A Critique of the AALS Hiring Process

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I. Introduction

Serving on the John Marshall Selections and Appointments Committee for the academic year 2007-2008 left me with a deep sense of dissatisfaction with the entire legal academic hiring system. It is an exhausting process that revolves around a one-dimensional selection criteria. The following is an outgrowth of my dissatisfaction. In the following I will attempt to critique the law school hiring process.

Although we in legal academia write a lot on almost everything, there isn’t much on how we do hiring. A review of the literature reveals that there are only two articles that focus on the process of recruiting itself. One, The Recruit’s Guide, functions as a semi-official guide to the interview process for faculty candidates; the other, Mere Brilliance, is a piece critical of the selection process, arguing that “we have no standard for hiring other than mere brilliance”

Although the articles were written twenty and fifteen years ago, little in the recruitment process has changed. The description of the AALS Faculty Recruitment form found in the 1988 article could serve as the description today. The lack of change is significant -- although we like to think legal education has changed in the last twenty years, our selection criteria have not.

II. The Problems: Procedural and Substantive

Since I teach civil procedure, I naturally divide issues into substance and procedure:

A. Procedural:


The selection process takes a lot of time. I estimate my time spent in the fall of 2007 (and I was not the hardest working member of the committee) to be eight working days. I hate to think of the time spent by the chair of the committee. I spent a weekend going through the seven hundred plus resumes in the AALS Faculty Appointments Register (as I emailed my fellow committee members after going through some five hundred resumes, “maybe it’s just me, but somehow, after five hundred resumes, the thrill is gone.”) Candidates submit an equivalent number of resumes directly to the school. Traveling to and from the recruitment conference (centrally located in Washington, D.C.), interviews for two days, my school’s committee and faculty meetings, and arranging and attending the interviews at the school takes up a great deal of time.

A lot of this time expenditure is caused by the sheer number of the applicants. Too many people want our jobs. Going through more than eight hundred applications leads to many problems. I’m sure many excellent candidates fall through the cracks. The reader starts to focus on gross indicators, such being on a law review, than on more subtle indicators such as the originality of the candidate’s publications. No one has time to read the resumes with much attention, if at all.

The interview process at the Recruiting conference allows little time to get to know candidate. The half-hour interviews (which practically work out to about twenty minutes) again only allow assessment of superficial characteristics. One who can’t sell himself or herself quickly is at a real disadvantage. The interview process does function to weed out the real losers and those totally lacking in social skills, but that is about it.

Two professors who have participated in the process have told me that they found it so exhausting that, as far as they are concerned, never again.
B. Substantive:

We can start with an analysis of the forms in the Faculty Appointments Register. The Form starts by giving gender and racial codes. (Numbers are given for being African-American, Asian, and the like.) On the upper right of the forms is “Personal Data,” which lists Gender and Race. Some candidates list their sexual orientation under this heading. The first main entry is for “1st Degree School” and then “Rank.” There seems to be a conflict between selection on the status of race and gender with rank in class, law school, and law review, but perhaps not. Stanley Fish comments that elite university English departments, when they first accepted Jews as faculty members, were “so insistently, if unself-consciously ….Protestant that one was faced with a choice between assimilating –imitating one’s senior colleagues down to the patches on their elbows—and various forms of “acting out,” a choice even more sharply posed today to those blacks who are being hired simultaneously by the academy as blacks and required to comport themselves just like everybody else, that is, according to “academic standards” that are supposedly indifferent to race, sex, ethnic origin, etc.”3 We seek diversity just so long as the diversity is not different. The ideal candidate, then, would be an African-American lesbian who went to a prestigious college, was editor of the law review, and who graduated in the top 5% of her class from an elite school.

After that, one lists schools and degrees. Law school teaching experience and other teaching experience comes next, followed by “most like to teach,” “may be interested in teaching,” and “would be willing to teach.” After geographic restrictions and previous employment, there is a small space for “Major Published Writings.” If we assume that these items are listed in order of importance, we can conclude that the most important criteria are

3 Doing What Comes Naturally 31(1989)
racial and gender status, law school attended, then rank in class and law review (or not). Law school teaching experience comes in after legal education, and then comes “employment.” Employment, however, is not a major factor in the decision to hire. 

