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THE “OTHER” MARKET

Cody J. Jacobs*

ABSTRACT

The hiring market for tenure-track non-legal writing positions is a world unto itself with its own lingo (i.e., “meat market” and “FAR form”), its own unwritten rules (i.e., “Do not have two first-year courses in your preferred teaching package.”), and carefully calibrated expectations for candidates and schools with respect to the process and timing of hiring. These norms and expectations are disseminated to the participants in this market through a relatively well-established set of feeder fellowships, visiting assistant professor programs, elite law schools, blogs, and academic literature on the subject.

But there is another market that goes on every year with much less fanfare—the market for positions teaching legal writing. In fact, it is likely that every year law schools fill more legal writing positions than positions teaching any other subject. Moreover, the hiring market for legal writing positions is far more heterogeneous than the market for non-legal writing positions. The positions themselves vary widely in their job security, governing status, job responsibilities, and writing expectations. And, the hiring processes also vary widely in terms of timing, application requirements, interviewing process, and decision-making mechanisms. Yet, unlike the non-legal writing market, there is little available to guide would-be applicants through this daunting process.

This Essay aims to not only fill that gap but also provide a critical appraisal of the state of the legal writing hiring process and suggest some areas where law schools and the legal writing community can improve. This Essay was born out of my own personal experience with the legal writing hiring process as a candidate over the last few years but is also informed by a survey of legal writing programs that have recently conducted candidate searches. This Essay examines the kinds of candidates legal writing programs look for, when jobs are posted and filled, and the various approaches that schools take to the interviewing and hiring process. It then proposes some

* Lecturer, Boston University School of Law. This Essay is based on a presentation given at the *Temple Law Review* symposium, *Disrupting Hierarchies in Legal Education: Commemorating the Impact of the Freedman Fellow Program*, in Philadelphia, Pennsylvania, on October 25, 2019. For an overview of the symposium, see Alicia Kelly & Richard K. Greenstein, *Disrupting Hierarchies in Legal Education: Commemorating the Impact of the Freedman Fellow Program*, 92 *TEMP. L. REV.* 713 (2020). I have the bittersweet distinction of being the last Freedman Fellow (I completed the fellowship in 2017). That fellowship is where I taught legal writing for the first time. Thanks to Sue Liemer, Kristen Murray, Jan Levine, and Peter Nemerovski for their very generous help on this Essay. I am also appreciative of the LWI Scholarship Committee’s Mentorship Program, which connected me to Sue and Kristen. I am also much indebted to Elizabeth DeArmond, Lee Carpenter, Susan DeJarmatt, and Ellie Margolis for introducing me to and helping me understand the legal writing hiring process. Finally, a big thanks to my wife, Kristen, for helping me figure out how to wield Excel sufficiently well to analyze the results of the survey.

suggestions for improving the process with an eye toward broadening the pool of candidates, elevating the status of legal writing in the profession, and improving the quality of teachers that schools ultimately hire.

TABLE OF CONTENTS

INTRODUCTION.....	766
I. THE MARKET: THE NON-LEGAL WRITING HIRING PROCESS.....	768
II. THE “OTHER” MARKET: THE LEGAL WRITING HIRING PROCESS	770
A. <i>Whom Do Schools Hire To Teach Legal Writing?</i>	772
1. Where Candidates Went to Law School.....	773
2. Practice Experience.....	774
3. Teaching Experience.....	776
4. Publications.....	778
B. <i>When Do Schools Hire Legal Writing Professors?</i>	779
C. <i>How Do Schools Hire Legal Writing Professors?</i>	781
1. The Application	781
2. The Screening Interview	782
3. The Callback Interview	784
III. AREAS FOR CRITICAL ASSESSMENT	786
A. <i>Timing</i>	787
B. <i>Going to the AALS FRC</i>	789
C. <i>Support for Candidates</i>	790
D. <i>Callback Presentations</i>	792
E. <i>Dealing with Dual Candidates</i>	795
CONCLUSION.....	797

INTRODUCTION

Teaching first-year legal writing is a wonderful job. It is a gratifying feeling every year to watch students progress from their early writing assignments to their final pieces of work. And, legal writing professors have an outsized impact on the profession as a whole by providing law students with their first training in what lawyers actually do on a day-to-day basis.¹ Beyond the classroom, legal writing professors are part of a well-organized and supportive professional community. While the job entails more than its fair share of long hours, it does allow for flexibility in ways that many other legal positions do not.

Obtaining a position teaching legal writing, however, is not so wonderful. It is a challenging multistep process that is not particularly transparent and can vary at different institutions. The process typically requires a lot of preparation, travel, and perseverance. To make matters worse, there is very little to guide candidates through

1. See Carol Goforth, *Transactional Skills Training Across the Curriculum*, 66 J. LEGAL EDUC. 904, 905 (2017).

this process, especially compared to the hiring process for positions teaching other law school subjects.

Professor Jan Levine recognized this over twenty years ago when he wrote a groundbreaking article about the hiring process for legal writing professors.² In that article, Levine described in detail the different kinds of legal writing positions that schools offer, outlined the hiring processes for those positions, and provided invaluable advice to candidates attempting to navigate them.³ To this day, it remains a helpful starting point for anyone interested in entering the profession.

However, in the two decades since he published that article, two significant developments have occurred. First, the non-legal writing⁴ hiring market has given birth to a cottage industry of fellowships, visiting assistant professor (VAP) programs, and advanced degree programs that are specifically designed to prepare candidates for the market.⁵ And, the rise of the legal blogosphere has allowed candidates access to troves of information about the hiring process, both generally and as it happens in real time during the year they are on the market.⁶

Second, the nature of legal writing jobs has changed substantially. Levine recognized that the field was undergoing a professionalization with many schools switching from adjunct or student faculty to full-time programs.⁷ Since then, that trend has continued and accelerated as legal writing faculty have obtained better status within

2. See Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1094–1116 (1999).

3. See *id.* at 1083–1116.

4. In this Essay, when I refer to “non-legal writing” subjects, I generally mean courses that are not legal writing, clinical, or other “skills” courses. This is more commonly referred to as “doctrinal” teaching, but that label is problematic and misleading because, among other reasons, legal writing teaching often involves teaching doctrine. See, e.g., Linda H. Edwards, *Legal Writing: A Doctrinal Course*, 1 SAVANNAH L. REV. 1, 1–3 (2014); Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181, 182–84 (2014); Harold Anthony Lloyd, *Why Legal Writing Is “Doctrinal” and More Importantly Profound*, 19 NEV. L.J. 729, 729–30 (2019); 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, 58 (2015) (“The rhetoric adopted by many law school faculties that identifies certain courses (e.g., torts, constitutional law, property) as ‘doctrinal’ or ‘substantive’ and legal research and writing as ‘skills’ encourages the view that legal writing does not teach doctrine or substance.”).

5. See, e.g., Jessica Erickson, *New Summer Series: Interviewing Fellowship and VAP Directors*, PRAWFSBLAWG (May 17, 2019, 9:53 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2019/05/new-summer-series-interviewing-fellowship-and-vap-directors.html> [<https://perma.cc/3DS9-J2KL>] (“VAPs and fellowships are the de facto gateway into the profession.”). Even as the number of these fellowships has grown, however, they have become somewhat concentrated in “elite” schools as the job market has contracted and lower ranked schools have had more difficulty placing fellows. Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 144 (1997). The Freedman Fellow Program that this Issue commemorates is itself an example of one of these early fellowships that met that fate. See *The Honorable Abraham L. Freedman Fellowship Program*, TEMP. L. REV., <http://www.templelawreview.org/the-honorable-abraham-l-freedman-fellowship-program/> [<https://perma.cc/P6ZC-58PG>] (last visited May 1, 2020).

6. Every year, PrawfsBlawg compiles job openings; the timing of when candidates receive interviews, callbacks, and offers; and a list of the candidates who ultimately get jobs and where they end up. See, e.g., Sarah Lawsky, *Entry Level Hiring: The 2020 Report - Second Call for Information*, PRAWFSBLAWG (Mar. 23, 2020), <http://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report/> [<https://perma.cc/QL66-RQ6E>].

7. See Levine, *supra* note 2, at 1068.

their institutions.⁸ Many schools now have tenure-track legal writing professors and a great deal more have legal writing professors with renewable long-term contracts.⁹ These status changes have come with changes to the jobs themselves as many legal writing jobs now involve faculty governance and scholarship expectations.¹⁰ These changes have, in turn, had an impact on the hiring process for these positions.

This Essay, in some ways, aims to pick up where Levine left off. Unlike Levine, however, who was a legal writing director and already a giant in the field when he wrote his piece, I am new to the profession, having just been hired for a permanent legal writing position this year. Going through the hiring process for both legal writing and non-legal writing positions is what inspired me to write about this topic. However, to make sure that the Essay does not just reflect my idiosyncratic experiences, I have also conducted an informal survey of legal writing programs about their recent hiring processes. Ultimately, I hope this Essay can be helpful to candidates seeking legal writing positions and spark conversations about ways law schools and the legal writing profession can improve the hiring process.¹¹

Section I begins with an overview of the hiring process for non-legal writing positions in order to better understand its relationship to the legal writing hiring process. Section II describes the legal writing hiring process as informed by my own experiences and an informal survey of legal writing programs. Section III then recommends some areas where the hiring process could be reformed to better serve candidates and schools.

I. THE MARKET: THE NON-LEGAL WRITING HIRING PROCESS

An overview of the non-legal writing hiring process is necessary in order to understand how and why it differs from the legal writing hiring process. While there is some slight variation, nearly every law school approaches the tenure-track non-legal writing hiring process the same basic way. First, schools put together a faculty hiring committee.¹² Second, starting late in the summer,¹³ schools review the Faculty Appointments Register, commonly known as the FAR.¹⁴ The FAR is a database that the Association of American Law Schools (AALS) manages through which, for a

8. See, e.g., Ann C. McGinley, *Employment Law Considerations for Law Schools Hiring Legal Writing Professors*, 66 J. LEGAL EDUC. 585, 588 (2017) [hereinafter McGinley, *Employment Law*].

9. See ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., ALWD/LWI ANNUAL LEGAL WRITING SURVEY: REPORT OF THE 2017-2018 INSTITUTIONAL SURVEY 11 (2018) [hereinafter 2017-2018 ALWD/LWI SURVEY], <http://www.lwionline.org/sites/default/files/Final%20ALWD%20LWI%202017-18%20Institutional%20Survey%20Report.pdf> [https://perma.cc/AHL8-EAPF].

10. See *id.* at 79, 101.

11. This Essay focuses on the legal writing hiring process and some of the ways it differs from the hiring process for tenure-track non-legal writing law school positions. I recognize that many other law school professors including clinicians, librarians, and academic support professionals face hiring processes that are similarly challenging and dissimilar from the rest of the faculty at many law schools.

12. Non-legal writing, tenure-track faculty generally dominate these committees. Whether and to what extent other kinds of faculty members are involved varies by school. Some committees also include students.

13. For example, the hiring process starts in summer of 2020 for professors who will begin teaching in the fall of 2021.

14. *Faculty Appointments Register (FAR)*, ASS'N AM. L. SCHS., <http://www.aals.org/services/far/> [https://perma.cc/3YPX-UD7W] (last visited May 1, 2020).

sizable fee,¹⁵ candidates have their credentials, teaching subject preferences, and other information provided to hiring schools.

