

Marquette University Law School

Marquette Law Scholarly Commons

Faculty Publications

Faculty Scholarship

2008

Tales of a Law Professor Lateral Nothing

Paul M. Secunda

Marquette University Law School, paul.secunda@marquette.edu

Follow this and additional works at: <https://scholarship.law.marquette.edu/facpub>



Part of the [Law Commons](#)

Publication Information

Paul M. Secunda, Tales of a Law Professor Lateral Nothing, 39 U. Mem. L. Rev. 125 (2008)

Copyright © 2008 The University of Memphis Law Review

Repository Citation

Secunda, Paul M., "Tales of a Law Professor Lateral Nothing" (2008). *Faculty Publications*. 558.
<https://scholarship.law.marquette.edu/facpub/558>

This Article is brought to you for free and open access by the Faculty Scholarship at Marquette Law Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

Tales of a Law Professor Lateral Nothing*

PAUL M. SECUNDA**

I.	INTRODUCTION	125
II.	SO, ARE YOU EXPERIENCED?	128
	A. <i>The Right Stuff</i>	128
	B. <i>Blogging to Be a Lateral</i>	130
III.	WHERE DOES ONE FIND THE LATERAL MARKET EXACTLY?	132
IV.	FIRST CONTACT	135
V.	THE NOTHING INTERVIEW	136
VI.	THE EVERYTHING INTERVIEW	138
VII.	THE WAITING GAME	140
VIII.	REJECTION IS A DISH BEST SERVED COLD?	142
IX.	THE OFFER: "YOU LIKE ME, YOU REALLY LIKE ME?"	143
X.	THE NEGOTIATION	146
XI.	"SHOULD I STAY OR SHOULD I GO?"	149
XII.	CONCLUSION.....	150

I. INTRODUCTION

It always struck me as odd that even though law professors spend an inordinate amount of time thinking and talking about moving to another law school "at the next level" through the later-

* With apologies to Judy Blume and her masterful, childhood classic: *Tales of a Fourth Grade Nothing*.

** Associate Professor of Law, Marquette University Law School. Substantial portions of this essay ran as part of a serial of posts on the Concurring Opinions blog, http://www.concurringopinions.com/archives/law_school_hiring_laterals/, from February 4th to 21st, 2008. Professor Secunda thanks all those who supplied comments to those blog posts. He is also co-editor of the Workplace Prof Blog, http://lawprofessors.typepad.com/laborprof_blog, of the Law Professor Blogs Network.

aling process,¹ there is surprisingly little written about the lateral hiring market for law professors. There are numerous articles and blog posts on how to score that first entry-level job in the legal academy,² and there is even a whole symposium devoted to the meaning of the law blogging revolution for law schools and for law professor aspirations to move up in the law professor world.³ However, in this Essay, I want instead to spotlight the less-discussed and more mysterious law professor lateral process.⁴ In short, this is an initial attempt to master the mysteries of the law professor lateral hiring market. I seek to fill in the knowledge gap through a first-person narrative, sometimes funny, sometimes

1. I do not think there is one happy hour or informal gathering at law conferences and symposia throughout the country—or world—where the topic of changing schools does not come up. Professor Orin Kerr aptly points out in a comment to this series of posts on Concurring Opinions that,

[T]he potential hire-ors are just as interested in finding out who is available as potential hire-ees: If I'm at a conference and I'm having lunch with a junior person who is writing good stuff and who I think is underplaced, I may simply ask them if they're interested in moving at some point. I may not know of an opening right then, but I occasionally get inquiries (either from my own school or from other schools) asking who is good and available; if a candidate is open to moving, I'll file that in the back of my head for the next time I get a call.

Posting of Orin Kerr to Concurring Opinions, http://www.concurringopinions.com/archives/2008/02/law_professor_1.html#comments (Feb. 6, 2008, 18:40 EST).

2. As far as law review articles on the entry-level law professor market, my favorite one by far is by my former colleague, David W. Case, *The Pedagogical Don Quixote de la Mississippi*, 33 U. MEM. L. REV. 529 (2003). On the other hand, numerous bloggers have given oodles of advice to the uninitiated. Those who have given invaluable advice to those interested in becoming entry-level professors include such law professor luminaries as Brian Leiter, Orin Kerr, Eric Goldman, and Brad Wendel.

3. See Symposium, *Bloggership: How Blogs Are Transforming Legal Scholarship*, 84 WASH. U. L.R. 1025 (2006).

4. To be clear, my objective here is not to explain why law professors want to lateral to another school in the first place, but instead to get into the nitty gritty of what it takes to lateral and how the process and mechanics work. See, e.g., Posting of Einer Elhauge to The Volokh Conspiracy, <http://volokh.com/posts/1179779013.shtml> (May 24, 2007, 09:16 EST) (discussing why professors lateral to other schools).

downright tragic.⁵ I feel as well suited as anyone to undertake this delicate task. I offer these humble observations as someone who has been on the lateral market for the last three years and who has been turned down by numerous schools—two of which occurred after fly-back interviews; I have also turned down a lateral offer and finally, accepted a lateral offer from Marquette University Law School (“Marquette”) in 2008.⁶ Additionally, I served on the University of Mississippi School of Law’s (“Mississippi”) Faculty Appointments Committee, which hired lateral candidates in 2007 and 2008. My hope is to bring some much-needed light to this process both from a candidate’s and an appointments committee member’s perspective.

The Essay starts from the very beginning of the lateral hiring process by establishing some basic guidelines to determine whether one might have the necessary credentials to take the plunge into the lateral market. From there, the Essay discusses the unique nature of the law professor lateral market, the best ways to break into that market, and how to handle the different stages of this process, such as the first contact with a law school, the preliminary or “nothing” interview, the call-back or “everything” interview, the waiting game, the rejection, the offer, the negotiation, and finally, the decision of whether or not to make a move to a new school.

