

University of Ottawa Faculty of Law (Civil Law Section)

From the Selected Works of Hon. Gerald Lebovits

July, 2004

Judges' Clerks Play Varied Roles in the Opinion Drafting Process

Gerald Lebovits

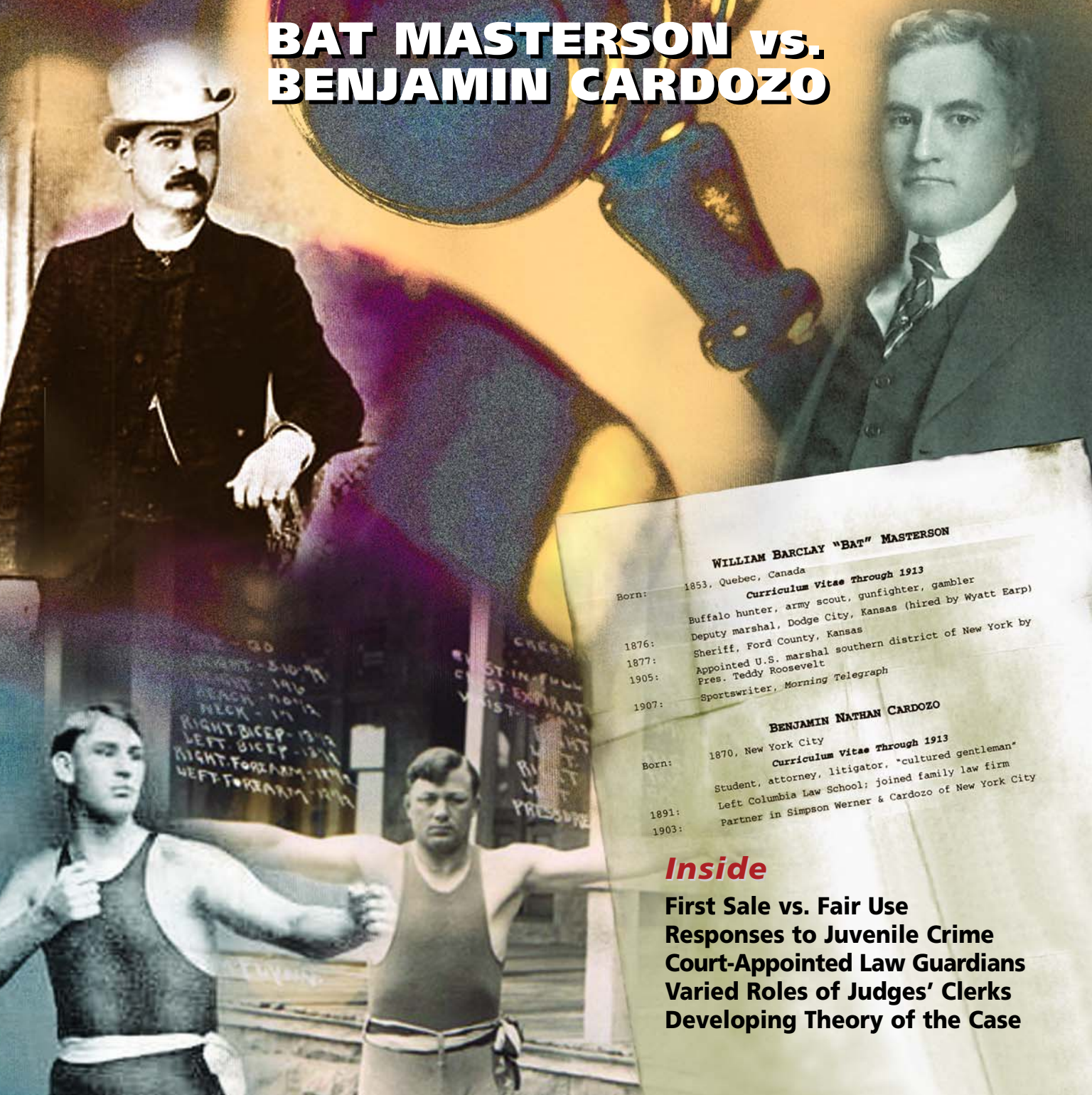


Available at: https://works.bepress.com/gerald_lebovits/59/

JULY/AUGUST 2004 | VOL. 76 | NO. 6

Journal

BAT MASTERSON vs. BENJAMIN CARDOZO



WILLIAM BARCLAY "BAT" MASTERSON

Born: 1853, Quebec, Canada
Curriculum Vitae Through 1913
Buffalo hunter, army scout, gunfighter, gambler
Deputy marshal, Dodge City, Kansas (hired by Wyatt Earp)
1876: Sheriff, Ford County, Kansas
1877: Appointed U.S. marshal southern district of New York by
1905: Pres. Teddy Roosevelt
1907: Sportswriter, Morning Telegraph