After the committee reviews these forms, it calls candidates it wants to interview at the Faculty Recruitment Conference (FRC), which takes place in Washington, D.C., every October.¹⁶ At the FRC the committee holds screening interviews that usually last around twenty-five minutes.¹⁷ Committees usually conduct well over a dozen of these interviews over the two days of the conference.¹⁸

Over the next couple of months, between the conference and the end of the fall semester, schools conduct callback interviews with a small group selected from the people who were interviewed at the conference.¹⁹ These interviews usually consist of spending the better part of an entire day on campus. The day typically includes a series of interviews with different small groups of faculty members and, most important, a job-talk presentation in which the candidate presents a so-called work in progress²⁰ and responds to feedback from the faculty. These interviews also usually include a dinner with faculty members either the night before or the night of the interview.²¹

Once all the callback interviews have concluded, the tenure-track faculty vote on whom they want to hire, and then schools extend offers to selected candidates, usually in early- to mid-December. Then, selected candidates may engage in some brief negotiation with schools before accepting or rejecting offers.

There is an extensive body of advice about, and analysis of, this process online, especially in the legal blogosphere.²² There are also publicly available guides that some law schools publish, particularly "elite" law schools where many of the candidates

15. *FAR Information*, ASS'N AM. L. SCHS., <http://www.aals.org/services/recruitment/far/> [<https://perma.cc/4L8E-J6RQ>] (last visited May 1, 2020). The fee for the 2019 hiring season was \$290. *Id.*

16. *See Faculty Recruitment Conference*, ASS'N AM. L. SCHS., <http://www.aals.org/services/recruitment/conference/> [<https://perma.cc/V3M9-34J3>] (last visited May 1, 2020). This conference is sometimes referred to as the "meat market." *See, e.g.*, Ashley Krenelka Chase, *Upending the Double Life of Law Schools: Millennials in the Legal Academy*, 44 U. DAYTON L. REV. 1, 11 & n.60 (2018).

17. *Faculty Recruitment Conference*, *supra* note 16.

18. *See* ASS'N OF AM. LAW SCHS., INTERVIEW TEAMS 4 (2019), <https://www.aals.org/wp-content/uploads/2019/09/InterviewTeamsBooklet2019.pdf> [<https://perma.cc/D8GL-WYV5>]. Calling it a conference is a bit misleading. The event bears a much stronger resemblance to on campus interviewing than it does to any kind of professional conference. *See id.*

19. *See* Jeffrey M. Lipshaw, *Memo to Lawyers: How Not to "Retire and Teach"*, 30 N.C. CENT. L. REV. 151, 154-55 (2008).

20. In reality, most job-talk articles are close to finished products or are even already published, since candidates are incentivized to put the best face on their writing, rather than to submit a truly "in progress" piece of work.

21. Occasionally, schools also include other components in these interviews, such as interview sessions with students or staff or teaching a mock class.

22. *See, e.g.*, Brian Leiter, *Advice for Academic Job Seekers*, BRIAN LEITER'S L. SCH. REP., <http://leiterlawschool.typepad.com/leiter/advice-for-academic-job-seekers/> [<https://perma.cc/UF88-NLN5>] (last visited May 1, 2020); *Getting a Job on the Law Teaching Market*, PRAWFSBLAWG, http://prawfsblawg.blogs.com/prawfsblawg/getting_a_job_on_the_law_teaching_market/ [<https://perma.cc/L6U5-GSGK>] (last visited May 1, 2020).

come from.²³ Beyond that, most candidates receive extensive direct guidance through their participation in VAP programs or fellowships, which are often at those same elite schools.²⁴ This guidance often includes having professors review application materials, mock interviews, and mock job talks.

Of course, this is necessarily a very generalized overview of the hiring process for non-legal writing positions. There are interesting nuances, trends, and problematic aspects of this process that are beyond the scope of this Essay.²⁵ Still, in thinking about how it relates to the legal writing hiring process, the bottom line is that the tenure-track non-legal writing hiring process is highly standardized and has an extensive support network built around it.

II. THE “OTHER” MARKET: THE LEGAL WRITING HIRING PROCESS

The legal writing market is quite different from the tenure-track non-legal writing market in several ways. Most importantly, the process is much more heterogeneous.²⁶ Partially, this reflects the nature of legal writing positions themselves, which vary widely between different schools. While a growing number of legal writing positions are tenure-track,²⁷ most are not.²⁸ According to the most recent joint survey of the Association of Legal Writing Directors (ALWD) and the Legal Writing Institute (LWI), 27% of full-time positions teaching first-year legal writing courses were tenure-track or on a programmatic tenure-track²⁹ during the 2017–2018 academic year.³⁰ Forty-two percent were on a track that leads to long-term, presumptively

23. See, e.g., *Preparing for a Career in Law Teaching*, YALE L. SCH., <http://law.yale.edu/studying-law-yale/areas-interest/law-teaching/law-teaching-program/preparing-career-law-teaching> [https://perma.cc/Q85T-QXYK] (last visited May 1, 2020).

24. In one study of the 2018–2019 hiring cycle, nearly 80% of the candidates who landed a tenure-track job had participated in a VAP or fellowship program. Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2019: Doctrinal, Fellowship, Doctorate*, PRAWFSBLAWG (June 6, 2019, 4:44 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2019/06/spring-self-reported-entry-level-hiring-report-2019-doctrinal-fellowship-doctorate.html> [https://perma.cc/T3B8-BTNJ] [hereinafter Lawsky, 2019 Doctrinal, Fellowship, Doctorate]. Out of those candidates, at least 70% had completed a fellowship from a “top fourteen” law school. See Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2019*, PRAWFSBLAWG (June 4, 2019, 4:03 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2019/06/spring-self-reported-entry-level-hiring-report-2019.html> [https://perma.cc/ET36-A33N] [hereinafter Lawsky, 2019 General Entry Level Hiring].

25. One interesting wrinkle that has come up recently is the creation of a second “market” by the Southeastern Association of Law Schools (SEALS). See *SEALS Faculty Recruitment*, SE. ASS’N L. SCHS., <http://www.sealslawschools.org/index.php/recruitment/> [https://perma.cc/GY9T-PE6U] (last visited May 1, 2020). That market will take place earlier than the AALS market but will have the same basic structure. See *Applicants*, SE. ASS’N L. SCHS., <http://sealslawschools.org/recruitment/applicants/> [https://perma.cc/5KMG-E3ZU] (last visited May 1, 2020).

26. See Levine, *supra* note 2, at 1110–11.

27. See, e.g., McGinley, *Employment Law*, *supra* note 8, at 588.

28. See 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 11. This survey has a winding history, and it is worth noting that the questions and methodology have varied a bit over time making it sometimes difficult to compare time periods. *Id.* at iii–iv.

29. “Programmatic tenure” means a tenure-track that has different requirements that are particularly geared towards legal writing professors. *Id.* at viii.

30. *Id.* at 11.

renewable contracts.³¹ Nearly half of legal writing professors (48%) either had short- or long-term contracts that are not presumptively renewable.³² Legal writing positions also vary widely in the level of enfranchisement that legal writing professors enjoy in faculty governance.³³ While fully tenure-track legal writing positions virtually always have the same voting rights as other tenure-track positions, legal writing professors on a programmatic tenure-track or not on any tenure-track often have limited voting rights or none at all.³⁴

These differences in position types have resulted in vastly different hiring processes with distinctive goals, timelines, and requirements for candidates.³⁵ Some schools are looking for candidates with publication records or at least a demonstrated aptitude for scholarship, while other schools are focused exclusively on teaching ability and experience. And, while some legal writing positions are filled on the same timeline as the non-legal writing market, other schools do not even *begin* to search for legal writing professors until well after their non-legal writing market process is complete.³⁶ Finally, the actual nuts and bolts of hiring processes—that is, what materials the candidate has to submit and the sort of performance the candidate may have to put on during a callback interview—also vary quite a bit more than it does for non-legal writing hiring.³⁷

To aid in answering these questions and understanding how the answers vary across schools, I conducted a survey of legal writing programs about their hiring processes. The survey, which was distributed on the LWI listserv commonly known as LRWPROF, asked a series of questions pertaining to schools' most recent legal writing hiring processes. To make sure the results are most relevant to the contemporary market for legal writing positions, I limited the survey to schools that had conducted a search within the last five years.³⁸

31. *Id.* This track is often referred to as the 405(c) track in reference to ABA Standard 405(c), which refers to affording clinical faculty members "a form of security of position reasonably similar to tenure." AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–2019, at 29 (2018), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf [<https://perma.cc/E3MW-9KB2>].

32. 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 11. The percentages add up to more than 100% because some schools have people with different statuses teaching in the first-year legal writing program. *See id.*

33. *Id.* at 79.

34. *Id.* at 79–81.

35. *See infra* Part II.A.

36. *See infra* Part II.B.

37. *See infra* Part II.C.

38. The complete results of the survey are on file with the author. I received forty-eight responses to this survey in total. Eight of them were from schools that had most recently hired a visitor or fellow to teach legal writing. Because schools are often trying to hire candidates who have the greatest potential to become attractive candidates on the non-legal writing hiring market, the considerations that go into hiring those candidates can be dramatically different than those that go into hiring other categories of legal writing faculty. For that reason, I have generally excluded those responses when I talk about the data below, except where otherwise noted.

A. Whom Do Schools Hire To Teach Legal Writing?

As in other areas, the characteristics of entry-level doctrinal professors are far better studied than their legal writing counterparts.³⁹ However, there was one comprehensive study of the credentials of legal writing professors that Professors Sue Liemer and Hollee Temple undertook a little over ten years ago.⁴⁰ This study provided a good starting point for understanding where legal writing professors come from and a good reference point for seeing changes in hiring processes in the years between their survey and the one in this Essay.⁴¹ An important caveat, however, in comparing the surveys is that they looked at different populations. Liemer and Temple looked at the credentials of *current* legal writing professors,⁴² whereas my survey focused only on recent hires.⁴³

More recently, Professor Peter Nemerovski conducted an empirical study that examined the backgrounds of legal writing professors hired at schools with top-ranked legal writing programs between 2010 and 2017.⁴⁴ Nemerovski's study provides perhaps the soundest dataset of any study of this issue since it is based on the author's direct research into each professor's background rather than a generally distributed survey.⁴⁵ However, the study focused on only a subset of writing programs (the twenty-nine schools that were "ranked" by *US News and World Report* in its 2019 rankings) and only a subset of professors hired at those schools (those that were still teaching at their respective schools as of 2018).⁴⁶ Therefore, while Nemerovski's study is still quite useful, any comparison between it and this survey or Liemer and Temple's should be taken with a grain of salt.

The subparts that follow examine the credentials schools are looking for in legal writing candidates across the following dimensions: the schools candidates attended,⁴⁷ candidates' practice experiences,⁴⁸ candidates' teaching experiences,⁴⁹ and candidates'

39. PrawfsBlawg has been keeping copious statistics for many years about several aspects of entry-level, tenure-track hiring. See Lawsky, *2019 General Entry Level Hiring*, *supra* note 24.

40. Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383, 383–88 (2008).

41. The characteristics of many legal writing programs—including the status of the faculty—have changed over the last decade. For example, in the 2007 ALWD/LWI survey that formed part of the starting point for Liemer and Temple's study, only a little over 14% of legal writing programs included people with tenure-track positions teaching in the program. See ASS'N LEGAL WRITING DIRS. & LEGAL WRITING INST., 2007 SURVEY RESULTS 51 (2008), [https://www.alwd.org/images/resources/2007%20Survey%20Report%20\(AY%202006-2007\).pdf](https://www.alwd.org/images/resources/2007%20Survey%20Report%20(AY%202006-2007).pdf) [<https://perma.cc/8UH2-B6LR>]. Today, that number has nearly doubled to 27%. 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 11.

42. See Liemer & Temple, *supra* note 40, at 416–17.

43. This likely reflects the different focuses of the two articles. Liemer & Temple, *supra* note 40, were focused on the credentials of the legal writing academy whereas this Essay is mostly focused on the hiring process.

