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# 2021 FEDERAL CLERKSHIPS: CAN ORDER EMERGE FROM CHAOS?

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This is a perfect juncture for analyzing 2021 federal judicial clerkships. Many aspirants recently finished half of their legal education. Six appeals courts' members have agreed to honor a new Federal Law Clerk Hiring Plan (hereinafter referred to as "the pilot") that is currently in its second year. The pilot directly proscribes seeking and permitting clerkship applications and recommendation letters until June 15, 2020 and prohibits student clerkship interviews and judicial offers before June 16, 2020.<sup>1</sup> However, certain judges within these six tribunals will not respect the pilot during its second year, even though jurists in the seven remaining courts of appeals might follow the new plan. The Administrative Office of the United States Courts ("AO") extended 2L students OSCAR access in February while suspending in January 2014 the 2003 clerk hiring plan—whereby 3L employment began near Labor Day—and judges will soon consider aspirants. Clues offered below may assist prospects in securing the coveted positions which start in 2021.

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\* Williams Chair in Law, University of Richmond School of Law. This piece is for David Lat whose perceptive insights on federal law clerk employment and so much else in law and life inspire all people who know his work and David. I wish to thank Margaret Sanner for valuable suggestions, Jamie Wood, Jane Baber and Emily Benedict for valuable research and careful editing, the University of Richmond Law Library staff for valuable research, the *Southern California Law Review Postscript* editors for excellent editing and sound advice, Ashley Griffin Hudak and Leslee Stone for excellent processing as well as Russell Williams and the Hunton Andrews Kurth Summer Research Endowment Fund for generous, continuing support. Numerous federal appellate and district court judges, law clerks and additional court personnel, law professors, Career Development Office (CDO) professionals and law students afforded many ideas examined below. Remaining errors are mine alone.

1. ADMIN. OFFICE OF THE U.S. COURTS, FEDERAL LAW CLERK HIRING PLAN (2018) [hereinafter HIRING PLAN]; ADMIN. OFFICE OF THE U.S. COURTS, FEDERAL LAW CLERK HIRING PLAN 2ND PILOT YEAR (2019) [hereinafter 2ND PILOT YEAR], [https://oscar.courts.gov/federal\\_law\\_clerk\\_hiring\\_pilot](https://oscar.courts.gov/federal_law_clerk_hiring_pilot); see also Will Baude, *A Proposal for a New Clerkship Hiring Plan (When The Current One Collapses)*, REASON: VOLOKH CONSPIRACY (Feb. 10, 2020, 3:55 PM), <https://reason.com/2020/02/10/a-proposal-for-a-new-federal-clerkship-hiring-plan-when-the-current-one-collapses> [<https://perma.cc/8KYL-6VVN>] (analyzing the 2019 federal law clerk employment pilot and suggesting a new plan).

## I. FEDERAL APPELLATE CLERKSHIPS

Most of the 270 appeals court jurists have filled posts, yet a significant number remain open. Many hired before the set period prescribed by the pilot, which other judges honored.<sup>2</sup> There are many phenomena that can explain the variation in hiring by federal appellate court judges, including the nascent pilot program, the 2014 AO discontinuation of an earlier hiring plan, and the reactions of numerous judges to a U.S. Court of Appeals for the District of Columbia Circuit announcement in January 2013. Seven years ago, the D.C. Circuit, America's second most important court, which had assiduously followed the 2003 clerkship hiring rules for years, announced that the tribunal's jurists, who found the once-workable plan had not been efficacious, would grant offers whenever they wanted.<sup>3</sup> The statement quickly precipitated a hiring frenzy that has continued since and promotes greater uncertainty this season, which the pilot's implementation compounds.<sup>4</sup>

Those developments suggest that applicants who hope to clerk for judges rejecting the plan and even students who might wish to capture positions on the D.C., First, Second, Third, Seventh and Ninth Circuits, which abide by the pilot, should move immediately. Clerkships for all jurists who dutifully comply with the plan are extremely competitive. They serve on courts of last resort which decide exceptional issues, encompassing abortion, civil rights, discrimination and immigration, or are ensconced in particularly desirable venues, including New York, Chicago and San Francisco, which means that numerous appellate court judges may favor

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2. See Edward Becker et al., *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 YALE L. J. 207, 215–16 (1994); Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L. J. 1707, 1725 (1991).

