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Stuck Inside the Heartland With Those Coastline Clerking Blues Again

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FORUM

STUCK INSIDE THE HEARTLAND WITH THOSE COASTLINE CLERKING BLUES AGAIN*

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Supreme Court Justice Stephen Breyer, Circuit Judge Edward Becker, and Circuit Judge Guido Calabresi deserve kudos for helping to craft, implement, and publicize an efficacious solution to the increasing difficulties engendered by the selection of federal judicial law clerks. The jurists' essay, *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, which recently appeared in the *Yale Law Journal*,[1] is a must read for all those who participate in the process of law clerk hiring.

The concerted efforts of Justice Breyer and Judges Becker and Calabresi have apparently succeeded in bringing considerable order out of chaos, judging from the first two years following the implementation of the "March 1 Solution." My purposes here, however, are to illustrate how the March 1 Solution may unfairly favor judges, law schools and students situated on the coastlines, particularly the Northeast corridor between Washington, D.C. and Boston, and to explore certain measures which could limit those advantages. I offer these mid-continental perspectives on clerkship hiring at the risk of appearing populist or insufficiently grateful for the three judges' valuable contributions.

First, I briefly describe the recent essay written by Justice Breyer and Judges Becker and Calabresi, emphasizing the March 1 Solution. My response then evaluates the substantial benefits that judges and students located on the seaboards have traditionally enjoyed and how the Solution accentuates those advantages. Many federal judges presently consider unpalatable the most obvious change, namely an autumn benchmark

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* I derive the title of this piece from BOB DYLAN, *Stuck Inside of Mobile with the Memphis Blues Again, on* BLONDE ON BLONDE (Columbia 1966).

** Professor of Law, University of Montana. I wish to thank Peggy Sanner for her valuable suggestions, Cecelia Palmer and Charlotte Wilmerton for proeessing this piece, and the Harris Trust for generous, continuing support. Errors that remain are mine. I am the informal clerkships coordinator at my school; however, these are solely my views and judges should not hold them against Montana applicants or students for whom I write letters of recommendation.

1. Edward R. Becker et al., *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 YALE L.J. 207 (1994).

starting date, which might reduce those benefits. I offer several recommendations for ameliorating this situation.

I. DESCRIPTION OF THE JUDGES' ESSAY

The three judges introduce their essay with the September 1993 resolution that the Judicial Conference of the United States unanimously adopted: "The Judicial Conference recognizes as the Benchmark Starting Date for clerkship interviews *March 1* of the year preceding the year in which the clerkship begins."[2]

The authors also reproduce an important "explanatory note" that accompanied the resolution.[3] They show how the March 1 Solution followed years of failed efforts to improve law clerk hiring, during which employment processes were triggered increasingly early in time, even at the beginning of students' second year in law school.[4] During the autumn of 1993, the Judicial Conference responded to this accelerating trend by adopting the March 1 Solution. The authors assert that the Solution was successful in practice and that federal judges, law students, law professors and law school administrators strongly endorsed the Solution.

In an attempt to persuade the federal bench and law schools to continue supporting the March 1 Solution, the authors provide a valuable historical account of previous efforts to solve the law clerk hiring conundrum.[5] The three judges carefully trace the various initiatives, illustrating how none secured sufficient support of the federal bench to

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2. Memorandum from Judge Becker and Chief Judge Breyer to Members of the Judicial Conference 1 (Sept. 8, 1993) (on file with Judge Becker) [hereinafter Memorandum], *reprinted in id.* at 207.

3. According to the memorandum:

> The Benchmark Starting Date is not meant to be binding. The Conference expects that judges will make a good faith effort not to interview candidates before that date, but special circumstances might sometimes call for an earlier interview. This Benchmark Starting Date will be made known to the law schools, with the suggestion that faculties be urged not to transmit letters of recommendation until approximately February 1, which is about the time when third semester grades are available. The suggestion will also be made that law schools advise students that they are *not* obliged to accept the first offer tendered (there being widespread confusion on this point).

Memorandum, *supra* note 2, at 1, *reprinted in* Becker et al., *supra* note 1, at 208.

4. Becker et al., *supra* note 1, at 208-12; *see also* Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152, 153 (1990).