BENJAMIN NATHAN CARDOZO

Born: 1870, New York City
Curriculum Vitae Through 1913
Student, attorney, litigator, "cultured gentleman"
Left Columbia Law School; joined family law firm
1891: Partner in Simpson Werner & Cardozo of New York City
1903:

Inside

First Sale vs. Fair Use
Responses to Juvenile Crime
Court-Appointed Law Guardians
Varied Roles of Judges' Clerks
Developing Theory of the Case

Judges' Clerks Play Varied Roles In the Opinion Drafting Process

BY GERALD LEBOVITS

In 1875, Massachusetts Chief Justice Horace Gray hired a law-school graduate to be his secretary. The Chief Justice paid the young man — whom he called a puisne¹ judge — from his own pocket. A few years after the Chief Justice was elevated to the Supreme Court, the United States government decided to pay for a clerk for each Justice.² Most Justices hired stenographers, but Justice Gray continued to hire young law graduates.

In 1919, after the government decided to pay for typists and a clerk, the other Justices began to hire recent law graduates. Thus began in federal court the institution of law clerks,³ which became common in federal court in 1936, when district judges were allowed to use law clerks, and widespread since 1959, when certifications of need for district judges were no longer required.⁴

What Law Clerks Do

Law clerks, the generic title used in this article, are integral to the decision-making process, both federally and in every state court of record. They “are not merely the judge’s errand runners. They are the sounding boards for tentative opinions.”⁵ Law clerks do “time-consuming and essential tasks: checking the record, checking citations, performing legal research, and writing first drafts Law clerks are indispensable to the judges, enabling them to focus on the decision itself and the refinement of the decision in writing.”⁶ Dan White, the satirist, explains the law clerk’s role this way: “All judicial clerks do the same thing, namely, whatever their judges tell them to do.”⁷

Law clerks are extensions of their judges. Whatever they do reflects on their judges. Good law clerks will excel at research, writing, administering the docket, and conferencing cases if in a trial part. Good law clerks maintain all personal and judicial confidences, play devil’s advocate with and be confidants to the judge, leave the decision making to the judge, save the judge from committing errors, and commit few of their own. A poor law clerk “dislikes library work, or . . . is unhappy unless agitating for a cause, or . . . is addicted to the telephone or cannot stand solitude.”⁸

Law Clerk Confidentiality

A maxim for law clerks is that what happens in chambers stays in chambers. Rarely while they work for judges have law clerks been known to share secrets. History records only one notorious example.⁹ In 1919, Justice Joseph McKenna’s law clerk was accused of leaking word of the decision in *United States v. Southern Pacific Co.*¹⁰ The clerk’s alleged co-conspirators profited from insider trading. When the plot was uncovered, the clerk resigned and was indicted for “conspiracy to defraud the Government of its right of secrecy concerning the opinions.” The clerk argued that no law forbade his supposed conduct, but his motion to dismiss was denied, as was his appeal to the D.C. Circuit and his petition for certiorari to the Court of his former employ.¹¹ The prosecution, however, eventually moved to dismiss the charges. Everything else about this affair is shrouded in mystery, except this: When the clerk, later a successful Washington baker, died at 83, he was cremated, and his ashes were “strewn on court property . . . under the cover of darkness.”¹²

Current law clerks may not reveal current confidences, but may they discuss their duties after they retire? The conventional wisdom is that law clerks must take confidences to the grave.¹³ But dozens of the nation’s most eminent attorneys and judges have written in surprising detail about their judges and the role they and their judges played in cases of national consequence.¹⁴ Law-clerk disclosure has turned into a “long-



GERALD LEBOVITS was the court attorney to Justice Edward J. McLaughlin in Supreme Court, Criminal Term, New York County, before becoming a judge of the New York City Civil Court, Housing Part, New York County. He is also an adjunct professor and Moot Court faculty advisor at New York Law School. He received a

bachelor’s degree from Carleton University and law degrees from Ottawa, Tulane and New York University law schools.