3. See also Carl Tobias, *Tips for Capturing 2014 Federal Court Clerkships*, 66 VAND. L. REV. EN BANC 145, 146 n.2 (2013); David Lat, *The Law Clerk Hiring Plan: Really, Really Dead Now*, ABOVE THE LAW (Jan. 30, 2013, 12:38 PM), <https://abovethelaw.com/2013/01/the-law-clerk-hiring-plan-really-really-dead-now> [<https://perma.cc/KRX4-ANKQ>]. It is unclear why so many federal judges have defected from the nascent pilot and every prior iteration of the Federal Law Clerk Hiring Plan. See Kozinski, *supra* note 2. See generally Louis F. Oberdorfer & Michael N. Levy, Response, *On Clerkship Selection: A Reply to the Bad Apple*, 101 YALE L. J. 1097, 1108 (1992) (addressing the “inefficient, expensive, disruptive, and demeaning” way that federal judges have selected their law clerks and proffering suggestions for improvement).

4. Karen Sloan, *Law Deans Implore Federal Judges to Follow Clerk Hiring Plan*, LAW.COM, (Jan. 29, 2020, 2:11 PM) <https://www.law.com/2020/01/29/law-deans-implore-federal-judges-to-follow-law-clerk-hiring-plan> [<https://perma.cc/X8J9-5FF4>]. The pilot ostensibly attempts to remedy or ameliorate what many observers contend has become a two-track process. Letter from Kerry Abrams et al. to the Members of the Federal Judiciary (Jan. 22, 2020), <https://images.law.com/contrib/content/uploads/documents/292/60749/Deans-Letter-to-the-Federal-Judiciary-January-20201.pdf> [<https://perma.cc/BRT7-E52W>].

aspirants who bring recent district clerkship or legal practice experience. Nonetheless, even on those appeals courts, some members in less popular areas recruit later. For example, frigid Vermont, Wisconsin or Idaho winters and steamy District of Columbia, Philadelphia or Phoenix summers can discourage numbers of potential applicants. When carefully scrutinizing the employment possibilities, students might want to remember that they will actually clerk for only a year.

Additional jurists, whose clerkship posts are not so distinguished or whose chambers are clearly in locales that applicants would prefer considerably less, have yet to employ students. They include portions of the Fifth, Eighth and Tenth Circuits but also in the Fourth, Sixth and Eleventh Circuits.<sup>5</sup> Finally, certain judges may be respecting the nascent pilot or awaiting two years of grades. Therefore, a number may have slots available,<sup>6</sup> yet time is certainly of the essence.

## II. FEDERAL CLERKSHIPS HISTORY

The D.C. Circuit ignited a firestorm which consumed hiring by most of the 1,100 district court jurists in 2013 and continued raging subsequently. After the D.C. Circuit's announcement, numerous judges picked 2Ls, but others acted slowly, perhaps favoring the clerkship system that performed well over the decade after 2003. This endeavor relied on Labor Day for the benchmark when 3L students could proffer, and jurists could receive, submissions; judges were concomitantly to delay arranging interviews until a week later when they might have extended offers.<sup>7</sup>

Problems complicate identification of exactly what happened after the D.C. Circuit jettisoned the standard regime.<sup>8</sup> Aspirants were not certain

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5. Aspirants should consider applying to positions in Jackson, Fargo, Casper, Greenville, Akron or Montgomery. See Jack Goldsmith (@jackgoldsmith), TWITTER (Feb. 10, 2020, 11:51 AM), <https://twitter.com/jackgoldsmith/status/1226955076738007040> [<https://perma.cc/KJP3-CRVN>] (urging students to apply beyond "so-called elite federal circuits").

6. Indeed, 2020 OSCAR postings include 2021 court of appeals clerkships. See, e.g., *Weekly Update: New Positions Posted (March 9 – March 16, 2020)*, OSCAR BLOG (Mar. 16, 2020), [https://oscar.uscourts.gov/blog\\_post/\\_1/348/Weekly\\_Update\\_New\\_Positions\\_Posted\\_March\\_9\\_-\\_March\\_16\\_2020](https://oscar.uscourts.gov/blog_post/_1/348/Weekly_Update_New_Positions_Posted_March_9_-_March_16_2020) [<https://perma.cc/M7XA-2EGN>]; *Weekly Update: New Positions Posted (March 30 – April 6, 2020)*, OSCAR BLOG (Apr. 6, 2020), [https://oscar.uscourts.gov/blog\\_post/\\_1/354/Weekly\\_Update\\_New\\_Positions\\_Posted\\_March\\_30\\_-\\_April\\_6\\_2020](https://oscar.uscourts.gov/blog_post/_1/354/Weekly_Update_New_Positions_Posted_March_30_-_April_6_2020) [<https://perma.cc/32AD-VSVV>].