5. Becker et al., *supra* note 1, at 208-12; *see also* Trenton H. Norris, *The Judicial Clerkship Selection Process: An Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform*, 81 CAL. L. REV. 765, 767-72, 785-88 (1993) (affording similar history).

effect lasting reform. The authors then briefly sketch the results of the implementation of the March 1 Solution by the federal judiciary and law schools during the 1993-94 season, ascertaining that the reported defections were "minor in number and effect."[6]

The three judges proceed to survey the benefits and costs of the March 1 Solution.[7] For example, they find that law schools and legal education realized numerous advantages. The application and interviewing processes were less disruptive of law schools' daily operations. The benchmark date concomitantly allowed students three semesters in which to evaluate and display their abilities and decide on their career plans. The authors believe that judges were somewhat less enamored of the March 1 Solution than the previous systems, but that most favored its continuation.

The March 1 Solution did create several difficulties, such as the uncertainties about which judges would honor the date and whether applicants should accept offers tendered before the deadline. Justice Breyer and Judges Becker and Calabresi observe that much of the dissatisfaction expressed by their colleagues with respect to the March 1 Solution was "arrayed along geographical lines"[8] because of East Coast judges' perceived advantage and the concentration of highly-qualified students on the seaboard.[9] The authors state that judges situated in the Northeast corridor apparently benefited from applicants' desire for having initial interviews in that location, where quick, inexpensive travel between chambers permitted students to schedule multiple interviews in one brief time frame.

The three judges explain that this perception of a Northeast corridor advantage prompted some members of the Ninth Circuit to interview applicants before March 1. A Tenth Circuit judge correspondingly voiced concern that the cost of air fare and the complication of combining more than one interview in geographically dispersed locations within a short time period limited the number of students whom he could interview prior to the benchmark date.[10]

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6. Becker et al., *supra* note 1, at 215-16.

7. *Id.* at 216-21.

8. *Id.* at 220.

9. *Id.* at 220-21; *see also infra* note 33 and accompanying text (providing Fifth Circuit judge's observation that "many top law schools and judges are concentrated on the East Coast").

10. Becker et al., *supra* note 1, at 220-21; *see also* Wald, *supra* note 4, at 160; *infra* note 34 and accompanying text. "In contrast, an Eighth Circuit judge, apparently expressing opposition to the perceived regimentation, proclaimed: 'I am bailing out of the cartel. Let a thousand flowers bloom.'" Becker et al., *supra* note 1, at 220-21 n.41 (citing Letter from Morris S. Arnold, Circuit Judge, U.S. Court of Appeals for the Eighth Circuit, to Judge Becker 1 (May 13, 1994) (on file with Judge Becker)).

The authors explore several alternative proposals which have much to commend them, although the judges find each to be flawed.[11] One approach is premised on a medical school matching model, whereby applicants and judges indicate their preferences and are matched by computers.[12] Ninth Circuit Judge Alex Kozinski, who criticized this system because it would restrict judges' ability to create a mix of clerks or to build a team with complementary skills, championed the reinstitution of a free market scheme.[13] The authors observe, however, that the free market approach was largely responsible for the law clerk hiring problems which gave rise to the various reforms now being proposed. Because most judges currently find the medical match model unacceptable, its future prospects are dim.[14]

Justice Breyer and Judges Becker and Calabresi offer a few suggestions for improving the March 1 arrangement. The authors state that the March 1 Solution has failed to address satisfactorily "one major shortcoming"[15] of the clerkship hiring process: the practice of many judges that requires applicants to accept offers either immediately or within an unreasonably short period of time. The three judges find this unfair and "unsporting to other judges," a situation which is exacerbated by the conventional wisdom at numerous schools that students must accept the initial offer extended to them.[16] The authors recommend that deans and professors act expeditiously to counter this misunderstanding as well as to advise applicants that they are not required to accept initial offers and should ask for reasonable time to consider them.[17] The three judges propose that their colleagues provide applicants between three working days and a week to contemplate offers, with extensions for good cause.[18]

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11. Becker et al., *supra* note 1, at 221-22.

12. *See* Wald, *supra* note 4, at 160-63; *see also* Becker et al., *supra* note 1, at 221-22; Norris, *supra* note 5, at 791-98; *see generally* Annette E. Clark, *On Comparing Apples and Oranges: The Judicial Clerk Selection Process and the Medical Matching Model*, 83 GEO. L.J. 1749, 1753-87 (1995).

