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Rat Race: Insider Advice on Landing Judicial Clerkships*

Ruggero J. Aldisert,¹ Ryan C. Kirkpatrick²
and James R. Stevens III³

For many, the judicial clerkship application process is, to quote Sir Winston Churchill, a “riddle wrapped in a mystery inside an enigma.” It is a frenzied “Pamplona-like” atmosphere that begins on Labor Day +1 and continues unabated for several weeks. The initial week is the make or break point in the application review process because it is then that the judge starts to read each application and makes a “yes” or “no” evaluation.⁴ If his vote is a “no,” then no further action is taken. If it is a “yes,” the application passes to the law clerks, who then begin their evaluation. Our experience reviewing these applications has led us to the unanimous conclusion that many applicants select their list of judges and put together their packets with little or no thought of strategy as to how to get their applications past this initial phase and into the “yes” pile. We would like to guide the judicial clerkship applicant through the application process by discussing how our chambers conducts the interview and selection process. Specifically, we hope to dispel rumors of what goes on behind the curtain, and ultimately

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2. Law Clerk to Judge Aldisert, 2005-2006, Yale University, B.A., 2001, UCLA School of Law, J.D., 2005.

3. Law Clerk to Judge Aldisert, 2005-2006, University of Notre Dame, B.A., 2002, Duke University School of Law, J.D., LL.M., 2005.

4. We recognize that each chambers conducts its search differently, with some judges merely relying on his or her “feeder,” the recommendation of a favored professor, for their clerks, but we hope the following advice will be of some aid to those applying to chambers where the clerks and judge participate fully in the screening of applications.

shed some light on how a clerkship applicant could improve his or her chances of receiving an offer.

Although this article reflects the viewpoint of only one chambers, our collective experience is broad. Judge Ruggero J. Aldisert has been receiving law clerk applications, interviewing candidates and selecting clerks since 1961. From the standpoint of sheer experience in the law clerk selection process, Judge Aldisert must be near the top of the list of current federal appellate judges. His two present law clerks, Ryan Kirkpatrick and James Stevens, each wear two battle stars for action in the application process. Kirkpatrick and Stevens earned their first star in 2004 when they survived the initial post-Labor Day “running of the bulls,” a term which appropriately describes the federal judiciary’s present hiring plan. The two clerks earned their second star a year later when they closely examined each of the 200 applicants in the 2005 “stampede” and ultimately helped to select the two best candidates to go on to future honors.

The authors are fully aware that there is a vast amount of literature discussing the clerkship application process. Most of the literature is couched in somber academic tomes, one of which was serious enough to require 334 footnotes.⁵ Our treatment of the subject is far less scholarly. We will not be discussing the role of game theory or the use of the “medical-matching model” in law clerk selection.⁶ Our purpose is simply to provide an insider’s perspective into the clerkship application process and, in doing so, defend the following theses:

- Unless you are the Editor-in-Chief of your school’s main law review or one of the top five or ten students in your class, you need to set yourself apart from the competition.
- Your road to success is through the face-to-face interview with the Judge. In making this point, we depart from the truism in the decision-making process that writing a good brief is more important than oral argument. In your written applications you may have sterling academic records, stunning extracurricular activities, and superb references, but whether you get the job offer depends on how you perform at the personal interview.

5. See George Priest, *Reexamining the Market for Judicial Clerks and Other Assortative Matching Markets*, 22 *YALE J. ON REG.* 123 (2005).

6. See, e.g., Annette Clark, *On Comparing Apples and Oranges: The Judicial Clerk Selection Process and the Medical Matching Model*, 83 *GEO. L.J.* 1749 (1995).

I. THE OBSTACLE

Every year, thousands of law students across the country apply for judicial clerkships. In Judge Aldisert's thirty-seven years on the federal bench, and his previous eight years on the Common Pleas Court of Allegheny County (Pittsburgh), Pennsylvania, he has seen the number of applications received by his chambers rise astronomically. In Fall 2005, we received over 200 applications and conducted forty-two phone interviews and sixteen personal interviews, all for two positions.⁷ Incidentally, even with 200 applications we are on the low end of the spectrum. And there are reasons for this. We are a senior judge's chambers, not those of an active judge.⁸ Moreover, we are located almost three thousand miles from the districts comprising the Third Circuit.⁹

From those judges who responded to our requests in preparing this article we learned that the number of applications received by other judges on the Third Circuit in 2005 ranged from 150 to 675. A leading New York City judge in the Second Circuit reported that he "[r]eceived about 300 and invited about 15." A random sampling of active judges in the Ninth Circuit showed 228, 400 and 784 applications.