7. Carl Tobias, *Salvaging the 2013 Federal Law Clerk Hiring Season*, 91 WASH. U. L. REV. 243, 244 (2013).

8. Considerable empirical data and other relevant information are private or anecdotal and complex variations existed among schools, courts, judges, and students. However, I can posit a snapshot by consulting accessible material and by relying on ideas which innumerable federal judges, law clerks, court employees, law professors, law students and Career Development Office personnel have expressed. For 2013–2015 data, see David Lat, *The Current State of Clerkship Hiring: 5 Points Worth Noting*,

about how to pursue clerkships and were discharging time-consuming law review duties. Many jurists offered no or limited guidance. Schools were unclear regarding how to advise candidates. They lacked material on judges and closely observed National Association for Law Placement (NALP) guidelines, which cautiously approached the D.C. Circuit decision. However, by April 2013, in a seeming effort to resuscitate the collapsing plan, the AO imposed June 28 as the date when rising 3Ls commenced applying.<sup>9</sup>

In 2013, employment did vary considerably. Most jurists slowly responded to the D.C. Circuit's notice, but in time more abandoned the decade-old process, which the AO had elaborated. They found that the scheme permitted inefficiency, "exploding offers," cheating, and secrecy.<sup>10</sup> A number complied with the 2003 and recent measures or decided to hire later for numerous reasons. Many chief judges, who administer district courts, respected the practices, as they deemed the notions constructive and probably wished to serve as role models. Specific jurists could have perceived that the nuanced strictures operated impressively or were awaiting the AO determination to end or refine the 2003 clerkship plan. Some judges may have preferred the late summer deadlines, recognized that numbers of aspirants can be accomplished clerks or thought the frenetic procedures were absurd or undignified.

Instructive empirical data in responses to a 2013 NALP member survey detected that judges' hiring endeavors provoked "real concerns about [OSCAR's] diminished utility" for clearly notifying students and their presenting clerkship submissions.<sup>11</sup> Jurists correspondingly "looked beyond OSCAR" to provide salient information, which prompted surging "email and paper applications," while confusion in OSCAR materials' reliability, notably the timing of applications, dissuaded manifold students from

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ABOVE THE LAW (Apr. 28, 2015, 5:59 PM) <https://abovethelaw.com/2015/04/the-current-state-of-clerkship-hiring-5-points-worth-noting> [<https://perma.cc/TLH7-FHUB>]. For recent ideas, see Baude, *supra* note 1.

9. The Administrative Office provided one day to apply, interview and offer. *See* Tobias, *supra* note 3, at 147; David Lat, *Clerkship Hiring Is Getting Earlier and Earlier*, ABOVE THE LAW (Apr. 11, 2013, 2:25 PM) <https://abovethelaw.com/2013/04/clerkship-hiring-is-getting-earlier-and-earlier> [<https://perma.cc/5V9P-UUY5>]. In 2012, prominent law schools recommended that their 2L students apply in the spring, information on which many potential applicants capitalized. Other schools have provided similar advice since. Tobias, *supra* note 7, at 246.

10. Exploding offers are ones that have short or no fuses. Many judges want freedom of action or oppose hiring plans because they function as cartels by limiting competition. *See* sources cited *supra* note 4.

11. Memorandum from NALP Judicial Clerkship Section to Fed. Judges' OSCAR Working Grp. 1 (Oct. 10, 2013) [hereinafter 2013 Memorandum], <https://www.nalp.org/uploads/BoardReports/JudicialClerkshipSectionPerezNov2013.pdf> [<https://perma.cc/XS45-VTTS>].

participating.<sup>12</sup> Legal educators in turn consistently “favored opening OSCAR” sooner and uncoupling clerkship applications from the hiring plan deadlines.<sup>13</sup> The AO carefully effectuated these recommendations in Fall 2013<sup>14</sup> and clarified hiring over the next several years by discontinuing the regime a few months later.<sup>15</sup>

### III. MORE RECENT GUIDANCE

In 2014, Administrative Office Director Judge John Bates remarked to jurists that the plan was ending and “no further dates [were] being set” for clerkships,<sup>16</sup> while the AO adopted voluntary “Best Practices to support transparency,” requesting that NALP craft those procedures “from the law school perspective.”<sup>17</sup> He implored judges to use the online mechanism.<sup>18</sup> The notice, which granted 1Ls access, meant that jurists sent OSCAR copious additional positions.<sup>19</sup> Discontinuation concomitantly seemed to

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12. *Id.* at 2–3; *see also* Tobias, *supra* note 7, at 246; Baude, *supra* note 1; Letter from Kerry Abrams et al. to the Members of the Federal Judiciary, *supra* note 4.

13. 2013 Memorandum, *supra* note 11, at 1.