13. *See* Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L.J. 1707 (1991); *see also* Becker et al., *supra* note 1, at 221-22; Clark, *supra* note 12, at 1759-96; Louis F. Oberdorfer & Michael N. Levy, *On Clerkship Selection: A Reply to the Bad Apple*, 101 YALE L.J. 1097 (1992); Wald, *supra* note 4, at 161.

14. *See* Becker et al., *supra* note 1, at 221-22; *see also* Norris, *supra* note 5, at 791-98.

15. Becker et al., *supra* note 1, at 222; *see also* Kozinski, *supra* note 13, at 1716; Oberdorfer & Levy, *supra* note 13, at 1101-02 & n.18, 1104.

16. *See* Becker et al., *supra* note 1, at 223; *see also* Kozinski, *supra* note 13, at 1726-27.

17. *See* Becker et al., *supra* note 1, at 223; *see also* Kozinski, *supra* note 13, at 1726-28.

18. *See* Becker et al., *supra* note 1, at 223; *see also* Wald, *supra* note 4, at 160-63.

The authors suggest that the optimal time for clerkship selection would be the autumn term of students' third year.[19] This would enable applicants to compile a more complete record and afford judges a broader basis on which to premise their decisions. However, unless the interview and the offer dates were extended to the fall, the three judges believe that the proposal would be destined to fail because judges would participate in the same unseemly competition for clerks that existed in 1990.[20] Moreover, the authors find that there is presently inadequate judicial support for an autumn interview benchmark.

The three judges conclude by encouraging their colleagues on the bench to honor the March 1 Solution during 1995.[21] The authors reassure applicants and law school professors that they can control the system by adhering to the benchmark. The three judges also reiterate the above recommendation regarding the final year of law school but recognize that the suggestion may be premature. In conclusion, the authors ultimately propose that judges and law schools abide by the March 1 Solution in 1995, that institutions inform applicants that they are not required to accept initial offers, and that judges allow students reasonable time to consider offers.

II. THE COAST IS THE MOST

A. Preexisting Coastline Advantages

It is no secret among the *cognoscenti* that federal judges, law schools and law students situated on the East and West Coasts, especially in the Northeast corridor, enjoyed substantial advantages in clerkship hiring prior to the advent of the March 1 Solution. The institution of the Benchmark Starting Date has apparently served to reinforce certain of these benefits, although it was not intended to accentuate the advantages.

Many of those law schools that have the finest reputations are located in the Northeast corridor or in California. Indeed, four of the six institutions which received number one academic rankings in a recent survey are situated in those areas, as are the remaining schools rated in the top ten.[22] The importance of the prestige that elite institutions and

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19. Becker et al., *supra* note 1, at 223-24; *see also* Norris, *supra* note 5, at 791.

20. *See* Becker et al., *supra* note 1, at 223. "Having an offer date rather than an interview date" apparently caused the 1990 approach to crash "so hard that the judges essentially want no more part of it." *Id.*; *see also* Wald, *supra* note 4, at 157-60.

21. Becker et al., *supra* note 1, at 224-25.

22. *A Long Shot At Best*, U.S. NEWS & WORLD REP., Mar. 21, 1994, at 72; *see also infra* note 33 and accompanying text ("so many top law schools concentrated on East Coast"). The University of Chicago and the University of Michigan were the other two

their students enjoy in the world of federal clerkship hiring cannot be overstated.

Numerous judges and law faculty seem to think that students can only receive an excellent legal education at institutions concentrated on a narrow spectrum running between Washington, D.C. and Boston. Some apparently believe that the truly great American law schools are those whose zip codes begin with the number zero. The two institutions at the pinnacle of legal education, quite naturally, are the very schools that all three judges attended and at which Justice Breyer and Judge Calabresi taught before their appointments to the federal bench.[23]

Judges and law professors might make exceptions to the coastal rule for several enclaves, such as one aligned along the Pacific Ocean which includes Stanford, Berkeley and Los Angeles. A few law faculty, if pressed, may admit that "big" legal ideas can be developed in the hinterlands of Ann Arbor, Austin and Chicago, and even in such provincial outposts of legal academia as Durham, Iowa City, Ithaca, Madison and Nashville.