standing historical tradition that has developed over the past sixty years.”¹⁵

A law clerk to Justice Robert Jackson was once accused of betraying confidences about other law clerks.¹⁶ In an article that created a firestorm of protest and support, then-Mr. William Rehnquist wrote that “a majority of the clerks I knew [showed] extreme solicitude for the claims of communists and other criminal defendants.”¹⁷ Apparently recovered from that controversy, then-Justice Rehnquist later wrote a beautiful portrayal of his judge in an article that disclosed no confidences.¹⁸

One can write about experiences as a law clerk and divulge nothing secret. For a piece of this kind from a two-year New York Court of Appeals clerk, see an article by Mario M. Cuomo.¹⁹

Law-Clerk Writing

According to a federal judge who knows, “most judicial opinions are written by the judges’ law clerks rather than by the judges themselves.”²⁰ Law clerks often write first drafts: “It is an ill-kept secret that law clerks often do early drafts of opinions for their judges.” Law-clerk opinion writing comes as no surprise to those who work in the courts: “It is widely recognized . . . that law clerks now draft many of the decisions that emanate from . . . chambers.”²¹ By their writing, law clerks play a role in decision making: “[M]any judges, if not most, require their law clerks to draft opinions for motions before the judges even skim the briefs. . . . [M]any motions present a close call. The person who gets to take the first crack at it (*i.e.*, the law clerk) may influence the outcome.”²² The outcome is influenced because “[h]e who wields the pen on the first draft . . . controls the last draft.”²³

Law clerks, especially at the appellate level, also write bench memorandums.²⁴ The bench memorandum, or report, may include the following: A concise statement of the facts, with a verification of the litigants’ statements of fact by reference to the record; a statement of the issues in contention; the litigants’ arguments on the issues, verifying the authorities; an analysis of the issues and the law; a list of questions that inquiry at oral argument might resolve; a recommendation on whether the court should decide the matter with a full, *per curiam*, or memorandum opinion; and a draft *per curiam* or memorandum opinion if the law clerk recommends either following a screening process.

The precise format of the bench memorandum depends on the court’s tradition, but the memorandum should emphasize the relevant issues and be impartial,

critical, and thorough — but not so thorough that the judges might as well have read the briefs and the record before oral argument. The law clerk’s goal is to familiarize the court with the case before oral argument and to focus a judge who wishes to do further research. It is appropriate for neutral, objective clerks to state their views pre-argument. The court may, and often does, disagree with the clerks’ views after oral argument and additional study. Moreover, “the only mission of a [memorandum] opinion is to inform the parties why the court is deciding as it is and to assure them that the court considered and understood the case. . . . Staff in these cases can relieve the judges of the initial drafting job, simple though it may be, thereby freeing judge time for the other demands of the court’s business.”²⁵

Is law-clerk writing good or bad for the administration of justice? According to D.C. Circuit Judge Patricia M. Wald, “judges who write every word of their own opinions (except for a few certifiable geniuses) do not produce works of markedly greater clarity, cogency, or semantic skill. The opposite is more likely true. . . . I for one would not return to the days when law clerks sharpened pencils and checked citations; the present system for deciding cases could not sustain that development.”²⁶

Some believe that a rule should be enacted to make it unethical for law clerks to write judicial opinions.²⁷ Most believe, however, that law-clerk writing is good for the courts.²⁸

The Interplay Between Law Clerk And Judge in Opinion Writing

Much law clerk-judge writing is collaborative.²⁹ But whether the law clerk prepares the initial drafts or the final edits, the entire adjudicative function and decision-making process must remain exclusively with the judge. The litigants’ rights and public confidence in the judiciary demand no less. Even if the law clerk writes every word of a particular opinion, the judge must agree with and understand every one of those words as if the judge alone wrote each word. Every word and citation must be the authentic expression of the judge’s thoughts, views, and findings. This requirement forces judges to review, with an eye toward editing, every opinion but the most routine, mundane, and brief draft.

In the end, “no matter how capable the clerk, the opinion must always be the judge’s work.”³⁰ That is because “[w]e lose the judge’s processed involvement when technically proficient law clerks write the opin-

“All judicial clerks do the same thing, namely, whatever their judges tell them to do.”
— Dan White

Law Clerks in New York

The position of law clerk in New York has been authorized for some judges since 1909.¹ New York clerks are appointed differently from federal law clerks and play somewhat different, larger roles.