14. Email from Laura Simon, OSCAR Program Manager, Admin. Office of the U.S. Courts, to Valerie L’Herrou, Dir. of Career Dev., Pub. Sector Careers, Univ. of Richmond Sch. of Law (Nov. 4, 2013) (on file with author); David Lat, *Clerkship-Seeking 2Ls, Start Your Engines*, ABOVE THE LAW (Nov. 4, 2013, 2:03 PM), <https://abovethelaw.com/2013/11/clerkship-seeking-2ls-start-your-engines> [https://perma.cc/ULS8-4WB4].

15. Memorandum from Judge John D. Bates, U.S. Courts Admin. Office Dir., to U.S. Judges (Jan. 13, 2014), [hereinafter Memorandum from Judge John Bates] [https://oscar.uscourts.gov/assets/Federal\\_Law\\_Clerk\\_Hiring-January\\_13\\_2014.pdf](https://oscar.uscourts.gov/assets/Federal_Law_Clerk_Hiring-January_13_2014.pdf) [https://perma.cc/DH3B-K2HK].

16. Judge Bates adopted a proposal that gave rising second-year students OSCAR access in June, so judges may have hired after students’ first year. *Id.*

17. Memorandum from Judge John Bates, *supra* note 15. I emphasize 2013 in this piece because the Administrative Office implemented comparatively few subsequent changes in federal law clerk employment. Federal Law Clerk Hiring Best Practices are:

- Support a transparent recruitment process by maintaining OSCAR judge profiles that identify hiring practices and preferences. . . .
- Consider coordinating hiring activities and efficiencies such as setting court-wide interview dates. Post interview dates in each OSCAR judge profile.
- Use video conferencing or electronic face-to-face interviews . . . when feasible. . . .
- Inform applicants of clerkship offer policies . . . [and grant reasonable time] to weigh [offers] against other viable offers. This does not prohibit [immediate acceptances].
- Choose online[, fax,] or paper application methods rather than requiring applications submitted by email due to the hardship which emailing applications places on law schools and applicants.
- Consider visiting law schools with a minority student population to share recruitment practices and insights . . . [that] may encourage more minority law students to [apply].

*Federal Law Clerk Hiring Best Practices*, OSCAR, <https://oscar.uscourts.gov/hiring-practices> [https://perma.cc/L4GU-HTZH].

18. Judge Bates implored his federal court colleagues to employ the online mechanism because OSCAR ensures transparency, eliminates paper, saves staff time, can increase diversity, and helps manage substantial numbers of applications with search and sort features. Memorandum from Judge John Bates, *supra* note 15.

19. *See, e.g.*, Lat, *supra* note 14; sources cited *supra* note 6.

propel hiring, witnessed by the surfeit of accelerated listings the past six years.<sup>20</sup> Nevertheless, relatively few judges employed clerks ahead of January, perhaps waiting on third semester grades, the 2014 AO plan change, or subsequent guidance.

In February 2018, the AO announced a pilot that would govern 2020–21 clerkship hiring.<sup>21</sup> This initiative deserves considerable review because some courts and jurists followed the plan last year or will this season. Thus, evaluation might aid their coordination and people who hope to begin clerking in August 2021. The chief judges of the D.C., Second, Seventh and Ninth Circuits and deans who lead prominent law schools proposed the regulatory system that would ostensibly expand student participation, while certain jurists on these tribunals, the First and Third Circuits and the Districts of Connecticut, District of Columbia and Massachusetts subscribed to the pilot.<sup>22</sup> The AO chose February 2020 OSCAR access for members of the 2021 class, who submit applications in June, permitted judges to extend, and students correspondingly to accept, clerkship offers basically upon receipt and in turn prohibited exploding offers.<sup>23</sup>

Several law professors who track court of appeals law clerk employment detect that some jurists honor the plan but numerous other judges whose courts subscribe to, or do not follow the pilot, eschew it. However, the writers find very difficult ascertaining exactly what is happening, while strong pressure to satisfy the pilot requirements exacerbates transparency's dearth.<sup>24</sup> The faculty members state that this

20. District court postings clearly outnumber appellate court postings. *See* sources cited *supra* note 6. But this is not surprising because the federal bench includes 677 active district judges and 179 active court of appeals judges. *See* AUTHORIZED JUDGESHIP 8, [https://www.uscourts.gov/sites/default/files/all\\_auth.pdf](https://www.uscourts.gov/sites/default/files/all_auth.pdf) [<https://perma.cc/2ULM-EKRZ>].

