

# **WOW! What a Clerkship!**

How to Maximize Law Students' Judicial Externships by Jumpstarting the Classroom Experience

By

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# I. Introduction

- Supervise Judicial Externship Clinic
- Teach Judicial Externship Class
- Growing and diverse externship – from 15-32 students each semester
- State and federal trial courts
- State and federal appellate courts
- Missouri and Illinois courts

# I. Introduction

- Administrative duties with this externship include:
- Advising current and prospective students on proper placements and opportunities
- Match and place students with appropriate placements
- Communicate with students and judge supervisors regarding students work

## II. What is the Value of a Clerkship?

- One of the **few opportunities** to have access **behind the scenes** working of a court and the process of **judicial decision-making**.

## II. What is the Value of a Clerkship?

- What is the **role of a law clerk**?
  - conduct legal research
  - draft bench memos, assist in preparation of final opinions
  - advise judge of resolution of issues,
  - assist judge in conducting conferences, hearings and trials
  - plus some administrative/clerical duties
- What words come to mind when you think of a **law clerk**?
  - **Confidant, advisor**, assistant, always at the judge's side

## II. What is the Value of a Clerkship?

**Why is this important to students? What do students want? What are students' goals?**

- Helps build their **resume** and interviewing skills.
- Develop contacts and **network** with judges, clerks and attorneys.
- **Self-confidence**
- “mini experts” on various legal topics
- **Explore** different parts of country
- Learn the ins and outs of **local rules/procedure**
- **Clerkship** after graduation

# III. Educational Goals

- “For the things we have to learn before we can do them, we learn by doing them” – Quote by Aristotle
- Learn how to **learn from experience**
  - Our students want to **make a difference**. They choose to be in clinic because they want to **do something**. The clinic experience helps them **prepare for their careers** as lawyers and law clerks.

# III. Educational Goals

- **What do we want students to learn before/during/after their judicial externships? Why are these goals important?**
  - Help students to learn specific skills necessary to be a successful judicial extern/clerk
    - These include the practice and improvement of **legal research and writing skills**, including familiarity with the format for **orders, memos, opinions**, and the **clear communication of facts**.
    - Be adept at **grasping legal problems and independently fashioning solutions** to them
  - Discuss topics that matter to students
    - Increase **clarity of career goals, build student confidence, address strengths and weaknesses that lawyers face**.
  - Help students become **engaged** in judiciary and judicial process and also help the students develop working knowledge of local courts through critical observation and discussion.
    - **Observation** and education in sophisticated aspects of the process of litigation
    - **Exposure** to the way academic areas such as evidence and procedure are implemented in practice.
  - Develop a sense of **professional responsibility**
    - Help students see/find value in clerking; help students become more competitive in law clerk search

# \*\*\*III. Small Group Discussion

Student goals v. Educational goals

- How are YOUR students' goals SIMILAR to YOUR educational goals?
- How are YOUR students' goals DIFFERENT from YOUR educational goals?
- How do you begin your semester?

# IV. Strengths of Judicial Externship

A. Law clerks and externs are essentially an **extension of the judge**.

- “Judges are required to act both **professionally and ethically**. Given that judicial clerks are the **trusted agents** of judges and that their conduct reflects on the judge, judicial clerks have a ***derivative duty to act both professionally and ethically***.”
  - To learn different ways to use your legal education and apply what you’ve learned in your courses to real life.
  - To test your legal analysis and writing skills in real life situations.
  - To learn the workings of a courtroom.