Like federal clerks, New York clerks should be selected with care. The judge-clerk relationship is "the most intense and mutually dependent one . . . outside marriage, parenthood, or a love affair."² But unlike federal judges, who typically appoint recent law-school graduates and mostly ask them to serve one- or two-year terms, New York judges tend to appoint experienced attorneys and retain them for lengthy durations as career court employees. New York practitioners and judges alike appreciate the maturity and wisdom that an experienced law clerk brings to a busy state court.

A federal clerkship has more status than a New York clerkship, but New York clerks are paid far better and in the main enjoy decidedly greater responsibilities, especially in the trial courts. Federal clerks can earn top salaries when they leave their judges, but New York clerks often secure job opportunities for which their federal counterparts must wait years: The New York judiciary is filled with law clerks who went directly from their clerkships to the bench, either by appointment or election.

In New York, court attorneys are called law clerks when they work for a Court of Claims judge or are the personal appointment of an elected

Supreme Court justice. Otherwise, they are court attorneys — from the court attorneys in the New York City Civil Court's Housing Part, to the pool attorneys in Supreme Court, to the court attorneys to the Chief Judge of the State of New York. Law clerks and court attorneys used to be called, respectively, law secretaries and law assistants.

Central staff court attorneys of the Court of Appeals answer to the Chief Judge and the court rather than to any particular Associate Judge. Court attorneys in the Appellate Division and the Appellate Term answer to the Presiding Justice of the Department or Term. Court attorneys assigned to a trial-term judge answer first to their judge, then to their supervising and administrative judges, and ultimately to the person who appoints them: the Deputy Chief Administrative Judge for New York City Courts or the Deputy Chief Administrative Judge for Courts Outside New York City. Law clerks are hired and fired by their justices alone.³ Trial Term court attorneys not assigned to a judge answer to their chief court attorney, then to their administrative judge, and ultimately to their respective Deputy Chief Administrative Judge.

The distinction between personally appointed law clerks and court-appointed court attorneys affects law clerks' and court attorneys' ethical obligations in terms of political activity,⁴ a fact of life in New York because many judges are elected from law-clerk ranks.

1. See N.Y. Judiciary Law §§ 166, 173 (Laws of 1909, Ch. 35), which gave Supreme Court justices the power to appoint confidential attendants and confidential law assistants.
2. Patricia M. Wald, *Selecting Law Clerks*, 89 Mich. L. Rev. 152, 153 (1990).
3. *In re Blyn v. Bartlett*, 39 N.Y.2d 349, 359–60, 348 N.E.2d 555, 560–61, 384 N.Y.S.2d 99, 104–105 (1976) (per curiam). A personally appointed clerk to an elected Supreme Court justice need not even be a lawyer. *In re Gilligan v. Procaccino*, 27 N.Y.2d 162, 166–68, 263 N.E.2d 385, 385–87, 314 N.Y.S.2d 985, 987–88 (1970).
4. See Gerald Lebovits, *Judicial Ethics, Law Clerks and Politics*, N.Y.L.J., Oct. 21, 1996, at 1, col. 1 (examining New York's Rules of the Chief Judge (governing nonjudicial-employee conduct) and the Rules of the Chief Administrator of the Courts (governing judicial conduct) as they apply to law clerks and court attorneys).

ions and the judge understands his role more as a decision maker and editor, if that, than as a writer."³¹ Although judges delegate "the task of stating the reasons for the decision, not the authority to decide . . . , the justice must make the final version his own opinion, because he is responsible for what it says."³² Thus, "the strongest control over staff personnel in their dealings with the judges is an ordinary sense of personal relationships. The judge is the boss. What he says and does

are the final mandates on an issue . . . "³³ Third Circuit Senior Judge Aldisert gives this advice to his clerks: "You were not selected by me to be a 'yes man.' . . . [Yet] when the decision is in, that is it."³⁴

Crediting Law Clerks and Law Students

Federal case law, including Supreme Court case law, is filled with textually relevant judicial acknowledgments that law clerks performed legal research.³⁵ But a

CONTINUED ON PAGE 38

judge should never acknowledge that a law clerk or judicial intern (often called “extern”) wrote the opinion. Doing so makes it appear that someone other than the judge decided the case. Reversal and remand to a different judge might be warranted if a judge credits a law clerk’s “preparation of this opinion.”³⁶ If a federal judge thanks an intern for assisting in writing an opinion, the West Group will print that appreciation.³⁷ So will the *New York Law Journal* if a New York State judge does so. A Westlaw check disclosed a surprising 146 published opinions (82 in the First Department, 64 in the Second Department) from 1990 to March 2004, in which the *Law Journal* printed acknowledgments to student interns from New York State judges.

