Acclaimed Judicial Clerkship Program Celebrates 15th Anniversary

The ABA Judicial Clerkship Program (JCP) that encourages a minority law student who seeks judicial clerkships upon their graduation will celebrate its 15th anniversary at the ABA Midyear Meeting in February, 2015. The program’s signature collaboration between the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline (Pipeline Council) and the ABA Judicial Division (JD), with strong support from LEXIS-NEXIS, has put clerking on the radar screen of hundreds of minority law students, dozens of whom have successfully pursued clerkships.

The genesis of JCP was a controversy that erupted in 1998 when the President of the NAACP and 18 others were arrested that fall after they peacefully crossed a police line at the high court in an attempt to deliver resumes of minority law students to Chief Justice William Rehnquist. The attention given to the small number of minority lawyers clerking for United States Supreme Court justices in 1998 contributed to the ABA and the National Association of Legal Career Professionals (NALP) commissioning a comprehensive study of the clerkship situation. The “study found that minority representation in clerkships was generally lower than in law school populations, although this did vary somewhat by ethnic group. However,” and this was the key finding, “this discrepancy did not result from a difference in the success of their applications, but rather a lower application rate of the minority students.”

The insight from these findings was that if more minority lawyers were to get clerkships, then more minority law students needed to be encouraged to apply for clerkships. Informed by this study, the ABA’s Commission on Racial and Ethnic Diversity (Commission), the JD, and LEXIS-NEXIS set out to try to increase the number of minority-lawyers serving as judicial clerks by launching the first JCP at the ABA Midyear Meeting in San Diego in February, 2001. (In 2007, the Pipeline Council assumed the responsibility initially undertaken by the Commission.)

In the ensuing years, the President and other top officials of the ABA have welcomed dozens of students and judges from around the country who then have worked closely together for two days through panel discussions, an extensive research exercise, and an appellate oral argument in an effort to introduce and then reinforce reasons for pursuing a judicial clerkship:

1. Allowing a new lawyer to develop a close personal working relationship with a judge;
2. Improving a new lawyer’s legal research, analytical, and writing skills;
3. Enhancing a new lawyer’s career opportunities; and
4. Permitting a new lawyer to participate directly in the process of shaping the law.

The most ambitious part of JCP is a “research exercise” structured to replicate the judge-klner working relationship; small groups of students and judges work together to develop an outline of an opinion deciding a closely watched case then-pending before the Supreme Court. For example, in 2002, the research exercise was based on Zelman v. Simmons-Harris: whether a state’s school “voucher” program violates the Establishment Clause; in 2008, on Crawford v. Marion County Election Bd.: whether a state law that requires voters to show photo identification issued by the government before they may vote violates the First and Fourteenth Amendments; and in 2011, on Brown v. Entertainment Merchants Ass’n: whether banning the sale or rental of violent video games to minors violates the First Amendment of the U.S. Constitution.

In 2015, the research exercise will examine the constitutionality of a municipal ordinance authorizing the warrantless search of hotel and motel customer information. In doing their research, the students use the computers and software provided by LEXIS-NEXIS.

David P. Avila says that “had I never participated in the ABA Judicial Clerkship Program, I would never have clerked. [When] I was a third-year student at the University of Michigan Law School, clerking was far from my mind. . . . Clerk- ing has helped me to understand how some judges think about and approach legal issues, it has given me a common bond with colleagues who have clerked, and I now have a lifetime friend and mentor in the judiciary. Without a doubt, the ABA Judicial Clerkship Program launched my legal career and for this I am truly thankful.” Avila now works for the U.S. Department of Justice.

Robyn N. Carr, a graduate of the Indiana University Maurer School of Law—Bloomington, says “When I finally began to interview with judges for a position, I never felt nervous—in part because I had interacted with several during the Judicial Clerkship Program. I knew that the process was completely and I credit the program for that preparation. I now work at a large firm in Washington, D.C. after finishing a two-year clerkship on the federal district court in Houston, Texas. The program was the impetus for it all and I am grateful to have had the opportunity to participate.”

The point these lawyers make is clear: students who participate in the JCP program have significant, face-to-face contact with a substantial number of judges. More broadly, JCP is a valuable networking experience. In addition to meeting the judges, students come into contact with fellow students from across the country. As mentioned at the outset, ABA top leadership, and leadership from both the ABA Law Student Division and the Young Lawyers Section attend sections of the program. And the students themselves are given the opportunity to participate in other aspects of the ABA Midyear Meeting.

Annual student participation has ranged between approximately 60 and 100 in recent years; judicial participation between 40 and 60. Staffing is provided by the Pipeline Council and JD.

