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Laurie A. Lewis

The Catholic University of America, Columbus School of Law

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CLERKSHIP-READY: FIRST-YEAR LAW FACULTY ARE
UNIQUELY POISED TO MENTOR STELLAR
STUDENTS FOR ELBOW EMPLOYMENT
WITH JUDGES

Laurie A. Lewis†

I. ABSTRACT

Judicial clerkships are in high demand for new law graduates. In this tight job market, applicants must possess outstanding applications. Applicants must be not only practice-ready, but also clerkship-ready. They must be people-oriented, with superb oral communication skills. They must be outstanding researchers and writers. And they must have a passion for discovering truth and promoting justice.

Students should embark on a clerkship-ready path during their first year of law school. First-year faculty members are uniquely poised to identify students with skills and traits inherent to successful clerks. Such students demonstrate intellectual excellence, superior work habits, and an ability to get along well with others.

Professors mentor interested stellar students through the clerkship application process. Mentoring begins with developing strategies for obtaining interviews with judges. Next, professors coach applicants on handling interviews and post-interview follow-ups for accepting clerkship offers. Finally, professors maintain post-clerkship contacts with graduates and judges to facilitate future *elbow clerkships*.¹

II. INTRODUCTION

Clerkships are highly coveted positions for graduating law students.² In this tight job market, securing a clerkship is exceedingly diffi-

† Clinical Assistant Professor, the Columbus School of Law of The Catholic University of America. I would like to extend special thanks to Dean Veryl V. Miles, Dean of The Columbus School of Law of The Catholic University of America, for providing a generous summer research and writing stipend which supported my work.

1. Elbow clerks are those who work closely for a year or two with a particular judge and are distinguishable from staff attorneys, pro se clerks, and habeas clerks. See Penelope Pether, *Sorcerers, Not Apprentices: How Judicial Clerks and Staff Attorneys Impoverish U.S. Law*, 39 *Ariz. St. L.J.* 1, 46-48 (2007); *infra* nn. 137, 141-44 and accompanying text.

2. See Natl. Assn. L. Placement (“NALP”), *Class of 2011 National Summary Report 1*, http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf (June 2012) (showing that 2011 graduates reported working in 3,315 judicial clerkships); Mary Dunnewold et al., *Judicial Clerkships: A Biography*, 8 *Leg. Commun. & Rhetoric: J. ALWD* 239, 239 (2011) (estimating that new law school graduates fill approximately 3,000 federal and state judicial clerkships each year); Trenton H. Norris, *The Judicial Clerkship Selection Process: An*

cult.³ For both federal and state judicial clerkships, the number of applications is increasing while opportunities dwindle.⁴ This is because job prospects for lawyers are bleak, producing ripple effects in the clerkship market.⁵ Graduating law students who might have landed federal court clerkships a few years ago now end up in state courts. As a result, state judges are seeing applicants from prestigious law schools that they had previously been unaccustomed to seeing. Additionally, an increasing number of practicing attorneys are seeking clerkships.⁶ Therefore, it is imperative that law students applying for clerkships develop outstanding application packets.

Part of being an outstanding applicant is being practice-ready.⁷ Over the past several years, employers in all sectors have demanded that new

Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform, 81 Cal. L. Rev. 765, 768 (1993) (stating that judicial clerkships have long been heralded as invaluable learning experiences); see also Christopher D. Bryan, *The Role of Law Clerks in Reducing Judicial Backlog*, 36 Colo. Law. 91, 92 (May 2007) (explaining that experience as a clerk distinguishes such attorneys from other recent law school graduates, giving "them an edge for highly sought-after jobs for young lawyers in a tight legal job market").

3. See Ruggero J. Aldisert et al., *Rat Race: Insider Advice on Landing Judicial Clerkships*, 110 Penn St. L. Rev. 835, 837 (2006) (stating that the number of clerkship applicants has risen "astronomically"); Ed Finkel, *Crunching Clerks: Funding Cuts and a Tougher Job Market Tighten the Competition*, 96 ABA J. 19, 19 (Feb. 2010) (finding that there are many more applicants for fewer clerkship openings); see Norris, *supra* n. 2, at 768; see *infra* n. 121 and accompanying text.

4. See Norris, *supra* n. 2, at 768; Finkel, *supra* n. 3, at 19 (discussing the reasoning behind some states resorting to freezing or reducing the number of clerkship positions).

5. See Finkel, *supra* n. 3, at 20; see also David Barnhizer, *Redesigning the American Law School*, 2010 Mich. St. L. Rev. 249, 278 (2010) (explaining that as thousands of lawyers are terminated by big firms and enter the job market, a "competitive ripple effect throughout the structure of law practice" will result).

6. See Barnhizer, *supra* n. 5, at 278; Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. Leg. Educ. 598, 599 (May 2010) (emphasizing the devastating impact the 2008 economic recession has had on the legal profession); *infra* nn. 125-29 and accompanying text.

7. See ABA Sec. Leg. Educ. & Admis. B., *Legal Education and Professional Development – An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap* 4-7 (ABA 1992) [hereinafter *MacCrate Report*] (criticizing law schools for not using a more practice-oriented rather than theory-oriented educational approach); see generally Roy Stuckey, *Best Practices for Legal Education* (Clinical Leg. Educ. Assn. 2007) (The concept of being practice-ready, whereby a graduating law student has sufficient skills to enter the job market prepared to practice, has been evolving for some time.). This report is based on the following premise:

There is a compelling need to change legal education in the United States in significant ways. . . . [and w]hile law schools help students acquire some of the essential skills and knowledge required for law practice . . . [i]t is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.

MacCrate Report, *supra* n. 7, at 7.

attorneys come equipped with a basic proficiency in practical legal skills.⁸ In response, law schools have redesigned their curricula to focus on the skills required to produce practice-ready graduates.⁹ Now, a focus on skills training accompanies the traditional *Langdellian approach* to teaching.¹⁰ It no longer suffices to teach students to “think like lawyers”;¹¹ students must learn how to practice like lawyers as well. Ideally, these two lines of educational pedagogy—teaching students to think like lawyers and teaching students to practice like lawyers—should merge into a unified teaching model.¹² When this happens, everyone will benefit—law schools, law students, legal employers, and clients.

For the successful clerkship applicant, however, practice-ready falls short. The applicant also needs to be clerkship-ready. Such a concept is broader than practice-ready and incorporates learning practice-ready skills that one gains through: journal membership; moot court participation; judicial externships; legal clinic work; research assistant work; teaching assistant work; and other related experiences providing opportunities for

8. See Thies, *supra* n. 6, at 599 (stating that the recession has spurred employers to highly value job applicants who have practical legal skills to avoid spending time and money on new hires).

9. The trend is for law schools to incorporate practical skills training into their programs, such as clinical programs and internships. See Joel W. Barrows, Symposium, *The Future of Legal Education: On Becoming a Lawyer*, 96 Iowa L. Rev. 1511, 1511 (2011); yet, legal education reform moves at a glacial pace with law schools lagging behind most other institutions in implementing practical improvements. Patrick G. Lee, *Law Schools Get Practical*, <http://onlinebarrows.com/article/SB1000142405270304793504576434074172649718.html> (July 10, 2011); see John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 Wm. Mitchell L. Rev. 303, 314-15 (2007); *infra* n. 53 and accompanying text.

10. In 1875, Christopher Columbus Langdell was appointed Dean of Harvard law school, where he instituted a novel approach to legal education that came to be known as the Langdellian model. See Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society—A Paradigm for Change*, 37 J. Legis. 1, 4 (2011). This model involves reading appellate court opinions and then critically evaluating them, thereby teaching students to think like lawyers. *Id.*

11. See e.g. David T. ButleRitchie, *Situating “Thinking Like a Lawyer” within Legal Pedagogy*, 50 Clev. St. L. Rev. 29, 29-30 (2003) (aligning “thinking like a lawyer” with the traditional American legal teaching model); Jack Chorowsky, *Thinking Like a Lawyer*, 80 U. Det. Mercy L. Rev. 463, 463-64 (2003) (characterizing “thinking like a lawyer” as learning and refining analytical skills); see also Karen Sloan, *Reality’s Knocking: The Recession is Forcing Schools to Bow to Reality*, Natl. L. J., Sept. 7, 2009, at ¶ 14 (“Law school deans are getting the message that firms want students who know more than just how to think like lawyers.”).

12. In the words of one scholar: “Schools must combine the traditional case method of teaching with experiential learning, where the curriculum focuses not just on doctrine but on training professionals.” Margaret Martin Barry, *Practice Ready: Are We There Yet?* 32 B.C. J.L. & Soc. Just. 247, 247 (2012); see also Nancy L. Schultz, *How Do Lawyers Really Think?* 42 J. Leg. Educ. 57, 57 (1992) (advocating that law schools eliminate the distinction between legal “skills” and “substance” instruction).

research, legal analysis, and client contact. Clerkship-ready, however, connotes more. It suggests someone who has superb oral and written communication skills.¹³ A clerkship-ready candidate is someone who is people-oriented and can interface with all levels of court personnel.¹⁴ In addition, for the applicant wanting to work at the judge's elbow, being clerkship-ready signals a passion for discovering truth and promoting justice.¹⁵ A clerkship-ready applicant also signals to the judge that the candidate is astute, bright, and self-confident enough to engage in Socratic dialogue with a judge.¹⁶

Judges desire clerkship-ready applicants because it makes their jobs easier.¹⁷ As caseloads reach all-time highs and financial resources fall to all-time lows, a judge's work environment can be extremely stressful.¹⁸ To

13. See Marie A. Monahan, *Towards a Theory of Assimilating Law Students into the Culture of the Legal Profession*, 51 Cath. U. L. Rev. 215, 223 (2001) (explaining that judges frequently engage interns in dialogue about case resolution); *infra* nn. 44, 58, 71, 97 and accompanying text.

14. See Carl Tobias, *Stuck inside the Heartland with Those Coastline Clerking Blues Again*, 1995 Wis. L. Rev. 919, 931 (emphasizing that a critical quality for a successful judicial law clerk is the capacity to work well with others, including staff within the judges' chambers and personnel within the courthouse, more generally).

15. See *supra* n. 2. The Honorable Alex Kozinski, Chief Judge of the U.S. Court of Appeals for the Ninth Circuit, stated: "The [elbow] relationship between judge and clerk is professional only in part; it is also a close human relationship, one that endures long after the clerkship ends." Alex Kozinski, *Confessions of a Bad Apple*, 100 Yale L.J. 1707, 1708 (1991).

16. As the former Honorable J. Daniel Mahoney of the U.S. Court of Appeals for the Second Circuit stated,

A law clerk's opinions or suggestions often result in a more careful search for the means by which a just decision should be reached. This sounding board function often compels a judge to consider alternatives that might otherwise have been ignored or considered inadequately. Given the strictures that inhibit a judge from seeking outside assistance in his analysis and evaluation of a case, and the practical limitations upon consultation of busy colleagues, this is an indispensable assistance.

J. Daniel Mahoney, *Law Clerks: For Better or for Worse?* 54 Brook. L. Rev. 321, 342 (1988); see *infra* nn. 167-69 and accompanying text.

17. The clerkship-ready clerk helps to lighten the judge's tremendous workload. Judge Kozinski stated this about selecting law clerks:

[J]udges have a very substantial stake in selecting clerks who are not merely competent, but brilliant; not merely articulate, but lightning fast and prolific; not merely thoughtful, but persuasive and tactful; not merely dedicated, but driven; not merely cooperative, but single-mindedly committed to easing the judge's burden and advancing the judge's cause in the multitude of disputes and disagreements that naturally arise on a collegial court.

Kozinski, *supra* n. 15, at 1708.

18. Many judges find themselves agonizing over the tension between volume, production, and justice. See Pamela Coyle, *Bench Stress*, 81 ABA J. 60, ¶ 23 (Dec. 1995). Moreover, particularly in state courts, increasing caseloads accompanied by decreasing

keep dockets running smoothly in a busy courthouse, judges must meet extensive work obligations beyond the confines of their chambers. Depending on the court's level and whether the venue is federal or state, judges may read briefs, hear oral arguments, decide cases, draft opinions, review opinions written by other judges, read case law, interpret statutes, attend court conferences, conduct interviews, supervise staff, train clerks, and participate on bar committees.¹⁹ Demands upon a judge's time, moreover, are enormous in the wake of two significant changes that are occurring over time—an increasing quantity of work and increasing complexity of subject matter.²⁰

It is not surprising, then, that a judge relies very heavily upon his or her *elbow clerk*.²¹ An *elbow clerk* works closely with a particular judge for a year or two and the person selected for that role matters tremendously. In the words of the Honorable Patricia M. Wald, former Chief Judge of the U.S. Court of Appeals for the District of Columbia: “The judge-clerk relationship is the most intense and mutually dependent one I know of outside of marriage, parenthood, or a love affair.”²²

To become an *elbow clerk*, a graduating law student must stand apart from the multitude of applicants.²³ Students should decide during their first year whether they want a post-graduate clerkship in order to build the strongest application possible.²⁴ Making such a decision can be difficult for most first-years, as they are learning to grasp fundamental legal principles.

dollars for court operations compounds the productivity dilemma. *Id.* A judge's stress also extends beyond the courtroom: “Even in a judge's personal life, he or she must adhere to standards of probity and propriety far higher than those deemed acceptable for others.” Jeffrey M. Shaman, *The Role of a Judge*, 2 *Geo. J. Leg. Ethics* 1, 1 (1988).

19. Karl Linde, *Appellate Brief Writing: Some (Hopefully) Helpful Hints*, 25 *Wyo. Law.* 18, 18 (2002).

20. Patricia M. Wald, Symposium, *The Problem with the Courts: Black-Robed Bureaucracy, or Collegiality Under Challenge?* 42 *Md. L. Rev.* 766, 769 (1983); see also Sarah B. Duncan, *Pursuing Quality: Writing a Helpful Brief*, 30 *St. Mary's L.J.* 1093, 1098 (1999) (explaining that she had not fully comprehended an appellate judge's heavy caseload and limited resources until becoming one).

21. Consider the notion that “the law clerk is the judge's lawyer.” Joseph L. Lemon, Jr., *Federal Appellate Court Law Clerk Handbook* 3 (ABA 2007). “The scenario is analogous to working for a senior partner of a law firm or the chief executive officer of a large organization: at the end of the day, the senior manager makes the meaningful decisions, but only after junior associates have facilitated the process by providing the decision maker with the necessary information.” *Id.*

22. Patricia M. Wald, *Selecting Law Clerks*, 89 *Mich. L. Rev.* 152, 153 (1990).

23. The Honorable Ruggero J. Aldisert of the U.S. Court of Appeals for the Third Circuit offers this insider's perspective into the clerkship selection process: “Unless you are the Editor-in-Chief of your school's main law review or one of the top five or ten students in your class, you need to set yourself apart from the competition.” Aldisert et al., *supra* n. 3, at 836.

24. Susan Harp, *Clerking – Something Every First Year Law Student Should Know*, 29 *Stetson L. Rev.* 1291, 1291 (2000).

These students are just starting to ponder what upper-level courses might interest them. Additionally, they are beginning to explore extracurricular activities that will advance their particular interests and aptitudes.²⁵

First-year law faculty can help first-year students decide whether a clerkship is an attractive, viable option. Both doctrinal and clinical faculty members can readily identify strong first-year students.²⁶ These students demonstrate intellectual excellence, superior work habits, and an exceptional ability to get along well with others. Strong first-year students achieve the highest grades on papers and exams, and show an eager interest in mastering the law from the start. They exhibit a thirst for learning; take initiative in assignments; challenge themselves to do their very best; enjoy deliberating about the law and its application; and repeatedly show up during office hours. Furthermore, they are quick to accept constructive criticism and act upon it. In sum, these students are highly engaged.

Because first-year faculty members can identify outstanding students, they are uniquely poised to mentor such students for clerkships. Many first-years will respond positively to a professor who raises the prospect of clerkship opportunities. Often, a professor's interest in a student is pivotal to the student's legal career. A professor who takes the time to develop strong relationships with students can draft strong recommendation letters, including clerkship recommendations.²⁷

First-year law professors, however, can do much more for potential clerkship applicants. For instance, professors can hire students as research or teaching assistants. Professors can arrange for externships with judges and suggest other learning opportunities, within and outside law school, to help students become clerkship-ready.²⁸ Additionally, professors can schedule ongoing meetings with aspiring clerks and encourage them to draw upon other law school resources, such as clerkship committees and career services offices.

25. *Id.*

26. Some faculty members have first-year students for both semesters, providing considerable time for assessing students' individual strengths and weaknesses. Moreover, with the increased emphasis upon assessment and finer tools for measuring performance, more information is available to gauge a student's clerkship potential. See generally Catherine L. Carpenter et al., *Interim Report of the Outcome Measures Committee*, <http://www.abanet.org/legaled/committees/OutcomeMeasures.doc> (July 27, 2008).