Judicial interns, especially those who receive law-school academic credit for their work, are now accepted features in the courthouse.³⁸ Judges who thank their interns do so out of kindness to students who, mostly without pay, make a significant contribution. What is kind to the interns, however, is unkind to the litigants and the public. This is not to suggest that judges not use interns to help with opinions. To the contrary, judges and their law clerks improve legal education and sometimes their opinions when they assign research, writing, and editing tasks to interns, so long as the judge and the law clerk monitor all student work closely. But crediting the intern makes it appear that the court delegated its decision-making obligations to an unaccountable law student.

A higher authority forbids what the *New York Law Journal* and the West Group permit. For the past decade, the New York State Law Reporting Bureau has put into effect a Court of Appeals policy in which the State Reporter will not print judicial acknowledgments to law clerks or interns. This policy suggests that judges who want to thank their clerks and interns reconsider their impulse, however well meaning. Before the Court announced that policy, the New York State Official Reports occasionally printed irrelevant acknowledgments that law students provided “research assistance” “in the preparation of this opinion.”³⁹

Law-Clerk Cheating

Heaven forbid, a law clerk must never slip language or references past a judge. That happened in *United States v. Abner*,⁴⁰ which contains multiple allusions to the songs and albums of the Talking Heads rock band. The law clerk included these references to get free Talking Heads concert tickets. To no one’s dismay, law clerks have been fired for including non-judge-approved writing in judicial opinions. Judge Jerry Buchmeyer⁴¹ tells the story of the soon-to-be-dismissed law clerk in *State v. Lewis*.⁴² Without consulting a judge, the clerk added a

lawyer’s lament, written as a fictional “reporter,” to the Kansas official reports:

Statement of Case, by Reporter
This defendant, while at large,
Was arrested on a charge
Of burglarious intent,
And direct to jail he went.
But he somehow felt misused,
And through prison walls he oozed,
And in some unheard-of shape
He effected his escape.

* * *

LEWIS, tried for this last act,
makes a special plea of fact:
“Wrongly did they me arrest,
As my trial did attest,
And while rightfully at large,
Taken on a wrongful charge.
I took back from them what they
From me wrongly took away.”

* * *

Opinion of the Court. PER CURIAM:
We — don’t — make — law. We are bound
To interpret it as found.
The defendant broke away;
When arrested, he should stay.
This appeal can’t be maintained,
For the record does not show
Error in the court below,
And we nothing can infer.
Let the judgment be sustained —
All the justices concur.

Nor may a judge use an outside expert — as opposed to an intern, law clerk, special master, or referee — to assist in opinion writing.⁴³ As the New York Court of Appeals wrote in *In re Fuchsberg*, “law clerks often contribute substantially to the preparation of opinions. [But] [w]e cannot accept respondent’s explanation that he looked upon the law professors he consulted as ‘ad hoc’ law clerks.”⁴⁴

First Amendment Rights

May a law clerk refuse to draft an opinion? In *Sheppard v. Beerman*, a law clerk to a Supreme Court, Queens County, justice declined to draft an opinion that, the clerk claimed, would result in “railroading” a defendant. The justice fired the clerk in December 1990 after the clerk called him a “son of a bitch” and “corrupt.” The clerk sued the justice under 42 U.S.C. § 1983. District Judge I. Leo Glasser of the Eastern District of New York twice granted the justice’s motions to dismiss the complaint. Citing the law clerk’s free-speech rights, however, the Court of Appeals for the Second Circuit

reversed — twice.⁴⁵ From a unanimous *Sheppard II*: “[T]he relationship between a judge and clerk is one based upon trust and faith. . . . But the First Amendment protects the eloquent and insolent alike.”⁴⁶

In early 2002, Judge Glasser granted the now-retired justice’s summary-judgment motion, which the justice filed after he and others, including his two children, were subjected to 31 depositions.⁴⁷ In early 2003, in *Sheppard III*, the Second Circuit affirmed, “[g]iven the explosive exchange between Beerman and Sheppard and Sheppard’s inability to produce any evidence supporting his claim of improper motive,”⁴⁸ and the Supreme Court denied certiorari in late 2003.⁴⁹ The 13-year saga thus ended on a First Amendment analysis, but not on whether a law clerk may refuse to write an opinion.

