

“Riddikulus!”: Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe

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In the third book of the popular Harry Potter series, Harry and his classmates at the Hogwarts School for Witchcraft and Wizardry encounter a scary creature called a boggart.¹ A boggart isn't confined to one creepy form but “shape-shifts,” taking “the shape of whatever it thinks will frighten us the most.”² Boggarts hide in enclosed spaces like wardrobes, grandfather clocks, and the shadowy spot underneath your bed.

Law-school faculties face boggarts too. These boggarts are the living myths that pop out and whisper in faculty ears whenever someone suggests that law schools should create tenure-track — or even permanent — faculty positions in legal writing. Although some faculties have defeated these boggarts,³ they are still out there, popping out not from under the bed or from behind the closet door, but at lunch in the faculty lounge, after the committee meeting, and during the conversation in the hallway. When challenged, these boggarts shift their shapes, twisting their logic until they are almost unrecognizable, exploiting the fears of those who debate the inclusion of legal-writing professionals in the academy.

¹ See J.K. ROWLING, *HARRY POTTER AND THE PRISONER OF AZKABAN* 133 (Scholastic Press 1999).

² *Id.*

³ See Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching*, 7 *SCRIBES J. LEGAL WRITING* 51, 60 (1998–2000) (Table) (indicating that roughly 50 law schools of the 185 surveyed have at least one legal-writing teacher in a tenure-track position, that most of these people are directors of their programs, but that only 8 schools have all their full-time writing faculty on tenure track).

The boggarts that “explain” why legal writing should not be taught at all, by anyone, have been eloquently attacked before.⁴ This article battles the boggarts that allow legal writing to be taught but curse its teachers to a short academic life — limited by caps on contracts or thwarted by positions that allow no job security or opportunity for scholarship. Unfortunately, the boggarts do more than just hurt the careers of legal-writing faculty: they stunt the progress of the very profession that legal education is meant to improve.

The boggarts have haunted legal writing for far too long. Harry and his classmates defeat their boggarts by laughing at them — by chanting the charm “Riddikulus!” and using their wands to turn the boggarts into something humorous. Although I have no magic wand with a phoenix tail feather, it’s time to shout “Riddikulus!” and “HA!” and to watch the boggarts explode, burst into “a thousand tiny wisps of smoke,”⁵ and disappear.

The It’s-Not-Intellectual Boggart:

Legal writing lacks enough intellectual substance for a tenure-track position, OR it’s so hard to teach that burnout is inevitable, making contract caps necessary.

This boggart argues that legal writing is such a nonintellectual, simplistic subject that it’s not worthy of a permanent position, let alone a tenure-track position.⁶ Legal writing is just a glorified grammar course. Because it’s a simple course to teach, it can be taught well off the top of your head, with no preparation, training,

⁴ See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 40-47 (1994).

⁵ Rowling, *supra* note 1, at 139.

⁶ See, e.g., Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 137 (1997); Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN’S L.J. 75, 80 (1997).

or experience. Thus, there is no need for teachers who have developed any sort of expertise or for any scholarship in the field.

When challenged, this boggart shifts shape and says that legal writing is so hard to teach that a permanent position is unwise. Legal-writing teachers face inevitable burnout from the mental strain of correcting papers — certainly no one could stand doing it for more than a year or two.⁷ We must protect legal-writing teachers by using capped contracts that force them out into better jobs.

Riddikulus! Legal writing is not focused on grammar any more than tax law is focused on math. Legal-writing faculty teach communication skills, it's true, but they teach those skills in the context of substantive issues of legal doctrine, professional responsibility, and legal practice. Legal-writing courses aren't the dirty diapers of legal education. Instead, they embody the very essence of what lawyers do: identify relevant authorities, synthesize legal rules from those authorities, and apply those rules to the relevant facts, all in a particular jurisdictional and procedural context.⁸ This is what "thinking like a lawyer" is all about, and it is what legal-writing professionals teach their students every semester.

