“Why Clerk? What Did I Get Out of It?”

Stephen L. Wasby

Introduction

Supreme Court clerks, who have sought the cachet of such a prestigious position, come from lower court clerkships on relatively well-defined paths and are said to share the ideology of the justices whom they serve. Assuming that law students wishing to clerk in the U.S. courts of appeals are likewise aware of the prestige such a position carries, do they also seek to become elbow clerks for individual judges for ideological reasons or as a result of other factors? How do they end up clerking for one judge rather than another? If they have applied for a clerkship with more than one judge, what was the basis for their choices? Then, given what drew them to a federal appellate court clerkship, once they have completed it, how do they view the experience? Did it meet their expectations? What effects do they feel the clerkship has had on their career?

In this article, I look first at how law students come to clerk for a particular judge—why they wish to clerk in a federal appellate court for “their judge.” The second part of the article describes the clerks’ retrospective evaluation of the quality of the clerkship, particularly the extent to which it met their expectations. I also examine the effect on the clerks’ subsequent career and their post-clerk contact with the judge.

I look at the chambers of Judge Alfred T. Goodwin of the U.S. Court of Appeals for the Ninth Circuit. This is the court studied by an organizational sociologist and lawyer who clerked there and surveyed some other chambers, and who viewed clerks as an important element in an appellate court as an organization. Judge Goodwin has sat on the Ninth Circuit since 1971, and, after serving as the court’s chief judge from 1988 through early 1991, took senior status but has continued to hear a substantial caseload. A 1995 survey of Judge

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Goodwin’s clerks—from the Oregon Supreme Court, the District of Oregon, and the Ninth Circuit—provided the principal basis for this article; also used were casual conversations with some clerks and more extended conversations with the judge as part of my ongoing research on the Ninth Circuit. Of the seventy-five clerks contacted for interviews or to whom surveys were mailed, thirty-one (41.3 percent) participated.

What can a study of one judge’s clerks provide? Even an intensive study of them cannot give us answers, much less definitive ones, to all the questions noted above. Reasons include the variability in judges’ use of, and interaction with, their clerks and the possibility that a judge of a particular temperament and ideology may attract clerks of a particular style. In this regard, it is important to note that Judge Goodwin is a pragmatic moderate who is thought to be easy to work for, and he is known to give his clerks considerable autonomy to carry out their tasks. These factors limit our ability to generalize about other chambers, but given that we lack such a study of any appellate judge’s clerks, what is presented here will add to our knowledge and perhaps provide the basis for further exploration. Moreover, looking at the large number of clerks who served this judge provides a far richer picture than was previously available of relationships between clerks and “their” judges, thus increasing the quantum of information we possess about these important members of the “federal judicial family.”

**Becoming a Clerk**

**Selection of Clerks**

Much of the exchange among judges about clerk selection concerns the never-ending battle over dates before which offers should not be made—dates that often seem, at least to judges far from the East Coast, to be unenforceable. Perhaps because the judges know what they want, they speak less about the bases on which they select their clerks, despite its importance—which can be seen in the remark that clerk selection is “an important mechanism with which to obtain the desired behavior from subordinates.”

Because judges, as principals, “work so closely with their clerks,” they “are in a relatively good position to monitor law clerks as their agents,” but nonetheless it is in a judge’s interest to have clerks “motivated to behave as desired” rather than those “whose actions need to be controlled or corrected.”

Judge Goodwin takes most of his clerks directly from law school, although one year he selected as an elbow clerk a court staff attorney who had done some work for him on individual cases. The judge did this “when the court

2. Unattributed quotations are drawn from those conversations and from survey responses.
4. Corey Ditslear and Lawrence Baum, Selection of Law Clerks and Polarization in the U.S. Supreme Court, 63 J. of Pol. 869, 870 (2002).
5. Id.
was trying to use the possibility of a judicial clerkship as a recruiting point in seeking high quality law graduates for staff positions,” and he wished to give the idea credibility. He would initially choose clerks “on paper,” one secretary observed, and preferred to have in hand an applicant’s grades through the first semester of the second year of law school and letters of reference. He did not want to receive writing samples with the applicant’s first letter, as he could ask for one when he invited someone to interview. For him, “stellar records, academic performance, work experience, and professors’ letters” might clinch having an interview, but they would “not necessarily” lead to a job offer. There had to be something more. A former clerk said that the judge liked to have those he thought interesting working for him, which went beyond being up-to-date on developments in legal thought, although he wanted that as well. After the judge started going to camp in Death Valley, where he would take a clerk, he would take into account whether the clerk would be open to that sort of activity.

Ideology is often mentioned as a basis for judges’ selecting clerks. Although an ideological match between judge and clerk develops because “clerks gravitate toward judges they agree with,” ideology is thought important because, to the extent that clerks are not selected on the basis of similarity of views between judge and clerk, more monitoring of their work might be required. However, Judge Goodwin was like many judges who did not take into account the prospective clerk’s ideology or philosophical views, and he indicated he would prefer someone who was not a “Yes person” but would challenge his views before those views encountered other judges’ eyes.

