



The ABA Judicial Clerkship Program Celebrates Its 10th Anniversary

By Justice Frank Sullivan Jr.

This article is dedicated to the memory of Robert E. Wone, pictured above, who brought energy and inspiration to the ABA Judicial Clerkship Program in its early years. He clerked for Hon. Raymond A. Jackson, U.S. District Court for the Eastern District of Virginia, and was a leader of the Asian Pacific American Bar Association.

On the eve of President Obama's inauguration, Linda Greenhouse of the *New York Times* reflected on the two Harvard Law School magna cum laude law review editors who were about to meet, in her words, "across a Bible." Among the dissimilarities between the two: Chief Justice Roberts had clerked following his graduation, whereas President Obama had pursued community organizing and electoral politics.

No one begrudges President Obama's career choices. But the divergent paths the president and chief justice took as to clerking are interesting because these

track research that indicates that minority law students seek judicial clerkships in percentages far below their Caucasian counterparts. This research, prompted by public outcry over the absence of law clerks of color at the U.S. Supreme Court, served as the genesis for the ABA Judicial Clerkship Program, which will celebrate its tenth anniversary in February 2010. The program has put clerking on the radar screen of hundreds of minority law students, dozens of whom have successfully pursued clerkships.

Background

Many of the leading figures in American law are former clerks. Indeed, three current members of the Supreme Court are former Supreme Court clerks, and two others clerked in lower federal courts. Former ABA President Dennis W. Archer is not only a former clerk for a most distinguished judge, but he was also an employer of law clerks during his tenure on the Michigan Supreme Court.

Justice Sonia Sotomayor bluntly says, "I don't have many regrets about my career . . . [b]ut I did one thing really wrong—I didn't clerk after I left law school. . . . [H]aving become a judge, I recognized the mistake I had made. In a year of clerking, you see more about the practice of law than you'll see in 10 years of practice."

Given this value placed on clerking by judges, clerks, and the legal community at large, it is not surprising that there is concern that the opportunity to clerk be available to all. This concern boiled over into public controversy when a substantial amount of attention was given to the small number of minority lawyers clerking for Supreme Court justices in 1998. In fact, 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.

This controversy contributed to the commissioning of a comprehensive study of the clerkship situation by the National Association for Law Placement (NALP) and the American Bar Association.

According to Professor Debra Strauss, the "study found that minority representation in clerkships was generally lower than in law school populations, although this did vary somewhat by ethnic group." Overall, only 15 percent of all judicial clerkships were held by minorities, despite the fact that minorities made up 30 percent of the general population and 20 percent of law students. "However," Professor Strauss points out, "this 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 has as one of its goals the promotion of "the full and equal participation in the legal profession by minorities." Clearly minority lawyers were not fully and equally participating in judicial clerkships. And just as clearly, at least part of the problem was that not enough minority law students were applying for clerkships.

In 2000, informed by the NALP study, the ABA's Commission on Racial and Ethnic Diversity set out to try to increase the number of minority lawyers serving as judicial clerks at both the trial and appellate levels of state and federal courts. It recruited the ABA Judicial Division (JD), the JD Standing Committee on Minorities in the Judiciary, and LexisNexis as partners in this effort. Under the leadership of co-chairs Judge Ellen F. Rosenblum and Judge Eileen A. Kato, and with ABA staff support led by Sandra Yamate, Luke Bierman, Cie Armstead, and Aimee Skrzekut, the first Judicial Clerkship Program was launched at the ABA Midyear Meeting in San Diego in February 2001. Not enough credit is given to the members of the Commission, Standing Committee, and ABA staff who had the vision to conceive of and initiate the Clerkship Program.

During the next five years, the Clerkship Program became an acclaimed fixture at the ABA Midyear Meeting under the cosponsorship of the Commission and the JD, with continuing strong support from LexisNexis. Starting at the Midyear Meeting in 2007, cosponsorship for the program was passed from the Commission to the ABA Council on Racial and Ethnic

Diversity in the Education Pipeline (formerly the Presidential Advisory Council on Diversity in the Profession). The Council worked in seamless transition with the JD and LexisNexis to produce an equally successful Clerkship Program in that year and each of the two succeeding ones.

Mission and Format

Although the structure and size of the Clerkship Program have changed somewhat over its decade of existence, its core mission remains the same:

The ABA Judicial Clerkship Program brings minority law students, judges, and former law clerks together at the ABA Midyear Meeting 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 Clerkship Program convenes over lunch on Thursday of the ABA Midyear Meeting with a welcome from the top leadership of the ABA—in most years, the president has greeted the students—as well as the chairs of the Commission (later Council) and JD, and a senior representative from LexisNexis. The program then gets down to business with students and judges working together for the next 48 hours in a combination of panel discussions and an extensive research exercise.