44. Peter Nemerovski, *Help Wanted: An Empirical Study of LRW Hiring*, 24 J. LEGAL WRITING INST. 315, 317–20 (2020).

45. See *id.*

46. *Id.* at 317. The "2019" rankings are actually those released in 2018. *Id.*

47. See *infra* Part II.A.1.

48. See *infra* Part II.A.2.

49. See *infra* Part II.A.3.

publication records.⁵⁰ This Part concludes with some discussion of "soft" factors schools consider such as candidates' personality traits. The way schools consider each criterion has important implications for candidates, schools, and legal writing as a discipline.

1. Where Candidates Went to Law School

In both Liemer and Temple's study and my survey, about 28% of respondents went to a top twenty law school.⁵¹ While that may seem high to an outsider, it is actually a sharp contrast with the doctrinal teaching market where, in the most recent year's PrawfsBlawg data, 84% of new hires went to a top twenty law school.⁵²

This discrepancy is good news for candidates, since it means a candidate will not necessarily be disqualified from a legal writing position simply because she did not go to an elite law school.⁵³ From the perspective of legal writing as a discipline, the situation is more of a mixed bag. On the one hand, looking beyond elite law school graduates for legal writing faculty probably helps to produce better results in the classroom. The criteria for getting admitted to and succeeding in an elite law school are not necessarily the same criteria that are necessary to be a good teacher. We have all seen in our own law school experiences that a brilliant understanding of a subject does not always translate into a great ability to teach that subject.⁵⁴

On the other hand, hiring from "non-elite" law schools, especially in contrast to the way non-legal writing hiring is done, may serve to reinforce the divide between legal writing and non-legal writing faculty. Often, the movement to improve the status and pay of legal writing professors has been met with arguments that non-legal writing professors deserve higher pay and status because of their supposedly better credentials,

50. See *infra* Part II.A.4.

51. Liemer & Temple, *supra* note 40, at 418–20. In my survey, when VAPs and temporary positions are included, that number goes up to almost 40%, but this likely reflects the necessity of these credentials for people who will ultimately go on the non-legal writing hiring market.

52. See Lawsky, 2019 *General Entry Level Hiring*, *supra* note 24. For full spreadsheet of PrawfsBlawg's 2019 Entry Level Hiring Data, see *Entry Level Hiring 2019*, <http://docs.google.com/spreadsheets/d/1WUwPcac9GApAM1WcSV3B3kbDXkAcU2SOA-dQl3GIvrU/edit#gid=0> [<https://perma.cc/4JUG-7ZCH>] (last visited May 1, 2020). Although comparing new hires to the current populations of professors is not completely apples to apples, the results are similarly stark even in studies of doctrinal professors as a whole. See 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) (finding that two-thirds of tenure-track non-legal writing professors at the time went to a top twelve law school).

53. For candidates who did go to an elite law school, the data still suggest that having such a degree is a plus rather than a minus. In my survey, 62% of respondents said that in their hiring process having a degree from a top law school was either "important" or "very important." And it may be particularly beneficial when applying to highly ranked legal writing programs: Nemerovski found that 42.6% of the new hires in such programs went to a law school ranked in the top twenty. See Nemerovski, *supra* note 44, at 330.

54. That is certainly not to imply that going to an elite law school is always a good marker of brilliance. Setting aside whether admissions credentials are the best proxy for ability, many people with the ability to be admitted to and succeed at elite law schools choose to attend lower ranked schools for many reasons, including geographic preferences, the presence of specialty programs at particular schools, and, probably most commonly of all, financial reasons. See Nancy B. Rapoport, *Changing the Model Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119, 1134 n.48 (2012). This further reinforces the point that many qualified law professors can be found among graduates of "non-elite" schools.

including because they are usually graduates of elite law schools.⁵⁵ This argument, though, suffers from a serious circularity problem: perhaps elite law school graduates are less interested in legal writing positions *because of* the lower status and pay.⁵⁶

In any case, the upsides of hiring (or at least considering) candidates from a more diverse pool of law schools likely outweigh any negative reaction to that openness.⁵⁷ Not only does hiring outside of the elite law school pool likely lead to hiring better teachers, it also fosters more innovation in legal teaching.⁵⁸ Hiring from only a small set of schools often leads to the pedagogical practices from those schools being repeated nationally without enough critical scrutiny.⁵⁹ Legal writing has been ahead of the curve in fostering curricular innovation, and continuing to recruit from a pool of people with diverse educational backgrounds will ensure that it stays that way.⁶⁰

2. Practice Experience

Practice experience is a highly sought-after credential in the legal writing hiring market.⁶¹ Often entry-level writing professors will have several years of practice experience under their belts, sometimes practicing in more than one type of practice setting.⁶² In my survey, 40% of respondents reported that their most recent hire had more than ten years of practice experience before being hired, and 82% said that practice experience was either “important” or “very important” in evaluating a

55. See Liemer & Temple, *supra* note 40, at 387–88, 418–20.

56. There are several other issues with this argument as well that Liemer and Temple detail nicely. See *id.* at 425–30.

57. Indeed, the non-legal writing hiring process has been criticized for limiting the pool of candidates to those with elite law degrees. See, e.g., Redding, *supra* note 52, at 595 (“[T]he lack of diversity in the educational backgrounds of newly hired [doctrinal] law teachers is detrimental to legal education and ultimately to law itself, and that the main criteria for faculty hiring should be the candidate’s record of scholarly and professional accomplishment and teaching experience.”). See generally Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN’S L. REV. 171, 174 (2013) (criticizing law schools’ strong preference for elite law school graduate hires as limiting the pool of potential professors to people from elite socio-economic backgrounds).

58. See generally Heather Garretson et al., *The Value of Variety in Teaching: A Professor’s Guide*, 64 J. LEGAL EDUC. 65, 65 (2014) (“A combination of teaching methods that creates a variety of approaches is the most effective way to enhance law-school learning.”).

59. See, e.g., Redding, *supra* note 52, at 596 (“[The] lack of diversity in educational background may well mean that established methods of instruction continue to be handed down . . . with little opportunity for graduates of non-elite law schools to bring whatever innovative techniques they may have learned to the classroom . . .” (omissions in original) (quoting Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation’s Law Professors*, 25 U. MICH. J.L. REFORM 191, 231–32, 238 (1991))).

60. See *supra* notes 51–54 and accompanying text for a discussion of the diverse educational backgrounds of legal writing professors. See also Redding, *supra* note 52, at 607 (“[A] diversity of educational backgrounds provides greater diversity of thought and approaches to pedagogy, scholarship, and activism.”).

61. See Levine, *supra* note 2, at 1105; Liemer & Temple, *supra* note 40, at 424.

62. See Liemer & Temple, *supra* note 40, at 424; see also Nemerovski, *supra* note 44, at 334 (finding that candidates hired at top-ranked legal writing programs had a median of about five years of practice experience).

candidate for a legal writing position. This is in stark contrast to the doctrinal market in which "too much" practice experience can actually be viewed as a negative.⁶³

This treatment of practice experience is consistent with my own experience with the two markets. Interviewers asked about my practice experience far more often and in far more depth during legal writing position interviews than in non-legal writing position interviews. Legal writing interviewers were particularly interested in the fact that I had practiced in two different kinds of settings—as a litigation attorney at a large corporate law firm and as a staff attorney at a non-profit primarily working on policy work. The latter seemed to particularly pique the interest of legal writing interviewers, since many programs are looking to expand the types of writing exposed to students.

To that end, there has been a general move in legal writing programs over the last few years to incorporate more transactional work into the legal writing curriculum, since so many graduates end up going into transactional practice rather than litigation.⁶⁴ According to the ALWD/LWI survey, between 2008 and 2014 the number of programs that included some kind of transactional drafting in the required curriculum increased by about 40%.⁶⁵ As this trend continues, the demand for candidates with transactional practice backgrounds will likely increase, in recognition of the different kinds of skills that transactional writing requires.⁶⁶

Even as the types of practice experiences that are attractive to schools diversify, the preference for some practice experience in legal writing faculty seems unlikely to

63. Levine explained to me that, at one school he used to work for, the non-legal writing faculty "often said that more than three years in practice ossified the brain." Email from Jan Levine, Dir. of Legal Research and Writing and Professor of Law, Duquesne Univ. Sch. of Law, to author (Mar. 4, 2020) (on file with author); see also Lipshaw, *supra* note 19, at 159 ("[T]he general sense within the academy [is] that extended practice diminishes one's ability to think like a scholar. It's good to have had a couple years 'out there' (usually as an associate in a big financial center or Washington firm), but a ten-year lawyer first looking for a law professor job sticks out like a female gymnast in her mid-twenties. Twenty-five years of practice is debilitating, so it is thought, to the academic cranial synapses, and almost disqualifying."); Rapoport, *supra* note 54, at 1145 ("Law schools tend to hire faculty members who have wonderful academic pedigrees but not necessarily a lot of real lawyering experience, and even those professors who have worked as lawyers may have left practice too early (say, in the first three years) to have a real feel for the breadth and depth of a legal career." (footnote omitted)).

64. See, e.g., Lynnise Pantin, *Deals or No Deals: Integrating Transactional Skills in the First Year Curriculum*, 41 OHIO N.U. L. REV. 61, 71–72 (2014).

65. Compare ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2008 SURVEY RESULTS 12 (2008) (finding approximately 25% of programs reported that "drafting documents" were part of the required curriculum), [http://www---staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/2008Surveyresults \(REVISED\).pdf](http://www---staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/2008Surveyresults%20(REVISED).pdf) [<https://perma.cc/UZ6W-SYL3>], with ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 2014, at 13 (2014), <http://www.lwionline.org/sites/default/files/2014-Survey-Report-Final.pdf> [<https://perma.cc/6R44-XJNG>] (finding around 35% of programs reporting the same). Note that these figures may be slightly inaccurate since "drafting documents" is fairly vague, but given that almost all the other options were explicitly litigation focused, this response gives a rough idea of the prevalence of these assignments. More recent data are not available because the ALWD/LWI survey stopped asking this question beginning with the 2015 survey. See ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 2015 (2015) [hereinafter 2015 ALWD/LWI SURVEY], [http://www.alwd.org/images/resources/2015%20Survey%20Report%20 \(AY%202014-2015\).pdf](http://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf) [<https://perma.cc/XUC2-GNQ5>].

66. See Goforth, *supra* note 1, at 905 ("When a lawyer assists in a transaction, the kind of writing required is fundamentally different from the predictive or persuasive writing associated with litigation and other dispute-resolution contexts.").

change.⁶⁷ This seems like an unqualified good thing—it is reasonable that someone teaching basic lawyering skills has at least some and preferably a great deal of experience as a lawyer employing those skills.

The real question is how this difference in the backgrounds of legal writing and non-legal writing faculty impacts faculty politics. One area that immediately comes to mind is the disparity in pay.⁶⁸ The rising gap in practice experience means that many legal writing professors have higher earning potential in practice than their non-legal writing counterparts.⁶⁹ Yet, the latter continue to be paid less—and often significantly less—than the former.⁷⁰

3. Teaching Experience

Teaching experience is also a desirable asset for a legal writing candidate.⁷¹ In my survey 78% of schools reported that their most recent hire had some kind of law school teaching experience.⁷² This teaching experience took a variety of forms. Thirty-five percent of respondents reported hiring a candidate with experience teaching in a permanent legal writing position—in other words, a lateral candidate. Sixty-three percent had experience in a temporary teaching position, like an adjunct or visitor position.⁷³ Finally, 23% had completed a VAP program or fellowship.

