

# JUDICIAL CLERKSHIPS: LEGAL METHODS IN MOTION

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# JUDICIAL CLERKSHIPS: LEGAL METHODS IN MOTION

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MATTHEW  BENDER

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# FOREWORD

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Lawyers have been heard to say: “There is the trial I planned, the trial I tried, and the trial I wished I tried.” Such comparisons abound in life, but for judicial clerks, they may also apply to their time working for judges: the clerkships they hoped for, those they experienced, and those they wished they had. Professor Milner’s book can help make the law clerk experience live up to the hopes of those graduates who start their careers at a judge’s side.

A clerkship is a time to participate in meaningful public service with a chance for some even to influence judges in properly ruling on and deciding cases. Clerking for a judge can also be a look behind the stage curtain and inside the judge’s chambers to where so many disputes are resolved on motions before trial, at trial, or later on appeal. For the general public and many lawyers, these court dynamics are shrouded in mystery. Clerks cannot only see firsthand and up-close just how court process works, but also view from the inside just how nuanced judges’ decisions are.

The relationship between judges and law clerks is more like a short-term marriage, or more precisely, like a short-term adoption of an adult by an older lawyer. The experience can be more valuable and meaningful, both for the clerk and for the judge, if there is a good fit and the clerk knows what to do and how to do it well. Professor Milner was my clerk for many years and I never had a better one. She is a gifted writer who demonstrated mature judgment and an excellent grasp of the law while she adjusted well in the cloister where an appellate judge works daily with a small staff. She is highly equipped to pass on her experience to others who aspire to clerk and who want to get the most out of their service. Following her advice can help assure that when the clerkship is over, clerks look back with pride and a sense of fulfillment as they begin their careers at the bar.

Andrew L. Sonner,  
Associate Judge, Maryland Court of Special Appeals



# INTRODUCTION

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By the third semester in law school, I knew I wanted to apply for clerkships because the job offered intellectual challenges, collaborative work, and a clear civic purpose. And clerk I did, for three judges, over seven years. It was my good fortune to serve in the chambers of Judge Alan M. Wilner on the Court of Appeals of Maryland, Judge Andrew L. Sonner on the Court of Special Appeals of Maryland, and Patrick L. Woodward on the Court of Special Appeals of Maryland. Each of these judges taught me how to think about cases and draft legal analysis. The administrative assistants in chambers, particularly Donetta Swick, and my co-clerks also taught me how to work together to create a product of which we all could be proud.

As I began teaching the judicial drafting course at Syracuse University College of Law, I sought to introduce my students to the invigorating thinking and writing that happens in chambers. This book is a product of those efforts. It is organized in three parts. The first part introduces clerkships by probing some of the controversies that swirl around the position, as well as by describing the work that law clerks perform in appellate and trial courts. The second part covers appellate clerkships, first examining the foundational principles of scope of review and *stare decisis*, before turning to the drafting and editing process for majority and minority opinions. The message I hope to relay is that careful thinking is a prerequisite to any writing.

Part three of the book addresses trial court clerkships. It begins with a discussion of fact and law and how these wayward concepts show themselves in motions for summary judgment. It continues with an example of the kind of statutory law that trial courts apply on a regular basis. Part three ends with a chapter on drafting orders, judgments, and findings of fact and conclusions of law. Here too, my purpose is to demonstrate both the analytical skills and the drafting skills that law clerks employ.

The primary sources for this book are opinions and orders from state and federal courts. Most of the citations and footnotes in these documents have been deleted. Some of the text has been omitted as well, as indicated by asterisks, ellipses, or brackets. Each chapter also includes notes and questions to provoke discussion, as well as suggested further reading to satisfy the curious reader. I chose and edited the material and structured the chapters with the goal of creating a book that would serve equally well as a textbook in a “clerking” course as it would a desk reference in a judicial clerkship or internship.

Thanks to the strong team of Legal Communication and Research faculty at Syracuse University College of Law and all the students at the law school who motivate me to teach as best I can. Special thanks to Ian Gallacher and Andrew Greenberg for checking in on me. I am also grateful to the three judges who hired me for what could be the best legal job there is (aside from teaching). Judge Sonner, in particular, has become a mentor to me in life and law. He demonstrates that

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## INTRODUCTION

intelligence and grace are complementary, and he taught me that laughter in chambers increases productivity. I am one among his many admirers.

Most of all, this book would not have been written without my family's support. My parents and my sisters are part of everything I do. My daughters delight and sustain me. Thank you, Ariella and Sarah, for being patient. My husband Daniel encouraged me to take on this project and stood by me throughout its development. He gave advice, read chapters, brought nourishment, and pulled me away from the computer at just the right time. Daniel is the love of my life, and the book is dedicated to him.



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