Given the large number of applications, in most years the judge asked his present clerks, using general criteria he suggested, to perform a first cut before he undertook interviews. A secretary might also “semi-screen” applications, one said, and she would ask the judge not to hire someone who was a “total jerk.” Clerks, with the secretary perhaps participating, were to sort the applications into three piles, for example, Possible, Maybe, and Don’t Bother. The judge said he occasionally looked at the “don’t bother” pile to determine whether the clerks were on the right track, because, if from elite schools, they might have a “colonial attitude” toward less prestigious places:

6. Although a few judges engaged in the practice, it did not become widespread.
7. See Letter from Judge Alfred T. Goodwin to Howard F. Maltby, Associate Dean and Dean of Students, Columbia University Law School (Dec. 27, 1989) (on file with author).
9. In this regard, Judge Goodwin was like a rather conservative judge in another circuit who “almost always hired clerks with a liberal political bent,” because, the judge was reported to have said, “If I can get my opinions by someone who has a totally different point of view, then I know I’m right.” David Simon Sokolow, A Tribute to the Honorable Thomas Gibbs Gee: The Best Boss A Guy (or Gal) Ever Had, 73 Tex. L. Rev. 471, 471 (1995).
"I tell them don't categorically throw them out," he says, because "there may be a Learned Hand in those venues."

Nonetheless, through the 2002-03 clerkship year, by far the largest number of the judge’s court of appeals clerks had been from Harvard (21) and Yale (18), with roughly a half-dozen each from UCLA (8), Columbia (7), Stanford (7), and Chicago (6). Four each came from Boalt Hall (University of California–Berkeley) and from the judge’s alma mater, the University of Oregon, and two from the University of Michigan and from the University of Virginia, with one each from eleven different schools, only two of which (Willamette and the University of Washington) are in the Northwest, the judge’s home territory.

The judge preferred to interview a dozen applicants, but when those from East Coast law schools were on the West Coast during semester break and asked to see him, he relented so they would not have to return (at their own expense), thus affecting the number interviewed. By all reports, the interviews, which became a major factor in many clerks’ decisions to accept an offer from the judge, were free-ranging, comfortable conversations, during which, as a secretary observed, the judge sold himself more than he asked candidates about themselves. The judge described creating a hypothetical to test the thinking of potential law clerks—to separate those whose reaction to a case was “touchy-feely” from those with analytical minds who would, by whatever route, get him to the result by cases and precedent. Clerks, however, don’t report this sort of “testing.”

The judge is reported to have said more than once that he wanted bright law clerks who would do all the work. However, he apparently did not use the interview to deal with a fit between judge and clerk on work habits by indicating his expectations, or to ask potential clerks about their work habits; at least one of his secretaries felt he should have done so, although a single interview might not sufficiently identify work-habit problems. One clerk reported that,

10. Lorne M. Sossin indicates that clerks are involved in selecting other clerks for the Supreme Court of Canada. There the selection of a clerk is “almost never” a result of present clerks’ views, but they may well contribute to a candidacy being turned aside. Lorne M. Sossin, The Sounds of Silence: Law Clerks, Policy Making and the Supreme Court of Canada, 30 U. B.C. L. Rev. 279, 286 (1996).

11. Adding the judges’ clerks from his time on the Oregon Supreme Court and the District of Oregon changes this picture very little, although the result is that there were two clerks each from New York University and the University of Pennsylvania, and a second clerk from Willamette.

More recently, the judge has chosen one clerk each year from the University of Oregon Law School. He says that his good contacts with the faculty there allow him to obtain thorough recommendations. Judge Alfred T. Goodwin, conversation with author, Bend, Oregon, October 21, 2006.

12. Secretaries, often key actors in judges’ chambers, have been little noticed. That they are involved in selection of clerks, whom they supervise and with whom they frequently interact, is one indication of the importance of their role. For further discussion, see, Stephen L. Wasby, A Judicial Secretary’s Many Roles: Working with an Appellate Judge and Clerks, 7 J. App. Pract. & Process 151 (2005).
during a two-hour interview, she was not asked any hard questions about the work situation, and a later candidate told her that the judge had not changed in that regard. This clerk observed critically that the judge wanted interesting people but not producers. However, another clerk, unhappy at being pressed to turn out cases, was critical in a different direction in saying the judge wants someone who will get opinions out quickly but, apparently having clashed with the judge, questioned whether, despite what he might say, the judge really wanted bright clerks, or at least self-confident ones (which he conceded was not the same thing) and someone to argue with him, because “self-confident ones will have strong convictions about the law [and] are likely to be stubborn.” Another clerk reinforced this by saying, “The judge doesn’t necessarily want someone to argue, but someone who will get opinions out quickly the way he wants.”

Reasons for Clerking

Most discussions of service as a law clerk, particularly for federal judges and justices of state high courts, note the position’s prestige, which enhances the clerk’s later legal career. Prospective clerks certainly had heard of the prestige of the clerkship position and the credential it provided. It “would be a door-opener,” as one put it, that “would put you in good stead for the rest of your career,” or would keep open academic possibilities. Yet, perhaps beyond assuming that people seek to clerk because of that career enhancement, we know little of why they actually sought to clerk. Here I draw on the survey of Judge Goodwin’s clerks to explore why they wanted to clerk for an appellate judge, and why they applied to work for Judge Goodwin, as well as why, when offered the position, they accepted.

Why Clerk?

Some clerks desired a clerkship to learn about the system; others wanted a transition to the “rest of one’s life.” Political considerations did not seem salient, at least in terms of the initial choice to clerk, as only one clerk spoke of wanting to have some impact on the direction the law was going. One clerk said a clerkship embodied his law school’s ideals of engaging in public service, but the clerkship itself, not some policy goal, was the public service. Some had been told, often by law professors, “it was a good thing to do,” a special type of opportunity that would not come along again and a “natural opportunity to do something you couldn’t do otherwise” unless, perhaps, you were a legislative assistant.

