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Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs

Jan M. Levine

Teachers of legal research and writing have long been considered second-class members of the law school academy. Historically, most law schools devoted inadequate resources to LRW programs and assigned research and writing teachers to low-status positions. Tenure-track appointments were virtually unheard of; and most full-time writing teachers, a rare group, had

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I would like to thank my colleagues at the University of Arkansas who read this article, and particular thanks are due to Carol Goforth, Mark Killenbeck, and Judith Kilpatrick for their insights. I also thank the legal writing teachers and directors who responded to my survey. Special thanks to Marjorie Dick Rombauer, who said it all, so well, and for so long, and inspired all of us now teaching legal research and writing.


2. See, e.g., Ramsfield, supra note 1, at 126.

3. The widely touted, but ultimately flawed, first experiment in using tenure-track teachers of LRW is described in Marjorie Dick Rombauer, Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem, 44 Alb. L. Rev. 392 (1980). The experiment at the University of Washington may simply have been ahead of its time. See also Joseph Kimble, Plain English: A Charter for Clear Writing, 9 Cooley L. Rev. 1, 6 (1992) (noting that even in 1990–91 only 51 of 352 full-time writing teachers at ABA-approved schools were on tenure track).
short-term appointments—by virtue of program design, resource allocation, and organizational or administrative structure.4

Previously published surveys of legal writing teachers have suggested that the second-class status of both subject and teacher has persisted since LRW courses were first offered in the late 1940s and early 1950s.5 But in fact a revolutionary change has occurred over the past two decades in the status of legal writing teachers and program directors. Because of the increased attention to legal research and writing, and the self-professionalization of the law faculty who choose to teach legal writing, many schools are granting tenure-track or tenured status to teachers who sought, at entry to the academy, to make LRW the focus of their careers.

Despite their apparent advancement, however, legal writing professionals who have broken through this barrier and are now in tenure-track or tenured positions have identified a major problem which, if not addressed, will plague them and others following in their footsteps: inadequate accommodation for workload. Many schools have not modified tenure criteria to take into account the heavier workload involved in teaching legal research and writing and the significant administrative responsibilities of directing an LRW program.

A new legal writing teacher faces a daunting task. There are no formal training programs for legal writing professionals,6 despite the many doctrinally oriented LL.M. programs that have proliferated in recent years. Many full-time legal writing teachers began their careers in the field after experience as a student teaching assistant or as an adjunct part-time teacher, or after a time-limited appointment to teach legal writing while enrolled in a graduate law program designed to produce expertise in another area of law or law teaching.7 While most new legal writing teachers probably bring with them

4. See, e.g., Ramsfield, supra note 1, at 126, 129–31; Rombauer, supra note 3, at 542–46 (pointing out the "unfortunate" historical basis for short-term legal writing appointments).

5. The latest published survey of legal writing programs and professionals appeared in 1991. It was based on responses provided by 130 schools during 1990. Ramsfield, supra note 1, at 124–25. Ramsfield and Brien C. Walton followed up in 1992 with a second survey of 127 schools. Survey of Legal Research and Writing Programs 125 (unpublished manuscript, 1992). Professor Ramsfield was kind enough to share with me some preliminary information from that survey, although her final report has not yet been published. In 1994, Ramsfield conducted yet another survey under the auspices of the Legal Writing Institute, seeking similar information from teachers in 1994; the results of that survey were not published at the time this article was written, but are scheduled for publication in Legal Writing.

Earlier surveys are summarized in Anita L. Morse, Research, Writing, and Advocacy in the Law School Curriculum, 75 Law Libr. J. 252 (1982). Morse’s own 1980–82 survey focused on “program costs, content, and the relationship of the program to other parts of the curriculum.” Id. at 259. She compared the results of her survey with those of Marjorie Dick Rombauer’s 1970 survey, reported in First-Year Legal Research and Writing: Then and Now, 25 J. Legal Educ. 558, 545–46 (1973).

6. Ramsfield used the term “legal writing professional” in the published report of her 1990 survey, to encompass all full-time teachers of legal writing. See Ramsfield, supra note 1, at 126–30.

7. In a typical LL.M. program that assigns responsibility for J.D.-level research and writing instruction to graduate law students, the graduate students’ focus is sure to be on their own course work, not on the teaching task. The LL.M. directors will also emphasize the graduate courses rather than teach the writing instructors how to teach. Schools may see LL.M.
significant experience from prior law practice, all really learn how to teach legal writing while on the job.⁸ J. Christopher Rideout and Jill J. Ramsfield recently wrote:

While legal research and writing programs exist in all law schools, many still have short-term and short-sighted programs. Many, if not most, law students are not rigorously trained, do not experience sustained individualized instruction, and do not explore problem-solving in an environment that simulates either law practice or rigorous legal scholarship. After their first year, most students fend for themselves in an atmosphere that tests their writing abilities in only two of several potential genres—exams and seminar papers—and few are trained by legal experts whose experience and study offer the best methods for ushering novices into a new discourse.⁹

It now appears that a number of schools have recognized the value of such experience and study, and are willing to maximize the value by giving the responsibility for designing writing programs and teaching legal writing to new tenure-track members of the faculty who want just such a role.¹⁰

It is axiomatic that tenured status is the goal of all law teachers; the presumption of this article is that legal writing teachers will not have achieved parity within the academy until they have managed to achieve tenure-track or tenured status. Although some schools have given legal writing teachers and directors a measure of job security via long-term contracts,¹¹ such contracts are

programs as a way in which legal writing instruction may be foisted off on bright young people intent on entering the teaching profession but not likely to be thinking of teaching legal writing as a career.


10. Thirty-six years ago, in a discussion about teaching legal research and writing, one prescient commentator said:

   [The] entire field is a high-grade specialty which should be left to specialists . . . . [W]e should say to those charged with the responsibility of teaching legal research and writing, "We give you the same authority, the same salary, the same everything, to teach these subjects that we give to those who teach torts or contracts, etc."


11. After completing the tenure survey detailed in this article, I collected information about standards and evaluation procedures for long-term contractual appointments for directors and teachers. See Jan M. Levine, Standards for Evaluating Legal Research and Writing Teachers, The Second Draft: Newsletter of the Legal Writing Institute, Spring 1995; at 4, 8 n.1. Detailed written performance standards that contemplate job security short of tenure have been adopted at Boston College, Brooklyn, California Western, Hofstra, Mercer, and Seattle (formerly Puget Sound); Arkansas and other schools are now considering similar standards. These schools, often at the request of the legal writing program director, have sought to grant increased job security to legal writing teachers who have exhibited consistently outstanding teaching performance, made significant contributions to the development of the existing legal writing program, and, in some cases, produced scholarship about legal research and writing. The schools have created tiered levels of review, mimicking the promotional steps in the tenure process and resulting in a mini-hierarchy within the legal
no substitute for tenure. Long-term contracts fail to grant legal writing teachers the full collegial respect of the other faculty; they are not likely to be accompanied by full faculty voting rights; and they do not protect teachers who take positions at odds with those of the administration and other faculty.