During each of the nine Clerkship Programs, the panel discussions have included a presentation from judges of courts with differing jurisdictions—federal and state, appellate and trial—who describe the work that clerks do in their

chambers. In addition, lawyers from a variety of practice areas, who were themselves law clerks, have discussed their experiences in panel discussions. A third type of panel discussion has focused on the “nuts and bolts” of obtaining judicial clerkships—resume writing, identifying and contacting judges, and the like.

The last panel discussion is called “The Students Question the Judges.” Judges participating in the program array themselves across the front of the room and respond to questions from students, questions that tend to focus on broad topics like the judges' jurisprudence and life experiences.

The most ambitious part of the Clerkship Program is the research exercise. In an effort to acquaint students with the working relationship between judge and law clerk, students convene in small groups of six or seven with several judges assigned to each group. Once in the groups, the students are asked to assume that they are judicial clerks and that the judge for whom they work has been assigned to write an opinion on a case of great interest. After discussing the assignment with their respective judges, the students use the computers and software provided by LexisNexis to research the case. Following several periods of both research and discussion, the students prepare outlines of opinions deciding the case.

The cases are selected by the Clerkship Program organizing committee from closely watched cases then pending before the Supreme Court. For example, in 2002, the issue was based on *Zelman v. Simmons-Harris*, which concerned whether a state's school voucher program violates the Establishment Clause; in 2009, the students looked at *Pleasant Grove City v. Summum* to consider whether a city with a display of the Ten Commandments in a public park must allow other religious groups to display comparable monuments.

The research exercise is structured to replicate the judge-clerk working relationship, not to test students' research and writing skills. As such, the judges use the meetings to discuss topics in addition to the research exercise itself. The exercise

is, in other words, meant to simulate to the maximum extent possible the kind of judge-clerk personal interaction characteristic of judicial clerkships.

The Clerkship Program is not all work. There are a series of informal social events for students and judges during the three days they spend together. And the Clerkship Program concludes each year with students and judges attending the “Spirit of Excellence Awards” luncheon of the Commission on Racial and Ethnic Diversity in the Profession. This inspiring event honors men and women who have made dramatic contributions to the cause of justice and racial and ethnic diversity throughout their careers.

The Early Years

At the first Clerkship Program in San Diego in 2001, Commission Chair Charisse R. Lillie, JD Chair Judge David Horowitz, and program co-chairs Rosenblum and Kato welcomed 30 students from six law schools. Law schools nationwide had been invited to make the following commitments to the Clerkship Program: first, 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, pay the travel and lodging expenses of sending their selected students. Schools began by sending six students to the program but, as it has grown over the years, it has been necessary to limit participation 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 finances the participation of six law students from different law schools in the Clerkship Program. (CLEO was founded in 1968 as a nonprofit project of the ABA Fund for Justice and Education to expand opportunities for minorities and low-income students to attend law school and become members of the legal profession by providing prelaw recruitment, counseling, placement assistance, and training.)

Over the nine years of the program's existence, students from 54 law schools

have attended the Clerkship Program, including students sponsored by CLEO. While each school and CLEO can determine its own method for selection of participating students, the program recommends consideration of students who have strong credentials for clerkships but who have not been considering clerking.

One student from the first year of the program, David P. Avila, writes today that “had I never participated in the ABA Judicial Clerkship Program, I would never have clerked. Eight years ago, when I was a third-year student at the University of Michigan Law School, clerking was far from my mind. . . . Clerking 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.

At the second Clerkship Program in Philadelphia in 2002, Commission Chair Lillie and new JD Chair Judge Diarmuid O’Scaannlain convened a much larger group of students (42 from 13 law schools). Following the San Diego program in 2001, Judge O’Scaannlain asked me to chair the program in 2002, which I did along with a member of the Commission, Judge Vicki Miles-LaGrange.

A student attending the program in Philadelphia, Ajay K. Mago, says that “attending the program was a watershed

moment in both solidifying my interest in, and giving me the resolve to apply for, judicial clerkships at the end of my law school career.” The University of Texas at Austin graduate observes that initiatives like the “Clerkship Program have been a part of the quiet force that has created an environment in which opportunities, even for the highest office in the land, can be afforded to anyone regardless of gender,

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color, race, religion, or ethnicity.” Mago now practices in a major Chicago firm.