27. "The importance of letters of recommendation cannot be overstated. Stellar letters of recommendation will separate an applicant from the pack." Aldisert et al., *supra* n. 3, at 842; *infra* nn. 155-58 and accompanying text.

28. Externing with a judge provides great insight into what a clerkship entails and offers opportunities to perform some of the same tasks *elbow clerks* do without taking on a heavy workload or too many responsibilities. See Calvert G. Chipchase, *Federal District Court Law Clerk Handbook* 4 (ABA 2007); *infra* nn. 57-84 and accompanying text; see generally J. P. Oligvy et al., *Learning from Practice: A Professional Development Text for Legal Externs* 3 (2d ed., Thompson/West 2007) (addressing the many facets of experiential learning, including how to maximize the process of self-learning within the context of externships).

A need for individualized assistance from first-year professors continues throughout the application and interview process. Professors can coach students on assembling application packets to help ensure strong resumes, writing samples, and letters of recommendation. They can coach students before and after interviews as well. Additionally, professors can make phone calls to judges' chambers on behalf of their students. When necessary, they can make cold calls to judges. By drawing upon personal connections with federal and state court judges, the law professor has a powerful impact upon a graduating student's success in securing a clerkship.²⁹

This article establishes effective guidelines for faculty to follow when mentoring stellar first-year law students who seek federal and state judicial clerkships upon graduation. Part III considers practice-ready and clerkship-ready concepts within the context of legal education. Part IV summarizes a brief history of clerkships to their present availability in the austere legal job market. Part V considers ideal *elbow clerkship* relationships, examining both what judges seek in their clerks and what new law graduates seek in their clerkships. Part VI explains the unique role first-year law faculty members should play in identifying potential clerks amongst students, and how those professors should mentor students to develop strong application packets. Part VII offers practical strategies for professors working with both judges and students to facilitate the selection of law graduates as *elbow clerks*. By mentoring stellar students and cultivating personal relationships with judges, first-year law professors can assist in the successful placement of clerkship-ready graduates in federal and state clerkships. Judges, as well as new law graduates, will reap the benefits of mutually desirable *elbow clerk* relationships.

III. BEYOND PRACTICE-READY TO CLERKSHIP-READY: AMERICAN LAW SCHOOLS IMPLEMENT CURRICULA DESIGNS TO PRODUCE MARKETABLE GRADUATES

Developing a clerkship-ready law graduate begins with the educational paradigm.³⁰ Law schools are finally embracing the need for changing curricula to produce practice-ready lawyers.³¹ In part, this is in

29. See Norris, *supra* n. 2, at 774. While most judicial clerkships are filled via unsolicited applications, recommendations from professors who know the judge personally can greatly enhance an applicant's prospects for securing a clerkship. *Id.*; see *infra* nn. 155-57 and accompanying text.

30. The traditional legal educational model based on reading and analyzing cases to impart doctrinal theory has been the subject of criticism for decades. See e.g. Stuckey, *supra* n. 7, at 2 (identifying critique of the traditional legal model dating back to 1917); Erwin Chemerinsky, *Why Not Clinical Education?* 16 Clin. L. Rev. 35, 37-38 (2009) (discussing critique beginning in 1921); *supra* nn. 9-12 and accompanying text.

31. See e.g. Carpenter et al., *supra* n. 26; Sonsteng et al., *supra* n. 9, at 308.

response to employers' demands for graduates who possess skills and are ready to hit the ground running.³² The ABA Standards for Approval of Law Schools reflects this change, which mandates that each student receive substantial instruction in "other professional skills generally regarded as necessary for effective and responsible participation in the legal profession."³³ Furthermore, heavily debt-laden students are becoming increasingly vocal in their demand for a legal education that will make them competitive in a tight job market.³⁴

A. Practice-Ready

In the 1979 *Cramton Report*, the ABA Task Force on Lawyer Competency urged law schools to broaden students' practical legal education.³⁵ The report concluded that law schools need to improve their performance "in: (a) developing some of the fundamental skills underemphasized in traditional legal education; (b) shaping attitudes, values, and work habits critical to the individual's ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fields of lawyer practice, including but not limited to trial practice."³⁶

While recognizing that law schools teach legal analysis along with some legal research and writing, the Task Force singled out certain fundamental skills for added emphasis. These skills included "fact gathering, oral communication, interviewing, counseling, negotiation, and [the] organization and management of legal work."³⁷ To promote constructive attitudes, values, and work habits, the Task Force called for "[m]ore individualized instruction, more detailed critique of student work, and more

32. One commentator has expressed it this way: "The new marketplace mantra for new attorneys is 'be prepared to hit the ground running.'" See Cavazos, *supra* n. 10, at 2 (referring the reader to Gary Blankenship, *Law Schools: Time to Get Practical?* <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/8cdb069589d3395e852575fb0067c45f?OpenDocument> (Aug. 1, 2009).

33. ABA Sec. Leg. Educ. & Admis. B., *2012-13 ABA Stands. for Approval of Law Schs.* 19, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf (2012).

34. Law students' demands that they be prepared properly to secure employment relate to the increasing number of recent law school graduates who are suing their alma maters for misleading them about employment prospects. See Deborah L. Cohen, *Few Jobs, But a Rack of Suits: Law Grads Claim Their Alma Maters Duped Them*, 98 ABA J. 18, 18-19 (2012); see also Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & Soc. Just. 309, 330 (2012) (finding that law schools are under tremendous pressure to justify the value of legal education given high law school tuition and low employment rates).

35. ABA Sec. Leg. Educ. & Admis. B., *Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools* (1979) [hereinafter *Cramton Report*].

36. See *id.* at 14.

37. *Id.* at 15.

comprehensive methods of measuring student performance.”³⁸ As for integrated learning experiences, the Task Force referred to experiential learning through which students put doctrinal theory into practice.³⁹

In 1992, the ABA Task Force on Law Schools and the Profession built upon the themes in the *Cramton Report*, mandating that law schools teach competence in what is designated the *MacCrate Report*.⁴⁰ The Task Force also noted that members of the legal profession have a responsibility, intertwined with that of law schools, to enhance competency training.⁴¹ While it recognized the benefits of some in-house training programs offered by public and private employers, the Task Force chided law schools and other members of the legal profession for not providing suitable mentoring under skills professionals.⁴²

The *MacCrate Report's* core is its “Statement of Fundamental Lawyering Skills and Professional Values” (SSV), which purports to describe, “what it means to be a lawyer.”⁴³ The SSV sets forth ten skills and four values, which are subdivided further. The ten generic skill categories include: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas.⁴⁴ The value categories include: (1) provision of competent representation; (2) striving to promote justice, fairness, and morality; (3) striving to improve the profession; and (4) professional self-development.⁴⁵

The authors of the *MacCrate Report* emphasized that their overriding focus was on “building a better legal profession, of which all in the law—law teachers and scholars, judges, law librarians, and practicing attorneys—are members, and on constructing the educational continuum so as to enhance and sustain that profession into the future in a changing world of law and lawyers.”⁴⁶ To that end, the Task Force recommended that law

38. *Id.* at 17.

39. *See id.* at 17-18. The experiential model assumes learning by doing under suitable supervision and could include, for example, live-client and simulation clinics and trial advocacy programs. *Id.*; *see infra* nn. 76-83 and accompanying text.

40. *See MacCrate Report, supra* n. 7, at 7.

41. *See id.* at 287-99.

42. Such mentoring should include an opportunity for law students to engage in lawyering tasks, receive constructive feedback, perform self-evaluations, and receive reflective evaluations from skilled professionals. *Id.* at 331.

43. *Id.* at 321.

44. *See id.* at ch. 5.

45. *Id.*

46. Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. Leg. Educ. 89, 92 (1994). Moreover, the authors wanted to complete the process already

school faculties use SSV to evaluate their curricula and make changes accordingly.⁴⁷

More recently, in 2007, the *Carnegie Report* published an intensive two-year study of teaching and learning in American and Canadian law schools.⁴⁸ The *Carnegie Report* builds upon the critiques of legal education embodied in the *Cramton* and *MacCrate Reports*, and supports the finding that teaching law should not focus primarily on appellate case analysis.⁴⁹ The *Carnegie Report* stresses that students need to gain practice-ready skills beginning with simulated experiences and then advance to responsibility for real clients.⁵⁰ At the same time, Professor Roy Stuckey drew the following assumptions: the majority of new lawyers are ill-prepared for practice; substantial improvements to our legal education model are attainable; and there are unlikely to be any significant changes to how law schools educate students.⁵¹

In response to the reports, Professor Roy Stuckey's *Best Practices for Legal Education*, and the ABA's Standards for Approval of Law Schools, many law schools have expanded clinic offerings to provide students more access to practical training.⁵² Clinical training is now a nationally ranked

begun by law schools of "bringing the teaching of lawyering skills and professional values into the mainstream of legal education." *Id.* at 91.

47. *Id.* at 93. At least one scholar has embraced this use of the MacCrate Report stating, "[w]hether the result is a restructuring of the entire curriculum or something much more modest, the important task is to begin the process of reassessment and to seek a coherent, comprehensive view of the education available to the average student at each school." Schultz, *supra* n. 12, at 73.

48. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 15 (John Wiley & Sons, Inc. 2007) [hereinafter *Carnegie Report*].

49. *See id.* at 55-56.

50. *See id.* at 195. Students therefore develop professional judgment while engaging in typical legal practice situations. *Id.* at 196. One scholar recently described the concept of practice-ready as follows:

It could mean that graduates, equipped with a basic array of substantive knowledge, are able to learn what they need to practice through apprenticeship in their first job. In the comforting embrace of an office prepared to introduce the necessary professional competencies, graduates would learn the essentials for participation in the profession. But law schools do promise more—that graduates who pass the bar exam are capable of representing clients, no further lessons required.

See Barry, supra n. 12, at 249.

51. *See Stuckey, supra* n. 7, at 1.

52. *See e.g.* Robert A. Parker & Sue Schechter, *The Ugly Duckling Comes of Age: The Promise of Full-Time Field Placements* 5, 17 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1886509 (July 15, 2011) (considering the learning advantages arising from externships and other legal placements); Inst. L. Teaching & Learning, *Chart of Legal Education Reform*, <http://lawteaching.org/publications/ILTLchartoflegaleducationreform200905.pdf> (accessed Sept. 9, 2012) (listing curricula changes at various law schools and showing an increase in clinical and externship opportunities).

law school specialty in the U.S. News and World Report ranking system.⁵³ Nevertheless, some law schools question the value of clinical experiences, marginalize the faculty who teach them, and complain bitterly about their costs.⁵⁴ The current tight job market, however, ensures that practice-ready instruction will continue as a dominant force in legal education.⁵⁵ Future American law students can expect not only to learn substantive law, but also to increasingly apply that law in various settings inside and outside of law school.⁵⁶

B. Clerkship-Ready

A judicial internship is one of the settings in which a law student can develop both clerkship-ready and practice-ready skills.⁵⁷ A judicial intern-

53. See generally U.S. News World Rpt., *Education: Top Law Schools*, <http://gradschools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools> (accessed Oct. 11, 2012).

54. See Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 Clin. L. Rev. 1, 21-22, 25-26, 49 (2000).

55. Such instruction was taken a step further for J.D. holders seeking to be law professors. Beginning in Fall 2013, Yale law school will offer a Ph.D. in Law that prepares the student to be “professor ready.” See Karen Sloan, *Yale Offers Ph.D. in Law to Train Aspiring Professors*, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202562531465> (July 10, 2012). Law schools also view clerkships very favorably as part of their hiring criteria. See Norris, *supra* n. 2, at 768 (“[F]ormer clerks have already been screened, gained experience in researching and writing about legal issues, and bring along the prestige of having worked closely with respected jurists.”); see also Edward Lazurus, *Closed Chambers: The First Eyewitness Account of the Epic Struggles Inside the Supreme Court* 18 (1998) (reporting that almost two-thirds of Harvard’s tenured or tenure-track faculty are former federal clerks).

56. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. Leg. Educ. 157, 167 (1993) (reporting that law schools are offering increasing opportunities for students to gain experience in the application of law, to include simulated and live-client clinics, law firm clerkships, and externships with members of the legal profession). One commentator observes,

The old law school was a place of large classes, slow cadence, limited subject matter, verbal analytics, symmetrical theology, classroom enclosure, repetitive pedagogy and compulsory curriculum. The modern law school is, within the limits of its resources, a place of smaller classes, multidisciplinary and diversified subjects, differentiated pedagogy, factual context, in-depth study, research in field and library, operational training, professional community activity and curriculum optimality.

Bayless Manning, *Financial Anemia in Legal Education: Everybody’s Business*, 55 ABA J. 1123, 1125 (Dec. 1969).

57. As one scholar commented, “[M]any of the MacCrate skills and values can be imparted, modeled, practiced, and/or reinforced by the experience of working for a judge while the students engage in some genuine legal work and a great deal of critical participant-observation.” Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 Neb. L. Rev. 872, 875 (1996); see generally Monahan, *supra* n. 13, at 223 discussing skills instruction inherent in judicial externships).

ship is an experiential learning experience that exposes the law student to the full spectrum of the law and its application to real cases.⁵⁸ While working on actual client matters, students not only observe courtroom action, but also benefit from researching and writing on client issues, and assisting in resolving those issues by deliberating with judges.⁵⁹ Judicial internships “offer a small slice of that rich learning experience which cannot be obtained in a traditional classroom.”⁶⁰

Judicial interns’ learning opportunities in research and writing can vary depending upon the level of court in which they work. At the trial court level, interns might research dispositive motions and draft opinions and orders.⁶¹ Additionally, judges may ask interns to help prepare jury instructions, court fact-findings, and legal conclusions.⁶² Sometimes interns play a participatory role in trials, motions arguments, and pre-trial

58. See Gerard J. Clark, *Supervising Judicial Interns: A Primer*, 36 *Suffolk U. L. Rev.* 681, 681 (2003).

At least five of the ten skills of lawyering mentioned in the MacCrate Report can be learned by the judicial intern. The judge spends a great deal of time engaged in legal analysis and reasoning (Skill 2). Legal research (Skill 3) will frequently be necessary. The judge will often encourage negotiation (Skill 7) and may indeed participate in it him or herself. In turn, the student gains the opportunity to observe, at close range, the successful and unsuccessful strategies of litigation and alternative dispute resolution (Skill 8). Family and juvenile cases demand extensive problem solving (Skill 1). The MacCrate values focus on competence, and through active participation the intern quickly learns the difference between competence and incompetence.

Id. at 681-82; see generally *MacCrate Report*, *supra* n. 7, at 7.

59. See Clark, *supra* n. 58, at 690-91 (finding that judges invite student interns to fully participate in the decision-making process by providing access to the court file, assigning needed research, critiquing the advocates’ court presentations, and discussing the competing policies and principles in resolving a case); Monahan, *supra* n. 13, at 223. Indeed, how a judge decides cases is frequently a topic of scholarly debate. See generally Mahoney, *supra* n. 16, at 328 (discussing a general concern that too much of the judicial decision-making is being shifted to inexperienced law school graduates); See Pether, *supra* n. 1, at 46-48 (suggesting that many judges’ decisions are too often made or unduly influenced by elbow clerks and staff attorneys).

60. Caplow, *supra* n. 57, at 876. “[A] law student has many of the same responsibilities as a regular judicial clerk, such as evaluating pleadings and motions, listening to oral arguments, researching and analyzing legal issues, conferring with judges, and drafting bench memos or opinions.” Anna E. McDowell & Pamela S. Mzembe, *Working in Chambers: The Rewards of a Pre-Graduation Judicial Clerkship*, 74 *J. Kan. B. Assn.* 7, 7 (2005).

61. Linda F. Smith, *The Judicial Clinic: Theory and Method in a Life Laboratory of Law*, 1993 *Utah L. Rev.* 429, 439.

62. *Id.*; see also Chipchase, *supra* n. 28, at 25-47 (providing guidance on researching and drafting the most common written products, which are orders and memos, and suggesting striking a balance between thoroughness and efficiency); see generally Mary L. Dunnewold et al., *Judicial Clerkships: A Practical Guide* (Carolina Academic Press 2010) (providing an overview of the trial and appellate court clerks’ roles).

hearings.⁶³ At the appellate court level, interns may draft bench memoranda after reading briefs and records, perform further needed research, and draft and edit opinions.⁶⁴

Writing opinions for a judge will be different from anything the judicial intern has previously done.⁶⁵ The intern is writing neither as an advocate, nor in his or her own voice.⁶⁶ The judge's mentorship teaches the intern to draft a decision around the type of case, whether law-based, fact-based, policy-based, or discretionary in nature.⁶⁷ As a novice opinion writer, the intern quickly appreciates the challenges involved in writing—informing an unfamiliar reader about the critical facts, controlling law, rationale, and disposition.⁶⁸

Improving research and writing skills, however, is just one aspect of how a judicial internship prepares a law student to become clerkship-ready. As interns participate in courtroom proceedings, they integrate knowledge of civil procedure gained from the classroom with the role of the judiciary.⁶⁹ Such integration leads to problem-solving, including the

63. See Clark, *supra* n. 58, at 684.

64. The bench memo is the “keystone to assisting” the judge to hear a case and “provides an analytical framework in which the judges will have access to the relevant issues, arguments, and controlling law.” See Lemon, *supra* n. 21, at 18; Smith, *supra* n. 61, at 439.