21. HIRING PLAN, *supra* note 1; David Lat, *Order in the Court, Order in the Court: The Law Clerk Hiring Plan Returns!*, ABOVE THE LAW (Mar. 1, 2018, 7:43 PM), <https://abovethelaw.com/2018/03/order-in-the-court-the-law-clerk-hiring-plan-returns/2> [<https://perma.cc/R9KT-DYDE>].

22. Letter from Ad Hoc Comm. on Law Clerk Hiring to Fellow Judges (Feb. 28, 2018), [https://oscar.uscourts.gov/\\_assets/Ad\\_Hoc\\_Committee\\_on\\_Law\\_Clerk\\_Hiring\\_Announcement](https://oscar.uscourts.gov/_assets/Ad_Hoc_Committee_on_Law_Clerk_Hiring_Announcement) [<https://perma.cc/9MGK-M3MT>]; *Judicial Clerkship Info for Career Services*, NALP (Dec. 2019) <https://www.nalp.org/judicialclerkshipinfoforcareerservices> [<https://perma.cc/V73Z-X2ZC>]; Letter from Ad Hoc Comm. on Law Clerk Hiring to Fellow Judges (Dec. 2019), <https://www.nalp.org/uploads/2019ClerkshipHiring2ndPilotYearJudgesEmailDec19.pdf> [<https://perma.cc/FCS5-XAPY>]. A small number of appellate courts leave the choice to each individual judge, the first three appeals courts supported earlier plans and the new one, and some judges of the Ninth Circuit have supported neither previous plans nor the pilot. Lat, *supra* note 21. Rather few appellate court judges follow the plan. Baude, *supra* note 1; Goldsmith, *supra* note 5.

23. 2ND PILOT YEAR, *supra* note 1 (adding one day reading period); Baude, *supra* note 1; *see also infra* notes 25, 38 and accompanying text.

24. For example, OSCAR proscribes “off-plan applications and requires those judges” to use word-of-mouth; some schools deny clerkship resources to off-plan students. Will Baude, *Some Reluctant*

paucity concomitantly helps students plus schools with access to inside information, and the plan can allow judges to select clerks early, issue exploding offers, and hire practitioners.<sup>25</sup> The scholars register concern that numbers of particular jurists who follow and support the pilot constitute appointees of Democratic presidents whose chambers are situated on the coastlines whom more progressive aspirants could favor, and numerous judges who seem to eschew while opposing the plan comprise appointees of Republican presidents whose chambers are located throughout the heartland whom conservative students prefer.<sup>26</sup>

In short, plentiful factors leave this season uncertain.<sup>27</sup> Essential is how many jurists now adopt the pilot. Others may be the limited, clear data on what happened subsequent to 2013. Related were June 1L OSCAR access, the 2003 plan suspension, the Best Practices' creation and circulation, the number of judges—saliently those eschewing OSCAR deployment—who learned about the procedures, and how completely jurists adhere to the guidelines furnished.

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*Skepticism About the New Law Clerk Hiring Plan*, REASON: VOLOKH CONSPIRACY (Aug. 27, 2018, 10:36 AM), <https://reason.com/2018/08/27/some-reluctant-skepticism-about-the-new> [<https://perma.cc/ES72-FDPG>]; Aaron L. Nielson, *D.C. Circuit Review – Reviewed: Why I Fear the D.C. Circuit's Approach to Clerkship Hiring Is Misguided*, YALE J. ON REG.: NOTICE & COMMENT (Aug. 24, 2018), <https://www.yalejreg.com/nc/d-c-circuit-review-reviewed-why-i-fear-the-d-c-circuits-approach-to-clerk-ship-hiring-is-misguided> [<https://perma.cc/4PNB-DCZ2>]; see also Letter from Kerry Abrams et al. to the Members of the Federal Judiciary, *supra* note 4. I rely substantially here on Professor Baude and Professor Goldsmith and my work advising students, but Mr. Lat, Professor Nielson, and I seem to share many of the views expressed.

25. I rely substantially here on Professor Nielson, *supra* note 24, and Professor Goldsmith, *supra* note 5, but Professor Baude, Mr. Lat and I seem to share the views.