The reason traditionally given for not putting legal writing teachers on a tenure track, even at schools having the best of intentions, was that there were few people willing to commit themselves to teaching legal research and writing. Marjorie Dick Rombauer, a pioneer in the field, was perhaps a bit pessimistic fifteen years ago when she wrote:

[I]t must be conceded that individuals who have a long-range interest in teaching research-and-writing based offerings, particularly for first-year students, are rare. And, interest—even a strong interest—may not be enough. A strong self-image is necessary to prevail against the insecurities generated by marching to this different drummer.

It now appears that such individuals are no longer so rare; or perhaps the drummer’s beat has changed.

This article does not go into detail about the tasks of legal writing teachers and directors; instead I focus on the recent recognition of legal writing expertise and professionalism given to teachers at the many schools that, by elevating legal writing teachers to tenure-eligible status, have acknowledged the legitimacy of the field, the legitimacy of those teaching and writing within it, and the need for the continued presence of a legal writing expert on the faculty. The arguments for such recognition and continuity have been made elsewhere; this article explores the breadth of the recognition and how tenure criteria are being applied to legal writing professionals. I do not explore the curricular designs or pedagogical premises of the writing programs at each of the schools surveyed. Peer status for legal writing teachers or directors does not, alone, guarantee a good writing program, and an award of tenure may have been based on factors other than good teaching of legal writing program. See id.; see also Evaluation Standards for Long-Term Contract Legal Writing Faculty, The Second Draft: Newsletter of the Legal Writing Institute, Spring 1995, at 1.

12. See Rombauer, supra note 9, at 597-98.

13. Id. at 410-11.

14. Three recent articles go into great detail about these multiple roles of legal writing directors, and address the interrelated issues in pedagogy, program design, staffing, and administration. See Arrigo-Ward, supra note 8; Levine, supra note 8; Rideout & Ramsfield, supra note 9. Many of the other references cited elsewhere in this article describe particular schools’ legal writing programs and courses in great depth. See also Lucia Ann Silecchia, Designing and Teaching Advanced Legal Research and Writing Courses, 55 Duq. L. Rev. 293 (1995); Bari R. Burke, Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context, 52 Mont. L. Rev. 373 (1991); Allen Boyer, Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials, 62 Chi.-Kent L. Rev. 23 (1985); Peter W. Gross, California Western Law School’s First-Year Course in Legal Skills, 44 Alb. L. Rev. 369 (1980); Marjor Livingston, Legal Writing and Research at DePaul University: A Program in Transition, 44 Alb. L. Rev. 344 (1980).

writing or skilled program design and administration. But it is likely that a school willing to invest in tenure-track legal writing professionals is making complementary investments in teaching staff, course credit hours, and financial resources, and is giving its legal writing professionals the freedom to design a good program. Finally, I do not address issues of salary; I have assumed that equal status translates to equal pay.

The Survey

From 1992 to 1994 I surveyed full-time tenure-track and tenured faculty who had as their primary academic responsibility the direction of a legal research and writing program or the teaching of legal writing, and who either sought or were assigned that well-defined responsibility when they began teaching. Among other things, I wanted to learn how those schools willing to hire them addressed the distinctive issues that their hiring had raised. I did not include in my survey legal writing directors who had assumed responsibility for their schools' programs many years after being granted tenure. They entered the field of legal writing after they were already viewed by their non-legal-writing colleagues as proven academics, and they did not face the difficulties which arise in the tenure review process for legal writing teachers.

Instead of surveying all 177 ABA-accredited law schools, I conducted a more focused survey of schools where the LRW professionals were tenured or

16. For example, a good program might award 5 or more credit hours for one year of work, include a required third semester or offer advanced courses, have grading policies consistent with those of other courses, be staffed by full-time teachers, allocate small numbers of students per teacher, use multiple writing and research projects, integrate research and writing, and offer consistent and professional written and oral feedback from teachers to students. See, e.g., Levine, supra note 8, at 618–24. Although the survey described in this article did not seek information on program design, at least 15 of the programs surveyed utilize full-time LRW teachers as the primary legal writing teachers. Full-time staffing is the most expensive staffing model, and has become the most prevalent, but other schools without tenure-track or tenured directors or teachers have similar programs and resources. See Ramsfield, supra note 1, at 127 (reporting that in 1990 58 percent of schools used full-time non-tenure-track professionals to teach legal writing). A full study of the relationships among “quality,” resources, and status has yet to be made; it has been noted, however, that “a school that finds itself in a continual cycle of reinvention [of the legal writing program] probably has not made the kind of commitment of resources necessary to make any model work.” Richard K. Neumann, Jr., Director's Manual, Legal Reasoning and Legal Writing: Structure, Strategy, and Style 3 (Boston, 1990).

17. Legal writing programs should not be designed by committee. Faculty and administrators who do not have the necessary expertise should not be involved in the design; the law school community may set the boundaries within which the writing program will operate, but the actual design choices are best made by an expert, or at least by the director, the one person who will be responsible for the program's implementation and operation. See Levine, supra note 8, at 612–14, 618–24.

18. Ramsfield's surveys have addressed salary issues in detail. See, e.g., Ramsfield, supra note 1, at 130. My assumptions may have been a bit naive. One legal writing teacher who was on a separate track reported a salary significantly below that of the teachers on the school's traditional tenure track, and perhaps that is not an isolated occurrence.

19. I began collecting the information because I had just joined the University of Arkansas faculty as a tenure-track director, after six years as a non-tenure-track director at the University of Virginia, and I realized that I should seek out detailed information about how other schools treated legal writing professionals in positions similar to my own.
on a tenure track; I identified those schools from several sources. My survey form asked nine open-ended questions. I was looking for narrative answers, and I was not disappointed; many of the respondents, whether tenure-track or not, sent me two- to four-page single-spaced letters. I did not use multiple-choice questions, which several earlier surveys used, because they would not have served my purposes.