# IV. Strengths of Judicial Externship

## B. Student Gains: Meeting our Educational Goals

### 1. Research and Writing

- Students learn to evaluate the hierarchy of authority, investigate new resources, formulate a research plan, look at legislative history, and weigh the applicability of precedent.
- Not all writing is the same
  - An Orientation to Judicial Writing
  - Trial Judge Writings
  - Appellate Judge Writings
  - Writing Effectively (Writing techniques, word usage, style)

*Stacy Caplow, From Courtroom to Classroom: Creating an academic Component To Enhance The Skills And Values Learned In a Student Judicial Clerkship Clinic, 75 Neb. L. Rev. 872, 876 (1996)*

# IV. Strengths of Judicial Externship

## B. Student Gains: Meeting our Educational Goals

### **2. Professional responsibility, Ethics and work place skills**

- Student learns to organize and manage legal work
  - Use of timesheets
- Student has to implement his professional ethics when sharing computers, files, desks with multiple individuals.
- Student learns to ask for constructive criticism and deal with it no matter the delivery.
- Student learns to abide by specific behavioral rules in their interactions with lawyers and parties and respect the confidentiality of chambers.

# IV. Strengths of Judicial Externship

## 2. Professional responsibility, Ethics and work place skills (continued)

- The student learns to understand the nexus between both **substantive and procedural issues**.
- Through their observations of hearings, trials, appellate arguments, documents such as motions and pleadings and other proceedings, the student begins to develop **analytical skills** which allow them to be critical of the quality of the written and oral abilities of the lawyers appearing in court.
- The clerkships thus offers “**a glimpse of advocacy from the inside-out**, a perspective that may teach enduring and influential lessons about effective oral and written communication.”

Stacy Caplow, *From Courtroom to Classroom: Creating an academic Component To Enhance The Skills And Values Learned In a Student Judicial Clerkship Clinic*, 75 Neb. L. Rev. 872, 880 (1996). Jennifer L. Sheppard, *In Chambers: A guide for Judicial Clerks and Externs*, Wolters Kluwer Law & Business in New York, 1<sup>st</sup> Ed. 2012.

# V. Challenges of Judicial Externship

- The **diversity** of placements
- Lack of immediate **direction**
- The use of **administrators or adjuncts** instead of full-time faculty
- Some favor the in-house clinic model
- Tendency to **run the program rather than teach the program**
- Creating an **interchange** about the students' fieldwork experience.

## \*\*\*V. Small Group Discussion

- What other challenges do you see in teaching the judicial externship class?
- How can you overcome these challenges?

# VI. How to Improve the Classroom Experience

## A. Recognizing the Issues you will face

- Your class will be diverse and therefore it is up to you to locate the **common ground** shared by students regardless of their specific court placements.
- Constraints imposed by courts' **confidentiality** requirements.
- The student may not understand the **educational benefit of spending time in the classroom** when they already learning on-the-job.

# VI. How to Improve the Classroom Experience

## B. Create Structure and Accountability

- **Manage** your semester in accordance to the issues your students will face.
- Use **timesheets** to check for quality work and supervision.
- **Share letter of goals** to judges
- Ask students to articulate their goals for the semester.
- Notify the student of what the professors and judges will be critically evaluating.
  - **Evaluation form** of students

# VI. How to Improve the Classroom Experience

## JE - EXTERNSHIP TIME SHEET

STUDENT NAME: \_\_\_\_\_

# of credits for externship: \_\_\_ 3 (126 hours); \_\_\_ 4 (168 hours)

EXTERNSHIP PLACEMENT: \_\_\_\_\_

Week #: \_\_\_\_\_

DATE	START AND END TIMES	# OF HOURS WORKED	DESCRIPTION OF ACTIVITIES

Total # hours on this time sheet \_\_\_\_\_

Total # hours on prior time sheets \_\_\_\_\_

TOTAL # HOURS TO DATE: \_\_\_\_\_

# VI. How to Improve the Classroom Experience

- **Goals** for the judicial externship are : (1) improvement of **analytical and writing skills**; (2) gaining a better understanding of **procedure** as applied in actual cases; (3) enhancement of their understanding of **how issues are decided** by the courts; and (4) **exposure to the limitations** within the operation of the adversarial court system. Your student may have additional, more **specific goals** which we will try to further.

