LWI survey reports that 76.6% of legal writing faculty are women. 2020–21 Surv. Comm., *ALWD/LWI Legal Writing Survey, 2020-2021*, ASS'N OF LEGAL WRITING DIRS., at 123 tbl.2 (2021), <https://www.alwd.org/images/resources/2020-2021-ALWD-and-LWI-Individual-Survey-report-FINAL.pdf>; see also Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47, 48–49 (2015) (documenting the overrepresentation of women in skills teaching positions).

⁸ See, e.g., MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 4 (2019).

⁹ Survey question 16.6 indicates 86.6% of legal writing professors identify as white. *ALWD/LWI Legal Writing Survey, 2020-2021*, *supra* note 7, at 124 tbl.3.

¹⁰ Ederlina Co, *Weathering Invisible Labor*, 51 SW. L. REV. 258, 259 (2022).

¹¹ Bennardo, *supra* note 1, at 124.

¹² *Id.* at 125.

think we should be immune from critique.¹³ We can and should critique our scholarly work and push to make it better. But a critique that implicitly reinforces the problems it purports to address is not effective and in the long run won't serve the needs or interests of the discipline. I chose to write this essay to explore in more depth what exactly about Bennardo's essay felt so problematic, and to consider how to critique from within the discipline, without perpetuating the marginalization we have faced—all the while viewing the disciplinary culture as a strength rather than a weakness.

The remainder of this essay proceeds as follows: Part II discusses the reasons critiquing a marginalized community without considering the effects of that marginalization is problematic. Part III discusses the way being marginalized has affected scholarly development in the legal writing discipline. Part IV shows how Bennardo's rhetoric reinforces that marginalization. Part V attempts to model a critique of the legal writing discipline that views the cohesiveness of the legal writing community as a strength rather than a weakness, followed by a brief conclusion.

II. THE CHALLENGES OF CRITIQUING A MARGINALIZED COMMUNITY

While I don't doubt that Bennardo was well-intentioned in calling for changes in the scholarly culture of the legal writing discipline, his essay reflects some of the perils of critiquing a marginalized group. Bennardo writes as a member of the legal writing community, but also places himself outside it in his critique of the disciplinary culture of legal writing scholars. Writing from a position of relative privilege, Bennardo dismisses the effect of the marginalization of legal writing faculty rather than factoring it into his analysis of the problems the discipline faces and how to address them.

In her pivotal essay *The Problem of Speaking for Others*,¹⁴ feminist scholar Linda Alcoff notes that “the practice of privileged persons speaking for or on behalf of less privileged persons has actually resulted (in many cases) in increasing or reinforcing the oppression of the group spoken for.”¹⁵ This is complicated by the fact that the speaker may have intersectional identities (including marginalized identities) and that the context of the hearer is out of the speaker's control.¹⁶

The question of privilege in the context of legal scholarship is a thorny one. While at some level all members of the legal academy are privileged with respect to society at large, status inequality and subject-matter bias place legal writing scholars in a relatively less privileged position within the legal academy. Bennardo's position within the legal writing community is similarly complex. He is a member of the

¹³ I have been directly involved in this discipline-building for many years as a member of the Editorial Board of the Journal of the Legal Writing Institute, as a member of the Board of Directors of the Association of Legal Writing Directors, and as chair and member of LWI's Discipline Building Working Group.

¹⁴ Linda Alcoff, *The Problem of Speaking for Others*, 20 CULTURAL CRITIQUE, Winter 1991–1992, at 5.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 15–16.

research and writing faculty at the University of North Carolina,¹⁷ a school that does not offer their writing faculty equality of position. At the same time, he has the relative privilege of being a man, and working at a law school with a relatively high ranking.¹⁸ In the essay, Bennardo speaks for himself, but also for others with marginalized identities different than his own.

This dynamic is at play in how the legal writing community perceived Bennardo's ready dismissal of the role marginalization has played in the development of the legal writing discipline. Intentional or not, the essay uses rhetoric which reinforces that marginalization. By not acknowledging or explicitly considering the ways both privilege and marginalization may color his views of the discipline, Bennardo's analysis reinforces the hierarchical values of the broader legal academy.

A second pitfall in critiquing a marginalized group lies in assuming that in seeking equality, the group is seeking full assimilation in the dominant culture. The hierarchies in legal academia extend beyond faculty status, often dictating the norms of rigorous legal scholarship. As a result, the scholarly voices of those traditionally underrepresented in the legal academy have often been discounted, and their scholarship considered less than.¹⁹ Critiquing the disciplinary practices of a marginalized group should—at a minimum—question the underlying assumptions about what scholarship is valuable and whose scholarly voices should be heard. A critique that does not do this implicitly reinforces the hierarchical norms of the legal academy. Bennardo's essay holds up traditional legal academic scholarship as the model to which legal writing scholars should aspire without examining that assumption.²⁰

Aspects of both of these pitfalls can be seen in Bennardo's essay, and as a result, the essay reinforces the hierarchies that have served to marginalize legal writing scholars and create the conditions the essay purports to critique.