That last number is particularly interesting because, while many VAP programs and fellowships involve teaching legal writing, few are designed to prepare candidates

67. Even among schools hiring for tenure-track legal writing positions, 77% reported that practice experience was either “important” or “very important.” This suggests that even as legal writing faculty achieve more parity with other faculty, the difference in the amount of practice experience preferred is likely to remain.

68. See Liemer & Temple, *supra* note 40, at 386 n.10 (providing various sources that report legal writing professors are paid 40–60% of the salaries that associate or full professors receive).

69. See Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 573 (2001).

70. See, e.g., 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 143 (showing that about half of legal writing faculty make less money than their doctrinal counterparts); Levine & Stanchi, *supra* note 69, at 573 (reporting survey findings that a candidate’s law school graduation date is not a strong predictive measure of their legal writing salary, thus implying that legal writing professors do not receive sufficient credit for their critical years of legal practice experience and noting the irony that “the close link between legal writing and the practice of law (as opposed to legal theory) is a typical reason given for the second-class treatment of legal writing”); see also Deborah J. Merritt, *Salaries and Scholarship*, LAW SCH. CAFE (Jan. 13, 2018), <http://www.lawschoolcafe.org/2018/01/13/salaries-and-scholarship/> [<https://perma.cc/LR33-469K>] (reporting on a study that found, at one top twenty-five school, entry-level, non-legal writing faculty made nearly twice as much as their legal writing counterparts).

71. See Liemer & Temple, *supra* note 40, at 423 & n.249; see also Nemerovski, *supra* note 44, at 335 (“[R]anked programs show a clear preference for hiring candidates with prior experience teaching legal writing.”). One of the main reasons schools prefer to hire legal writing professors with teaching experience, according to Levine, is because these professors know what they are getting into. See Email from Jan Levine to author, *supra* note 63 (“NO ONE who hasn’t taught LRW, even in a weak program or school, has any idea of what’s involved. . . . If they STILL want to teach LRW after having done it, then that’s someone who really knows what he or she is getting into. People who haven’t taught LRW even as an adjunct will likely not last, or will be an immediate disaster. Kind of like a surgeon who doesn’t know how to deal with blood.”).

72. The survey did not ask about teaching experience in non-law school contexts, although, at least anecdotally, that kind of experience may also be valued by hiring schools.

73. These two kinds of positions are very different and, in retrospect, given how common this selection was, I regret not breaking this down more granularly.

to obtain a permanent position teaching writing.⁷⁴ This result could reflect the growing number of tenure-track legal writing positions. Out of the schools that hired someone who completed a VAP program or fellowship, over half were hiring for a tenure-track legal writing position—well over the 13% of tenure-track hires represented in the data overall.⁷⁵ It could also reflect an oversaturation of the non-legal writing teaching market with candidates who completed a VAP program or fellowship. Some people who completed a VAP program or fellowship with the initial goal of securing a non-legal writing position may nevertheless end up accepting a legal writing position.

In my own case, teaching experience was definitely a major focus of the interview process. In fact, most of the interview questions focused on my teaching experience, asking me things like how I have approached different aspects of teaching legal writing, how the two programs at which I had previously taught were similar or different, and how I dealt with problems that came up in my teaching. Schools were also quite interested in reviewing my teaching evaluations, which seemed to give them a kind of hard data about how students have responded to my approach.⁷⁶

Teaching experience also serves another valuable purpose beyond the experience itself—providing an “in” with the legal writing community. The national legal writing community is a robust group that regularly holds regional and national conferences and has an active listserv throughout the year.⁷⁷ Having teaching experience allows a candidate to get to know the writing professors on at least one faculty and, hopefully, obtain positive references from them. This may provide more reassurance to schools relative to a candidate directly from practice who would be more of an unknown. That said, teaching experience is certainly not a required qualification for a legal writing position, especially when compared to tenure-track non-legal writing positions, in which candidates straight from practice are now truly rare.⁷⁸

74. See Jessica Erickson, *VAP/Fellowship Reflections: An Overview of the Different Types of Programs*, PRAWFSBLAWG (Nov. 14, 2019, 2:36 PM), <http://prawnsblawg.blogs.com/prawnsblawg/2019/11/vapfellowship-reflections-an-overview-of-the-types-of-programs-out-there.html> [https://perma.cc/MDS8-BNCR] (providing an overview of the different types of VAPs and fellowships that schools offer).

75. One respondent reported hiring for a position that could be tenure-track depending on the interests and experiences of the candidate. For purposes of this calculation, I am counting that position as a tenure-track one.

76. Reliance on teaching evaluations, however, can be problematic. See, e.g., Anne Boring et al., *Student Evaluations of Teaching (Mostly) Do Not Measure Teaching Effectiveness*, SCIENCEOPEN RES., Jan. 7, 2016, at 1, http://www.scienceopen.com/document_file/25ff22be-8a1b-4c97-9d88-084c8d98187a/ScienceOpen/3507_XE6680747344554310733.pdf [https://perma.cc/9ABS-YHF9]. A growing body of data show that student evaluations tend to be biased against women and people of color. *Id.* at 1, 10; see also Lorraine K. Bannai, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275, 287 (2014).

77. See, e.g., *About LWI*, LEGAL WRITING INST., <https://www.lwionline.org/about> [https://perma.cc/GM39-USYN] (last visited May 1, 2020).

78. Non-legal writing candidates with teaching experience have become the norm as a byproduct of the proliferation of fellowships and VAP programs. See *supra* note 24 and accompanying text. That proliferation is not the result of schools showing an increased interest in teaching experience itself but rather in candidates working to get more publications under their belt prior to going on the market. See Derek Muller, *Want This Job? Move Five Times in Eight Years*, PRAWFSBLAWG (Apr. 12, 2018, 9:12 AM), <http://prawnsblawg.blogs.com/prawnsblawg/2018/04/want-this-job-move-five-times-in-eight-years.html> [https://perma.cc/8JC6-XA6K] (“Candidly, I understand that there’s a kind of arms race out there among schools and prospective law

4. Publications

While publications are at the center of the tenure-track non-legal writing hiring process,⁷⁹ they are far less important in most legal writing hiring. According to my survey, just 30% of hiring schools thought publications were an “important” or “very important” criterion in looking at legal writing candidates.

Publications—especially about non-legal writing subjects—could even turn out to have a negative effect on hiring chances. A non-legal writing publication record may be seen as a negative in two different ways. First, non-legal writing publications may prompt interviewers to ask what the candidate’s “real” goals are with the thought that the candidate might see the legal writing position merely as a stepping-stone to a non-legal writing position either at their school or another one. Second, some schools may be concerned that engaging in scholarship would divert time and energy away from teaching legal writing. During one of my interviews, one member of a law school’s administration told me quite bluntly that her school is a good place to teach legal writing but not a good place to publish doctrinal scholarship.

That said, the survey data do show that this attitude is far from universal. Forty-three percent of the people who were ultimately hired at responding schools had at least one publication at the time of their hire. And, of course, publications are likely to be helpful in schools that have tenure-track legal writing positions or non-tenure-track positions with scholarship expectations.⁸⁰ But, even at those schools, I found that teaching experience (or aptitude for good teaching) was still the far more important criterion.⁸¹

* * *

Aside from these criteria, there is another less tangible set of personality-related criteria on which interviewers judge legal writing candidates.⁸² Schools often seem to be looking for a particular profile in a legal writing professor, a profile that is not necessarily the same as what they are looking for in a tenure-track non-legal writing position.⁸³ Specifically, schools look for candidates with good social skills, a caring attitude toward students, and a willingness to set aside ego and work collaboratively with other legal writing faculty.⁸⁴ To some extent, these qualifications make a lot of

professors. . . . Candidates remain on the market for longer periods and cycle through additional fellowships. And that leads to candidates with ever-longer publication records, which in turn requires future prospective candidates to take the time (and a move or two) to improve their own publication records. (Indeed, some come to the market with tenure-worthy track records!).”)

79. See, e.g., Lipshaw, *supra* note 19, at 156.

80. Out of the schools in those categories, 62% said scholarship was either “important” or “very important” in choosing a candidate.

81. The survey data bear this conclusion out as well. Eighty percent of schools with a publication requirement said that previous teaching experience was “important” or “very important.”

82. Arrigo, *supra* note 5, at 158 (“Academic and professional qualifications may be only minimum threshold requirements, however, for [a legal research and writing] candidate.”).

83. See *id.* at 158–59; Liemer & Temple, *supra* note 40, at 425 (“[T]here is ample evidence that legal writing professors are expected to have credentials not required of other law professors.”).

84. See, e.g., Arrigo, *supra* note 5, at 158–59; Maureen Arrigo-Ward, *How To Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV.

sense. Legal writing faculty work directly with students and often collaborate with each other in a way that the rest of the faculty does not.⁸⁵ And indeed, it can be very rewarding to help students not only with their writing but also with getting acclimated to and becoming successful in the law school environment.

However, the darker side to these sorts of personality qualifications is that they are rooted in a gendered vision of legal writing that codes the job as female and associates it with traditionally feminine personality traits.⁸⁶ Professor Ann McGinley described this dynamic well:

Legal writing faculty are expected to act as mini-psychologists and emotional soothers for their troubled students. Their role, which resembles the behavior of a mother in a traditional family, is not only to teach, but also to guide with a gentle hand, to listen to complaints, to solve problems and to be available to respond to the students' emotional concerns about legal writing, law school and, at times, life in general.⁸⁷

This dynamic has developed in the context of and, in turn, has reinforced the overwhelmingly female makeup of legal writing faculties.⁸⁸ In 2015, nearly three-quarters of legal writing professors across the country were female, and new hires that year were only slightly more gender diverse at approximately two-thirds female.⁸⁹

Again, there is nothing inherently wrong with looking for legal writing faculty who will do well working closely with students, but these kinds of qualifications cannot be understood without reference to the gendered assumptions that may underlie them. I am certainly not suggesting that men are at a disadvantage in the legal writing hiring process—that definitely was not my experience. But candidates of any gender-identity who do not immediately fit the profile law schools have of legal writing professors may face more questions about their ability to handle these personality-related aspects of the job.

B. When Do Schools Hire Legal Writing Professors?

For some legal writing positions, especially tenure-track ones, the timeline is the same as it is for non-legal writing positions. Law schools post the positions in late summer, conduct screening interviews in early- to mid-fall, and make offers by

557, 570 (1995); Levine, *supra* note 2, at 1074; Liemer & Temple, *supra* note 40, at 425; Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 129 [hereinafter McGinley, *Reproducing*].

85. Levine, *supra* note 2, at 1071–72.

86. *E.g.*, McGinley, *Reproducing*, *supra* note 84, at 128–29.

87. *Id.* at 129 (footnote omitted).

88. *See id.* at 107–08, 128–30.

89. 2015 ALWD/LWI SURVEY, *supra* note 65, at ix. Nemerovski's study suggests that this is consistent with the approach at top-ranked legal writing programs—62.3% of the professors in his study were female. Nemerovski, *supra* note 44, at 326. The gendered nature of legal writing teaching arose from a peculiar confluence of historical events in the 1970s and 1980s that led to woman dominating the full-time legal writing professoriate. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 3, 7–9 (2001). The short version is that the demand for these programs arose at the same time that many more women were becoming lawyers but still facing widespread discrimination in the legal industry. *Id.*

December.⁹⁰ Most of the time, however, law schools hire legal writing professors on a much later timeline than other professors. In my survey, 40% of permanent legal writing jobs were not even *advertised* until after January 1.⁹¹ In other words, nearly half of legal writing searches did not even begin until searches for almost all other law faculty positions were already completed.