As will be discussed in greater detail shortly, a relatively small number of judges participated in the Clerkship Program during its first two years. However, the work of the judges in the early years of the program was supplemented by a cadre of former law clerks who volunteered their time to assist. Most deeply involved among the former clerks was Robert E. Wone, who helped organize the Clerkship Program during its first three years and

also assisted at each of them. Wone himself had clerked for Judge Raymond A. Jackson and, as a leader of the Asian Pacific American Bar Association, had a particular passion for encouraging minority law students to seek judicial clerkships. For many of us involved at the time, the 2002 program was particularly noteworthy because, during the program, Wone became acquainted with Katherine Ellen Yu, a most able lawyer on the staff of the Commission. A year later, they married.

The third Clerkship Program was held in Seattle in 2003, attended by 38 students from 13 law schools. New Commission Chair Lawrence R. Baca and

new JD Chair James Scott Sledge were upstaged when ABA President-Elect Dennis Archer made an unscheduled appearance during the opening session. This marked the beginning of a subsequently uninterrupted annual practice of the top leadership of the ABA welcoming students to the program. Commission member J. Cunyon Gordon assisted me in co-chairing the 2003 program.

The biggest development at the Seattle program, however, was in terms of judicial participation. During the first program in San Diego, responsibility for recruiting judges fell primarily to the JD Standing Committee on Minorities in the Judiciary; 14 judges participated. During the second program in Philadelphia, responsibility for recruiting judges was shifted to the JD Appellate Judges Conference; 13 judges participated. But in asking me to chair the program for a second time in 2003, Judge Sledge directed me to recruit judicial participation from throughout the JD—from the appellate, general jurisdiction, specialized jurisdiction, and administrative benches, and from both federal and state courts. The number of judges participating began to grow markedly, this time to 24.

The Program Matures

The fourth Clerkship Program convened in San Antonio in 2004, with a record 51 students from 13 law schools and a record 30 judges participating. ABA President Archer and President-Elect Robert J. Grey Jr. joined Commission Chair Baca and new JD Chair Richard N. Bien in welcoming the students. This was the third year that I chaired the program, and the second year that I did so along with Commission member Cunyon Gordon.

Among the students attending the program in San Antonio was Robyn N. Carr from the Indiana University Maurer School of Law—Bloomington. “When I finally began to interview with judges for a position,” she writes today, “I never felt nervous—in part because I had interacted with several during the Judicial Clerkship Program. I knew what to expect completely, and I credit the program for that preparation. I’m now working 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 fifth Clerkship Program was held in Salt Lake City in 2005, and the somewhat remote location saw the number of students participating drop to 35 but judicial participation remained a strong 31. The tradition of the ABA’s top leaders greeting the students remained intact with attendance of the opening session by ABA President Grey, ABA President-Elect Michael S. Greco, and Immediate Past President Archer. Utah Chief Justice Christine M. Durham, Commission Chair Baca, and new JD Chair Judge Louraine C. Arkfeld also welcomed the students. This was to be my fourth and final year as chair of the program, along with Commission member Jacqueline Regis.

The great innovation of the Salt Lake City program was the opportunity for the students to witness an appellate argument. At the suggestion and invitation of Judge Harris L. Hartz, the students traveled to the local federal courthouse. There they watched two oral arguments before a panel of the U.S. Court of Appeals for the Tenth Circuit consisting of Circuit Judges Robert H. Henry, Michael W. McConnell, and Hartz. Following argument, the three judges and their clerks had lunch with the students and answered their questions.

The sixth Clerkship Program convened in Chicago in 2006, following the relocation of the ABA Midyear Meeting that had originally been scheduled for New Orleans. The program was attended by a record-number 56 students. A substantial contingent of Cook County judges pushed judicial participation to a still-record 69. The students received greetings from ABA President Greco, ABA President-Elect Karen J. Mathis, and Immediate Past President Grey. William J. Caprathe, Justice George P. Hanks Jr., and Commission member Reuben A. Shelton together chaired the 2006 program at the appointment of new Commission Chair Kay H. Hodge and new JD Chair Judge Jodi B. Levine.

54 Law Schools Participate in ABA Judicial Clerkship Program

One or more students from each of the following 54 law schools have participated in the ABA Judicial Clerkship Program since its inception in 2001. In most cases, the schools listed provided the financial support necessary for the students to attend. However, the national CLEO program provided financial support for a number of the students from the law schools listed to attend in most years of the program.

