

ABA Judicial Clerkship Program Inspired By *Brown's* Call for Opportunity

By Justice Frank Sullivan Jr.

When *Brown v. Board of Education* created new educational opportunities for minority school children fifty years ago, the institution of judicial law clerks was already well established. A recent initiative of the American Bar Association, now beginning its fifth year, creates new opportunities for minority lawyers to serve as judicial law clerks.

The ABA Judicial Clerkship Program brings minority law students from throughout the country together annually for an intense program designed to encourage them to seek judicial clerkships. Inspired by *Brown's* unfulfilled call for an America where “opportunity . . . is available to all on equal terms,” the Program helps make an extremely valuable opportunity—a judicial clerkship—available to minority lawyers.

Background

The opportunity to work with law clerks is a special joy for judges. One member of the Supreme Court who participated in the *Brown* decision, Justice William O. Douglas, described his law clerks as “the spice that fresh young minds [bring] to the job; another, Justice Hugo Black, as “his personal investment in the future.” Former clerks too have been generous in their praise for the clerking opportunity. Frank Beytagh, who clerked for Chief Justice Warren, the author of *Brown*, described the importance of his clerkship opportunity.

Those of us who had the opportunity of working with [Chief Justice

Warren as his law clerks] are forever indebted to him. . . . We learned about justice and equality and fairness and freedom as we worked with him on the Court's business. But we learned far more about life as we came to know him.

Given the value placed on clerking by judges, clerks, and the legal community at large, it is not surprising that many of the leading figures in American law are former law clerks. Indeed, three current members of the U.S. Supreme Court (Chief Justice William H. Rehnquist, Justice John Paul Stevens, and Justice Stephen G. Breyer, for former Justices Robert H. Jackson, Wiley B. Rutledge, and Arthur J. Goldberg, respectively) are themselves former Supreme Court clerks. The president of the American Bar Association, Dennis W. Archer, is not only a former clerk but also a former employer of law clerks during his tenure on the Michigan Supreme Court.

And given the value of clerkships, it is crucial that clerking opportunities be available to all. In 1998, the lack of minority clerks in the U.S. Supreme Court boiled over into public controversy when the president of the NAACP and others were arrested after peacefully crossing a police line at the High Court in an attempt to deliver the resumes of minority law students to Chief Justice William Rehnquist.

In response to the controversy, the National Association for Law Placement (NALP) and the ABA commissioned a comprehensive study of the clerkship situation. Professor Debra Strauss indicated that “the study found that minority representation in clerkships was generally lower than in law

school populations.” Despite this fact, Strauss pointed out, the “discrepancy did not result from a difference in the success of their applications, but rather a lower application rate of the minority students.”

These findings and conclusions were of particular concern to the ABA, which counts “the full and equal participation in the legal profession by minorities” as one of its goals. Clearly, minority lawyers were not fully and equally participating in judicial clerkships. And just as clearly, at least part of the problem stemmed from the fact that not enough minority law students were applying for clerkships.

Following the completion of the NALP study in 2000, the ABA's Judicial Division and the Commission on Racial and Ethnic Diversity in the Profession, with support from LEXIS-NEXIS, agreed to create the Judicial Clerkship Program. The Program would bring minority law students, judges, and former law clerks together at an ABA meeting in an effort to encourage students to pursue a judicial clerkship. The Program would stress the benefits of clerkships, noting that such roles facilitate close personal working relationships with judges; improve research, analytical, and writing skills; enhance career opportunities; and allow clerks to participate directly in the process of shaping the law.

The Students

Commission members and staff took the lead role in recruiting the students for the Program. Law schools from throughout the country are invited to make the following commitments to the Program:

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first, to pay an annual participation fee for a minimum of three years; second, select a racially and ethnically diverse group of students to participate; and third, to pay the travel and lodging expenses of sending their selected students to the Program. Participation is currently limited to four students per school. In addition, the Council on Legal Education Opportunity (CLEO), which administers the Congressionally-mandated Thurgood Marshall Legal Educational Opportunity Program, annually selects and sponsors six law students from different law schools in the Program. Although each school and CLEO can determine its own method for selecting participating students, the Program recommends the consideration of students who may not already be likely candidates for clerkships or may not even be considering clerkships.

This year, the following law schools sent forty-five students to the Program: Cornell Law School, Indiana School of Law—Bloomington, South Texas College of Law, University of Michigan Law School, University of New Mexico School of Law, University of Tennessee College of Law, University of Texas at Austin School of Law, and William Mitchell College of Law. The six CLEO fellows who also participated were students at Boston College Law School, Georgetown University Law Center, Harvard Law School, Northwestern University School of Law, and University of Connecticut School of Law.