The reasons that law schools hire legal writing positions on different timelines are not always easy to discern, but some of my survey respondents volunteered some interesting answers. The most common reason had to do with schools' bandwidths to conduct callback interviews. If a school was holding callbacks for non-legal writing positions during the fall semester, it was (supposedly) not possible to schedule legal writing callbacks as well because not enough faculty would turnout. Sometimes the position itself did not exist until later in the academic year, either because someone unexpectedly left the school or the administration delayed approving the creation of a new position.⁹² The geographic scope of the search may also be partially behind the timing—some schools require a national search for tenure-track jobs but may only pay for a regional or local search for a non-tenure-track position.⁹³ A few survey respondents openly told me that the faculty at their schools consider non-legal writing hiring “more important,” which is why the schools prioritized it.

Whatever the reasons, the disparate timing can be a challenge for candidates. Schools that hire well into the spring can put candidates who already have academic positions in the difficult position of not knowing whether they should plan to stay at their current institution for the following academic year.⁹⁴ The AALS provides general guidelines for law school hiring that recommend schools make lateral offers by “early spring” to avoid disrupting other institutions.⁹⁵ When it comes to legal writing hiring

90. Among the tenure-track positions in my survey, ninety-three were at least advertised in the summer or fall before the year the candidate was expected to begin work.

91. In my survey, about 12.5% of respondents hiring for permanent positions said that their position was not even advertised until after March 15.

92. These sorts of delays can occur for a number of reasons including a lack of knowledge about the hiring timeline at the university level or a failed tenure-track search freeing up money for a non-tenure-track legal writing position.

93. In Nemerovski's study, which only looked at top-ranked legal writing programs, over 60% of the hired candidates were *not* local, compared to about half that were local in my survey. Nemerovski, *supra* note 44, at 328. This difference could suggest that schools that take their legal writing programs more seriously are more likely to allocate the resources necessary to conduct a national search. *See id.* at 330 (“[A] law school following the best practices outlined in this article, which include designing jobs that a strong candidate might relocate to fill, will likely hire a majority of its legal writing professors from outside the city where the school is located.”); *see also infra* Part III.B (arguing that schools should attend the FRC in order to reach a national pool of candidates).

94. This seems fairly common, since 35% of respondents said they hired a candidate with previous experience in a permanent teaching position. Of course, it is not just candidates in permanent positions who may face this timing issue—fellowships and visitorships (both formal VAP and other visiting positions) often require faculty to make decisions about whether to renew for another year at some point in early- to mid-spring.

95. *AALS Handbook: Statement of Good Practices: Recruitment of and Resignation by Full-Time Faculty Members*, ASS'N AM. L. SCHS., <http://www.aals.org/about/handbook/good-practices/full-time-faculty/> [<https://perma.cc/L37U-Y5U5>] (last updated Feb. 25, 2019).

though, a small but significant handful of schools do not even *begin* the process until the middle of spring.⁹⁶

These late movers are less of an issue for candidates coming directly from practice. However, the disparate timing among legal writing positions is still not ideal since it makes it far more likely that candidates will be put in a position of having to make a decision on one school's offer before another's process has been completed (or even started). Competition for candidates should theoretically incentivize schools to move their hiring processes earlier so they have the largest possible pool of candidates. But, at least so far, that has not happened uniformly.⁹⁷

C. How Do Schools Hire Legal Writing Professors?

Whenever it does happen, the actual hiring process for legal writing positions can vary significantly from the non-legal writing hiring process. These processes can also vary from one school to another. The process for hiring legal writing professors can generally be divided into three steps: (1) the application,⁹⁸ (2) the screening interview,⁹⁹ and (3) the callback interview.¹⁰⁰

1. The Application

Although some legal writing positions hire through the AALS hiring market, the majority do not.¹⁰¹ Because of that, candidates mostly have to apply to legal writing positions individually, rather than relying on the FAR database to bring their candidacy to the attention of hiring schools. Schools post advertisements for legal writing openings in a variety of places, but they are most consistently posted on the ALWD and LWI legal writing listservs¹⁰² and the LWI website.¹⁰³

ALWD and LWI have used their position as disseminators of these postings to require schools to include important disclosures with each post.¹⁰⁴ These disclosures indicate the salary range, faculty status, and expected course load for the advertised

96. See *supra* note 91.

97. There have been some anecdotal observations on the listserv this year that hiring is beginning to happen earlier than in previous years.

98. See *infra* Part II.C.1.

99. See *infra* Part II.C.2.

100. See *infra* Part II.C.3.

101. According to my survey, only 43% of hiring schools even reviewed FAR forms, and only about half as many (20%) actually conducted interviews at AALS.

102. The two most widely used legal writing listservs are DIRCON and LRWPROF, which are run by ALWD and LWI, respectively. For more information about these listservs, see ASS'N OF LEGAL WRITING DIRS., BYLAWS OF THE ASSOCIATION OF LEGAL WRITING DIRECTORS 1 (2017), <http://www.alwd.org/images/resources/alwd-bylaws-11-10-17.pdf> [<https://perma.cc/R9DJ-884L>]; *Listserv Subscription Management and Archive Access*, LEGAL WRITING INST., <http://www.lwionline.org/listserv-subscription-management-archive-access> [<https://perma.cc/QYW7-PLLE>] (last visited May 1, 2020).

103. See *Employment Listings*, LEGAL WRITING INST., <http://www.lwionline.org/resources/employment-listings> [<https://perma.cc/M2MH-ADJE>] (last visited May 1, 2020).

104. See, e.g., *id.* (providing the Legal Research & Writing Faculty Teaching Position Job Posting Disclosure Form for the LRWPROF-L Listserv).

position.¹⁰⁵ These forms are a great innovation and one way that the legal writing hiring process is far superior to the non-legal writing hiring process. Little, if any, of this kind of information is usually posted in advertisements for non-legal writing positions.

In addition to these required disclosures, the job posting will usually list the materials that candidates should send.¹⁰⁶ Usually, these include a cover letter, curriculum vitae, writing sample, and teaching evaluations (if applicable).¹⁰⁷ Finding a relevant writing sample can be a bit of a challenge for people who have been in academia for a while. The most recent time I was on the market, I had been out of practice for five years. Although I wrote quite a bit during those five years, nearly all of those pieces were law review articles. Submitting a law review article or even a section of one as a writing sample can send the wrong signal, especially if the school is one without a scholarship expectation for legal writing faculty.¹⁰⁸ The best approach may be to risk submitting something older (as long as it is reasonably good), rather than submitting something that may make the candidate seem like a bad fit (even if it is well written).

When applying for any job, attention to detail is a must when submitting application materials. That seems to be doubly so for legal writing jobs since, after all, the job is teaching people how to write.¹⁰⁹ Levine's article recounted several of his own experiences rejecting applications out of hand that included typos or other small mistakes.¹¹⁰ As a recent candidate, these stories are terrifying, and I cannot say with certainty that I was never rejected for a similar error.

As for the substance, since schools are most interested in practice and teaching experience, it makes sense for candidates to highlight those experiences in their materials and how they relate to the particular position.¹¹¹ This stage of the process is also a good time (as it is for non-legal writing positions) to highlight a candidate's particular interest in a school, such as a geographic connection or interest in a particular aspect of their legal writing program.¹¹²

2. The Screening Interview

Once the application materials have been received, schools must go through the arduous task of reviewing the materials and selecting candidates to interview. These job postings generally draw a lot of applicants, so this process takes considerable

105. *See, e.g., id.*

106. For an example, see Posting of Sha-Shana Crichton, scrichton@law.howard.edu, to lrwprof-l@iupui.edu (Mar. 31, 2020) (on file with author).

107. If the position is tenure-track, the application package will usually also include a research agenda.

108. A piece of scholarship about legal writing, however, can be a good option. See *supra* Part II.A.4 for an overview of publications and their role in the hiring process.

109. Levine, *supra* note 2, at 1102.

110. *Id.* at 1102 & nn.157–58.

111. *See id.* at 1103–05.

112. See *infra* Part II.C.3 for a discussion of how the application can be a good, early opportunity for candidates to demonstrate their interest in staying in the position long term, something that many schools are looking for in legal writing candidates.

effort.¹¹³ When the committee finishes its review, it selects candidates for screening interviews. Sometimes these screening interviews happen at the AALS FRC, but more often they occur separately, usually either by phone or over video conference.¹¹⁴ These interviews can be anywhere from twenty minutes to an hour. They often involve the committee asking a battery of prewritten questions, which can give these interviews a bit of a stiff, formal feel. The typical questions in these interviews are fairly obvious and general—"Why do you want to teach legal writing?" was pretty much a universal first or second question in my experience. Other questions I received more than once include the following:

- Can you describe a challenging situation you faced in the classroom, and then explain how you handled it?¹¹⁵
- How do you help struggling students?
- What is your approach to commenting?
- What is your approach to teaching research?¹¹⁶
- How do you think new technology will impact the way legal writing is taught in the next ten years?
- What book do you use, and how do you incorporate the readings into your class?
- What do you know about [name of location]?¹¹⁷

Depending on how formal (and how long) the interview was, sometimes there would be follow-up questions. All of these interviews ended with my least favorite question of all—"Do you have any questions for us?" While that question gave me anxiety, many interviewers say it is a critical part of the process because it is the candidate's opportunity to demonstrate her familiarity with the school and interest in the position.¹¹⁸

As Levine emphasized, preparation is important when interviewing for these positions.¹¹⁹ This advice is perhaps even more apt for the screening interview than the callback interview. The short nature of these interviews makes it important that candidates use their time wisely, by making sure to give a lot of airtime to their strengths. Having a good understanding of the school and the position is critical to doing that well. For example, if a candidate is interviewing at a school where there is a

113. See Arrigo, *supra* note 5, at 142 (noting that a legal writing director is "deluged with resumes from qualified applicants" whenever she posts a job).

114. The latter was more common in my experience, which the survey data support. While only 21% of schools reported conducting screening interviews at AALS, 81% conducted screening interviews via phone or video conference.

115. Although many of these questions are geared towards candidates with teaching experience, usually they can be rephrased as prospective hypotheticals for candidates coming directly from practice.

116. This question would not be asked at schools where the legal writing professors do not teach research, although sometimes that can prompt a variation that asks how the candidate would work with a research librarian.

117. This type of question tended to be less common when interviewing with schools from large metropolitan areas.

118. See Levine, *supra* note 2, at 1111–13 (highlighting the fact that an interview is a two-way process and that candidates should be prepared to interview their employer).

119. *Id.* at 1110–11.

major transactional piece to the first-year curriculum, emphasizing transactional experience might be helpful.

Researching the school well can also help a candidate demonstrate her particular interest in the school to the committee.¹²⁰ In my survey, 78% of schools said that the likelihood of a candidate remaining in a position long term was either an “important” or “very important” factor in deciding whom to hire.¹²¹ The screening interview is the committee’s first significant opportunity to get a sense of whether a candidate is likely to stay. Of course, the easiest way for a candidate to reassure the committee about that is to volunteer some personal connection to the school or geographic area.¹²² But most of the time no such connection exists, so the next best thing a candidate can do is demonstrate that she has taken the time to do some homework about the school, which at least shows that the candidate is seriously interested in the position.¹²³ A candidate’s questions for the committee can be a good opportunity to demonstrate that kind of familiarity (e.g., “I saw on your website that your program includes X, can you tell me more about that?”).¹²⁴

Some schools will follow up on the screening interview by asking select candidates to complete a mock commenting exercise.¹²⁵ These exercises involve giving candidates a packet of materials about an assignment (cases, statutes, the assigning memo, etc.), along with a sample student’s submission, and then asking candidates to comment on the student’s work as though they were doing so for a real student.¹²⁶ The committee can then use these comments to get an idea of how the candidate would approach the commenting process—a critical part of any legal writing position.¹²⁷

3. The Callback Interview

After the committee concludes its screening interviews and, in some cases, asks candidates to complete commenting exercises, it will select a much smaller group of

120. *See id.* at 1110–13.