III. MARGINALIZED STATUS AND THE PRODUCTION OF SCHOLARSHIP

At the outset of his essay, Bennardo asserts “there is no need here to wade into the substance of the marginalized status claim” because all that matters for his essay is that “legal writing professors as a group believe it to be true.”²¹ But the fact of marginalization matters. The fact of marginalization can't be separated from the feelings about it.

To suggest that the discipline will improve if legal writing scholars just stop thinking of themselves as victims minimizes the very real and deep obstacles to scholarly development in the legal writing discipline. By focusing on the attitude of

¹⁷ *Faculty*, UNIV. OF N.C. SCH. OF L., <https://law.unc.edu/academics/the-writing-and-learning-resources-center-wlrc/faculty/> (last visited Feb. 27, 2023).

¹⁸ As of the latest U.S. News rankings, the UNC Law school is ranked 23rd. *University of North Carolina--Chapel Hill Law School Overview*, U.S. NEWS, <https://www.usnews.com/best-graduate-schools/top-law-schools/university-of-north-carolina-at-chapel-hill-03119> (last visited Feb. 27, 2023).

¹⁹ Meera Deo, *Intersectional Barriers to Tenure*, 51 U. CAL. DAVIS L. REV. 997, 1024 (2018).

²⁰ See Bennardo, *supra* note 1, at 124.

²¹ *Id.* at 112 n.1.

legal writing faculty as the biggest obstacle to disciplinary growth,²² Bennardo's essay fails to grapple with the ways marginalization has shaped legal writing scholarship and the academic culture around it. And as product of this failure, Bennardo implicitly reinforces many of the conditions that have contributed to that marginalization.

Status inequality of legal writing faculty has directly affected the growth of the scholarly community in concrete ways. Law schools are elitist institutions that value and reinforce hierarchy more often than they break it down, and the development of legal writing scholarship must be viewed against this backdrop. Tenured faculty are not only predominantly white and male but are also graduates of a handful of the most elite law schools.²³ Law journal reputation by and large tracks the ranking of the law schools that house them. Patriarchy and racism are baked into the American legal system, including the legal academy.²⁴ In this environment, the predominantly female field of legal writing contends with the structural inequality experienced by all marginalized faculty, compounded by the obstacles posed by having a lesser status in a profession highly attuned to hierarchy. These barriers don't go away merely by virtue of ignoring them, and they manifest in very specific ways regarding both the creation of scholarly work and its publication and engagement.

A. Creating Scholarship

There are myriad ways in which status inequity has slowed the progress of legal writing scholarship—the heavy teaching loads; lack of research assistants or other institutional support for scholarship development; and the fact that scholarship is neither expected nor rewarded.²⁵ The heavy teaching loads and other structural barriers can have a disproportionately negative affect on women who typically have more caregiving responsibilities outside of work, making it impossible to find time to produce scholarship.²⁶ Additionally, faculty who are women, LGBTQIA+, and people of color tend to bear a disproportionate burden of student interactions—compounded by the fact that students are often more comfortable with legal writing faculty because of smaller class sizes and more individual interaction.²⁷

In addition to the burdens that make it difficult to find time to develop ideas and write scholarly articles, legal writing faculty have historically been excluded from the support law schools generally provide to developing scholars. At many schools,

²² *Id.* at 117.

²³ See generally Milan Markovic, *The Law Professor Pipeline*, 92 *TEMPLE L. REV.* 813 (2020).

²⁴ Teri A. McMurtry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 *J. LEGAL EDUC.* 575, 577 (2017).

²⁵ Soled, *supra* note 3, at 9–10; Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 *HASTINGS WOMEN'S L. J.* 3, 12 (2020); Ruth Anne Robbins, Kristen K. Tiscione & Melissa H. Weresh, *Persistent Structural Barriers to Gender Equity in the Legal Academy and the Efforts of Two Legal Writing Organizations to Break Them Down*, 65 *VILL. L. REV.* 1155, 1174–75 (2021).

²⁶ Deo, *supra* note 19, at 1023.

