CLERKING — SOMETHING EVERY FIRST YEAR LAW STUDENT SHOULD KNOW*

Susan Harp**

I. MAKING THE DECISION TO APPLY FOR A CLERKSHIP

The decision to serve a judicial clerkship after graduation is an important choice law students should consider. The first and most obvious question a law student might explore when considering a judicial clerkship is what the job entails. On whole, judicial clerkships offer young attorneys an opportunity to apply the research and writing skills they learned in law school to real cases. While every judicial clerkship is a unique experience, there are some very basic similarities shared by most clerkships. Judicial clerks are typically responsible for researching legal issues, summarizing the briefs filed by the parties, and analyzing the parties’ arguments. Some judges have their law clerks draft opinions, but other judges prefer to write the opinions themselves. If this type of job interests you, it is never too soon to begin the application process. In fact, most students are shocked when they discover how soon they should begin.

Many judges hire a year or two years in advance. Practically speaking, this means law students should consider and decide whether they want to do a clerkship during their first year of law school. This is a difficult decision to make at a point when students are just beginning to grasp fundamental legal principles and make choices about which extracurricular activities will best prepare them to be good attorneys and help them get a job.

With that said, making the decision at this early stage of law school has several advantages. First, the earlier you make the decision, the better your odds of being hired. As mentioned above, many judges hire clerks two years in advance. If you wait until your second year, you may miss many opportunities. Second, making the decision early will allow you plenty of time to research and select the judges for whom you would like to work. As anyone who has done a clerkship will tell you, the experience varies dramatically.

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depending upon your judge. Third, having your job secured before your second year will decrease the stress and anxiety many second- and third-year law students experience.

II. CHOOSING THE RIGHT JUDGE

Once you have made the initial decision that a clerkship is something that interests you, there are several remaining decisions to make. First, you need to decide whether you wish to do a state or federal clerkship. One factor to consider in making that decision may be what type of law you want to practice. If you choose to practice in an area of law that lends itself to state courts, then you may find a state clerkship more valuable than a federal clerkship. That aside, federal clerkships tend to be more prestigious and typically pay more money; however, they are also more difficult to obtain. One way to increase your chances of getting a federal clerkship is to be flexible in where you are willing to live.

A second decision is to decide how long you are willing to work as a judicial clerk. Some judges only hire for a year, but many hire for two years. Some judges prefer to hire for one year and reserve the option to have the clerk stay for a second year. Still other judges prefer to hire permanent clerks. Length of service is an individual matter within the judge’s discretion. When you are researching judges, this is an important piece of the puzzle. If a judge is looking for a permanent clerk and you are only interested in a one-year position, then you should not apply for that clerkship.

Third, you will need to decide whether you would like to work for a trial judge or an appellate judge. This decision will most dramatically affect your experience as a law clerk. If you chose a trial court, you have more opportunities to observe trials. Appellate clerkships involve more research and writing, but allow you to observe appellate oral arguments. Again, this decision can be shaped according to the area of law that you ultimately want to practice. If you want to be an appellate lawyer or a law professor, then an appellate clerkship would probably prove more valuable. However, the converse is not necessarily true. If you do not want to practice appellate law, an appellate clerkship can still be valuable because it will teach you what types of errors are common at the trial level and how to preserve the errors for appeal. Typically, appellate clerkships are considered more prestigious than trial level clerkships.

Another way to select clerking positions is to choose a judge
who handles cases in an area of law in which you may want to practice. For example, if you know you want to go into bankruptcy law, then you could narrow your potential judges to only bankruptcy judges. Be careful in narrowing your selection too much, however, because it is difficult to truly know what type of law you want to practice in your first and second years of law school. A clerking position which offers a broad range of issues may prove to be more valuable than a clerking position in which you are limited to one precise area of the law.