After the information on one’s legal education and work experience comes “the secondary criteria:” what the candidate has done with his own life after the three years of law school: legal employment and teaching.

A colleague of mine pointed out that I was confusing the order of in which the candidate’s information is presented with how one can use that information. Certainly, one can use the computer search function in the Faculty Appointments Register to search for candidates with, say, Peace Corps experience. But, I would bet that most faculty recruiters use the initial information as screening criteria. (That is exactly what the Recruit’s Guide states. The few studies of who actually gets hired(discussed below) indicate that is the primary information that is the most important. An article which explains the AALS recruiting process to the faculty recruit (The Recruit’s Guide) describes how the recruiters read the Form:

What do we look for? What lines are crucial? Although they disclaim uniformity, recruiters tend to follow patterns. A sweep of law school, class rank, honors, and law review seems to be a dominant pattern. Publications may be an equally important “make or break” for a number of recruiters. The reading often ends there if the baseline expectations are not met. The next categories of significance are law employment, judicial clerkship, teaching interests, and prior law school teaching – depending on the school’s or recruiter’s biases. One or more of these factors may also end the scanning process with a decision against the applicant. Minority or gender status may also be significant. Candidates who survive the first scanning will typically receive fuller consideration of their résumé, in which undergraduate honors, chairing of the Bar Ethics

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4 “The data would seem to indicate at least for these three states (Massachusetts, Ohio, Texas), that individuals who join most law school faculties tend to have limited experience as practicing lawyers.” Ethan S. Burger, J. Douglas, R. Richmond, The Future of Law School Faculty Hiring, 16 Va. J. Soc. Pol’y and Law 1, 50 (2005).
Committee, pre-law stint as a foreign-service officer, and a reference from Sandra Day O’Connor may be noted.\footnote{5}

One statistical study identified three paradigms for “successful” AALS candidates:

1. A graduate of a prestigious law school with an editorship on the law review, high class rank, a judicial clerkship (preferably federal), and no more than two or three additional years of work experience;

2. An individual with both a J.D. and Ph.D. Persons with interdisciplinary backgrounds can often make scholarly contributions in areas where a person with a law degree alone cannot. Such individuals often have spent their entire working lives up to this point in an academic setting.

3. Members of groups who historically have been underrepresented on law school faculties, whether based on color, ethnic origin, gender, or race, as well as individuals with disabilities and persons having veteran status.\footnote{6}

Professor Stephen L. Carter calls the system of recruitment at the elite schools the “star system.” The star system for law faculty hiring feeds on grades, law review membership, and judicial clerkships – the dividends that the system delivers to those lucky enough to enter, and, not entirely by coincidence the traditional means for predicting scholarly potential.\footnote{7} He notes, though, that this system does not require the production of any scholarship prior to entry level hiring, and that in his view being a good student, being on law review, and being a judicial clerk are not useful predictors of being a good scholar.\footnote{8}

Both Duncan Kennedy and Jon C. Dubin give incidents of candidates with many years of experience of being evaluated on the basis of their law school transcripts.\footnote{9}

\footnote{7} The Best Black, and Other Tales, 1 Reconstruction 6, 27 (1990).
\footnote{8} Id., at 27, 28.
\footnote{9} Jon C. Dubin, Faculty Diversity as a Clinical Legal Education Imperative, 51 Hastings L.J. 445, n. 67 (2000).
A principle of Japanese aesthetics states that what is of real importance in a work of art is what is left out, not what is put in. The Form gives almost no room for any description of the article. There is room for the title and citation of an article, but not what it is about. Since there certainly no time to read an article, one judges the candidates’ work on its titles and the prestige of its law review. There is little space to discuss community activities, avocations, non-legal interests, or significant life experiences such as art, sports, political action, public service, or intellectual interests. The form operates on one dimension: legal education, legal publication, legal jobs. The multi-dimensional human who is the candidate is filtered out.

The nature of the above system is to a large part driven by sheer numbers. Our committee, for example, received hundreds of resumes. No one has time to read them thoroughly, if at all. Years of practice are to be condensed into one word descriptions. A candidate can submit a full resume, and candidates in my year on the committee submitted about six hundred, but few recruiters, if any, have time to read them.