Before going any further, however, like any good professional in my line of work, I start with a very important disclaimer. *There may be as many factors beyond your control about whether you obtain a lateral job as those that are within your control.*

5. Like Professor Case, I believe the device of the personal narrative is under-utilized in legal writing. See Case, *supra* note 2, at 530 n.2 (“Personal narratives and stories are not traditional fare for the writings and teachings of law professors. There are, however, certain instances where such personal experiences are instructive and add important accounts of successes and failures to the relevant ‘historical record.’ In my view, the narrative voice is an important, and perhaps underutilized, tool in deconstructing the arbitrary processes of the legal academic hiring market.” (citations omitted)). The same premises equally apply to the legal academic lateral hiring market.

6. Besides the identities of the schools where I started, the University of Mississippi School of Law (Mississippi), and the school where I ended up, Marquette University Law School (Marquette), I will refer in vague terms to the other schools I have had experience with both to protect the innocent, and more importantly, to protect myself.

These outside-of-your-control factors include whether you are a junior or senior faculty, whether you are tenured or not, what curriculum slot the school is looking to fill, what demographic diversity you bring, the crazy politics of a place, and even the crazy interior world of one faculty member's mind who has made it his or her life's mission to "get you" for reasons not apparent to anyone. Nevertheless, focusing on the factors over which you do exercise some control, this Essay's goal is to decipher the "rules of the road" so that you will be better able to become a great candidate and land the job of your dreams in legal academia.

II. SO, ARE YOU EXPERIENCED?

A. The Right Stuff

How do you know if you are potential lateral material? Most seem to agree that the number one factor is whether or not you are a prolific writer. Not surprisingly, most schools want an objective way to determine whether you will be an ongoing, contributing scholar on their faculty who will not shirk after tenure. Good teaching and good contributions to faculty committees may also help, but I do not know of anyone who got a lateral position for winning teacher of the year or for chairing the Admissions or Faculty Appointments Committee.

Also, it is not enough that you write a lot. A lot of people these days write a lot. There needs to be quality to your writing, measured by who publishes your articles, books, and other writings, and increasingly, how many times your articles are downloaded on the Social Science Research Network ("SSRN") or featured on blogs or other on-line resources. Other types of publications, like treatises, casebooks, and teacher's manuals, are adequate and are part of a well-rounded CV, but most schools want some sign that the person is an original, creative thinker whose ideas help to advance or change their discipline in significant ways.

What else besides publications? People may disagree on this one, but a national profile is normally essential. Scholars no longer achieve that profile just through law review articles but also through blogging and networking at national conferences like the Association of American Law Schools ("AALS") Annual Conference, the Southeastern Association of Law Schools ("SEALS"),

and the Law & Society (“LSA”) Annual Meeting.⁷ The more people who know you, the more likely you will be invited to symposia and conferences where your work will be highlighted. Of course, the more your work is highlighted nationally and virtually; the better chance you will have to make a name for yourself, though some people have achieved this notoriety in exactly the wrong way.

Even at this initial point of determining whether you would be a good lateral candidate, you should consider whether you have been someone who has taken the initiative in doing projects outside of your institutional responsibilities; however for some schools it may be important if you are dedicated to institution building, especially with newly-founded law schools. Schools will likely be interested in knowing whether you have been an officer in an organization like the American Bar Association (“ABA”) or AALS, have helped put together symposia or conferences in your discipline at your school or elsewhere, or have been quoted, or have written op-ed or articles in major newspapers and magazines. These are all indicia that you will bring welcome attention to your new institution and will help that institution sell itself to the greater legal academic community.

Finally, there is much disagreement over whether it is better to go on the lateral market pre-tenure or post-tenure. On the one hand, the thought is that pre-tenured individuals are more marketable because schools can take a chance on you without the added risk of permanency if things do not work out. Of course, junior faculty members are much cheaper and do not demand such perks as parking spots, their own research center, and expensive digs in the city.⁸ On the other hand, a post-tenure candidate may allow a school to avoid issues over how long a person must wait until they apply for tenure, whether prior years of service at another school count toward tenure, and whether previous written articles count towards tenure at the new institution. Also, the fact that another school has done the external reviews and voted posi-

7. There are, of course, many other such conferences. However, it is probably better to go to at least some conferences where there will be people outside of your discipline. Remember that law school appointment committees are composed of people from different disciplines, and it is great to network beyond your field of scholarly interest.

8. Posting of Brian Leiter to Brian Leiter’s Law School Reports Blog, <http://leiterlawschool.typepad.com/leiter/2008/01/so-how-does-nyu.html> (Jan. 22, 2008).

tively on your tenure means that there might be less likelihood that that you will someday end up on the "Deadwood Report."⁹ In any event, I know people who have lateraled pre-tenure, post-tenure, and even in their tenure year. Although it is likely an important consideration to weigh in the balance, it is not clear whether your tenure status will work dispositively for you or against you.

What makes it all the more difficult to determine the correlation between certain credentials and success on the lateral market is that no one will probably ever know how many professors consider lateraling, go through the interview process, etc. However, we do know that even with increasing numbers, the overall number of professors lateraling to a new law school in any given year is still relatively small. For instance, a list of lateral moves by law professors in 2007 compiled by the Concurring Opinions blog showed some 125 lateral moves.¹⁰ On the other hand, the 2006-2007 AALS Statistical Report on Law Faculty reports there are 7,618 law professors at the Professor, Associate Professor, or Assistant Professor level.¹¹

B. Blogging to Be a Lateral

Before continuing on to the characteristics of the lateral market, I want to spend a little more time on the issue of whether blogging can help a law professor become more viable in the lateral market. Recently, Professor Jay Brown of the University of Denver School of Law posted an interesting new paper on SSRN, *Of Empires, Independents, and Captives: Law Blogging, Law Scholarship, and Law Rankings*.¹² Among his thought-provoking arguments is that blogging may be a cost-efficient way for law schools to increase their rankings:

9. "The Green Bag Journal plans to put law school's extravagant claims about having the best and greatest faculties in the universe to the test." Posting of Paul Secunda to Concurring Opinions, <http://www.concurringopinions.com/archives/2008/02/> (Feb. 26, 2008, 10:13 AM CST).

10. Posting of Dan Filler to Concurring Opinions blog, http://www.concurringopinions.com/archives/2007/07/law_school_facu.html (July 13, 2007, 22:01 EST).

11. Directory of Law Teachers Data, <http://aals.org.cnchost.com/statistics/0607/DLT-new/gender.html> (last visited Nov. 10, 2008).