Many talked of having wanted to know more about the judicial process, to participate in the process from the inside, and to be on the judge’s side of the bench. They saw the clerkship as a way to obtain unique insights into operation of the system and to learn firsthand which considerations weigh heavily with judges. Slightly more specific was the hope, by one who wanted to be a litigator, to gain insight into advocacy. Another wanted “the intellectual experience of working with a judge and drafting opinions,” something
he believed would help him decide if judging, about which he was already thinking, was something he might want to do. A few focused less on learning about process than substance. As one stated, it was a “unique experience to view and participate in the heart of American jurisprudence,” and another talked of developing better knowledge of the law.

Another way of putting this desire to obtain knowledge is a somewhat different reason for seeking to clerk—that one would get “experience with the judiciary before turning to the ‘real world’ of private practice.” Clerking would be something different from practice and would, in short, provide a “good transitional year” between law school and law practice. A clerkship, said one former clerk, “comes logically after law school,” and, as another stated, it was “a good experience before getting a real job,” “a nice hiatus between law school and the start of practice.” Others talked of not being sure what they wanted to do with their careers, so being a clerk “seemed a good way station”—perhaps not a demanding one but a position providing “steady, not overly demanding work commensurate with low government wages.” In short, the clerkship might be “a good way to put off a decision about what to do with myself.” Someone who was uncertain about what he wanted to do but was thinking somewhat about teaching and knew a clerkship would help in teaching as well as look good on a resume, said the clerkship allowed him to postpone a decision and work on publication in an unpressed environment.

Why an Appellate Clerkship?

Why seek a clerkship at the U.S. court of appeals? Not everyone who held an appellate clerkship had had it as their primary goal. One clerk had applied mostly to trial judges because he wanted to litigate, but most district court clerkships were for two years and he wished to serve for only one. This, which related more to logistics than to the position itself, was also a consideration for several others. Some, including two who served Judge Goodwin as a “bridge” from service in the District of Oregon to that on the Ninth Circuit, had applied to the judge when he was on the district court but he was elevated before their clerkship began. For others, the individual, not the level of court on which he sat, prompted their applications; for one, an appellate clerkship “seemed more attractive than the district court” only after meeting the judge.

Prospective clerks may have several reasons for selecting the appellate courts. This is evident in the response of one who chose that court because the clerkship paid more money, there was more diversity in subject-matter, and there was “more fun,” but others gave more focused reasons. For some, the greater prestige of a clerkship there played a part, with one saying an appellate clerkship would be a “more conspicuous feather, a brighter one.” However, for most, what attracted them was the law they could encounter and with which they could have have to deal. An appellate clerkship deals with legal rather than factual issues, with more opportunity to think about the law than about facts. This is akin to the comment by a clerk who felt more
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prepared for an appellate than a trial court clerkship because his interests were more academic and less trial-oriented; related was another clerk’s interest in the greater research and writing opportunities at the court of appeals. Clearly, this also meant dealing with issues that seemed more interesting than those in the district court, although for some clerks, “interesting” issues were those discussed in law school and others thought it meant a greater variety or diversity of issues. What they could do with those issues also played a part: “I wanted to think about issues as well as decide cases,” said one, and another spoke of the “more contemplative atmosphere” he expected in the appellate court.

Despite the prospective clerks’ interest in legal issues, the possibility of being more involved in developing the law did not seem a salient factor for many. However, it did affect the choice of a few clerks. Another felt the appellate court could provide involvement in decision-making (and intellectual stimulation) and spoke of wanting a place where he could have an impact on the direction of the law. A third wanted to be involved in deciding legal issues discussed in law school.

Although some sought an appellate court clerkship because they were not headed for courtroom work, others did so to diversify their experience. One clerk wanted to try the appellate court because he had already clerked in district and state trial courts during law school, and thus “had a good sense of the criminal trial court.” Others chose the appellate court because they would later be involved in trial court work. One had been told that he would learn in his own practice about the trial level but less about appellate courts, so the clerkship could offset that imbalance. One of these clerks, however, said he hadn’t realized that district courts might have more training value for a prospective civil litigator, indicative of what another said of law schools’ failure to communicate about differences between clerking at the two levels. Another clerk reported that once he had made his choice, he was “jealous of those who went to the district court: they were in the trenches,” and, were he to do it over, he would do both a district court and a court of appeals clerkship.

Why This Judge?

Why did prospective clerks seek to work for Judge Goodwin? Although we take it for granted that one applies to judges individually even if one is applying to several judges on the same court, when Justice Goodwin was on the Oregon Supreme Court, prospective clerks applied to the court. As the clerks saw it, they were “assigned” to the judge or heard from him for the first time when, having selected them, he made them an offer.

A few clerks, including one who chose the judge based on a prior clerk’s recommendation, may have applied for a clerkship only with Judge Goodwin, but most applied to a number of judges. Before beginning the application process, some had heard him speak—one of them said he “seemed like a personable and intelligent person”—and others had heard of him but only one had known him professionally, through American Bar Association staff work.
They applied to Judge Goodwin essentially because of location, reputation, or a combination of the two. There is one reason that definitely did not apply—as a step toward a clerkship in the U.S. Supreme Court. Someone might wish to clerk in the court of appeals because it is a prerequisite, and there were some Ninth Circuit judges—most particularly, Judges William Norris, Alex Kozinski, and J. Clifford Wallace—quite a number of whose clerks went on to clerk for a Supreme Court justice. Two of Judge Goodwin’s clerks—James N. Gardner (Potter Stewart, 1975 term) and David Litt (Anthony Kennedy, 1990 term)—did go to the Supreme Court, but the judge was not one of those seen as providing that connection.