In a self-perpetuating cycle, the increased competition for clerkships has led many applicants to simply apply to more judges. Even the very best applicants routinely fail to obtain the clerkships they most covet. The typical response to this crap-shoot is to roll the dice more often. According to one career services office, the average applicant sends his materials to sixty-five judges. It is not atypical for a qualified applicant to apply to over 150 judges.

This trend is certain to continue with the advent of the Online System for Clerkship Application and Review (OSCAR).¹⁰ Introduced in the fall of 2005, OSCAR permits applicants to file their federal clerkship application materials online. In OSCAR's first

7. We originally invited over twenty applicants to our chambers for interviews, but that number was whittled down as applicants received offers from other chambers.

8. This does not mean that our work is less. An active judge has seven four-day sittings of counseled appeals a year, but he or she has four law clerks. We have about forty percent of a full calendar, but have only two clerks.

9. For health reasons, Judge Aldisert moved his chambers from Pittsburgh to Santa Barbara, California, in 1987. For fifteen years thereafter, he flew to Philadelphia for hearings. During that time, he also sat by designation with the Fifth, Seventh, Ninth, Tenth and Eleventh Circuits. Currently, Judge Aldisert is only hearing Third Circuit appeals, generally by video-conference.

10. The Federal Judiciary Online System for Clerkship Application and Review, <https://oscar.symplicity.com/> (last visited Feb. 21, 2006).

year of service, 258 judges participated.¹¹ Under this system, applicants no longer need to go through the trouble and expense of printing and mailing dozens of applications; they can now select judges to whom they wish to apply with a simple click of a mouse. Although the system makes the application process easier on applicants, it also allows applicants to apply to twice or thrice the number of judges with no additional effort. OSCAR may even encourage submissions by those who would otherwise not go through the trouble and expense of snail-mailing paper applications, making the Judge's selection task all the more difficult.¹²

All of this is a long way of emphasizing that clerkships are extremely competitive. Applicants are competing against hundreds of other top students from law schools across the country. Many applicants are under the impression that having high marks and an editorial position on law review or another prominent journal will automatically put them at the top of every judge's list. This is not the case. Every judge receives dozens of applications from students with near identical qualifications. Indeed, only a small percentage of those who apply are genuinely unqualified. It is a common saying in our chambers that we could probably pick an applicant at random and he or she would make a capable law clerk. The high number of qualified applicants reinforces the need for candidates to set themselves apart by highlighting both personal and academic achievements. Here's how.

II. GETTING AN INTERVIEW

A. *Do You Have to Come from an Ivy League Law School?*

Contrary to popular belief, many federal judges routinely hire from a diverse group of law schools. It is a common misconception that you have to be an Ivy Leaguer, or from the top fifteen schools, to be considered seriously for a federal clerkship. Indeed, in hiring for the current 2005-2006 term, the judges on the Third Circuit looked beyond the usual suspects and hired clerks from law schools such as Temple, Ave Maria, St. Louis University, Cardozo, Seton Hall, Dickinson, William & Mary, Duquesne, Pittsburgh, Florida, Rutgers, Villanova and the University of Akron. A table of the

11. United States District Court for the District of Columbia, Second Look at Oscar—Part 2 1 (2005), <http://oscar.dcd.uscourts.gov/oscar-FAQ.pdf> (last visited May 9, 2006). As of this writing, 559 judges have indicated that they will participate in OSCAR. See http://oscar.dcd.uscourts.gov/participating_judges.pdf (last visited May 9, 2006).

12. Our chambers does not and will not participate in this electronic cattle call. If for no other reason, we would have to print every application ourselves.

clerks chosen by Judge Aldisert from 1961 through the newly filled 2006–2007 term shows similar diversity.¹³

| <i>Law School</i> | <i>Number of Clerks</i> | <i>Law School</i> | <i>Number of Clerks</i> |
|-------------------|-------------------------|-------------------|-------------------------|
| Pittsburgh | 10 | Brooklyn | 1 |
| Duquesne | 4 | Columbia | 1 |
| Boston College | 4 | Emory | 1 |
| Notre Dame | 4 | Hastings | 1 |
| Berkeley | 3 | Harvard | 1 |
| George Washington | 3 | Miami (FL) | 1 |
| Pennsylvania | 3 | Rutgers | 1 |
| Albany | 2 | Seattle | 1 |
| Catholic Univ. | 2 | UCLA | 1 |
| Cincinnati | 2 | Valparaiso | 1 |
| Duke | 2 | Vermont | 1 |
| Fordham | 2 | Villanova | 1 |
| Northeastern | 2 | Virginia | 1 |
| NYU | 2 | William & Mary | 1 |
| Pepperdine | 2 | Yale | 1 |
| BYU | 1 | | |