²⁷ Anne C. McGinley, *Reproducing Gender on Law School Faculties*, 99 *BRIGHAM YOUNG UNIV. L. REV.* 99, 129–31 (2009).

legal writing faculty are not given (or even forbidden from receiving) summer research grants or funding for research assistants.²⁸ And it is common for legal writing faculty to be excluded from the kind of mentoring that junior scholars on the tenure track receive.²⁹

B. Publishing Scholarship

In addition to the very real obstacles to *creating* scholarship, the status inequity also makes it more difficult for legal writing faculty to *publish* what we have created. Legal writing faculty are disadvantaged in multiple ways due to the implicit bias involved in the law review selection process.³⁰ First, journals are more likely to accept articles from professors at elite law schools with elite pedigrees.³¹ Legal writing faculty are less likely to work at elite schools because those schools have been slow to add legal writing professors to their faculties. While some top legal writing scholars attended elite schools, many have not.³² Thus, “letterhead bias” tends to work against legal writing scholars trying to get articles placed in top journals.³³

Second, law review editors tend to favor articles in a limited range of subject matters, focusing heavily on constitutional law.³⁴ In contrast, there is a bias against scholarship focusing on practical skills or pedagogy—topics typically the focus of legal writing scholarship.³⁵ Legal writing scholars devoted to developing disciplinary scholarship about the theory and substance of legal writing are thus often excluded from top journal placements.

In addition to these two obstacles, race and gender bias may play a role in law review selection, making it more difficult for scholars from historically disadvantaged groups to receive publication offers.³⁶ This adds another barrier for legal writing scholars, who are disproportionately women.³⁷ And all of this is compounded by the fact that articles are more likely to be accepted when an author has previously been published in a higher ranked journal.³⁸ For all of these reasons, articles written by legal writing faculty are less likely to be published, especially in higher ranked journals.

²⁸ Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 483 (2004).

²⁹ Robbins et al., *supra* note 25, at 1175.

³⁰ See Michael J. Higdon, *Beyond the Metatheoretical: Implicit Bias in Law Review Article Selection*, 51 WAKE FOREST L. REV. 339 (2016).

³¹ *Id.* at 344–45.

³² Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 UNIV. LOUISVILLE L. REV. 383, 420 (2008).

³³ Higdon, *supra* note 30, at 344–45.

³⁴ *Id.* at 346.

³⁵ *Id.* at 351.

³⁶ *Id.* at 347–49.

³⁷ *Id.* at 351.

³⁸ *Id.* at 347.

These factors work together both to keep individual legal writing faculty from developing elite scholarly profiles and to keep the discipline as a whole from recognition as a valid scholarly enterprise.

C. Promoting Scholarship

Because legal writing faculty are typically not expected to write as part of the job, those interested in writing are typically excluded from the institutional mechanisms to promote and engage in scholarly work.³⁹ In addition to the lack of mentoring, legal writing faculty are often excluded from workshops and colloquia. Articles advancing legal writing as an academic discipline are devalued by the academy as a whole, and articles by legal writing faculty on other substantive topics are not respected by scholars who teach in those fields.⁴⁰ As a result, the legal writing profession as a whole is not acculturated into the scholarly activities of reading and critiquing scholarship in the same way that tenure-track faculty typically are.

As Kathy Stanchi has pointed out, law schools often justify the low pay and lack of tenure opportunity on the fact that legal writing faculty don't publish while at the same time blocking opportunities to publish—creating a vicious circle.⁴¹ Creating conditions in which it is impossible to succeed and then blaming the people in those conditions for their lack of success is a classic move to reproduce hierarchy. In critiquing legal writing faculty for “feeling” like victims and blaming that sense of victimhood for lack of progress, Bennardo's essay reinforces hierarchy rather than disrupting it.

IV. REINFORCING MARGINALIZATION THROUGH CRITIQUE

Bennardo's essay acknowledges the reality of status inequality for legal writing professors while simultaneously undermining its legitimacy. The essay begins by referring to “the narrative that many in the legal writing discipline choose to tell” and their “litany of grievances,”⁴² creating the impression that the discipline is looking to complain rather than genuinely experiencing inequality. In addition, the essay states that “legal writing professors perceive themselves as victims,”⁴³ and repeatedly uses language such as “they feel”⁴⁴ to describe legal writing professors' reactions to marginalization in the legal academy.

The essay's use of this kind of language calls to mind classic gaslighting, in which women are made to believe the sexism they have experienced isn't real⁴⁵ or the non-apology of “I'm sorry you feel that way” which puts the focus on the woman's

³⁹ Robbins et al., *supra* note 25, at 1175.

⁴⁰ *Id.* at 1176.

⁴¹ Stanchi, *supra* note 28.

⁴² Bennardo, *supra* note 1, at 111.

⁴³ *Id.* at 112.