III. PROS AND CONS OF A CLERKSHIP

Many first- and second-year students are not familiar with the pros and cons of a post-graduation judicial clerkship. When asking my fellow clerks how they feel the experience has benefitted them, the unanimous response was that it had improved their writing and analytical abilities. Another commonly agreed upon benefit is the increase in employment opportunities after the clerkship is finished. Many firms recruit former law clerks because they feel the clerks have better writing and analytical skills than students right out of law school. These firms often offer additional signing bonuses. Currently, many larger firms are offering an additional five thousand dollar signing bonus for attorneys coming from one-year state clerkships and ten thousand dollar signing bonuses for attorneys coming from one-year federal clerkships. Many firms will also often give judicial clerks credit for the time they spent clerking. Several firms offer one year of credit towards the firms’ partnership tracks for two year clerkships.

However, one of the biggest complaints about clerkships is the pay. Currently, the starting salary for a Florida state judicial clerkship is approximately $36,000, while the starting salary for a federal clerkship is approximately $40,000.

A second con of clerkships is that finding a job while you are in law school is easier than finding one after you get out because firms come to the schools to recruit. When looking for a job after graduation, attorneys must be more proactive. One potential cure for this clerking hazard is to go through the on campus interviewing process, even if you have already agreed to do a clerkship after graduation. Many firms will still hire you as a summer associate despite the fact that you will not be available to work for them right after graduation because they hope you will return to the firm after your clerkship expires.
A final reality of clerkships that may be a pro or con is the reality of what you will do on a daily basis as a judicial clerk. The vast majority of your day as a clerk is spent either researching an issue or writing briefs and opinions. Some clerks enjoy this process, while others feel confined or frustrated because they are stuck at their computer.

IV. STRATEGY FOR GETTING A JUDICIAL CLERKSHIP

While there is no substitute for attending a good law school, good grades, and law review, there are some less obvious strategies that can be employed when applying for judicial clerkships. Information is the key. The more you know about the judge for whom you are applying, the more likely you are to get the job. For example, if you know Judge X likes fishing and you like fishing then you can add an “Interest” section to your résumé that includes fishing.¹ If you discover Judge X went to your college or law school, or perhaps has a son or daughter that went there, you immediately have a bond, a commonality. Commonalities bring judges and clerks together. Several times I have seen clerks hired who did not have the best résumé, merely because they clicked with the judge.

A second strategy is to contact former judicial clerks. First, the former clerk can tell you about his or her experience in working for that judge. As stated earlier, clerking experiences differ dramatically depending upon the judge. Therefore, it is important to choose a clerkship that offers you a positive experience. Second, the former clerk may be willing to advise you on how to best structure your résumé to get an interview with the judge and perhaps even provide some interviewing tips. Third, if you meet a former clerk and have an opportunity to talk with him or her, you may find the former clerk willing to give you a recommendation. There is no substitute for a personal recommendation from a former clerk. Judges often become close to their clerks and trust their advice. For example, former Florida Supreme Court Justice Ben Overton has a reunion every year for all of his former law clerks and their families. In fact, he and Mrs. Overton often refer to their former clerks as their “children,” despite the fact that many of their “children” are successful attorneys who have been practicing for twenty-five years or more.

¹ Of course, you would never want to misrepresent your interest because this could cause you to be embarrassed at an interview or even after you have been hired.
A third strategy is to call the judge for whom you would like to work and offer to spend a summer as an intern working for free. Judges frequently allow law students to intern for them during the summer. After all, judges often have more of a case load than they can handle and additional help is always welcome. Some schools have programs that allow students to get credit for summer internships. However, if there is not such an established program within your school or with the judge for whom you would like to work, then you are almost in a better position because calling on your own to set up an internship shows you are ambitious. Once you have the internship, you can impress the judge with your skills and charming personality.

A fourth strategy, which is particularly helpful for students who decide they want to do a clerkship in their last year of law school, is to look for newly appointed judges. As they are newly appointed, they probably have not hired clerks in advance. Perhaps the best way of learning this information is to contact the clerk of the court where you would like to work and simply ask if there are any new judges being appointed.