B. Your Resume

1. Less is More

Unless you possess significant experience between your undergraduate and law school years, hold a Ph.D. or an M.D., or have done something truly extraordinary that merits extra mention, keep your resume to one page. When scores of resumes pass through our hands on a daily basis, it's often difficult to discern why someone who summered for "Biglaw" in New York must belabor the point for half a page in his or her resume that he or she performed document review on three different projects.

If you did do something interesting as a summer associate, highlight that experience in your explanation of what you did at the law firm. For example, if you worked on a novel legal issue or an interesting pro bono case, add a sentence specifically describing the issue and the work you did. Descriptions such as these allow the judge and the clerks to form an impression of who you are and what interests you, and they provide conversation pieces should you be granted an interview. If you performed the typical law firm tasks of researching and writing for junior partners and associates, then simply state the sections of the firm in which you worked. Don't try to

13. It bears noting that from 1968 to 1988 a clerk's term in Judge Aldisert's chambers was two years. Also, as mentioned above, Judge Aldisert was on the Pennsylvania Court of Common Pleas in Pittsburgh from 1961 to 1968, which may partially explain the preference for Pittsburgh law schools.

“wow” the resume reader for half a page with distracting information.

2. Know Your Audience

You are writing this resume to get a job as a law clerk, not a patent clerk. Highlighting your work on novel scientific research is a bonus on the resume, but going ad nauseam into the depths of the science will likely lose your reader and detract from the other highlights on your resume.

That being said, prior work experience gives insight into a person’s character and work ethic. The judge always keeps an eye out for entries that the applicant served as a waiter or waitress, or has some life experience beyond taking exams. The resume of one of our 2006–2007 term clerks caught Judge Aldisert’s eye because he had been a landscaper at a cemetery in the judge’s hometown, a real “down to earth” type of guy. We were all under the impression that this was a tasteful way of saying “gravedigger.” Alas, it was not so, but the resume reference did lead to some interesting interview sidebars.

In sum, although going into elaborate detail regarding prior work experiences is unnecessary, briefly noting them will help set you apart from other applicants.

3. Reveal Your Personality

The judge always looks for something in your resume that hints at your actual personality. He is on the lookout for some clue that shows you have interests outside of the law. If you like movies, then say so. If you say “films,” this suggests that you like Bulgarian films with Croatian sub-titles. If you say you like John Wayne movies, the judge is in hog heaven.

Always remember that the “Interests” section of the resume serves two purposes: showcasing your personality and providing topics of conversation for the interview. It behooves you to include something unique or interesting. Ask yourself: would you rather be asked about movie trivia (about which the judge *will* amicably quiz you) or about your views on the exhaustion requirement in federal habeas corpus jurisprudence?

C. Cover Letter

1. The Recommended Standard Form Letter

Cover letters should be short. Unless you have some special interest in or connection with a particular judge, use the standard

form letter. The cover letter is not the place to recount all of your academic and professional accomplishments or to discuss your summer work experiences; that is the purpose of the resume. If you are the editor of a journal or rank highly in your class, you may note those achievements. Other than that, however, the cover letter should be straightforward and short. The following sample letter typically used by Harvard applicants is a good example:

Dear Judge Aldisert,

I am a third-year student at _____ Law School and _____ editor of the _____ Journal/Law Review. I am writing to apply for a 2006-2007 term clerkship in your chambers.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. The writing sample is from _____, which examines _____. Also enclosed are letters of recommendation from the following people:

| | | |
|------------------|------------------|----------------|
| Prof. X | Prof. Y | Ms. Z |
| _____ Law School | _____ Law School | _____ Law Firm |

If there is any other information that would be helpful to you, please let me know. Thank you for your consideration.

Sincerely,

Joseph Applicant

2. The Exception to the Universal Cover Letter Rule

If you have your sights set on one judge in particular, the cover letter is the place to say so. Tell the judge why in particular you want to clerk for him or her. You could explain that a named professor recommended that you apply to these particular chambers, or that you discussed some of the judge's cases in class, or that you talked to a former law clerk who raved about the clerkship, or that the judge made a speech or wrote an article that impressed you. But here's a real caveat: don't fake it, because if you are lucky enough to get an interview, the judge will surely ask you about it.