Advice to Law Clerks and Practitioners

Law clerks have neither the judge’s commission nor the judge’s experience. Some clerks tend to overwrite; they include the irrelevant because they are unsure about what is important and because they might not have been at oral argument.

Practitioners can overcome a possible obstacle by making it easy for clerks to read and understand their papers — thus making it easy for the court to rule for them. Getting to the point quickly, applying law to fact succinctly, attaching photocopies of key precedents and statutes (for trial judges), making clear what relief is requested, and countering the other side’s points in writing as opposed to leaving them for oral argument are among the good habits practitioners should consider, not only for judges but especially for their clerks.

For judges and their clerks, communication is one answer to assuring quick and accurate decision making and opinion writing. Here is another for clerks. Law clerks, who come and go, must learn a valuable talent: how to emulate their judge’s writing style. Writing is connected to personality. Personality is reflected in the tone of the writing. Personality traits and writing styles do not change easily or overnight. Judges have preferences. Law clerks should learn them. Learning them maintains consistency, lets the judge adjudicate rather than edit for style, and, no small benefit, improves the law clerk’s writing. The best ways to learn the judge’s writing style is to study the judge’s opinions and to profit in future cases from the judge’s edits to current drafts.

Law clerks do not only write, whether opinions or jury charges. They also work with the public, whether it is scheduling cases or settling them. Law clerks are their judges’ alter egos. Clerks are imbued with the sense that they are more than their judges’ lawyers. As the Fifth Circuit put it, “Clerks are privy to the judge’s thoughts

in a way that neither parties to the lawsuit nor his most intimate family members may be.”⁵⁰ Clerks expect litigants and lawyers to deal with them as if they are dealing with the judge. Practitioners should realize that treating a member of the court family disrespectfully will not advance their cause. And clerks, who are subject to many of the same ethical rules as judges,⁵¹ must treat litigants and lawyers with the respect, competence, and intelligence with which the judge with the mandate must treat all.

1. Pronounced “puny.”
2. See 24 Stat. 254 (1886).
3. To study the history and current role of law clerks in America, see Paul R. Baier, *The Law Clerks: Profile of an Institution*, 26 Vand. L. Rev. 1125 (1973); George D. Braden, *The Value of Law Clerks*, 24 Miss. L.J. 295 (1953); Heather Bupp-Habuda, *Law Clerk’s Ethical Boundaries*, 38 Fed. B. News & J. 213 (1991); Norman Dorsen, *Law Clerks in Appellate Courts in the United States*, 26 Modern L. Rev. 265 (1963); John G. Kester, *The Law Clerk Explosion*, 9 Litig. 20 (1983); Cornelius J. Moynihan, Jr., *Ghostwriters in the Courts*, 17 Litig. 37 (1991); John B. Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process: Perceptions of the Qualities and Functions of Law Clerks in American Courts* (1980); Richard A. Posner, *The Federal Courts: Crisis and Reform* 102–119 (1985); Nadine J. Wichern, Comment, *A Court of Clerks, Not of Men: Serving Justice in the Media Age*, 49 DePaul L. Rev. 621 (1999); Eugene A. Wright, *Observations of an Appellate Judge: The Use of Law Clerks*, 26 Vand. L. Rev. 1179 (1973). A book-length volume about law clerks by 15 prominent judges, academics, politicians, and journalists is found in *Law Clerks: The Transformation of the Judiciary*, 3 Long Term View: A Journal of Informed Opinion (1995).
4. J. Daniel Mahoney, *Law Clerks: For Better or Worse*, 54 Brooklyn L. Rev. 321, 325–26 (1988).
5. *Hall v. Small Business Admin.*, 695 F.2d 175, 179 (5th Cir. 1983) (Rubin, J.).
6. Jefferson Lankford, *Judicial Law Clerks: The Appellate Judge’s “Write” Hand*, Arizona Att’y 19, 21 (July 1995).
7. D. Robert White, *The Official Lawyer’s Handbook* 71 (1983).
8. Robert Braucher, *Choosing Law Clerks in Massachusetts*, 26 Vand. L. Rev. 1197, 1199 (1973).
9. This story is told best in Chester A. Newland, *Personal Assistants to Supreme Court Justices: The Law Clerks*, 40 Or. L. Rev. 299, 310 (1961), and John B. Owens, *The Clerk, The Thief, His Life as a Baker: Ashton Embry and the Supreme Court Leak Scandal of 1919*, 95 Nw. U. L. Rev. 271 (2000).
10. 251 U.S. 1 (1919).
11. See *Embry v. United States*, 257 U.S. 655 (1921).
12. David J. Garrow, *“The Lowest Form of Animal Life”? Supreme Court Clerks and Supreme Court History*, 84 Cornell L. Rev. 855, 849 n.27 (1999) (book review).
13. See Comment, *The Law Clerk’s Duty of Confidentiality*, 129 U. Pa. L. Rev. 1230 (1981).
14. For an illuminating look at the extent to which former Supreme Court law clerks have disclosed confidences, see Garrow, *supra* note 12 (reviewing Edward Lazarus, *Closed Chambers: The First Eyewitness Account of the*