A fifth strategy for obtaining a clerkship position is to take the back door route. Many courts have central staffs or senior staffs, where attorneys work for the court instead of a particular judge. The competitions for these jobs is often not as steep as it is for the clerkships. Once you have a job working for the central or senior staff, you have the inside track to getting a clerkship position by doing a good job and letting it be known that you are interested in clerkings for a judge if a position becomes available.

V. CONCLUSION

Clerking for a judge can be one of the most valuable experiences a young attorney can pursue. While it may be a financial burden in the beginning, it opens many doors and can provide future monetary rewards. Just remember to start looking early and get as much information as possible to choose the right court and judge for you.
LIFE AFTER LAW SCHOOL: FROM A LARGE FIRM PERSPECTIVE*

Brendan Lee**

It is easy for a law student to lose sight of the goals of a legal education. Rather than simply concentrating on preparation for a legal career, students are often forced to focus on survival when faced with the pressures of the first year. The unfamiliar teaching methods, combined with the emphasis on grades and class rank, can present an intimidating atmosphere that compels students to concentrate on the short term.

My situation was no different. It was not until I began drafting this Essay that I examined how my legal education had prepared me for my work as an associate at Macfarlane Ferguson & McMullen.¹ After having spent one year as an associate in a large firm, I am more comfortable with a legal education's impact on a student's preparation for a legal career. Though there are many aspects of law school that seemingly have no relevance to my work, I call upon principles learned in law school on a daily basis. These principles are not limited to the basic substantive law of Contracts or Real Property, but also include time management and client relations. I learned many of these principles in the first few months of law school.

The difficulties facing a first-year law student are well-chronicled. Most students are confronted with a new method of education taught by a new breed of educators. My first-year courses included Contracts, Torts, Criminal Law, and Real Property, as well as Civil Procedure and Research & Writing. While the substantive courses received most of my attention due to the emphasis on grades, the principles taught in Research & Writing were equally important.

The importance of the principles learned in Research & Writing is based upon the scope of legal issues that can arise in a large firm. While most large firms are departmentalized, with a new

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1. The law firm of Macfarlane Ferguson & McMullen had its genesis in 1884, and currently employs over 50 attorneys in its Tampa, Clearwater, and Tallahassee offices. The firm represents a broad range of local, state, and national companies, government entities, and individuals in all aspects of the law.
associate assigned to a specific department, there is necessary intermingling between departments. Further, a number of other factors may lead to an associate working outside of her practice area.

My experience at Macfarlane Ferguson & McMullen has provided me exposure to a wide range of legal subjects, from workers' compensation to family law. Although my chosen field of appellate practice is somewhat responsible for this diversity, it is certainly not the only reason. Partners often require immediate assistance on a project, and do not necessarily have time to find an associate in the given department with particularized expertise. In addition, the skilled legal writing essential to the area of appellate practice has allowed me to assist in other areas of the law, such as trial practice.

Most of my first-year professors advised that specific knowledge of intricate legal principles would not be required of first-year associates. While this is generally true, associates are presumed to have a general understanding of certain areas of the law. For example, associates are expected to understand the general principles of first-year courses, such as Contracts, Torts, and Real Property. Furthermore, issues involving rules of procedure, such as time deadlines, arise on a daily basis.\(^2\)

In addition, associates are expected to have a firm grasp on methods of legal research to acquire a greater understanding of the substantive law. Through my Research & Writing courses in law school, I learned research methods that enabled me to become familiar with areas of the law that I do not frequently address. Research & Writing also provided the elements of legal writing structure and style. Without these tools learned in Research & Writing, it would be impossible to succeed as a practicing attorney.

In addition to legal principles, the first year of law school also teaches many students the fundamentals of time management. Students often begin law school immediately after completion of their undergraduate studies, and may assume that the time spent on their legal studies will be comparable to earlier course work. However, the workload in law school is more demanding than undergraduate studies, and the principles are often more foreign.

These time management skills were even more important with

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\(^2\) In my chosen area of appellate practice, a colleague's initial inquiry undoubtedly concerns issues of appellate procedure such as the time to appeal or preparation of the record on appeal.
the introduction of extracurricular activities. After my first semester of law school, I accepted a clerking position at a small law firm to gain practical experience. The clerking position was only fifteen hours per week, but forced me to manage my time and arrange my priorities. Clerking allows a law student insight into the real world, as well as potential job opportunities upon completion of law school.

