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## AGENDA

- Effective Techniques: Online Applications
- Reactions to the Legal Hiring Landscape
- Why Federal Agencies Can't Just Say "Yes"




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## EFFECTIVE TECHNIQUES: ONLINE APPLICATIONS



*How To Stand Out From The Crowd  
In The Electronic Age*

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## IDENTIFY THE TARGET AUDIENCE

*A successful application appeals to more than one!*




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**ON TARGET**

## IDENTIFY THE TARGET AUDIENCE

*A successful application appeals to more than one!*

**PROGRAM MANAGERS**

FOCUS ON WHETHER APPLICANTS MET PROGRAM REQUIREMENTS

**HUMAN RESOURCES STAFFS**

FOCUS ON ADMINISTRATIVE MATTERS

**SELECTING OFFICIALS**

FOCUS ON FINDING THE BEST CANDIDATE FOR THE POSITION




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**ON TARGET**

## HITTING THE BULL'S EYE



**PRIMARY FOCUS**

- Attracting the attention of selecting officials



**BE AWARE OF:**

- Issues that trigger closer administrative scrutiny



**AND AVOID:**

- Lack of attention to detail

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**ON TARGET**

## EXAMPLE OF AN EFFECTIVE ESSAY

**COMMENT**

*One thing about myself:*

I was a grade school benchwarmer. Despite countless hours of practice I couldn't duplicate the ball handling and shooting ability of other basketball players on the team. From the sidelines, the boundaries of the court represented the division between benchwarmers and players, accentuating the painful gap between my current status and the game I wanted to play. That simple demarcation seemed an insurmountable barrier. I was definitely "out of bounds," and from my perspective, had no foreseeable way of crossing the line and getting into the game.

Ironically, sitting on the sidelines was integral to my development as a player. When the ball was brought up court, I noticed that the defense sprinted to half court while the offense followed the ball handler as if playing a game of tag, leaving the area underneath the basket wide open. We trailed by 20 points and I begged the coach to put me in. "We've got nothing to lose," I pleaded. The coach relented. Suddenly, I was off the bench and ready. Whenever the players converged at half court, I ran into the paint where I was wide open and called for a pass. I scored again and again. The defense eventually caught on and started guarding me. However, my height, combined with newly developed confidence--a result of taking a step back, analyzing the situation and coming up with a new strategy--transformed me into a formidable opponent. I had become a starter, but not only on the basketball court. I had discovered a method of approaching challenging situations that would become a life long model for creative problem solving.



**WHY IT WORKS**

- Operates on multiple levels
- Illustrates MANY character traits that are sought after in the workplace

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## WHY FEDERAL AGENCIES CAN'T JUST SAY "YES"



*Legal Issues Associated with Accepting "Free" Services*

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## CAN I WORK AT DOJ "FOR FREE" IF I AM ...

- ① A CURRENT LAW STUDENT SEEKING EXPERIENCE?
- ① A CURRENT LAW STUDENT EMPLOYED BY A PRIVATE FIRM?
- ① A RECENT LAW SCHOOL GRADUATE?
- ① A RECENT GRADUATE EMPLOYED BY A LAW FIRM WITH A DEFERRED ENTRY?
- ① A LAW FIRM ASSOCIATE?
- ① AN EXPERIENCED UNEMPLOYED ATTORNEY?



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**The answer varies.**

① Before accepting unpaid services from an individual, federal agencies must have an appointment authority that permits the agency to bring an individual on board.

**There are legal issues.**

- ① Each appointment authority has individual requirements relating to
  - Eligibility
  - Scope of work that may be provided
  - Citizenship & Security
  - Acceptance of outside compensation
  - Approval level



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The law limits the ability of the federal government to accept “free” legal services.

Many HR staffs and legal supervisors may inadvertently enter into impermissible arrangements.



**It's Complicated!**

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**So What's the Problem?**

*Did we mention that it's complicated?*

The Anti-Deficiency Act bars the feds from accepting voluntary services except in cases of emergency.