Akron, American, Arizona State, Boston College, Boston University, California Western, Charleston, Connecticut, Cornell, DePaul, Detroit Mercy, District of Columbia, Drexel, Duke, Florida A&M, Fordham, Georgetown, Harvard, Hofstra, Howard, Indiana Maurer-Bloomington, Indiana-Indianapolis, Iowa, Kentucky, Mercer, Michigan, New Mexico, North Carolina Central, North Dakota, Northeastern, Northwestern, Penn State, Pittsburgh, Seattle, SMU Dedman, South Texas College of Law, Southwestern, St. Louis, St. Thomas, Stanford, Suffolk, Syracuse, Tennessee, Texas, Texas Southern, Texas Wesleyan, Tulane, Tulsa, Valparaiso, Vanderbilt, Villanova, Washington, William Mitchell, Yale.

The Chicago program followed the precedent established in Salt Lake City when students visited the U.S. Court of Appeals for the Seventh Circuit and viewed an oral argument before Circuit Judges Richard A. Posner, Kenneth F. Ripple, and Michael S. Kanne. Following the arguments, Circuit Judge Diane P. Wood, her clerks, and Judges Ripple and Kanne met with the students and answered their questions. The judges, clerks, and students subsequently had lunch together.

The Program Grows to Record Levels

The seventh Clerkship Program in Miami in 2007, as noted at the outset of this article, was one in which the cosponsorship of the program was passed from the Commission on Racial and Ethnic Diversity in the Profession to the Council on Racial and Ethnic Diversity in the Education Pipeline (then known as the Presidential Advisory Council on Diversity in the Profession). The transition could not have gone more smoothly, with a record 74 students from a record 19 law schools attending. Judicial participation was strong as well with 47.

The students were welcomed by ABA President Mathis, President-Elect William H. Neukom, and a number of other ABA leaders, along with Council Chair Evett L. Simmons and new JD Chair Judge Leslie B. Miller. Judge Caprathe and Justice Hanks continued to chair the program, along with Council member Daisy Hurst Floyd.

Continuing the practice of courthouse visits established in the two previous years, the students traveled to the federal courthouse where U.S. District Court Judge Jose E. Martinez conducted an argument on a motion to dismiss in a case pending before his court. Following the arguments, Judge Martinez, U.S. Court of Appeals for the Eleventh Circuit Judge Rosemary Barkett, several of Judge Martinez’s fellow district court judges, and Judge Martinez’s clerks met with the students and answered their questions over lunch.

The eighth Clerkship Program in Los Angeles in 2008 saw continued growth in the number of students, with 80 attending from 23 different law schools. Continuing the tradition, ABA President Neukom and President-Elect H. Thomas Wells Jr. welcomed the students. Joining them was National Bar Association President Vanita Banks, new Council Chair Ruthe

C. Ashley, and new JD Chair Judge James A. Wynn Jr. Judge Caprathe chaired the program for the third year, this time with the assistance of Judge Terri F. Love.

The logistics of Los Angeles made it impracticable to travel off-site, and so the program innovated to give students the opportunity to view an appellate argument. The research exercise for the 2008 program focused on whether a state law violated the First and Fourteenth Amendments if it required would-be voters to show a government-issued photo identification prior to voting. Using this topic, a panel of five appellate judges from the 45 participating in the program conducted a mock oral argument. Judge Caprathe acted as petitioner's counsel, arguing that the photo ID requirement was unconstitutional; attorney Bennett Evan Cooper argued for its constitutionality.

Judge Caprathe's three years of distinguished service as co-chair of the Clerkship Program came to an end at the conclusion of the 2008 program. He describes it as "a fundamental action program to help accomplish the important goal of diversity in the legal profession." He says that he has heard from "so many attorneys and judges that it is a great experience to work with these enthusiastic, intelligent law students for the three days, and many would like to hire them in the future."



Justice Frank Sullivan Jr. has been a justice on the Indiana Supreme Court since 1993. He is chair of the Nominating Committee of the ABA Judicial Division's Appellate Judges Conference (AJC); he is immediate past chair of the AJC's Executive Committee, and he is a member of the Nominating Committee of the Judicial Division. He can be reached at fsullivan@courts.state.in.us.

The ninth Clerkship Program in Boston in 2009 shattered attendance records, with 110 students from 27 law schools attending. Welcoming the students was ABA President Wells, ABA President-Elect Carolyn B. Lamm, Council Chair Ashley, and new JD Chair Judge Barbara M.G. Lynn. The chair of the program itself was Judge Ramona G. See, assisted by Judge Love; 51 judges participated.