20. These were the sources:

- program descriptions generated at the 1992 Legal Writing Institute conference;
- the preliminary results and a special printout from a prior survey, Ramsfield, supra note 5;
- Placement Bulletins from AALS for 1991 through 1994, which contained advertisements for tenure-track legal writing positions;
- a screening of the titles of all faculty listed in the 1995–94 AALS Directory of Law Teachers (I looked at the titles of everyone teaching legal writing, and mailed the survey to all who might have tenure-track or tenure status);
- notices posted at the 1993 ABA Workshop on Legal Research and Writing in Washington;
- an electronic mail notice posted on LEGWRI-L, the legal writing teachers' Internet discussion list, and another notice posted in response to a discussion string about legal writing on the LAWPROF Internet discussion list; and
- many suggestions from the recipients of the original and follow-up mailings.

21. These were the questions:

- Were you hired into a tenure-track position, or was your directorship converted by the faculty or administration after you were "on board" and working in the legal research and writing program?
- What criteria, if any, were developed for an award of tenure? Were they developed before the position was filled? Did you have a role in their drafting? Are they reduced to writing?
- Is your position on a separate track? Can you teach courses other than legal research and writing? Who determines your mix of courses, and the frequency of teaching courses other than legal research and writing?
- What is the mix of scholarship, service, and administration in your tenure criteria? Is it any different from, or related to, those of other faculty, such as candidates for "regular" tenure or clinicians?
- Who determines whether you have fulfilled the criteria for tenure? Are there hurdles to tenure from outside of the law school but within the University?
- To what degree is legal-research-and-writing-related scholarship considered in your tenure criteria? Who evaluates the quality of LRW-related scholarship? Does the law school support your LRW-related scholarship in the same way as it supports your more "traditional" scholarship efforts (assuming, of course, that you do receive support at all)?
- How is the administration of the program considered in your tenure evaluation, and to what extent do you have autonomy in the administrative design and implementation of your program?
- How long does the process of becoming tenured take? Is it different from the period for "traditional" tenure? Does the period take into account any period of time that you spent as a non-tenure-track legal research and writing teacher?
- Is there any history of legal research and writing tenure decisions before yours? Will you be (or were you) the first person at your school considered for tenure as a legal research and writing director?
For example, the surveys conducted by Marjorie Rombauer, Anita Morse, and Jill Ramsfield did not differentiate between legal writing teachers who had been granted tenure before teaching legal research and writing and those who chose from the beginning to make legal writing the focus of their academic careers. Ramsfield's published 1990 survey found that only 10 schools offered legal writing professionals tenure-track positions or long-term contracts.\textsuperscript{22} She reported that 18 percent of the 130 responding schools used full-time tenure-track legal-writing faculty, a broad categorization that included teachers who had received tenure before assuming the responsibility for legal writing.\textsuperscript{23} Ramsfield's 1992 unpublished survey reported 26 schools with tenure-track faculty teaching legal writing; but only 12 of the 19 schools responding to another related question reported that legal writing accounted for at least 25 percent of their overall teaching load. It seemed that most of the 26 schools she identified had someone with responsibility for legal writing instruction, but it was not clear from the report exactly what that responsibility entailed or whether the tenured or tenure-track respondent actually taught legal writing or merely received some teaching load credit for oversight of a program. For example, 6 of the 26 schools rotated the teaching of legal writing among several faculty members, which suggested that some or all teachers of first-year students shared in the responsibility for teaching legal writing but that their primary instructional responsibility was a so-called "substantive" course.\textsuperscript{24}

I sent my survey to all the schools responding to Ramsfield's survey that had asserted the tenure-track status of their teachers. After my follow-up, it appeared that only 7 of the 26 schools which had claimed to have tenure-track legal writing faculty actually hired those teachers to teach legal writing. The other teachers were law librarians,\textsuperscript{25} or were not hired or tenured primarily as legal writing teachers or directors;\textsuperscript{26} as expected, several other schools used

\textsuperscript{22} Ramsfield, supra note 1, at 196.
\textsuperscript{23} Id. at 127.
\textsuperscript{24} Ramsfield & Walton, supra note 5. Examples of schools with such programs are Duke, Iowa, and Louisville. For a general discussion of the pros and cons of such an approach, see Willard Pedrick et al., Should Permanent Faculty Teach First-Year Legal Writing? A Debate, 32 J. Legal Educ. 413 (1982). Apparently none of the schools using such a model have tenured or tenure-track legal research and writing program directors, and all require the faculty to teach legal writing as part of their substantive courses; they are not specialized legal writing teachers. Such a model may be destined to fail, or at least to promote faculty and student discontent; certainly it is not a model gaining many new adherents.
\textsuperscript{25} I did not include law librarians because all appeared to have been hired specifically to administer the law library (and most did not respond to the survey anyway); several do teach LRW courses and/or have administrative oversight of the LRW program, but at all those schools the primary and overriding responsibility for such a person is the direction of the law library.
\textsuperscript{26} At several schools, such as Colorado and Villanova, the legal writing program is administered by faculty members who were tenured before assuming the directorship. They rightfully regard themselves as legal writing professionals and certainly are seen as such by others because they proselytize for legal writing programs and professionals with the zeal of the converted. I did not include them in the reported group because they were not hired or tenured as teachers of LRW.
the model in which all faculty teach legal writing as part of a first-year substantive course. It is likely that Ramsfield’s 1990 survey, which suggested that 18 percent of all law schools had tenured or tenure-track legal writing faculty, included in that 18 percent only 7 of the 31 or more schools I identified in my survey.

Analysis of the Responses

The Schools

The available data show that 31 to 35 schools, or about 20 percent of all ABA-accredited schools, have specifically recruited legal writing professionals as tenure-track faculty, a number far larger than previously reported. I received detailed responses from 23 schools. Some of the respondents were directors of “skills programs,” which include such topics as pretrial techniques or negotiation training. Others taught at a school without a titled director. In addition to the 23 schools responding, I was able to identify 8 schools as having hired legal writing professionals into tenured or tenure-track positions; it is also probable that at least an additional 7 schools may fall in that group, so the actual number may be 38 or more schools. None of these positions existed before the late 1970s, and most appear to have been created in the past ten or fifteen years. Given the typically glacial pace of change in the composition of law school faculties, these changes in hiring and tenuring over the past two decades are quite remarkable.

27. I did, however, include Pace’s new program in reporting some of the results of my survey because of their unique variation on the old model. See Michelle S. Simon, Teaching Writing Through Substantive: The Integration of Legal Writing with All Deliberate Speed, 42 DePaul L. Rev. 619 (1992). The school has hired tenure-track faculty to teach a combined criminal law and legal writing course; only those teachers teach legal writing (unlike the model where all first-year teachers teach legal writing), and most of the people the school recruited had extensive experience teaching LRW. The program appears to be a modified version of a separate legal writing tenure track.


29. Baltimore, Northeastern, and William and Mary.


31. The 8 schools that I added to the 23 respondents are CUNY at Queens College, Chicago-Kent, Northwestern, Pace, Temple, Tennessee, Vermont, and Widener.