⁴⁴ *See id.* at 112, 117.

⁴⁵ Alexandra Barraza, *Feminism 101: What is Gaslighting?*, FEM NEWSMAGAZINE (Oct. 31, 2016), <https://femmagazine.com/feminism-101-what-is-gaslighting/>.

feelings rather than the hurtful behavior that caused them.⁴⁶ This places the focus on how those subject to harmful behavior express themselves, instead of on the harmful conduct itself.⁴⁷ In suggesting that the focus on feelings causes harm to the disciplinary development of scholarship, rather than the marginalization itself, Bennardo's essay contributes to the perception of legal writing scholars as unserious, more interested in complaining than in developing rigorous scholarship. Using rhetoric that focuses on feelings and emotions to critique a field predominantly made up of women draws on classic mechanisms of sexism, reinforcing the views that have contributed to denying legal writing faculty tenure and support for scholarship development.

Despite the obstacles, the legal writing community has developed into a scholarly discipline. We have had to become each other's supporters because we didn't have someone at our home institution to support us. We created our own networks to support writing, and our own journals to get our work published and out into the world.⁴⁸ Those journals, *Legal Communication and Rhetoric: JALWD* and *Legal Writing: The Journal of the Legal Writing Institute*⁴⁹ are both peer reviewed and together have published a substantial body of work theorizing the substance of legal writing. In addition, legal writing scholars have published articles in numerous law school based journals.

Bennardo's essay suggests that this body of work has been uncritically accepted in the legal writing world, that the "protectionist" mentality has led legal writing scholars to shy away from open critique of each other's work. As evidence of the norm against critiquing, he points to a conference presentation in which the speaker identified a flawed idea but refused to name the person who expressed that idea.⁵⁰ The example suggests that Bennardo's view of critique involves direct public confrontation, with the possible consequence of public shaming.⁵¹ But a critique doesn't have to be confrontational to be effective. As an example, Professor Kathy Stanichi's essay in the Spring 2022 volume of the *Unending Conversation*⁵² responds

⁴⁶ Harrington, Katy, "I'm Sorry You Feel That Way" Is The Most Infuriating Apology Ever, REFINERY 29 (Dec. 2, 2020), <https://www.refinery29.com/en-gb/gaslighting-apology-toxic-relationships-friendships>.

⁴⁷ See Sylvia Burrow, *The Political Structure of Emotion: From Dismissal to Dialogue*, 20 HYPATIA 27, 31 (2005) (noting that abusers use gaslighting as a technique to "divert issues from legitimate targets by instead placing the focus on the way in which one expresses oneself").

⁴⁸ Soled, *supra* note 3, at 2.

⁴⁹ *Legal Communication & Rhetoric: JALWD*, ASS'N OF LEGAL WRITING DIRS., <https://www.alwd.org/lcr> (last visited Mar. 1, 2023); *Legal Writing*, J. LEGAL WRITING INST., <http://www.legalwritingjournal.org> (last visited Mar. 1, 2023).

⁵⁰ Bennardo, *supra* note 1, at 120.

⁵¹ This narrow view of critique is reminiscent of the accounts of junior faculty of color who experience critique as hostile, rather than supportive. See, e.g., DEO, *supra* note 8, at 48.

⁵² Kathy Stanichi, *Unending Conversation: Gut Renovations, Comparative Legal Rhetoric and the Ongoing Critique of Deductive Reasoning*, 5 STETSON L. REV. F. 5 (2022).

to the *Gut Renovations*⁵³ article with a deep critique by raising questions and offering reactions without being confrontational or publicly shaming the authors.

While critique within the legal writing community may look different than it does in other disciplines, there are good reasons for that. Like many other groups that are the object of inequitable treatment, legal writing scholars have had to operate outside of the usual channels of power and access. Like other outsider groups, that culture may be viewed as “protectionist” by the dominant culture, but what it really does is create space and opportunity to grow and develop. Bennardo calls this an “academic safe space”⁵⁴ as if that is a derogatory term. But the term *academic safe space* originally referred to places that students from marginalized groups could feel secure sharing and exploring uncomfortable ideas, a place for intellectual growth.⁵⁵ To the extent this is what legal writing scholars have done, it has been essential to advancing the discipline.

In critiquing the discipline for being too nice, not being rigorous enough, and not focusing on traditional avenues of publication, Bennardo’s essay reflects an internalization of the very views that have worked to maintain legal writing faculty marginalization. Calling the culture of the legal writing community “protectionism”⁵⁶ is a form of blaming the victim and reinforcing the hierarchical lines that the legal writing discipline has fought to erase.