Moreover, a significant percentage of the most prestigious clerkships from a student's perspective are with judges located in the Northeast corridor or in California. The Supreme Court sits in Washington, as does the United States Court of Appeals for the D.C. Circuit. The D.C. Circuit, which is widely regarded as the second most important court in the land, decides cases that involve cutting-edge issues of science, economics, and public policy and which affect millions of Americans.[24] The Second Circuit and the Southern District of New York similarly resolve complex questions implicating business, finance, and criminal law that also have profound national consequences.[25] The Ninth Circuit is

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schools that received the number one academic ranking.

23. Becker et al., *supra* note 1, at 207 nn.†-††† (showing that the three judges are graduates of either Harvard or Yale Law Schools). A significant percentage of law professors have attended law schools considered to rank among the ten finest institutions and have also clerked for federal judges. *See* Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 507, 518-19. Judges also rely substantially on professors who teach at elite institutions for clerkship recommendations.

24. *See, e.g.*, Center for Auto Safety v. Thomas, 847 F.2d 843 (D.C. Cir.) (en banc) (per curiam), *vacated*, 856 F.2d 1557 (D.C. Cir. 1988); Consolidated Coal Co. v. Federal Mine Safety & Health Review Comm'n, 824 F.2d 1071 (D.C. Cir. 1987); *see also* Carl Tobias, *The D.C. Circuit as a National Court*, 48 U. MIAMI L. REV. 159 (1993). *See generally* Cass R. Sunstein, *Participation, Public Law, and Venue Reform*, 49 U. CHI. L. REV. 976 (1982).

25. *See, e.g.*, Onwubiko v. United States, 969 F.2d 1392 (2d Cir. 1992) (criminal); All Services Exportacao v. Banco Bamerindus do Brazil, 921 F.2d 32 (2d Cir. 1990) (business).

recognized for deciding critical issues involving human rights and natural resources,[26] while the Central and Northern Districts of California were among the first courts to experiment with innovative procedures for facilitating dispute resolution.[27]

It is not surprising, therefore, that numerous judges, law professors, law students, and attorneys consider the most desirable clerkships to be those with judges whose chambers are located in venues which the Amtrak Metroliner services. Of course, Justice Breyer, Judge Becker and Judge Calabresi themselves are all members of very prestigious federal courts which are situated in the Northeast corridor.

The Northeast corridor and California are also geographic locales that offer substantial possibilities for challenging and lucrative legal work after the new lawyers have concluded their clerkships. New York is the financial capital of the nation and perhaps of the world, while Washington, D.C. is the political center of the country; both offer a broad range of opportunities in private law firms, the federal government and law schools.[28]

The cities in the Northeast Corridor and California where the judges sit, such as Boston, New York, Philadelphia, Washington, San Francisco and Los Angeles, also constitute the cultural meccas of the United States. For example, the Boston Symphony, the New York Philharmonic, and the Philadelphia Orchestra, as well as the Boston Museum of Fine Arts, the Metropolitan Museum, the Museum of Modern Art, the National Gallery, the Philadelphia Museum of Art, and the Los Angeles County Museum of Art are among the finest arts organizations and institutions in the United States, even enjoying international acclaim.

It is entirely predictable, therefore, that judges on these courts would select many law clerks from law schools in the Northeast corridor, and that many clerkship applicants would target the courts in that locale. For instance, during the 1993-94 term, eleven of twelve clerks working with D.C. Circuit Judges Harry Edwards, Ruth Bader Ginsburg, A. Raymond

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26. *See, e.g.*, Flores v. Meese, 942 F.2d 1352 (9th Cir. 1991) (human rights); Oregon Natural Resources Council v. Marsh, 820 F.2d 1051 (9th Cir. 1987), *rev'd*, 490 U.S. 360 (1989) (natural resources).

27. *See, e.g.*, N.D. CAL. R. 235-7 (affording example of innovative procedures); Robert F. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case From Filing to Disposition*, 69 CAL. L. REV. 770 (1981). *See generally* Richard L. Marcus, *Public Law Litigation and Legal Scholarship*, 21 U. MICH. J.L. REF. 647 (1988). It is important to remember that clerkships on these courts, partieularly the D.C. Circuit, often lead to Supreme Court clerkships and thus are considered "feeders." *See* Wald, *supra* note 4, at 154; *cf.* Kozinski, *supra* note 13, at 1729 (discussing law professors as "feeders" who recommend students for clerkships).