Geography was a factor prompting some applications. For some applicants, location meant the Ninth Circuit, because they were interested in that court. (One said it was "one of three elite circuits," always with the D.C. and Second Circuits, which had “better judges and more interesting issues.”) More often, however, location initially meant the Pacific Northwest generally and Oregon in particular, as Judge Goodwin maintained his chambers in Portland from his appointment to the court of appeals in 1971 until the mid-1980s. For one prospective clerk, the Pacific Northwest was an area acceptable to her husband and two children for year, while others definitely wanted to clerk in the Northwest, although one of those ended up in Pasadena when the judge moved there. Someone seeking to be in Oregon applied for clerkships with all the federal judges in Portland and some Oregon Supreme Court judges, and another, a native Oregonian, “wanted to come home.” After Judge Goodwin relocated to Pasadena, location came to mean Pasadena itself, as “a nice place to work out of”; the Los Angeles area, because, for one, “my boyfriend had taken a job there, and I thought I could spend at least one year there”; or California, as a place in which to stay for those from that area.

What about the judge’s reputation? Many made recommendations to the would-be clerks. This included family, friends, and former clerks, particularly those from the same law school, and it included a high recommendation from the father of a prospective clerk, someone at a law school who knew the judge through church, and an Oregon contact who “recommended him as a delightful person.” In another instance, a friend of a person who recommended Judge Goodwin was the prospective clerk’s mentor, whose views were reinforced by the comments of some of the judge’s former clerks who worked at the Portland law firm where the would-be clerk had spent a summer.

Also important were some law school placement offices that maintained files reporting alumni clerking experiences. At Yale, from which many of the judge’s clerks had come, comments were said to be “uniformly glowing”; the clerkship adviser at another law school was “high on him”; and the placement office at another law school reported “good things” and indicated that the judge was a “congenial” person with whom to work. In general, prospective clerks had been told he was a “good judge and decent human being” or had “a good personal style,” and another clerk said he had applied because of the judge’s
reputation as a fair, honest, and middle-of-the-road judge, an indication that personal characteristics and ideology were involved in the choice.

Indeed, by and large clerks choose to work for judges of similar ideology, even if the judge does not select on that basis, with the result at times a less than perfect "match" of views that can also result from the clerks' imperfect information. Potentially the most difficult to identify are those judges who are moderate, ideologically centrist, or pragmatic, like Judge Goodwin, who was also said to follow the law, not the political winds. (One clerk spoke of being told that President Nixon, who had nominated Judge Goodwin, had been the last president who appointed judges without an ideological bent.) It is easier to identify the views of those at the ideological extremes—in the Ninth Circuit, judges like Stephen Reinhardt at the liberal end and Andrew Kleinfeld at the conservative end. Yet from the grapevine and reading of dispositions, prospective clerks can also identify judges who are moderate in persuasion, and a few clerks spoke of having done that. One noted that the judge's opinions showed he was a "political moderate." Perhaps because of this stance, ideology was mentioned less frequently than personal characteristics as a reason for applying to clerk for him.

Accepting the Clerkship

As the clerks, with only one or two exceptions, had applied for several clerkships, it is important to know why they accepted the position Judge Goodwin offered them. A couple spoke of having accepted the offer because it was the first one received, and one immediately withdrew all other applications. Another said, "You don't turn down a clerkship," but another spoke of having put a "squeeze play" on the judge after receiving a clerkship offer from a court of appeals judge in another circuit. Many accepted Judge Goodwin's offer for a combination of reasons that, like their reasons for applying, involved location, court, and Judge Goodwin as a person.

Seventeen of twenty respondents agreed that location was a positive factor, while three said it was negative, with only one, who disliked southern California, saying he "hated" the location. In addition to those who had applied to clerk with the judge because of location, one specifically noted a desire to stay in Oregon, and another, who had spent time in Texas and on the East Coast, said that the location provided geographic balance. Sixteen said that the court was a factor in accepting the clerkship—one stressed that "the Ninth Circuit was a big plus"—while four said it did not play a role in their choice. For another, the alternative, the Oregon Supreme Court, lacked the same level of excitement and did not deal with the public law issues of greatest concern to the prospective clerk.

Perhaps not surprisingly, all who answered said the judge himself had been the reason they accepted the clerkship. Illustrating that the process of choosing a judge for whom to clerk is ultimately a "visceral as well as intellectual decision, coming out of an imprecise process," the clerks referred both to personality and intellect in their often effusive comments. The interview,
obviously a post-application element, had a substantial effect, seen in the comment that the deciding factor was “mostly his personality as revealed by the interview.” Many spoke of reacting positively to, and being particularly impressed with, Judge Goodwin in the interview or “had a good feeling about him when I met him.” Typical were the remarks that the judge “was approachable and we hit it off well,” “our relationship got off to a wonderful start,” and “I enjoyed his company from the start.” Someone who “hadn’t known much about him before meeting him” said he liked him immediately and very much wanted to work for him because of his “marvelous demeanor.”

