

Legal Communication & Rhetoric: JALWD  
Fall, 2011

Article and Essay

**\*239 JUDICIAL CLERKSHIPS**

A Bibliography

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**Introduction**

Approximately 3,000 judicial clerkships are filled each year by new law school graduates. [FN1] Most law schools also offer judicial internship or externship courses, allowing students to earn academic credit for work performed as judicial clerks. [FN2] These courses often involve a classroom component in which students read about and discuss judicial decision-making, the judge's and clerk's roles, judicial writing, and other relevant topics. Recognizing the value of working behind the scenes in a judge's chambers, some law students even seek out and obtain volunteer positions as judicial clerks. [FN3]

A wide variety of materials about judicial clerkships is available in bar journals, law reviews, and books, and on relevant web sites. This bibliography brings together the more recent of these materials and categorizes them by topic. The resulting compilation should be useful to academic professionals planning judicial-clerkship classes or externship experiences, law students contemplating judicial-clerkship positions and wanting to know more, and recent law school graduates preparing to enter judicial clerkships. [FN4]

**\*240** We limited the bibliography to materials published since 1980 for two reasons. First, reliance on judicial clerks has exploded since the 1960s, [FN5] and advice to clerks may have changed as clerkship positions have become both more competitive and more available. Second, legal writing has become increasingly professionalized over the past several decades, [FN6] and there has been a corresponding increase in the market for articles about writing in specific contexts, like judicial clerkships. The scope of the bibliography is broad, including materials on a wide range of topics relevant to the judicial-clerkship experience. The materials are broken down into ten categories and cover such topics as the judicial-clerkship hiring process, the clerk's role in working with a judge, the judge's role in the legal system, and "how to" materials about specific kinds of judicial writing. The selections are written by judges, academic professionals, and judicial clerks, providing a range of perspectives on each topic.

## I. General Resources about Judicial Clerkships

General resources and articles about judicial clerkships provide a comprehensive overview of the clerkship experience and guidance about how to be an effective judicial clerk. Some of these overview sources are directed at clerks working in particular courts, e.g., federal district courts or state-specific courts. Nonetheless, readers who want to understand the clerkship position in general may find even these specific resources useful since different clerkship experiences, particularly those in the same level of court (e.g. trial versus appellate), tend to share important features. Many of these resources explain topics ranging from the clerkship application procedures to appellate jurisdiction.

Laura B. Bartell, *Rubin: Practitioner, Professor, and fudge: A Splendid Relationship--Judge and Law Clerk*, 52 La. L. Rev. 1429 (1992).

Donald L. Burnett, Jr., *Law Clerking: "My Favorite Year"*, 53 *Advoc.* 26 (Mar./Apr. 2010).

Massey Mayo Case & Jill E. Tompkins, *A Guide for Tribal Court Law Clerks and Judges* (U. Colo. L. School 2007) (available at [http://www.colorado.edu/iece/docs/Thompson/Final\\_version\\_Guide.pdf](http://www.colorado.edu/iece/docs/Thompson/Final_version_Guide.pdf)).

Calvert G. Chipchase, *Federal District Court Law Clerk Handbook* (ABA 2007).

\*241 Mary L. Dunnewold, Beth A. Honetschlager, & Brenda L. Tofte, *Judicial Clerkships: A Practical Guide* (Carolina Acad. Press 2010).

Federal Judicial Center, *Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges* (Sylvan A. Sobel ed., 2d ed., Fed. Jud. Center 2007) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbk.pdf/\\$file/lawclhbk.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbk.pdf/$file/lawclhbk.pdf)).

Edward Lazarus, *Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court* (Penguin 1999).

Joseph L. Lemon, Jr., *Federal Appellate Court Law Clerk Handbook* (ABA 2007).

Geraldine Szott Moohr, *One Kind of Legacy: Judge Sprouse's Law Clerks*, 98 *W. Va. L. Rev.* 17 (1995).

William E. Nelson et al., *The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?* 62 *Vand. L. Rev.* 1749 (2009).

Charles H. Sheldon, *Law Clerking With a State Supreme Court: Views from the Perspective of the Personal Assistants to the Judges*, 6 *Just. Sys. J.* 347 (1981).

Louis J. Sirico, *Judging: A Book for Student Clerks* (LexisNexis 2003).

Debra M. Strauss, *Behind the Bench: The Guide to Judicial Clerkships* (BarBri Group 2002).

Stephen L. Wasby, *Clerking for an Appellate Judge: A Close Look*, 5 *Seton Hall Cir. Rev.* 19 (2008).

Stephen L. Wasby, "Why Clerk? What Did I Get Out of It?" 56 *J. Leg. Educ.* 411 (2006).

## II. Court Guides and Directories

Directories and guides provide contact and other information about the judiciary. Some of these sources are comprehensive guides to the United States judiciary. These comprehensive sources will be helpful to readers planning a clerkship-employment search and thus needing current information about judges in all geographical areas in which they are considering applying. The more narrowly focused sources provide indepth information for readers interested in clerking for a particular court or type of court. Some of these sources are kept up to date by annual or semiannual publication.

*Almanac of the Federal Judiciary* (Aspen).

*The American Bench: Judges of the Nation* (Forster-Long).

*BNA's Directory of State and Federal Courts, Judges and Clerks* (BNA Books).