- This means that a statutory exception is required to allow agencies to accept volunteers.

- It's easier to understand how this works when you break it down into bite-sized pieces.

- Let's look first at law school student volunteers.

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**LAW STUDENT VOLUNTEERS**

An exception to the Anti-Deficiency Act permits federal agencies to accept volunteer services from students enrolled not less than half-time at a qualifying educational institution, but there are some rules:



- “Student” means someone enrolled not less than half-time at a qualifying educational institution

- Student volunteers may not displace an employee or staff a position that is a normal part of the agency's work force

- Employment terminates upon graduation

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### LAW STUDENT VOLUNTEERS

#### Associated Issues:

- Waiver of sovereign immunity
- Ethics & Conflicts of Interest
  - Outside compensation
  - Non-Federal sponsorship

*In addition, federal agencies may have their own policies that affect student volunteers.*



*For example at DOJ, some USAOs have policies that preclude volunteers from accepting compensation from certain sources, or limit the scope of a volunteer's activities in legal clinics or other federal entities while working for DOJ, generally due to conflicts of interest concerns.*

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### LAW STUDENT VOLUNTEERS

#### WHAT'S GENERALLY "OK"

- Students currently enrolled not less than half time
- School-sponsored externships
- Compensation from law schools for public interest work
- Compensation from general public interest sponsors (not limited to federal employment)

#### WHAT'S NOT "OK"

- Sponsors asserting or implying an inappropriate relationship with the agency
- Students volunteering while employed by private law firms
- Broad waivers of sovereign immunity as a condition of volunteer services
- Participating in legal clinics involving litigation with or proceedings before the U.S. while volunteering
- Working past graduation




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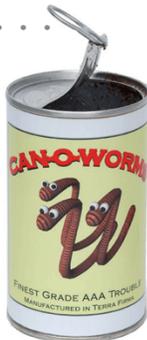
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**OK - THAT SEEMS EASY ENOUGH . . .**



Well . . .



*I understand the rules for current students. So what's the big deal once a student graduates from law school?*

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ON TARGET 

## When Placing Law School Grads to Provide Free Legal Services . . .

*The Devil is In the Details*




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ON TARGET 

## THERE IS A CRITICAL DISTINCTION

**"Volunteer"**  
v.  
**"Gratuitous" Services**

- There is a legal distinction between *volunteer* services and *gratuitous* services
- Federal agencies **can** accept volunteer services from law students (subject to certain requirements) due to the statutory exception
- Federal agencies **may not** accept volunteer legal services from law school graduates (*unless they have a specific statutory exception to the Anti-Deficiency Act*)
- Under **extremely limited** conditions, federal agencies may accept *gratuitous services* from law school graduates when they are:
  - Official services
  - Performed by an appointed individual
  - Pursuant to a statutory allowance or requirement that has no minimal level of compensation




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ON TARGET 

## THE ANTI-DEFICIENCY ACT BARS NON-STUDENT LEGAL VOLUNTEERS ...

*So the agency needs another kind of appointment authority for "gratuitous" service*

- Appointment Authorities define the eligibility of persons who can serve without compensation and the type of work that may be performed.
- DOJ has five appointment authorities (two unique to DOJ)
  - Special Attorney (SA)
  - Special Assistant U.S. Attorney (SAUSA)
  - Expert or Consultant
  - Statutory Gift Acceptance
  - Intergovernmental Personnel Act (IPA)




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### SPECIAL DOJ APPOINTMENT AUTHORITIES

**SPECIAL ATTORNEYS (SA) *and* SPECIAL ASSISTANT U.S. ATTORNEYS (SAUSA)**

- These appointment authorities do not specify a minimum salary, so AG can fix the salary at zero.
- Permits the attorney to perform the same duties as a regular DOJ attorney.
- Does not result in an impermissible augmentation of appropriations or violate the Anti-Deficiency Act.




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### CAN A RECENT GRAD BE APPOINTED AS A SAUSA or SA?