D. Letters of Recommendation

The importance of letters of recommendation cannot be overstated. Stellar letters of recommendation will separate an applicant from the pack, and can often compensate for deficiencies such as

lower grades. Unfortunately, getting good letters of recommendation is not something you can do at the last minute. You need to start early by getting to know your professors. Receiving an “A+” in a course will not yield a good letter of recommendation if you are the student who hides in the back of the room. This does not mean that you have to religiously show up for office hours or place outrageous bids on dinner with a professor at your school’s public interest auction. But you do have to put in extra effort by volunteering in class or talking to the professor outside the classroom. As a general rule, the longer a letter of recommendation is, the better it is. The key is to give the professor enough information to fill two or three pages raving about you.

One way to help your recommender learn about you is to sit down with him or her and discuss your desire to clerk, as well as your background and career ambitions. You should also provide your recommender with your resume and a writing sample. Even if you have never talked outside of class before, it is amazing how much can be accomplished in a half-hour of chatting.

Picking which professors to write your letters is also important. All things being equal, it is always better to have prominent tenured faculty writing your letters. First, they may have connections with certain judges and can personally contact a judge on your behalf.¹⁴ Second, even if the judge does not know the professor personally, having heard the name gives instant weight to a recommendation. A recommendation from a top academic is far more meaningful and helpful to a judge. If you have been unsuccessful in building such a relationship, however, it may be that a reference must come from a lesser-known faculty member who knows you better.

E. The Writing Sample

The writing sample may be the last part of your application anyone in chambers reads, but it is nonetheless important. Unlike letters of recommendation, an excellent writing sample from an otherwise average candidate will probably not yield an interview.

14. Getting to know such faculty can definitely bolster your chances, as there are many judges who rely entirely on the word of a trusted professor or practitioner for their hiring. A close friend of Judge Aldisert observed that although he received a couple hundred applications, he is “quite sure that those applicants knew nothing of me and had no desire to come with me. It has become the pattern for students to apply to every circuit judge living in an acceptable locale, hoping to get the best offer they can. So the applications no longer mean anything to me. I react only to a judge or professor or lawyer friend who has experience with a student and makes an effort to contact me and strongly recommend the person. Only then will I follow up with the application and possibly an interview.”

But a poor writing sample can easily destroy the chances of an otherwise stellar candidate. In our chambers, it is the law clerks' responsibility to read the writing samples of those applicants whom we select for personal interviews. In reviewing this year's round of applications, the clerks made several observations, some of which are obvious, and others that are not.

Let us start with the obvious: spell check, spell check, spell check. It is startling to count the number of writing samples that have obvious spelling errors on the first page. (At the very least, spelling errors should be buried towards the back of the writing sample; the clerks generally do not make it that far.) It is baffling that someone would take the time and effort to assemble an otherwise beautiful and impressive application packet and not even notice the red underlining on Microsoft Word.

Similarly, flagrant grammatical errors are inexcusable. Although the state of grammar in this country is on a perpetual decline, basic rules should not be ignored. We will not recount the numerous errors we saw this year except to remind applicants that "it's" is a contraction for "it is" and "its" is a possessive pronoun meaning "belonging to it."

A less obvious observation concerns what type of writing to use for a clerkship writing sample. A writing sample should showcase how you write. The best way to do this is to pick something short and punchy rather than long and formalistic. Reasoning sections from research memoranda you wrote at a second-year summer position often make the best writing samples. By this time you should have developed an identifiable style and abandoned some of the more rigid rules developed in your first-year legal writing course. And unlike briefs or motions, these sections probably best showcase your ability to be objective, which is a cornerstone of the law clerk job. If your writing sample is overly long, we recommend redacting the piece down to a workable size to ensure that the reader's attention is focused upon your best writing.

Organization is also very important. As a law clerk, you must be an organized writer. You will write about very complex issues, and some bench memos exceed fifty pages. Learn the value of headings and topic sentences. It is essential that you cue the reader, who often is the judge, where you are leading him. This also makes your writing sample much easier for the law clerks to skim.

Finally, you should be the only editor of your writing sample. We frequently receive law review notes as writing samples. Law review notes are generally so heavily edited that is impossible to tell whether it is the author's work or that of the author, five law review

staff members and a faculty advisor. Regardless of what type of writing you use, you should send an unedited version. To buttress that point, it often helps to include a cover page stating that no other editors had a hand in this work.