In addition, this field cries out for scholarship. Academics are people who apply research to problems. They evaluate the problem, propose solutions, and test those solutions with further scholarship. The problems in professional legal writing are severe, and the calls for help come from many sources, from the MacCrate Report⁹ to the recent AALS speech of Attorney General Janet

⁷ See, e.g., Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 118 (1998).

⁸ See Joel R. Cornwell, *Legal Writing as a Kind of Philosophy*, 48 MERCER L. REV. 1091, 1092 (1997); Joseph Kimble, *Plain English: A Charter for Clear Writing*, 9 T.M. COOLEY L. REV. 1, 6, 28 (1992).

⁹ ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992).

Reno.¹⁰ If the law schools are honestly committed to solving these problems, then they should create the tenure-track positions that will spur needed scholarship.

Finally, teaching legal writing is no more likely to lead to burnout than teaching any other subject matter. Just as certain people enjoy the intellectual challenge of tax law or property law, some enjoy the challenge of studying and teaching legal writing. The growing number of experienced legal-writing teachers who have taught for 5, 10, 15 years or more prove the point.¹¹ If a legal-writing teacher is not overwhelmed by too many students¹² and has opportunities for professional development, burnout need never be a problem.

The Course-Scheduling Boggart:

Law schools shouldn't create tenure-track positions in legal writing because this will result in a "specialist" position, and law-faculty members are supposed to be able to teach everything, OR legal-writing teachers shouldn't get tenure because then they'll insist on teaching everything else and not legal writing.

This boggart shifts its shape based on two mutually exclusive myths about law faculty. The first is that faculty members routinely switch from teaching one subject to another at a moment's notice, moving effortlessly from criminal procedure to cyberlaw to environmental torts. The second is that, each year, tenured faculty present a list of their preferred courses to the

¹⁰ Janet Reno, *Lawyers as Problem-Solvers: Keynote Address to the AALS*, 49 J. LEGAL EDUC. 5, 9 (1999) ("First of all, you haven't taught them how to write yet . . . I would like to work with you in perfecting programs that will let lawyers be the best writers in America.").

¹¹ See Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1072 (1999).

¹² RALPH L. BRILL ET AL., SOURCEBOOK ON LEGAL WRITING PROGRAMS 62 (1997) (recommending no more than 40–45 students per semester).

associate dean, and the associate dean bows deeply and grants each request. No matter which myth prevails, tenured legal-writing professors would create a threat. They might be perceived as being unable to step into the breach and teach an unfamiliar subject. Or, after deceiving the faculty by feigning an interest in this distasteful field, they would wield the enormous power of tenure and refuse ever to teach legal writing again.

Riddikulus! The reality is that most law professors are mostly specialists, with one or two areas of particular competence in which they prefer to teach. But they are also realists, and they know that the law school needs to have teachers for all its required and elective courses. So they are willing to teach a first-year required course, even though it's not their favorite, or a new upper-level course that's designed to meet student demand. And although faculty must sometimes step in and teach a new course when curricular needs require it, this step is not taken lightly or routinely. Further, many legal-writing faculty are already teaching other courses, either because their law schools need them to do so or because of their experience or interests — in other words, for the same reasons that all faculty teach different courses.

The other reality is that even tenured faculty have only limited power to choose the courses they teach. Academic freedom does not usually mean that you can teach whatever courses you want, whenever you want. At most law schools, the administration develops the course schedule by balancing faculty requests and curricular needs. If all the requests and needs can be met, fine. But if not, curricular needs will usually trump. So while it's possible that a small percentage of legal-writing faculty who get tenure will *ask* not to teach legal writing anymore, whether these requests are granted depends on the administration.