I did not receive responses from 3 other schools at which the legal writing teachers or directors are reputedly on a tenure track or tenured, and I have been unable to confirm their status, despite repeated efforts. Three more schools have reportedly changed their legal writing directors to tenure-track appointments to begin with the 1995–96 academic year, and still another school, accredited by the American Bar Association after my survey was completed, has a tenure-track director and tenure-track LRW teachers. If those 7 schools have indeed granted tenure-track status to legal writing professionals, it would not materially change this article’s conclusions, including those about the apparent rank-based distribution of tenure-eligible appointments.

32. Cf. Rombaer, supra note 5.
Although legal writing teachers have certainly been pushing their schools for changes in status, and many have written about the status issues, several external factors probably provided a fertile context in which the seeds of change could germinate. First of all, over the last two decades more public attention has been paid by the bench and bar to law graduates' shortcomings in lawyering skills, including deficits in research and writing. As legal writing professionals began to gain more security, they remained within the field longer, and many took advantage of the opportunity to publish, and to create better legal writing programs. Perhaps the most important development has been the creation of the Legal Writing Institute, which has grown rapidly in its short lifetime (it was founded at Puget Sound in 1984) and has offered legal writing teachers unprecedented opportunities for professional development. Tenure-track appointments for LRW teachers may simply be an idea whose time has finally come.

The distribution of the new tenure-track positions for legal writing professionals is clearly related, however, to law school rankings. The conventional wisdom among legal writing teachers has been that the "elite" law schools devote few resources to legal writing and are particularly jealous about refusing to recognize professionalism in the field by allocating tenure-track positions to those teachers, even when nationally known legal writing teachers are on their faculties. To determine if there was indeed any rank-related pattern to the distribution of tenured or tenure-track positions among schools, I looked at the 31 schools' positions in the U.S. News and World Report rankings.

33. Articles and studies about the skills deficits of law students and recent graduates have been common perhaps ever since the first attorney in ancient Babylon hung out a clay shingle, but they certainly have proliferated in the 1980s and 1990s. See, e.g., American Bar Association Section of Legal Education and Admissions to the Bar, Lost Words: The Economic, Ethical and Professional Effects of Bad Legal Writing (Indianapolis, 1994); Bryant C. Garth & Joanne Martin, Law Schools and the Construction of Competence, 43 J. Legal Educ. 469 (1993); American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Chicago, 1992); Graylyn Conference Report: 1990, ed. Donald Dunn (Rochester, 1991). A few studies have attributed the decline in students' proficiencies in one area of skills training to the emphasis on other areas—robbing Peter to pay Paul. See, e.g., Donald J. Dunn, Why Legal Research Skills Declined, or When Two Rights Make a Wrong, 85 Law Libr. J. 49, 53–58 (1993).

34. See generally Rideout & Ramsfield, supra note 9, at 51–56.

35. George D. Copen & Kary D. Smout point out that "[i]f the quantity of publications produced in a field is directly representative of the professional interest it has attracted, then there must be a strong and growing interest in legal writing." Legal Writing: A Bibliography, 1 Legal Writing 93, 95 (1991). They list 103 books and 409 articles; 62 of the books and 207 of the articles were published from 1980 through the summer of 1991.

36. At the 1994 Legal Writing Institute conference, more than 60 workshop presentations were offered by about 90 legal writing professionals; over 300 people attended the four-day conference.
of law schools. The differences in the rankings over the three-year period from 1993 through 1995 have been minimal at best, and I combined the three years of rankings to further minimize any variations in the distribution.

Looking at the ranking of the 23 schools responding positively to my survey and those 8 for which I had other data confirming the status of the legal writing professionals, I could see that schools in the bottom half of the rankings are much more likely to appoint legal writing professionals to tenure-track or tenured rank:

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The 23 schools in column A responded to the survey. The 8 schools in column B did not respond to the survey, but I was able to confirm that they had legal writing professionals in tenure-track or tenured positions.

Combining the three years of rankings put things in a somewhat more consistent framework. Of the top 50 law schools (first and second tiers), only 4 to 6 have had tenure-track LRW slots in the past three years, and only one of those schools has been in the first tier for the last two years. Of the 37 to 43 schools ranked in the third tier, only 7 have had tenure-track LRW slots. Twenty of the schools with tenure-track legal writing professionals—two-thirds of the total—are in the bottom two tiers, where 88 schools (half of the accredited schools) reside.

There are several possible explanations for the rank-related distribution. Lower-ranking schools may have higher percentages of students who are poor writers, and may seek to make up for their students' shortcomings. Non-elite


Any ranking system is certainly subject to criticism. There is, however, no readily available substitute acceptable to academicians at all of the schools ranked high and low (at least in public). It might be noted that U.S. News and World Report asks for much of the same data that schools provide to the ABA for purposes of accreditation. See LSAT Scores—Disturbing Discrepancies, U.S. News & World Rep., Mar. 20, 1995, at 82.


39. In 1995, that was Northwestern. Id. at 84.

40. In 1995, the third tier included Brooklyn, Chicago-Kent, Hofstra, Mercer, Montana, Northeastern, and Temple. Id. at 86.

41. In 1995, the fourth tier included Arkansas at Fayetteville, Baltimore, Dayton, Missouri at Kansas City, Pace, Santa Clara, Seton Hall, Stetson, Valparaiso, and Vermont. The fifth tier included CUNY at Queens College, Howard, John Marshall, Northern Kentucky, Quinnipiac, Thomas Cooley, Widener, and William Mitchell. Id.
schools may feel a need to make themselves distinctive—something that writing programs may accomplish. It is also likely that regional or local schools, which have higher percentages of their graduates going into small or solo practice settings, may feel a greater need to train their students in research, writing, and other practical skills.  

The U.S. News and World Report top tier of 25 schools includes the 20 elite schools that have been identified as the top producers of law teachers. For fifteen years, the academy has had proof of the long-held assumption that law schools hire from above. In 1980 Donna Fossum’s landmark study, based on data about faculty composition of ABA-accredited law schools in 1975–76, showed that “almost 60 percent [of law teachers] ... were the products of fewer than 15 percent of the nation’s accredited law schools.” Fossum looked at holders of advanced degrees and determined that “74 percent (2,841) of law teachers were either the primary (J.D. degree) or secondary (LL.M. degree) products of these 20 law schools.” To summarize, “33.2 percent of all full-time law teachers received their J.D. degrees from one of a group of only 5 law schools.” In a follow-up study of the profession in 1988–89, two other researchers concluded that the pattern showed no sign of changing. The distribution was nearly identical to that in 1975–76, although the number of law teachers had increased by more than a third.