Additionally, Bennardo’s essay reinforces marginalization by suggesting that the time for focusing on status inequity as the subject of scholarly inquiry has passed—that there has been enough written on that subject and it is time to move on to other things. Leaving aside the fact that the scholarly work of legal writing faculty spans many other subjects, as aptly pointed out by Soled,⁵⁷ Bennardo’s assertion merits further inquiry. It is not “rehashing victimhood” to explore the ongoing effects of oppression and work to change it. Bennardo’s suggestion that legal writing scholars should not be “spending scholarly capital on identifying microaggressions”⁵⁸ reinforces the orthodoxy about “valid” legal scholarship that works to oppress all marginalized identities.⁵⁹

Scholarship and advocacy on status are necessary because the inequities continue, just as critical race scholars continue writing about the systemic inequities in our criminal justice system and feminist scholars continue writing about gender

⁵³ Elizabeth Berenguer, Lucy A. Jewel & Teri A. McMurtry-Chubb, *Gut Renovations: Using Critical and Comparative Rhetoric to Remodel How the Law Addresses Privilege and Power*, 23 HARV. LATINX L. REV. 205 (2020).

⁵⁴ Bennardo, *supra* note 1, at 112.

⁵⁵ See Laura P. Graham, “Safe Spaces” and “Brave Spaces”: The Case for Creating Law School Classrooms That Are Both, 76 U. MIAMI L. REV. 84, 101 (2021) (exploring the history of the term “safe space”).

⁵⁶ Bennardo, *supra* note 1, at 112.

⁵⁷ Soled, *supra* note 3, at 7; see also Ruan, *supra* note 25, at 25 (noting that skills professors “engage in deep and meaningful scholarship on a wide variety of topics, including doctrinal, rhetorical, pedagogical, empirical, and theoretical works”).

⁵⁸ Bennardo, *supra* note 1, at 124.

⁵⁹ See DEO, *supra* note 8, at 89; Priya Baskaran, *Service, Scholarship, and Radical Citation Practice*, 73 RUTGERS L. REV. 891, 903–04 (2021).

discrimination in the workplace. Legal writing scholars have made important contributions to the discourse on expanding equality in the legal academy. Suggesting legal writing scholars stop writing about status echoes the way Black academics have been discouraged from writing identity-based scholarship⁶⁰ and implicitly echoes the hegemonic control of scholarship that has historically excluded marginalized groups from legal academia.

Additionally, issues around faculty status and their effect on legal writing professors continue to evolve, and as long as they do, there is room for scholarship about equity and inclusion in the legal academy. For example, as more legal writing professors move into tenure-track positions,⁶¹ new questions will arise about whether and how the tenure process is different; how LRW pedagogy and scholarship are valued in the process; and particularly whether articles from the growing body of disciplinary scholarship will count in the tenure process. In addition, while scholars have addressed how the tenure system creates structural barriers for faculty of diverse backgrounds⁶² there is room to explore whether and how these barriers affect legal writing scholars in new and different ways. It is precisely because of the history and evolution of the discipline that legal writing scholars are uniquely poised to make valuable contributions to the next generation of scholarship on equity in the legal academy.

Similarly, the strong bonds of community that Bennardo's essay criticizes will continue to be important to support the ongoing push towards tenure and other forms of secure position. While legal writing faculty have made progress as a discipline, the structural obstacles are still present. Bennardo's suggestion that it is time to stop talking about and adopt the norms of the academy at large overlooks both the challenges the legal writing community has overcome and the obstacles we continue to face in developing our scholarly discipline. To adapt Ruth Bader Ginsburg's famous dissent in *Shelby County v. Holder*, getting rid of the approaches that have worked to advance the discipline "is like throwing away your umbrella in a rainstorm because you are not getting wet."⁶³

Thus, in critiquing both the scholarly culture of the legal writing discipline and the content of the scholarship, Bennardo's essay reflects and reinforces the traditional views of status and scholarship hierarchies that have served to keep legal writing faculty from being valued and treated as equals in the legal academy.

⁶⁰ See Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 378 (2021).

⁶¹ *Report of the Annual Legal Writing Survey 2010*, ASS'N OF LEGAL WRITING DIRS., at 61 tbl.1 (2010), <https://www.lwionline.org/sites/default/files/2010-Survey-Report.pdf> (noting that the 2010 ALWD/LWI survey showed 38 tenured or tenure-track legal writing professors); compare with ASS'N OF LEGAL WRITING DIRS., *supra* note 7, at 2 tbl.1 (noting that the 2020–2021 survey report shows 64 tenured or tenure-track legal writing professors).

⁶² Deo, *supra* note 19, at 997.