The form does hit on the traditional criteria used by the elite schools. If one is looking for a candidate who is in the top of the class, was on law review, had a judicial clerkship, published an elite journal, and worked for a white shoe law firm, the selection process is easy. One could have a secretary or research assistant go through the 800 + resumes and pick out thirty candidates to interview. But if one is looking for a candidate with a non-traditional, non-elite background, who has had a varied life experience, who has done public service, or has unique talents, one has to read between the lines, and with 800 + resumes to go through, digging is hard.

III. But Is There A Problem?
We have a great legal education system in the United States. One can get an excellent legal education in any accredited law school in America. (There may be a few schools that are disasters somewhere, but I am unaware of them.) A student may have to be more pro-active at a “fourth tier” school than at elite schools, but he or she will receive an excellent preparation for the practice of law.

There have, however, been some calls for change. The Carnegie report on legal education recommends that we have more practice-oriented courses. I do not want to enter that debate, but if law schools were to offer many more such courses, they would have to change the criteria from the present focus on only academic achievement to ones focusing on expertise in doing legal work. The Carnegie report points out that the practice of “self-replication” produces a “narrow perspective, which acts as an obstacle to integrating the teaching of practice with theory.”

Our prevalent practice of hiring those with little, if any, practice experience would have to change.

The President of the AALS, John H. Garvey, in his presidential address to the AALS House of Representatives in 2008, spoke on “Institutional Pluralism.” He spoke of law schools which are religiously affiliated, those at historically black colleges and universities, and those with academic concentration such as economics (George Mason) and clinical legal education (Antioch). But a school cannot be different if it hires faculty with the same attributes as everybody else.

But there is a lack of intellectual diversity. The race and gender codes address issues of racial, ethnic, and gender diversity, but not intellectual diversity, in law school faculties. Basing

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any employment decision on this information is illegal, but that is another matter.\textsuperscript{12} I want to avoid the debate about affirmative action and instead talk about intellectual diversity.

The entire system is geared towards selections of those who have succeeded on the standard track, and succeeded in the early stages of their legal careers. Law school attended and rank in class is given prominence over professional and life experience. As stated by Duncan Kennedy,

\textit{“Third, law school faculties apply a pedestrian, often philistine cultural standard in judging white male resumes, interviews and presentations at the entry level, and white male teaching and tenure work at the promotion level. They administer this pedestrian, philistine standard with an unconscious but unmistakable moderate conservative to moderate liberal bias. And they serve it up with a powerful seasoning of old-boyism and arbitrary clique preference \textit{as between white males.”}}\textsuperscript{13}

Many professors at John Marshall, for example, speak several languages, which is important for positions teaching international subjects, but this information is included as an afterthought. The lack of space for listing languages or international experience works against hiring those with global perspective. Although there is lip service given to the need of American law schools to address globalization issues, the AALS Form gives short shrift to candidates with global experience.\textsuperscript{14}

One of our committee members stated that he looked for some public service, in order to avoid hiring narcissists. One has to search the form and read between the lines to discover the candidate’s involvement in pro bono activities or public service. I found myself reading the

\textsuperscript{12}An attorney I know, who works for the Equal Employment Opportunity Commission, thinks the inclusion of race and gender is crazy.


resumes in the AALS register from the bottom up, looking for other factors than law school attended and rank in class.

Although the Form does not work well to present life and professional experience, writing excellence, or public service, it does serve recruiters’ needs efficiently if the search is for “the best available athlete.” This point is made in Professor Gordley’s article, Mere Brilliance, which argues that the process produces “mere brilliance,” but that mere brilliance is ultimately lacking in substance: “The cult of undirected brilliance, of raw brainpower, is also distressing to me because it is so dull.”\textsuperscript{15} He contrasts the usual academic training for teaching, getting a Ph.D., with that of the law student. The Ph.D student does undergo systematic training in research and writing; the J.D candidate, who is being hired in large part to research and writing, does not. He does point out that the selection process takes time, and that law professors spend a lot of time and energy on it: “One could work full time and do nothing but teach class and evaluate people.”