The lack of tenure-track or tenured legal writing appointments at the higher-ranking schools may reflect a subtle interplay of long-held faculty views about legal writing, typical faculty hiring patterns, and the elite schools’ historic lack of attention to legal research and writing. Rideout and Ramsfield have noted: “Legal educators ... often see legal writing as quite simple if one knows how to write. They never had a course in legal writing and they did just fine.”

42. These may be factors in the conclusions of the recent American Bar Foundation study on skills training in law schools. See Garth & Martin, supra note 39. The published report by Garth and Martin does not sort the responses by law school, although in a conference presentation Garth discussed just such an analysis looking at the “prestige and placement” of the Chicago-area “feeder schools.” Preliminary Outline for Talk to Be Presented at AALS Workshop on Legal Research and Writing, at 31 (unpublished outline, 1993).


44. Id. at 520.

45. Id. at 507.


47. Id. at 229.

48. Rideout and Ramsfield further point out:

   It is likely that these educators were at the top of their law school classes. This implies that their orientation to the discourse was so swift that they may be unaware of the steps in the process, a phenomenon of which the other 90 percent of the class was keenly aware.

Rideout & Ramsfield, supra note 9, at 40 n.16 (citing Philip C. Kissam, Law School Examinations, 42 Vand. L. Rev. 433 (1989)).
Besides being superb students, those educators were likely to be graduates of elite law schools. It is axiomatic that teachers tend to recreate the system they know best—the one that produced them. The graduate of an elite law school is less likely to see the need to grant tenure-track status to a teacher of LRW, no matter how well regarded the teacher or the program may be. It is likely that at most law schools, most faculty members have had little or no experience as students with a legal writing program staffed with tenured or tenure-eligible legal writing professionals. At the elite law school level there may be reinforcement of the mindset because those schools hire virtually exclusively from a small number of institutions perceived as peers.

Another possible explanation for the concentration of the tenure-track and tenured in the lower tiers may be that tenure standards at the elite schools are unusually high, requiring nationally recognized scholarship, perhaps about paradigmatic changes in the law, in the elite schools’ law reviews. But this self-serving justification for not rewarding legal writing scholarship ultimately fails. The explanation presumes that legal writing as a subject area is not amenable to serious scholarship, or that legal writing professionals are incapable of producing scholarly work of any kind. It is hard to imagine similar opinions being espoused about any other universally taught subject area in the modern law school curriculum. Such a theory is a self-fulfilling prophecy which disregards the recent paradigm shifts in writing pedagogy and the huge body of scholarship generated by other academicians about composition theory. The elite law schools simply have not given legal writing teachers the opportunity to prove the schools’ assumptions wrong. Furthermore, the student law review editors at elite schools are likely to share the faculty views and to reject articles about legal writing.

49. [The faculties at the nation’s most prestigious law schools are overwhelmingly the products of the same group of prestigious schools. This lack of diversity in educational background may well mean that established methods of instruction continue to be handed down to successive generations of elite school graduates with little opportunity for graduates of non-elite law schools to bring whatever innovative techniques they may have learned to the classroom.]

Borthwick & Schau, supra note 46, at 231–32.

50. When I taught at Virginia, a top law school under any ranking system, the attitudes of the faculty and the students toward the legal writing course reflected, with rare exceptions, the messages hidden not very deeply beneath the way the program was structured. The course was taught by two non-tenure-track teachers and 26 upper-division teaching assistants, and was graded pass/fail, unlike the doctrinal courses. Students received two hours of credit for an entire year’s work. Several faculty members remarked to me that they saw no need for a writing course, because, after all, they had had no real writing course when they were in law school. I was even told that I could not change the course title to include the word “analysis” because an LRW course obviously taught nothing about analysis. That view of legal writing as a mere “instrument” for conveying thoughts “misses the fundamental point that the writing process itself can serve as an independent source, or critical standard, that alters and enriches the nature of legal thought.” Philip C. Kissen, Thinking (by Writing) About Legal Writing, 40 Vand. L. Rev. 135, 140 (1987); see also Gale, supra note 1, at 305–04.
The Teachers

The data from the 25 responding schools, together with the available information about the 8 other schools, suggest that there are 25 schools with one tenured or tenure-track legal writing professional on the faculty, and 6 schools with more than one (ranging from two to perhaps five or more). Twenty-seven schools have tenure-track or tenured legal writing program directors or codirectors who were hired specifically to run the program. At 3 of those schools, the legal writing professionals have responsibilities for even broader programs covering skills training beyond the field of legal research and writing.

At all the responding schools but one, the incumbent teacher was the first legal writing professional who was eligible for, or who received, tenure. During the period covered by the survey, 7 of the schools had awarded tenure to their legal writing professionals, and at least two others may have granted tenure between the time of the survey and the publication of this article. Up to the 1994 close of the survey, the solitary example of a decision not to reappoint a tenure-track legal writing professional was an anecdote relayed by one respondent; it was not recent, it did not involve a decision about tenure, and it did not involve a teacher who had the formal title of director.

A review of the biographical entries in the 1994–95 AALS Directory of Law Teachers for 32 of the persons confirmed to be in tenured or tenure-track positions reveals that only 8 of them received their primary law degrees from the 20 producer law schools (3 from Harvard, 2 from Pennsylvania, and 1 each from Michigan, Virginia, and Iowa). The producer schools' percentage of legal writing professionals hired into tenure-track or tenured positions is approximately 25 percent, as compared to the producers' overall 1975–76 rate of almost 60 percent of all law teachers. It is possible that this lower ratio is a factor in the lack of tenured or tenure-track slots among the elite law schools, but it should not be seen as a lack of pedigree among the legal writing professionals. It is entirely possible that fewer graduates of elite law schools who are interested in teaching are pursuing careers teaching legal writing. Five of the legal writing professionals are teaching at the schools from which they were graduated, so it is possible that a school is more willing to allocate a tenure-track appointment teaching legal writing to one of its own graduates.

Twenty-eight received the primary law degree between 1972 and 1985; 20 were graduated from law school between 1978 and 1982. All had primary law degrees but one, who had received her graduate degree in another field and then taken an LL.M. Although the birth years of the group range from 1930 to 1960, 22 were born between 1943 and 1954; and 18 are baby boomers (properly termed), born between 1945 and 1954. They are very likely to be female.