121. It would be interesting to see how this compares to the non-legal writing market. In my experience, some schools hiring tenure-track non-legal writing positions do care about a candidate’s likelihood of staying, but others see it as simply a fact of life that people work at one school for a while and then “move up” to higher ranked schools. That latter attitude is simply not part of the culture surrounding legal writing hiring. While a legal writing professor may be interested in moving to a school with a better legal writing program or with better legal writing faculty status, ranking rarely motivates such moves.

122. Unlike in the non-legal writing market, schools are often willing to hire their own graduates to teach legal writing. Twenty-three percent of the survey respondents reported hiring a candidate with a J.D. from their law school. Also, hiring local candidates is quite common in the legal writing market—in my survey, 50% of respondents reported hiring a candidate who already lived within fifty miles of the hiring school.

123. *See Levine, supra* note 2, at 1112–13.

124. *See id.*

125. In my survey, 10% of schools reported asking candidates to complete some form of mock commenting exercise.

126. A handful of schools that I interviewed with did a variation of this by only asking me for examples of student work on which I had already commented (with identifying information removed). From a candidate’s perspective, this approach was preferable since it was less work, but from the school’s perspective, it was probably harder to compare commentary on different assignments between different candidates.

127. *See* 2015 ALWD/LWI SURVEY, *supra* note 65, at xi (“The most preferred method of giving feedback was commenting on the paper itself through textual edits and marginal comments.”).

candidates for callback interviews. Typically, a committee will conduct about four callback interviews for each position, although that number can vary widely depending on the school. Like non-legal writing callbacks, callbacks for legal writing positions usually last the better part of a day and involve meetings with several individuals or small groups of people on campus.¹²⁸

Some callbacks (a little less than half in my data) also involve an off-campus meal either the day before or the day of the interview. The idea is to provide a more informal setting for the candidate to get to know the faculty and for the faculty to get to know the candidate. I always found these meals rather nerve-wracking, but for most candidates they are probably an easier part of the process. From the school's perspective, these meals are a chance to see how they get along with the candidate on a personal level, see what the candidate might say and do in an ostensibly less formal environment, and sell the candidate on the school and the city. Another thing that may be going on here is an attempt to emulate the non-legal writing hiring process for the sake of doing so. These kind of meals have long been a standard feature of non-legal writing interviews, so taking a legal writing candidate out to a meal is an easy way for the school to demonstrate, at least superficially, that it sees legal writing faculty on equal footing with other faculty.¹²⁹

Probably the largest variation among legal writing callbacks is the type of presentation schools ask candidates to do for the faculty. There are essentially three types of these presentations. The first kind is a traditional job talk in which the candidate gives a fifteen-to-twenty-minute talk about a piece of scholarly writing, followed by another twenty minutes or so of responding to questions from the faculty about the piece. The expectation is usually that the piece will be a law review article, and, despite taking the format of a workshop, the piece is generally expected to look like a finished product. These pieces can be about legal writing-related topics or about other subjects. Traditional job talks are most common in tenure-track jobs, since they are designed to give the faculty an idea of the candidate's potential as a scholar, as well as a teacher. In my survey, 45% of schools' processes included this type of presentation.

A second kind of presentation is a talk about a teaching-related topic. For example, when I gave this type of pedagogical presentation, I would talk about methods for teaching e-mail assignments. These presentations are not expected to be paired with a piece of writing; instead, the substance is in the presentation itself. These presentations are usually a similar length or slightly longer than a traditional job-talk presentation. The goal of these presentations is to help the faculty get a sense of how the candidate thinks about pedagogy. Fifty-five percent of schools in my survey asked candidates to give this kind of presentation.

A third variety of presentation is a mock class. A mock class is exactly what it sounds like—the faculty asks the candidate to teach an example legal writing class.

128. See, e.g., *What Happens on a Callback? What Should Happen?*, PRAWFSBLAWG (Nov. 18, 2008, 6:19 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2008/11/what-happens-on.html> [https://perma.cc/8C9G-MHVR].

129. A meal may also give the legal writing faculty a chance to speak candidly to a candidate in a setting where other faculty members are not present.

These demonstrations tend to be the longest of the three kinds of presentations, since they are designed to mimic at least a good portion of a real-life class (usually around thirty to forty-five minutes). Once the mock class is complete, it is usually followed by some “out of role” questions from the audience about the candidate’s approach to the lesson. The mock class can be in front of either a faculty audience or an audience of volunteer students, with the session video recorded for faculty to review later. The mock class theoretically gives the faculty a direct look at how the candidate would be in the classroom. This type of presentation is slightly less popular than the other two according to my survey, with 35% of schools utilizing this model.

There are also some variations on these three styles. One school I interviewed with not only asked me to give a mock class but also present a ten-minute talk giving an overview of my scholarship afterwards. Another school’s interview process involved both a traditional job talk and a mock class. There are likely other combinations as well, since 33% of schools in my survey reported asking candidates to do more than one of these things.¹³⁰ There are also a significant number of schools—20%—that reported having an interview process without a presentation at all.

III. AREAS FOR CRITICAL ASSESSMENT

The legal writing hiring process undeniably has some advantages over the hiring process for non-legal writing positions. It is open to a wider variety of candidates (people who went to non-elite schools),¹³¹ values practice experience, and continues to focus on the importance of teaching even as scholarship has become a part of many legal writing positions. It is also far more transparent, at least when it comes to the compensation and working conditions in advertised positions, thanks to LWI and ALWD’s disclosure requirements. Although equality is an important goal, achieving it does not, and should not, require jot-for-jot emulation of the traditional tenure-track non-legal writing approach to hiring.

That said, there are several aspects of the legal writing hiring process that at the very least are worthy of critical assessment, either because they reinforce the hierarchy between legal writing and non-legal writing positions, artificially limit the pool of candidates, make things needlessly difficult for candidates, or some combination of these things. Below, I discuss five areas that warrant a closer look: the timing of hiring,¹³² participation in the FRC,¹³³ support for candidates,¹³⁴ callback

130. To be clear, this response could mean two different things. It could mean that each candidate was asked to give more than one kind of presentation or that each candidate had the option to choose the kind of presentation she gave.

131. That does not mean it is open enough, however. Perhaps most importantly, while the hiring process for legal writing positions has resulted in a gender-diverse discipline, it continues to disproportionately hire white candidates just like the hiring process for other faculty positions. *See, e.g.*, Bannai, *supra* note 76, at 279. A complete critique of the aspects of the hiring process that allow this disparity to continue is beyond the scope of this Essay, but it is certainly an area where critical assessment is warranted.

132. *See infra* Part III.A.

133. *See infra* Part III.B.

134. *See infra* Part III.C.

presentations,¹³⁵ and how to handle candidates interested in teaching or writing about non-legal writing subjects.¹³⁶

A. Timing

The timing of the process is an obvious area for improvement, even though it may be a difficult one. As discussed above, having an asynchronous hiring process disadvantages candidates by forcing them to make decisions about early-moving schools before late-moving ones.¹³⁷ The late-moving schools, especially ones that do not begin their processes until March or later, also create problems for candidates currently in academic positions, since that is around the same time they may have to commit to staying at their current institutions for another year.¹³⁸ And, these late movers put themselves at a disadvantage by removing themselves from the market for candidates who may be interested in both legal writing and non-legal writing positions, since the latter are almost universally hired in the fall.¹³⁹

Although some schools may not want to add legal writing callbacks to busy fall schedules of non-legal writing callbacks, that objection reflects an improper and outdated conception of legal writing as a lesser subject.¹⁴⁰ No school would wait to hire a torts professor until the spring because they were too busy interviewing for a criminal law position in the fall. There is no legitimate reason to treat legal writing hiring any differently, and, unlike other ingrained inequities legal writing professors face, this one is a relatively easy fix. The fact that so many schools *do* hire legal writing professors on the same timeline as non-legal writing professors (even when the latter are not tenure-track)¹⁴¹ shows that such an approach is feasible.

Other reasons for delayed legal writing hiring processes are harder to dismiss as easily. One of the most common reasons is simply that a legal writing position opens up unexpectedly later in the academic year due to a lateral move or retirement. While unexpected departures can happen to non-legal writing faculty too, other subjects are easier to find coverage for within a school's existing faculty due to the larger class sizes and less siloed nature of non-legal writing teaching.¹⁴² Thus, schools often find themselves needing to look outside for legal writing coverage.

Schools faced with this dilemma can pursue other avenues besides hiring a permanent legal writing professor on a delayed timeline, though these avenues come

135. See *infra* Part III.D.

136. See *infra* Part III.E.

137. See *supra* Part II.B for a discussion of this asynchronous hiring process and its disadvantages.

138. See *supra* note 91 and accompanying text.

139. See *supra* notes 94–97 and accompanying text; see also Nemerovski, *supra* note 44, at 355 (“To the extent possible, legal writing hiring should follow the same timeline as podium faculty hiring.”).

140. There is a voluminous body of literature critiquing this kind of thinking from multiple angles. See, e.g., Mitchell Nathanson, *Dismantling the “Other”: Understanding the Nature and Malleability of Groups in the Legal Writing Professorate’s Quest for Equality*, 13 LEGAL WRITING 79, 79–81, 88–90 (2007); Tiscione & Vorenberg, *supra* note 4, at 58.

141. About 40% of the non-tenure-track positions in my survey were at least advertised in the summer or fall before the position was supposed to begin.

142. It is fairly easy on most faculties to find *someone* who can (and is willing to) teach torts for a semester, but it is not as easy for a legal writing course.

with their own potential difficulties. First, schools can seek an adjunct to fill the position.¹⁴³ Adjuncts can be effective legal writing teachers—many programs use at least some adjuncts to teach in the first-year legal writing program, and a few are staffed entirely by adjuncts.¹⁴⁴ However, there are serious drawbacks to using adjuncts to teach first-year legal writing. Most importantly, the course is usually highly time intensive to teach and requires far more out-of-class work (providing feedback on student writing) than other courses. This places a great strain on adjuncts, who are usually working in full-time legal positions.¹⁴⁵ Having an adjunct in a program that full-time professors generally staff can also create additional complications, since students may get very different experiences depending on the professor they end up with.¹⁴⁶

The other approach is to fill the position with a visitor.¹⁴⁷ Schools often use visitors to fill non-legal writing teaching spots that they are unable to cover internally.¹⁴⁸ Visiting positions can be filled with veteran legal writing professors who simply want a change of scenery for a year or by entry-level or lateral prospects who want to gain teaching experience and a foot in the door at a place with an upcoming vacancy.¹⁴⁹ The latter type of visitor can also be advantageous to the hiring school, since it provides the opportunity to get to know a candidate before making a serious commitment.¹⁵⁰

The visitor approach is not without flaws either, however, particularly when it comes to visitors who are also candidates—the so-called look-see visit.¹⁵¹ Hiring a visitor can lead to a hiring process for a permanent position that is not truly open. While most schools will still go through the motions of conducting a national search, it will be difficult to hire an outside candidate to “replace” a visitor that the faculty has gotten to know for the better part of a year.¹⁵² When candidates are given a leg up in the hiring process through visitorships, schools unnecessarily limit themselves to candidates who have the geographic and financial flexibility to take a year-long visiting position on the hope that it turns into something permanent.¹⁵³

The best course for schools with ill-timed vacancies may be to hire visitors with the understanding that the visitor will not be a candidate for a permanent opening. This

143. See Levine, *supra* note 2, at 1089–90.

144. See 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 9–10, 23.

145. See AM. BAR ASS'N, SOURCEBOOK ON LEGAL WRITING PROGRAMS 110–12 (Eric B. Easton et al. eds., 2d ed. 2006).

146. See *id.*

147. See Levine, *supra* note 2, at 1088–89; see also 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 23.

148. See Levine, *supra* note 2, at 1088–89.

149. See *id.*

150. See *id.* at 1088 (“Typically, law schools ‘test out’ a potential hire by inviting the professor to visit for a semester, a temporary arrangement that usually involves teaching and writing, but little or no local service.”). But see *id.* at 1089 (“Testing out a temporary teacher may be more trouble than hosts care to endure.”).

