

MISSION POSSIBLE. HIRING FOR MISSION IN A VAGUE WORLD

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EVERY law school has a mission.¹ The most fortunate law schools know what their real mission is. A smaller number of schools consistently carry out their mission in admissions, curriculum, and faculty hiring. Because the faculty ultimately controls both admissions and the curriculum, faculty hiring is the key element in protecting the mission from dilution and irrelevance. The many colleges, universities, and law schools that began as church-related institutions, but evolved over the years into purely secular places, did so because the faculty evolved into a faculty that believed in a different mission.² Law schools that began as places of practical instruction for practicing lawyers, but changed over the years into theoretical hotbeds of one kind of legal philosophy or another, did so because the faculty changed.

Although I have spent most of my career³ at Pepperdine, I have seen a few other law school missions in action, through visits and service on ABA site inspection teams. It is an awe-inspiring sight when the faculty is committed to a single vision and implements it in virtually every aspect of law school operation.⁴ When I visited for one semester at Campbell University School of Law, the mission was to produce excellent trial lawyers for North Carolina. An elaborate and well-planned curriculum was devoted to that goal. They did not solicit students from outside the state, although they certainly did attract some, nor did they attempt to place them in

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1. "The dean and faculty of a law school shall develop and periodically revise a written self study, which shall include a mission statement." ABA STANDARDS FOR THE APPROVAL OF LAW SCHOOLS Standard 202(a) (July 11, 2000). In my limited experience, mission statements such as, "The mission of this law school is to force desperate, short-sighted law students into crushing, life-long debt so that the faculty can afford Jaguars," raise questions during the accreditation process. However, I see no problem with a mission statement that justifies a Jaguar for the dean.

2. Frequently, the new mission is football. As a graduate of Vanderbilt, one of those formerly church-related universities, I know that the guiding mission must be something high-minded because it sure isn't football. A Vanderbilt fan keeps track of the season by counting wins and losses differently than, say, a Florida fan. A Vanderbilt football season is summarized by "wins," the total of actual games won, plus moral victories—when we beat the point spread, and "losses," those rare occasions when we fail to beat the point spread. The Vanderbilt accounting system produces consecutive winning seasons that stretch beyond the horizon, but are not recognized by the NCAA, the BCS, or any other acronym.

3. "Career" in this context means "blind, dumb luck compounded by forces beyond my control and successfully evading detection for more than twenty years." Or, as the legal philosopher, Woody Allen, said, "Ninety percent of life is showing up on time."

4. I apologize in advance for the following examples, which, if inaccurate, are the result of faulty memory, double and triple-hearsay, and changed circumstances. If defamatory, I'm counting on my Torts faculty to find a privilege to enfold me.

jobs outside the state, although their graduates could, and do, practice successfully anywhere in the country

George Mason has been known, for some time, for its superb, single-minded focus on law and economics. While it has added other centers of excellence over the years, law and economics is the first label that comes to mind when most academics think of George Mason. Religiously affiliated schools are especially conscious of the centrality of mission. One of the answers to the question, "Why study law at BYU?" is:

Brigham Young University exists to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-Day Saints. That atmosphere is created and preserved through commitment to conduct that reflects those ideals and principles. Students and faculty at BYU are committed to maintain the highest standards of honor, integrity, morality, and consideration of others in personal behavior.⁵

Your school may be one of the fortunate few whose mission is clear and pervasive.

Today's lesson is about hiring for mission. While it may fit this issue's sub-theme regarding religiously affiliated law schools, the general principles apply to any law school that takes their well-defined mission seriously. Whatever the character of your school, it will change unless faculty hiring focuses largely on the mission. Each year, hundreds of lawyers apply to teach who have excellent credentials in every area of subject need. When the applicant pool contains an assortment of diverse candidates with virtually fungible qualifications, law schools should choose those who best support the mission of the law school.

COMMUNICATE THE MISSION

The instinct to be all things to all people exists even at law schools with a distinctive mission, resulting often in mission statements that are buried in a sea of generalities and aspirations that would apply to every law school in the country. Although the appointments committee cannot control how the mission is presented in the catalog or the web page for other audiences, it should communicate the real mission to prospective faculty members in a forceful and intentional manner. By including it prominently in letters or materials from the appointments committee, applicants are put on notice that the mission is important and that they should consider how their interests and attitudes mesh with it.