The opening panel of the program was particularly exciting, as it was chaired by former ABA President Archer and included Massachusetts Chief Justice Margaret H. Marshall. The Massachusetts appellate judiciary contributed to the Boston program in another major way when Massachusetts Appeals Court Justice Fernande R.V. Duffly made it possible to reinstate the previous practice of the students traveling to view an appellate oral argument. The students watched oral arguments in two separate cases at the Massachusetts Appeals Court and then listened as a panel of justices and current law clerks described their experiences with or as law clerks. The justices, clerks, and students subsequently had lunch together.

Conclusion

With the tenth anniversary of the ABA Judicial Clerkship Program to take place in February 2010, I think that the Judicial Division, Council on Racial and Ethnic Diversity in the Education Pipeline, and the Commission on Racial and Ethnic Diversity in the Profession can be extremely proud of their cosponsorship of the program. In 2002, the Judicial Clerkship Program was honored by the ABA with its Section Officers' Conference "Meritorious Service Award," which recognizes each year a single pro-

gram or activity of an ABA member entity for significant contributions to the work of the Association. But beyond that award, the true measure of the program is the fact that it has acquainted approximately 500 minority law students from throughout the country with the opportunity and benefits of clerking.

Judge Rosenblum says that she is "confident that this program has increased the level of interest in and number of applications for judicial clerk

positions from minority lawyers." The data show that at least 41 of the 310 students attending the program from 2001 through 2007 secured clerkships with appellate and trial court judges. Dozens more completed judicial internships as part of their legal studies.

As one who has been involved in the Clerkship Program since its outset, I want to acknowledge several individuals, some of whom are not mentioned in the foregoing paragraphs, for their considerable contributions to the program.

First and foremost, each year's program requires an enormous amount of effort from the ABA staff members assigned to it—recruiting students, recruiting judges, arranging logistics, and providing on-site administration for the program itself. Each of these tasks is complicated and difficult; and each year they have been performed flawlessly. A number of men and women have been responsible for that achievement, but most notable among them have been Gilda Fairley, Regina Smith, and Sharon Tindall. The three of them in particular have truly made the program what it is today.

Second, Judges Caprathe, Kato, Love, Rosenblum, and See, along with Justice Hanks, and the other co-chairs of the programs all gave generously of their time and

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Celebrating 10 Years!

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What is the ABA Judicial Clerkship Program?

The Judicial Clerkship Program is a joint effort of the ABA Judicial Division and the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline in the Profession, with the generous support of LexisNexis®. The Program is held for three days in various sessions and brings approximately 90 minority law students from around the country together to meet with judges and former law clerks. The group participates in panel discussions, a research and writing exercise, and informal social events. These activities are designed to introduce and reinforce to students the reasons and values of pursuing a judicial clerkship.

For more information or to register, visit <http://www.abanet.org/jd/diversity/home.html> or call [Gilda Fairley](mailto:Gilda.Fairley@staff.abanet.org) at 312-988-5689. Pre-registration is preferred. Walk-ins welcomed!

talent and made each program a memorable experience for the students and judges who participated. A special word of praise is due to Judge Rosenblum, who, in addition to chairing the first Clerkship Program and serving as its great champion at the highest levels of the ABA, hosted for many years a late-evening cheesecake dessert reception for the students.

Several additional judges have participated in a substantial number of the annual programs, contributing their expertise, their enthusiasm, and their inspiration to both the program and the students: Judges Margarita Solano Bernal, Danny J. Boggs, Arthur L. Burnett, Charles N. Clevert Jr., Herbert B. Dixon Jr., Donald D. Haley, Barbara M.G. Lynn, Joel D. Medd, William D. Missouri, Rosemary Shaw Sackett, Berle M. Schiller, Calvin L. Scott Jr., and Justice Patricia Timmons-Goodson.

And LexisNexis has been a wonderful partner. As the program has grown from 30 students at the start to over 100 this year, LexisNexis has provided more and more computers, software, and printers—and on-site technical support—to meet the needs of the program's ambitious agenda.

Judge Lynn has observed, "It is a wonderful experience to see minority students, many of whom thought a judicial internship or clerkship was out of their reach, learn what opportunities are available and internalize what skills are required to succeed." Judge Caprathe adds, "The program is a great opportunity for us as judges, and lawyers, and law students to improve the justice system in this country." Motivated by the ABA's commitment to "the full and equal participation in the legal profession by minorities," the ABA Judicial Clerkship Program looks ahead with hope and anticipation to encouraging and assisting ever more minority law students to seek and secure judicial clerkships. ■

Judges wishing to participate in the 2010 Judicial Clerkship Program may contact Gilda Fairley at FairleyG@staff.abanet.org.