⁶³ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

V. CRITIQUING FROM WITHIN THE DISCIPLINE

Bennardo's main critique of the "protectionist" mentality of the legal writing community is that it has slowed the growth of the discipline and prevented a community of public critique that leads good scholarship to rise to the top and weeds out weaker work.⁶⁴ While I disagree with his analysis and find it problematic in the way it deploys rhetoric that reinforces marginalization, I do agree that the disciplinary community needs to continue growing and developing a stronger culture of public engagement with other legal writing scholars' work.

So how do we engage in meaningful critique that advances the discipline without falling prey to the pitfalls of critiquing a marginalized community? By recognizing the cohesion born out of marginalization as a strength to build on rather than an obstacle to dismiss.

The lack of institutional support for scholarly development and punishing teaching loads meant early legal writing scholars had to forge their own way, proving that legal writing was a subject worthy of academic inquiry and developing a substantial body of disciplinary work.⁶⁵ In addition to the concrete obstacles to scholarship production such as lack of time and financial support, status inequality contributes to imposter syndrome—feeling like one's scholarly voice does not have value in the legal academy.⁶⁶ Developing a body of disciplinary scholarship in the early days took tremendous determination, inner resources, and support from trusted colleagues and friends. Thus, the culture that Bennardo's essay critiques as negative, the supportive and collaborative nature of the legal writing community, is a positive that has allowed the discipline to flourish.

Bennardo's critique suggests that the legal writing culture has led to "stunted disciplinary growth,"⁶⁷ but does not appear to take into account that the legal writing discipline is one of the newest in the legal academy.⁶⁸ Some of the shortcomings the essay identifies may be because there is still room for growth, rather than because the discipline has been held back by the culture of mutual support and encouragement. I believe it is possible to identify areas for the discipline to grow by building on the existing culture, rather than reinforcing marginalization by treating that culture as a liability.

The chief complaint of Bennardo's essay is that the disciplinary community needs to develop a stronger culture of rigorous critique of each other's work.⁶⁹ I agree. Public dialogue is an important aspect of disciplinary development, and something

⁶⁴ Bennardo, *supra* note 1, at 120–21.

⁶⁵ See Kristen K. Tiscione, *The Next Great Challenge: Making Legal Writing Scholarship Count as Legal Scholarship*, 22 J. LEGAL WRITING INST. 50 (2018).

⁶⁶ See, e.g., Sarah L. Ochs, *Imposter Syndrome & the Law School Caste System*, 42 PACE L. REV. 373, 404–07 (2022) (discussing how imposter syndrome has affected skills professors in both developing and promoting their scholarship).

⁶⁷ Bennardo, *supra* note 1, at 120.

⁶⁸ Melissa H. Weresh, *Sharing the Baton: Intergenerational Advances in the Legal Writing Community*, 25 J. LEGAL WRITING INST. 91, 94 (2021).

⁶⁹ Bennardo, *supra* note 1, at 121.

the legal writing community needs to do better. Bennardo assumes that the reason for the absence of a culture of critique is fear of disagreeing, but it is possible to disagree from within a supportive community, as Soled's essay demonstrates in pointing out examples of robust scholarly dialogue.⁷⁰

Improving the culture of scholarly critique involves multiple factors and requires first identifying the causes of this gap in disciplinary development, and then identifying solutions. Rather than blaming the disciplinary culture as Bennardo's essay does, blame likely resides elsewhere—the lack of time because of punishing teaching loads, lack of practice with critique because legal writing faculty have been excluded from faculty culture where that discourse takes place, and lack of incentive to spend time on scholarship and critique because it is not rewarded. In other words, the effect of marginalization extends beyond the production and publication of scholarship to the scholarly culture of critique. Improving the discipline will similarly involve continued work on improving status at many institutions, along with more concerted effort to improve the culture of scholarly dialogue.

This work has begun, but there is more to do. Legal writing faculty formed the Legal Writing Institute (“LWI”) and the Association of Legal Writing Directors (“ALWD”), professional associations that provide support for teaching and scholarship, as well as advocacy to improve employment status.⁷¹ One of the chief ways these organizations can help is by continued advocacy to improve status. As more law schools provide tenure to their legal writing faculty, more of the status barriers to disciplinary growth will fall away.

In addition, both individual legal writing scholars and the national organizations can and should be more deliberate in promoting practices that will help newer legal writing faculty develop as scholars. As they do so, the discipline will grow, and the scholarly culture will improve. The culture and systems are in place so that if LWI and ALWD prioritize discipline-building, growth could happen more quickly.