65. See Caplow, *supra* n. 57, at 880; see also Stephen J. Choi & G. Mitu Gulati, *Which Judges Write Their Opinions (And Should We Care)?* 32 Fla. St. U. L. Rev. 1077, 1081 (2005) (stating that opinion writing is a joint venture between judges and their law clerks).

66. “From the judicial perspective, the student writer must consider the goals, logic, language and style of another author, while remembering the unique responsibility of a judge to clearly explain and justify the outcome.” Caplow, *supra* n. 57, at 880.

67. *Id.* When helping to write an opinion at the appellate level, the student needs to keep the judge's two primary concerns in mind: first, making a just decision for the affected parties; and second, ensuring that the decision is either consistent with precedent or creates a workable rule to be applied to future similarly situated parties. See Robert J. Martineau et al., *Appellate Practice and Procedure* 812 (2d ed., West 2005).

68. See Lemon, *supra* n. 21, at 45. As explained by a former federal district and appellate court clerk:

Legal writing as a law clerk is not easy. You must identify the issues and relevant facts, research and understand the governing law, and then apply that law to the facts to reach the correct—the legally appropriate—result. Identifying the issues in a macro sense—the matter before the court—is easy. The procedural posture of the case will govern the type of decision the court is to make—grant summary judgment, deny leave to amend, enter judgment for the plaintiff, etc. Identifying the issues in a micro sense is more difficult. . . . The depth of your review, however, must go well beyond the pleadings. . . . [showing] completeness and rigorousness of your legal analysis.

Chipchase, *supra* n. 28, at 29.

69. Monahan, *supra* n. 13, at 223. Many judicial interns report a significant improvement in their analytical abilities by making connections between legal doctrines

resolution of ethical dilemmas.⁷⁰ As interns juggle the myriad of tasks facing judicial clerks, they develop sharper organizational and time management skills.⁷¹ Court personnel and persons outside the courthouse interact with interns and help hone their oral communication skills.⁷²

Analyzing a practicing attorney's written and oral communications strengthens the intern's evaluation of persuasive arguments as well as his or her appreciation for the level of expertise expected in the legal profession.⁷³ Familiarity with litigation practices and procedures, together with exposure to a particular jurisdiction's substantive law, can make the judicial intern more attractive for post-graduate clerkships in the same jurisdiction.⁷⁴ Similarly, judges considering the intern for a post-graduate clerkship may view the hands-on experience in a judge's chambers favorably. This is because the intern already has an appreciation for the give-and-take in the judicial decision-making process.⁷⁵

introduced in the classroom and involvement in their application during actual litigation. See Caplow, *supra* n. 56, at 881.

70. Monahan, *supra* n. 13, at 224. "During clinic work, the students will be exposed to certain ethical issues faced by the judge. At a minimum the students must be prepared to maintain confidentiality and to understand how conflicts of interest might affect them and their work." Smith, *supra* n. 60, at 467.

71. See Caplow, *supra* n. 57, at 884; Monahan, *supra* n. 13, at 224. A judge's chamber is a very busy place and requires that interns develop excellent work habits to facilitate handling heavy workloads. See e.g. John B. Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process* 27-28 (Berkeley: U. Cal. Press 1980) (finding that increasingly, federal district court judges and magistrate judges are treating their interns as additional law clerks in handling their burdensome workloads); Clark, *supra* n. 57, at 682-83 (emphasizing that student interns are welcomed by overworked judges and courts).

72. See Chipchase, *supra* n. 28, at 7. Clerks "meet and interact with judges, lawyers, and laypeople . . . Each person, whatever his or her role, serves an important function in the court, and you must treat everyone you encounter with courtesy and respect. You represent the judge." *Id.* Moreover, the judicial intern's oral communication skills are enhanced by conversing with the judge. Caplow, *supra* n. 57, at 883. "Although few students predict that the internship will be an occasion for improving oral communication skills, it is indeed. They have to persuade the judge that their recommended analysis and reasoning is sound." *Id.*

73. See McDowell & Mzembe, *supra* n. 60, at 7; see also Caplow, *supra* n. 57, at 881-82 (stating that although judicial interns do not work directly as advocates, they learn how to advocate effectively by observing attorneys in court and listening to what the judge has to say about those attorneys); Stewart Macaulay, *The Judge as Mentor: A Personal Memoir*, 36 J. Leg. Educ. 144, 146 (1986) (explaining that during "one-on-one Socratic classes" the judge would comment on advocates' skills and honesty).

74. McDowell & Mzembe, *supra* n. 60, at 7. Through assisting with real cases, judicial interns can apply substantive law to actual disputes, in contrast to classroom hypotheticals. *Id.*

75. See Jennifer A. Gundlach, "This is a Courtroom, Not a Classroom": So What is the Role of the Clinical Supervisor? 13 Clin. L. Rev. 279, 305 (2006) ("One judge has pointed out that a well-supervised student who goes it alone in the courtroom is likely to be as competent or even more competent than a newly-admitted lawyer."); *infra* nn. 163-68 and

A live clinic is another related experiential learning mechanism that can help prepare clerkship-ready graduates.⁷⁶ “[T]he courtroom is a valuable extension of the law school classroom and a critical site in which student attorneys learn by doing.”⁷⁷ Through practice, the student-attorney not only applies substantive and administrative rules of law, but also learns first-hand that solving a client’s problems requires addressing both social and legal issues.⁷⁸

Equally as important, when making pivotal decisions affecting clients, the student-attorney begins implementing professional judg-

accompanying text; see also Abner J. Mikva, *Judicial Clerkships: A Judge’s View*, 36 J. Leg. Educ. 150, 151 (1986). As explained by the Honorable Abner J. Mikva, former Chief Judge of the U.S. Court of Appeals for the District of Columbia:

The real worth of judicial clerks to the judicial system, however, is greater than their input into the decision or the constancy they bring to those decisions. . . . The essential value of clerks to the judiciary is the flexibility they bring to an institution that would ossify without them. . . . Fortunately, every year a new batch of clerks comes into the judge’s chambers. . . . They ask questions and raise doubts. If the relationship between judge and clerk is a good one (and most often it is) they can even criticize their judge. They provide sorely needed constructive tension [T]he “Why do you say that?” critiques—those can and do come only from clerks.

Id. The Honorable Kermit Lipez of the U.S. Court of Appeals for the First Circuit writes, “[l]aw clerks are intellectual company. The decisional part of judging is a lonely process. Except for our colleagues, our clerks are the only people that we can talk to about our cases.” Kermit Lipez, *Judges and Their Law Clerks: Some Reflections*, 22 Me. B.J. 112, 115 (2007).

76. As much as sixty-five years ago, Jerome Frank supported law students working in courtrooms. Jerome Frank, *A Plea for Lawyer-Schools*, 56 Yale L.J. 1303, 1311 (1947). It was not, however, until the late 1960’s that the legal clinic really began to take hold in law schools, due in part to the funding of clinical and field work in 1968 by the Independent Council on Legal Education for Professional Responsibility. See Smith, *supra* n. 61, at 434-35.

77. Gundlach, *supra* n. 75, at 289. “[S]tudent attorneys have the opportunity in a courtroom to really be creative in applying and experimenting with lawyering skills in practice, to see first-hand the consequences of their choices and their performance, to observe and evaluate the performance of other practitioners and judges, and to learn numerous administrative and clerical tasks that are necessary corollaries to the practice of law.” *Id.* at 288-89.

78. See Douglas A. Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 Tenn. L. Rev. 939, 940 (1997); see also David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* 5 (West 1991) (“Whatever the legal aspects of a problem, nonlegal aspects frequently are at the heart of a client’s concerns. . . . [Therefore,] counseling inevitably requires that you elicit information about these nonlegal aspects and factor them into a problem’s resolution.”); Mark Herrmann, *The Curmudgeon’s Guide to Practicing Law* 121 (ABA 2006) (stating that students benefit from representing real clients in part because they come to appreciate the non-legal dimension in problem resolution).

ment.⁷⁹ Integral to the development of professional judgment in the courtroom is teaching the student attorneys to be “reflective practitioners.”⁸⁰ Donald Schon, a social scientist who created this term, warned that professional competence could suffer when a practitioner fails to reflect on his or her actions.⁸¹ To avoid this problem, the practicing student-attorney can “reflect-in-action,” by examining and analyzing repeated assumptions and experiences related to representing clients.⁸² Such a process enables students to benefit from self-learning.⁸³

Whether serving as a judicial intern or practicing in a live clinic, students develop clerkship-ready skills to augment practice-ready skills gleaned from other experiences.⁸⁴ By engaging in an active learning envi-

79. “[T]he law student should have the opportunity to see the world through the eyes of a practicing attorney, facing the full range of ambiguities and complexities that arise in that role and being the one to identify choices and then choose among them. Only when in the role will the student truly be able to learn to practice professional judgment.” Gundlach, *supra* n. 75, at 287.

80. See generally Donald A. Schon, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books 1983); Donald A. Schon, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass 1987).

81. Schon describes a failure to reflect as follows:

As a practitioner experiences many variations of a small number of types of cases, he is able to “practice” his practice. He develops a repertoire of expectations, images, and techniques. He learns what to look for and how to respond to what he finds. As long as his practice is stable, in the sense that it brings him the same types of cases, he becomes less and less subject to surprise. His knowing-in-practice tends to become increasingly tacit, spontaneous, and automatic, thereby conferring upon him and his clients the benefits of specialization. On the other hand, professional specialization can have negative effects. . . . [A] high degree of specialization can lead to a parochial narrowness of vision. . . . Further, as a practice becomes more repetitive and routine, and as knowing-in-practice becomes increasingly tacit and spontaneous, the practitioner may miss important opportunities to think about what he is doing.

Schon, *The Reflective Practitioner*, *supra* n. 80, at 60-61.

82. *Id.* at 61-62.

83. Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 Clin. L. Rev. 231, 250 (1995) (distinguishing education from training as follows: “[E]ducation [is] the self-learning process, while training is what others make you do.”).

84. In addition to such experiences, upper-class students should seek other opportunities to learn and develop practical skills for competent lawyering, such as: interviewing; counseling; negotiation; alternative dispute resolution; mediation; arbitration; and trial and appellate advocacy. See generally James J. Alfani et al., *Mediation Theory and Practice* (2d ed., Lexis 2006) (addressing history and skills development in mediation and negotiation); Robert M. Bastress & Joseph D. Harbaugh, *Interviewing, Counseling and Negotiating: Skills for Effective Representation* 253 (1990) (emphasizing detailed fact gathering for most effective client representation); David A. Binder & Susan C. Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (West 1977) (encouraging dialogue between attorney and client as the most effective method of interviewing); Laurence J. Boule et al., *Mediation Skills and Techniques* (Lexis 2008) (detailing steps and processes for effective mediation); David F.

ronment, upper-class students practice competencies not learned during their first year. Rather than focusing almost exclusively on rules, the upper-class student implements people-oriented skills, which foster strong attorney-client relationships.⁸⁵ Indeed, it is through working with people that the student most effectively becomes clerkship-ready.

IV. JUDICIAL CLERKSHIPS: A BRIEF HISTORY AND AVAILABILITY OF FEDERAL AND STATE COURT POSITIONS IN THE CURRENT LEGAL JOB MARKET

The judicial clerkship role has evolved considerably since its inception in the late nineteenth century. Both federal and state judicial systems employ clerks, and their numbers have soared exponentially, concurrent with sharply rising caseloads. Securing a clerkship position, however, has become increasingly difficult due to a surplus of lawyers and a tight legal job market.

A. History of Clerkships

Horace Gray, a former Chief Justice of the Massachusetts Supreme Court, hired the first judicial clerk in 1875.⁸⁶ Justice Gray selected recent Harvard Law School graduates for his clerks and paid them out of his own pocket.⁸⁷ Justice Gray continued hiring judicial clerks after his appointment to the United States Supreme Court in 1882.⁸⁸

Chavkin, *Clinical Legal Education: A Textbook for Law School Clinical Programs* (Anderson Publ. Co. 2002) (extolling clinical programs for involving students in the world of real lawyering); Roger S. Haydock & Peter B. Knapp, *Lawyering Practice and Planning* (3d ed., West 2011) (stressing listening as pivotal to earning clients' trust); G. Nicholas Herman & Jean M. Cary, *Legal Counseling, Negotiating, and Mediating: A Practical Approach* (2d ed., Lexis 2009) (setting out model client communications in mediation and negotiation contexts); Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (2d ed., Aspen Publishers 2003) (discussing optimum skills for working with clients); Martineau, *supra* n. 67 (providing a comprehensive overview of appellate litigation).

85. See Laurie A. Lewis, *Winning the Game of Appellate Musical Shoes: When the Appeals Band Plays, Jump From the Client's to the Judge's Shoes to Write the Statement of Facts Ballad*, 46 Wake Forest L. Rev. 983, 1004-05 (2011) (maintaining that law schools must teach students people-oriented practical skills to prepare them for the practice of law).

86. See Martha Swann, *Clerks of the Justices*, in *The Oxford Companion to the Supreme Court of the United States* 159 (Kermit L. Hall ed., Oxford Publ. Co. 1992).

87. See *id.* at 159-60; all of Gray's law clerks were referred to him by John Chipman Gray, a Harvard professor who was also Gray's half-brother. Oakley & Thompson, *supra* n. 71, at 10.

88. Swann, *supra* n. 86, at 159-160; see also Mahoney, *supra* n. 16, at 324 (stating that "Justice Gray was not only the founder of the institution of 'law clerking,' but also the draftsman of the role a law clerk was thereafter to perform").

When Congress passed the Appropriation Act of 1922, it authorized Supreme Court Justices to hire clerks.⁸⁹ A burgeoning docket spurred this legislation.⁹⁰ Initially, Supreme Court clerks performed administrative assistant, secretarial, and even chauffeuring duties.⁹¹ Over time, however, clerks became an invaluable screen of information for Justices who were increasingly overwhelmed by a “caseload explosion.”⁹² In 1930, Congress gave circuit courts the option to hire clerks,⁹³ this option later extended to district courts.⁹⁴

Over the past fifty years, continued caseload expansion has stimulated rapid growth in the number of clerks.⁹⁵ Currently, Supreme Court Justices may have four clerks, circuit court judges may have three, and district court judges may have two.⁹⁶ The Honorable Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit, however, explains that after considering staff attorneys, circuit court judges actually average four clerks.⁹⁷

Law clerk duties vary depending upon whether they are serving in federal or state court, the level of court, and the individual judges.

89. Nadine J. Wichern, *A Court of Clerks, Not of Men: Serving Justice in the Media Age*, 49 DePaul L. Rev. 621, 624 (1999). Each Justice could hire one clerk at an annual salary of \$3,600. *Id.* In 1886, however, Congress had provided a “stenographic clerk” for each Justice at an annual salary of \$1,600. Mahoney, *supra* n. 16, at 324.

90. Kevin D. Swan, *Protecting the Appearance of Judicial Impartiality in the Face of Law Clerk Employment Negotiations*, 62 Wash. L. Rev. 813, 817 (1987). State courts soon followed the U.S. Supreme Court’s practice, such that by 1942 almost half of the top state courts employed clerks. See Oakley & Thompson, *supra* n. 71, at 18.

91. See John G. Kester, *The Law Clerk Explosion*, 9 Litig. 20, 21 (1983). “One clerk was recommended to one Justice for his skills as a barber.” *Id.* at 22.

92. Paul R. Baier, *The Law Clerks: Profile of an Institution*, 26 Vand. L. Rev. 1125, 1163-71 (1973).

93. Act of June 17, 1930, Pub. L. No. 71-373, 46 Stat. 774.

94. Act of Feb. 17, 1936, Pub. L. No. 74-449, 49 Stat. 1140. Despite the authorization of district court clerks, their numbers were sharply restricted and required a certification of need until 1959. Mahoney, *supra* n. 16, at 324-25.

95. See Oakley & Thompson, *supra* n. 71, at 21. For both federal and state court systems, as judges’ “workload[s] continued to increase steadily over time, the judiciary’s response was always the same: add law clerks.” Mahoney, *supra* n. 16, at 337. Nonetheless, caseloads increase and numbers of judges do not.

Additional Article III judgeships are critical to the Judiciary’s efforts to provide efficient and prompt service to the public. It has been more than two decades since the Judiciary’s judgeship needs were comprehensively addressed. Since then, the Judiciary’s civil caseload has grown by 29 percent and its criminal caseload has grown by 60 percent, while the number of Article III judgeships has grown by only 4 percent.

Admin. Off. U.S. Cts., *2010 Annual Report of the Director* 13, <http://www.uscourts.gov/uscourts/FederalCourts/AnnualReport/2010/images/annualReport2010.pdf> (2011).