Using a law review article is also problematic because bench memos and judicial opinions should not look like law review articles. If you send us a note with 200 footnotes detailing every nuance of your topic, the Judge begins to fear that this is how every memo and opinion will look next year. That being said, publishing a note during law school is an impressive accomplishment, and several law review notes have caught our eye because they address topics that interest either the Judge or the clerks. So if you do have a note you would like to use, send in an unedited version. If possible, also send in a shorter, less “academic” writing sample. That way, if the clerks need to get a better feel for your writing, or if they do not share your interest in the law and economics analysis of holographic wills, they have another writing sample to use in their evaluation.

F. Send in Your Application as Early as Possible

Remember what Civil War General Nathan Bedford Forrest said: “Get there firstest with the mostest.”¹⁵ It is critical that the chambers receives your application on D-Day H-Hour, which, under the Clerkship Hiring Guidelines,¹⁶ is the first day after Labor Day. In other words, your application should not arrive on the second or third day after Labor Day, and certainly not a week later. You’re up against a lot of competition, and judges and clerks frequently suffer from “Resume Fatigue Syndrome.” Although it may be unfair to applicants who live far away or cannot afford overnight FedEx, the truth remains that getting your application in the judge’s hands while he or she is fresh does improve your chances.

G. Get Your School Involved in the Process

As discussed above, you do not need to go to a “top” law school to get a clerkship. Nonetheless, schools do play a very important role in the clerkship application process. In addition to offering varying degrees of academic rigor, law schools also offer

15. *DICTIONARY OF QUOTATIONS* 261–62 (Bergen Evans ed., 1968).

16. The Clerkship Hiring Guidelines are a timetable established for the hiring of law clerks. Most, though not all, federal judges follow the Guidelines. *See Report of the Ad Hoc Committee on Law Clerk Hiring Endorsing a Law Clerk Hiring Plan for 2006*, <http://www.cadc.uscourts.gov/bin/lawclerk/> (last visited March 13, 2006).

varying degrees of involvement in the application process. Applicants from schools that are highly involved in the process tend to have a distinct advantage over those applicants who are left to figure out the process for themselves. Involved schools make sure applications arrive together on the first day, that they are placed in easy-to-read folders (rather than having letters of recommendation put in individual envelopes), and that they are accompanied by a letter from the dean and a booklet of faculty profiles. Such a presentation creates the impression that the applicants bear the special imprimatur of the institution itself, and it gives judges the opportunity to compare students from a given institution in one reading. When judges compare apples and apples in this fashion, it generally results in at least one or two students from a given institution receiving interviews.

If your school does not do these things, you should consider establishing a Clerkship Committee so that candidates from your school will be on a level playing field with those schools that have an organized process. Although schools have varying degrees of financial resources, most can afford to undertake these small steps that improve their students' clerkship chances and make the lives of judges much easier.

H. They Could Be Researching You

Most judges may be unfamiliar with the power of the Internet, but their clerks are not. This past year, when there was a free moment or two in the chambers, the law clerks "Googled" several of our applicants' names and, lo and behold, they found a treasure trove of information omitted from the carefully-crafted application packet. What does this tell you, the applicant? Be careful what you put on personal web pages, web logs, or other Internet sites such as Friendster, because a clerk with a couple of minutes on his or her hands could be researching you. Although clerks may find it fun to circulate a link to your website around the office, you may not appreciate what knowledge of your party antics may do to your job chances. And if you are very active in legal or political activities, you should generally note it on your resume. Although the fear that judges may screen candidates for their political views is understandable, nothing raises more red flags than an applicant who fails to disclose that he or she is a regular contributor to the *Nation* or the *National Review*. Most judges will not screen for ideology, but they will screen for an agenda. Such omissions can only lend credence to a suspicion that an applicant harbors an agenda.

III. COMMUNICATIONS WITH CHAMBERS

A. *General Contact*

You are being evaluated in all communications with the chambers. The law clerks are evaluating you from emails, letters and phone conversations. You should always return phone calls and emails promptly and check emails or letters for spelling errors. Do not let your guard down. Judges rely on their clerks and secretaries to be their second set of eyes and ears, and to pick up on subtle clues.

B. *The Phone Interview—Initial Contact with the Clerks*

Our chambers first pre-screens applicants by phone interview with the law clerks before inviting candidates to Santa Barbara for a personal interview with the Judge. Phone interviews are the exception rather than the rule in the clerkship application process, but you should prepare yourself in the event you get a friendly call from a clerk wanting to chat about your application. The same rules discussed here also apply to face-to-face interviews conducted solely with the clerks, which are very common.