A. Increasing Mentoring & Scholarly Engagement

Within our home institutions, legal writing faculty have not received the same kind of scholarship mentoring as tenure-track faculty, nor have they been encouraged to promote scholarship through traditional scholarly channels.⁷² Mentoring inculcates faculty members into the scholarly culture of the school and has long term beneficial effects with scholarly success and development.⁷³ Experienced legal writing scholars must be deliberate in mentoring junior faculty members, and LWI and ALWD should develop systems to make sure junior scholars are getting mentored.⁷⁴ As more schools grant tenure to legal writing faculty, those tenured professors should

⁷⁰ Soled, *supra* note 3, at 12.

⁷¹ Robbins et al., *supra* note 25, at 1178.

⁷² *Id.* at 1175–76.

⁷³ See Yvonne M. Dutton, Margaret Ryznar & Lee Shaver, *Advancing Faculty Diversity Through Self-Directed Mentoring*, 25 DUKE J. GENDER L. & POL'Y 56, 60 (2017).

⁷⁴ I am aware that both LWI and ALWD have made an effort to improve mentoring in the past but have not always been successful. These efforts should be renewed and prioritized.

see mentoring as part of their job, and the national organizations could facilitate trainings on how to be an effective mentor.

Good mentoring involves a sound understanding of what it means to be a legal writing scholar. This, too, is something that legal writing academics need to work at. There is nothing about the supportive culture of legal writing that prevents this. Legal writing scholars should turn that supportive energy towards elevating the culture of scholarly engagement. To that end, the discipline should focus on developing a culture of reading and responding to each other's work through workshops, symposia, and the like.

For the discipline to grow, legal writing scholars must share core knowledge about the foundational works in our field and increase familiarity with the wide array of existing disciplinary scholarship.⁷⁵ Heavy teaching loads make this a challenge, and it is understandable that the primary focus of new legal writing professors is on pedagogy.⁷⁶ This makes it incumbent on more experienced legal writing scholars to emphasize the importance of reading both foundational disciplinary scholarship and staying current with new scholarly developments. It is also incumbent on the national organizations—LWI and ALWD—to make sure those new to the profession are aware of the importance of reading and understanding the discipline. When new faculty are introduced to the field,⁷⁷ they must be told that reading scholarship is as much a part of the job as preparing for class and critiquing student work.⁷⁸ This is an area in which the discipline can do better, and the systems set up to provide support to new faculty can be used in this way too.

In addition to being more widely read, legal writing scholars should become more practiced at critiquing each other's work. While Bennardo's essay suggests that the reason public critique is rare is concern about not being nice,⁷⁹ it is more likely due to the lack of practice. Engaging in critique of legal scholarship is a skill that needs to be practiced, and legal writing faculty have had less opportunity to practice. In the broader law school environment, legal writing faculty have often been left out of the scholarly conversation because of the perception that legal writing scholarship is "just about skills" and thus is excluded from academic conferences and symposia with tenured and tenure-track scholars.⁸⁰ Legal writing scholars interested in

⁷⁵ The two peer-reviewed legal writing journals have published more than two decades' worth of scholarship specifically on the subject of legal writing. Several sub-disciplines have developed. The Legal Writing Institute has developed a Monograph Series to collect and highlight important disciplinary scholarship in a variety of areas. *LC&R: JALWD* has published multiple bibliographies collecting the works of sub-disciplines. See Robbins et al., *supra* note 25, at 1176 n.163.

⁷⁶ Stanchi, *supra* note 28, at 481.

⁷⁷ Both LWI and ALWD, in national and regional conferences, have sessions for new faculty on how to be a legal writing professor. The LWI has also started a bootcamp for new faculty. All of these are opportunities to help legal writing scholars develop an understanding of the discipline.

⁷⁸ The LWI Monograph Series and bibliographies published by Legal Communication and Rhetoric: JALWD are a great start, and experienced scholars should make sure that newer scholars are aware of these resources.

⁷⁹ Despite Bennardo's critique, there are in fact a number of examples of robust public critique of legal writing scholarship. See Soled, *supra* note 3, at 12.

⁸⁰ Stanchi, *supra* note 52, at 4.

building the discipline must be mindful and intentional in creating more opportunities for junior scholars both to have their work critiqued and to critique others.⁸¹ Legal writing scholars' participation in workshops and colloquia should become the norm, not the exception. The supportive nature of the legal writing community can help new scholars feel safe in subjecting their work to critique.

B. Increased Focus on Scholarship at Professional Conferences

Another site for discipline-building, for engagement and discussion of scholarly work, is the legal academic conference. Bennardo's essay rightly points out that both LWI and ALWD host many large and small conferences throughout the year,⁸² and that many sessions at these conferences focus on status.⁸³ While the focus on status is important for the reasons already discussed, the national organizations could send a powerful message about the value of disciplinary engagement by focusing more conference programming on scholarship.