One clerk called particular attention to the circumstances of his interview, which took place in a New York City hotel lobby during an ABA meeting: “two and a half hours later, we were still there, talking.” This was part of the picture that for most, it was personality that attracted them. This meant, for one, the judge’s “wit, frankness, and kindness”; for another, it was his “sense of humor on top of his intellect.” Others spoke of his being “relaxed and uncommonly convivial, with eclectic interests.” One said that he was “one of the nicest, most even-keeled and kind people” the prospective clerk had met. In one of the longer adjectival strings that a clerk offered, the judge was said to be “unpretentious, sensible, experienced, reasonable, and a smart person”; a similar list came from the clerk who spoke of the judge’s friendliness, informality, and basic practical sense combined with intelligence, openness, apparent approachability.” To another, who had been told by many that the key to a clerkship was the judge and the nature of the judge’s relations with his clerks, “it was obvious that he was a special person and a judge who cared about his clerks.” He seemed to another to be someone who would be both friendly to clerks and a good teacher, and his interest in clerks could be seen in the interest he expressed to one about that person’s undergraduate work in philosophy and work in criminal law.

In addition, some were attracted to the judge by elements they had in common. This could be occupational, such as the common background as former newspaper reporters, which created a bond from the outset; intellectual, like “a shared interest in the First Amendment”; or philosophical, when a discussion of the applicant’s work on a book on injunctions showed that both were “thoughtfully conservative” and “we looked at things in the same light.” For still another, “shared Presbyterianness,” although not discussed, led the applicant to feel comfortable. For a few, the judge’s political moderation was the attraction, as it was for the person who said the judge was “in the best tradition of non-partisan Oregon politics” and the one who said that the judge was “willing to decide cases based on the facts and the law rather than ideological reasons.”
Evaluating the Clerkship

Beyond some clerks' individual reminiscences, little has been written about how clerks later view their clerkships. However, Charles Sheldon notes that the advantages for clerks are personal, including "[d]evelopment of confidence, maturity, contracts and lasting friendships"; professional; and practical, which includes the acquisition of "important lawyering skills," such as "development of research proficiency, refinement of writing skills, and the acquisition of knowledge of the rules, procedures, and decisional process of the appellate courts." I look at the clerks' evaluation of their experience as a clerk for Judge Goodwin, including the clerks' overall evaluation of the clerkship; their perceptions as to whether the clerkship met or exceeded their expectations, or how it failed to meet them; the effects of the clerkship on their subsequent careers; and what contact, if any, they had with the judge after the clerkship ended.

Overall Evaluation

All survey respondents provided extremely positive overall evaluations of their experience: An "excellent experience," a "fantastic unforgettable experience," a "fantastic opportunity," a "tremendous experience I will never forget" were joined by many observations of "very good" and "great" and that it was "an excellent year, well worthwhile." However, a couple volunteered comments about the judge's travels, as in the remark, "I was disappointed by how little he was there," or the comment that "the only negative" was "his absence," and others thought the frequency of his absences made it difficult for them to discuss with him in detail matters they considered important.

Among more specific observations, some related to a clerkship's place in a legal career, as when one clerk said the year "was an excellent job, with an opportunity right out of law school to be involved in significant legal decisions on a wide variety of matters." Other reactions had a strongly personal cast, as when a clerk had "found a mentor," and another had "developed an attachment to law and the legal process" not present when the clerkship began. Effects on the clerks' thinking processes could be seen in the statement that one "learned how to balance intellectual curiosity and scholarly inquiry with practicality and concrete results," and clerks also spoke of improvements in their research, writing, and analytical skills. Others spoke of learning how the court worked or of obtaining an insight into the en banc process, while others talked of "gaining familiarity with issues" and developing expertise in various areas of the substantive law. The clerkship was "good graduate training" on the wide range of substantive legal topics in federal court, said one.


Despite all these positives, some negatives—beyond those dealing with the judge’s absence—appeared at various points in the survey. Those with negative feelings might have been disproportionately represented among non-respondents, and some interviewed close to the time of the clerkship were less positive, but respondents’ willingness to express disappointment about certain aspects of the clerkship suggests that the positive overall reaction is not unrepresentative.

Not all clerks held positive views of their working relations with the judge, with a couple characterizing their relationship as “fairly adversarial.” One clerk “let him know he was blowing cases by being too speedy,” while the judge had made clear that the clerk was not moving quickly enough. Yet this clerk spoke very positively of how the judge had quietly and carefully called to his attention some implications of “a scathing memo, with biting tone,” that the clerk was about to send concerning an opinion written by another member of the court. The judge conveyed that “I might want to think about different ways of sending a message.” In speaking of this event, the clerk now says, “Good parents inform their children of their mistakes, they tell them of possible mistakes. This says they value him,” and the clerk clearly felt valued by the judge.

As this suggests, feedback received by a clerk is an important part of a close working relationship in chambers. In this regard, it is noteworthy that all but one respondent said that the judge complimented them on their work, although their perceptions of the extent of those compliments varied, from “relatively often” to infrequent, although the judge was said to be “careful to provide reinforcement when it was necessary.” Comments about praise received are, however, made in the context of young professionals who expected to work on their own without close supervision and who could “know he liked my work because he used it” and found “a light edit of my draft...a compliment.”