- Epic Struggles Inside the Supreme Court (1998), and Dennis J. Hutchinson, *The Man Who Once Was Whizzer White: A Portrait of Justice Byron R. White* (1998) (footnotes in title omitted)).
15. Garrow, *supra* note 12, at 893.
 16. See William H. Rehnquist, *Who Writes Decisions of the Supreme Court?*, U.S. News & World Rep., Dec. 13, 1957, at 74.
 17. *Id.*
 18. See William H. Rehnquist, *Robert H. Jackson: A Perspective Twenty-Five Years Later*, 44 Albany L. Rev. 533 (1980).
 19. *The New York Court of Appeals: A Practical Perspective*, 34 St. John's L. Rev. 197 (1980).
 20. Richard A. Posner, *Cardozo: A Study in Reputation* 148 (1990).
 21. Jeffrey O. Cooper & Douglas A. Berman, *Passive Virtues and Casual Vices in the Federal Courts of Appeals*, 66 Brooklyn L. Rev. 685, 697 (2001).
 22. Abby F. Rudzin & Lisa Greenfield, *Ten Brief-Writing Don'ts — The Judicial Clerk's Perspective*, 85 Ill. B.J. 285, 285 (1997).
 23. Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. Chi. L. Rev. 1371, 1384 (1995).
 24. For advice on writing a bench memorandum, see Alvin B. Rubin & Laura B. Bartell, *Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges* 143–44 (Fed. Jud. Ctr. rev. ed. 1989); Richard B. Klein, *Opinion Writing Assistance Involving Law Clerks: What I Tell Them*, 34 Judges' J. 33 (1995).
 25. Daniel J. Meador, *Appellate Courts: Staff and Process in the Crisis of Volume 49* (1974).
 26. Wald, *supra* note 23, at 1384.
 27. See David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 Geo J. Legal Eth. 509, 555 (2001) ("Judges should write their own published opinions. They should not have law clerks or anyone else do the writing for them.").
 28. See, e.g., Alex Kozinski, *Making the Case for Law Clerks*, 3 The Long Term View: A Journal of Informed Opinion 55 (1995).
 29. Douglas K. Norman, *Legal Staff and the Dynamics of Appellate Decision Making*, 84 Judicature 175, 175 (2001). To avoid the dangers of allowing pool, or central staff, attorneys to produce "no judge" opinions, see an article by (later recalled) California Chief Justice Rose E. Bird, *The Hidden Judiciary*, 17 Judges' J. 4 (1978). To make effective use of law clerks in opinion writing while preventing bureaucratic, or committee, writing, see a piece by Second Circuit Judge J. Daniel Mahoney, *supra* note 4, and another by an Arkansas Supreme Court justice, George Rose Smith, *A Primer of Opinion Writing for Law Clerks*, 26 Vand. L. Rev. 1203 (1973).
 30. Federal Judicial Center, *Judicial Writing Manual* 11 (1991).
 31. William Domnarski, *In the Opinion of the Court* x (1996).
 32. Bernard E. Witkin, *Manual on Appellate Court Opinions* § 10, at 16 (1977).
 33. Jack Leavitt, *The Yearly Two Foot Shelf: Suggestions for Changing Our Reviewing Court Procedures*, 4 Pacific L.J. 1, 17 (1973).
 34. Ruggero J. Aldisert, *Duties of Law Clerks*, 26 Vand. L. Rev. 1251, 1256–57 (1973).