A look through the conference programs from the past LWI Biennial Conferences⁸⁴ and ALWD Biennial Conferences⁸⁵ (held in alternate years) shows that sessions devoted to presenting and critiquing scholarship are in a significant minority in comparison to presentations on pedagogy and professional issues. It is time for that to change. While there will always be a place for presentations on status and pedagogy, as the discipline evolves conference planners should shift the balance to provide more opportunities for scholarly discussion at the national conferences. And even presentations on pedagogy should be grounded in the theory provided by relevant scholarship. This would both create much-needed opportunity for legal writing scholars and send a message about the importance of scholarly engagement.

If the national legal writing organizations focused more explicitly on disciplinary scholarship, it would send a powerful message about the importance of the value of producing and promoting that scholarship, which is a key way for the discipline to grow. The biennial conferences should embrace the breadth of disciplinary scholarship and solicit more presentations based on new articles. In addition, in the same way that conferences have dedicated time for new faculty to learn about critiquing or leadership⁸⁶ the conferences could host a workshop on getting to know the discipline by introducing newer faculty to important disciplinary scholarship.

⁸¹ Again, I don't mean to suggest that this work is not happening. Both LWI and ALWD have devoted time and financial resources to supporting and hosting writing workshops, scholars' forums, scholarly retreats, and the like. Individual law schools have as well.

⁸² Bennardo, *supra* note 1, at 115.

⁸³ *Id.* at 116.

⁸⁴ *LWI Biennial Conference*, LEGAL WRITING INST., <https://www.lwionline.org/lwi-conference-programs-1984-date> (last visited Mar. 2, 2023).

⁸⁵ *2023 Biennial Conference*, ASS'N OF LEGAL WRITING DIRS., <https://alwd.org/conference> (last visited Mar. 2, 2023).

⁸⁶ These are frequent topics at the LWI and ALWD Biennials.

The discipline can also look to other models to increase opportunities for scholarly engagement. There are already some. LWI's Applied Legal Storytelling Conference⁸⁷ has a focus on scholarship and creates an opportunity for scholars to test ideas and receive critique. Perhaps it is not a coincidence that storytelling scholarship is one of the best-developed areas within the discipline. The virtual reading group for Research Methods in Legal Communication provides an opportunity for scholars to develop greater expertise with methods.⁸⁸ Bennardo's essay points to the annual Conference for Empirical Legal Studies as a model to engage in and critique scholarship. An ALWD or LWI-sponsored conference using this model would be an excellent addition to existing conferences and would help develop scholarship using empirical methods. The existing resources of the national legal writing organizations could be put to great use in expanding opportunities for scholarly engagement and sending the message that this work is important.

Finally, for legal writing scholarship to gain greater acceptance in the legal academy as an area of legitimate academic inquiry, the discipline must do more to encourage legal writing scholars to engage in scholarly life in the broader academy. Legal writing professors should make a concerted effort to visit other schools to participate in colloquia and other scholarly workshops, as well as participating in these activities in their home institutions. It is time to become comfortable sharing ideas and receiving feedback from those outside the legal writing community.

Bennardo's essay is correct in suggesting that there is some safety in presenting work within the legal writing discipline. It can be intimidating for legal writing scholars to move into spaces they have not historically been welcome. But here, again, the supportive nature of the legal writing community can be an asset. Legal writing colleagues can show up for each other, by giving the names of legal writing scholars to their school's colloquium committee to be speakers, and then showing up to be a friendly face in the audience. The more experience legal writing scholars have with giving and getting scholarly critique within the legal writing discipline, the more support they will be able to provide legal writing colleagues in other settings. This is how the discipline will expand and grow.

⁸⁷ *Ninth Applied Legal Storytelling Conference*, LEGAL WRITING INST, <https://www.lwionline.org/conferences/ninth-applied-legal-storytelling-conference> (last visited Mar. 2, 2023).

⁸⁸ This reading group, hosted over the LWI listserve, is run by Brian Larson of Texas A&M University School of Law's Legal Analysis, Research & Writing program and Kirsten Davis of Stetson University's Institute for the Advancement of Legal Communication.

VI. CONCLUSION

In sum, to achieve the laudable goal Bennardo identifies of growing the legal writing discipline, the supportive nature of our community is an asset—not a liability. Status inequality has shaped the formation of the discipline and continues to shape the way legal writing exists in the broader academic community. Rather than pretending we are past it or adopting the hierarchical views that contribute to our marginalization, legal writing scholars should continue to build on the successes that have come from addressing inequality head-on and working through it.