12. J. Robert Brown, *Of Empires, Independents, and Captives: Law Blogging, Law Scholarship, and Law School Rankings* (Feb. 16, 2008), available at SSRN: <http://ssrn.com/abstract=1094806>.

The paper . . . studies the impact of law blogging on rankings in the US News. In the short term, blogging can disproportionately benefit law schools and faculty outside the top tier. Blogs can enhance the reputation of the sponsoring faculty member, enable them to route around the biases inherent in the system of law review placements and SSRN downloads, permit a level of participation in the legal debate that might otherwise not be available, and facilitate the dissemination of information important to alumni and other constituencies. Most critically, however, they represent a cost effective mechanism for improving a law school's reputational rankings and, perforce, its overall rankings in the infamous US News and World Report.¹³

In addition to these valid points that Professor Brown makes, I think it is important to add another potentially provocative assertion here—good blogging can be an excellent way to not only get noticed on the lateral market but also for getting hired in that market. As Professor Brown argues, some day higher-ranked schools may come to realize the advantage of having a high-profile blogger on their faculty, and rather than start their own faculty blogs or encourage their faculty to start blogs, they will instead “purchase” the services of an already well-regarded blogger for their school.¹⁴

Now, I do not think law schools have started to hire law professor bloggers in droves yet, but there is a substantial list of full-time bloggers who have moved schools in the last three or so years. I am not arguing that super-star law professors like Brian Leiter would not have made his way from Texas to Chicago without his multiple blogs. I think this theory works best with someone who is in the lower second tier or in the third and fourth tiers. These individuals have a harder time getting noticed in the law professor community from their current academic platforms and are looking for ways to get their work out and to be invited to conferences and symposia. So not only can blogging certainly help

13. *Id.*

14. *See id.*

with one getting newspaper and media interviews, but it also can pique the interest of law school appointment committees.

Finally, if Professor Brown is right that good blogging helps increase a school's reputation, then it is in a school's best interest to start hiring bloggers to increase their reputation scores. Yes, I recognize my own self-interest in making this point, but I really believe it helped me during the lateral process that more people already knew who I was through my work on the Workplace Prof Blog. Again, I think this point is more valid for lower-ranked schools where there is more room to grow in reputation ranking. Nevertheless, even elite schools that are grouped closely together in various rankings may do well to get an added public relations push that comes with having a well-known blogger on faculty.

III. WHERE DOES ONE FIND THE LATERAL MARKET EXACTLY?

Having considered credentials needed to succeed on the lateral market, including how to become better known to more law professors, how does one actually put oneself out there in that hard-to-find, Cheshire-like, lateral market? Especially during my first year on the lateral market, I received conflicting advice about how one puts oneself "out there." Should you send letters to school appointments committees you wish to target? Should you fill out an AALS Faculty Appointment Registration ("FAR") form like entry-level candidates do and relive glorious meat market days at the AALS Faculty Recruitment Conference in Washington, D.C.? Or should you simply wait to be called by those who are interested in having you come to their schools?

Unfortunately, there is no right answer to these questions both because lateral candidates have succeeded in following all of the above methods and because there is no obvious "meat market" for laterals the way entry-levels have with the AALS. So here is my best advice. Step one: get to know the people you need to know in your field and in other forums in which you participate. I know that is oblique, but really what you should do is find out who are the movers and shakers in your field overall, and get to know them and have them get to know you. Why? When hiring committees start lateral searches, they not only canvass people on their committee and friends in the academy about good prospects, but they also reach out and call those whose opinions are most respected on these matters. When that call is made to Madame

Mover and Shaker in your field or to Monsieur Bigwig Blogger, and they are asked who is good and upcoming in their field or in general, you want your name to be one of three or five names on their lips.¹⁵ Preferably you want to be the first one they mention with some enthusiasm and knowledge about your writings and other accomplishments.

Unfortunately, it is hard today to get people to recognize junior scholars merely by publications alone. Again, it is important to self-promote, hopefully in a tasteful way, by blogging or guest-blogging. Also consider asking scholars in your field to give comments on your articles. Do not be shy in inquiring for assistance on your pieces; only one person has ever told me “No.” Most are flattered that you recognize them as one of the top people in that field and like the idea of helping you craft the argument while it is still being developed. Also, by attending and speaking at conferences and symposia, you will inevitably have sufficient time to get to know your elders. There is nothing quite like a one-on-one lunch with someone whose writings you used to admire in law school.

This aggressive networking is especially important for those of you who wish to lateral from lower-ranked schools. No offense against my former home school of Mississippi, but sometimes you need to shout to let people know that you exist. My blogging at Workplace Prof Blog was key but also was my friendship with fellow bloggers at Concurring Opinions,¹⁶ The Volokh Conspiracy,¹⁷ PrawfsBlawg¹⁸ where I guest blogged in August 2006, Feminist Law Professors,¹⁹ Brian Leiter’s Law School Re-

15. There is a potential problem with appointment committees depending too much on the recommendations of bigwigs in a given field. However, as Professor Kerr pointed out in the comments to one of these posts on Concurring Opinions, although there is some reason to believe that these individuals will often recommend their friends, former students, or those who genuflect in their general direction rather than the people that are really the best out there . . . in the land of the blind, the one-eyed man is King, so it’s natural for committees to at least seriously consider people who recognized bigwigs say are great.

Kerr, *supra* note 1.

16. See <http://www.concurringopinions.com> (last visited Oct. 25, 2008).

17. See <http://volokh.com> (last visited Oct. 25, 2008).

18. See <http://prawfsblawg.blogs.com> (last visited Oct. 25, 2008).

19. See <http://feministlawprofessors.law.sc.edu> (last visited Oct. 25, 2008).

ports,²⁰ Conglomerate, Legal Theory Blog,²¹ and the TaxProf Blog,²² home of Blog Emperor Paul Caron.