26. Jack Goldsmith (@jacklgoldsmith), TWITTER (July 15, 2019 11:47 AM) <https://twitter.com/jacklgoldsmith/status/1150839301929930752> [<https://perma.cc/R5NH-L522>] (claiming that more progressive students will be able to seek fewer clerkships, as more progressive judges follow the plan and hire later); see also Karen Sloan, *Not Everyone Loves the Federal Clerk Hiring Plan*, LAW.COM: AHEAD OF THE CURVE (Feb. 3, 2020, 9:00 PM), <https://www.law.com/2020/02/03/ahead-of-the-curve-not-everyone-loves-the-federal-clerk-hiring-plan> [<https://perma.cc/RU3Y-EP5P>]; Mark Joseph Stern, *President of Harvard's Federalist Society Brought a Gun to Zoom Class*, SLATE (Apr. 9, 2020), <https://slate.com/news-and-politics/2020/04/chance-fletcher-federalist-society-harvard-gun.html> [<https://perma.cc/8XUV-7JJE>]. Professor Baude surmises that the patterns can yield a regime which half the bench adopts and half rejects, so if students cluster by locale and ideologically, it could be rather stable but may frustrate those who wish to clerk for judges in each camp or many locales, and few would design this regime *ex ante*. Baude, *supra* note 24. Goldsmith and Baude predict the plan's demise. Goldsmith, *supra* note 5; Baude, *supra* note 1. I rely here on Professor Goldsmith and Professor Baude, but I share their views.

27. This season is uncertain and may only become clearer after mid-June and once the AO has scrutinized empirical data on the pilot. For later seasons, the judiciary must review the data and improve the pilot or craft a new plan. See Baude, *supra* note 1 (providing valuable suggestions for improving hiring after the pilot fails, which he predicts).

#### IV. FEDERAL DISTRICT CLERKSHIPS REPRISED

Candidates should meticulously apply the concepts assessed by consulting the AO views, judges' OSCAR postings, and court websites. To jumpstart the search, I provide a representative sample of how numerous district jurists and courts proceeded after January 2013 from which students can extrapolate. Potential applicants might remember that, while district court judges and tribunals traditionally recruit later, the 2014 discontinuation of the 2003 plan, the institution of several Best Practices, and the uncertainty about how careful and systemic pilot compliance will be acutely show that confusion and variability could plague this year.<sup>28</sup>

Some judges acted earlier to pick clerks in the last few seasons. Phenomena, which encompass prestige, location, and competitiveness, indicate aspirants can rely on heavily and sparsely populated districts when they set 2021 priorities. This approach reveals that numbers of jurists did conclude 2L employment by May in Arizona, Colorado, Northern Ohio, Maryland, Northern Georgia, Eastern Missouri, and Northern Texas.<sup>29</sup> However, the courts include so many judges that all districts and jurists require verification.<sup>30</sup> A plethora completed hiring on June 28 (for 3Ls) in 2013 and earlier (for 2Ls) subsequently until 2019. Illuminating were Eastern Virginia jurists, who promptly collected applications, conducted interviews, and chose before March.

Since 2013, numerous judges had yet to fill positions by April, while specific ones might have not even begun. Montana jurists, who principally notify students during the year when they will clerk, are illustrative. Eastern California, and Middle Pennsylvania, which regularly start later had plenty of fall slots, and districts in rural venues, like Wyoming, also experienced vacancies then. Finally, plentiful judges supplied negligible information, but a few courts enhanced transparency by placing strictures prominently on websites.<sup>31</sup>

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28. The representative sample enhances earlier data's value, because how most jurists will proceed this season remains unclear, as the nascent pilot and the 2014 advice are not mandatory, while many have hired later since 2013 and may still follow that and other earlier ideas.

29. This hiring was predictable because their clerkships are competitive, prestigious and in desirable areas.

30. There were also exceptions. For instance, Western Louisiana and Northern Florida judges had apparently hired clerks by May, while Minnesota and Eastern Michigan jurists seemingly had not employed by then.

31. The Southern District of New York posted numerous judges' measures; some jurists deployed rolling review but did not interview or offer until June 28 in 2013. *Law Clerk Hiring Information*, U.S. DISTRICT CT.: S. DISTRICT N.Y., <https://www.nysd.uscourts.gov/judges/law-clerk-hiring-information> [<https://perma.cc/Q8YS-EA5>]; see Baude, *supra* note 24 (suggesting that requiring judges to post openings on the internet could help level the playing field).

## V. GATHERING ADDITIONAL INFORMATION

Applicants could depend on these snapshots of the past six years and how this season commenced. Persons may also consult the information which numbers of jurists efficiently list through OSCAR and websites that they or courts maintain, yet some jurists use neither. A related way that people solicit profitable material is phoning and emailing chambers to seek advice from law clerks or judicial assistants, namely for jurists who ignore OSCAR or employ it but disregard the rules enunciated. These inquiries elicit much data respecting hiring processes: notably who screens candidates and crucial timeframes which govern submissions, interviews, and clerkship offers.