51. See Rideout & Ramsfield, supra note 9, at 48–61.

52. As I report on the compilation of the individual responses to the questions in the subsequent discussion, please keep in mind that there are several reasons the numbers of schools or teachers may not always add up to 23 or 31. One school had 3 codirectors with slightly different histories; I received 2 responses from a school that changed directors over the period of the survey, and the 2 directors had slightly different modes of entry; and a few schools had several people teaching within the program, with or without a director. Furthermore, some of the information I sought was simply not provided by each of the respondents.
Tenured and Tenure-Track Directors and Teachers in LRW Programs

The field of legal writing may or may not be a "pink ghetto," but the ratio of females to males among the teachers at the 31 schools is about 2 to 1, whether one looks at all teachers or just directors.

At 11 of the 23 schools responding, the legal writing professionals were hired from outside the school directly into a new tenure-track slot; most of those teachers, however, had previously taught legal writing at other schools, in non-tenure-track positions. The other 12 schools converted people already teaching at the school from non-tenure-track or visiting faculty positions to tenure-track positions. Two responding schools did not identify a time period for conversion of their faculty; but 5 schools converted positions within a year of initial hiring, 3 within 2 to 3 years, 2 within 4 to 5 years, and 2 within 6 to 8 years. It appears that new tenure-track slots are more likely to be filled by recruitment from outside the institution, or by converting a teacher recently hired after an outside search for a non-tenure-track legal writing professional. Although patience may pay off for someone hoping to have a non-tenure-track position converted to one on a tenure track, a legal writing teacher seeking an upgrade in status may be well advised to search for a tenure-track position at another school.

The pattern of going outside for a new director and being reluctant to convert an arguably qualified incumbent may be evidence that familiarity breeds contempt. Many faculties may think that a change requires someone new. The administration and faculty may feel that they need not change an incumbent's status because that person is not going to push for a change, for fear of losing the job, or leave the job and the personal or familial ties to the geographic area. Or a school may hire from outside because the incumbent director is exhausted and is departing after educating the faculty and administration about the responsibilities of the directorship. One legal writing director (not a respondent to the survey), discussing his own situation as the first full-time director of his school's legal writing program, compared this situation to "throwing out the first pancake."

Processes and Criteria for Tenure

Time Periods

At all the responding schools, the institutional time periods for tenure decisions applied uniformly to all tenure-track teachers, and uniform tenure-review processes applied to all tenure-track faculty, regardless of whether the teachers were legal writing teachers. Prior experience teaching legal writing often was recognized by initial appointment above the assistant professor level

or was otherwise unavailable.

55. See Ramsfield, supra note 1, at 136 n.57; Sarah Rigdon Bensinger, The Pink Ghetto of the Law Schools (Legal Writing Institute conference workshop presentation, Chicago, 1994).

54. Although I do not have direct responses from the other eight schools that have tenure-track legal writing teachers or directors, at least three of those schools hired new directors from outside, directly into the new tenure-track positions.

55. Only one respondent reported external university opposition to conversion of the legal writing director's position to the tenure track, but the opposition vanished when the school later voted to award the director tenure. One other respondent expressed some concern that the university might not approve a tenure request for a skills-related directorship.
and by salary adjustments. Six of the schools did not allow any credit for time spent in non-tenure-track legal writing positions, although 7 schools allowed the teacher to have the tenure clock advanced for past teaching. At 3 of those schools, the teacher did receive such a shortened tenure period, but at one of these a year was added to the shortened tenure period to allow sufficient time to meet the quantitative aspects of the school's scholarship requirement. At another school the teacher received partial credit for time spent in a clinical position. At 3 schools, teachers who could have asked for the tenure clock to be advanced refrained out of fear that the scholarship requirements could not be met on an accelerated schedule. One school converted a teacher from a non-tenure-track position and granted the teacher tenure very quickly, yet without prior clarification of the standards for achieving tenure.

Separate Tracks Versus Undifferentiated Tenure

Six or 7 of the 23 responding schools had created formal, separate tenure tracks for legal writing professionals. The separate track might be one shared with clinical teachers. Fifteen or 16 schools had undifferentiated tenure slots for legal writing professionals; at those schools there were no written or formal restrictions requiring the legal writing professional to remain in the legal writing program as a condition of tenure. At 16 of the schools, the legal writing professionals could teach other courses without formal restriction, subject to the typical negotiation with a dean or associate dean about curricular needs. Many had taught one or more non-LRW courses, ranging from first-year required courses to upper-level electives. Three schools had a strict limit on the type or number of courses a legal writing teacher could teach, but only one of those schools had the legal writing professional on a separate track. Two of the schools with separate legal writing tracks would not allow the teachers to teach any non-legal-writing course, and the issue has never arisen at one other school. Considering the strict limitations some schools impose on the teaching activities of those on separate tracks, and the possibility for salary differentials, the question becomes whether such tenure-eligible legal writing positions are truly comparable to those reserved for the schools' other teachers.

Modifications of Tenure Criteria

The traditional criteria for tenure are scholarship, teaching, and service. All the respondents from the schools with undifferentiated tenure said that the same criteria applied to them as to their non-legal-writing colleagues, but many detailed differences in the ways in which performance was measured or evaluated, or in the relative weight of each of the criteria. One respondent put

56. At most of the schools, a candidate for tenure need not wait a specific period of time before being considered for tenure.
57. One legal writing professional on an otherwise undifferentiated tenure track had to "promise" to always teach legal writing.
58. One teacher was not sure if he was on a separate track or not, because it had never been discussed.
it succinctly when he said: "Basically, the school added a scholarship requirement to my already full-time job without any corresponding reduction in my legal writing workload." Of the responding schools with separate tenure tracks, three allowed input from the legal writing professional when creating somewhat modified job descriptions or tenure criteria. Two schools had created the standards before appointing legal writing teachers, and one school with a separate track reportedly did not modify the regular criteria at all.

Virtually all respondents said that scholarship was the primary criterion for award of tenure at their schools; only two respondents, who were on separate tenure tracks, said that teaching performance was the primary criterion in the applicable tenure standards. Almost every respondent said that scholarship related to legal research and writing would count, or had counted, toward tenure. But several hinted that they did not know that for sure, and were not likely to assume that legal writing scholarship would count toward tenure—highly ironic, if scholarship is supposed to feed into teaching. Although five said it likely would be weighed less than more traditional scholarship, two said that it might be weighed heavily or be sufficient by itself. Three said they had no plans to produce any scholarship related to legal research and writing. All responding schools supported scholarly efforts in the field of legal research and writing in the same manner and degree as the support given for more traditional scholarship.