If he was chary with explicit praise, Judge Goodwin also did not express anger toward the clerks or others. Of the twenty clerks responding to the survey, only three said he was ever angry at them, one saying it was about “politics,” and only two said he became angry at others, with one of those saying it was over “poor work.” As one clerk put it, “I screwed up an opinion once, and the judge never reprimanded or criticized me,” and one secretary observed that only once had she seen him chew out a clerk. The judge did, however, have other ways of conveying how he felt, with one clerk saying “he often let us know gently if he was disappointed in any of the workers in his chambers or his colleagues on the bench.” His “punishment’ of you was withdrawal, not anger,” said another clerk. “All he had to do was ‘lean away’ and you knew you needed to do more.” As to anger directed at others, the most that was said was something like, “Maybe I saw him with a stern look if he didn’t like what was happening in a case or peevd at another judge,” and another clerk talked of the judge expressing frustration and anger at, for example, judges who could
not seem to write an opinion twelve to eighteen months after argument; even then, he never expressed anger directly at them.

Those observations and the one that a clerk had “learned an enormous amount about judging” leads us to ask whether the clerks found the year “a useful learning experience.” All who responded said they found it so. A couple spoke in terms of the transition between law school and practice. One said that “the fresh-faced ideology of law school met the real world,” something “‘eye-opening,’ particularly for an activist student.” In addition to more comments that clerks had learned “more about research and writing,” most remarks were about “learning a lot more about how courts work” and “becoming familiar with the appellate process” and “the workings of a collegial court.” This included learning “what seemed to influence how opinions were written,” and “how courts made their decisions” including “how judges’ personality determines their jurisprudence.” Of particular note is a clerk’s having obtained insights into judges’ concerns such as their lack of comfort with long sentences and their “wanting to be ‘fair’ rather than follow a law they felt was stupid,” and the realization that they, too, were human and had to live (and sleep) with the decisions they made.

Meeting Expectations

Asked, “To what extent did the experience meet your expectations?” surprisingly a few said they “did not really have expectations” or “didn’t have very specific expectations,” but for most, their expectations were met “substantially,” “well,” “very much,” or at least “pretty well”; included were exuberant responses, such as that the clerk “looked forward to coming in to work every day, in ways I did not again” for many years. (All but one of the judge’s Oregon Supreme Court clerks who responded to the survey said that their clerkship exceeded their expectations in certain respects, with the exception saying the clerkship met his expectations “fully.” Some felt that the judge gave more responsibility than expected and gave the clerk free rein on many projects. The only person who said that expectations were not met in certain respects had that happen as a result of delegation rather than constraint, as he said he didn’t think it appropriate he should be the one to decide a case.)

Of course, to say that expectations were met doesn’t say what those expectations were, as when a former clerk spoke of being “happy” with the clerkship, which was “pretty much what I expected,” and another stated that there had been “a stunning overlap between expectations and what it was like.” Likewise, while fifteen of eighteen said the experience exceeded their expectations, a “No” answer didn’t necessarily mean unhappiness, as was evident in the comment by a clerk who had looked forward to a wonderful year and “that’s exactly what I had.” It was also the case that high expectations could be exceeded: “I had pretty high expectations of good relations; the relations were better than any clerk could expect.”
Some said their expectations touched on the law's substance. One spoke of having "learned a great deal about the law, particularly the kinds of issues that come to federal courts," and said he "was able to work on a number of cases of considerable significance both to the law and to my view of importance." Another spoke of "learning of much substantive law in areas we hadn't studied in law school"; another wrote of having "worked on fascinating issues." There were also expectations about organizational style, evident in a clerk's comments about the judge's "relatively hands-off style," in which "you did your work and handed it to him." As this suggests, there were expectations about the judge, more explicit in comments that "our judge was extremely fair and commonsensical."

What did exceed expectations? Part related to personal growth—the "intellectual challenge" had been greater than expected, and one's writing "improved immeasurably," or a clerk had "acquired confidence in my analytic skills, in my ability to approach difficult cases both rigorously and thoughtfully," what the clerk characterized as likely being "judgment." Some expectations related to involvement in the decisional process. The clerks had "a great deal more responsibility than expected" or "much more power to write opinions" and that clerks' "input into opinions" exceeded expectations. This was perhaps best put in a comment about "the degree to which clerks participated in the process and were able to draft opinions and guide decisions in interesting cases" and in another clerk's statement that clerks "had great input into outcome, reasoning, and style of decisions." A job element that exceeded expectations, an "unexpected bonus," was the occasional trip to San Francisco and Los Angeles.

Exceeded expectations also related to relationships; here the relationship with the judge was a major element. One heard about the judge's "fine personal qualities," that "working personally with Judge Goodwin was a delight," and that he was "an extraordinarily nice guy and fine judge." The judge "made it special," another put it, by treating clerks "as equal despite our naivete" and "making us feel at home as part of the court's extended family." Also quite evident was the importance of "close relationships developed with co-clerks," the "fellowship with co-clerks," the "relaxed" and "mellow" atmosphere of chambers with its "generally collegial nature," and relations with clerks in other chambers in the same building.15

While the experience exceeded expectations for most, it also failed to meet expectations for roughly two-thirds. A principal aspect was the judge's

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15 These comments, and those below about the isolation some clerks felt from other clerks, are relevant to the "clerk network," a key element in the organizational life of a court of appeals. On U.S. Courts of Appeals from an organizational perspective, see Cohen, Inside Appellate Courts, supra note 1. For more on clerk interaction within the Ninth Circuit, see Stephen L. Wasby, Clerking for an Appellate Judge: A Close Look (2003) (paper presented to Midwest Political Science Association) (on file with author). On the "clerk network" in the Supreme Court, see Artemus Ward and David L. Weiden, Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court (New York, 2006).
absences, a theme captured by the remark, "The judge was around a lot less than expected," and the observation that "the one disadvantage" of the clerkship was the judge’s "frequent absences." Another clerk thought the judge’s absences "sometimes detracted from my efforts." Some clerks thought he should have paid more attention to some of the lesser-weight cases, reflected in a complaint that "the judge thought we were spending too much time on three-weight cases" (those of modest difficulty, as rated by staff attorneys), and there was unhappiness about his agreeing to sit on extra panels, which took him away and, it was said, led to his devoting even less time to those cases.