*The Directory of Minority Judges of the United States* (4th ed., ABA 2007).

\***242** *Federal-State Court Directory* (CQ Press).

*Federal Regional Yellow Book* (Leadership Directories).

*Federal Yellow Book* (Leadership Directories).

*Judicial Yellow Book* (Leadership Directories).

Federal Judicial Center, *History of the Federal Judiciary*, [http:// www.fjc.gov/history/home.nsf](http://www.fjc.gov/history/home.nsf) (accessed Apr. 23, 2011).

*National Center for State Courts*, <http://www.ncsc.org/> (accessed Apr. 23, 2011).

*National Tribal Court Law Clerk Program*, [http:// www.narf.org/nill/triballaw/clerkcu/brochure.pdf](http://www.narf.org/nill/triballaw/clerkcu/brochure.pdf) (accessed Apr. 23, 2011).

April Schwartz & Mary Jo B. Hunter, *United States Tribal Courts Directory* (4th ed., William S. Hein & Co. 2010).

### III. Selection-Employment

The resources in this section address various aspects of judicial-clerkship employment, as well as the processes of applying for clerkships and choosing clerks. Application practices vary widely, from the formal and prescribed process used by most federal judges to informal processes used by many state trial court and tribal court judges. In the federal system there is a great deal of competition both between applicants for the most desirable clerkships and between judges for the most desirable clerks. The federal judicial-clerk application-and-selection processes have proven to be fertile ground for analysis and criticism by judges, former clerks, and academics. Thus it is perhaps not surprising that many of the resources in this section concern federal judicial-clerk selection and employment. This section also lists more broadly focused resources that examine employment statistics and trends in all courts. Other resources here contain practical information that will be valuable to readers applying for clerkships.

More information about clerkship opportunities and application processes in specific courts can be found on the courts' websites. In addition, law school career offices keep track of the hiring processes of the courts in their states and vicinities. Finally, some of the resources in the General Resources about Judicial Clerkships and Court Guides and Directories categories above also include practical information about how, when, and where to apply for judicial clerkships.

Edward S. Adams, *A Market-Based Solution to the Judicial Clerkship Selection Process*, 59 Md. L. Rev. 129 (2000).

\***243** Ruggero J. Aldisert, Ryan C. Kirkpatrick & James R. Stevens III, *Rat Race: Insider Advice on Landing Judicial Clerkships*, 110 Penn. St. L. Rev. 835 (2006).

- Christopher Avery et al., *The New Market for Federal Judicial Law Clerks*, 74 U. Chi. L. Rev. 447 (2007).
- Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. Chi. L. Rev. 793 (2001).
- Edward R. Becker, Stephen G. Breyer, & Guido Calabresi, *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 Yale L.J. 207 (1994).
- Christopher R. Benson, *On the Supreme Court: A Renewed Call for Diversity Among Supreme Court Clerks: How a Diverse Body of Clerks Can Aid the High Court As an Institution*, 23 Harv. Blackltr. L.J. 23 (2007).
- Annette E. Clark, *On Comparing Apples and Oranges: The Judicial Clerk Selection Process and the Medical Matching Model*, 83 Geo. L.J. 1749 (1995).
- Corey Ditslear & Lawrence Baum, *Selection of Law Clerks and Polarization in the U.S. Supreme Court*, 63 J. Pol. 869 (2001).
- Paul H. Edelman, *Law Clerks, Law Reviews & Some Modest Proposals*, 7 Green Bag 2d 335 (2004).
- Richard A. Epstein, *Ending the Mad Scramble: An Experimental Matching Plan for Federal Clerkships*, 10 Green Bag 2d 37 (2006).
- Ernan Haruvy, Alvin E. Roth & M. Ütku Ünver, *The Dynamics of Law Clerk Matching: An Experimental and Computational Investigation of Proposals for Reform of the Market* (Harvard NOM Research Paper No. 01-08, 2001) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=286282](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=286282)).
- Ed Finkel, *Crunching Clerks: Funding Cuts and a Tougher Job Market Tighten the Competition*, 96 ABA J. 19 (Feb. 2010).
- Susan Harp, *Clerking--Something Every First Year Law Student Should Know*, 29 Stetson L. Rev. 1294 (2000).
- David K. Hendrickson, *Conducting Job Interviews: A Guide for Federal Judges* (Fed. Jud. Ctr. 1999) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/intervie.pdf/\\$file/intervie.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/intervie.pdf/$file/intervie.pdf)).
- Randy K. Jones & Tony Mauro, *Minority Law Clerks on the Rise*, 15 NBA Natl. B. Assn. Mag. 10 (Mar./Apr. 2001).
- Alex Kozinski, *Confessions of a Bad Apple*, 100 Yale L.J. 1707 (1991).
- Natl. Assn. L. Placement, *Courting Clerkships: The NALP Judicial Clerkship Study* (Natl. Assn. L. Placement 2000) (available at <http://www.nalp.org/courting-clerkships>).
- Natl. Assn. L. Placement, *Courting the Clerkship: Perspectives on the Opportunities and Obstacles for Judicial Clerkships* (Natl. Assn. L. Placement 2000).
- \*244 Trenton H. Norris, *The Judicial Clerkship Selection Process: An Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform*, 81 Cal. L. Rev. 765 (1993).
- Louis F. Oberdorfer, *On Clerkship Selection: A Reply to the Bad Apple*, 101 Yale L.J. 1097 (1992).
- Mark W. Pletcher & Ludovic C. Ghesquiere, *In Restraint of Trade: The Judicial Law Clerk Hiring Plan*, 78 U. Colo. L. Rev. 147 (2007).
- George L. Priest, *Reexamining the Market for Judicial Clerks and Other Assortative Matching Markets*, 22 Yale J. on Reg. 123 (2005).
- Lynn K. Rhinehart, Student Author, *Is There Gender Bias in the Judicial Law Clerk Selection Process?* 83 Geo. L.J. 575 (1994).
- Carl Tobias, *Stuck inside the Heartland with Those Coastline Clerking Blues Again*, 1995 Wis. L. Rev. 919 (1995).
- U.S. Courts, *OSCAR (Online System for Clerkship Application and Review)*, <https://oscar.uscourts.gov/> (accessed Apr. 23, 2011).
- Vermont Law School Career Services, *Guide to State Court Judicial Clerkship Procedures*, ht-