That said, the fear of a request to stop teaching legal writing is probably overblown. When choosing, for example, a tax professor, law schools look for someone with a demonstrated interest in the field, as evidenced by teaching history, practice experience, scholarship, or all three. Schools should do the same when searching for legal-writing faculty. Of course, some legal-writing

faculty will have multiple interests, just as some tax-law or civil-procedure faculty have multiple interests. Interestingly, some schools have even *forced* tenure-track legal-writing professionals to develop another area of specialization by refusing to accept legal-writing scholarship as part of the tenure-review process. While there's nothing wrong with a legal-writing professor's having multiple interests, law schools could promote a commitment to legal writing by rewarding scholarship in the field.

The Supply-and-Demand Boggart:

Tenure-track positions are inappropriate because you can't attract "tenure quality" people to them, OR they are unnecessary because we are already attracting high-quality people even without the lure of tenure.

This boggart relies on an argument discussed above — that no sane person with any options really *wants* to teach legal writing. Those who do so must have some ulterior motive, or are too incompetent to get any other sort of job. When it's pointed out that many highly qualified people already teach legal writing — including people who have the good "paper credentials" of federal clerkships and high class rank — the boggart shifts shape and declares that tenure-track positions are not needed because we're already attracting well-qualified people.

Riddikulus! We need tenure-track positions in legal writing not just to benefit highly qualified people who are already teaching in it, but also to attract even more of these qualified people to the field. With the current state of affairs, it's no wonder that few so-called "quality" candidates have sought out legal-writing jobs. The conventional wisdom is that teaching legal writing — or even expressing an interest in teaching it — sounds the death knell of

any chance for a tenure-track position.¹³ Not surprisingly, people deny any interest in this undervalued discipline. If, however, legal writing becomes valued, if there is an opportunity to build a worthwhile career teaching legal writing, then valuable people will seek out those positions.

As for the reverse argument — that tenure is unnecessary because we are already attracting good people without it — law faculty would be wise not to discuss supply and demand too loudly. We create tenure-track positions for law professors not because it is the only way to attract good teachers, but because it is the best way to attract the best teachers. Certainly, in the current market, law schools could find good teachers of contracts, torts, constitutional law, and many other courses without offering tenure-track positions. But the academy's cost-benefit analysis has always been that the benefit of committed, secure, full-time faculty with academic freedom is worth the cost of tenure-track positions.

A tenure-track law professor is an incredible resource, and not just for the law school. The three elements of the tenure-track position — scholarship, teaching, and service — produce concrete, tangible benefits for law students, the legal community, and the public at large.¹⁴ Legal-writing scholars have already taken giant strides: they have analyzed myriad types of legal prose and created a legal-writing vocabulary that allows us to discuss what makes an analytical document complete or a drafted document comprehensible. But much remains to be done.

The lack of tenure-track positions in legal writing denies the bench, the bar, and the public the opportunity to benefit from the work of experienced writing teachers. Like any other professor, legal-writing professors can conduct CLE seminars and sit on bar

¹³ See, e.g., Kevin H. Smith, *How to Become a Law Professor Without Really Trying: A Critical, Deconstructionist, and Hermeneutical Exploration of Avoiding the Drudgery Associated with Actually Working as an Attorney*, 47 U. KAN. L. REV. 139, 144 (1998).

¹⁴ See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 42-44 (1992) (discussing the benefits that "practical" legal scholarship provides to the judiciary).

committees. They can analyze how writing is best accomplished in law firms and propose training programs for new attorneys. They can study how lay people read and use legal documents, and they can suggest improvements. The possibilities are endless.

The contemporary example of alternative dispute resolution provides a good case in point. For hundreds of years, lawyers and disputants have been practicing alternative methods for resolving disputes within the formal legal system. But only within the past 15 to 20 years have the greatest advances been made. Those advances are largely attributable to the legal academics who conducted research, published scholarship, and shared their knowledge with the bench, the bar, and their students. Through their unique perspective and their unique ability to produce relevant, practical scholarship, they have made an incalculable difference in how lawyers use alternative methods of dispute resolution.

In recent years, scholarship in legal writing has grown greatly. But only as the boggarts explode, and as more schools create the tenure-track positions that encourage legal-writing scholarship and service, will we see the full impact that legal-writing professors can have on the practice of law.