More than 100 students participating in the program** from its inception through 2011 have gone on to become traditional “elbow clerks” or approximate equivalents for federal and state judges and courts throughout the country. (The percentage of JCP participants obtaining clerkships is well above the baseline percentage of both minority law graduates and all law school graduates who obtain clerkships following graduation.) Dozens more JCP participants have completed judicial internships, externships, and similar programs while in law school.

Given the value placed on clerk- ing by judges, clerks, and the legal community at large, the opportunity to clerk must be available to all. The ABA is committed to this end as part of its goal to “promote full and equal participation in the association, our profession, and the justice system by all persons.” The ABA Judicial Clerkship Program is a celebrated and successful illustration of that commitment at work.

* 2002-2015 Compilation of Research Exercises Used at the ABA Judicial Clerkship Program.

**2001-2011 Chart of American Bar Association Judicial Clerkship Program Participants Who Have Clerked.

Hon. Toni E. Clarke, Associate Judge, Seventh Circuit Court Prince George’s County, and Judicial Clerkship Program Co-chair, Upper Marlboro, MD

Frank Sullivan, Jr., is Professor of Practice at the Indiana University Robert H. McKinney School of Law. He was a Justice on the Indiana Supreme Court from 1993-2012 and has been a leader of JCP since its inception.
Research exercises used at the ABA Judicial Clerkship Program (2002-2015)

Huston, TX, February 5, 2015
Whether a city ordinance that authorizes warrantless police inspections of hotel guest registries containing guest-supplied information is facially unconstitutional under the Fourth Amendment. (This issue is currently pending before the U.S. Supreme Court. See City of Los Angeles v. Patel (No. 13-1175), cert. granted, 135 S. Ct. 400 (2013).

Chicago, IL, February 6, 2014
Whether the Fourth Amendment permits police to search a shared dwelling with the consent of one resident after another resident who refuses consent has been arrested and removed from the scene. (On February 25, 2014, the U.S. Supreme Court by a vote of 6-3 held that where the consent was provided well after the defendant had been removed; the search was permissible under the Fourth Amendment. The exception to permissible warrantless consent searches of jointly occupied premises established by Randolph v. Georgia (see 2006 Research Exercise below) that arises when one of the occupants present objects to the search, did not apply. See Fernandez v. California, 134 S.Ct. 1126 (U.S. 2014).

Dallas, TX, February 7, 2013
Whether the Fourth Amendment permits the warrantless collection and analysis of DNA from a person who has been arrested for, but not convicted of, a criminal offense, solely for use in investigating other offenses for which there is no individualized suspicion. (On June 3, 2013, the U.S. Supreme Court by a vote of 5-4 held that a search using a cheek swab to obtain defendant’s DNA sample after arrest for serious offense was reasonable under Fourth Amendment. The Court held that taking and analyzing a cheek swab of the arrestee’s DNA was, like fingerprinting and photographing, a legitimate police bookkeeping procedure. See Maryland v. King, 133 S.Ct. 1938 (2013).

New Orleans, LA, February 2, 2012
Whether a dog sniff at the front door of a suspected “grow house” violated the Fourth Amend- ment. (On March 26, 2013, the U.S. Supreme Court by a vote of 5-4 held that where the police, without prior suspicion or implicit invitation, took a drug-snarfing dog to a home’s front porch in hopes of discovering incriminating evidence, the investiga- tion was a “search” within the meaning of the Fourth Amendment. See Florida v. Jardines, 133 S.Ct. 1409 (U.S. 2013).

Atlanta, GA, February 10, 2011
Whether banning the sale or rental of violent video games to minors violates the First Amendment of the U.S. Constitution. (On June 27, 2011, the U.S. Supreme Court by a vote of 7-2 held that a California law that restricted the sale or rental of violent video games to minors violated the First Amendment. The Court held that video games qualified for First Amendment protection because, like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium; and that the California statute did not satisfy the strict scrutiny accorded protected speech. See Brown v. Entertainment Merchants Ass’n, 131 S. Ct. 2729 (U.S. 2011).)

Orlando, FL, February 4, 2010
Whether a law that allows a state to widen beaches between private oceanfront property and waters’ edge violates the Takings Clause of the U.S. Constitution. (On June 17, 2010, the U.S. Supreme Court by a vote of 8-0 held that the Florida Beach Renourishment Act’s stipulation that the state title take over all land seaward of the pre-renourishment project “mean high water line” did not constitute a taking without due process because the landowners cannot show that as beachfront owners, they have a right to the waterfront property or a right to contact the water that is superior to the state’s right to fill in its sub- merged land. See Stop the Beach Renourishment, Inc. v. Florida Dep’t of Environmental Protec- tion, 560 U.S. 702 (2010).)

