

The Rankings Game: An Ethical Dilemma in Legal Recruitment

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Introduction

Many large law firms typically recruit from only some of the top 15 law schools as ranked by the yearly *U.S. News and World Report's America's Best Graduate Schools* (2005) along with a few regional law schools that are ranked at least in the top 50. Is it ethical for an employer to only interview candidates from certain law schools when so many factors influence a person's choice of law school? Firms believe they are making a "good" decision because hiring from those schools will maintain or increase their prestige and they believe the education provided at those schools is superior to lesser ranked schools. For example, a candidate with an "A" average at the third tier school would not be interviewed, but a candidate from Yale with a "B" average would be interviewed. This practice goes against Michael Josephson's (2002) ethical pillar of fairness. Josephson (2002, p. 12) states "fairness implies adherence to a balanced standard of justice without reference to one's own biases or interests". Further, this practice demonstrates favoritism towards some and discriminates against others who do not attend the selected law schools who may otherwise have equal job experience and legal training. According to the Markkula Center for Applied Ethics (2003, p. 1), such firms are practicing the fairness or justice approach to ethics based on Aristotle's teaching that "equals should be treated equally and unequals unequally".

Background

The recruiting process at many large law firms is often shrouded in secrecy, but understood by law students and practicing lawyers as highly selective and based on the law school attended and transcripts. Typically, the firm will interview a percentage of the class based on the school's rankings in the *U.S. News and World Report* magazine. The lower a school is ranked, the smaller the percentage of the class is viewed as viable candidates and vice versa. If a school is not deemed as "prestigious", a candidate is already handicapped by their law school choice and most likely, not given consideration. The National Association of Legal Placement (NALP) (2004, A), the governing body that law firms and law schools subscribe to, cautions firms from using this as the first criteria in selecting candidates. NALP (2004, A, p. 1) asserts "[u]se of commercially published law school rankings in screening applicants may eliminate candidates with much to offer your organization". Furthermore, NALP (2004, A, p. 4) discusses in the Principles and Standards for Law Placement and Recruitment Activities section that

[e]mployers should use valid, job related criteria when evaluating candidates. Hiring decisions must be based solely on *bone fide* occupational qualifications. ... Factors in candidates' backgrounds that have no predictive value with respect to employment performance, such as scores on examinations required for admission..., should not be relied upon by employers in the hiring process.

NALP stops short of mentioning law school grades as one of the predictive background factors, but most law schools not ranked in the top 50 espouse the belief that there is more to a candidate than his or her law school grades that firms should consider.

Discussion

Large firms believe that recruiting candidates from certain schools maintains or adds to the prestige of the firm. Nelson (1983, p. 18) notes "[t]he large law firm predominantly has been the domain of graduates from prestigious law schools". Candidates from Harvard, Stanford and Yale are more attractive to large firms due to the perceived image of prestige of the school and the superior education received there than the likes of Rutgers, Syracuse and Chapman. Law school curriculums are fairly standardized in that all students must take courses like Constitutional Law and Torts. According to Scott Van Allstyne (1982, p. 669), "degree requirements display remarkably little variation". Van Allstyne (1982, p. 669) goes on to say

[a]rguments have been made that nonetheless the more elite law schools have teachers who emphasize the interfaces of law and the nonlegal environment... This is not really a matter of curriculum, but of pedagogy, and for evaluation it has the added difficulty of elusiveness.

So if the difference is pedagogy, what is the difference of a legal education at Yale versus Rutgers? It is the perception of prestige.

Large firms also place an emphasis on law school transcripts as an indicator of success at the firm. Hiring Committees at some firms strongly believe that grades are a predictive indicator of potential success. At times, an exception has been made for a candidate who does not meet the grade criteria to be hired and the candidate fails and does not stay at the firm. In some cases, these candidates had been hired for diversity purposes. Could there be another factor influencing a person's success rather than his or her grades such as etiquette and cultural differences? Could it be that the person needs some mentoring about the politics of a mostly Caucasian male atmosphere? So many other variables can explain why a candidate is not successful. Often, those issues are difficult to address in a large bureaucratic firm with long standing traditions. Other times, firms do not believe there is a problem or they think it is the new attorneys responsibility to adjust. Clearly, grades are not the only factor in the area of attorney success and retention.

Law schools and students are quick to point out some of the flaws that hurt and discriminate against candidates not able to attend the most prestigious schools. Not all students with excellent undergraduate backgrounds can attend Harvard. Van Allstyne (1982, p. 666-667) states

[n]o matter how much the prospective law student may yearn to take advantage of the image projected by a particular law school (to secure a better entry level in the profession) and even though his qualifications (GPA and LSAT) may gain him admittance to such a school, stark economic reality may require him to attend his home state law school.

So many factors influence a person's decision on where to attend law school. After completing the monumental task of graduating from law, the non-prestigious law school graduate faces discrimination in the large firm job market. Career Services in such law schools try hard to market their students to potential employers because they know they already are faced with competition from the top ranked schools. Another flaw in using the rankings as hiring criteria are the flaws in the ranking methodology. U.S. News and World Report has tweaked the study over the years to produce certain outcomes and does not measure important factors like the quality of education (Thompson, 2000). According to Willard (1994, p. 3) NALP and other law school associations also issued a statement "cautioning against reliance on the [report] because "[s]tatistics cannot reflect such factors as the quality of faculty, curricular offerings, adequacy of library resources and quality of life" (2004, B).

Conclusion

In conclusion, large law firm hiring practices based on the U.S. News and World Report rankings should be questioned. Is it ethical to use such standards? By using the ethical pillar of fairness, the answer is no. After reviewing the various sides and flaws pertaining the issue, firms should reevaluate their hiring standards to be fair and to not show favoritism or

discriminate in the name of prestige. Also, knowing that so much emphasis is put on their ranking lists, U.S. News and World Report should reevaluate their methodology and add more relevant variables. These would include more focus on education, the student experience and curriculum (Thompson, 2000). Until this happens, large firms should approach hiring criteria from a more holistic approach.

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