151. *Id.* at 1088.

152. Or in some situations, the opposite can be true—one “bad” semester by the visitor can render her other credentials irrelevant and lock her out of contention.

153. See Levine, *supra* note 2, at 1088–89.

approach allows schools to conduct a permanent hiring process in the fall, while still securing full-time coverage for their legal writing programs and without unfairly limiting the search process. If enough schools adopted this approach, it could also have a secondary benefit to the profession by encouraging more established legal writing professors to take visitorships at other schools. This would foster the exchange of teaching and scholarly ideas between different programs in much the same way that visitorships in non-legal writing positions do.¹⁵⁴

Of course, because legal writing programs and positions vary so much, it is impossible to prescribe one model for filling unexpected vacancies that could fit all schools. But it is fair to say that almost any school is going to benefit from hiring for a permanent position earlier in the cycle rather than later. Since that timing benefits candidates as well, moving in that direction ought to be a goal of every program.

B. Going to the AALS FRC

Almost everyone I have talked to about the FRC hates it, whether they are candidates, faculty committee members, or legal writing or non-legal writing professors. Having gone through it twice in a two-year period, I am certainly inclined to agree with them—it is exhausting both emotionally and physically.¹⁵⁵ However, I do think there is some value to that process. A face-to-face interview provides certain advantages that even the most modern video conference does not offer. Studies have shown what most people probably intuitively already know—face-to-face interviewees have a leg up over video interviewees in getting jobs.¹⁵⁶

In my survey, half of the applicants whom schools ultimately hired already lived within fifty miles of the hiring school. At least part of the reason for this result may be that local applicants have the advantage of being able to attend a screening interview in person.¹⁵⁷ Attending the FRC gives schools the opportunity to conduct in-person screening interviews with a truly national pool of candidates.¹⁵⁸

Attending the FRC also has important symbolic value. Since non-legal writing positions are almost universally hired through that process, leaving legal writing positions out of it serves to further separate legal writing from the rest of the faculty. Like the candidate meals discussed above, interviewing at the FRC is a relatively easy

154. Certainly, a good number of non-legal writing visitorships are also preludes to lateral moves, but many are not. Paul M. Secunda, *Tales of a Law Professor Lateral Nothing*, 39 U. MEM. L. REV. 125, 144 (2008).

155. The hotel is very large!

156. Nikki Blacksmith et al., *Technology in the Employment Interview: A Meta-Analysis and Future Research Agenda*, 2 PERSONNEL ASSESSMENT AND DECISIONS 12, 15 (2016).

157. Forty percent of schools reported conducting a mix of screening interviews in person and via video conference. Of course, there are many other reasons local candidates get hired more often, including the willingness of candidates to move for legal writing positions, which can vary a lot based on things like spousal jobs, children, etc. The institution may also play a role in this by artificially limiting legal writing searches to local or regional candidates. See *supra* Part II.B.

158. As Nemerovski correctly pointed out, attending the FRC is not *alone* enough to make a search truly national. Nemerovski, *supra* note 44, at 346. Instead, "a true national search requires the law school to offer a package of compensation, benefits, status, and job security sufficient to entice a strong candidate to relocate for the position." *Id.*

way to signal to candidates that a school treats legal writing faculty with some measure of equal respect.¹⁵⁹ It may also signal that fact to others. Even purely non-legal writing candidates who interview alongside legal writing candidates may be more likely to view their jobs as similar once they join a faculty than if legal writing people are hired through separate channels.¹⁶⁰

All of that said, there are some serious downsides to the FRC. The FRC puts candidates who are unable to travel to Washington, D.C., at a disadvantage.¹⁶¹ The cost of submitting a FAR form itself is a further financial barrier that makes FRC attendance even more difficult.¹⁶² Schools might be able to mitigate at least that aspect of it by interviewing candidates at the FRC without requiring the submission of a FAR form. The form is largely geared towards non-legal writing positions anyway and may be of limited utility.¹⁶³ Still, the financial costs of attending the FRC should certainly be balanced against the benefits of using it.¹⁶⁴

C. Support for Candidates

One of the most striking differences between the market for legal writing positions and the market for non-legal writing positions is the amount of support that is available to candidates. As Section I discusses, most non-legal writing candidates these days go on the market while completing a VAP program, PhD, or fellowship.¹⁶⁵ These programs allow candidates to receive formal and informal training on the ins and outs of the hiring process, including providing mock interviews and job talks and reviewing application materials.¹⁶⁶ Even for candidates not coming from one of these programs, there are several other mechanisms for learning about and preparing for the teaching market.¹⁶⁷ Many elite law schools provide support for their graduates entering the market, and there are several blogs that monitor the hiring process closely and provide advice from established faculty about how to navigate it.¹⁶⁸

For the legal writing hiring process, by contrast, there is no similar network of support. While some legal writing candidates (like me) come from VAP programs,

159. This signaling is especially true if a school's committee is already there to conduct interviews for other positions, although at many schools a separate committee conducts legal writing hiring.

160. See Nathanson, *supra* note 140, at 81 (“[T]he only way for the doctrinal professorate to treat its legal writing counterpart equally is to convince it that a difference does not exist; that there is no ‘other,’ that we are all part of the same group.”).

161. See *supra* notes 16–18 and accompanying text.

162. See *supra* notes 14–15 and accompanying text.

163. See *FAR Information*, *supra* note 15 (providing access to the FAR and a brief discussion of what information the form asks candidates to provide). For example, it includes few details about practice experience. See *id.*

164. There also may be a financial risk to schools using the AALS process because candidates there might be less likely to take a legal writing job, so schools may end up wasting their time pursuing such candidates. While that is a real concern, I think it may be, at least in part, a self-fulfilling prophecy—more serious legal writing candidates would interview at AALS if more schools were looking there.

165. See *supra* note 5 and accompanying text. For a discussion of the growing prominence of VAP programs, see *supra* Part II.A.3.

166. See *supra* note 24 and accompanying text.

167. See *supra* note 6 and accompanying text.

168. See *supra* notes 22–23 and accompanying text.

most do not.¹⁶⁹ And even for those who do, VAP programs tend to largely be designed for candidates seeking non-legal writing positions (even though many of them involve teaching legal writing). At the FRC, there have sometimes been “break-out sessions” for legal writing candidates to hear from directors about the hiring process,¹⁷⁰ but, as discussed above, most legal writing hiring does not happen at the FRC. There are blogs that often have job postings for legal writing positions and occasionally include helpful tips about legal writing hiring, like the Legal Writing Prof Blog and Legal Skills Prof Blog,¹⁷¹ but the depth of market-related coverage is not comparable to the treatment non-legal writing hiring receives in the blogosphere.¹⁷²

This imbalance matters less for candidates seeking tenure-track legal writing positions, since those hiring processes tend to mirror non-legal writing hiring most closely.¹⁷³ For example, the Southeastern Law Schools Association (SEALS) holds a workshop at their annual conference at which candidates seeking academic positions can get feedback on their application materials, job talks, and interview skills.¹⁷⁴ That workshop has recently begun accepting applicants for legal writing positions, as well as other subjects, so it can be a very useful opportunity for legal writing candidates to practice these skills.¹⁷⁵ However, the SEALS conference only has a limited number of slots, and the cost to register for the conference and attend can be an additional barrier.¹⁷⁶

More fundamentally, while it is nice that some legal writing positions are becoming tenure-track, the large majority still are not.¹⁷⁷ This creates a specialized hiring process that in many ways is different—and requires different preparation and advice—than the non-legal writing market.¹⁷⁸ Thus, it would be nice if the legal writing community could put together more resources to help entry-level job seekers. Formal workshops with mock interviews and presentations may not always be feasible, but a concerted effort to put together online resources for legal writing job seekers could go a long way towards narrowing the gap for the non-legal writing market. Mock interviews could even be made available online, with some kind of process that allows

169. Around 23% of candidates that responding schools ultimately hired had completed a VAP program or fellowship.

170. Levine, *supra* note 2, at 1085 n.63.

171. See, e.g., LEGAL SKILLS PROF BLOG, http://lawprofessors.typepad.com/legal_skills/ [<https://perma.cc/VUV7-MSRM>] (last visited May 1, 2020); LEGAL WRITING PROF BLOG, <http://lawprofessors.typepad.com/legalwriting/> [<https://perma.cc/7LTR-839L>] (last visited May 1, 2020).

172. See, e.g., Secunda, *supra* note 154, at 126 & nn.2–3 (discussing the breadth of research surrounding the “law blogging revolution” and its connection to hiring in legal academia).

173. Out of the fourteen tenure-track positions represented in my survey, only one reported that their hiring process differed in “important respects” from the hiring process for other tenure-track positions.

174. *Applicants*, *supra* note 25. I participated in the workshop both times that I was on the market and found it very helpful.

175. See *id.*

176. See *id.* This is mitigated somewhat for candidates who are already in teaching positions at schools that are willing to shoulder this cost.

177. See *supra* notes 27–32 and accompanying text for a discussion of legal writing positions.

178. See *supra* Part II.C for a discussion of the legal writing hiring process.

interested job seekers to sign up to have volunteer legal writing professors virtually interview them.¹⁷⁹

Schools can also help by supporting their graduates who are interested in teaching legal writing. As Part II.A.1 discusses, although legal writing professors come from a broader array of schools than non-legal writing professors, there is still a relatively small group of schools that produce a disproportionate number of candidates. Those schools should provide the same kinds of resources and support to graduates interested in legal writing teaching careers that they do for graduates interested in teaching other subjects. These kinds of resources can take the form of things like reports explaining the differences between legal writing programs and positions, feedback on application materials, or even a willingness by the faculty at those schools to make calls on behalf of their graduates.

Another possibility is for schools to create VAP programs or fellowships specifically designed for people interested in careers teaching legal writing. These kinds of programs would give candidates an opportunity to gain teaching experience, learn legal writing pedagogy from experienced faculty, make connections in the broader legal writing community, and, importantly, learn about the legal writing hiring process to prepare for the market. Of course, VAP programs and fellowships do have their downsides—like the visiting positions discussed above, they are only available to people with the financial and geographic flexibility to participate. Because of those limitations, it would be a mistake for VAP programs or fellowships to become a de facto qualification for entry-level legal writing positions in the same way they have for positions teaching non-legal writing subjects over the past few years. And, these positions can be an opportunity for schools to take advantage of people—hiring candidates who cannot otherwise get a permanent legal writing job at a lower salary with lower job security.

Nevertheless, at a school with a strong institutional commitment to legal writing and a willingness to hire people with an eye towards placing them on the broader legal writing market, such a program can be a valuable gateway to the profession.¹⁸⁰

D. Callback Presentations

One of the other distinctive features of the legal writing hiring process is the variety of presentations schools ask candidates to give during callbacks. As discussed above, this aspect of the process certainly puts a strain on candidates, since they must be prepared to give at least three different kinds of presentations during callbacks.¹⁸¹ Whether the needs of schools justify this extra work is difficult to assess.

It makes sense that schools with scholarly writing requirements would be more interested in hearing presentations about a candidate's scholarship than would schools

179. These types of resources could somewhat mirror what elite law schools offer to graduates seeking non-legal writing positions.