Other aspects of the failure to meet expectations were systemic rather than particular to Judge Goodwin. One clerk was unhappy about the mix of cases as containing "too few cases dealing with the type of issues that draw law students, such as First Amendment." More important, some clerks found that being a clerk in a court of appeals chamber entailed a "cloistered-ivory tower existence," caused by the dispersion of judges throughout the circuit and particularly true in Pasadena when there were still few judges in the courthouse. (It was particularly so for those who clerked when the judge was in temporary rented space in a bank building, with no other judges nearby.) These situations forced clerks "to be premeditated" about seeing other clerks, and clerks were more likely to see other "Los Angeles" clerks in San Francisco than in the Los Angeles area.16

Career Effects

What effects did the clerkship have on the clerks’ subsequent work? While all said it had some effects, some focused on skills, others on understanding of the process that helped their work, and still others on their type of legal practice or positions they held. To some extent, these stem from the judge’s being "something of a model" both as a person and as a judge, in which he "provided an excellent model of judicial decorum and demeanor" that for one clerk proved particularly useful in preparing legal education programs.

Quite a few clerks mentioned writing skills. One former clerk was "a better writer" as a result of the clerkship, and another spoke of "an unquestionable effect of my writing and legal analysis." We "learned a lot about writing from the judge, especially short declarative sentences," "It taught me how to write a brief," and "It improved appellate advocacy" were among other comments. Perhaps the effect on the clerk’s skills was put best by the clerk who spoke of an "improved ability to think through legal issues, research the law, marshal facts to support a position, and write clearly, concisely, and cogently." There was also a general work stance, an effect "on the way I work" because the judge was "effective and self-reliant, typing his own memos, handling his own

16. One clerk voicing this concern had as a basis for comparing a federal courthouse in another city, in which he had worked during law school, where, he said, "the clerks got together spontaneously."
schedule, and making his own travel arrangements, writing his own speeches” which the clerk tried to emulate.

As to knowledge of the appellate process that was gained, an appellate lawyer “drew all the time” on such knowledge and a colleague thought that one who had clerked understood the appellate process and how judges think much better than those who had not clerked. Another litigator’s strong belief that “it is facts more than law which decides cases” really started during his clerkship year, “when I saw that application of law to facts was much more complex, subtle, and fact-oriented than I had imagined.” For some, memory of the clerk role gave them an appreciation of what present clerks encountered, leading at least one lawyer to “put myself in clerks’ shoes when preparing papers for the court.” One clerk spoke of having to unlearn bench memo style, characterized as “on the one hand, on the other hand,” and to learn how to advocate a position. What some clerks learned about the process also led them away from the appellate courts, as when a clerk realized that the atmosphere and type of work did not provide a good personal fit. Another clerk found the intense work on a limited number of cases “excruciating” and who very much preferred high-volume trial work, “when you walk into court with fifty cases and had thirty seconds to make decisions.”

As to effects on career paths, there was, of course, the “very good credential” a clerkship provided; it “puts you in a certain group” and “is a signal of your abilities,” and “the prestige of the clerkship opens doors.” One former clerk talked of “having no doubt that with the resume, the clerkship caught a potential employer’s attention,” with a job offer forthcoming when that person talked to Judge Goodwin. Another also spoke of having been offered a valuable job immediately after someone from the government agency at which he was seeking employment called the judge. This suggests the combined effect of the credential itself on a resume and the judge’s job recommendation, and the judge did in fact write such recommendations.7 It also created a special “club.” One lawyer mentioned that when he was in Beijing for a meeting, he “dumbfounded” a lawyer from another firm by saying, “You also clerked for Judge Goodwin.”

Did the clerkship affect the types of practice to which the clerks turned? Here we find instances where a clerk in effect said, “This work is for me.” One who enjoyed the clerk role served as a research attorney for a state appellate court as a career. Other clerks worked as staff attorneys (or their equivalents) for other courts for a part of their career. One of those said that being a clerk was fine, but he wouldn’t want to do it for an extended period because a clerk “was always handing off work to someone else.” The more likely connection to legal practice was evident in the comment, “My practice has always been best when it has focused on legal issues.” This lawyer, who pointed to more than five years of private practice expressly designed to specialize in legal analysis and

17. The judge’s files contain letters of recommendation for those applying for an LL.M., committee positions, employment as an Assistant U.S. Attorney, membership in the American Law Institute, and those seeking judgeships.
appeals, was among those who specialized in appellate work because of their clerking experience, one appellate specialist saying the clerkship “dramatically affected his professional path” in that way.

Indeed, that former clerk ultimately became a judge, seeking it because he had “so enjoyed and valued my experience.” That experience also affected his actions as a judge. As he noted, “Much of my approach to judging, including my relations with my colleagues and my clerks, is modeled on my experience with Judge Goodwin.” He was not alone in going into judging, perhaps not surprising because, although he was supportive of those who took different paths, Judge Goodwin recommended a path toward a judgeship for some and aided them through recommendations. (Two of his former clerks served as judges on the Oregon Court of Appeals and one moved from there to the Oregon Supreme Court.) Clerking for Judge Goodwin also led some former clerks to teaching. One said the correlation between a Goodwin clerkship and a teaching career was “not coincidental.” Indeed, as of the end of 2002, roughly a dozen of the ninety clerks for whom information is available were teaching in law schools.18 The greatest number—more than fifty—were in private practice, with ten working for government agencies (including staff work for courts), five for companies, and two for non-profit organizations, and one—David Wu, D Oregon—was a member of Congress.