Respondents often mentioned that they were given no reduction in teaching loads to compensate for the burden of a writing course. Although a writing course demands that the teacher spend much time reviewing papers and meeting with students, few schools modified their tenure standards or adjusted the teaching load. Failure to adjust teaching loads may create short-term problems for the legal writing teachers and may undermine the long-term stability of the tenure-track appointments. For example, a normal teaching load for non-legal-writing courses might be 12 credit hours per year, but a legal writing teacher might be working longer hours than the norm even with a 9-credit-hour teaching load. The schools' failure to accommodate teaching load is a serious problem for all respondents and for the future of tenure-eligible legal writing teachers. One factor that led to the dissolution of the University of Washington's classic experiment in the 1970s with dedicated tenure-track teachers for the LRW course was the way in which the school's administration and faculty overlooked both the school's carefully developed formula for adjusting the teachers' workload and the purposes behind the policy.

59. These troubling responses may have reflected a pretenure fear that the scholarship would be rejected or discounted by the faculty, or it may reflect the teachers' lack of scholarly interest in the field itself (a far more troubling possibility).

60. For example, I taught 52 students in 1994-95; I estimate that I reviewed at least 5,000 pages of student writing and met with students in scheduled conferences for more than 100 hours.

61. See Rombauer, supra note 5, at 40/9. I am aware of at least one other school where many of the legal writing teachers, having achieved tenure in the 1970s or 1980s, drifted away from their prior commitment to teaching legal writing, and the responsibility for teaching writing was then apportioned to all faculty teaching first-year students with some oversight by a non-tenure-track director.
Administration

All the tenured or tenure-track directors who responded to my survey reported virtually complete autonomy over the existing program (but most observed that the autonomy might be challenged if they sought major changes that could affect the rest of the curriculum). Administrative responsibilities, however, were seen by the program directors as their greatest burden, and the one least likely to be accommodated by the school. Law schools, regardless of the status of the program director, may fail to provide adequate accommodations for the nonteaching tasks and may fail to allocate sufficient administrative resources to their writing programs. The typical director must design the curriculum and the syllabus; develop course materials; counsel students; run moot court programs, often bringing in significant numbers of judges; hire, train, and evaluate staff; and fulfill all the other responsibilities of a teacher, scholar, and member of the law school community. Unfortunately, most faculty members have little understanding of what makes for a good administrator, and few have any interest in how a good LRW program is administered.

Several directors said they received absolutely no accommodations from the school for the added administrative responsibilities of their position—no additional pay, no reduction in teaching. But several schools did try to modify teaching loads and recognize the burdens of administration. One director, in a clinical slot, received a 75-percent reduction in teaching load but over-loaded himself with non-legal-writing courses. At a school with three rotating codirectors, when two of the group were active as directors, each of them received 3 hours of teaching credit for administration; that was consistent with another director who reported a 6- or 7-hour teaching load credit, or half the normal load. One director said that administration was considered his "service" requirement, while another reported that his administrative performance was evaluated as half of his teaching performance.

Even non-tenure-track directors have a large portion of their workload in administration, but the uncertainty of how administration factors into tenure decisions is particularly troubling for tenure-track or tenured legal writing professionals. One respondent "suspected" that administration was important but said that it was not recognized in any way by the school's tenure criteria. Although one might surmise that the amount of a director's time spent on administration may be related to program design and staffing patterns, the

62. See Arrigo-Ward, supra note 8, at 571–95; Levine, supra note 8, at 630–38. Few legal writing programs have assistant or associate directors. Faculty secretaries and computer support may be distributed by the law school without regard for the administrative needs of the writing program; student administrative or research assistants may not be provided to the director or other teachers; and little may be done to recognize the special administrative and budgetary needs and demands of the program as a whole.

63. See Levine, supra note 8, at 613–15.

64. There are several staffing patterns for legal writing programs, including full-time staff on long- or short-term contracts, part-time adjunct instructors, teaching assistants, graduate students, and combinations of two or more of the above. Each has special demands on the director charged with administering the program, but it would be difficult to say which model might be the most administratively demanding without looking at the other program variables, such as the numbers of teachers and students, course credits and hours, grading, and course coverage of writing and research. See id. at 618–24.
Tenured and Tenure-Track Directors and Teachers in LRW Programs

complaints about appropriate accommodations for administrative load were not limited to any one staffing pattern. At least ten of the responding teachers felt it necessary to address at length the lack of accommodation for administrative tasks, and their unhappiness with the uncertainty is clear:

Most directors spend substantial time hiring, training, and supervising legal writing instructors, whether they are part-time adjuncts or teaching assistants. At present, there seems to be little in most tenure rules that directly addresses this vital and time-consuming responsibility.

The school did not make any concessions for the time I spent administering the Legal Writing Program. I had to satisfy the formal promotion criteria as though my job did not include a time-consuming administrative component.

I am not certain how my performance as director will affect my tenure evaluation; I only know that it will.

I hope the work as director and instructor in the program helps me get tenure. However, I sometimes fear that a few of my colleagues take the quality and success of the program for granted, as if it had always been this way.

Administration is not supposed to be a factor considered for tenure. It is clear, however, that the faculty views the stability and success of the program as a major part of my responsibility as director, and that my performance as the director is implicitly a factor in my evaluation for tenure.

If there are no problems, the school is happy and not interested in administration. My autonomy is total, as long as there are no complaints.

The effective administration of the program is probably what the faculty thought of as most important in my tenure decision. If there had been a perception that the program was not running well, I don’t think that it would have mattered that I had published. They based this evaluation in part on their own sense of how things were going.

I was pretty naive when hired, and I made no effort to make this explicit.

I do not believe that someone who is not involved in the administration of the program could fathom the responsibility and the amount of time that is consumed in administering the program. Therefore, I believe that my efforts in the area will likely be underestimated and partially discounted.

Administration is understandably related to the stress levels of the directors, who find themselves juggling administration, teaching, and scholarship, and worrying about dropping one or more of the balls before a tenure decision is made. The uncertainty may be more difficult for women. Two of the respondents wrote:

Teaching writing is not that much different from working at a big law firm. At a firm, you must work hard to prove yourself. If you are a woman, you need to work twice as hard; if you are a woman with children, work three times as hard. If you are a woman with children and you are teaching legal writing, you had better work twice as hard and produce much scholarship in the years before tenure.

65. See Arrigo-Ward, supra note 8, at 596–97; Levine, supra note 8, at 638–40.
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I may have made my "journey" sound easier than it was. It was far from easy to deliver a ultimatum to the university. But I have strong feelings about the way women are exploited by many universities, so that impulse drove me as well. As you can tell, I have some strong feelings about the way legal writing courses and legal writing teachers are handled.