96. Mahoney, *supra* n. 16, at 326.

97. Richard A. Posner, *The Federal Courts, Crisis and Reform* 103 (Harvard U. Press 1985).

Although the law clerk has no statutorily defined responsibilities, in 1977 the Federal Judicial Center provided a general job description for law clerks in its Law Clerk Handbook:

The law clerk is an assistant to the judge and has no statutorily defined duties. Rather, the clerk serves at the direction of the judge and performs a broad range of functions. Clerks are usually assigned legal research, drafting, editing, proof-reading, and verification of citations. Frequently, clerks also have responsibility for library maintenance, document assembly, service as courtroom crier, and some personal errands for the judge. Clerks often attend conferences in chambers with the attorneys in a case and also engage in conferences and discussions with the judge regarding pending cases.⁹⁸

As regards appellate clerks, the Law Clerk Handbook states their primary responsibility is “to research the issues of law and fact in an appeal and to draft a working opinion for the judge, pursuant to his directions.”⁹⁹ Regardless, there is scant evidence that these definitions or any others depict clearly the duties and functions of law clerks.¹⁰⁰ Most likely, this is explained by the uniquely personal nature of judge-clerk relationships.¹⁰¹

Just as there are no sharply defined job descriptions for clerks, there are no strict guidelines for judges’ selection of clerks. Judges enjoy complete discretion in their hiring of *elbow clerks*.¹⁰² This has resulted in a chaotic and stressful process that has been the subject of severe criticism for

98. A. Dileo & A. Rubin, *Law Clerk Handbook: A Handbook for Federal District and Appellate Law Clerks* § 1.100 (F. Jud. Ctr. 1977).

99. *Id.* at § 1.200.

100. Clerk job descriptions also appear in case law. See e.g. *Hall v. Small Bus. Admin.*, 695 F.2d 175, 179 (5th Cir. 1983) (stating that law clerks are “sounding boards for tentative opinions and legal researchers who seek the authorities that affect decisions. . . . [and] are privy to a judge’s thoughts in a way that neither parties to the lawsuit nor his most intimate family members may be”); *Fredonia Broad. Corp. v. RCA Corp.*, 569 F.2d 251, 255-56 (5th Cir. 1978) (stating that “in addition to relieving [the judge] of many clerical and administrative chores, law clerks may serve as sounding boards for ideas, often affording a different perspective, may perform research, and may aid in drafting memoranda, orders and opinions”).

101. Todd C. Peppers et al., *Inside Judicial Chambers: How Federal District Court Judges Select and Use Their Law Clerks*, 71 Alb. L. Rev. 623, 631 (2008) (“Because of the confidential nature of our chamber activity, as well as the varying ways in which different judges use their clerks, our knowledge of law clerk duties is somewhat limited.”). Law clerks are, however, bound by the Code of Judicial Conduct, and the more stringent Code of Conduct for Law Clerks. ABA, *Model Code Jud. Conduct* (ABA 2007); *Code of Conduct for Law Clerks of the Supreme Court of the United States* (1989).

102. See Wichern, *supra* n. 89, at 625. Congress does not restrict the process by which judges select, train, supervise, or fire their law clerks. See Norris, *supra* n. 2, at 772; see also Pether, *supra* n. 1, at 49 (“Judges appoint clerks with virtually no regulation.”). But a judge

decades.¹⁰³ Many characterize this process as a “frenzy of hiring [that] has cast the judiciary into disrepute.”¹⁰⁴ During this process, “the law of the jungle reigns and badmouthing, spying and even poaching among judges is rife.”¹⁰⁵ One clerkship applicant stated, “It was positively surreal, the most ludicrous thing I’ve ever been through.”¹⁰⁶

There have been several attempts to reform the clerkship hiring process, but most have failed.¹⁰⁷ Finally, in April 2002, the National Federal Clerk Hiring Plan announced a streamlined hiring process.¹⁰⁸ Addition-

cannot hire a first cousin or a closer family relation to serve as a clerk. 5 U.S.C. § 3110 (2006); 28 U.S.C. § 458 (2006).

103. See generally Edward S. Adams, *A Market-Based Solution to the Judicial Clerkship Selection Process*, 59 Md. L. Rev. 129, 129 (2000) (discussing problems in the clerkship hiring process and promoting a free-market system based on game theory); Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. Chi. L. Rev. 793, 796 (2001) (suggesting adoption of a modified medical matching program to alleviate inefficient clerkship hiring methods); Louis F. Oberdorfer & Michael N. Levy, *On Clerkship Selection: A Reply to the Bad Apple*, 101 Yale L.J. 1097, 1098 (1992) (proposing that more information gleaned through a matching system for law clerk hiring may reduce a frenzied process); Mark W. Pletcher & Ludovic C. Ghesquiere, *In Restraint of Trade: The Judicial Law Clerk Hiring Plan*, 78 U. Colo. L. Rev. 147, 162 (2007) (reviewing the chaotic clerkship hiring process and advocating that OSCAR materials be set up for open access); Wald, *supra* n. 22, at 160-161 (encouraging consideration of a matching program to help transform clerkship selection into a more dignified process).

104. Avery et al., *supra* n. 103, at 796.

105. David Margolick, *The Law: At the Bar; Annual Race for Clerks Becomes a Mad Dash, with Judicial Decorum Left in the Dust*, N.Y. Times B4 (Mar. 17, 1989). Margolick’s article was the impetus for renewed reform efforts. George L. Priest, *Reexamining the Market for Judicial Clerks and Other Assortative Matching Markets*, 22 Yale J. on Reg. 123, 129 (2005).

106. Margolick, *supra* n. 105 (quoting a Stanford student who also said: “Here are these brilliant, respected people . . . Federal judges . . . – and they’re behaving like 6-year-olds.”). In response to Margolick’s scathing article, Judge Wald expounded on some of the reasons why the clerkship hiring process is so highly charged:

[T]he federal judge . . . works in small, isolated chambers with a minimum of work contacts . . . She is totally dependent on herself, her law clerks, and her staff . . . If for any reason one of her clerks proves significantly deficient, she, or the other clerks, must take up the slack . . . [A]n excellent versus a mediocre team of clerks makes a huge difference in the judge’s daily life and in her work product. Indeed, a judge sometimes decides whether to file a separate opinion or to dissent in a case based – at least in part – upon the support she can anticipate from her clerks. . . . Judges talk about it being a “good” or “bad” year, not just in terms of results they have achieved, or in the importance of matters before the court, but also in terms of teamwork and the dynamics of work within their chambers. Her clerks are basically the only persons a judge can talk to in depth about a case.

Wald, *supra* n. 22, at 153-54.

107. Todd Zywicki, *Herdling Cats*, 5 Green Bag 2d. 239, 239 (2002) (“Every plea and plan has fallen prey to the same problem: Article III (i.e., it is hard to control a federal judge).”).

108. See Pletcher & Ghesquiere, *supra* n. 103, at 161-62.

ally, the Online System for Clerkship Application and Review (“OSCAR”), an online database that most federal judges use, launched in 2005.¹⁰⁹ Under the Federal Clerk Hiring Plan, specific dates are set for when judges may receive applications, and contact, interview, and hire clerks. These dates are in the early fall and apply to matriculating third-year students.¹¹⁰

Due to extreme competition, amongst both judges seeking more desirable candidates and candidates seeking more desirable clerkships,¹¹¹ most federal clerkships are filled by mid-October.¹¹² Often brisk hiring is accompanied with what has become known as “exploding offers” and “vanishing offers.” In an exploding offer, the judge forces an applicant “to make take-it-or-leave-it choices before interviewing with their preferred judges.”¹¹³ “In a vanishing offer, the judge makes the offer and agrees to give the candidate time to decide; before that time is up, the judge calls back and withdraws the offer.”¹¹⁴ These types of offers force students to

109. *Id.*

110. *Id.* at 149-50, 161-62. The plan does not apply to law school graduates; law students, however, must wait until the day after Labor Day to mail applications. From that point until noon EDT on the second Thursday following Labor Day is a reading period, after which judges may schedule interviews. Interviews and offers can start the third Thursday after Labor Day. The Law Clerk Hiring Plan is still in place and is widely accepted, in part because the AALS agreed to enforce it. Then in 2005, the clerk hiring process went online through the Online System for Clerkship Application and Review (“OSCAR”). Most, but not all, judges have opted into OSCAR, which greatly eases administrative burdens and costs. *Id.* at 161-62.

111. See Adams, *supra* n. 103, at 141-42 (“[C]andidates will posture themselves before judges of the highest possible reputation . . . [and] clerk for a judge immediately following law school, often using their clerkship to leverage themselves into more favorable subsequent employment opportunities. The best students, therefore, look for the ‘best’ clerkships.”); Norris, *supra* n. 2, at 775 (“[S]ince a judge’s reputation may be enhanced by attracting top students . . . the goal of many judges is to hire the most credentialed set of clerks, often without regard to other considerations.”).

112. See Priest, *supra* n. 105, at 136 (finding that interviews lead quickly to offers, which in turn spur rapid acceptances).

113. Richard A. Epstein, *Ending the Mad Scramble: An Experimental Matching Plan for Federal Clerkships*, 10 Green Bag 2d. 37, 39 (2006). This scholar explains how “ugly” the process can get:

Stage one: the judge extracts a promise from an applicant not to accept any other offers until the applicant interviews with the judge. It is not explicitly stated, but strongly implied, that a position will be kept open in good faith. After all, no sane applicant would take the offer from any judge who explicitly stated that the position could evaporate before the interview takes place. Stage two: the student postpones taking or encouraging other offers and flies off at great personal expense to the appointed interview. Stage three: the judge says, “Sorry, all my positions have been filled.”

Id.

114. Adams, *supra* n. 103, at 133.

take action without sufficient time to deliberate.¹¹⁵ Moreover, some judges employ other tactics in efforts to secure more desirable clerks such as: insisting on interview times that conflict with other judges' schedules;¹¹⁶ speaking derogatorily about other judges; informing applicants of negative information about competing judges;¹¹⁷ and extending more offers to applicants than positions available.¹¹⁸

B. Current Clerkship Market

Despite an anxiety-provoking and often demeaning clerkship selection process, law school students are clamoring for post-graduate clerkships.¹¹⁹ Clerkships are historically favorable, and despite the current job market, the number of applications continues to increase.¹²⁰ Moreover, demand for clerkships is rising despite relatively low-paying salaries¹²¹ and crushing law student debt.¹²² Currently, new law graduates rely on enhancing their opportunities to obtain higher-paying jobs after their clerkships.¹²³

115. *See id.* "This 'exploding' offer is grossly unfair to the applicant who (1) may have had several interviews before the current one, and is expecting an answer from them, or (2) is scheduled to interview with other judges sometimes later the same day." Aldisert et al., *supra* n. 3, at 850. Students, however, also have contributed to the fray. For example, they "learn quickly to hedge, to answer some calls earlier than others, to avoid some calls altogether, and to solicit time in which to seek competing offers." Wald, *supra* n. 22, at 156.

116. *See* Kozinski, *supra* n. 15, at 1717.

117. *See* Margolick, *supra* n. 105.

118. Avery et al., *supra* n. 103, at 819.

119. *See* Norris, *supra* n. 2, at 768.

120. "Clerkships are extremely competitive. Applicants are competing against hundreds of other top law students from law schools across the country." Aldisert et al., *supra* n. 3, at 838. The recent dramatic influx of lawyers further contributes to the competition for clerkships. *See* Barnhizer, *supra* n. 5, at 282 (stating that of the more than 1.1 million persons currently licensed to practice law, almost 400,000 of these attorneys only entered the profession over the last decade).

121. According to NALP, annual salaries for judicial clerks range from \$43,000 - \$60,000, with a mean income of \$52,000. *See* NALP, *supra* n. 2, at 1.

122. *See* Thies, *supra* n. 6, at 599; *see also* David L. Chambers, *The Burdens of Educational Loans: The Impacts of Debt on Job Choice and Standards of Living for Students at Nine American Law Schools*, 42 J. Leg. Educ. 187, 196 (1992) (finding no support for heavily debt-burdened students shying away from judicial clerkships due to lesser pay).

123. Chambers, *supra* n. 122, at 214. "[C]lerkships typically last only one year and the comparatively low clerkship earnings are little or no guide to the probable earnings of the clerks in the years that follow." *Id.*; *see also* Mahoney, *supra* n. 16, at 321-22 (observing that prestigious law firms actively recruit former clerks and pay handsomely to have them); Norris, *supra* n. 2, at 767 (stating that clerkship graduates are wooed by firms because of their insights both as to the law and the inner workings of the judicial system).

Most significantly, however, law school graduates are facing one of the worst job markets in history.¹²⁴ The overall employment rate for 2011 graduates stood at 85.6%, the lowest it has been since 1994 at 84.7%.¹²⁵ Moreover, for the first time since 1975, the number of graduates in private practice fell from 50% to 49.5%.¹²⁶ Many who would have secured employment in the private sector are now competing with practicing attorneys who have one or more years of experience.¹²⁷ Fewer paying clients discourage some who would have opened a solo practice.¹²⁸

It is not surprising, therefore, that an increasing number of new law graduates are applying for judicial clerkships.¹²⁹ By working for a judge, the newly minted lawyer develops vital practical skills,¹³⁰ makes useful con-

124. See Joe Palazzolo, *Law Grads Face Brutal Job Market*, <http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html> (June 24, 2012) (stating that nine months after graduation, only 55% of the class of 2011 reported full-time, long-term jobs requiring a law degree); see generally NALP, *Employment for the Class of 2011 – Selected Findings*, 1, <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf> (showing the 2011 class as hitting the “bottom” employment profile in a “brutal entry-level job market”); see also Thies, *supra* n. 6, at 599 (stating that although there were economic turndowns in 1990-1992 and 2000-2001, the economic recession of 2008-2009 has placed unprecedented stress on the legal job market, and is apt to last longer and be more intense than the earlier ones).

125. “Analyses of these data reveal an employment rate that has fallen more than six percentage points since reaching a 23-year high of 91.9% in 2007 and marks the lowest employment rate since the aftermath of the last significant recession.” NALP, *supra* n. 124, at 1.

126. *Id.*

127. Barnhizer, *supra* n. 5, at 286 (“[A] substantial number of lawyers with several years of experience in larger firms are finding themselves cut loose by those law firms and make up a pool of experienced competitors vying with inexperienced new graduates for the limited number of available positions.”).

128. Nevertheless, 6% of 2011 law school graduates went into solo practice, up from 3.3% for the class of 2008. NALP, *supra* n. 124, at 3.

129. See *supra* n. 119 and accompanying text; see also Finkel, *supra* n. 3, at 19 (stating that graduates are scouring everywhere for work, and thus those who might not have looked for clerkships in the past are now viewing them as a viable option). The number of new law graduates reporting clerkships as their first job has remained stable over the past several years. For the class of 2011, it was 9.3% of the total; it was the same for the class of 2010. NALP, *supra* n. 2, at 1; NALP, *Class of 2010 National Summary Report*, 1, http://www.nalp.org/uploads/NatlSummChart_Classof2010.pdf (June 2011). For Classes of 2009, 2008 and 2007, the percentages were 8.7%, 9.6%, and 9.8%, respectively. NALP, *Class of 2009 National Summary Report*, 1, http://www.nalp.org/uploads/NatlSummChart_Classof2009.pdf (June 2010); NALP, *Class of 2008 National Summary Report*, 1, http://www.nalp.org/uploads/NatlSummChart_Classof2008.pdf (June 2009); NALP, *Class of 2007 National Summary Report*, 1, http://www.nalp.org/uploads/NatlSummChart_Classof2007.pdf (June 2008).

130. Clerks’ benefits are multiple, including “[d]evelopment of confidence, maturity, contacts and lasting friendships. . . . [and] important lawyering skills, [including] research proficiency, refinement of writing skills, and the acquisition of knowledge of the rules, procedures, and decisional process of the appellate courts.” Charles H. Sheldon, *Law*

tacts in the legal environment,¹³¹ and forges a close relationship with an influential mentor.¹³² The judge-clerk relationship has a profound impact upon both parties. The successful *elbow clerk* who becomes a member of the judge's clerkship family enhances the judge's professional reputation.¹³³ At the same time, the judge who becomes a lifelong friend and mentor to the clerk advances the clerk's legal career.¹³⁴ It is both the desires of judges and clerkship candidates, along with job market forces, that shape attainment of an ideal *elbow clerk* relationship.

V. IDEAL *ELBOW CLERK* RELATIONSHIPS: PREFERENCES AND PRACTICES OF JUDGES AND NEW LAW GRADUATE APPLICANTS

Elbow clerks generally provide research and writing assistance for oral argument cases.¹³⁵ This is the most common form of judicial clerkship.¹³⁶ Because individual judges hire *elbow clerks*, the methods of selecting candidates and making offers vary widely.¹³⁷ Particular judges will seek specific qualifications and attributes in their *elbow clerks*. Similarly, new law gradu-

Clerking with a State Supreme Court: Views from the Perspective of the Personal Assistants to the Judges, 6 Just. Sys. J. 346, 365 (1981).