Remember that your mission may be the subject of myth and hyperbole among others in the academy and profession.⁶ Often, the faculty appointments committee is the first to learn that the school's image differs from the faculty's understanding of its mission.⁷ In addition to stating formally what the mission is, it may be helpful

5. See Brigham Young University Law School website at http://www.law2.byu.edu/Law_School/why_bvu/why_byu.htm.

6. See *supra* note 4.

7. When the faculty prospect falls to the floor, laughing, snorting, and unable to catch his breath, after being informed that the law school exists "to train lawyers interested in service to the urban

to state informally what the mission is not. Rumors about law schools outlive faculties, deans, and law student loans.⁸ Forcefully denying the rumors may not do much to dispel them, but it will make you feel better.⁹

INTERROGATE ABOUT THE MISSION

It is then necessary to ask the faculty prospects about their understanding of the mission and their interest in supporting it. How do their teaching and research interests correspond to the mission? How can the mission be advanced beyond what the school is currently doing? Their responses, even if awkward or ill informed, will demonstrate whether they have thought about the mission, at least indicating that they respect it and take it seriously.

Pepperdine is one of the few law schools that asks serious faculty candidates to fill out an application form. Many of the questions on the form duplicate information on the accompanying resume and most candidates so indicate on the form. However, the mission question requires an original response.¹⁰ Whether your "mission question" is written or oral, interpreting the response is not as easy as it might seem. First, many applicants who are supportive of the mission are surprised by the question and give a misleadingly superficial answer. For example, an applicant who responds to the mission by saying, "I am a person of the highest moral and ethical beliefs and will convey that to my students," is not telling us much. We assume that most people who want to teach in a law school share those values. But, there may be other clues in the resume or from references or mutual

poor," there is a possible disconnect between the mission and public perception.

8. There is a thirty-year old rumor that Pepperdine will not hire professors unless they sign a written oath to abstain from smoking, drinking, dancing, and a long list of other hobbies. There may be people on your faculty who claim to have *actually seen* this document. IT AIN'T TRUE.

9. *See id.*

10. The application reads:

PART E. THE MISSION OF PEPPERDINE UNIVERSITY

Pepperdine University is a Christian university committed to the highest standards of academic excellence and Christian values, where students are strengthened for lives of purpose, service, and leadership.

As a private institution under the control of an independent Board of Regents, the University from its beginning has maintained a close relationship with the Churches of Christ. Supportive individuals with a variety of religious backgrounds comprise the faculty, governing board, staff and student body of the School. The University expects from all of its students and employees the highest standard of moral and ethical behavior in harmony with its Christian philosophy and purpose. Engaging in or promoting conduct or lifestyles inconsistent with traditional Christian values is not acceptable.

Please discuss the extent and nature of your interest in and ability to contribute to the University's mission and educational philosophy as expressed above.

(followed by a blank space for a written response)

friends that this applicant would give a more thoughtful and responsive answer if prompted gently.

A second caution is that some applicants may be so eager to teach anywhere that they will tell you what they think you want to hear. A good fictitious answer may result in an interview, but a philosophy invented for purposes of an employment application will not hold up well in discussions with the committee. The committee and the faculty, if the candidate gets that far, will look for evidence that the candidate's life is consistent with the claimed interest in the mission. For example, it is more likely that a professor who is active in a church, synagogue, or mosque will enthusiastically support the mission of a religiously affiliated school.¹¹ Remember, however, that just as a proud member of the N.R.A. and the Republican National Committee might strongly support the mission of an urban law school interested in outreach to the poor, making inferences based on group memberships and stereotypes is a risky business.¹²

The candidate will quickly learn during interviews that the mission means different things to different faculty members. The candidate may be surprised, but this is normal. At many schools, the mission succeeds precisely because no one talks about it in detail.¹³ The strong consensus, it turns out, is for the mission as broadly defined, not narrowly applied. Faculty members are free to interpret it differently, but the fact that they are thinking about how to apply it to the life of the law school keeps it alive.