**YES, if ...**



- The graduate is admitted to the bar (and is an active member in good standing)
- The graduate is a U.S. citizen (some exceptions for foreign counsel in special cases)
- The graduate can accommodate the full range of conflicts of interests laws and ethical restrictions imposed on DOJ employees

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### Are SAUSA or SA Positions Available?

**YES ... INCREASING USE AT USAOs**

- District of Columbia Legal Fellowship Program
- Southern District of California
- District of Maryland
- Northern District of Georgia

**BUT ... “Free” is not really free**



- Investment in training and time to get up to speed
- Cost of security and suitability review
- “Foot in the Door” syndrome & temporary bans on subsequent employment

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### ARE THERE OTHER WAYS A RECENT GRAD OR UNEMPLOYED ATTORNEY CAN WORK "GRATUITOUSLY" AT DOJ?



"We've heard it is possible to appoint them as "experts" or "consultants" or for them to donate their services as a gift."

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### BOTH AUTHORITIES EXIST BUT ...

#### EXPERT OR CONSULTANT

Generally, the only way recent law school grads can be appointed as an expert or consultant is if they had a previous career that gave them expertise.

Implementing regulations have specific definitions for:

- Expert
- Expert position
- Consultant
- Consultant position

#### STATUTORY GIFT ACCEPTANCE

There are strict limits on the type of work that can be performed by uncompensated attorneys providing "gifts of services."

- Work is limited to tasks that "aid or facilitate" the work of the agency that are:
  - Discretionary in nature
  - Do not encompass what the agency is required to do
  - Do not fall within the agency's regular mission or operations or would ordinarily be performed by a paid employee



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### WHY DON'T THESE AUTHORITIES WORK?

Recent grads, while "experts" in the law compared to a layman, are not "experts" as compared to other attorneys - *and*

In both cases, permissible tasks are limited to those that *aid or facilitate* agency operations. As interpreted, this means work that rarely meets the goals of the individual offering the services or the office seeking to employ them.



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ON TARGET 

**IS THERE ANYTHING ELSE THAT ALLOWS A RECENT GRAD TO BE PLACED AT DOJ TO PERFORM MEANINGFUL WORK?**




*Actually, there is!*

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ON TARGET 

**The Intergovernmental Personnel Act (IPA)**

A promising way for law schools to develop formal programs placing highly qualified recent graduates with federal agencies, including DOJ, for 1 to 2 years.

- Law grads must be employed in a career position with
  - Institutes of higher education
  - State, local or tribal governments
  - Other qualifying entities
- Requires a written agreement with the agency to accept temporary services (not to exceed 2 years)
- Scope of work: “for mutual concern”
  - Includes work that otherwise would be performed by agency employees




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ON TARGET 

**CAN SCHOOLS MAKE THE IPA WORK?**

**YES** . . . but it can be costly for the school

- Recent grads can be assigned to a federal agency by *appointment* or *detail*

Also requires:

- Separate written agreement for each placement
- Legal review of agreements



*“All the nutritional benefits of regular worms without the hassle of having to get up early.”*




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ON TARGET 

### Yale Law School uses the IPA to detail its Heyman Fellows at federal agencies

- Department of Justice
  - *National Security Division*
  - *Civil Division*
- Department of State
- Department of Defense

**CAN OTHER SCHOOLS USE THE IPA AT DOJ?**  
**YES!**  
*We would consider similar programs from other law schools*




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ON TARGET 

### DO OTHER AGENCIES HAVE STATUTORY EXCEPTIONS?

DEPARTMENT OF DEFENSE

- 10 U.S. Code 1588
- DOD Order \_\_\_\_\_.

I am discussing this on Wed with DOD General Counsel's office. Slide will be completed afterwards.





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ON TARGET 

### What Can Career Services Offices Do?

- Expand student programs and specialized externships
- Understand the limitations on placing law school graduates in federal agencies
- Think outside the box




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# QUESTIONS?



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