131. See Norris, *supra* n. 2, at 767 (stating that the judge's chambers can be a "golden opportunity for networking").

132. Peppers et al., *supra* n. 101, at 637 (finding that federal district court judges view their clerks as "fledging lawyers to whom a duty was owed to mentor and educate"); see also Aldisert et al., *supra* n. 3, at 851 ("[T]here is an extraordinary close relationship between the judge and his law clerk. . . . [T]he judge and his law clerks meet and talk together several times during the day to discuss cases and, yes, cabbages and kings, and to eat lunch together twice a week.").

133. Pletcher & Ghesquiere, *supra* n. 103, at 154 ("As clerks forever carry the credential of having worked for a particular judge, those clerks' future successes . . . reflect upon the judge.").

134. See e.g. Bryan R. Walters, *Judicial Clerkships and the Salary Wars*, 48 Fed. Law. 4, 5 (2001) (emphasizing the value impact a clerkship has upon a future legal career); Stephen L. Wasby, "Why Clerk? What Did I Get Out of It?" 56 J. Leg. Educ., 411, 426 (2006) (suggesting the judge's personal recommendation is a strong factor in securing post-clerkship employment).

135. See Gilbert S. Merritt, *The Decision Making Process in Federal Courts of Appeals*, 51 Ohio St. L.J. 1385, 1389 (1990) (stating that after oral argument, elbow clerks often write the first drafts of many opinions); *supra* n. 15 and accompanying text.

136. Others are staff attorneys and career clerks, who do not work for individual judges, but rather, work on routine assignments or specialized cases. See Pether, *supra* n. 1, at 6 n.23 ("Staff attorneys are also called 'habeas clerks,' or 'pro se clerks,' or 'death clerks' in federal courts, often when their functions are specialized in the way the titles signify."); see generally Dunnewold et al., *supra* n. 61, at 9-10 (describing duties of staff attorneys and career clerks, including long-term and short-term appointments).

137. See Norris, *supra* n. 2, at 775 (stating that because of their "unfettered discretion" in selecting elbow clerks, the process is marked by the "individual goals of judges rather than the interests of the public or the judiciary as a whole").

ates' decisions about to whom they will apply, and on what basis to accept offers, are individually motivated.¹³⁸ Arguably, generalizations remain regarding the unique process of pairing judges with *elbow clerks*.¹³⁹

A. Judge Preferences and Practices

A judge cares deeply about who serves as his or her *elbow clerk*.¹⁴⁰ Clerks can have a significant impact on judges' workloads and work products, decision-making processes, and reputations amongst colleagues and the wider legal community.¹⁴¹ Clerks are often confidants, and eventually, friends. "By accepting a judge's clerkship offer, a young lawyer becomes part of the judge's extended family, a disciple, an ally, quite possibly a friend."¹⁴² Indeed, the clerk is forever "tethered" to the judge.¹⁴³

Certain criteria rank highly in judges' minds when selecting *elbow clerks*. Among these are: an applicant's grades, resume, writing sample, cover letter, school, letters of recommendation, journal membership, moot court participation, previous clerkships, other work experience, and political ideology.¹⁴⁴ Perhaps nothing figures more prominently, however, than

138. See *infra* nn. 175-203 and accompanying text.

139. See e.g. Norris, *supra* n. 2, at 776-82 (considering the process through which judges and elbow clerks seek to find a mutually beneficial match).

140. See Pletcher & Ghesquiere, *supra* n. 103, at 151 (finding that "all judges agree that hiring good [elbow] law clerks is of paramount importance"); Wald, *supra* n. 20, at 778 (emphasizing that the judge and clerk have an "intensely intimate relationship"). Judge Wald stated this about the importance of elbow clerks:

"[M]any judges are not looking just for qualified clerks; they yearn for neophytes who can write like Learned Hand, hold their own in a discussion with great scholars, possess a preternatural maturity in judgment and instinct, are ferrets in research, will consistently outperform their peers in other chambers and who all the while will maintain a respectful, stoic, and cheerful demeanor."

Wald, *supra* n. 22, at 154.

141. See e.g. Jefferson Lankford, *The Judge's "Write" Hand*, 31 Ariz. Atty. 19, 20-21 (describing clerks as performing "indispensable work" which assists in the decision-making process); Lipez, *supra* n. 75, at 115 (stating that while he could write his opinions without his law clerks, the opinions would be more conclusory and therefore less predictable as to the law); Mikva, *supra* n. 75, at 151 (suggesting that increased numbers of trial court clerks have resulted in more complete orders and opinions, thereby providing a better basis for appellate review); Wald, *supra* n. 22, at 154 (observing the significant, often lasting impact clerks have upon a judge's reputation).

142. Kozinski, *supra* n. 15, at 1708.

143. "Judge and law clerk are in fact tethered together by an invisible cord for the rest of their mutual careers." *Id.* at 1709.

144. Judge Kozinski stated this about selection criteria:

"[T]he characteristics judges consider relevant in selecting a law clerk mix vary widely. Many judges consider geographical, racial and gender balance to be important . . . Other judges may want at least one clerk who has served on a law review, or who has taken certain courses, or who comes from a particular school. Age and nonlaw experience may be an

the applicant's personality, which comes through most clearly during the interview with the judge.¹⁴⁵ An applicant's "road to success is through the face-to-face interview . . . whether you get the job offer depends on how you perform at the personal interview."¹⁴⁶ During the interview, judges assess whether applicants are a "good fit" for their chambers.¹⁴⁷ Judges look for candidates who demonstrate knowledge about the judge, curiosity about the position, and enthusiasm for the work.¹⁴⁸

Getting the interview, however, is a huge hurdle.¹⁴⁹ The applicant must have a strong academic record.¹⁵⁰ The applicant's resume should be no longer than a page, unless the applicant has had significant work experience prior to law school.¹⁵¹ Similarly, the cover letter should be concise, unless the applicant sincerely has a strong desire to work for that particular judge.¹⁵² Writing samples are important, but are unlikely to garner an interview for an otherwise "average" applicant; however, they can ruin the chances for an otherwise "stellar" applicant.¹⁵³

What can make the difference in getting an interview, however, are strong letters of recommendation from law professors who know the appli-

important factor . . . if you have two young male hot dogs you may deem it particularly important to have a third clerk who is a bit older, or female, or who has had a prior career. Equally important are the intangible factors: How will a particular set of clerks get along with each other and the rest of the judge's staff?

Id. at 1722; see *infra* nn. 149-73 and accompanying text.

145. Dunnewold et al., *supra* n. 62, at 37 (stating that one of the most important selection factors is an applicant's personality); see also Kozinski, *supra* n. 15, at 1711 ("[N]othing can take the place of the personal interview. A thorough, searching interview, conducted with mutual candor, can tell judge and applicant a great deal about each other.").

146. Aldisert et al., *supra* n. 3, at 836-37.

147. See Kozinski, *supra* n. 15, at 1709.

148. Aldisert et al., *supra* n. 3, at 849 (stating that judges will also screen for an applicant's "inflated sense of self-importance").

149. Judges receive hundreds of applications from top students across the country with nearly identical outstanding credentials. See Aldisert et al., *supra* n. 3, at 838. Therefore, at the interview, the applicant should "recall that the judge or his clerks have already said 'yes' to you. What you have to do now is to confirm why they should say 'yes' again." *Id.* at 849.

150. See Peppers et al., *supra* n. 101, at 633-34 (finding that, for federal district court judges, the most important factor is the applicant's law school rank).

151. "Don't try to 'wow' the resume reader for half a page with distracting information." Aldisert et al., *supra* n. 3, at 840. But do not leave out experience providing insight into one's character and work ethic. One applicant who stood out for Judge Aldisert, for example, had listed experience as a landscaper in the judge's hometown. *Id.*

152. See *id.* at 841-42 (explaining that the exception to the short "Universal Cover Letter Rule" applies only if "you have your sights set on one judge in particular . . . But here's a real caveat: don't fake it, because if you are lucky enough to get an interview, the judge will surely ask you about it").

153. *Id.* at 843-44 (offering specific tips on writing samples and emphasizing that they should be flawless, with no spelling or grammatical errors).

cant well.¹⁵⁴ Judge Kozinski stated this about the role of law professors: “No one plays a more decisive role in influencing clerkship selection . . . [t]he written and oral communications they provide can make or break a clerkship candidate.”¹⁵⁵ Judges especially appreciate detailed letters that demonstrate the professor’s knowledge of an applicant’s background, interests, and academic performance.¹⁵⁶ Moreover, if judges know the professors personally, letters can be particularly persuasive in favoring one applicant over another.¹⁵⁷

Letters of recommendation from other judges are also highly influential. Often, a federal appellate court applicant has already had a federal district court clerkship that provided valuable judicial work experience and insight into the judiciary generally.¹⁵⁸ Sometimes, an applicant has had a judicial internship as a law student.¹⁵⁹ Additionally, live clinic advocacy and externships with district attorneys’ or public defenders’ offices can provide courtroom experiential work and produce excellent sources of recommendation letters.¹⁶⁰

Another top criterion is law journal membership. “On a student’s resume, nothing compares to two words: ‘Law Review.’”¹⁶¹ An applicant with journal experience is more likely to be a strong researcher and writer.

154. See Norris, *supra* n. 2, at 774, 777 (stating that judges typically seek three letters of recommendation from persons who know an applicant well, such as law professors, but that letters from former clerks can also strengthen an application).

155. Kozinski, *supra* n. 15, at 1728-29. See Aldisert et al., *supra* n. 3, at 842-43 (emphasizing that letters of recommendation from law professors can be pivotal in separating out applicants); Peppers et al., *supra* n. 101, at 634 (finding that letters of recommendation can help an applicant be noticed or serve as a “tie-breaker” amongst otherwise equally matched high quality applicants).

156. Aldisert et al., *supra* n. 3, at 842.

157. The Honorable Alfred T. Goodwin, former Chief Judge of the U.S. Court of Appeals for the Ninth Circuit, for example, routinely selected an *elbow clerk* each year from the University of Oregon Law School because of his good contacts with faculty members. See Wasby, *supra* n. 134, at 414 n.11. Some judges also tend to prefer certain law schools over others, but many hire from a diverse array of schools. “It is a common misconception that you have to be an Ivy Leaguer, or from the top fifteen schools, to be considered seriously for a federal clerkship.” Aldisert et al., *supra* n. 3, at 838-39.

158. See Dunnewold et al., *supra* n. 62, at 15. Some U.S. Circuit Courts of Appeals are viewed as “feeder” positions for clerkships at the U.S. Supreme Court. *Id.*; but see Mikva, *supra* n. 75, at 152 (suggesting that directly following law school, the “timing is perfect for judge and clerk to meet,” as the judge is comfortably ensconced in his role and “has a stake in the status quo,” while the clerk has no such stake and knows that judges “do not always speak with clarity and precision”).

159. See *supra* nn. 57-75 and accompanying text.

160. See *supra* nn. 76-83 and accompanying text.

161. Norris, *supra* n. 2, at 778. See Dunnewold et al., *supra* n. 62, at 36 (emphasizing that all judges are seeking clerks possessing superb legal research and writing skills). Many judges also rate highly applicants with moot court experience, as they will have written appellate briefs. *Id.*

Furthermore, if an applicant is serving in a significant position on a journal's board of editors, such "[e]lection . . . is proof of a student's commitment and perseverance, and a tribute to his ability to work with and gain the trust and respect of others."¹⁶²

An applicant's political ideology is less important to most judges.¹⁶³ Judges prefer clerks who are not "yes" persons; they want clerks who will challenge their views.¹⁶⁴ Having a clerk who consistently agrees might make the judge's year go more smoothly; but, as one judge expressed, "In my heart of hearts, I know it's a good thing to have dissent in chambers."¹⁶⁵ The ideal *elbow clerk* serves as a "sounding board" that uses the adversarial process to force the judge to justify each step in the decision-making process.¹⁶⁶ Through this model, judges sharpen their views and test their reasoning against potential strengths and weaknesses.¹⁶⁷ "Sometimes we are too quick to accept our own judgments. We need to be willing to rethink those judgments, and there is no shame for a judge . . .

162. Kozinski, *supra* n. 15, at 1710.

163. Dunnewold et al., *supra* n. 62, at 38 (finding an applicant's political ideology ranked last on a list of ten clerkship selection factors, and suggesting that where judges consider ideology, it is more likely to result in hiring applicants with views opposite to their own).

164. See Wasby, *supra* n. 134, at 413 (explaining that to the extent there exists an ideological match between judge and clerk it is most likely because "clerks gravitate toward judges they agree with").

165. Alex Kozinski & Fred Bernstein, *Clerkship Politics*, 2 Green Bag 2d. 57, 58 (1998). "If you have the judge and clerk both hoping for the same result, it is far more likely that key facts will be omitted, and important arguments on the other side will be overlooked. Whereas, having dynamic tension . . . is more likely to lead to an informed result and an opinion that is fair and honest." *Id.* at 62.

166. The "father" of the sounding board model is Judge Learned Hand. See Wichern, *supra* n. 89, at 634 (explaining that Judge Hand used his clerks primarily to sharpen his views on a case by engaging them in a candid debate); see also Mahoney, *supra* n. 16, at 342 (suggesting the sounding board model often compels a judge to consider viewpoints that might otherwise not be considered or only considered superficially). Judge Mahoney describes the law clerk's primary function as follows:

[The clerk] is to do the legwork on a given case; spot the most important issues, summarize the arguments, give an impression of which arguments are most persuasive, and thus identify the aspect of a case that should have an impact on the final decision. With this assistance, the judge can get to the heart of the case and be prepared to highlight the most important issues at oral argument or at a conference afterwards.

Id. at 341.

167. See Wald, *supra* n. 20, at 778 ("Good judges cannot go off in the desert like St. Francis and meditate until the right decision descends upon them. Judges do not have the luxury of discussing their cases with anyone but law clerks Very simply, the most seasoned opinions benefit from a continuing dialogue between judge and law clerk."); see also Wichern, *supra* n. 89, at 635 (describing the "mirror model" as an alternative under which the clerk does not challenge the judge's views, but rather, predicts and mimics them).

when the judge concludes that the law clerk has the better view of a case.”¹⁶⁸

Even with regard to the clerkship interview, Judge Kozinski glibly stated,

There may, indeed, be those among my colleagues who like clerks with marshmallow personalities, but most realize that you must have law clerks who will talk back to you precisely because everyone else will not. While enthusiasm and genuine expressions of interest make an interview more enjoyable and improve the applicant’s chances, a student who crosses the dangerous line into sycophancy, or who is too eager to agree with the judge’s views, is probably digging a syrupy grave for himself.¹⁶⁹

Finally, due to hundreds of applications, most judges have their clerks do an initial screening. Judges likely base their screening upon selected criteria, such as academic performance, law journal experience, or work prior to law school.¹⁷⁰ After providing general criteria, clerks might make several piles, such as “Possible, Maybe, and Don’t Bother.”¹⁷¹ Judges might also ask clerks for further information about applicants they know or have their clerks research them.¹⁷² Therefore, this screening process is sometimes susceptible to the “vicissitudes of the rumor mill,” and a judge’s clerk could block an applicant’s dreams.¹⁷³

Yet, perhaps Judge Aldisert’s views most aptly reflect how judges approach selection of *elbow clerks*: judges look for the most polished applications, from applicants who express sincere interest in working in their chambers and have strong letters of recommendation from professors who know them well.¹⁷⁴ The judge’s perspective, however, is only half of the

168. Lipez, *supra* n. 75, at 116.

169. Kozinski, *supra* n. 15, at 1726.

170. Norris, *supra* n. 2, at 782.

171. These were the piles clerks made while screening applications for Judge Goodwin. Wasby, *supra* n. 134, at 413–14 (explaining that sometimes Judge Goodwin would look in the “don’t bother” pile to confirm his clerks were “on the right track,” and to assure himself there was not a “Learned Hand” in there).

172. Judge Aldisert commented on his clerks’ facility with the Internet and that when they “Googled” several of the applicants, “they found a treasure trove of information omitted from the carefully-crafted application packet.” Aldisert et al., *supra* n. 3, at 845 (suggesting that while most judges do not screen for political ideology, they will for an applicant’s agenda); see also Norris, *supra* n. 2, at 782 (acknowledging that a judge’s current clerks can sometimes exert an unfair influence on the selection process).

173. Norris, *supra* n. 2, at 782.

174. See Aldisert et al., *supra* n. 3, at 852 (“Our advice may be synthesized as follows: obtaining a clerkship requires diligence, sincerity, enthusiasm and, never to be discounted, luck.”).

pairing process; the new law graduate's perspective is the other half that forges a judge-clerk *elbow clerkship* relationship.