# VI. How to Improve the Classroom Experience

**Exercise: Students are required to submit a goals memo at the beginning of the semester**

- Why did you want to have this experience?
- How will this shape your legal career?
- Write and reflect on your specific goals and the specific experiences you will seek out to achieve these goals this semester.
- What challenges do you foresee?
- How can you try to overcome these challenges?
- Consider classroom materials and discussions in your memo. Your memo should not exceed 3 pages in length.
- Students are also asked to reflect on these goals in their final paper.

# VI. How to Improve the Classroom Experience

- Supervisor Evaluation Form:
- **1-LEGAL RESEARCH**
- **2-LEGAL WRITING SKILLS**
- **3-LEGAL ANALYSIS**
- **4-ORAL PRESENTATIONS**
- **5-PROFESSIONAL JUDGMENT**
- **6-INITIATIVE**

# VI. How to Improve the Classroom Experience

- Supervisor Eval Form (cont.)
- **7-TIME MANAGEMENT**
- **8-OFFICE PROCEDURES**
- **9-PROFESSIONAL BEHAVIOR**
- **10-ETHICS**
- **ADDITIONAL COMMENTS ABOUT THE STUDENT:**

# VI. How to Improve the Classroom Experience

## **C. Engage the students**

- How is the world of clerking different from practicing law?
- What are the skills of a good law clerk?
- What are the ethical rules that govern them?
- How do judges decide cases?
- How are judges selected?

# VI. How to Improve the Classroom Experience

## Exercise – Judicial Interview

- Describe the educational and personal background of your judge. Where did they grow up? Where did they attend undergrad/law school? Where did they practice? What area of law did they practice?
- How did they become a judge? Was he or she elected or appointed? Describe the process. What are the formal/informal political procedures? Pros/cons of each?
- What are their likes/dislikes about being a judge?
- Any advice to law students/future lawyers/future judges?
- Anything else of interest the judge would like to share?
- What is the most significant lesson you learned this semester?

# VI. How to Improve the Classroom Experience

## **D. Create common core themes:**

### **How to build a law clerk**

1. Ethics
2. Research & Writing
3. Judicial Decision-making

# 1. Ethics

“Judicial clerks hold a unique and privileged position in the judiciary. Clerks are privy not only to litigants’ secrets and proprietary information, but also to Judges’ decision-making processes. **With such privilege comes great responsibility:** clerks must keep information learned ‘on the job’ secret.”

# 1. Ethics

- “The **Judicial Code** is, in many respects, written in general language that leaves judges and clerks uncertain of the appropriate behavior under specific circumstances. For example, the code **requires judges to avoid not only actual impropriety, but also the appearance of impropriety.** Absent ethics education, judges and clerks are left to their own devices to understand this requirement and other requirements under the code and a vast body of relevant case law that can be confusing and contradictory.”

Cynthis Gray, Frances Kahn Zemans, *Instructing Judges: Ethical Experience and Educational Technique*, Law and Contemporary Problems, Vol. 58 (1995).

# 1. Ethics

- Confidentiality
  - Basic Rule, dealing with other attorneys, dealing with family and friends, and other law clerks,
- Conflicts of Interests
  - Basic Rule, potential conflicts, actual conflicts, financial conflicts
- Decision-making on the record
- Outside Legal Activities
  - Law-related employment, practice of law, check to see if you should engage in that activity
  - Typically – if the judge can't do it, you can't do it

# 1. Ethics

- Dealings with Prospective Employers
  - Confidentiality, Benefits, Conflicts
- Outside Professional, Social, & Community Activities
  - Restrictions
- Receipts of Gifts and Honoraria
- Political Activities

# 1. Ethics

- Use **class simulations** to recreate the interactions between a law student and a judge using a specific case scenario each week.
- Ask students to consider the **scenarios** and explain what they would do and why.
- Quiz or **exercise** on ethical **hypotheticals**.
- See Handout.

# 1. Ethics

## Example Scenario 1

- You are working on the Rodriguez case in Chambers when one of the attorneys on the case comes by chambers and tells you she needs a copy of the document from the case file. The clerk's office is already closed. You are to assume the documents are not filed electronically and the case is not sealed. You have the chambers' copy of the document she needs. Do you give her a copy of the document? Why or Why not?