Deans and faculties may fail to accommodate the workload of administering a program and teaching writing courses because they realize they have a chance to get something for nothing (or for very little) while the teacher is worried about appointment, status conversion, or tenure. They may want to see if the nontenured teacher is "serious" about remaining a legal writing professional despite the workload. Of course, it is possible that the faculty and administration may know nothing about the administrative tasks inherent in a directorship and may not even consider them during the recruitment and appointment process.66

The schools' failing to accommodate the administrative workload of legal writing programs is in stark contrast to the ways in which law schools compensate a tenured professor for assuming the administrative tasks that accompany appointment as a dean or associate dean. Such a person receives a reduced teaching load, often with a significant salary bonus for assuming what are seen as onerous administrative tasks,67 and the school's expectations for scholarship may be lowered. Several people who were tenured before assuming the role of a legal writing director have told me that they received teaching credit, and might also receive additional salary to take on the job. Furthermore, evaluation of such a previously tenured director's administrative performance is usually a decanal function, and those teachers may resign from their administrative positions at will without adverse career consequences.

* * * *

A major shift has taken place in the numbers of schools willing to treat legal writing teachers as full members of the academy, and the past two decades may eventually be seen as the most significant period of status changes for legal writing. The pace of change shows no sign of slackening, and more schools are likely to allocate tenure-track positions to teachers of legal research and writing, recognizing the field as a legitimate one for tenure-level scholarship and appointments. Market pressures alone should force such changes, but it also is likely that the law schools willing to make the status

66. Detailed information about the administrative tasks involved in legal writing programs has been available for more than 20 years. See, e.g., Jack Achtenberg, Legal Writing and Research: The Neglected Orphan of the First Year, 29 U. Miami L. Rev. 218 (1975).

changes will continue to be overrepresented among the lower-ranked institutions. A broader-based change may have to wait for status changes at such schools as Harvard and Yale.

Once within the ranks of tenure-eligible faculty, legal writing teachers have become more aware of fundamental problems that may have been partially hidden by the status barrier. Schools that are willing to recognize the professionalization of legal writing teachers must accommodate the vastly different pedagogy involved in teaching legal writing and the administrative tasks that accompany the direction of legal writing programs. It may be that resolution of these problems will have to be addressed by the legal writing professionals as a group,68 perhaps with the involvement of the relevant committees of the Association of American Law Schools and the American Bar Association,69 but the important breakthrough to peer treatment has already taken place.

The workload accommodation problems identified by the new legal writing professionals may have shallow roots in the circumstances surrounding a particular appointment as well as deeper roots in the overall institutional milieu. Obviously, a new director may be naive, or without bargaining power, especially in a situation where a nontenure appointment has been converted to one on the tenure track. A school’s faculty and dean, especially in the case of undifferentiated tenure, may fear that the legal writing teacher is using the position as a back-door entry into a more traditional teaching position.70 But

68. Legal writing directors from across the country met in San Diego, July 28–29, 1995, at a conference entitled The Politics of Legal Writing: A Conference for Directors of Legal Research and Writing Programs. Hosted by the California Western School of Law and sponsored by West Publishing Company, the group discussed status, accreditation standards, workload and teaching standards, public relations, and scholarship trends and ideas. They also voted to create a new organization composed solely of directors of legal writing programs.

69. The ABA’s traditional role in the law school accreditation process, however, is likely to be modified as a result of the proposed resolution of an antitrust complaint brought by the U.S. Department of Justice. The ABA will no longer use salary data as a factor in accreditation, and reportedly will modify other standards used in the process. See United States v. American Bar Ass’n, Civil Action No. 95-1211, Proposed Final Judgment ¶¶ IV(A)–(C) (D.D.C. filed June 27, 1995); Steven A. Holmes, Justice Dept. Forces Changes in Law School Accreditation, N.Y. Times, June 28, 1995, at A1. It should be noted, though, that the ABA accreditation process has never formally recognized the status differentials traditionally accorded to legal writing teachers, despite having standards and derivative policy interpretations about job security for non-tenure-track professionals teaching in the field of clinical legal education. See Susan L. Brody, Teaching Skills and Values During the Law School Years, in The MacCrate Report: Building the Educational Curriculum, eds. Joan S. Howland & William H. Lindberg, 22, 26 (St. Paul, 1994) (referring to ABA Standard 405(e)).

70. The doubts of law faculties on these issues have not changed very much over time:

[The] “bad-guy concern” . . . was a concern that a faculty candidate would dissemble—would pretend a long-range concern in teaching the course just long enough to obtain an appointment and tenure and then ask to be relieved of the teaching responsibility . . . . Even a [good guy] with a genuine long-range interest in teaching the course could tire of the time and emotional demands of working so closely with individual students and would then have a valid basis for wanting to shift out of that teaching responsibility.

Romberg, supra note 3, at 401. A candidate should respond to a question about future plans by pointing out that it would be unlikely for the faculty to expect any other candidate to commit to forever writing in one limited area or to teaching a particular course in perpetuity, nor would the questioners expect that of themselves.
failure to accommodate the workload may cause the very difficulty that schools have used as a justification for not awarding tenure status to legal writing teachers: burnout.

The possibility of burnout is real, but it is not inherent in the subject area of legal writing. It must be acknowledged that many teachers of the traditional law subjects are burned out as teachers, scholars, or both. Legal writing teachers, of any status, are usually given too few resources to do the job well; the numbers of papers and conferences do take a toll, especially when the numbers are outrageously high (and in virtually all programs they are). But the teachers responding to my survey, and many legal writing professionals not having the protection of tenure, have not burned out. One respondent put it succinctly:

We have one of the best legal writing programs in the country only because I have been in the position long enough to get it right; as long as legal writing positions are temporary and less than fully professional, law schools are not going to get excellent writing programs. Or if they do, it's by chance and probably won't last. I see myself as a professional legal writing teacher and a law professor, and I am treated that way by my colleagues. In my opinion, these views are critical.

The flame burns hotter and faster when work is neither accommodated nor appropriately rewarded; giving higher status but adding a scholarship requirement to all the other tasks of the job may act as gasoline thrown on a fire and accelerate the process. The heavy workload of legal writing must be compensated by teaching load adjustments, appropriate salaries, and access to other teaching and scholarly opportunities. Tenured and tenure-track faculty of any stripe often are entitled to research leave or teaching sabbaticals, visiting appointments at other law schools, reduced teaching loads for certain periods, and other opportunities for relief and reward. Legal writing teachers must be treated no differently.

These teaching and administrative workload problems are not insurmountable; they simply require acknowledgement and careful accommodation. The remarkable changes that have already taken place in the professionalization of legal writing teachers within the law school academy should inspire others to seek—indeed to demand—that they be treated as full colleagues by the faculty at their own law schools. Tenure-track and tenured LRW professionals are no longer voices alone in the wilderness; the frontier is showing signs of becoming civilized.