tp://www.vermontlaw.edu/x1101.xml. (accessed Apr. 23, 2011) (password protected--password available from most law school career offices).

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

Kimm Alayne Walton, *Guerilla Tactics for Getting the Legal Job of Your Dreams* 1178-227 (2d ed., Thompson/West 2008).

Linn Washington, Jr., *Bringing More Blacks to Clerking*, 13 NBA Natl. B. Assn. Mag. 34 (Feb. 1999)

Mark E. Wojcik, *Why Work for the Government?* 35 Student Law. 15 (Mar. 2007) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1197642](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1197642)).

#### IV. Judicial Clerk's Role

Judicial clerks have come to be considered essential members of judges' staffs. Most judges agree that the courts could not continue to function as they do without the aid of judicial clerks. [FN7] Whereas the clerk's job is commonly described as, in effect, anything the judge wants it to be, [FN8] there is not universal agreement about what role, exactly, clerks should play in the judicial decisionmaking process. Some commentators worry that in recent decades judges have ceded too much authority to their clerks, for \*245 clerks draft increasing numbers of documents issued by courts, sometimes with very little supervision. [FN9]

The resources listed in this category offer various perspectives on the clerk's role; some are written by judges, some by current or former judicial clerks, and some by outside observers. The more general sources about "the clerk's role" will help student readers understand what might be required of them if they pursue a judicial clerkship position. In contrast, materials specific to the United States Supreme Court, which provide insiders' views on clerking for that elite institution, may be interesting to a broader audience interested less in landing a clerkship job and more in how the Supreme Court operates.

Thomas E. Baker, *Intramural Reforms: How the U.S. Courts of Appeals Have Helped Themselves*, 22 Fl. St. U. L. Rev. 913 (1995).

Arthur M. Boley, *Pretrial Motions in a U.S. District Court: The Role of the Law Clerk*, 74 Judicature 44 (1990).

Kenneth C. Broodo & Douglas D. Haoltis, *Practice in the Federal District Courts from the Law Clerk's Perspective: The Rules Behind the Rules*, 43 Baylor L. Rev. 333 (1991).

Christopher D. Bryan, *The Role of Law Clerks in Reducing Judicial Backlog*, 36 Colo. Law. 91 (May 2007).

Richard J. Cardamone, *How an Expanding Caseload Impacts Federal Appellate Procedures*, 65 Brook. L. Rev. 281 (1999).

David Crump, *How Judges Use their Law Clerks*, 58 N.Y. St. B.J. 43 (May 1986).

David Crump, *Law Clerks: Their Roles and Relationships with Their Judges*, 69 Judicature 236 (1986).

David J. Garrow, *"The Lowest Form of Animal Life"?: Supreme Court Clerks and Supreme Court History*, 84 Cornell L. Rev. 855 (1999).

Sally J. Kenney, *Puppeteers or Agents? What Lazarus's Closed Chambers Adds to Our Understanding of Law Clerks at the U.S. Supreme Court*, 25 L. & Soc. Inquiry 185 (2000).

John G. Kester, *The Brighter Side of Clerkships*, 36 J. Leg. Educ. 140 (1986).

John G. Kester, *The Law Clerk Explosion*, 9 Litig. 20 (Spring 1983).