## VI. ADDITIONAL CLERKSHIPS

As myriad persistent students frantically pursue clerkships at the thirteen appellate courts and ninety-four district courts, committed aspirants might wish to seriously contemplate numerous possibilities serving with additional particular courts and copious judges whom applicants may have overlooked or not considered. They run along a gamut of appeals courts, district courts, and Article I tribunals. Senior appellate court and trial level jurists constitute preeminent examples.<sup>32</sup> Another is chief judges, who upon ascension secure one more clerk.<sup>33</sup> A related promising source would be President Donald Trump's nominees and confirmees; the chief executive must fill seventy-two positions which currently remain unoccupied, and competition might be less stiff for those posts because smaller numbers of students meticulously track the vacancies.<sup>34</sup>

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32. 28 U.S.C. § 371 (2018); *see also* David R. Stras & Ryan W. Scott, *Are Senior Judges Unconstitutional?*, 92 CORNELL L. REV. 453, 455 (2007); Joseph Goldstein, *The Oldest Bench Ever*, SLATE (Jan. 18, 2011, 7:01 AM), <https://slate.com/news-and-politics/2011/01/federal-judges-are-getting-older-and-more-often-senile.html> [<https://perma.cc/88CX-W6HV>].

33. 28 U.S.C. § 136 (2018). Magistrate judges and judges for territories, including Guam and the Virgin Islands, also hire. 28 U.S.C. § 631 (2018); 48 U.S.C. §§ 1424, 1612 (2018).

34. *Judicial Vacancies*, U.S. COURTS, <https://www.uscourts.gov/judges-judgeships/judicial-vacancies> [<https://perma.cc/BLH7-YH33>]; *see Confirmation Listing*, U.S. COURTS, <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/confirmation-listing> [<https://perma.cc/GFW5-UEXD>]; John Besche, *YLS Students Speak About Clerking for Trump Appointees*, YALE DAILY NEWS (Jan. 30, 2020, 11:54 PM), <https://yaledailynews.com/blog/2020/01/30/progressive-law-students-speak-about-clerking-for-trump-appointees> [<https://perma.cc/TE4V-BTQA>]. *But see* Hannah A. Klain et al., *Harvard Law School: It's Time to Be Part of the Solution, Not the Problem, with Judicial Clerkships*, HARV. CRIMSON (Feb. 5, 2019), <https://www.thecrimson.com/article/2019/2/5/klain-kohnert-yourt-patel-judicial-clerkships> [<https://perma.cc/R3F6-JGMM>]; Leah Litman, *On Clerkships & Wasted Opportunities*, TAKE CARE (Dec. 23, 2019) <https://takecareblog.com/blog/on-clerkships-and-wasted-opportunities> [<https://perma.cc/7CF8-LUZF>]; Stern, *supra* note 26.

## VII. EARLY PREPARATION

Aspirants ought to plan early. For instance, when 1L examinations conclude, students should actively participate in law review competitions to ensure their selection. Once designated, picks need to be rigorously involved, as jurists value membership, specifically on the editorial board, which perceptibly demonstrates commitment to robust intellectual activity. Students can diligently prepare to apply for clerkships by assembling a comprehensive list of judges, signing up for OSCAR, and creating a profile. Aspirants could solicit advice on jurists whom they can target from knowledgeable professors or 3L colleagues while seeking powerful faculty letters of recommendation.

## VIII. APPLICATIONS

Judges directly receive clerkship applications from plentiful students, who ought to consider the starting period the deadline, as numerous jurists hire on a rolling basis. Candidates should astutely choose because OSCAR's maximum number of applications has been 100,<sup>35</sup> (although deficient transparency confounds this). Aspirants who employ paper submissions need to carefully place materials in a single envelope which promotes tracking by judicial chambers. The large number of applications indicates that cover letters and resumes must be short. Cover letters ought to persuasively explain why aspirants do have substantial competence and how collegially applicants would perform in chambers. Students normally advance three recommendation letters, two of which faculty craft and one that a practitioner develops. The writing sample must be concise enough that it deftly provokes reading, yet sufficiently long to display fine analytical, critical research, and exquisite drafting, capability.

## IX. INTERVIEWS

Numerous interviews actually resemble law firm "call-backs," even though aspects can be peculiar to the bench and individual jurists.<sup>36</sup> Court members seemingly have different perspectives, expectations, interests, and requirements. Substantial numbers of judges clearly are intelligent, diligent,

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35. *OSCAR Version 7: Limit of 100 Clerkship Applications*, OSCAR BLOG (Apr. 8, 2013, 11:10 AM), [https://oscar.uscourts.gov/blog\\_post/\\_1/13/OSCAR\\_Version\\_7\\_Limit\\_of\\_100\\_Clerkship\\_Applications](https://oscar.uscourts.gov/blog_post/_1/13/OSCAR_Version_7_Limit_of_100_Clerkship_Applications) [<https://perma.cc/7N2Y-JE33>].