In our chambers, getting a phone interview is a good sign; it means that your application was culled from the pack for further review. One of our main goals in the phone interview process is to screen out those individuals who would not fit well into our chambers. This is hard to gauge by a mere phone conversation, but we consider it an important step before asking someone to incur the expense of flying to Santa Barbara.

Here are some tips for the phone interview. First, always be enthusiastic with the interviewer. In our chambers, we made over forty phone calls to applicants, and nothing was more certain to nix an applicant than a bland attitude. Second, don't just answer the questions posed by the interviewer; be sure to respond with your own questions. Discuss the judge, learn about his personal work habits, and do not be afraid to ask how he or she treats the clerks. Ask about the flying-off-the-handle quotient, or the extent, if any, of a walking-on-eggs atmosphere in the chambers. Ask about the caseload, the frequency and extent of the face-to-face relationship, or just the job in general. By far the best questions to ask, both in a phone interview and a face-to-face interview, are those the interviewer is unlikely to have heard before. This is your chance to draw in the interviewing clerk and to take charge of the conversation. Trust us, the interviewing clerk would love nothing more than to let the applicant take the reins on the phone interview. It shows initia-

tive and really allows the clerk to appreciate your interest in the position. Third, do not be afraid to talk about things completely unrelated to the law or clerking. The phone interview is about getting to know your personality. Where you grew up, whether college football is better than pro football (it is), and what movie you saw last week are not only acceptable topics of conversation, but are encouraged.

There are some responses you should definitely avoid during the phone interview. The clerk will inevitably ask you, “Why did you apply to *this* judge?” The absolute wrong answer is, “Because I might as well give it a shot.” More than one applicant was rejected because of such an answer. It indicates a lack of drive and direction. We are not telling you to lie, but there must be a better answer. Your search may not have been guided by a desire to serve a specific judge, but rather for specific locales, circuits, states or cities. If that is the case then say so. It is a manifold better response, and one that the clerk will respect. If you did apply to a specific judge because of some personal interest in that judge, then be sure to say so. Nothing will get the applicant a more favorable rating in a phone interview than a genuinely expressed, but knowledgeable, interest in the judge.

Furthermore, be sure to sell yourself. Make sure you highlight your positives, not your negatives. Do not, however, come off as arrogant. Judicial chambers are allowed only one rock star, and he or she is the one that wears the robe and carries the gavel.

Above all, be aware that much of what the clerk is trying to sense during the phone call is how your personality would meld with the atmosphere of the chambers. Judge Aldisert tells the clerks to screen for “nerds,” but what the clerks actually do is try to find applicants who would work well with the judge and the chambers’ secretary.

C. Receiving an Offer for an Interview

If you receive an invitation for a face-to-face interview, ask to be scheduled on the first day of interviews. There are three important reasons for this. First, the same principle discussed above with respect to getting your application in the first day applies equally here; you are much more likely to make a good impression on a judge if you are the first or second interview than if you are the tenth or eleventh. Second, some judges give offers to candidates on the spot even if they have other interviews scheduled. If you schedule your interview late in the process, chances are that the judge will have fewer, if any, clerkship positions still available. Third, and

most importantly, it shows that you are enthusiastic and genuinely interested in a clerkship with that judge. One prominent judge on the Fifth Circuit summed up this entire discussion when she told us: “If an applicant really wants a position with a particular judge, he can signal that by offering to do an interview the first day. When an applicant tells me that he or she wants an interview on the third day or later, I take it as a sign that he or she has a different priority.” Judge Aldisert is more forgiving because many of his applicants fly from the East Coast and he understands that it is hard to get a plane ticket at the last minute; but he is nonetheless impressed when a candidate puts in an extra effort to come out as quickly as possible.