- Helen J. Knowles, *Clerkish Control of Recent Supreme Court Opinions?: A Case Study of Justice Kennedy's Opinion in Gonzales v. Carhart*, 10 *Geo. J. Gender & L.* 63 (2009).
- Alex Kozinski & Fred Bernstein, *Clerkship Politics*, 2 *Green Bag 2d* 57 (1998).
- \*246 Jefferson Lankford, *Judicial Law Clerks: The Appellate Judge's "Write" Hand*, 31 *Ariz. Atty. 19* (1995).
- Kermit Lipez, *Judges and Their Law Clerks: Some Reflections*, 22 *Me. B.J.* 112 (2007).
- J. Daniel Mahoney, *Law Clerks: For Better or for Worse?* 54 *Brook. L. Rev.* 321 (1988).
- Anna E. McDowell & Pamela S. Mzembe, *Working in Chambers: The Rewards of a Pre-Graduation Judicial Clerkship*, 74 *J. Kan. B. Assn.* 7 (July/Aug. 2005).
- Abner J. Mikva, *Judicial Clerkships: A Judge's View*, 36 *J. Leg. Educ.* 150 (1986).
- Douglas K. Norman, *Legal Staff and the Dynamics of Appellate Decision Making*, 84 *Judicature* 175 (2001).
- John B. Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process: Perceptions of Qualities and Functions of Law Clerks in American Courts* (U. Cal. Press 1980).
- Todd C. Peppers, *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk* (Stan. U. Press 2006).
- Todd C. Peppers, Michael W. Giles, & Bridget Tainer-Parkins, *Inside Judicial Chambers: How Federal District Court Judges Select and Use Their Law Clerks*, 71 *Alb. L. Rev.* 623 (2008).
- Todd C. Peppers & Christopher Zorn, *Law Clerk Influence on Supreme Court Decision Making: An Empirical Assessment*, 58 *DePaul L. Rev.* 51 (2008).
- Penelope Pether, *Sorcerers, Not Apprentices: How Judicial Clerks and Staff Attorneys Impoverish U.S. Law*, 39 *Ariz. St. L. J.* 1 (2007).
- Richard A. Posner, *Will the Federal Courts of Appeals Survive Until 1984? An Essay on Delegation and Specialization of the Judicial Function*, 56 *S. Cal. L. Rev.* 761 (1983).
- Lauren K. Robel, *Caseload and Judging: Judicial Adaptations to Caseload*, 1990 *BYU L. Rev.* 3.
- Royce de Rohan Barondes, *Want Your Opinions Reversed? Hire a Yale Clerk (and Don't Require the Bar)* (U. of Mo. Columbia Sch. of L., Leg. Stud. Res. Paper Series, Research Paper No. 2008-8, 2008) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1116343](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1116343)).
- Carolyn Shapiro, *The Law Clerk Proxy Wars: Secrecy, Accountability, and Ideology in the Supreme Court*, 37 *Fla. St. U. L. Rev.* 101 (2009).
- William H. Simon, *Judicial Clerkships and Elite Professional Culture*, 36 *J. Leg. Educ.* 129 (1986).
- Mary Lou Stow & Harold J. Spaeth, *Centralized Research Staff: Is There a Monster in the Judicial Closet?* 75 *Judicature* 216 (1992).
- David R. Stras, *The Supreme Court's Gatekeepers: The Role of Law Clerks in the Certiorari Process*, 85 *Tex. L. Rev.* 947 (2007).
- \*247 Artemus Ward & David L. Weiden, *Sorcerer's Apprentices: 100 Years of Law Clerks at the U.S. Supreme Court* (NYU Press 2006).

## V. Judicial Role

Although the resources in this section do not directly address judicial clerkships, they provide a valuable perspective on judges, the “bosses” of judicial clerks. Because the pressures faced by judges will inevitably affect their clerks, readers considering applying for or entering judicial clerkships will benefit from a better understanding of these pressures. In addition, an understanding of the judicial role should enter into any discussion about the clerk's role, since the two roles are interrelated.



- Ruggero J. Aldisert, *Judicial Declaration of Public Policy*, 10 J. App. Prac. & Process 229 (2009).
- Jim Chen, *The Mystery and the Mastery of the Judicial Power*, 59 Mo. L. Rev. 281 (1994).
- LaDoris H. Cordell & Florence O. Keller, *Pay No Attention to the Woman behind the Bench: Musings of a Trial Court Judge*, 68 Ind. L.J. 1199 (1993).
- Pamela Coyle, *Bench Stress*, 81 ABA J. 60 (Dec. 1995).
- Pauline T. Kim, *Deliberation and Strategy on the United States Courts of Appeals: An Empirical Exploration of Panel Effects*, 157 U. Pa. L. Rev. 1319 (2009).
- Gilbert S. Merritt, *The Decision Making Process in Federal Courts of Appeals*, 51 Ohio St. L.J. 1385 (1990).
- Chad M. Oldfather, *Error Correction*, 85 Ind. L.J. 49 (2010).
- Alexander M. Sanders, *Everything You Always Wanted to Know About Judges but Were Afraid to Ask*, 49 S. Cal. L. Rev. 343 (1998).
- Jeffrey M. Shaman, *The Role of a Judge*, 2 Geo. J. Leg. Ethics 1 (1988).
- Christopher E. Smith, *United States Magistrates in the Federal Courts: Subordinate Judges* (Praeger 1990).
- James A. Wall, Jr. & Dale E. Rude, *Judicial Involvement in Settlement: How Judges and Lawyers View It*, 72 *Judicature* 175 (1988).

## VI. Writing and Citation

Judges and clerks tend to be strong writers and to have strong opinions about writing in general. Thus, numerous sources address issues of style in judicial writing; but few sources address specific documents, other than opinion drafts, that clerks actually write. In addition to the resources listed \*248 in this category, current judicial clerks looking for sample documents or models can consult document banks or existing case files available within their own court or chambers. Also included in this section are some general legal-writing-style reference books and citation materials that will be helpful to clerks and interns-externs working in the courts.

*ALWD-Bluebook Comparison Charts*, [http://www.alwd.org/publications/third\\_edition\\_resources.html](http://www.alwd.org/publications/third_edition_resources.html) (accessed Dec. 1, 2010).