 35. See *Conroy v. Aniskoff*, 507 U.S. 511, 527–28 (1993) (Scalia, J., concurring) (noting that legislative history "examined and quoted" was "unearthed by a hapless law clerk to whom I assigned the task"); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 318 n.5 (1977) (Stevens, J., dissenting) (noting his law clerk's statistical analysis); *Noto v. United States*, 76 S. Ct. 255, 258 n.4 (1955) (Harlan, J.) (noting that data came from the record "or from the research of my Law Clerk").
 36. See, e.g., *Parker v. Connors Steel Co.*, 855 F.2d 1510 (11th Cir. 1988) (Gibson, J.) (mandating recusal of federal district judge who credited his law clerk in a footnote), *cert. denied*, 490 U.S. 1066 (1989).
 37. See, e.g., *Veras v. Strack*, 58 F. Supp. 2d 201, 201 n.1 (1999) (Baer, J.) (acknowledging student intern); *Masayesa for & o/b/o Hopi Indian Tribe v. Zah*, 816 F. Supp. 1387, 1393 n.* (D. Ariz. 1992) (Carroll, J.) (acknowledging law clerk).
 38. See generally Gerald J. Clark, *Supervising Judicial Interns: A Primer*, 36 Suffolk U. L. Rev. 681 (2003); Rebecca A. Cochran, *Judicial Externships: The Clinic Inside the Courthouse* (2d ed. 1999).
 39. See *In re Application of the Dist. Att'y of Queens County*, 132 Misc. 2d 506, 512 n.5, 505 N.Y.S.2d 293, 297 n.5 (Sup. Ct. Queens County 1986) (Rotker, J.); *People v. Sadacca*, 128 Misc. 2d 494, 501 n.3, 489 N.Y.S.2d 824, 830 n.3 (Sup. Ct. N.Y. County 1985) (Rothwax, J.). One reported opinion went even further: "The hard work, thorough research and scholarship of Edward Larsen, New York Law School Intern participating in the Richmond County Bar Association Summer Intern Program, is gratefully acknowledged and in large measure credited in the formation of this opinion. Mr. Larsen has the sincere thanks of this Court." *Wolkoff v. Church of St. Rita*, 132 Misc. 2d 464, 473, 505 N.Y.S.2d 327, 334 (Sup. Ct. Richmond County 1986) (Kuffner, J.).
 40. 825 F.2d 835 (5th Cir. 1987) (Garza, J.).
 41. *Criminal Law: The Escape*, 45 Tex. B.J. 541, 542 (Apr. 1982).
 42. 19 Kan. 260 (1878).
 43. See, e.g., *In re Judicial Disciplinary Proceedings Against Tesmer*, 219 Wis. 2d 708, 580 N.W.2d 307 (1998) (per curiam) (reprimanding judge for having law professor write 32 opinions).
 44. 43 N.Y.2d (J), (Y), 426 N.Y.S.2d 639, 648–49 (per curiam) (Opn. of Censure — Ct. on Jud. 1978).
 45. See *Sheppard v. Beerman*, 822 F. Supp. 931 (E.D.N.Y. 1993), *aff'd in part & vacated in part* by 18 F.3d 147 (2d Cir.) (Altimari, J.) (*Sheppard I*), *cert. denied*, 513 U.S. 816 (1994), *on remand to & dismissed* by 911 F. Supp. 606 (E.D.N.Y. 1995), *vacated & remanded*, 94 F.3d 823 (2d Cir. 1996) (McLaughlin, J.) (*Sheppard II*).
 46. 94 F.3d at 829.
 47. See *Sheppard v. Beerman*, 190 F. Supp. 2d 361, 362 (E.D.N.Y. 2002), *aff'd*, 317 F.3d 351 (2d Cir. 2003).
 48. *Sheppard v. Beerman*, 317 F.3d 351, 357 (2d Cir. 2003).
 49. *Sheppard v. Beerman*, 124 S. Ct. 135 (2003).
 50. *Hall*, 695 F.2d at 179.
 51. See generally John Paul Jones, *Some Ethical Considerations for Judicial Clerks*, 4 Geo. J. Legal Ethics 771 (1991).