IV. THE INTERVIEW—MISSION ACCOMPLISHED?

A. *Do Not Give Them a Reason to Say No*

If the judge invites you to chambers for an interview, you should realize that you have surmounted the highest hurdle in the application process. You have grabbed the judge’s attention. But that does not mean you should rest on your laurels. It only means that you’ve made it from the field of sixty-four to the “Sweet Sixteen.”¹⁷

You should enter any clerkship interview as you would a law school exam or moot court oral argument: prepare, prepare, prepare. Judge Aldisert tells the story of how a former clerk, David W. Burcham prepared for his interview. David checked out the Judge’s book, *The Judicial Process: Readings, Materials and Cases*, from the law school library and read the entire 938 page book on the red-eye from Los Angeles to Pittsburgh. He was not only offered the job at the end of the interview, but, after accepting and serving for two years, went on to clerk for Supreme Court Justice Byron R. White.¹⁸

Be prepared to adapt and elaborate on questions from the judge and especially be ready to ask your own questions. No two judges interview the same way, but Judge Aldisert believes that if an applicant has gone through substantial travel expenses, he or she is entitled to at least thirty or forty minutes of his time. In the end,

17. For readers unfamiliar with college basketball, the NCAA tournament begins with sixty-four teams, which are narrowed to thirty-two, then to sixteen (“the Sweet Sixteen”), eight (the “Elite Eight”), to four (the “Final Four”), and then the Championship Game.

18. David Burcham is now dean of the Law School at Loyola of Los Angeles.

you may be paying the equivalent of ten dollars a minute for the interview, so get your money's worth!

When you enter the interview, recall that the judge or his clerks have already said "yes" to you. What you have to do now is to confirm why they should say "yes" again. Don't give them a reason to reject you. In our chambers, we evaluate an applicant's interview shortly after it's over, and nearly half of the time we conclude that the applicant gave us more reasons *not* to hire him or her. The reasons are diverse and varied, but the most common problems with interviewees are: lack of enthusiasm; lack of curiosity for the position, judge or chambers; lack of knowledge about the judge; and an inflated sense of self-importance.

Why is knowledge about the judge important? It is generally not a matter of ego, but one of diligence. One of a law clerk's major responsibilities is to do research, and if you have not done your homework in learning about the judge, it's a giveaway that you won't be much of a researcher. So research the judge. Find some way to personalize the interview. Pick up a case, book or article by the judge and read it. Devise an insightful way to bring that up in the interview. Our chambers are located in Santa Barbara, so our East Coast applicants face a five-hour plane ride just to come out for the interview. Make use of that time! The application process is a whirlwind affair, but when you are invited to an interview, preparation for that interview should be your top concern.

During the interview, be respectful to the judge, but do not be overly deferential. Most judges do not want to be surrounded by "yes-men," and when these chambers evaluate a candidate after the interview, sometimes the question arises: is he or she tough enough to stand up to the judge? As Judge Alex Kozinski of the Ninth Circuit Court of Appeals has written: "While enthusiasm and genuine expressions of interest make an interview more enjoyable and improve the applicant's chances, a student who crosses the dangerous line into sycophancy, or who is too eager to agree with the judge's views, is probably digging a syrupy grave for himself."¹⁹

Most of all, relax and be yourself. Although the interview environment is such that it is difficult for the applicant to maintain poise, all that is necessary is to present yourself in a dignified, restrained, yet enthusiastic manner.

19. Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L. J. 1707, 1726 (1991).

B. *Closing the Interview*

Judge Aldisert often says, “[a]n interview is a two-way street.” Although the interview is sponsored by and organized on behalf of the judge, it is also an opportunity for the applicant to evaluate the judge. As the judge looks you over and asks you questions, you have the equal opportunity to “judge the judge,” to appraise, assess and measure. And here again Judge Kozinski makes a prescient observation: “The relationship between judge and clerk is not the ordinary relationship between employer and employee. The process by which the relationship is forged—the way parties behave, the tactics they employ, the degree of candor and enthusiasm they display—can get the relationship off to a good start or a bad one.”²⁰ The interview is the key event in applying for the position because not only must the applicants sell themselves to the judge, but the judge must also sell his or her chambers to the candidate.

If at the interview’s end you really want the job, then say so. Before you leave, say: “If offered, I would accept this position.” It seems simple enough to say, but you would be surprised how many applicants leave our chambers without repeating that simple line. Out of the hundreds of applicants, scores of phone interviewees, and dozens of personal interviewees, you want to be the applicant whose name the judge remembers as having “fire in the belly.” Closing an interview with a sincere expression of your desire for the position can only help your chances.

V. THE OFFER

Judge Aldisert’s pet peeve with many of his judicial colleagues is a failure to give a successful applicant time to consider an offer. He feels that this is the major, if not a fatal, flaw in the Clerkship Hiring Guidelines. Under these Guidelines, a judge may not receive an application before the day after Labor Day, cannot schedule an interview until ten days later and cannot interview until a week after that. But the judge is under no constraint to make an offer on the day of the interview and then say, “I offer this job now, and if not accepted immediately, the offer is withdrawn.”