B. *New Law Graduate Preferences and Practices*

Just as the judge's selection of an *elbow clerk* matters greatly with regard to a "good year,"¹⁷⁵ the new law graduate's acceptance of a clerkship significantly impacts his or her overall work experience.¹⁷⁶ A clerkship is a wonderful first job, a "usually-once-in-a-lifetime chance to see from the inside how courts operate and how real-life judges think and behave."¹⁷⁷ In accepting a clerkship position, the graduate seeks to optimize potential work experiences around certain factors. These factors vary according to each graduate's personal priorities, but typically include: geography; the type and level of court; a judge's personality, reputation and political ideology; the collaborative and collegial atmosphere within a judge's chambers; and the judge's propensity for involvement in the clerk's search for post-clerkship employment.¹⁷⁸

Geographical considerations and the type and level of court, to include the federal or state judicial system, are linked together.¹⁷⁹ Geogra-

175. See Wald, *supra* n. 22, at 153 (characterizing a "good" or "bad" year as relating to the quality of her elbow clerks and the team dynamics within her chambers).

176. Judge Kozinski stated this about the importance of the graduate's clerkship decision: [F]or the vast majority [of clerks] the year they serve will be the sum and substance of their experience as court insiders. The degree to which a particular judge takes her clerks into her confidence, consults with them in making decisions, lets them observe the workings of the court, is generous with her time and seriously considers their advice – all of these will make a vast difference in the type of experience a particular clerk will have. A good clerkship is a joyful, maturing experience; a bad clerkship is a year in purgatory. And, of course, there is the matter of how involved a judge is willing to become in a clerk's immediate and future career advancement. Some judges stand aloof; others take a much more hands-on approach. A young lawyer's choice of a clerkship can have a significant impact on his further career development.

Kozinski, *supra* n. 15, at 1709.

177. John G. Kester, *The Brighter Side of Clerkships*, 35 J. Leg. Educ. 140, 141 (1986); but see William H. Simon, *Judicial Clerkships and Elite Professional Culture*, 36 J. Leg. Educ. 129, 135-36 (1986) (asserting that clerkships "prolong the style of adolescence to which privileged Americans tend to become compulsively habituated," and that while "[t]he clerk's work varies . . . it is the work that the judge does not want to do herself. . . . [and] is not really supposed to involve responsibility or creativity").

178. See generally Dunnewold et al., *supra* n. 62 (describing the clerkship application process and what the applicant should consider); Wasby, *supra* n. 134 (providing an overview of an applicant's considerations in making a clerkship decision); McDowell & Mzembe, *supra* n. 60 (discussing rewards of a clerkship).

179. See Wasby, *supra* n. 134, at 418. The author's findings were that some applicants decide on a particular court, such as the U.S. Court of Appeals for the Ninth Circuit, thereby restricting them to the Pacific Northwest generally; while others decide on a

phy is particularly important for some graduates who want to practice in a particular jurisdiction.¹⁸⁰ Sometimes, geography plays a pivotal role if a graduate is married or has children, thereby restricting the area in which a clerkship would be acceptable.¹⁸¹

Geography notwithstanding, most graduates focus on whether they prefer federal or state court, trial or appellate level, or a specialty court.¹⁸² Those seeking the more prestigious positions often gravitate toward federal court clerkships, which are generally more competitive.¹⁸³ Others desire state court clerkships, in anticipation of practicing in that state and making useful connections in the legal community. Whether the judicial clerkship is federal or state, however, the graduate will benefit from a “unique access to the judicial system and learn[ing] the behind-the-scenes ways that justice is administered on a daily basis.”¹⁸⁴

The choice between trial and appellate level courts is perhaps more significant than the choice between the federal and state court systems. A graduate who applies for an appellate-level clerkship seeks to engage in

particular geographical area, such as Oregon, thereby restricting them to federal and state judges based in Oregon. *Id.*

180. See Dunnewold et al., *supra* n. 62 (suggesting the applicant should decide whether they want to remain where their law school is located; return to their hometown or state; or are flexible and willing to move elsewhere); Tobias, *supra* n. 14, at 925 (stating that California and the Northeast offer substantial post-clerkship opportunities for challenging and lucrative legal work).

181. See e.g. Norris, *supra* n. 2, at 777 (giving examples of some applicants' concerns, such as wanting to live with a loved one or not wanting to relocate after a clerkship); Wasby, *supra* n. 134, at 418 (stating one applicant with a husband and two children was willing to relocate for a year to accept a clerkship in the Ninth Circuit).

182. Specialty courts exist in both the federal and state judicial systems, at the trial and appellate levels. They offer widely different experiences around the court's specialty area. Some examples of federal specialty courts are: The Court of Federal Claims, Veterans Appeals Court, Military Appeals Court, Tax Court, International Trade Court and Bankruptcy Courts. See Dunnewold et al., *supra* n. 62, at 16. Additionally, many administrative law judges in federal agencies employ clerks. *Id.* at 16-17. State court systems generally mirror the federal system, with both trial and appellate courts. *Id.* at 16. Both systems also employ magistrate judges who are entitled to judicial clerks. *Id.* at 26.

183. See Norris, *supra* n. 2, at 777 (indicating that prestige is a very important factor for some law students); Tobias, *supra* n. 14, at 924 (stating that for many students, a significant percentage of the most prestigious clerkships are with judges located in California or the Northeast); Harp, *supra* n. 24, at 1292 (stating that federal courts typically pay more); see also Aldisert et al., *supra* n. 3, at 852 (“[W]hether justified or not, a federal appellate clerkship is considered a currency of high value on your resume for decades to come.”).

184. Bryan, *supra* n. 2, at 92. The Honorable Alexander M. Sanders, former Chief Judge of the South Carolina Court of Appeals, when asked about the difference between a federal judge and a state court judge, quipped: “A state court judge has to work twice as hard and be twice as smart to get half the respect of a federal judge. Fortunately, this task is not difficult.” Alexander M. Sanders, Jr., *Everything You Always Wanted to Know about Judges but Were Afraid to Ask*, 49 S.C. L. Rev. 343, 344 (1998).

analysis of law over facts¹⁸⁵ and to perform more research and writing.¹⁸⁶ They also seek the potential for “being more involved in *developing* the law.”¹⁸⁷ A graduate preferring a trial level clerkship, on the other hand, desires more experience in the courtroom, thereby observing the judge and attorneys during hearings and trials.¹⁸⁸ These applicants seek a faster-paced setting, a wider range of duties, and an exposure to more varied legal issues.¹⁸⁹ The trial court clerkship also has the benefit of preparing the graduate for post-clerkship litigation.¹⁹⁰

Personality plays a pivotal role in a graduate’s acceptance of an offer, just as it did in the judge’s decision to make an offer.¹⁹¹ As it does for the judge, the personal interview gives the applicant a sense of whether the “fit” is right.¹⁹² Some personality traits that are attractive to the applicant are the judge’s demeanor, kindness, wit, frankness, intellect, and approach-

185. See Wasby, *supra* n. 134, at 416 (suggesting a preference for more opportunity to “think about the law”).

186. Harp, *supra* n. 24, at 1292 (offering also opportunities to observe appellate arguments).

187. See Wasby, *supra* n. 134, at 417 (emphasis in original). Judge Aldisert described the appellate level clerkship as follows:

The pace is slower on the appellate level, and it is the most monastic life in the legal profession because your work environment is limited to an association with your co-clerks, the secretary and the judge for a year. Yet the advantage of an appellate clerkship is the intellectual satisfaction of having participated in establishing precedent that may be viable for twenty-five years or longer.

Aldisert et al., *supra* n. 3, at 852.

188. “Keep in mind there is a significant difference between a clerkship with a trial judge and a clerkship with a circuit judge. With a . . . district judge you will . . . have a good opportunity to learn about both effective and ineffective lawyering. At the same time you will acquire excellent training in writing and researching under the gun.” Aldisert et al., *supra* n. 3, at 852.

189. See Dunnewold et al., *supra* n. 62, at 8 (describing trial court clerks as the “judiciary’s jacks-of-all-trades”).

190. See Wasby, *supra* n. 134, at 417 (suggesting that for a law student who wants to be a litigator, a trial court clerkship is much more useful).

191. See *supra* nn. 145-48 and accompanying text.

192. The new law graduate can also get a sense of the judge’s personality following the interview, such as how the judge extends an offer. As Judge Kozinski observed:

The way people respond to the pressure of the . . . selection process is very revealing. . . . A student confronted with a short-fuse offer is doubtless put in a difficult position, but by making that kind of offer the judge reveals something about the way she operates; it is an indication of how empathetic, fair-minded and generous an individual she really is. It is . . . not that difficult to be just when resolving other people’s disputes; the real test is how a judge acts when her own vital interests are at stake.

Kozinski, *supra* n. 15, at 1718; see *supra* n. 147 and accompanying text.

ability. Choosing a judge is ultimately a “visceral as well an intellectual decision, coming out of an imprecise process.”¹⁹³

The graduate can also gain a sense of the judge’s personality through reputation in the courthouse, law school, and broader legal community.¹⁹⁴ The judge’s current and former law clerks are sources of information, as are the school’s clerkship committee and career services office. “Judges . . . pay for improper or undignified behavior that aggrieved students and faculty members are not reluctant to recount.”¹⁹⁵ The graduate learns what the judge is like to work for, what type of work the judge assigns, and how good a mentor the judge is, including the amount and type of feedback.¹⁹⁶

Political ideology is low on the new law graduate’s selection criteria, just as it is for the judge.¹⁹⁷ Some applicants, however, do favor judges with whom they agree.¹⁹⁸ It can be difficult for a clerk holding views very divergent from those of a judge to research and write for that judge, such as a liberal clerk being assigned a death penalty case in which a conservative judge is apt to vote for execution.¹⁹⁹

The new law graduate does care, however, about the atmosphere in a judge’s chambers. He or she wants to work in chambers that feel relaxed, and where co-clerks seem to get along well.²⁰⁰ Collegiality with clerks in

193. Wasby, *supra* n. 134, at 419; see also Kozinski, *supra* n. 15, at 1718. (“The relationship between judge and clerk is not the ordinary relationship between employer and employee. . . . [For it] calls for an uncommon degree of trust, respect and goodwill.”).

194. See e.g. Wasby, *supra* n. 134, at 429 (finding that the judge’s reputation as someone easy to work with played a significant role in students accepting clerkship offers).

195. Kozinski, *supra* n. 15, at 1718 (stating also that judges share stories with one another about applicants and interview scenarios).

196. See Dunnewold et al., *supra* n. 62, at 33.

197. See *supra* nn. 163-68 and accompanying text.

198. See Wasby, *supra* n. 134, at 413-14. Judge Kozinski stated the following about whether an applicant should choose a judge with whom they agree: “[T]he ideal clerkship would be working for a judge you generally agree with. You can write with real gusto. And you can push the envelope, in your research and writing, and know your effort is not going to be wasted, because your judge is likely to sign on.” Kozinski, *supra* n. 165, at 57-58.

199. See Kozinski, *supra* n. 165, at 57-58 (recounting by a former Kozinski clerk, who considered himself a liberal, what it was like to work for Judge Kozinski, a conservative). Judge Kozinski, for example, raises the issue of death penalty cases during interviews: “I say, ‘If you’re going to work in this circuit, you’re going to have to work on death cases, and most of the time I vote to execute the guy - that’s just my track record. And there’s no way I can let you out of that. So if you can’t stomach it, don’t take the job.’” *Id.* at 60.

200. See e.g. Wald, *supra* n. 22, at 153 (emphasizing the importance of having a positive dynamic amongst clerks in her chambers). As aptly stated by Judge Kozinski, the observant clerkship applicant can learn a lot about the dynamics in a judge’s chambers during the interview:

Are the secretaries brusque and condescending or friendly and obliging?
Are the law clerks genuinely enthusiastic or are they delivering platitudes

other chambers within the same courthouse is also important.²⁰¹

Finally, sometimes the applicant chooses a judge based in part on that judge's propensity to assist the clerk in obtaining post-clerkship employment.²⁰² For example, a judge can connect a clerk with practicing attorneys whom the judge holds in high esteem. If a clerk's goal is to work in a district attorney's office, a judge's personal relationships with members of that office and his or her recommendation can help the clerk obtain a position. Perhaps the clerk wants another clerkship, and the judge has a reputation for helping clerks transition from state to federal court, or from a lower court to a higher court.²⁰³ All are examples of the many means through which judges can advance their clerks' future legal careers.

Law students must depend upon law school faculty to attain the enviable position of a new law graduate who is a highly competitive clerkship candidate. The student needs the encouragement, support, and practical advice of faculty mentors regarding judicial clerkships. In particular, first-year faculty members play a vital role in the early identification and mentoring of potential future clerks.

VI. FIRST-YEAR LAW FACULTY: IDENTIFYING STELLAR FIRST-YEARS TO INFORM AND ENCOURAGE THEM ABOUT JUDICIAL CLERKSHIPS

First-year law faculty members, both doctrinal and clinical, have a unique vantage point from which they can identify first-years who are viable clerkship candidates. First-year professors recognize stellar students inside and outside the classroom, through conversation, observation, and academic performance. These students demonstrate a commitment to intellectual excellence, including the development of outstanding verbal and written communication skills; a dedication to superior work habits,

through clenched teeth? Does the judge seem aloof and distant, or is there a warm ambience that suggests familiarity and teamwork? Does the judge's perception of himself match that of his staff? Are the judge's work habits consistent with the applicant's own? An alert applicant can gather a wealth of information about the judge and the type of office he runs.

Kozinski, *supra* n. 15, at 1711.

201. See Wasby, *supra* n. 134, at 424; see also Kozinski, *supra* n. 144 (providing Judge Kozinski's criteria in selecting a mix of clerks, to include how well they are likely to get along with one another and others on his staff).

202. See Kozinski, *supra* n. 15, at 1709 (suggesting the positive impact a judge can have on a clerk's career advancement when the judge has a "hands-on" approach with the clerk's post-clerkship job search).

203. See *e.g.*, Dunnewold et al., *supra* n. 62, at 15 (explaining that some judges are viewed as "feeder" judges for higher federal court clerkship positions). Over the last few years, I have had several former students move from a state to a federal court clerkship; I have also had a couple move from a trial court to an appellate court venue, both within the federal and state judicial systems.

including compliance with rules; and a gift for leadership, including an exceptional ability to get along well with others. Professors should inform and encourage these students about clerkship career options.

A. *Intellectual Excellence, Including Strong Communication Skills*

Stellar students demonstrate passion for the legal profession. They seek a deeper understanding of the law and appreciate its nuances. They seek to engage in dialogue about the law, both inside and outside of class.²⁰⁴ In addition, they frequently show up in office hours, challenging themselves to make the most of their law school education.

Engaging first-years in conversation about the law provides an opportunity to evaluate their oral communication skills and their grasp of IRAC (Issue-Rule-Application-Conclusion).²⁰⁵ The professor assesses students' abilities for self-expression and thinking on their feet. The strong students are articulate, thoughtful, and persuasive.²⁰⁶ They present well-reasoned points²⁰⁷ and grasp the importance of engaging in dialogue, maintaining appropriate pace in speech, and incorporating suitable inflections in voice.²⁰⁸ Also, strong students maintain excellent eye contact throughout a conversation.²⁰⁹

Some assessment of oral communication skills takes place during oral arguments within the context of a skills course. Such arguments provide the professor with an opportunity to test the student's preparedness and mastery of the law and case facts.²¹⁰ The student's responses should address

204. Through Socratic dialogue, for example, with professors posing and addressing questions, students' insight and knowledge emerge. See Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law* 65, 131 (Carolina Academic Press 1999).

205. First-years are introduced to IRAC as a tool for applying legal rules to a hypothetical case. See David S. Romantz & Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skill* 89-103 (Carolina Academic Press 1998). The Issue is the legal issue in the case; the Rule is the rule formulated by the court in the case; the Application is the application of that rule to the facts of the case; and the Conclusion is what that rule means for the parties involved in the case. Nancy L. Schultz & Louis J. Sirico, Jr., *Legal Writing and Other Lawyering Skills* 42 (5th ed., Aspen Publishers 2010).

206. See Robin Wellford Slocum, *Legal Reasoning, Writing, and Other Lawyering Skills* 559 (3d ed., Matthew Bender & Co. 2011) (suggesting that, as most novice advocates speed up when nervous, they "practice speaking very slowly—almost excruciatingly slowly—clearly enunciating every word").

207. See Antonin Scalia & Bryan A. Garner, *Making Your Case* 41 (West 2008) (suggesting expressing points syllogistically for greater persuasion).

208. See Robert N. Sayler & Molly Bishop Shadel, *Tongue-Tied America: Reviving the Art of Verbal Persuasion* 78-91 (Wolters Kluwer L. & Bus. 2011) (discussing use of breath, voice, and speech strategies in effective oral communication).