Subsequent Contact

Do clerks have continuing contact with Judge Goodwin? One might expect the answer to be “Yes,” after the intense experience of a year which entailed frequent contact with the judge, an experience most saw as positive. However, while all but two clerks responding to the survey reported some post-clerkship contact, the contact has been relatively limited contact—“minimal,” “infrequent,” or “only occasional.” Indeed, one clerk expressed surprise that there was no contact because, given the judge’s “affable nature,” the clerk thought “we might have an occasional ongoing relationship.” While acknowledging not having contacted the judge and “never reached for him”—something other clerks hinted at—this clerk “never felt welcome as an ‘alumnus’ of his office calling him.”

The former clerks’ contact with the judge includes exchanging letters and notes and sending him clippings or articles they have written. A number continued to exchange Christmas cards with the judge each year, and one commented specifically that the judge (eventually) answered them. Particularly if they are law professors, they may write to recommend someone for a clerkship. He writes to congratulate them on awards they have received, and he inquires about their work and families, comments on articles they sent (including their substance) or on rules they proposed, comments on politics, and at times even on cases.

18. Several of the judge’s former clerks were known not to be working; one is deceased; and information was not available for eight (of those serving through 2003); some information may also be outdated.
Some have continuing contact with the judge roughly once a year, while the frequency was slightly higher for others, perhaps two or three times a year. Others, however, have had only two or three contacts since the clerkship. Apart from two reunions of former clerks with the judge—9—one in 1992 and another in connection with the celebration of his eightieth birthday, contacts beyond correspondence or telephone calls are indeed most likely to be lunch or dinner—"a lunch here, a dinner there," as one observed—although some clerks make a point of contacting the judge and coming to his chambers to visit with him. Limited contact is at least in part a function of distance. Those who moved to the East Coast were particularly likely to have reduced contact, but even those remaining on the West Coast who are not in the Los Angeles area might see the judge only when he came to their city to hear cases, with one clerk perhaps contacting others to take the judge to lunch or dinner, although, in an example of chance contact, they might see the judge on the street in San Francisco. Some East Coast clerks have, however, been able to see the judge when they returned to the West Coast for vacation or family visits, or when the judge has been in New York City or Washington, D.C.—more generally, a matter of "getting together when we were in the same city at the same time."

The most extensive contact came when a former clerk was involved in the Ninth Circuit's work. That lawyer's service on the court's Advisory Rules Committee, for which the judge had recommended him, allowed them to have contacts including lunch, several times a year during a term on the committee. In addition, some former clerks have tried cases before the judge. Judge Goodwin has a rule in which he would recuse himself from cases in which former law clerks appeared during the first few years after the clerkship—three to five years—but he has no permanent ban on their appearing before him, and he has written to a former clerk to commend the pro bono argument that clerk had made to the court.

**Conclusion**

What does this account of the clerks of one federal appellate judge—their choice of the clerkship and their evaluation of it—tell us? Those who have been clerks, or at least those responding to the survey, found the clerkship a positive experience, with continuing effects on their careers. Given the boost in status that a federal appellate clerkship can provide, this should not be surprising. Perhaps more interesting is what the survey tells us about what led these individuals to a clerkship for this judge. They did want to learn more about the law and how the courts functioned, but the clerkship was also "something to do." Particularly of interest is that, for some, it was a way of postponing decisions before really getting into the practice of law. It is a key point that there were multiple reasons that eventually led these

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19. By contrast, it is not uncommon for Supreme Court clerks who worked for a particular justice to have annual reunions, with their families included, with a formal dinner and informal activities.
individuals to Judge Goodwin. Some of these, such as geography, were relatively independent of any particular judge; other reasons were the type of court (appellate) or the specific court (the Ninth Circuit).

Although prospective clerks may unconsciously have gravitated toward someone who was politically like them, ideology seems to have played a relatively small role in the path to the clerkships, at least with this judge, being but one of a number of factors. Ideology, if it played a role, was but one of a number of factors in the equation, perhaps because Judge Goodwin is not an ideologue (at either end of the political spectrum). The judge's reputation, as someone for whom it was not difficult to work, also probably played a greater role than ideology. This suggests the importance of personality, which seemed to play an even larger part once potential clerks had met the judge.

If there were multiple reasons why people chose to clerk, in a particular court, and for a specific judge, multiple individuals also affected a particular individual’s decision to end up as a clerk for this judge. Included were past clerks, who either spoke of their experience with Judge Goodwin or had left reports with their law schools, an important source of information for prospective clerks; and present clerks and other chambers’ staff, who played a role in initial evaluation of applications.

Undoubtedly, some—perhaps much—of what is reported here is something which, at some level, “we always knew” or thought was likely to be the case, but some is not. Moreover, a less anecdotal and more systematic approach may have provided both a more complete and a clearer picture of why law students seek clerkships and what they feel they take away from them. What we see here are only the responses of the clerks of one judge, but those responses perhaps provide the basis for a more extensive examination of judges who vary as to political perspectives and work styles.