This “exploding offer” is grossly unfair to the applicant who (1) may have had several interviews before the current one, and is expecting an answer from them, or (2) is scheduled to interview with other judges sometimes later the same day.

20. *Id.* at 1718.

Most applicants proceed on the law school advice to accept the first offer extended. By doing so, the student misses out on a potential opportunity for a more attractive clerkship down the road. At the same time, when the judge chooses the first candidate to walk into chambers, the judge misses out on better candidates. In preparing for this article Judge Aldisert inquired of many of his colleagues in the various circuits, who unanimously report that several of the applicants they invited to interview withdrew because they were under the gun to accept another offer.

When it comes to choosing clerks, most judges follow a procedure first defined by Carnegie Mellon Professor Herbert A. Simon in his *Models of Man* (1957) as “to satisfice”—to accept a choice or judgment that is good enough, one that satisfies. Here the judge sets up a standard or norm that he or she expects in a law clerk, and the first person to meet the minimum requirements is chosen. *Satisficing* action can be contrasted with *optimizing* action, which seeks the best result rather than a good one. *Optimizing* action is the decision-making process that Judge Aldisert follows. He is not interested in getting a *good* result; he seeks the *best* result.

To do this, the Judge extends a large number of offers for interview, probably more than most judges. He wants the person with the highest qualifications to be the appropriate match for a small chambers in Santa Barbara, where there is an extraordinarily close relationship between the judge and his law clerk. In our chambers, the Judge and his law clerks meet and talk together several times during the day to discuss cases and, yes, cabbages and kings, and to eat lunch together twice a week.

Although at times Judge Aldisert may choose one applicant before the interviewing process is concluded, he does not make the other choice until the end of the scheduled interviews. The Judge is of the view that it is unjust to cancel a scheduled interview when an applicant has already sacrificed various school commitments and expended a substantial amount of money and time for travel. Indeed, one of the clerks chosen in September 2005 was the last of sixteen persons interviewed.

There was a time when Judge Aldisert was able to protect his choice by telling the applicant at the conclusion of the interview, “We have other candidates to interview, but I am very impressed by you. If you get into a jam in the meantime, that is to say, if you receive another offer while I am still interviewing others, please call us immediately before you accept.” This proved to be satisfactory until a few years ago, when many judges—too many of them—began to insist that applicants accept an offer immediately without

giving them the opportunity to seek the advice of their spouses, their significant others, their parents—or other judges who have previously interviewed them.

The best advice we can offer to this unfortunate now-or-never offer is to appeal to the judge's sense of fair play: "Your honor, I am tremendously overwhelmed and grateful for the confidence you place in me. Will you kindly indulge me a few minutes, not more than twenty minutes, to make some personal phone calls?"

To be sure, this will not help an applicant who has not yet been interviewed by other judges, but it does permit a short time to telephone chambers where an interview has already taken place. If the judge will not extend you the privilege of twenty minutes, then you will have to make a decision. At the forefront of your mind should be the following question: "Do I need this job so badly that I am willing to devote a full year with such a demanding person?"

VI. CONCLUSION

Keep in mind that clerkships are not fungible. No two chambers operate precisely the same way. You should begin your research long before the September opening gun sounds. Learn as much as you can about how a particular chambers functions. One of the best ways to do this is to contact former law clerks.

Keep in mind that there is a significant difference between a clerkship with a trial judge and a clerkship with a circuit judge. With a magistrate, bankruptcy or district judge you will acquire invaluable experience in observing the judge and attorneys at hearings or trials. This is a good opportunity to learn about both effective and ineffective lawyering. At the same time you will acquire excellent training in writing and researching under the gun.

The pace is slower on the appellate level, and it is the most monastic life in the legal profession because your work environment is limited to an association with your co-clerks, the secretary and the judge for a year. Yet the advantage of an appellate clerkship is the intellectual satisfaction of having participated in establishing precedent that may be viable for twenty-five years or longer. Moreover, whether justified or not, a federal appellate clerkship is considered a currency of high value on your resume for decades to come.

Our advice may be synthesized as follows: obtaining a clerkship requires diligence, sincerity, enthusiasm and, never to be discounted, luck. Many law students believe that the best way to increase the chance of obtaining a clerkship is to simply apply to

more chambers. In this chambers' view, your time would be much better spent by making your application as polished as possible, obtaining recommendations from professors who know you well, and expressing a genuine interest in those chambers to which you apply.