Having said that, really the most important way to get on the lateral market is getting known so people will contact you instead of vice versa. Nevertheless, there are other ways that junior professors have found their way to the Promise Land. For instance, I know of a number of professors who have filled out the FAR form and gone back to the meat market. Of course, the downside of this is for those of you who do not want their home schools to know that you are looking. In my second year of trying to lateral, I had a good reason to be looking because there was a sickness in the family and because we wanted to move for geographical reasons. As a result, I told my Dean and Associate Dean that I was looking, and they were extremely supportive. Interestingly, although I received about five or six meat market interviews, I did not go to Washington that year. Instead, I visited some of those schools in person and declined interviews that were not good geographical fits. As it turned out, I did receive a lateral offer in my second year of looking but not through the meat market. The offer I received was the result of a friendship with a big name in my field on that faculty and because I reached out to friends in the blogosphere who were at that school.

On the other hand, the person we hired last year at Mississippi while I was on the appointments committee was a lateral whom the committee knew of both inside and outside of the FAR process. We actually reviewed her FAR Form and did an initial interview with her in Washington. I know another person who used the FAR process to move from a Fourth Tier school to a First Tier school this year. All this seems to suggest that as long as you do not have concerns about people knowing you are looking, you might as well go forward with all the approaches—get known, file a FAR, and target letters and emails to appointments committees. Although I think letters are by far the least effective method, as no one wants to be added to the bottom of a long stack of papers, you just never know.²³

20. See <http://leiterreports.typepad.com> (last visited Oct. 25, 2008).

21. See <http://www.theconglomerate.org> (last visited Oct. 25, 2008).

22. See <http://taxprof.typepad.com> (last visited Oct. 25, 2008).

23. There might also be some advantage to pointing out in a letter your particular reasons for wanting to be at the targeted school. This could range from the fact that you or your spouse's family is from that area, the school has a

And that, my friends, sums up the lateral market in general. You just never know. Sometimes you try to put yourself “out there” without actually being “out there,” and other times you do nothing proactive and are “out there” anyway. Go figure.

IV. FIRST CONTACT

Having decided that you have what it takes, and somehow finding that elusive lateral market, you have started to receive calls, emails, letters, and even a text message or two. Thank goodness for Blackberries. Not surprisingly, the first question one is normally asked when contacted is some version of the question, “Are you really genuinely interested in coming here or are you just pulling our chain?” I am not sure if the question is completely rhetorical, but in any event it is important to state enthusiastically for the record that you would give your left arm and perhaps the naming of your next child to be deemed worthy of the institution calling you.

However, first, let us consider some obvious points and some not so obvious points about these first contacts. Obvious: do not say you might be interested depending on how other schools work out—even if this might be true—and you would be happy to consider said institution as a “safety” or “back-up” possibility. Not so obvious: do not act desperate. This crucial point bears repeating. *The absolute worst thing you can do is make the appointments committee believe you need to leave your institution because you did something wrong there, or you are just a malcontent.*²⁴ The lateral process represents a pulling-and-pushing dynamic. You never want to be too far on either side—pulling away too much because of lack of interest or pushing too hard to get in the door. So saying, “This is my dream job. I would leave my spouse for it,” even if true, is something better to keep mentally in the upstairs compartment.

One’s real or faux enthusiasm is sometimes hard to moderate, especially when most people who call you from the appointments committee will heap praise on your credentials and make it

particularly strong program in your field of interest, or because of recent retirements or lateral moves at the school in areas in which you teach and research.

24. In other words, you want some plausible story about why you are leaving your current school that does not leave the impression that you are just not a very good candidate.

seem that you just successfully lateraled over the phone. Do not buy into it. This is a long process, and the first contact is essentially a feeling-out process where the interested school wants to express the genuineness of its interest, to explain to you, at the outset, why their school is so amazing, and also to make sure you have basic social skills and will not have to be stuffed in a closet once they hire you. On your side, you must act appropriately flattered by the professed interest, ask not-too-sensitive questions at the outset (like: "So how are you going to solve that student diversity problem of yours?"), and talk knowledgeably about the school without giving your hand away.

During this first contact, some schools will ask to meet you at the AALS meat market in D.C. Some will invite you to do a phone interview or ask you to do a preliminary interview at their school, while others will cut right to the chase and ask you to do a fly-back/job-talk interview. Still others will just chat you up and may never be in touch with you again in this lifetime or send you a polite reason for why they rejected your candidacy when you inquire by email or phone on the progress of your candidacy. Here is a hint: if they do not contact you again, it is not an oversight or mistake. Rarely does following up lead to a good result. That being said, I have known some committees to wait months before getting back in touch with a candidate. In any event, if you have not heard anything by March or April of a given academic year, chances are you are looking for nothing more than a podium-filler visitorship, although this could be something you might be interested in. In any event, the take home point of this section is to find a nice balance between pushing and pulling during this early stage of first contact and for the love of everything that is sacred on this entropic earth, *do not act desperate!! Please!!!*

V. THE NOTHING INTERVIEW

Of course, when I call this part of the lateral process the "nothing interview," I mean that somewhat figuratively, and I am speaking from the candidate's point of view. Really, I do not know anyone who has been hired based solely on one of these initial interviews. The "nothing interview" can literally mean no preliminary interview at all, as when you are invited directly back to the school for your fly-back/job talk interview. This situation is somewhat less frequent, but I have done interviews this way with at least three schools.

More common is some sort of preliminary interview. This can take place in person or over the phone. I personally have not done a teleconference interview, but I know others who have, and those people are mostly universal in the discomfort they felt going through this disembodied process. There is nothing quite like having questions thrown at you by four or five people thousands of miles away and having to answer those questions without getting the sense of whether they are laughing silently at your responses or are making outrageous, googly-eyed faces to their colleagues. Appointments committee people out there, if you are reading this, please do us all a favor and stop the madness.

Preliminary interviews are usually held at the AALS meat market or at the school itself. Again, even though I did fill out the FAR form one year, and was invited back for interviews, I did not go as a candidate. I did, however, interview three or four lateral candidates from the other side this past year as a member of the Mississippi appointments committee. I personally think law school appointments committees should separate lateral interviews and entry-level interviews at the meat market. Otherwise, it is like comparing apples and oranges. The committee should decide what it is looking for and go from there. In any event, as some of you know, there is only so much you can learn from a candidate in twenty to thirty minutes. If, on the other hand, you are the candidate, you want to radiate energy, enthusiasm, intellectual curiosity, and engagement. There is some to gain and much to lose in this environment,²⁵ but you want the committee members yearning to learn more about what exactly makes you tick.