209. See Schultz & Sirico, *supra* n. 205, at 307; Slocum, *supra* n. 206, at 558.

210. See Ursula Bentele et al., *Appellate Advocacy: Principles and Practice* 356-60 (5th ed. 2012) (setting out preparatory steps in anticipating questions); Sayler & Shadel, *supra* n. 208, at 159-62 (emphasizing preparation and delivery in presenting oral argument to a judge).

issues in a logical manner, being both well organized and understandable.²¹¹ Additionally, the professor notes whether the student is composed, self-confident, and respectful, including adhering to time limits.²¹²

Evaluating the student's legal research and writing skills is even more vital to assessing a first-year's clerkship potential.²¹³ Legal skills faculty in particular are poised to gauge the skills that are essential to becoming a competent attorney. Such skills include the ability to read and analyze cases; construe statutory and regulatory law; formulate solid legal arguments; perform competent legal research; and write effective objective and persuasive legal memoranda.²¹⁴ Professors design written assignments to test the student's analysis of conceptually complex material. Additionally, professors test how well the student translates analysis into a well-organized presentation within a specific framework.²¹⁵ Finally, professors evaluate memoranda on completion, clarity, and conciseness.²¹⁶

211. See Cathy Glaser et al., *The Lawyer's Craft* 391-92 (2d ed., Anderson Publg. Co. 2002) (describing organization as key to effective oral argument); see generally Schultz & Sirico, *supra* n. 205, at 307-08, 315-16 (providing guidance for public speaking and answering questions from the bench); Slocum, *supra* n. 206, at 557-59 (discussing how to present oral argument and respond to questions from the judge).

212. "A relationship of respectful intellectual equality . . . [is what] counsel should try to establish. . . . Perhaps the best image of the relationship . . . is that of an experienced junior partner in your firm explaining a case to a highly intelligent senior partner." Scalia & Garner, *supra* n. 207, at 33. See Glaser et al., *supra* n. 211, at 395 (suggesting to pace delivery according to time remaining); Slocum, *supra* n. 206, at 556 (stating to ask the court's permission to briefly conclude when time has expired).

213. See *supra* nn. 144, 153, 161 and accompanying text.

214. While first-year academic programs vary, almost all beginning legal research and writing skills courses require students to write both closed and open objective memoranda, as well as persuasive memoranda, such as motions and appellate briefs. In a closed research memorandum assignment, students are presented with the facts and the applicable legal research. They are permitted to use only that research to analyze and produce their memoranda. In an open research memorandum, students are provided a set of facts based on which they need to research, analyze, and write their memoranda.

215. See e.g. Irving R. Kaufman, *Appellate Advocacy in the Federal Courts*, 79 Fed. R. Dec. 165, 169 (1978) ("All the careful strategy in the word will be of no assistance to you unless you write clearly and forcefully. And, clarity and power are above all the fruit of simplicity."); Harry Pregerson & Suzianne D. Painter-Thorne, *The Seven Virtues of Appellate Brief Writing: An Update from the Bench*, 38 Sw. L. Rev. 221, 226 (2008) ("[W]rite for clarity. Clear writing is essential to making a brief easy to read.").

216. Grammatical and formatting errors diminish an attorney's credibility and persuasiveness. The Honorable Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit issued this scathing admonishment:

Usually we do not comment on technical and grammatical errors . . . but here the miscues are so egregious and obvious that an average fourth grader would have avoided most of them. For example, the word "principals" should have been "principles." The word "vacatur" is misspelled. The subject and verb are not in agreement in one of the sentences, which has a singular subject ("incompetence") and a plural verb

Law schools expect first-years to master legal research in both print and electronic form. Legal research and writing faculty or legal librarians assign research exercises to test the students' understanding of different legal authorities and their ability to access them.²¹⁷ Professors also give written assignments that require students to research legal issues around a canned set of facts.²¹⁸ These assignments test the students' ability to find and choose the most relevant, persuasive authorities in support of their points.²¹⁹ Thereafter, skills professors can measure intellectual excellence amongst first-years through various tools, methods, and oral and written assignments.²²⁰ For indeed, both written and oral communication skills

("are"). Magistrate Judge Stickney is referred to as "it" instead of "he" and is called a "magistrate" instead of a "magistrate judge." And finally, the sentence containing the word "incompetence" makes no sense as a matter of standard English prose, so it is not reasonably possible to understand the thought, if any, that is being conveyed. It is ironic that the term "incompetence" is used here, because the only thing that is incompetent is the passage itself.

Sanches v. Carrollton-Farmers Branch Independent Sch. Dist., 647 F.3d 156, 172 (5th Cir. 2011). Strong written composition skills are essential for the clerkship-ready applicant. Papers must be assessed not only for their substantive content, but also for grammatical, typographical, and other errors. See Lewis, *supra* n. 84, at 1008. Moreover, first-year doctrinal exams should also be assessed for such errors. *Id.* (emphasizing the importance of demanding higher standards of professionalism in law school). For some recommended texts on writing style, see generally Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* (3d ed., Wolters Kluwer L. & Bus. 2009); Terri LeClercq & Karin Mika, *Guide to Legal Writing Style* (5th ed., Aspen Publishers 2011); William Strunk, Jr. & E.B. White, *The Elements of Style* (4th ed., Longman 2006); Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Academic Press 2005).

217. Students are expected to be proficient in researching statutes, case law and secondary authorities, plus some legislative history and federal administrative law. For some recommended texts on legal research, see generally Stephen M. Barkan et al., *Fundamentals of Legal Research* (9th ed., Found. Press 2009); Christina L. Kunz et al., *The Process of Legal Research* (6th ed., Aspen Publishers 2004); Amy E. Sloan, *Basic Legal Research: Tools and Strategies* (5th ed. 2012).

218. Rather than a prepared set of facts, ideally students would be given the opportunity to interview clients to obtain the clients' stories. But rarely is this the situation. See Steven D. Stark, *Writing to Win: The Complete Guide to Writing Strategies That Will Make Your Case – and Win It* 71 (Doubleday 1999). As the author aptly notes, "The facts tend to be far more important to many arguments than most lawyers and law students think. Certainly law school gives us the impression that facts are interchangeable; law professors hand out canned facts and always concentrate on 'the law' to the exclusion of almost anything else." *Id.*

219. Researching to find the most current mandatory and persuasive law is a primary responsibility of law clerks. See Chipchase, *supra* n. 28, at 29–31; Dunnewald et al., *supra* n. 62, at 20–22; Lemon, *supra* n. 21, at 67–69.

220. Doctrinal as well as clinical skills courses now incorporate several tools and methods of evaluating a student's performance, such as quizzes and group work. Moving away from assigning a grade on the basis of one final exam at the end of the semester is consistent with

figure significantly in a student's clerkship potential. Intellectual excellence is attainable, however, only if a student has a strong work ethic.

B. Superior Work Habits, Including Compliance with Rules

First-years who stand out academically most likely have superior work habits. Professors identify students' diligence through various means, such as consistent preparation for class; thoughtful, probing questions; taking initiative in understanding a professor's expectations; timely submission of assignments; careful completion of written work; keeping well-organized materials; and showing up to class and other required meetings on time.²²¹ Diligence also manifests through a student's openness and responsiveness to constructive criticism.²²² Within the context of a research and legal writing class, stellar first-years strive to incorporate a professor's written comments and suggestions into their memoranda. Diligent students also seek additional comments during the professor's office hours and project a positive attitude toward handling difficult tasks.²²³ Rewriting is one of those difficult tasks. In fact, Justice Brandeis once said: "There is no good writing, only great rewriting."²²⁴

Good legal writing requires strict adherence to rules, including court, citation, and assignment rules.²²⁵ The legal profession thrives on rules, not

the growing movement in legal education to teach practical skills. See generally Carpenter et al., *supra* n. 26.

221. Students who take the time to engage assigned readings for class, for example, can often raise the level of class discussion through their insights. See Ruth Ann McKinney, *Reading Like a Lawyer* 63 (Carolina Academic Press 2005) ("Reading law effectively is about as far from an intellectually passive activity as you can get.")

222. For example, in a student's revising a memorandum for a more polished product, the student goes much beyond correcting obvious errors, whether of legal reasoning or otherwise. In rewriting, the student does not merely proofread, but rather writes anew what has already been written. See Duncan, *supra* n. 20, at 1127. But the diligent student must proofread carefully as well. Bryan A. Garner, *Interviews With United States Supreme Court Justices*, 13 *Scribes J. Leg. Writing* 71 (2010) (reporting Justice Scalia's admonition that a lawyer's credibility is undermined by typographical errors, as they reflect a lack of care).

223. See Aldisert et al., *supra* n. 3, at 852 (identifying diligence as a highly desirable clerkship applicant trait).

224. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy and Style* 61 (4th ed., 2001) (quoting Justice Brandeis).

225. When writing an appellate brief for a federal court of appeals, for example, the student must pay careful attention to the appropriate standard of review and the specific court's local rules in addition to the Federal Rules of Appellate Procedure. See generally Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* (3d ed., Aspen Publishers 2010); Kelly Kunsch, *Standard of Review (State and Federal): A Primer*, 18 *Seattle U. L. Rev.* 11 (1994) (providing an overview of the standards of review); Stella J. Phillips, *Putting It All Together: Law Schools' Role in Improving Appellate Practice*, 31 *UALR L. Rev.* 135 (2008) (emphasizing the importance of knowing the degree of deference an appellate court accords to a lower court's decision).

only substantive but also formatting rules.²²⁶ A student's attention to detail, such as flawless citation form, demonstrates hard work.²²⁷ Just as importantly, the stellar student complies with all specific assignment rules, including group assignments, which often provide an opportunity to observe a student's natural leadership ability.

C. Leadership, Including an Ability to Get Along Well with Others

A first-year exhibiting clerkship potential gets along well with others.²²⁸ The student interfaces comfortably with all levels of law school personnel, including peers, professors, administrators, and other staff.²²⁹ The first-year student's interpersonal communications are respectful and

226. For a lawyer who does not comply with a court's local rules, consequences can be severe. See e.g. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002) (affirming a lower court's refusal to consider plaintiff's additional filings because they failed to conform to local rules for typefaces and page restrictions); *Hamblen v. Co. of L.A.*, 803 F.2d 462, 464-65 (9th Cir. 1986) (dismissing an appeal and ordering sanctions for counsel who repeatedly ignored court rules); see Pregerson & Painter-Thorne, *supra* n. 213, at 230 ("A virtuous brief follows the court's local rules to the letter and to the spirit."). See also Judge Stephen J. Dwyer et al., *How to Write, Edit, and Review Persuasive Briefs: Seven Guidelines from One Judge and Two Lawyers*, 31 Seattle U. L. Rev. 417, 426 (2008) (emphasizing the court's insistence on a particular format).

227. See generally *The Bluebook: A Uniform System of Citation* (Columbia L. Rev. Assn. et al. eds., 19th ed. 2010). Sloppy citations undermine credibility and demonstrate a student's lack of diligence in complying with rules. See Dwyer et al., *supra* n. 226, at 428 (using the following analogy regarding citations):

Citation form is like the handshake of a secret society: it conveys important information while simultaneously announcing membership. A brief with correctly formatted citations not only provides information . . . but also conveys a sense of completeness and thoroughness. Conversely, a brief marred by incorrectly formatted citations raises hackles and invites suspicion; it is the lawyer-author's tacit admission that "I really don't belong here." If you send the message that it is not important to you, you identify yourself as a careless outsider. That cannot possibly help your client's cause.

Id. But see Richard A. Posner, *Goodbye to the Bluebook*, 53 U. Chi. L. Rev. 1343, 1343-44 (1986) (describing the Bluebook as a "hypertrophy" of law, that is "elaborate but not purposive [as] [f]orm is prescribed for the sake of form, not of function").

228. See Tobias, *supra* n. 14, at 931 (identifying working well with people as critical to successful clerking, and stating that "few law professors can teach [this] skill"); *supra* n. 144 (Judge Kozinski discussing selection criteria.).

229. To be successful, an attorney needs good people skills. See Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 Ohio St. J. on Dis. Res. 437, 437-38 (2008) ("Practicing law means working with people. To be effective in working with clients, witnesses, judges, mediators, arbitrators, experts, jurors, and other lawyers, attorneys must have a good understanding of how people think and make decisions, and must possess good people skills. Yet, law schools have tended to teach very little, directly, about how to be good with people.").

friendly.²³⁰ These students have a sense of humor and do not take themselves too seriously.²³¹ Strong interpersonal skills include compassion and an ability to listen to others.²³² While first-years are customarily competitive by virtue of the law school culture, they should be willing to help one another as the need arises. Moreover, cutthroat competition does not cut it in a courtroom setting; a judge expects his or her chamber staff to be collaborative and collegial.²³³

Often, small group work highlights students who are not only collaborative and collegial, but also natural leaders. These students are adept at facilitating group dynamics to elicit an excellent and efficient collaboration. Within a legal research and writing course, for example, students often work in small groups to locate sources of primary and secondary authority that can assist the class in their initial research of a legal matter. These groups then present to the class, and everyone contributes.²³⁴ Group members who emerge as leaders often managed the logistics involved in successfully following through with such a presentation.

Students who are natural leaders, with excellent social skills, earn the respect of peers and professors alike. They will also earn the respect of the judges with whom they interview. To obtain judicial clerkship interviews, however, stellar first-years must embark on a clerkship-ready path.

D. *Placing First-Years on a Clerkship-Ready Path*

First-year professors are instrumental in enabling strong first-years to become clerkship-ready.²³⁵ In the midst of a stressful, busy first year of law school, first-years focus on their studies during the first semester. In the beginning of their second semester, however, students look ahead to potential summer internships and externships for their second year of law

230. See Wald, *supra* n. 22, at 154 (stating clerks should project a respectful and cheerful demeanor).

231. See Adilert et al., *supra* n. 3, at 847 (instructing clerks to screen for “nerds” amongst applicants, to help ensure they will work well with others in the judge’s chambers).

232. To be successful, attorneys need to listen to others, especially their clients. See Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 Neb. L. Rev. 1, 3–4 (2008) (“Understanding clients and exercising empathy and compassion comprise the ‘heart’ of lawyering. . . . Unfortunately, the traditional law school curriculum devotes little emphasis to teaching students about clients or about the role of empathy and compassion in law practice.”).

233. See Kozinski, *supra* n. 15, at 1722 (emphasizing the importance of clerks getting along well with one another as well as other staff members); Wald, *supra* n. 22, at 153 (pointing to team dynamics as crucial to a “good” year in chambers).

234. The manner of presentation varies widely, such as PowerPoint presentations and lectures using whiteboards or handouts. Moreover, while all group members are required to contribute, not everyone needs to present. In my experience, the first-years who make the class presentation are often the group leaders.

235. See *supra* nn. 57–85 and accompanying text.

school.²³⁶ This is the time when professors should inform stellar students about judicial clerkships.

Some students will hear about clerkships when attending a career services information session or talking with upper-class students. Yet, they might not realize the benefits of a clerkship, or that they need to begin grooming themselves so soon to become competitive candidates.²³⁷ Furthermore, some students might not realize they have the mix of skills and traits needed to become competitive.²³⁸

Professors explain what clerkships are and encourage strong first-years to consider them as a career option. Depending upon their contacts with federal and state judges, professors personally connect students with judges for summer internships and second-year externships.²³⁹ Professors hire students as research assistants or teaching assistants.²⁴⁰ They encourage them to enter their law school's journal competition and to compete for moot court.²⁴¹ They suggest participation in one of the law school's live clinics.²⁴² Should professors have contacts with practicing attorneys seeking interns or externs, they can connect their students with them, too.

Raising a stellar first-year's awareness about clerkships, to include the competitive application process, places the student on a clerkship-ready path. Once the student embarks on that path, however, the first-year professor does much more to assist the student in securing a post-graduate clerkship. Mentoring the student continues throughout law school to help facilitate a good fit between a new graduate and a judge.

236. Early in the spring semester, first-years often seek recommendations from professors for internships, externships and scholarships. This provides an opportunity for professors to raise the subject of judicial clerkships with their outstanding students.

237. See ABA, 40 Judges J. 10, 12-13 (2001) (finding that clerkship applicants were attracted by the potential work experience, impact of the prestigious work on their future career, and connections with practicing attorneys); *supra* nn. 2, 24, 119-23, 130-334, 176-78 and accompanying text.

238. See *supra* nn. 204-34 and accompanying text.

239. Although competitive, the judicial internship and externship application process lends itself more readily to professors contacting judges directly, in advance of or simultaneous with a student's application. This past spring, for example, I called judges' chambers in one federal trial court and two state trial courts and recommended to each judge a particular student to serve as a summer intern. On the strength of my relationships with the judges, formed over time by having had referred other students who had worked for them, all three students were offered and accepted internships within two weeks. See *supra* nn. 57-75 and accompanying text.

240. For both research and teaching assistant work, the student continues to polish research and writing skills, which are critical to obtaining a judicial clerkship interview. Moreover, employing a student as a research or teaching assistant provides a greater basis for the professor to write a strong clerkship recommendation letter. See *supra* nn. 60-68, 98-100, 144, 161-62 and accompanying text.