The Judges

The judges who participate in the Program come from throughout the country. They sit on appellate and trial benches and in federal and state courts. They are Caucasians and minorities. Some judges have participated only once; others, year after year.

The JD has played an important role in recruiting judges for the Program. The breadth of involvement was particularly impressive in 2004. Each of the chairs of the Appellate Judges Conference (Judge James A. Wynn, Jr.), the National

Conference of Federal Trial Judges (Judge Andre M. Davis), and the National Conference of State Trial Judges (Judge Sophia H. Hall) designated liaisons to the Program to assist in recruiting, as did the Chair of the Standing Committee on Minorities in the Judiciary (Judge Gregory Holiday). Their efforts and those of others resulted in thirty participating judges, twelve of whom were appellate judges, nine of whom were federal district, bankruptcy, or administrative law judges, and nine of whom were state trial judges. Seven of those judges were active in the working of the Standing Committee and another seven were judges from within the State of Texas.

The Program

Although the Program made a few adjustments after the first year, organizers have used the same general approach of conducting panel discussions, a research exercise, and informal social events over parts of three days. This year, for example, one panel, chaired by Judge Patricia Timmons-Goodson of the North Carolina Court of Appeals and consisting of a five judges from courts with different types of jurisdiction, discussed the differences and similarities in clerking for trial courts, intermediate appellate courts, and courts of last resort at the federal and state level. Another panel this year was chaired by Jacqueline Regis, a member of the Commission. It consisted of six former law clerks, three of whom practice in law firms, two of whom are in-house counsel for major corporations, and one of whom is a law professor. They shared their experiences as clerks and the ways in which their clerkships have been helpful to them. Students at the University of Texas at Austin Law School and representatives from the school's placement office made a special presentation on the techniques of applying for and securing judicial clerkships.

The most ambitious part of the Program has become the research exercise. To help demonstrate the working relationship between judge and law clerk,

the students convene in small groups of four to six students. Several judges are assigned to each group. The students are asked to assume that they are judicial clerks and that their supervising judge has been assigned to write an opinion on a case of great interest. After discussing the assignment with their respective judges, the students use computers and software provided by LEXIS-NEXIS to research the case. Following several periods of both research and discussion, the students prepare outlines of opinions deciding the case.

The Program's cases are closely-watched cases pending before the Supreme Court. In 2002, the case was based on *Zelman v. Simmons-Harris*: whether a state's school "voucher" program violates the Establishment Clause. In 2003, the issue was based on *Demore v. Hyung Joon Kim*: whether the Constitution permits the government to imprison without individualized hearings certain resident aliens with criminal records while deportation proceedings are conducted. This year the issue was based on *Locke v. Davey*: whether a state that offers taxpayer-financed scholarships for post-high school education can withhold the money from an otherwise eligible student who wants to use it to attend a religious college and major in theology.

Above all else, the research exercise is meant to simulate the kind of judge-clerk interaction characteristic of judicial clerkships. By all measures, the small group contact between students and judges has accomplished this objective.

The Results

Feedback from participating law students has been extremely positive. Virtually all of the students said they intended to seek clerkships. The Program is now in the process of conducting a comprehensive survey of all former program participants to determine the extent to which they sought and secured clerkships. However, the Program is aware that at least following students from the first three Programs have, are, or will

clerk for the following judges:

2001 Program

David P. Avila (University of Michigan Law School)—Justice Frank Sullivan Jr. (Indiana Supreme Court)

Nancy Morisseau (Cornell Law School)—Judge George B. Daniels (U.S. District Court for the Southern District of New York)

2002 Program

Mauricio Gonzalez (Cornell Law School)—Judge Kermit E. Bye (U.S. Court of Appeals for the Eighth Circuit)

Sarita Nair (University of New Mexico School of Law)—Judge Lynn Pickard (New Mexico Court of Appeals)

2003 Program

Sahar Aziz (University of Texas at Austin School of Law)—Judge Andre Davis (U.S. District Court for the District of Maryland)

Carl Butler (Indiana University School of Law—Bloomington)—Justice Frank Sullivan Jr. (Indiana Supreme Court)

Kirk Chavez (University of New Mexico School of Law)—

Judge Lynn Pickard (New Mexico Court of Appeals)

Conclusion

In 2002 the ABA's Section Officers Conference honored the Program with its Meritorious Service Award, which recognizes an ABA member entity program or activity for significant contributions to the work of the Association. Motivated by the ABA's commitment to "the full and equal participation in the legal profession by minorities," the Program looks forward to helping ever more minority law students to seek and secure judicial clerkships.