The Big Rock Candy Mountain: How to Get a Job in Law Teaching by Brad Wendel

Students often ask me, perhaps because I'm a relatively recent entrant into the teaching profession myself, how they can become law professors. Here are my responses to some of the most frequently asked questions, as well as some questions I wish students would ask.

Q: What kind of credentials does it take to get a teaching job?

A: The classic resume of a teaching candidate generally has the following:

(1) J.D. from one of the 15 or so law schools that can claim to be a prominent national school: Yale, Harvard, Stanford, Chicago, Columbia, Michigan, NYU, Berkeley, Virginia, Duke, Penn, Cornell, Georgetown, Northwestern, Texas, and UCLA. A substantial percentage of plausible teaching candidates comes from only 4 schools -- Harvard, Yale, Stanford, and Chicago -- with a few more from Columbia, Michigan, and Virginia, which traditionally have a strong presence in academia. There are a number of prominent national law schools from which you may have a J.D. and not be ruled out entirely for law teaching, provided you finished near the top of your class and have the rest of your credentials in order. These schools include USC, Vanderbilt, Emory, Notre Dame, Minnesota, Iowa, George Washington, and Washington and Lee. It will be harder from these schools, but it's do-able. Getting a teaching position with a J.D. from a school significantly farther down the food chain would be akin to walking on water, unless you are #1 in your class, have a graduate degree in law or some other discipline, and have a record of good publications.

(2) High class standing, with "high" understood on a sliding scale -- the better the ranking of the law school, the farther down into the class a candidate may be. Even at the best school, though, anything out of the top 25% is deadly. At the "prominent national schools" listed above, you should aim to be in the top 5% to be competitive.

(3) Law review service, along with publication of a student note. If you are still in law school and thinking of teaching, you should angle for one of the board positions on law review, such as articles editor or editor-in-chief. I've recently been informed that law review is not really a "must" from the very top law schools, as long as a candidate has a record of publication and
strong recommendations. That would make sense, since all of these credentials are useful only insofar as they serve as a proxy for scholarly potential. A published article is a much better proxy for future success than two years of unpaid drudgery on law review.

(4) A judicial clerkship on a federal appellate court or one of the more prestigious district courts. Clerking for the U.S. Supreme Court is practically a sure-fire way to be a player on the teaching market, in part because it requires #1 through #3 to be satisfied.

(5) A couple of years of practice experience, often at one of the top firms in New York, D.C., Chicago, L.A., or San Francisco. Some firms, such as Covington & Burling in D.C., Cleary Gottlieb in New York, Ropes and Gray in Boston, and Gibson Dunn in Los Angeles, have a reputation for producing law teachers. Alternatively, practice experience can be with a high profile government agency like the SEC, EPA, or the Department of Justice, or with a U.S. Attorney's or federal public defender’s office (a few state agencies, like the Manhattan D.A. and the Public Defender Service in Washington D.C., satisfy this requirement). You don't want to have too much practice experience, though. See below, in the comments on clinical teaching.

(6) Increasingly, teaching candidates must have at least one post-law school publication (i.e. not a student note) published in an academic law review, not a publication intended primarily for practitioners. At one time this was considered icing on the cake. Now, at the better schools, it's becoming a \textit{de facto} requirement for serious consideration.

(7) Recommendations from faculty members (as opposed to judges or law firm partners) who are familiar with your scholarly agenda and potential to make an impact on your chosen field. It helps if your referees are big names, but it helps even more if they are willing to work the phone and contact their friends on your behalf.

Q: \textbf{That pretty much rules me out.}

A: Like I said, that's the classic model. There are other ways to get into law teaching, but you have to understand that you are working against the odds. There will be hundreds of people on the market who have the classic resume, so you have to really distinguish yourself from the pack.
Q: Aren't these all the things that teachers and advisors are always telling me not to worry about?

A: Yes, if you had ambitions other than working at a huge firm in New York City or teaching law. There are some jobs for which prestige is everything, and law teaching is absolutely one of them.

Q: Why are law schools so fixated on prestige?

A: Simple microeconomics – supply and demand. Think about why you want to go into law teaching. It is intellectually challenging, you work with smart people all day, you have a tremendous degree of autonomy regarding the subject matter of your research as well as your daily life, the money and benefits are decent, job security is unbeatable once you have tenure, there's a fairly high level of social esteem for law professors, there are no partners screaming at you or telling you not to go hiking this weekend because you have to stay around and write some ridiculous motion for a case that is going to settle anyway, and – most importantly – you get paid to do something cool, namely read about, talk about, and write about interesting ideas. Now, think about how many other people have gone through the same mental calculus. That's your competition. Schools have to weed out applicants somehow, so the first cut they make through the huge stack of resumes they receive is based on relatively easy-to-quantify factors such as one's J.D. school and the presence or lack of a federal clerkship. Appointments committees screen 500-600 resumes in a few weeks in the fall. Although people try hard not to overlook candidates with nontraditional credentials, it's awfully easy to look only at the Harvard/Yale JDs with appellate clerkships, a couple of published articles in good journals, and references from heavy-hitter professors. Even that pool contains dozens of candidates. Fairly or not, your resume is likely to get skipped over if it deviates too much from the classic model.