36. Numerous Career Development Offices maintain useful summaries of past students' interview experiences. See Debra M. Strauss, *Top Ten Tips for Judicial Clerkship Interviews*, ABOVE THE LAW (Jan. 22, 2015, 6:59 PM) <https://abovethelaw.com/career-files/ten-tips-to-the-judicial-clerkship-interview> [<https://perma.cc/89QK-65G2>].

ethical, and independent, while most have balanced temperament. Candidates need to learn all possible regarding specific judges' diverse backgrounds: colleges attended, career history, and conditions of appointment.<sup>37</sup> Prospects must correspondingly examine jurists' writing, namely decisions.

Aspirants should concomitantly anticipate lines of inquiry that bench members, law clerks, and additional court personnel will scrutinize by, for example, contacting present and former clerks. Interviews' salient purposes are cogently ascertaining whether candidates have effectively acquired the necessary competence and can collaboratively interact with others. Applicants must be especially solicitous of chamber personnel, as court staff need to perform smoothly on a team and judges prize their opinions. The queries, thus, could address a broad spectrum from recent judicial treatment of discrete areas, notably criminal procedure, reproductive freedom, or employment discrimination, to favorite Supreme Court Justices, hobbies or wines.

Some jurists eschew making final determinations at interviews because they conscientiously prefer to interview every individual and select clerks who appear extremely capable and can be rigorous teammates of the permanent staff.<sup>38</sup> Increasing numbers extend offers during interviews or at their conclusion, which means aspirants need to realistically prepare for this eventuality.

## X. OFFERS

Judges may variously notify students when tendering offers, but certain dimensions of the process seem analogous to procedures that law reviews use in choosing manuscripts. Numerous jurists expect instant acceptances, a concept which distinctly resembles journals' "short fuse" or exploding offers.<sup>39</sup> Judges might withdraw any offers that prospective clerks fail to swiftly accept in phone conversations when they are delivered, which writers trenchantly characterize as "disappearing offers," even though the nascent pilot bars this measure.<sup>40</sup>

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37. For biographical data sources, see JUDICIAL YELLOW BOOK (Winter 2020); FORSTER-LONG, *THE AMERICAN BENCH* (2020).

38. "If you have two young, male hot dogs [as clerks], you may [want one] who is a bit older, or female, or had a prior career." Kozinski, *supra* note 2, at 1722. For an explanation as to why selecting the finest clerks is crucial for judges, see Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152, 153 (1990).

39. Kozinski, *supra* note 2, at 1716; *see also* Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 535 (1995); Wald, *supra* note 38, at 152, 156; *supra* note 10.

40. Kozinski, *supra* note 2, at 1716; *see also supra* note 23 and accompanying text; Deborah Pines,

Jurists could accord students one week for making clerkship determinations. Applicants with the intestinal fortitude can attempt to leverage the opportunities for circumstances which they perceive as superior.<sup>41</sup> Certain judges apparently encouraged applicants to leverage offers by requesting that aspirants directly inform chambers upon offers' extension.<sup>42</sup> The Administrative Office Best Practices also urge jurists to supply complete instructions on employment processes and grant students reasonable time for cautiously weighing offers but do not proscribe speedy acceptances.<sup>43</sup> However, the pilot insists that students have forty-eight hours to reach this decision.<sup>44</sup>

### CONCLUSION

I hope that these clues for attaining clerkships prove helpful. Bon voyage.

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*Federal Judges Try to Fix Frantic Clerk Hiring*, N.Y.L.J., June 14, 1993, at 26; Strauss, *supra* note 36. Many judges who hire early deploy this.

41. Wald, *supra* note 38, at 156. This phenomenon resembles law review leveraging. Tobias, *supra* note 39, at 537–38.

42. See generally Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. CHI. L. REV. 793, 813–20 (2001). Judges employ diverse measures to *not* offer. See Staci Zaretsky, *Rejection Letter of the Day: You're Not Prestigious Enough To Clerk In My Less-Than-Prestigious Court*, ABOVE THE LAW (Feb. 25, 2014), <https://abovethelaw.com/2014/02/rejection-letter-of-the-day-youre-not-prestigious-enough-to-clerk-in-my-less-than-prestigious-court> [<https://perma.cc/X8Y8-AADS>].

43. See *supra* note 17. Many judges who rely on OSCAR post notices online that their slots are filled. Some who use paper applications do not. Students who have not received interviews by autumn can assume that most judges have hired.

44. HIRING PLAN, *supra* note 1; Nielson, *supra* note 24 (suggesting that forty-eight hours is insufficient time for making such an important decision).