One other point about the “nothing interview.” Some schools might invite you to a meal near their campus, at the meat market, or even at the AALS Annual Conference in January if you happen to be there. Such impromptu gatherings are actually better methods for gauging the personality of the candidate and whether he or she will fit into the law school culture, which is of course very important. But it may be harder to explain your latest theory

25. Professor Michael Risch in a comment to a Concurring Opinions post on this subject put it best: “Sounds similar to the advice I used to give my litigation clients: ‘You can’t win your case in a deposition, but you sure can lose it.’” Posting of Michael Risch to Concurring Opinions, http://www.concurringopinions.com/archives/2008/02/law_professor_1_3.html#comments (Feb. 7, 2008).

on why inter-disciplinarity is ruining the academy if you have juice from your filet running down your chin.

Finally, you may be asked to come directly to the school for a preliminary interview. Appointments committees, these are a colossal waste of time. I did two of these in my second year of looking and kept thinking to myself, "Why don't I just stand up and give a job talk," and then they can feed me lunch. It makes no sense to do an hour interview while sitting around a table with somewhere between six to eight people who ask again whether I *was really* interested in lateraling. Although I wanted to be polite as possible, I felt like saying that I do not usually travel close to 1000 miles to meet new people. Interestingly, from these two interviews on campus, two different things happened. One school decided not to invite me back, and the other school decided to hire someone else before deciding to call me back again. I guess in retrospect I did not answer the genuine interest question so well. So, it behooves the appointments committee and the candidate to get on with it and either spend little time on or completely skip this "nothing" interview part of the process.

VI. THE EVERYTHING INTERVIEW

The "everything" interview is the fly back/job talk interview where you not only need to show up at the school of your dreams and behave reasonably well, but you have to "stick the landing." By sticking the landing, I primarily mean giving a gangbusters job talk. Yes, you will go on a whirlwind adventure at the lateral school for twenty-four hours, where you will gorge yourself on food, speak to everyone including the custodial staff and a few visitors to the law school who are just walking through, and stay at the swankiest hotel that school has to offer. All fine and good, though not for the waist-line, but really here is what the food, office interviews, and everything else boils down to: just be a normal, everyday person. Now, I realize this will be hard for some of you, (and shoot, who am I kidding, me), but try not to eat with your hands, or off of someone else's plate (my problem); keep yourself from blurting out your professed love for Barry Manilow or Gary Glitter, and do not start laughing maniacally when what the other person just said was not even funny. Just chill.

However, do put all of your effort into the job talk that you will give normally during lunch time in front of a good segment of the faculty. Here are some tips for this all-important event. First,

do not eat before your job talk. Have someone put some food aside for you for afterwards. Second, not everyone will be riveted to your speech. I have given about five lateral job talks, and I have witnessed someone reading a newspaper and book during my speech, looking over their email on their blackberries, talking in a rather loud voice to their friend about something about fishing, and even falling asleep; needless to say, I did not get that job. Try not to be unnerved by this. In one of my speeches, I could not quiet the inner voice that was telling the senior female faculty member in the back corner of the room to "Put down the newspaper and listen!" I never got back on track.

As far as the presentation itself, you should try to give a piece that shows how you have advanced scholarship in your area of the law and that you are a creative and original scholar. Most schools want about a twenty to twenty-five minute speech, followed by some equal time for questions and answers.²⁶ Do not put the faculty to sleep by giving an hour snoozer. You do not want to finish your speech and have the faculty run out to get to class or just to get out. Realize also that many schools will videotape your presentation for missing colleagues. I do not know how you all feel about it, but the word for me is "unnerving."

Schools do differ here in what they want. As far as my specific experiences, one school I went to made it like an appellate argument—with aggressive judges on the bench. They basically wanted to see if I could survive an antagonistic faculty I guess. I spoke for about two minutes before being interrupted and attacked over what was not the main point of my paper. That dialogue ended up taking a substantial part of my time and I never got back on track. Of course, I did not get an offer there either, which I figured out when my meeting with the Dean after the speech lasted for about five minutes. What I would say to the appointments committees out there is that your candidate will appreciate it if you allow him or her to get through most of the job talk and then let the faculty have at it. One school in particular did a wonderful job of asking for questions to be held and then wrote down a list of peo-

26. Another hint—if there are no immediate hands after you finish your presentation, standing around and gawking at people in the audience is not the best thing to do. Instead, ask in your most confident voice, "Are there any questions or comments on my thesis?"

ple who wanted to blow me out of the water in an orderly, polite manner. I did not get the offer there either.

To stick the landing, I think it is important that you speak without notes in a conversational tone if at all possible. No shocker here, but faculty are not impressed with people who read from their papers like they are reading a book or look like they are dawning (praying for the uninitiated) because their head is bobbing up and down so frequently. Similarly, in answering questions, no matter the tone of your inquisitor (I mean questioner), keep it on an even keel. No one appreciates combative, defensive answers or a patronizing look that screams, "Gosh that was a moronic question. Are you really a professor?" Of course, it is also good that you do not break down and cry when you are asked a question you have no earthly idea about or which you realize quite late in the game that you should have probably included in your paper. Here is another hint I learned from one of the better people I had the privilege to listen to: no matter how asinine or mean-spirited you believe a question is, you should begin your answer with, "That's a great question"

In any event, when you are done with the job talk, take a deep breath and hopefully close the deal. On the other hand, I have given such stinkers that one appointments committee head took me to the school cafeteria and just slowly and sadly shook her head back and forth. I did not get that job either.

VII. THE WAITING GAME

Maybe it is better stated that this is really "The Crying Game," with a bizarre, upsetting ending a lot of the time just like that movie.²⁷ You have now made it through the "everything" interview, and you are sitting back nervously in your office or home waiting for the phone to ring, an email to chime in, or a snail mail letter to arrive. Snail mail is never a good thing in these situations, and you have to wonder after having spent all that time invested in you, what type of nimrod would be so tone deaf to send you a form letter saying to never bother them again. I can remember being disappointed during this period when my mother, wife, children, or eighty-five year-old grandmother was on the other side of the line.