Boston, MA, February 12, 2009
Whether the Free Speech Clause of the First Amendment requires a city that allows the Ten Commandments to be displayed in a public park also allow other religious groups to display comparable monuments based on their beliefs. (On February 25, 2009, the U.S. Supreme Court by a vote of 9-0 held that the placement of a permanent monument in a public park was a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause. See Pleasant Grove City v. Summum, 555 U.S. 460 (2009).)

Los Angeles, CA, February 7, 2008
Whether a state law that requires voters to show photo identification issued by the government before they may vote violates the First and Four- teenth Amendments. (On April 28, 2008, the U.S. Supreme Court by a vote of 6-3 upheld the constitutionality of an Indiana statute requiring citizens to present photo identification issued by the government when voting. Justice Stevens, joined by Chief Justice Roberts and Justice Kennedy, concluded that the evidence in the record did not support a facial attack on statute’svalid- ity. Justice Scalia, joined by Justices Thomas and Alito, were of the view that petitioners’ premise that even if the statute imposed a special burden on some voters, it would still be constitutional. See Crawford v. Marion County Election Bd., 553 U.S. 188 (2008).)

Miami, FL, February 8, 2007
Whether an $80 million punitive damages award imposed on a tobacco company for fraudulently advertising its product as safe violates the Due Process Clause where the jury had awarded $825,000 in compensatory damages. (On Feb. 20, 2007, the U.S. Supreme Court held by a vote of 5-4 that a punitive damages award based in part on a jury’s desire to punish a defendant for harming non-parties amounted to a taking of property from the defendant without due process. See Philip Morris USA v. Williams, 549 U.S. 346 (2007).)

Chicago, IL, February 9, 2006
Whether a warrantless police search of a home with the consent of one co-habitant violates the Fourth and Fourteenth Amendment where the other co-habitant was present and withheld consent. (On Mar. 22, 2006, the U.S Supreme Court held by a vote of 5-3 that in such circum- stances, the consent of the co-habitant was required. See Georgia v. Randolph, 547 U.S. 103 (2006).)

Salt Lake City, UT, February 10, 2005
Whether police officers’ refusal to enforce a domestic violence restraining order violates the protected person’s due process rights where the city police refuse to take any action after a state court issues a restraining order against a father to protect a mother and her children. (On Mar. 21, 2005, the U.S Supreme Court held by a vote of 7-2 that the mother did not, for Due Process Clause purposes, have a property interest in police enforcement of the restraining order against the father. See Town of Castle Rock v. Gonzales, 545 U.S. 748 (U.S. 2005).)

San Antonio, TX, February 5, 2004
Whether a state program of taxpayer-financed scholarships for post-high school education violates the Free Exercise Clause where the state denies scholarship to an otherwise eligible student who sought the scholarship to attend a religious college and major in theology. (On Feb. 24, 2004, the U.S. Supreme Court held by a vote of 7-2 that Washington’s exclusion of the pursuit of a devotional theology degree from its otherwise-inclusive scholarship aid program did not violate the Free Exercise Clause. See Locke v. Davey, 540 U.S. 712 (U.S. 2004).)

Seattle, WA, February 6, 2003
Whether the Immigration and Naturalization Service violates the Due Process Clause when it detains a lawful permanent resident without bail while removal proceedings are pending in accordance with provisions of the Immigration and Nationality Act. (On Apr. 29, 2003, the U.S. Supreme Court held by a vote of 5-4 held that Congress could require that a permanent resident alien be detained for the brief period necessary for removal proceedings. See Demore v. Hyung Joon Kim, 538 U.S. 510 (U.S. 2003).)

Philadelphia, PA, Jan. 31, 2002
Whether a “voucher” program that provides scholarships to children from low-income families who attend private school violates the Establish- ment Clause. (On June 27, 2002, the U.S. Su- preme Court held by a vote of 5-4 held that the program did not violate the Establishment Clause. See Zelman v. Simmons-Harris, 536 U.S. 639 (U.S. 2002).)
The following law students who participated in the American Bar Association Judicial Clerkship Program (JCP) from 2001 through 2011 went on to clerk following their graduation from law school for the judges listed next to their names. (Subsequent years will include all students from 2012-2014 who have completed their legal studies.) This list has been compiled from sources considered reliable but does not purport to be comprehensive. The clerkships listed represent traditional "elbow clerks" or approximate equivalents but do not include dozens of additional students who completed judicial internships, externships, and similar programs while in law school. The JCP expresses its appreciation to Kim L. Schwant, Reference and Catalog Librarian, North Carolina Central University School of Law, for her assistance with this compilation.