In an ideal world, appointments committees would not have to rely on proxies for the one thing they care most about – promise as a scholar (see below) – and would somehow be able to measure it directly. But of course there is no way to directly measure scholarly promise, so traditionally committees rely on pedigree (fancy school, law review, clerkship) as an indirect measure. In an interesting post on the Conglomerate blog, Bill Henderson argues that a rational
committee ought to play “Moneyball” (as in the book by Michael Lewis) by seeking out candidates who have been undervalued by the market, but who have indicia of scholarly promise. Although the evidence is somewhat weak, there are signs that the key indicator of scholarly promise is a record of pre-hiring publication. I’ve been saying for a long time that the three most important things an aspiring law professor can do is publish, publish, publish. As some comments on the Moneyball post indicate, many committees are still hung up on pedigree, so that a Yale JD, law review, Supreme Court clerk would get vastly more interviews than a “mere” top-15 law school JD with several publications. This is by no means universal, however, and an increasing number of committees seems to be using the Moneyball technique to gain an edge in hiring.

Q: Does getting an LL.M. help?

A: Yes and no. I've heard a lot of people say that an LL.M. from a top 10 school can "validate" you for the teaching market, notwithstanding your J.D. school. I actually think it's only the Yale LL.M. program that has this magical quality. Other LL.M. programs – even at top schools like Harvard and Columbia – don't do it as well, although there's certainly no harm in getting a Harvard or Columbia LL.M. There's really a self-selection process going on here. Yale's program is very small – they only take 8 or so Americans each year – so it's insanely competitive. Only people who are likely to do well on the teaching market anyway are able to get into Yale. Correlation does not imply causation; it's not the Yale LL.M. that lands these folks teaching jobs, it's the credentials they had going into graduate school. On the other hand, I've seen a number of resumes from people who have decidedly mediocre records at mid-rank law schools and an LL.M. from a top-10 law school. In those cases, I'd say the LL.M. did not make the candidate significantly more marketable.

Q: What about Ph.Ds in other disciplines?

A: When I first put up this site several years ago, I said that having a Ph.D. didn’t help much. In a few years’ time, however, that advice has become outdated. So let me state what seems to be the new conventional wisdom: There are some areas in which it is becoming almost impossible to get a job at a top national law school without a Ph.D. in a relevant discipline. The
clearest example of this phenomenon is in the corporate area. Most newly hired corporate law professors, at least in top-tier schools, have a Ph.D. in either economics or a social science discipline that emphasizes rigorous empirical methodologies. Almost every paper published recently in the corporate area in a top student-edited or peer-reviewed law journal reflects graduate-level training in empirical social science methods. In addition, it has always been true that jurisprudence positions at top-tier schools require a Ph.D. in philosophy, but these positions are so rarely open that the requirement of a Ph.D. here might have been regarded as anomalous. One caveat is in order: There is a difference between two types of candidates: (1) those with outstanding J.D. credentials and a Ph.D. in a closely related field (such as economics, psychology, philosophy) who are being advised by scholars at top law schools and who will be competitive as entry-level hires at top law schools; and (2) those whose J.D. credentials don’t satisfy the classical model, who are thinking about using a Ph.D. to burnish their law school records. My original comment that Ph.D.’s weren’t all that important probably reflected my experience of talking mostly to candidates in category #2.

Q: What’s wrong with publishing in bar journals? What’s so great about law review articles? Do law schools just have a footnote fetish?

A: Law review scholarship is a justly parodied genre, but you do have to produce it. And in the eyes of appointments committees, there’s a significant difference between practical and theoretical scholarship. In fact "practical" has an almost pejorative connotation in law school hiring. This may seem bizarre, in light of the mission of law schools in training practicing lawyers, but it makes sense in light of the history of American legal education. At least until the turn of the century, the vast majority of lawyers obtained their education on the job, essentially as apprentices, while others studied in proprietary law schools (like Litchfield, in Connecticut) and a few obtained an education at law departments in universities like Harvard and Columbia. From the standpoint of traditional arts and sciences faculties at universities, law looked like a "trade" – again in the pejorative sense – and not an academic discipline. After Langdell at Harvard mounted a massive public relations effort to enhance the prestige of legal education, more universities opened law schools, but they were often considered stepchildren by the rest of the university. It may be a bit of an exaggeration, but it’s not entirely incorrect to say that the legal academy has for this reason always had a bit of an inferiority complex vis-à-vis the wider
university, and has sought to defend itself against allegations of being a "mere" trade school by mimicking the standards of other university departments. If it helps to personify the legal academy, imagine it holding up a law review article and saying to the university, "Look here, we can produce turgid prose with lots of footnotes, just like you!" The attempt to gain standing in the eyes of the university helps explain the sexiness of interdisciplinary scholarship like law and economics, law and social science, law and philosophy, postmodern legal theory (drawing from literary criticism, cultural studies, and some branches of sociology and anthropology), and so on. It also shows why traditional doctrinal scholarship has fallen into disfavor. In the early part of the 20th Century, the model of successful legal scholarship was the great treatise, like Wigmore on Evidence, Scott on Trusts, or Willison on Contracts. These works did not merely summarize the law, but systematized it, exposed its underlying structure, and showed its immanent logic. That mode of scholarship is now pretty much dead, and many excellent treatises are now produced by practitioners. Now an ambitious legal scholar would never set out to write a treatise, but would instead try to produce the definitive application of economic principles to an area of law (like Calabresi's *The Costs of Accidents*) or would do work rooted primarily within another discipline, with application to law (like the work of Joseph Raz).