# 1. Ethics

## Example Scenario II

- Please explain if the following are confidential or not, and why.
  - Observations regarding a judge's decision-making process in general.
  - When a judge's decision will be handed down and made public.

# 1. Ethics

## Exercise/Short Paper - Confidentiality

Ask students to read chapter 1 in Cochran's Judicial Externships and answer the following questions:

- What is **your understanding** of the **rules of confidentiality** for judicial externs based on the reading material? Is this the same as or different than what your understanding was prior to reading this chapter? If different, describe the difference and whether your opinion has changed.
- Ask your judge or his/her law clerk to explain the **Court's policy** on confidentiality, if this has not already been explained to you. Is it the same as or different than what you read in the assigned chapter?
- Is the rule of confidentiality for judicial externs the **same as or more restrictive than your understanding of the confidentiality between a lawyer and a client?**
- \*\***IMPT** – At the end of this paper, students **MUST** include the following: **“I have read the Code of Conduct for Judicial Employees in its entirety.”**

## 2. Research & Writing

**“Judges and clerks tend to be strong writers and to have strong opinions about writing in general.”**

Mary Dunnewold, Beth Honetschlager, Brenda Tofte, *Judicial Clerkships: A Bibliography*, Legal Communication & Rhetoric: JALWD, Vol. 8, (2011)

## 2. Research & Writing

A. Students usually assist in the **preparation of decisions** or orders.

- The “**problem**” has been defined by the parties in the pleadings or the particular motion or proceeding before the court in the judicial setting, and thus, the students must **analyze the reliability** of the research conducted by the lawyers on the particular case.
- The **revision process** beginning with discussion of the issues with the judge or and/or law clerks followed by drafts and continued editing, relies considerably on the supervisory time of everyone in the chambers.

## 2. Research & Writing

B. The student learns that writing for a judge is **very different** than his prior legal writing experience.

- He is not advocating a position or writing on behalf of a client.
- He needs to consider the audience of the opinion.
- He needs to pick up on the goals, logic, language, and style of another author.
- He must at all times remember the ethical responsibilities of the judge.
- He must keep in mind the different objectives and functions of a trial court or an appellate courts rulings.
- He needs to understand how the type of case (fact-based, law-based, policy-based, discretionary) determines the contents, organization, and emphasis of the decision.

- See Handout.

Stacy Caplow, *From Courtroom to Classroom: Creating an academic Component To Enhance The Skills And Values Learned In a Student Judicial Clerkship Clinic*, 75 Neb. L. Rev. 872, 880 (1996). Jennifer L. Sheppard, *In Chambers: A guide for Judicial Clerks and Externs*, wolters Kluwer Law & Business in New York, 1<sup>st</sup> Ed. 2012.

Sheppard, Jennifer L., *The 'Write' Way: A Judicial Clerk's Guide to Writing for the Court* (October 30, 2008). University of Baltimore Law Review, Vol. 38, 2008. Available at SSRN: <http://ssrn.com/abstract=1830519>

## 2. Research and Writing Exercise

- Ask each student to bring a **sample** of judges' writing to class.
- Have students exchange sample with neighboring student.
- Ask the student to **edit** the sample.
- Then regroup and ask students which had a **GOOD** sample and which was **NOT a good sample** and why.
- Teaches important skill of editing and critique.
- Teaches them how to apply readings/lectures on good judicial writing to samples.

# 3. Judicial Decision-making

- A. Have students read Fuller, “**Case of the Speluncean Explorers.**”
  - This difficult case often leads to lively **class discussion** on what each student believes the correct decision should have been.
  - Ask students which judge’s decision is best and why
  - Ask students which judge’s decision best reflects their judge’s decision-making process and why
- See handout.

# 3. Judicial Decision-making

B. Discuss how **public opinion** may or may not influence judicial decision-making.

–“Because the pressures faced by judges will inevitably affect their clerks, [students] applying for or entering judicial clerkships will benefit from a better understanding of these pressures.”