Since its inception in 2001, hundreds of federal and state, and appellate, trial, and administrative judges have benefited from the research and review of clerks' work. The program's continuing success has been due in large part to the efforts of students working in various judicial systems throughout the United States and the commitment of faculty members, law schools, and judges. The program's contribution to judicial clerkship programs is well-rewarded in the benefits the JCP students receive in their legal educations and careers.
“The Judicial Clerkship Program has been an inspirational piece of professional service for me. It is a delight to interact with the students, share insights on careers in law, and orient them to the call of the judiciary and potential for their participation through clerkship or in a pipeline for future judicial appointment.”

Hon. Annette Scieszinski, Iowa District Court

“As a staff employee of a court I was not in a position to offer a JCP participant a job. However, I did establish a relationship with one of the Tennessee participants and placed him in contact with my husband, who is shareholder in a law firm, and my husband did ultimately hire him for a summer clerkship.”

Karen Hornsby, Tennessee Supreme Court (Staff Attorney)

“I totally enjoy the experience. I learn more than I teach. I also have made friends with other judges from a variety of backgrounds that I would not have met otherwise. Here is a typical story: I meet a student from, say San Diego, they impress me, and I introduce them to my colleagues in San Diego and they get a position. One student from Penn State was an intern to a district judge in Pittsburgh (on my introduction) and had a great experience.”

Hon. Frank Bailey, US Bankruptcy Court

“Outstanding program assisting law students in networking and forming professional relationships with bench officers as well as assisting them obtain clerkships.”

Hon. Allen Webster, Los Angeles Superior Court

“JCP is a wonderful opportunity for students to be exposed to the judicial clerkship experience. But perhaps equally important is the ability to interact with judges who have the ability to provide job opportunities when they graduate. I have hired students who attended the program and look for future clerks every time I participate.”

Hon. William Carpenter, Superior Court of Delaware

“Three transformative events: 1. In 2003, at the direction of JD Chair Jamie Sledge, judges from all JD conferences were recruited for JCP for the first time. This has been a great strength of JCP ever since. 2. In 2005, at the instigation of AJC Chair Harris Hurtz, JCP students attended actual oral arguments (10th Circuit) and then discussed oral arguments with the judges and their clerks. This has been a great strength of JCP ever since. 3.

Hon. Frank Sullivan, Indiana University Robert H. McKinney School of Law

“I found it a wonderful interactive experience to be able to talk to the law students and provide guidance and encouragement. I felt I got more out of the experience than the students did.”

Hon. Richard Goodwin, U.S. Department of Transportation, Administrative law

“I have immensely enjoyed my JCP experience. I think that it’s true to say that I have learned from my externs as they have learned from their experience with me. It is a pleasure to participate in assisting the next generation of lawyers and judges.”

Hon. Marguerite Downing, Los Angeles Superior Court

“I have been asked to speak on international opportunities, and have been able to accept several of the students in the JCP into the internship program at the International Criminal Tribunal for the former Yugoslavia. I also have spoken to a number of different law schools in follow up programs to the JCP about how to break into the international criminal law practice.”

Col. Linda Murnane, Special Tribunal for Lebanon

“I love my experience as a judge to mentor so many law students and then to encounter them later and interview them for possible employment. These students understand that although state trial judges may not be able to offer them a high wage position, they have learned to realize that these law clerk positions are stepping stones to bigger and better employment opportunities in their future. After this program, they consider law clerking with judges as a learning adventure in the courtroom to observe first-hand courtroom techniques and strategies from the lawyers appearing in our courtrooms.”

Hon. Stephanie Domitro维奇, Sixth Judicial District of PA

“The JCP has helped create an opportunity for the Native American community to send its brightest students so that they can get much needed exposure to the even the idea of becoming a Judicial Clerk. Within the judiciary the Native American presence is almost nonexistent. This is primarily due to lack of exposure, contacts, and understanding of the process. Without the JCP an entire group of future lawyers would not even consider the judiciary as something to prepare for and aspire to become. In just the past four years the numbers of Native American participants in the JCP has increased 100%. We have even registered our first Native American federal magistrate among the participants. The JCP is a testament to progress for inclusion of all and preparation for a future judicial pipeline for which we can all be proud.”

Robert Saunooke

It was a pleasure to participate! I participated when I was serving as a law clerk with the US Court of Appeals for the 11th Circuit. The students were interested and engaged, and were a delightful reminder of the opportunities that the law offers. I have stayed in touch with many of the students that I met.”

Kembra L. Smith