27. THE CRYING GAME (Channel Four Films & Palace Picture 1992).

It is hard to have a good response to your five year-old son when he asks, "Daddy, why do you sound disappointed I called?"

In any event, do not, I repeat *do not* give into temptation and call or email your contact at the school. Resist this incessant impulse, do not rationalize why you should call, for instance, to see if you left your jacket at the school—just wait. You are not going to increase your chances of an offer by acting like a persistent pain-in-the-neck. Indeed, if anything, it might give those who are about to vote on you a look into the future about what it might be like to have you on the faculty. The appointments committee will call you when they need additional information to complete your file, usually references from fellow faculty or student evaluations, or when they have something important to say to you. It is extremely unlikely the person on the other end of the phone is going to say, "You know that it is great you called/wrote because I meant to tell you a week ago that we wanted to make you an offer. I've just been too busy."

In any event, the lack of contact may be preferable to some of the the waiting game experiences I have had over the years. In my first year on the lateral market, I was under the impression that since those who I had dinner with at my fly back interview were talking as if I had already been made an offer and the whole thing was a *fait accompli* that it was just a matter of time before the official offer would come from the Dean. In retrospect, it should have dawned on me that because I never met the Dean of that school during the interview, and have not to this day, an offer was really not all that likely. In any event, about a month later I told my friend about my current situation at this school, at which said so-called friend blithely informed me that my shoo-in job had been given to another person. Talk about an awkward moment. When the head of the appointments committee got in touch with me later that night, I started the conversation by saying that I already knew that I did not get the position, which turned into another awkward moment. He was a none-too-happy camper that the cat got out of the bag; appointments committees out there, let this be a lesson. Make sure you call all your candidates before having your committee and the successful candidate tell the world that he or she got the job. It just might save you from saying embarrassing things to the rejected candidate such as, "I'll bet someday you'll be the head of an appointments committee turning me down," which of course made me feel a whole lot better.

I have also been in a waiting game situation where I really never got a final answer. I stayed in touch with one committee for over *three months* as they interviewed other candidates. I was finally told I was not their first choice but that anything was still possible. Actually, if you are told that, "it doesn't look good, but you never know," say you do know and move on. You certainly do not want to go to a school that has made it clear that you are not their first choice and are less than enthusiastic with you joining their faculty.²⁸ Foot dragging is never a good sign.

Finally, this may be hard to believe, but you may never get any type of answer. In one situation, the one from the last section in which the appointments head shook her head sadly at me, I never really got a follow up decision until I wrote to the school and basically asked, "I was rejected by the committee, right?" The Chair of the committee just agreed, as if to say, "Duh, you would think that you would have been more self-aware of your own crashing and burning." You would think. In any event, as difficult as this may be, the overall advice to glean from this section is *wait*. Then wait some more. And guess what? If you are never contacted, chances are you probably did not get the job offer anyway.

VIII. REJECTION IS A DISH BEST SERVED COLD?

I know, I know. It is "revenge" that is the dish in question, but it seems to me that rejection is also quite a frosty platter as well, especially after going through a longer version of the waiting game. Believe me when I say, anyone who goes through the lateral market will be rejected at some point. As my co-blogger at Workplace Prof Blog, Professor Rick Bales, aptly put it to me, "Folks entering this market need to know that they're not going to hit a home run every time, and that what may be a home run in one school's ballpark may well be a foul ball in another school's ballpark." And, boy, have I had my share of foul balls.

In the last couple of sections, I have described the ways in which I heard about the rejection of my candidacy, and for my own mental health, I do not review them again here. Instead, I want to focus on how to turn rejection into a constructive enterprise, or

28. To be clear, it may be better to take a job in some circumstances even if you are a second or third choice. You may never be a first choice. However, my larger point is to not go to a place where there is a lack of enthusiasm or if there appears to be misgivings about you coming from the beginning.

better put, how to respond to rejection properly. It may be obvious to some, but a rejection may only be an initial rejection. Because committee members, curricular needs, and just school politics change, it is conceivable that you may have another opportunity to revisit a candidacy with that school in the near future. Remember my initial caveat; there are many, many factors beyond one's control in the lateral market, and a rejection is not necessarily a rejection of you personally. The point is not to burn any bridges if there is even a remote possibility that you could see yourself going to that school in the future. Do not respond to a rejection by saying: "Fine! That's just fine! I'll be laughing when I am choosing between Harvard, a federal judgeship, and a sweet government position in a few years!" Suppress the urge.

Indeed, in a frank discussion with the head of a lateral appointments committee that ended up not having me back to their school, he explained that lateral hiring is a multi-year process, not just because you might be offered a look-see visitorship instead of a permanent position in the future, but because it may take a few years of interaction with a school before they are ready to move on your candidacy. As an example, he discussed a situation where his school identified a prospect in the Fall of 2002, invited that person for a visit in the Spring of 2006, had that person actually visit in the Fall of 2006, and then they made an offer that was accepted in the Spring of 2007 to join that faculty in the Fall of 2007. So five-year courtships in the lateral market can and do happen. So, as Monty Python pointed out in *The Life of Brian*,²⁹ one should always look on the bright side of life. When in your lowest of low moments, just remember that the lateral market has a funny way of working out, and that rejection call or email may be just the start of something great.

IX. THE OFFER: "YOU LIKE ME, YOU REALLY LIKE ME?"

So, congratulations, after putting yourself through hell and back and sweating out ten pounds of water weight, you have finally received a lateral offer from a school. The process is over, right? Wrong. There are still some remaining issues to tackle including what to say and not to say during that first conversation with the dean—who will now take over from the appointments

29. THE LIFE OF BRIAN (Handmade Films Ltd. 1979).

committee head, how to negotiate for different terms and conditions, and finally, how to handle acceptance and other remaining matters like "The Move."

First, how you react to an offer probably first depends on what type of offer you receive. It seems that a number of years back, it was not unusual for a school to offer a candidate the look-see visit. The idea was that a year visiting the place would be mutually beneficial for both the school and the candidate, especially if the candidate's head started turning around and spewing vomit or, on the other hand, if the candidate discovered a faculty culture that reminded him or her of a perpetual AALS conference. Otherwise, it might be best to part on amicable terms after a year while at least pretending still to be friends.