While he is sure that we law professors care about hiring, he is less sure about the information supplied. “We are trying to judge whether a person who has not written much is likely [to] write well someday. It is more like buying a colt than a racehorse, or perhaps more like paying stud fee. After all we have to go one are grades, personal recommendations interviews, and the talk.”\textsuperscript{16}\textsuperscript{i}

Professor Gordley points out that grades indicate the ‘ability to make intelligent arguments about discrete points of law.” Legal scholarship, on the other hand requires abilities grades do not measure, such as those necessary “to rethink starting points, to synthesize, to see

\textsuperscript{15} \textit{Supra, n. 2 at 383.}

\textsuperscript{16} \textit{Id. at 374.
relationships between different problems."\textsuperscript{17ii} He concludes that the selection process is to a large part a product of the lack of any models for contemporary legal scholarship. The only standard is brilliance.

This selection process has hurt our profession. While there is much creative, insightful, and brilliant legal writing, much of legal scholarship is the same old, same old, mechanical articles that are either unread or, if read, do not break new ground, but re-debate old issues. Frequently, authors engage in micro-analysis of opinions and statutes rather than investigating how to achieve a fairer, more accurate, or more efficient legal system. In civil procedure, for example, the Civpro Listserve frequently focuses on minute details of federal subject matter jurisdiction rather than on the system as a whole. I’ve just finished reading a several postings on the Lawprof Listserve on how meticulous one should be with one’s citation forms. Duncan Kennedy’s view parallels mine:

“Second, I think some legal scholarship is exciting and enriching and stimulating, but that’s not very much. People seem to produce the good stuff through neurotic, often dramatic processes, full of twists and turns and surprises. I think most legal scholarship is pretty much done by the numbers, and it’s hard to make any sharp quality differential between articles. This stuff is useful. Writing it is hard work. But it doesn’t take deep scholarly quality. There are many, many people who are excluded by the “standards” from teaching law who could do it as well or as mediocrely as those who do it in fact. For this reason, I think we would lose little in the way of quality even if massive affirmation action failed to produce the rich harvest of new ideas and approaches that I anticipate.”\textsuperscript{18}

He points out that the selection criteria do not select the best scholars: “The “standards” that law schools apply in hiring assistant professors and promoting them to tenure are at best very rough proxies for accomplishment as we assess it after the fact. People who get good grades and have prestigious clerkships often turn out to be duds as legal scholars and teaches by the

\textsuperscript{17} Id.

\textsuperscript{18} Frontiers of Legal Thought, 1990 Duke L.J. 705, 716.
standards of those who appointed them. People with less impressive resumes often turn out to be terrific scholars and teachers.”

IV. Prospects for Change

Here I have been told by one reader that I end on a dismal note, because I find it hard to think of how the system could be changed. There does not seem to be any demand for change, indeed there is little attention paid to how do we do faculty hiring. A review of the literature reveals that there is almost no literature—there is little discussion, in legal articles or cases, on the legal academic hiring process. While we examine almost every aspect of state, federal, and international law, we do not examine how we hire.

In any case, the topic of how we replace ourselves deserves the same scholarly analysis we give to legal issues. There is little evidence, in legal literature, at conferences, in faculty meetings, of debate on what sort of people we want to hire and, given that, how we should go about hiring them. We do debate affirmative action on one hand, and individual candidates on the other, but not very much on the hiring criteria per se.

Two personal experiences. At the start of our hiring process, I asked the committee (which did do an incredible job in organization) to have a discussion about who we wanted. At the committee’s first meeting, the Dean informed us we were looking for teachers of criminal law and legal writing, among others. I then asked again for a discussion of criteria, and was told, “We just did it.” I explained that I was talking about what qualities and experiences we were looking for, rather than areas of scholarly expertise. I finally got the message through.

\footnote{An example of the lack of interest paid to how we hire is the summary rejection this article received by the Journal of Legal Education. I submitted the piece on a Thursday and it was ejected on the following Monday, with the statement that the article would not contribute to the discourse about legal education.}
I presented the ideas in this paper to a faculty discussion group in my school. Some faculty members commented that we were happy with our new faculty members, so what was the problem?

I’m close to concluding that a non-elite law school should abandon the entire AALS selection process and change to one based on invited applications from professors we already know. This approach, while not illegal under Title VII, often results in hiring less minorities. We could devise our own selection criteria and invite candidates to furnish us with information on these criteria. The AALS Form should be changed, and that organization should not wait for a law suit to do it. We could try to spend the time and the energy to read between the lines in the present forms. I doubt that there will ever be system-wide change, but all legal academics should consider better ways to recruit faculty.

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