*ALWD-Bluebook and Bluebook-ALWD Rule Conversion Charts*, [http://www.alwd.org/publications/third\\_edition\\_resources.html](http://www.alwd.org/publications/third_edition_resources.html) (accessed Dec. 1, 2010).

Douglas E. Abrams, *But “Will it Write”? How Writing Sharpens Decision-Making*, 3 Precedent 61 (Spring 2009) (available at [members.mobar.org/pdfs/precedent/May09/Abrams.pdf](http://members.mobar.org/pdfs/precedent/May09/Abrams.pdf)).

Linda J. Barris, *Understanding and Mastering the Bluebook: A Guide for Students and Practitioners* (2d ed., Carolina Acad. Press 2010).

Carol M. Bast & Susan Harrell, *Has The Bluebook Met Its Match? The ALWD Citation Manual*, 92 Law Lib. J. 337 (2000).

Deborah C. Bouchoux, *Aspen Handbook for Legal Writers: A Practical Reference* (2d ed., Aspen 2009).

Mary Dunnewold, *Please the Court: Writing a Bench Memo*, 33 Student Law. 22 (May 2005).

Federal Judicial Center, *Judicial Writing Manual* (Sylvan A. Sobel ed., Fed. Jud. Center 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/JudicialWritingManual.pdf/\\$file/JudicialWritingManual.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/JudicialWritingManual.pdf/$file/JudicialWritingManual.pdf)).

Susan W. Fox & Wendy S. Loquasto, *The Art of Persuasion Through Legal Citations*, 84 Fla. B.J. 49 (Apr. 2010).

Bryan A. Garner, *The Redbook: A Manual on Legal Style* (2d ed., Thomson/West 2006).

Thomas Gibbs Gee, *A Few of Wisdom's Idiosyncrasies and a Few of Ignorance's: A Judicial Style Sheet*, 1 Scribes J. Leg. Writing 55 (1990).

*The Inter-American Citator: A Guide to Uniform Citation of Inter-American Sources for Writers and Practitioners*, 39 U. Miami Inter-Am. L. Rev. 275 (2008).

Gerald Lebovits, *Tanbook, Bluebook, and ALWD Citations: A 2007 Update*, 79 N.Y. St. B. Assn. J. 64 (Oct. 2007).

Joan Ames Magat, *The Lawyer's Editing Manual* (Carolina Acad. Press 2009).

Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 Law Lib. J. 329 (2007).

\*249 Abner J. Mikva, *For Whom Judges Write*, 61 S. Cal. L. Rev. 1357 (1988).

N.Y. U. Sch. L. J. Intl. L. & Pol., *Guide to Foreign & International Legal Citations* (2d ed., Aspen 2009).

Richard A. Posner, *Judges' Writing Styles (And Do They Matter?)*, 62 U. Chi. L. Rev. 1421 (1995).

Susan Rowe, *Linking Citations to Text: Signaling Support*, 69 Or. St. B. Bull. 11 (Nov. 2008).

Jennifer Sheppard, *The "Write" Way: A Judicial Clerk's Guide to Writing for the Court*, 38 U. Balt. L. Rev. 73 (2008).

Larry L. Teply, *Legal Writing Citation in a Nutshell* (Thomson/West 2008)

Patricia M. Wald, *A Reply to Judge Posner*, 62 U. Chi. L. Rev. 1451 (1995).

Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. Chi. L. Rev. 1371 (1995).

Patricia M. Wald, "How I Write" Essays, 4 Scribes J. Leg. Writing 55 (1993).

## VII. Opinions

A great deal has been written about judicial opinions and opinion writing, and the resources listed here cover a wide range of information, including "how to" guides, criticism of opinions for such things as excessive length and use of humor, analysis of the writing styles of opinions, and analysis of particular rhetorical considerations such as audience and purpose.

The practical resources address the structure of opinions; writing advice; grammar and usage tips; and the processes of writing, editing, and finalizing opinions. Many of these practical resources were written for judges, but they are equally useful for judicial clerks who will be drafting opinions for judges. The more-academic resources may be particularly useful as readings for academic coursework or for clerks interested in the more-theoretical aspects of judicial opinions and opinion writing. For additional practical advice about drafting opinions, clerks should consult the resources of their courts or chambers, including past opinions written by their judges and the advice of more experienced clerks.

Douglas E. Abrams, *Judges and Their Editors*, 3 Alb. Govt. L. Rev. 392 (2010).

Douglas E. Abrams, *Sports in the Courts: The Role of Sports References in Judicial Opinions*, 17 Vill. Sports & Ent. L.J. 1 (2010).

Ruggero J. Aldisert, *Opinion Writing* (2d ed., AuthorHouse 2009).

Ruggero J. Aldisert, Meehan Rasch & Matthew P. Bartlett, *Opinion Writing and Opinion Readers*, 31 Cardozo L. Rev. 1 (2009).