It is useful for the university's president, provost, or another academic officer also to interview prospective law school faculty members. That interview should ask, among other things, what the prospect understands the law school's mission to be, how clearly it was communicated, and how enthusiastic the prospect is about it. The university view of the prospect's support of the mission will not be clouded by other items on the agendas of those pushing for or resisting the hiring. If the university view is credible and is accurately reported to the law school, it furnishes a valuable perspective on how this person will fit into what the university believes the law school to be.¹⁴

11. Because matters that should go without saying usually need saying, I wish to state for the record that Pepperdine, like almost all religiously affiliated law schools, welcomes faculty members from other denominations and faith traditions. Less than one third of our faculty are members of the Church of Christ, as is less than 5% of our student body. However, our experience is that professors who are not active in their own faith cannot be relied on to support the mission of a religiously affiliated law school over time. There are exceptions, of course. But, at the hiring stage, why take the chance? The faculties of most religiously affiliated schools contain professors who were active members in a faith when hired, but whose beliefs have changed over the years. They may support the mission now out of habit and loyalty, and do so quite effectively.

12. Given my considerable naivete, you won't be surprised to learn that I was surprised to learn that an active member of a Humanist Jewish synagogue did not believe in God or that there are Evangelical Unitarians.

13. Dissection is never a good procedure for a living organism. The observer learns something, but the subject dies.

14. The Provost's conclusion that "She'll fit in quite well with that bunch of cranky, leftist crackpots down there" is full of useful information.

THE DEAN REINFORCES THE MISSION

Of course, the dean reinforces the mission in numerous ways, ranging from the dean's message in the catalog to CLE speeches to lawyers. One of the dean's primary jobs is to maintain and strengthen the mission. If the institution has grown away from its original mission, the president may charge a new dean with its restoration, a tricky and difficult job that only succeeds when faculty hiring during the next few years is driven by mission. If the law school is drifting without a clear mission and the university is unconcerned, the dean should lead the effort to define the mission and organize the law school around it. Whatever the status of the mission, the dean's involvement in faculty recruitment as the protector of the mission is crucial.

While the dean has several opportunities to ask the candidate's view of the mission, perhaps beginning with the initial interview at the AALS hiring conference, the final step is that meeting in the dean's office when the offer will be made. The dean always hopes that the candidate is an inspired choice for the position.¹⁵ The air is full of nervousness, fear of rejection, intimidation, stress, and undifferentiated anxiety.¹⁶ A few sentences in this setting about the mission, its importance to the future of the law school, and its effect on the students and future lawyers are more memorable than the earlier posturing. Like good voir dire that commits jurors to be fair or open-minded, the dean gives the candidate a final chance to respond to the mission and to commit to it.

Faculty hiring at a mission-oriented school can be eroded by overemphasizing hiring more U.S. Supreme Court clerks, Ph.D.s, or narrow specialists. While it is legitimate to change the mission of the school to fit the needs of society or the interests of the university or the law school faculty, change that results merely from drift does not inspire confidence about the vision of the school and its leaders.

15. As always, Dean Prosser said it first:

It is to be hoped, for the sake of everyone concerned, and most of all for the sake of the young man himself, that the dean has chosen well. There never was a dean in such a case who did not hope that he was about to give the world another Wigmore or another Williston. All too often he has only saddled his school with a well-meaning incompetent, unqualified to teach, to write, to think, or to do anything at all but sit and wear the dignified title of Professor—a title which he shares with every orchestra leader, every bootblack, every prestidigitator, professional hypnotist, or other charlatan in the land, and which most of us wear with what grace we can. Only too often the dean has added to his faculty a superficial skimmer of surfaces, a human phonographic recording device, who can take the ideas of other men from textbooks, from articles, or even from his own classroom notes of a bygone day, and repeat them forever without ever really comprehending them or ever adding anything of his own.

There is no law school, no matter how distinguished its reputation, that has not numbered on its faculty some such men as these. These are there because a dean has made a bad choice. One cannot always blame the dean, although of course he is always blamed. No one can be sure about the inside of a cantaloupe or a coconut; he did his best, but the fog came in just the same. The tragedy is that nothing can ever be done about it. Few die, and none resign.

William L. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257-258-59 (1948).

16. And that's only the dean. Who knows how the candidate feels?

Whether the task is to change the mission intentionally or to protect against drift, faculty hiring for mission is the greatest responsibility of the faculty and the dean.