28. In many cases, the clerkships are indispensable components of students' subsequent applications to enter legal academia.

Randolph and Patricia McGowan Wald had graduated from elite institutions in the Northeast corridor.[29] Between the 1992-93 and 1993-94 seasons, Judge Becker employed two clerks from Harvard and one each from Columbia, Michigan, Virginia and Yale.[30] Indeed, a highly respected member of the D.C. Circuit once revealed to an applicant, who was the editor-in-chief of the leading journal published at one of the premier public law schools, that the judge had never hired a clerk from a public institution.[31]

B. How the March 1 Solution Accentuates Coastline Advantages

The March 1 Solution accentuates the advantages of judges, law schools and students located on the coastlines, especially the Northeast corridor, in several ways, with varying degrees of subtlety. Perhaps most obvious are the advantages that derive from geography. The perceived appeal of clerkships with federal judges who sit on courts located between Boston and Washington and the relative ease, inexpense and convenience with which multiple interviews can be conducted are all factors that greatly benefit judges, schools and applicants situated in the Northeast corridor.[32]

Particularly telling were a Fifth Circuit judge's observations that the *de facto* shortening of the interview period compounded the advantages of the East Coast judges, because so many top law schools and judges are concentrated on the East Coast," and that "judges in the Northeast corridor benefit[ed] from students' desire to schedule their initial interviews along the eastern seaboard where quick and inexpensive travel between chambers enable[d] them to schedule multiple prime interviews in a short time frame."[33] In contrast, a Tenth Circuit judge stated that the considerable expense of air fare and the complications of combining more than one interview in several cities during a short time period meant

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29. *See* NATIONAL ASS'N FOR LAW PLACEMENT, 1993 FEDERAL AND STATE JUDICIAL CLERKSHIP DIRECTORY (1992) [hereinafter NALP]. The twelfth clerk attended Michigan. Of course, Judge Ginsburg's elevation to the Supreme Court in 1993 enhanced the prestige of her clerkships.

30. *Id.*

31. The judge predicted that one of his colleagues would hire the applicant who would then clerk on the Supreme Court. The judge was a better prognosticator than employer.

32. *See* Kozinski, *supra* note 13, at 1719. This is somewhat less true of Los Angeles and San Francisco, where substantial numbers of circuit and district judges are located.

33. Becker et al., *supra* note 1, at 220 (citing Memorandum from Jerry E. Smith, Circuit Judge, U.S. Court of Appeals for the Fifth Circuit, to Emilio Garza, Circuit Judge, U.S. Court of Appeals for the Fifth Circuit 1-2 (May 2, 1994) (emphasis added)).

that only applicants who targeted specific locales in his area as first choices would travel there before March 1.[34]

Even factors which appear comparatively innocuous, such as the three-hour time differential between the East and West Coasts, can assume great significance; the authors report that this time disparity afforded a palpable advantage during the 1990 season when noon Eastern time was the agreed-upon hour for making offers.[35] Judges on the Atlantic seaboard could realize analogous advantages, to the extent that they treat the Benchmark Starting Date as one for tendering offers rather than interviewing.

The authors suggest that "fundamental fairness and optimal placement require that a student be given a minimum of three working days to a week to accept an offer, with the option of an extension for good cause shown."[36] This recommendation disproportionately benefits judges and applicants on the coastlines for reasons similar to those enumerated above, although the proposals are well-intentioned and preferable to the status quo. For instance, the circumstances of geographic proximity, time, and resources will inure to the advantage of students and judges on either seaboard, insofar as the time frame just suggested would enable any applicant to schedule more interviews and secure additional offers.[37] More specifically, law students from New York City could interview there and make day trips to Boston and Philadelphia during a single week, while applicants on the West Coast might be able to interview efficiently in both San Francisco and Los Angeles. In contrast, students located in the Midwest would encounter much greater difficulty, principally economic, in assembling comparable trips during that brief time period.