\*250 Samuel A. Alito, Jr. et. al., *The Second Conversation with Justice Samuel A. Alito, Jr.: Lawyer-*



- ing and the Craft of Judicial Opinion Writing*, 37 *Pepp. L. Rev.* 33 (2009).
- Appellate Judges Conference, *Judicial Opinion Writing Manual* (ABA 1991).
- Erik Paul Belt, *Concerned Readers v. Judicial Opinion Writers*, 23 *U. Mich. J.L. Reform* 463 (1990).
- Ryan C. Black & James F. Spriggs II, *An Empirical Analysis of the Length of U.S. Supreme Court Opinions*, 45 *Hous. L. Rev.* 621 (2008).
- Richard B. Cappalli, *Improving Appellate Opinions*, 83 *Judicature* 286 (2000).
- Stephen J. Choi & G. Mitu Gulati, *Which Judges Write Their Opinions (And Should We Care?)*, 32 *Fla. St. U. L. Rev.* 1077 (2005).
- Tom Cobb & Sarah Kaltsounis, *Real Collaborative Context: Opinion Writing and the Appellate Process*, 5 *J. ALWD* 156 (2008).
- William Domnarski, *In the Opinion of the Court* (U. Ill. Press 1996).
- Charles G. Douglas III, *How to Write a Concise Opinion*, 22 *Judges J.* 4 (Spring 1983).
- Elizabeth Fajans, Mary R. Falk & Helene S. Shapo, *Writing for Law Practice* 337-73 (Found. Press 2004).
- Robert A. Ferguson, *The Judicial Opinion As Literary Genre*, 2 *Yale J.L. & Humanities* 201 (1990).
- Joyce J. George, *Judicial Opinion Writing Handbook* (5th ed., William S. Hein & Co. 2007).
- Michael J. Higdon, *Something Judicious This Way Comes ... the Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 *U. Rich. L. Rev.* 1213 (2010).
- Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 *U. Miami L. Rev.* 693 (1987).
- Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 *Scribes J. Leg. Writing* 1 (2003-2004) (reprinted in Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (pts. 1 & 2) 15, 89 (Carolina Acad. Press 2006)).
- Joseph Kimble, *First Things First: The Lost Art of Summarizing*, 8 *Scribes J. Leg. Writing* 103 (2001-2002) (reprinted in Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 73 (Carolina Acad. Press 2006)).
- Richard B. Klein, *Opinion Writing Assistance Involving Law Clerks: What I Tell Them*, 34 *Judges J.* 33 (Summer 1995).
- Gerald Lebovits, *Advanced Judicial Opinion Writing: A Handbook for New York State Trial and Appellate Courts* (7.4 ed., N.Y. St. Jud. Inst. 2004) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1406709](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406709)).
- \*251 Gerald Lebovits, *Ethical Judicial Writing--Part III*, 79 *N.Y. St. B. Assn. J.* 64 (Feb. 2007).
- Gerald Lebovits, *Ethical Judicial Writing--Part II*, 79 *N.Y. St. B. Assn. J.* 64 (Jan. 2007).
- Gerald Lebovits, *Ethical Judicial Writing--Part I*, 78 *N.Y. St. B. Assn. J.* 64 (Nov./Dec. 2006).
- Gerald Lebovits, *Short Judicial Opinions: The Weight of Authority*, 76 *N.Y. St. B. Assn. J.* 64 (Sept. 2004).
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Frederick Schauer, *Opinions As Rules*, 62 U. Chi. L. Rev. 1455 (1995).

Annie M. Smith, *Great Judicial Opinions Versus Great Literature: Should the Two Be Measured by the Same Criteria?* 36 McGeorge L. Rev. 757 (2005).

Jeffrey A. Van Detta, *The Decline and Fall of the American Judicial Opinion, Part II: Back to the Future from the Roberts Court to Learned Hand-- Segmentation, Audience, and the Opportunity of Justice Sotomayor*, 13 Barry L. Rev. 29 (2009).

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Paul J. Wahlbeck, James F. Spriggs, II & Lee Sigelman, *Ghostwriters on the Court?: A Stylistic Analysis of U.S. Supreme Court Opinion Drafts*, 30 Am. Pol. Res. 166 (2002).

Nancy A. Wanderer, *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 Maine L. Rev. 47 (2002).

Stephen L. Wasby, Steven Peterson, James Schubert & Glendon Schubert, *The Per Curiam Opinion: Its Nature and Functions*, 76 Judicature 29 (1992).

James Boyd White, *Judicial Criticism*, 20 Ga. L. Rev. 835 (1986).

James Boyd White, *What's an Opinion For?* 62 U. Chi. L. Rev. 1363 (1995).

\*252 Ryan Benjamin Witte, *The Judge As Author / The Author As Judge*, 40 Golden Gate U. L. Rev. 37 (2009).

### VIII. Jury Instructions

The outcome of a trial can depend upon the instructions the judge gives the jury. Jury instructions state the law that jurors must apply to the facts of a case, and a change in the law can mean a change in the verdict. With so much at stake, it is not surprising that much has been written about jury instructions. The resources listed below not only provide examples of jury instructions that courts can adopt for use in specific cases, but also provide helpful information about making jury instructions more readable and understandable to jurors who have no legal training. Additional resources are available in jurisdiction-specific and topic-specific sources such as state practice guides, state bar publications, and ABA publications. For example, the ABA Section on Litigation publishes books of topic-specific pattern jury instructions. [FN10] In addition, many jurisdictions provide model jury instructions that can be accessed on court websites. [FN11] Since there is often more than one acceptable set of instructions for a cause of action or claim, new clerks should ask their judges if they have preferred sources for jury instructions.