- Justices’ preferences shift in response to the same social forces that shape the opinions of the general public.
- Human factor or gut feeling in decisions

Giles, Blackstone, and Vining, *The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision-making*.

Mary Dunnewold, Beth Honetschlager, Brenda Tofte, *Judicial Clerkships: A Bibliography*, *Legal Communication & Rhetoric: JALWD*, Vol. 8, (2011).

# 3. Judicial Decision-making

## C. Discuss the **public's view of judicial decision-making.**

- Present a judicial decision that is thought to be a solid decision based on legal procedure and poll the class to see whether they agree with the decision, and discuss the reasons why.
- Ask the student to analyze and discuss how they viewed the decision-making process prior to entering law school in comparison to how they view it now.

# 3. Judicial Decision-making

## D. Observation Exercise

- Ask the students to attend a sentencing hearing and discuss the following:
  - Who were the players in the courtroom and what were their respective roles? Who seemed to be in charge of the process?
  - Where did the event take place? What influence if any, did the location have on the proceeding? What was the judge's role in controlling the process?
  - Describe your impression of the court/judge you observed. How does this compare to the court/judge you are working with this semester?

# \*\*\*VI. Small Group Discussion

- Other Judicial Externship class topics
- What other topic(s) do you teach in your class?
  - How did you teach this topic?
  - Were you successful?
  - What challenges did you face?

# Sample Topic

**To Clerk or Not to Clerk? How to address this topic with your students.**

1. About **4 weeks into the judicial externship**, after orientation and discussion/lecture on ethical considerations for judicial clerks and writing for the judges
2. Ask the students **how many of them would like to/already have/plan on applying for a judicial clerkship** after graduation?
3. How can they use the skills acquired in this class to **enhance their application?**
4. How can they apply what they are learning to **future employment?**
5. Sometimes I use **former students** who are/have served as law clerks to come and speak about their experience
6. **Challenge – when** to introduce this topic to class. Don't want to raise it too early (they are not ready to think about it). Don't want to raise it too late (after they made their decision to apply or not to apply).

# Additional Judicial Externship Class Topics

- Non-judicial perspectives on courtroom experience: lawyers, juries, and parties.
- Introduction to histories and current status of legal judicial professions in the U.S.
- Judicial selection methods – appointment versus election – and impacts on the courtroom experience.
- The Role of the Law Clerks and Externs
- Court Organization
- Judicial demographics: who are the judges and on what types of tribunals do they serve?
- Settlement negotiations and the roles of lawyers and judges
- See Handout.

# VII. Conclusion

- What is the value of a Judicial Clerkship?
  - Students conduct legal research and draft opinions and court memoranda for the judges on pending cases.
  - They are exposed to criminal and civil practice procedural rules, rules of evidence, oral advocacy, the judge's decision-making process, among other things.
  - Many students are even able to use the externship to find a full-time clerkship after graduation.
  - Our job is to help them on their journey. Ask ourselves each semester? Were we successful? What could we have done better?

# VII. Conclusion

Student takeaways: “Regardless of your future career path, a judicial clerkship can be a significant asset to your career.”

- Writing Sample

- Ask judge, clerk
- Final, finished, public written product
- How much did you write? How much was edited? Be selective and respectful of judge’s/chamber’s work

- References

- Did you ask judge if you can list him/her as a reference?
- Did you ask clerk if you can list him/her as a reference?

- Letter of Recommendation

- Did you ask judge if he/she would write you a letter?
- Did you ask clerk if he/she would write you a letter?

- Mentor

- Did you develop or set the ground work for mentor relationship with JUDGE or CLERK?
- How do you foster this? Stay in touch – especially staff
- Keep them up to date on job search, invite them to events at the law school, meet for lunch/coffee, join same groups

- Update RESUME asap!

- Specifically discuss what you are learning, experiencing, observing. Include your contribution to chambers.