241. See *supra* nn. 144, 161-62 and accompanying text.

242. See *supra* nn. 76-83 and accompanying text.

VII. MENTORING STUDENTS THROUGH THE CLERKSHIP
APPLICATION PROCESS: EFFECTIVE STRATEGIES FOR
OBTAINING A POST-GRADUATE CLERKSHIP

After mentoring a first-year for judicial clerkship preparation, a professor continues to significantly influence a student's success in obtaining a clerkship. Mentoring the student during their second and third years of law school helps ensure a highly competitive application, one designed to garner clerkship interviews. Following students' judicial interviews, the professor mentors the students in accepting judges' offers. Finally, a professor does post-clerkship follow-ups to maintain strong relationships with judges and former students, and to benefit future students seeking clerkships.

A. *Pre-Interview Mentoring*

Once the first-year is on a path to clerkship-ready status, the professor meets regularly with the student to assist him or her in becoming an outstanding clerkship applicant. Topics for mentoring include the student's courses including clinic participation, internships and externships, journal and moot court memberships, legal-related work experience, resume, writing sample, potential sources of clerkship recommendation letters, selection of judges, and cover letters to judges.

To promote clerkship-ready traits, the professor assists the student with academic planning. Courses with a practical orientation that involve legal research and writing, oral argument, and client contact are beneficial.²⁴³ Internships and externships with judges and practicing attorneys are also important.²⁴⁴ Working as a professor's research assistant polishes legal research and writing skills; working as a professor's teaching assistant enhances those skills as well as people-oriented and time management skills.²⁴⁵

Resumes must be professional, complete, concise, and tailored to a particular judge.²⁴⁶ Writing samples must display the student's analytical ability. Moreover, they must be flawless, with no typographical, citation,

243. See ABA, *supra* n. 237 (finding that the academic record and law journal participation play the largest roles in a successful clerkship application); *supra* n. 144 and accompanying text.

244. See *supra* n. 153 and accompanying text.

245. See Sloan, *supra* n. 11 (stating that an increasing number of law schools are modifying curricula to emphasize teamwork, leadership, professional judgment, and approaching issues from the client's viewpoint); *supra* n. 238 and accompanying text.

246. See *supra* n. 151 and accompanying text.

or other errors.²⁴⁷ Cover letters similarly must be flawless and demonstrate, where feasible, interest in working for a particular judge.²⁴⁸

Given the many potential clerkship settings, the professor mentors the student through the court and judge selection process.²⁴⁹ Such mentoring includes providing general information about the types and levels of courts,²⁵⁰ and consideration of all the factors that are important to the individual student.²⁵¹ Furthermore, mentoring warrants consideration of judges with whom the professor has a personal relationship and whom the student might be a good fit as an *elbow clerk*.²⁵²

The professor serves as one of the student's recommenders. The professor assists the student in identifying other references who could write strong letters of recommendation.²⁵³ Potential references should be people whom the student knows well or can develop a close relationship with before needing letters.²⁵⁴ Given that most judges prefer three letters of

247. See Aldisert et al., *supra* n. 3, at 843-44 (suggesting to use something "short and punchy rather than long and formalistic," and that often research memoranda from a second-year summer position are suitable as they showcase objective reasoning ability and individual style); *supra* nn. 153-54 and accompanying text.

248. See *supra* n. 152 and accompanying text.

249. There are many guides on the federal and state court systems, to include judges' biographical information, lawyers' evaluations of judges, court directories with contact information, clerkship opportunities, and clerkship application procedures. For some print resources, see generally *The Almanac of the Federal Judiciary* (Megan Rosen ed. 2009); BNA Directory of State and Federal Courts, Judges and Clerks; *Federal - State Court Directory* (Robert S. Want ed. 2009); *The Judicial YellowBook: Federal and State Court Judges* (published twice annually). For some Internet resources, see generally Federal Administrative Law Judges Conference, available at www.faljc.org; Federal Judges Law Clerk Hiring Plan, available at <http://www.cadc.uscourts.gov/internet/lawclerks.nsf/Home?OpenForm>; Federal Judicial Center, available at <http://www.fjc.gov/public/home.nsf>; National Center for State Courts, available at <http://www.ncsc.org/>; OSCAR (Online System for Clerkship Application and Review), available at <https://oscar.uscourts.gov>; U.S. Courts web site, available at <http://www.uscourts.gov/index.html>; Vermont Law School Career Services, *Guide to State Court Judicial Clerkship Procedures*, available at <http://www.vermontlaw.edu/x1101.xml> (password available from law school career offices).

250. See ABA, *supra* n. 237, at 15 (reporting that former state trial clerks in particular found that their clerkship experience prepared them well to handle post-clerkship work); Wasby, *supra* n. 134, at 417 (reporting that an appellate clerk had not realized trial courts could be more valuable for litigation training purposes, and suggesting that this occurs due to law schools' failure to explain the differences in clerking at the two levels); *supra* nn. 182-90 and accompanying text.

251. See *supra* nn. 176-203 and accompanying text.

252. See e.g. Kozinski, *supra* n. 15, at 1728 (suggesting that professors, some of whom have been clerks, can serve as mentors to students in assessing chances of employment with particular judges).

253. See *supra* nn. 154-55, 158-60 and accompanying text.

254. See ABA, *supra* n. 237 (reporting that many students experienced problems with professor recommendation letters, including their content and timely submission); *supra* n. 156 and accompanying text.

recommendation, the professor mentors the student to instruct those recommenders to address various facets of clerkship-readiness.²⁵⁵

Clerkship applications must go out as early as possible, before judges and clerks suffer from “Resume Fatigue Syndrome.”²⁵⁶ After a student submits applications, the professor coaches the student on the interview process.²⁵⁷ Topics include accepting and scheduling interviews,²⁵⁸ further researching of judges and courts,²⁵⁹ anticipating interview questions, preparing questions to ask at interviews,²⁶⁰ and interacting with persons in judges’ chambers.²⁶¹

255. Recommendation letters are most helpful when each contains detailed information about an applicant’s skills and traits from professors or employers who know the applicant well. I counsel students to discuss with each recommender what they will write about and to let all recommenders know what each recommender is covering. For example, one recommender can address the applicant’s work as a research assistant, another his or her law journal experience and editorial responsibilities, and yet another live clinic brief writing and oral advocacy.

256. See Aldisert et al., *supra* n. 3, at 844-45 (“It is critical that the chambers receives your application on D-Day H-Hour, which, under the Clerkship Hiring Guidelines, is the first day after Labor Day.”).

257. See *id.* at 848 (“You should enter any clerkship interview as you would a law school exam or moot court oral argument: prepare, prepare, prepare.”); ABA, *supra* n. 237, at 14 (stating that clerk alumni identified the personal interview as “extremely important” to the judge and that second in importance were “personal character traits”); *supra* nn. 145-48 and accompanying text.

258. See Norris, *supra* n. 2, at 780 (suggesting that, once called for an interview, the student immediately call other judges in that geographical area to let them know they will be there soon and ask whether they would like to schedule an interview).

259. See Aldisert et al., *supra* n. 3, at 849 (emphasizing that the interviewee must demonstrate diligence in researching about the judge, for “if you have not done your homework in learning about the judge, it’s a giveaway that you won’t be much of a researcher”); Harp, *supra* n. 24, at 1294 (stating that an applicant is more likely to get a clerkship the more the applicant knows about the judge).

260. See Aldisert et al., *supra* n. 3, at 848-49 (encouraging applicants to prepare their own questions, but also to be ready to elaborate on the judge’s questions).

261. Often students are first invited for a phone interview with one of the judge’s clerks as a screening for personal interviews with judges. See Aldisert et al., *supra* n. 3, at 846. Judge Aldisert offers the following tips for the phone interview:

First, always be enthusiastic with the interviewer. . . . Second, don’t just answer the questions posed by the interviewer; be sure to respond with your own questions. Discuss the judge, learn about his personal work habits, and do not be afraid to ask how he or she treats the clerks. Ask about . . . the caseload, the frequency and extent of the face-to-face relationship . . . This is your chance to draw in the interviewing clerk and to take charge of the conversation. . . . The phone interview is about getting to know your personality. Where you grew up . . . and what movie you saw last week are not only acceptable topics of conversation, but are encouraged. . . . Nothing will get the applicant a more favorable rating in a phone interview than a genuinely expressed . . . interest in the judge. Furthermore, be sure to sell yourself.

If students know at the end of an interview that they really want to work for that judge, for example, the professor advises students to say so.²⁶² The professor can also make calls to judges they know personally, and cold-call other judges. The purpose of such calls is not for “strong-arming or cajoling reluctant judges . . . to make . . . offers,” but rather, to provide judges with further information to help facilitate their selection process.²⁶³

B. *Post-Interview Mentoring*

Following-up with a student after his or her interviews greatly facilitates a successful clerkship search.²⁶⁴ The professor debriefs the student after the first interview, with a goal towards improving subsequent interviews. The professor also answers questions about the when and how of accepting offers.²⁶⁵ Furthermore, the professor simply listens to the student, being supportive during what can be a confusing, frustrating process.

Most law schools advise the student to accept a clerkship offer immediately.²⁶⁶ In doing so, however, the student may miss a more attractive clerkship opportunity.²⁶⁷ Given the significant impact a clerkship can have upon a new graduate’s career, pressure to make a quick decision is troublesome.²⁶⁸ In the event of an exploding offer,²⁶⁹ Judge Aldisert offers the following advice: “[A]ppeal to the judge’s sense of fair play: ‘Your

Id. at 846-47; see also Wasby, *supra* n. 134, at 414 n.12 (suggesting applicants remember that judges’ secretaries are key actors in clerkship selection and therefore they should treat all chambers’ staff with respect).

262. See Aldisert et al., *supra* n. 3, at 850 (“Before you leave, say: ‘If offered, I would accept this position.’ It seems simple enough to say, but you would be surprised how many applicants leave our chambers without repeating that simple line. . . . Closing an interview with a sincere expression of your desire for the position can only help your chances.”).

263. See Kozinski, *supra* n. 15, at 1729 (emphasizing that professors are most helpful when they provide reliable, practical information and serve as a “conduit between judges with whom they enjoy a relationship of trust and students in whom they have confidence”).

264. The professor should encourage the student to “judge the judge,” just as the judge was appraising and assessing the student during the interview. See Aldisert et al., *supra* n. 3, at 850 (“The interview is the key event in applying for the position because not only must the applicants sell themselves to the judge, but the judge must also sell his or her chambers to the candidate.”).

265. See Tobias, *supra* n. 14, at 922 (recommending to advise candidates that they are not obligated to accept initial offers and should request a reasonable time period in which to consider them).

266. Debra M. Strauss, *Six Simple Rules for Judicial Clerkship Interviewing*, <http://www.judicialclerkships.com/JudicialClerkshipInterviewing.htm> (Oct. 2003).

267. See Aldisert et al., *supra* n. 3, at 851; Kozinski, *supra* n. 15, at 1726 (“The most common, most pernicious piece of misinformation disseminated year in and year out by our law schools is this: ‘If you get an offer from a federal judge, you accept on the spot.’”); Norris, *supra* n. 2, at 780 (suggesting countering the conventional advice of immediately accepting an offer, thereby offering students broader options).

268. See Norris, *supra* n. 2, at 782.

269. See *supra* n. 16 and accompanying text.

honor, I am tremendously overwhelmed and grateful for the confidence you place in me. Will you kindly indulge me a few minutes . . . to make some personal phone calls?"²⁷⁰ Other judges suggest, "fundamental fairness and optimal placement require that a student be given a minimum of three working days to a week to accept an offer."²⁷¹ After all, the clerkship selection process is a two-way street in which judge and student both evaluate the merits of an elbow relationship.²⁷²

If a student is extremely keen to work for a particular judge, this is the time for the professor to call the judge if not done already.²⁷³ Other post-interview advice includes updating the student's credentials if there are new developments, and if and when to follow-up with a judge's chambers otherwise.²⁷⁴ Should the student be unsuccessful in obtaining a clerkship, the professor continues in a mentoring role and counsels the student on alternative post-graduate career options. Certainly, part of the professor's intrinsic satisfaction in mentoring a student so closely throughout the clerkship search process is when the student receives an offer he or she accepts. It is even more thrilling for the student. The judge, too, reaps satisfaction in a match well made.²⁷⁵

270. Aldisert et al., *supra* n. 3, at 852. Judge Aldisert also suggests that if the judge will not extend some time to consider an offer, then the student should consider this question: "Do I need this job so badly that I am willing to devote a full year with such a demanding person?" *Id.*

271. Stephen Breyer, Edward Becker & Guido Calabresi, *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 Yale L.J. 207, 223 (1994).

272. See Kozinski, *supra* n. 15, at 1726. "[T]here is no way a judge can force an applicant to accept a premature offer. The candidate—an intelligent, independent human being—can just say no, or ask for time to interview with other judges." *Id.* at 1720; see also Macaulay, *supra* n. 73, at 148 ("Famous judges should get all due respect, but the emphasis should be on the 'due.'").

273. See *supra* n. 259 and accompanying text. Moreover, recommenders should expect to receive post-interview calls from judges. A couple of years ago, for example, a federal district court judge called me at home over the weekend about a particularly difficult decision between two elbow clerk applicants, one of whom I had recommended. The judge sought further assurance about the candidate's legal research and writing skills, his ability to maintain confidentiality, and the likelihood he would accept an out-of-state job offer. Following this phone conversation, the judge offered the position to my student, who accepted.

274. If, for example, the student has been offered a clerkship but would prefer to work for another judge with whom the student has already interviewed, the student should call the preferred judge's chambers to determine and perhaps influence clerkship selection timing. See Aldisert et al., *supra* n. 3, at 852.

275. See Kozinski, *supra* n. 15, at 1723 ("Having served on both sides of the judge-clerk relationship—and having suffered my share of disappointments and enjoyed my share of triumphs—I can say there are few things quite so electrifying as hearing (or uttering) the words: 'Yes, judge, I accept.' It is a moment laden with anticipation and pleasure; it is the end of a process and the beginning of a lifetime relationship.").

C. Post-Clerkship Follow-Up

Professors maintain contact with former students they have mentored and obtain feedback about their clerkships. Such information helps inform continued mentoring of students.²⁷⁶ The insider view a clerk has is valuable concerning the clerkship interview and selection criteria, interview procedures, and the clerk's role generally. The clerk provides additional insights about a particular court and the judge.²⁷⁷ Clerks also give feedback on the extent to which a particular judge is involved in assisting the clerk with post-clerkship work.²⁷⁸

The professor also follows-up with judges about clerks the professor mentored and recommended. Cultivating and fostering strong professor-judge relationships proves fruitful for new law graduates seeking clerkships in this tight job market.²⁷⁹ It also enhances the chances for future successful *elbow clerk* relationships, for indeed, the clerkship institution is likely here to stay.²⁸⁰

VIII. CONCLUSION

Obtaining a judicial clerkship immediately following law school is exceedingly difficult, especially in the current tight job market. The new law graduate must be not only practice-ready, but also clerkship-ready in order to secure a position as an *elbow clerk*. To be a viable applicant, grooming must begin during the law student's first year. First-year faculty members are uniquely poised to identify students who exhibit intellectual excellence, superior work habits, and an ability to get along well with

276. See Mikva, *supra* n. 75, at 153 ("When I clerked I saw the process close up. I could touch it, feel it, measure its human dimensions. I learned more about how to practice law from my one year of clerking than from any other comparable experience."); see also ABA, *supra* n. 237, at 15 (stating that former clerks described many benefits from their clerkship experience, including acquiring and polishing a large variety of legal and professional skills; identifying firms for which they wanted to work; and developing a heightened interest in academia or government service).

277. See ABA, *supra* n. 237, at 15 (reporting former clerks' high satisfaction with the depth of their relationships with judges).

278. *Id.* Pether, *supra* n. 1, at 52 (suggesting that judges frequently take an active interest in their clerks' career development and exercise influence with potential employers).

279. See Pether, *supra* n. 1, at 52-53 ("[M]any judges rely on the estimation of law professors whose values they share to recommend prospective clerks.").

280. See *e.g.*, Lankford, *supra* n. 141, at 21 (maintaining that with present caseloads judges could not perform time-intensive tasks such as record and citation checking were it not for their clerks); Lipez, *supra* n. 75, at 116 (suggesting that the judicial system benefits from painstaking collaborations between judges and their clerks); Mahoney, *supra* n. 16, at 345 (emphasizing that clerks are critical to judges in completing their work); Merritt, *supra* n. 135, at 1389 (maintaining that, without clerks, judges could not perform their jobs and court delays would be intolerable); Mikva, *supra* n. 75, at 151 (stating that clerks provide a "sorely needed constructive tension" in judges' decision-making); Wald, *supra* n. 20, at 778 (stressing the importance of judge-clerk dialoguing in producing well-reasoned opinions).

others. By mentoring students on a clerkship-ready path, professors help them assemble outstanding applications that garner interviews with judges. Pre- and post-interview mentoring leads to clerkship offers and acceptances. Conducting post-clerkship follow-ups with mentored students and the judges who hired them facilitates the future placement of other students. By using the clerkship-ready mentoring process, judges, professors, and new law graduates all reap the benefits of strong *elbow clerk* relationships.