David Barron, *I Did Not Want to Kill Him but Thought I Had to: In Light of Penry II's Interpretation of Blystone Why the Constitution Requires Jury Instructions on How to Give Effect to Relevant Mitigating Evidence in Capital Cases*, 11 J.L. & Policy 207 (2002).

Bethany K. Dumas, *Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues*, 67 Tenn. L. Rev. 701 (2000).

Ronald W. Eades, *The Problem of Jury Instructions in Civil Cases*, 27 Cumb. L. Rev. 1017 (1996-1997).

Jill S. Gelineau, *Using Jury Instructions to Shape the Trial*, [http://files.aliaba.org/thumbs/datastorage/skoobesruoc/pdf/CM102\\_chapter\\_18\\_thumb.pdf](http://files.aliaba.org/thumbs/datastorage/skoobesruoc/pdf/CM102_chapter_18_thumb.pdf) (accessed Dec. 1, 2010).

\*253 Arthur J. Hanes, Bert S. Nettles, & Leila H. Watson, *The "Plain English" Project of the*

*Alabama Pattern Jury Instructions Committee--Civil*, 68 Ala. Law. 369 (2007).

Joseph Kimble, *How to Mangle Court Rules and Jury Instructions*, 8 Scribes J. Leg. Writing 39 (2001-2002) (reprinted in Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 105 (Carolina Acad. Press 2005)).

Joseph Kimble, *The Route to Clear Jury Instructions*, 78 Mich. B. J. 1406 (1999) (also published in 6 Scribes J. of Leg. Writing 163 (1997)).

Kevin O'Malley, Jay E. Grenig, & William C. Lee, *Federal Jury Practice and Instructions Civil* (5th ed., West 2000).

Kevin O'Malley, Jay E. Grenig, & William C. Lee, *Federal Jury Practice and Instructions Criminal* (5th ed., West 2000).

Mary Barnard Ray, *The Basics of Legal Writing* 288-98 (Gale Cengage 2006).

Mary Barnard Ray & Barbara J. Cox, *Beyond the Basics: A Text for Advanced Legal Writing* 54-88 (2d ed., Thomson/West 2003).

Nancy L. Schultz & Louis J. Sirico, Jr., *Legal Writing and Other Lawyering Skills* 289-96 (4th ed., LexisNexis 2004).

Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 Ala. L. Rev. 441 (1997).

Walter W. Steele, Jr. & Elizabeth G. Thornburg, *Jury Instructions: A Persistent Failure to Communicate*, 67 N.C. L. Rev. 77 (1988).

Elizabeth G. Thornburg, *The Power and the Process: Instructions and the Civil Jury*, 66 Fordham L. Rev. 1837 (1998).

Peter Tiersma, *The Rocky Road to Legal Reform: Improving the Language of Jury Instructions*, 66 Brook. L. Rev. 1081 (2001).

Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Jury Instructions* (National Center for State Courts 2007).

## IX. Academic Clerkship Classes

As noted in the introduction, most law schools offer a judicial externship experience for credit. Sources listed in this section offer advice about how to create an externship program or advice about how to work with interns or externs within a judge's chambers.

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 (1996).

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

\*254 Rebecca A. Cochran, *Judicial Externships: The Clinic Inside the Courthouse* (3d ed., LexisNexis 2005).

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

## X. Ethics

Judicial clerks hold a unique and privileged position in the judiciary. Clerks are privy not only to litigants' secrets and proprietary information, but also to judges' decisionmaking processes. With such privilege comes great responsibility: clerks must keep information learned "on the job" secret. In addition, clerks often have to

modify their outside activities so as not to inadvertently establish the appearance of impropriety or favoritism. Since society views judicial clerks as extensions of their judges, clerks must conduct themselves with dignity and neutrality at all times. The following sources discuss clerks' duties of professionalism and confidentiality. Judicial clerks should always ask their judges if there are specific limits on their activities or if there are certain rules the judges want clerks to follow.

Ruggero J. Aldisert, Book Review, *72 Cal. L. Rev.* 275 (1984) (reviewing Bernard Schwartz, *Super Chief: Earl Warren and His Supreme Court--A Judicial Biography*).

Carol M. Bast & Linda B. Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty*, *57 Cath. U. L. Rev.* 777 (2008).

Heather Bupp-Habuda, *Law Clerk's Ethical Boundaries*, 38 Fed. B. News & J. 213 (No. 4, 1991).

Erwin Chemerinsky, *Opening Closed Chambers*, *108 Yale L.J.* 1087 (1999).

*Code of Conduct for Judicial Employees*, <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductJudicialEmployees.aspx> (accessed Apr. 23, 2011).

*Code of Conduct for United States Judges*, <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx> (accessed Apr. 23, 2011).

Comment, *The Law Clerk's Duty of Confidentiality*, *129 U. Pa. L. Rev.* 1230 (1981).

Federal Judicial Center, *Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges* (Sylvan A. Sobel, ed., 2d ed., Fed. Jud. Center 2007) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbk.pdf/\\$file/lawclhbk.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbk.pdf/$file/lawclhbk.pdf)).