The authors also urge that law deans and professors act promptly to "counter the conventional wisdom and to counsel students *instanter* that they are not obligated to accept, and should request a reasonable time to consider, an offer."[38] These ideas may subtly and unintentionally

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34. *Id.* The judge also thought that comparatively few applicants from schools on either coastline target cities that are geographically remote, such as Salt Lake City. *Id.*

35. *See id.* at 210-11. For example, "some judges called applicants promptly at noon only to find that they had accepted another offer a few minutes earlier from a judge whose 'watch was fast,'" while there was a frenzy of offers and aceeptances within minutes of noon because judges had not agreed how long offers were to remain open. *Id.* at 211.

36. *Id.* at 223.

37. Because of the relatively brief time period, many students and judges will experience problems scheduling and conducting interviews, while judges will encounter additional difficulties in making offers.

38. Becker et al., *supra* note 1, at 223.

benefit judges, law schools and students located along the coasts. Numerous applicants, particularly those from elite law schools, will generally have broader options, both in judicial clerkships and the profession. This means that coastline applicants can resist more easily the considerable pressure to accept that inevitably accompanies many offers. In comparison, the students who attend less prestigious institutions will have, on average, fewer employment prospects and may consider themselves fortunate to receive any clerkship offers, much less have the luxury of comparison shopping.

I also believe that the authors seriously underestimate the pressure which some applicants understandably will feel to accept the initial offer received. Consider the tale of a student who attended an Ivy League law school. When the judge tendered the offer, the applicant asked for an evening to discuss the offer with his family. The judge was apparently so insulted that he immediately retracted the offer, stating that he did not wish to hire a student who needed time to think about the offer.

Judge Kozinski recounts an equally revealing story of an applicant who received an offer one morning from a judge located on the East Coast.[39] The student requested that he have until early afternoon to telephone a West Coast judge whom the applicant had promised to contact before accepting an offer. The judge in the East agreed, but thirty minutes later his secretary called to report that the judge had withdrawn the offer.[40]

Finally, some judges, just like many people, evince caution and even conservatism when making employment decisions. This means that many judges, especially in close cases, probably will select the applicant who: is closer geographically; comes from a familiar milieu, such as the school that the judge or the judge's previous clerks attended; receives the strong recommendation of someone, such as a law professor, whom the judge knows; or demonstrates ability by matriculating at a prestigious institution. These and related factors benefit students who attend elite schools on both seaboards.

In sum, judges, institutions and applicants on the coasts currently possess certain advantages pertaining to clerkship hiring, while a number of judges concomitantly consider unacceptable several solutions which would remedy or ameliorate this circumstance. The preeminent example is moving the benchmark starting date to applicants' fifth semester of law school. That measure would permit interviews to occur throughout the

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39. Kozinski, *supra* note 13, at 1716.

40. *Id.* The authors, being Article III judges themselves, undoubtedly know that no one is more independent than an Article III judge. *See* Wald, *supra* note 4, at 162 (characterizing Article III judges as "notoriously independent critters").

preceding summer, thus decreasing the advantages, particularly those involving geography, which judges, law schools and students on the seaboards now possess. The authors explain that there is insufficient judicial support for the approach because judges are accustomed to earlier hiring of clerks. The final section, accordingly, provides additional suggestions for rectifying this situation.

III. MID-CONTINENTAL MUSINGS

First, the federal judiciary should seriously reconsider making autumn of the applicants' final year in law school the benchmark starting date. This change would facilitate clerkship interviewing during the previous summer and eliminate or reduce important advantages that judges, law schools and students located on the coastlines currently enjoy. The federal bench should explore mechanisms for accommodating the needs of judges, institutions and applicants not situated on either seaboard. For instance, the federal judiciary might authorize interviewing in the interval between students' third and fourth semesters, which would enable judges and applicants living inland to compete better with their counterparts on the coastlines by, for example, reducing their expenses.

If the federal bench is reluctant to adopt these prescriptions, judges, law schools and students not located on the East or West Coasts ought to examine and implement several measures which could limit the benefits that accrue simply from inhabiting the seaboards. The judges, law schools and students should work closely together to forge new, or modify existing, arrangements in ways which will foster multiple interviews in convenient locations in short time frames.

An obvious solution regarding circuit court clerkships would be to schedule interviews during the one week a month that all or most judges are hearing oral arguments in a relatively central venue, such as San Francisco for the Ninth Circuit or Denver for the Tenth Circuit.[41] The federal judiciary, law schools and applicants also should consider capitalizing on events that significant numbers of appellate and district court judges attend. For instance, every circuit conducts annual judicial conferences in which all judges participate,[42] and circuit judicial councils

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41. This idea also has some applicability to district court clerkships, as when district judges sit on circuits by designation. *See* 28 U.S.C. § 46 (1988).