The clerking positions also enabled me to experience different areas of the law and different types of practices. During law school, I was able to work in a small boutique law firm, a medium-sized law firm, and a large law firm. I also completed judicial internships in both federal and state court. Many law schools offer internship programs that allow students to gain practical experience through programs such as a clinic or judicial internship. These programs were invaluable and provided guidance about my choice of practice area.

One of my biggest complaints about law school is the fact that clinical programs are not a mandatory element of the curriculum. Clinical programs not only allow a student to experience the daily work of an attorney, but also introduce a student to a broad range of areas of the law. Further, clinical programs allow networking opportunities, job contacts, and references. These factors were especially helpful to me, as I did not participate in a traditional clerking program before graduation.

Other extracurricular activities include law review, moot court, and serving as a research assistant. I was fortunate enough to participate in all of these activities. With these added activities, time management became even more important. Law students must learn to allocate time properly, and determine whether activities can be undertaken while maintaining success in the law curriculum. Many students are reluctant to participate in these extracurricular activities, fearing that the additional time requirements will harm their grade point average. While there is some truth to this belief, the benefits of these activities outweigh the drawbacks. Law firms seek a complete individual, and a student who has had these experiences is often more prepared to handle the daily grind as a practicing attorney. Like law students, attorneys are expected to be involved in extracurricular activities such as pro bono projects, bar associations, and civic organizations.

Elective courses in law school also assisted in my professional

development, due in large part to the specific courses that I chose. By the time I was able to select electives, I had a general idea of the type of law I wished to practice and selected pertinent courses accordingly. For those students who have not decided on a practice area, elective courses also allow a student to learn different areas of the law. For example, several students in my workers’ compensation class decided to practice in this area.

In choosing a practice area, I would advise that students remain flexible. There are many students who have decided prior to law school that they would like to practice in a certain area, such as criminal law. These students may be reluctant to change if they find that criminal law is not to their liking. Further, an associate in a large firm may be required to assist in departments outside of a preconceived area. While this work outside of the associate’s chosen practice area may not be permanent, associates are expected to lend a hand when needed.

As was the case with my first-year courses, one of my most invaluable elective courses did not teach substantive, black-letter law. In Pretrial Practice, students were matched into pairs and assigned cases at the beginning of the semester. The groups performed the entire pretrial process, from client intake to the pretrial conference. Students interviewed clients, deposed witnesses, and argued motions. Like the clinical programs and judicial internships, the course provided practical experience and confidence after graduation.

The Pretrial Practice course also taught the importance of teamwork, which is necessary to succeed in a large firm. In most law courses, students are not dependent upon another individual for their success or failure. Students can dictate their study habits and are graded on an individual basis. However, the practice of law mandates communication and collaboration with other people. In most cases, an associate works with several other attorneys in the firm. Associates must be able to successfully interact with these attorneys on a professional level and understand that each attorney has different tendencies and work habits.

Theoretically, the size of a large firm can create division due to the number of attorneys and separation of departments. On the other hand, large firms enable the attorneys to serve all of their clients’ needs. Clients can rely on the firm for legal services with confidence that their needs will be met. Attorneys in the firm must work together toward a common goal — serving their clients in conformance with the highest professional standards.
In my limited experience, I am fortunate to have the opportunity to work with superior attorneys with a wide range of specialties. I have confidence in my colleagues and respect for their dedication to the law and community service. There is a sense of pride in Macfarlane Ferguson & McMullen and a recognition of the firm’s history. The law firm has been in existence since 1884, so it would be impossible to chronicle the firm’s great history in this Essay. From Hugh Macfarlane to Chester Ferguson to T. Paine Kelly, the law firm of Macfarlane Ferguson & McMullen has always symbolized excellence. I am thankful to have the opportunity to continue the legacy and tradition of the firm and will look to my studies in law school as the preparation that has allowed me to succeed.