\*255 Federal Judicial Center, *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks*, [http://www.fjc.gov/public/pdf.nsf/lookup/Ethics01.pdf/\\$file/Ethics01.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Ethics01.pdf/$file/Ethics01.pdf) (2002).

Linda H. Green, *The Spotless Reputation and Federal Law Clerk Employment Negotiations*, *25 U. Mem. L. Rev.* 127 (1994).

Philip J. Grib, *The Ethical Foundations of Judicial Decision-Making*, *35 Cath. Law.* 1 (1991).

John Paul Jones, *Some Ethical Considerations for Judicial Clerks*, *4 Geo J. Legal Ethics* 771 (1991)

Gerald Lebovits, *Ethical Judicial Writing--Part III*, *79 N.Y. St. Bar Assn. J.* 64 (Feb. 2007).

Gerald Lebovits, *Ethical Judicial Writing--Part II*, *79 N.Y. St. Bar Assn. J.* 64 (Jan. 2007).

Gerald Lebovits, *Ethical Judicial Writing--Part I*, *78 N.Y. St. Bar Assn. J.* 64 (Nov.-Dec. 2006).

Steven Lubet, *Judicial Ethics and Private Lives*, *79 Nw. U. L. Rev.* 983 (1984).

Gerald Lebovits, Alifya V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, *21 Geo. J. Leg. Ethics* 237 (2008).

Richard W. Painter, *Matter of Ethics: Open Chambers?* *97 Mich. L. Rev.* 1430 (1999).

Parker B. Potter, Jr., *Law Clerks Gone Wild*, *34 Seattle U. L. Rev.* 173 (2010).

Parker B. Potter, Jr., *Law Clerks Out of Context*, *9 U. N.H. L. Rev.* 67 (Dec. 2010).

Joe G. Riley, *Ethical Obligations of Judges*, *23 Mem. St. U. L. Rev.* 507 (1993).

Nancy L. Sholes, *Judicial Ethics: A Sensitive Subject*, *26 Suffolk U. L. Rev.* 379 (1992).

Faye A. Silas, *Mum's the Word: the Law Clerk as Confidant*, *71 ABA J.* 36 (1985).

Charles W. Sorenson, Jr., *Are Law Clerks Fair Game? Invading Judicial Confidentiality*, *43 Val. U. L. Rev.* 1 (2008).

Kevin D. Swan, *Protecting the Appearance of Judicial Impartiality in the Face of Law Clerk Employment Negotiations*, *62 Wash. L. Rev.* 813 (1987).

Peter N. Thompson, *Confidentiality in Chambers: Is Private Judicial Action the Public's Business?*

62 Bench & B. Minn. 14 (Feb. 2005).

[FN1]. Mary Dunnewold, Beth Honetschlager, and Brenda Tofte are Legal Research and Writing Instructors at Hamline University School of Law.

[FN1]. See Natl. Assn. L. Placement, *Jobs for New Law Graduates--Trends from 1994-2004*, NALP Bulletin (July 2005) (available at <http://www.nalp.org/2005juljobsfornewlawgraduates?s=jobs%20for%20new%20graduates>).

[FN2]. Natl. Assn. L. Placement, *Courting Clerkships: The NALP Judicial Clerkship Study* (Natl. Assn. L. Placement 2000) (available at <http://www.nalp.org/courtingclerkships#overview>).

[FN3]. Judicial-clerkship survey data on file with authors (data collected fall 2008). These positions are usually referred to as “internships,” as opposed to “externships,” which are offered by law schools for credit.

[FN4]. See *id.* Many judicial clerks report feeling unprepared and overwhelmed in the first several months of a clerkship and express a desire for more guidance on how to do their jobs.

[FN5]. See John B. Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process; Perceptions of the Qualities and Functions of Law Clerks in American Courts* 8-22 (U. Cal. Press 1980).

[FN6]. See Suzanne E. Rowe, *Professionalism of Legal Writing Programs: Time-Lapse Lessons from the Institute's Surveys* (Feb. 5, 2010) (available at SSRN: <http://ssrn.com/abstract=1548663>).

[FN7]. See generally Oakley & Thompson, *supra* n. 5.

[FN8]. See e.g. David Crump, *How Judges Use Their Law Clerks*, 58 N.Y. St. B. J. 43, 44 (May 1986).

[FN9]. J. Daniel Mahoney, *Law Clerks: For Better or for Worse?* 54 *Brook. L. Rev.* 321, 336-40 (1988).

[FN10]. See e.g. ABA Section of Litigation, *Model Jury Instructions: Copyright, Trademark and Trade Dress Litigation* (ABA 2008); ABA Section of Litigation, *Model Jury Instructions: Employment Litigation* (2d ed., ABA 2005).

[FN11]. See e.g. Committee on Model Jury Instructions within the Eighth Circuit, *Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit*, <http://www.juryinstructions.ca8.uscourts.gov/index.htm> (accessed Apr. 23, 2011); *Pattern Jury Instructions for Civil Practice in the Superior Court of the State of Delaware*, <http://courts.delaware.gov/Superior/pattern/pattern.stm> (accessed Apr. 23, 2011); *Florida Standard Jury Instructions*, [www.floridasupremecourt.org/jury\\_instructions.shtml](http://www.floridasupremecourt.org/jury_instructions.shtml) (containing links to jury instructions in Word format).

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