On the other hand, there seems to be an increasing trend, as witnessed by this year's The Faculty Lounge Blog lateral moves list,³⁰ for schools just to offer a permanent position from the get-go. This seems to be more common at the non-elite schools and less likely at places like Harvard, Yale, Mississippi, or Marquette. In any event, there are some very good blog posts by others on the merit of going the visitorship approach, including discussions on the important point that women and men with children have a much harder time picking up and visiting for a year.³¹

Let us assume you are made a permanent offer. The important point here is that there is nothing wrong in telling the dean that you are thrilled to learn that the school is making you an offer. Again, it is probably not a good idea to exclaim that your next child—of either sex—will be named after said dean. In fact, it is almost never a good idea to accept the offer on the spot.

Here is why. First, it may be that the dean does not have all the specifics of your hire. In one of my experiences, the dean was new to the school and needed to check with others on the law fac-

30. Posting of Dan Filler to the Faculty Lounge Blog, <http://www.thefacultyounge.org/2008/03/the-2008-law-fa.html> (Mar. 28, 2008, 00:02 EST).

31. For comprehensive analysis of the visitorship versus permanent position debate, see Christine Hurt's two-part series on the Conglomerate Blog. Postings of Christing Hurt to Conglomerate Blog, http://www.theconglomerate.org/2006/01/junior_law_prof.html (Jan. 16, 2006); *see also* Posting of Brian Leiter to Leiter Reports, <http://leiterreports.typepad.com/blog/2005/02/page/2/> (Feb. 11, 2005, 13:38 EST).

ulty and across campus to determine things as crucial as salary, course load, and tenure policy. Even in my other hiring situation, there was much to be determined through talking to other people around campus. Second, there will be plenty of time for more in-depth negotiation later. At present, it is enough to say that you are honored and humbled by the offer. You should probably let the dean do most of the talking and hopefully you will hear him or her say things like, "We are excited about the prospect of you joining our faculty," instead of, "Phew! That was a close one. You barely scraped by." This is also not the time to tell the dean that you are planning to take sabbatical your first year or that you are dead set on making a play for the Associate Dean position.

Also, this goes back to the pushing and pulling dynamic that I discussed in an earlier section. Now that it is clear that the school wants you, you have some leverage. This is not to say that you want to metamorphosize into a large disgusting bug. It is fair, however, to use the new power dynamic appropriately to your advantage. For instance, you may decide that even though you love the place, it is necessary to have the dean pay to send you and your family to check out the place again in more detail. At least the two Deans that I have dealt with have been more than happy to pay for this expense. Such a trip may give you a chance to get to know future colleagues and to figure out whether said school is really excited and enthusiastic about you coming to their school.

Also, by taking your time with the offer, you can do the law review expedite process, only this time with schools. I think there is nothing wrong with telling schools that are still in the process of considering you that you now have an outstanding offer. It is amazing sometimes how schools that did not seem to be that interested in you become more so when they know another school has made you an offer. Now, this is not to say that other schools will necessarily move more quickly on a decision on you—some committees are hopelessly mired in faculty situations beyond their own control—but at least at that point you can make the school give you a definite answer.

So, accept your offer with real glee and grace. You deserve it. You worked hard, sweated through a job talk, and travelled a few thousand miles. Sit back and let it all sink in for a little bit. Negotiations are just around the corner.

X. THE NEGOTIATION

So you have a lateral offer in hand. Now what? Assuming you did not accept the offer on the spot, the time has come to negotiate. How hard should you negotiate with possibly your future boss? Hard. This might be the last, best chance you have to establish with some leverage the terms and conditions at your prospective new workplace. As one wise friend in the academy put it to me, "Do not be afraid to negotiate hard, especially over compensation. I was too soft. Once you are there, you have zero leverage. Get the number you want now, not ten years from now."

As far as the list of possible negotiation points, it is a long one, and whether you need to address each of these issues depends on your current situation. For instance, where you stand with regard to tenure is *the big deal* if no one has voted on your tenure yet. Schools take *vastly* different stances on whether they will credit previous years and how long you need to wait before you are eligible to go up for tenure.

Although my two offers came only one year apart, the first school wished me to wait until my third year on their campus before going up for tenure, which would have meant that I would have not gone up for tenure until my eighth year, while Marquette was able to make me an offer with tenure. Now granted, I had just been voted tenure by the faculty at Mississippi, so Marquette had many of the materials it needed, including external reviews, for promotion and tenure purposes, but that still does not explain the vastly different offers I received.

To be fair, though, state schools tend to be more constrained by university policy and they might have less ability to work with you on tenure issues. Indeed, some state schools routinely require that you spend at least a year in residence before being eligible to go up for tenure the following year. Private law schools have more latitude in this regard.

At the very least, my experience suggests it might be easier to lateral once you already have tenure as opposed to trying to move pre-tenure. I know, as was discussed previously, there are many arguments out there that you are more desirable pre-tenure because your upside is greater, you cost less, and there is less commitment necessary by the new school, but consider this all from a candidate's point of view. What if you move to a new school without tenure, something goes dreadfully wrong before

you go up for tenure, and then you are out in the cold without a job at all on the tenure-track in the academy?

Tenure remains the gold standard in the legal academy, and you should ask yourself whether it might be better to stay at your current school where tenure may be assured versus venturing out and taking a chance of losing the greatest job in the world, and I really do believe this is the greatest job in the world. If you do consider jumping pre-tenure, make sure you ask: will I get full credit for prior years spent on the tenure track; will my existing publications count towards tenure; and is there a possibility of early tenure if merited, and if so, what are the conditions for going up early?