180. VAP programs and fellowships can also be an opportunity to diversify the profession. For example, the University of Wisconsin has had a successful fellowship program for several decades specifically aimed at increasing minority representation on law faculties. *See generally* Thomas W. Mitchell, *The Hastie Fellowship Program at Forty: Still Creating Minority Law Professors*, 2013 WIS. L. REV. 737.

181. *See supra* Part II.C.3.

without a writing requirement. Whether the traditional job talk is, in general, a good predictor of success as a scholar or teacher is debatable, but it is certainly the standard metric for judging candidates for scholarly law school positions regardless of subject matter. For that reason, having to prepare for scholarship-focused job talks alongside other kinds of presentations may be unavoidable, as long as legal writing positions vary in their scholarship expectations.

The differences *between* nonscholarship presentations, however, deserve more careful consideration. There are no obvious programmatic differences that would make a presentation about a teaching topic more helpful to a hiring decision than a mock class. A mock class might be more helpful in a program in which individual legal writing professors have less discretion to alter the curriculum, but even highly centralized programs usually value professors who can contribute to evaluating and modifying the curriculum every year.

If the two kinds of nonscholarship presentations do not reflect programmatic differences, then it makes sense to take a closer look at which might be more effective. The mock class, of course, has the advantage of giving the faculty an actual look at what the candidate would be doing on a day-to-day basis as a teacher.¹⁸² The mock class also tests how the candidate thinks on her feet in the classroom by allowing the faculty or volunteer students to play the role of first-year students asking questions and participating in the class. It is also easier for candidates who are already in a legal writing teaching position to prepare for, since they can just use a chunk of a class they have already prepped, rather than having to prepare a completely new presentation.

Additionally, the mock class may have advantages that go beyond the hiring process itself. More than one interviewer told me that the mock class presentations candidates give during the hiring process provide an opportunity for non-legal writing faculty to "see what we do" in the legal writing classroom.

The mock class, though, is very artificial in a number of ways. The lesson the candidate teaches is taken out of the important context of her classroom. Lesson plans are often adapted based on where the class is with particular concepts and the idiosyncrasies of the environment that a particular class creates. Just in terms of time management, preparing for a class that is very active and willing to ask questions is very different than preparing for one that is quieter and needs to be coaxed into participating. Beyond that, most concepts in legal writing are not modular and instead build on one another. Therefore, it is difficult to just teach one lesson to a "class" without the necessary context that would have helped students in the real class better understand that lesson.¹⁸³ This is not to say that the mock class is valueless—it still provides an opportunity to get *some* idea of how the candidate would be in the

182. Although some mock classes are done for an audience of students, these are almost always video recorded for the faculty to assess later.

183. For example, when I was interviewing, I did a mock class about small-scale organization and paragraphing. The lesson incorporated specialized terminology, which I used in my class to describe the paradigm for legal reasoning—terminology that the students in my class were familiar with by the time I would normally teach this lesson. I recognized, however, that this terminology may have been lost in these mock classes. After giving that presentation a few times, I adjusted my approach by giving the audience a handout explaining the terminology.

classroom—but it is best thought of as a shadow of the real thing rather than a true representation of the candidate’s teaching.

The pedagogical presentation approach has its own positives and negatives. On the one hand, it is less artificial—a presentation about pedagogy is something a faculty member might realistically give to a group of colleagues. It gives the faculty an opportunity to learn something about how the candidate thinks about the legal writing curriculum that they would not necessarily learn from a mock class. And the faculty can openly and directly ask the candidate questions about her teaching approach, as opposed to having to ask “in character” questions as students. These presentations allow faculties the opportunity to potentially hear innovative teaching ideas from candidates that they may not have otherwise been exposed to.

On the other hand, the pedagogical presentation may be difficult for candidates, especially people who are new to teaching. There is a deep and somewhat imposing body of scholarship about legal writing pedagogy. While LWI does a good job of putting together bibliographies on particular topics on its website,¹⁸⁴ it may be a lot to ask a candidate to get up to speed enough to put together an informed presentation on relatively short notice.¹⁸⁵ Of course, this problem can be tempered somewhat by faculties adjusting their expectations to match the challenges entry-level candidates face. A presentation that just talks about how a particular candidate would approach teaching a topic does not necessarily need to be a prescriptive presentation about how that topic should be taught in general.

The pedagogical presentation also may present other difficulties for candidates. A candidate may risk alienating her audience by taking a position in her presentation that is different from the approach to teaching legal writing that the faculty at the school is currently taking. For example, a candidate giving a presentation about how to approach live grading¹⁸⁶ may get a cool reception from a faculty that relies exclusively on written comments. One would certainly hope that faculties would be open-minded enough to appreciate a candidate coming to them with a different perspective, but suggesting changes to a potential employer’s program can feel like a minefield to a candidate.

It is difficult to say definitively which of these kinds of presentations does a better job identifying successful legal writing teachers.¹⁸⁷ However, since these presentations

184. See *Bibliographies*, LEGAL WRITING INST., <http://www.lwionline.org/resources/bibliographies-for-scholars> [<https://perma.cc/AP8A-52HM>] (last visited Apr. 5, 2020).

185. This is not to suggest that legal writing candidates should not try to develop a familiarity with the literature about legal writing—of course they should, just as professors teaching other subjects are expected to be familiar with the relevant literature even at an entry level. However, the difference is that by the time a doctrinal candidate gives a presentation, she has likely spent over a year writing a lengthy article on the topic, getting feedback from other people in the field, and workshopping it in several practice sessions. A legal writing candidate, on the other hand, not knowing in advance what sort of presentation she may have to give to get a job, may not even start creating the presentation until after she receives the callback. By that point, even if she already has a general familiarity with legal writing scholarship, expecting her to be as deeply familiar with the scholarship in the area she chooses to present on as a candidate in a traditional job talk is asking a lot.

186. Live grading, sometimes called live critiquing, is a process where a professor reads a student’s paper in the student’s presence and provides her reactions and commentary “live,” instead of, or in addition to, traditional written comments. Patricia Grande Montana, *Live and Learn: Live Critiquing and Student Learning*, 27 *PERSP.* 22, 22–24 (2019).

187. Putting aside the difficulty of finding metrics to identify successful legal writing teachers at all.

seem to be such a major part of most legal writing callbacks, it would be a good idea to have more dialogue among legal writing programs about their experiences with each approach. While no one-size-fits-all approach is going to apply to every school, dialogue within the profession can help to develop best practices for each approach and to better identify their strengths and weaknesses. This dialogue would also help to better disseminate knowledge about the two kinds of nonscholarship presentations to potential candidates to help them prepare for what they may be asked to do.

E. Dealing with Dual Candidates

This Essay, thus far, has largely treated the markets for hiring legal writing and non-legal writing positions as two distinct things; however, this is not quite accurate. As discussed above, many legal writing positions today are tenure-track, and their hiring processes usually do not differ substantially from the non-legal writing hiring process.¹⁸⁸ And, especially at schools with a unitary tenure-track, people may be hired to teach both legal writing and other subjects.¹⁸⁹ Thus, in a very real sense, sometimes the markets are one and the same.

The markets are also overlapping for many candidates, like myself, who apply for positions teaching legal writing and positions teaching other subjects. These dual candidates face unique challenges in navigating the hiring process. Non-legal writing faculty are often puzzled by a candidate's interest in teaching legal writing instead of, or in addition to, other subjects, and that bewilderment can often lead to problems for the candidate. When I was filling out my FAR form, I had multiple faculty members (both legal writing and non-legal writing) advise me against listing legal writing too highly as a subject interest because I might not be viewed as a "serious scholar."

At the same time, schools hiring for legal writing positions are often wary of candidates who have also expressed an interest in teaching other subjects. In the past, legal writing positions often served as stepping stones for candidates who ultimately wanted to go on the market to find tenure-track positions teaching other subjects.¹⁹⁰ As legal writing positions have become more professionalized, formal VAP programs have taken their place as the stepping stone position.¹⁹¹ Still, it does happen occasionally that a faculty member will move from non-tenure-track legal writing positions to tenure-track positions teaching other subjects. Because of that possibility, schools are often concerned that a candidate who has expressed an interest in teaching other subjects is simply using the legal writing position as a stopover on her way to her true goal.

That reticence is understandable. As discussed above, 78% of schools in my survey said that finding someone who is likely to stay in a position long term was a "very important" consideration in searching for a candidate, which is not surprising given all the time and resources that go into integrating a new person into a legal

188. See *supra* notes 27–30, 173 and accompanying text.

189. See 2017–2018 ALWD/LWI SURVEY, *supra* note 9, at 90.

190. Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 LEGAL WRITING 1, 15 n.110 (1996).

191. See Levine, *supra* note 2, at 1091–94, 1092 n.93.

writing program.¹⁹² And while important advancements have been made in the last two decades, non-legal writing positions still have significant advantages over legal writing positions at the vast majority of schools.¹⁹³ Of course, the most prominent difference is security of position—most legal writing positions are not tenure-track, while virtually every other full-time position teaching other non-legal writing subjects is.¹⁹⁴ Faculty teaching legal writing also make substantially less money than their peers teaching other subjects, even while they teach classes that are often more work intensive.¹⁹⁵ And, legal writing faculty are often denied other markers of faculty status that are standard for faculty teaching other subjects, such as faculty governance rights, equal office space, or the title “professor.”¹⁹⁶

For these reasons, legal writing programs may be tempted to play it safe by looking for candidates who appear to have zero interest in teaching other subjects, being involved in faculty governance, or publishing non-legal writing scholarship. That approach is a mistake. While a real passion for, and primary interest in, teaching legal writing is an absolute requirement for this job, legal writing programs should hire legal writing professors who will be full faculty members, even if their school does not view them that way yet. The more differences between legal writing faculty and non-legal writing faculty dissipate, the fewer justifications there will be for maintaining the hierarchy separating them.¹⁹⁷

Will that approach lead to some people leaving for the greener pastures of non-legal writing teaching? Probably. No matter how much someone likes teaching legal writing, it is hard to turn down a job with better pay, job security, and status just because it involves teaching something else. However, this is a fact of life in every profession in a free market economy. Workers are always going to sell their labor to employers that offer better benefits and working conditions. Schools should respond to that competition by increasing the quality of legal writing jobs, not by shrinking the candidate pool.

192. See *supra* note 121 and accompanying text.

193. See *supra* notes 33–34, 70 and accompanying text for a discussion of some of the advantages of tenure-track positions.

194. See *supra* notes 27–32 and accompanying text for a discussion of the different statuses among legal writing faculty.

195. A recent study estimated that entry-level law professors teaching legal writing and clinical courses at top twenty-five schools make half as much as entry-level, non-legal writing law professors at the same schools. Merritt, *supra* note 70.

196. See Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 112–13 (2015).

197. See, e.g., Catherine Martin Christopher, *Putting Legal Writing on the Tenure Track: One School's Experience*, 31 COLUM. J. GENDER & L. 65, 79 (2015) (“[T]he legal writing faculty looked, walked, and quacked like ducks, so when the vote came before the faculty to begin calling us ducks, the choice seemed obvious.”); Susan P. Liemer, *Many Birds, One Stone: Teaching the Law You Love, in Legal Writing Class*, 53 J. LEGAL EDUC. 284, 294 (2003) (“As [legal writing faculty] venture from time to time into other aspects of legal education, *along with* being experts in teaching fundamental lawyering skills, we build connections and help integrate ourselves more fully into the legal academy, both as individuals and as an entire field.”).

CONCLUSION

The suggestions in this Essay are meant to start a conversation, not end it. The survey I conducted is interesting, but it is far from a robust dataset. Moreover, my own limited experience makes me ill-equipped to offer definitive solutions to the issues discussed above. But as someone who recently went through the process, I can say with certainty that more critical assessment of the legal writing hiring process is long overdue.