So, that is tenure, but what are some of the other issues you may wish to negotiate over? The more important ones to discuss include: sabbatical (schools seem rather firm on not giving credit for sabbatical for years spent at another institution, but schools are flexible to a larger or smaller degree on this point), moving expenses (if you can, accept nothing less than the school paying for the full move), subsequent trips to look for homes and do spouse interviews (get at least one of these, but two if possible—one house hunt is never enough), research resources (including a travel budget, summer grants, research assistants, book allowance, etc.) and course load and courses that you will teach (here, depending on the prestige of the school, three or four courses may be normal, but if it is four, try to negotiate a few three-load years so you can do your move and have a smooth transition). On the courses you will teach, try to maintain some flexibility, but do not agree to teach a class that will make you miserable. Also, try not to set yourself up for too many new course preps while you are making the transition from one city to another. No matter how many times you do it, or even if the less stressful variables are not present (like placing children in school or finding a spouse a job), moving is never easy, and that is not even calculating the amount of your valuables that will be broken or lost by the movers.

On research assistants and resources, the sweetness of an offer can be made especially sweet if summer grants and travel budgets are not only generous, but guaranteed for a few years after your arrival and you are able to exceed your budget to attend speaking engagements as necessary. Not only do schools seem to have more flexibility in these areas of compensation, but it does say a lot about a school's commitment to scholarship and visibility in the larger legal academy. On the other hand, if the school is

being stingy on, or completely cutting out things like conference travel, research grants, and research assistants, my advice is run and run fast. One last thought on negotiating over research funds: if you are relatively senior, you may also want to ask for start-up funds to set up a program, institute, new law journal, or research program beyond what is normally given for research funds.

More or less important points you may wish to discuss during your negotiation with your lateral school include: bar dues and organizational membership fees (such as the ABA or Law & Society), the type of computer you will get and how often it will be replaced (or how about a blackberry or other smart phone), benefits (including 401(k) retirement and health insurance, though there is probably little you can negotiate as these benefits are usually set campus-wide), spousal job support (and what type of assistance—will the dean merely pass out a resume, or will he or she push hard for the spouse to get a job—obviously, this can be a very important item for some couples), and maybe an initial research leave or course relief (especially if an early sabbatical is not possible).

Finally, this is probably just personal taste, but things I would negotiate less, if at all, include: a parking space, a postcard announcing your arrival, which just strikes me as tacky and most schools will do it anyway, and tickets to sporting events. On the last one, Marquette basketball is pretty darn good, and it probably would have been next to impossible to score seats. On the other hand, if you are lateraling to a school without much of a football program, say Notre Dame or Michigan, or basketball program, say Kentucky or UCLA, it should not be a problem.

All in all, there is a lot to talk about with the dean, and it likely will take a number of conversations and emails over some length of time to sort this all out. So, try not to be rushed into a decision or rush the school for that matter. A good dean will understand that an unreasonable exploding offer is not a good idea if one wants to start off with a happy new faculty member come the next semester. With that out of the way, all that is left now is to decide whether to make the jump or hold pat. However, as we will discuss in the next section, your current school may have something to say about that.

XI. "SHOULD I STAY OR SHOULD I GO?"

More than just The Clash³² song that I sang, poorly, to my wife at our wedding some ten years ago, the title of this post is the ultimate question you must answer in the lateral market process. For some, the answer will be easy. The new school represents a jump in prestige, more research funding, better geographic location for family, a spouse has found a new job, or a family member is ill. Or it might be that you just cannot stand the people you work with anymore. I know nothing about this last point.

However, for some, the answer is downright difficult. When I received my first lateral offer last year, it was a school that was basically on the same prestige level, in the same part of the country, and only slighter closer to my or my wife's family. Another big issue for us, the presence of a religious community (more fellow Members of the Tribe) was also only slightly better. In these types of situations, I think it behooves you to have a heart-to-heart with your current dean and honestly explain the situation. This is an important conversation because not only do you want to see if the outstanding offer permits you to gain some perks at your current school through your newly-found leverage, but also it is nice to know whether or not you are truly valued by your institution.

Consider the following responses and tell me which one you would rather hear. "Congratulations. They are sure lucky to have a scholar and teacher on your level. Now, will you close the door. I was just in the middle of a record-breaking minesweeper game." Or, "Wow [crying hysterically]. That is awful for me and the school. I will do anything, short of dressing in opposite sex clothing or agreeing to more faculty parking, to get you to stay here. Please. *Please!!!*"

Now, it is unlikely you will get either of these exact responses from your dean, but before you start negotiation with him or her against the other offer, ask yourself honestly how much you really want to stay at your current institution. How much you really want to stay at your current institution probably depends on how you are treated there. I would not even bother seeking a counter-offer if you know that you are not staying. Some might argue that even if you really do not think there is much of a chance

32. THE CLASH, SHOULD I STAY OR SHOULD I GO? (Sony 1982).

of staying at your current school, you should still see what you can get from your dean in order to play that off the offer from the lateral school. You could do that, but I would not recommend it. First of all, the law professor community exists in a super small (nay incestuous?) world, and it may get out that you played off the two sides when your decision was always clear. Also, if you engage in this type of gamesmanship only to leave your old school, you might not leave on good terms. In short, do not burn bridges unless you absolutely have to.

So for me, because my first lateral offer did not present me with an obvious decision, I did have a talk with my dean, and we worked out a package which would both increase my standing among the faculty and clearly established for me that I was valued by my institution. I did not then go back and re-negotiate with the other school. I just turned down that offer. On the other hand, the offer I received from Marquette was better in ways that my school could concededly not compete against. Better for religious reasons, better as far as being in an urban area, and better because of the nature of the law I teach, labor and employment law. So this time, although I think I came to fair terms with the dean at my new school, I did not come back and seek to get a better offer at my current school. I just told my dean that I was leaving and that I appreciated all my current school had done for me for the last six years in helping me to establish my law teaching career. Just be sure you tell the two involved deans first before making it public news because you never exactly know where that Leiter guy lurks. Because mutual respect still exists on both sides, my last months at Mississippi were pleasant, except for the raspberries I received from colleagues who had to take over my committee assignments.

XII. CONCLUSION

So, there you have in a nut shell almost everything you need to know about the crazy lateral hiring process for law professors. There will be good days and many bad days for those of you who take the plunge, but my hope is that this essay will help you in modest ways to navigate the mysteries of the lateral market. Really, the whole thing is like *American Gladiators*³³ for law pro-

33. *American Gladiators* (Four Point Entertainment 1989).

fessors, with characters like Volokh, Chemerinsky, and Balkin, instead of Fury, Wolf, and Siren.³⁴

34. *See id.*