42. *See* 28 U.S.C. § 333 (1988 & Supp. V 1993). I recognize that timing and time could present problems. For example, the Ninth Circuit Conference traditionally is held in the summer, which would not ameliorate the difficulties posed by the Mareh 1 Benchmark Starting date. Moreover, the judges' busy schedules during that Conference may leave them little time for interviewing. *See* Victoria Slind-Flor, *9th Circuit's Theme: Federalism*, NAT'L L.J., Aug. 30, 1993, at 3.

and various other entities within the circuits, such as task forces and district judges' committees, convene regularly.[43]

Other prospects include meetings of the American Bar Association, the American Judicature Society or similar entities. Particularly apropos times for judicial clerkship interviewing would be judicial training or educational conferences and sessions of various committees of the Judicial Conference of the United States. Although a significant percentage of these meetings are held in Washington, D.C., the advisory committees to the Committee on Rules of Practice and Evidence convene across the United States.[44]

Law schools and law students also might develop and effectuate constructive solutions that would encourage multiple interviews in convenient locations during a brief period. One possibility is for the institutions in a specific geographic area to sponsor a "regional federal judicial clerkships fair" at which judges and applicants conveniently could meet. Another would be for individual schools to invite particular judges to the campus for interviews.

Members of the federal judiciary who are located on the Atlantic or the Pacific Coast could undertake analogous efforts. The judges should be alert to opportunities to arrange interviews with multiple students in centralized venues within a compressed time span. For example, when circuit or district judges sit by designation or attend meetings of the numerous organizations, such as the American Bar Association or the Judicial Conference mentioned above, they also could interview applicants.[45]

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43. *See* 28 U.S.C. § 332 (1988 & Supp. V 1993). By way of illustration, the Ninth Circuit has many task forces devoted to specific areas, sueh as gender bias in the courts and the special problems of tribal courts. *See, e.g.*, NINTH CIRCUIT GENDER BIAS TASK FORCE, PRELIMINARY REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE (1992); David Pimentel, *Pioneering Work with Tribal Courts*, 9TH CIRCUIT NEWS, Summer 1994, at 6. *See generally* Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 STAN. L. REV. 1525 (1993).

44. *See, e.g.*, Committee on Rules of Practice and Procedure of the Judicial Conference of the U.S., *Call For Comment on Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and Federal Rules of Evidence*, 150 F.R.D. 325 (1993) (announcing advisory committees' public hearings in Dallas, Denver, Los Angeles, New York and Washington, D.C.); Committee on Rules of Practice and Procedure of the Judicial Conference of the U.S., *Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure and the Federal Rules of Evidence*, 137 F.R.D. 53 (1991) (announcing advisory committee public hearing in Los Angeles). *See generally* Carl Tobias, *Improving the 1988 and 1990 Judicial Improvements Acts*, 46 STAN. L. REV. 1589, 1606-07 (1994).

45. *See supra* notes 41-44 and accompanying text.

All those who sit on the federal bench should remember that mere matriculation at law schools on the seaboards does not necessarily insure that students will be superior judicial law clerks. Two qualities seem most important to successful clerking. One is the ability to discharge a federal clerk's substantive duties, namely researching, analyzing and writing at a high level of competence. The other is the capacity to work well with people, including the judge and the judge's staff.[46] Few law professors can teach the latter skill, and elite institutions, by no means, have a monopoly on students who possess either of these attributes.[47]

Another consideration that all judges should keep in mind is that many clerkship applicants attend law schools in specific geographic areas for a number of quite legitimate reasons which are unrelated to their abilities to matriculate and perform well at prestigious institutions. Economic restraints are obviously one critical factor. A number of students may be justifiably reluctant to assume the future debt load (which can exceed $100,000) that attends the substantial tuition charged by elite schools and the high cost of living that typically accompanies such attendance. These clerkship applicants, particularly if they are state residents, could have chosen to secure their legal educations from very fine, if less prestigious, public law schools.

Other students, for reasons which involve familial circumstances (such as ailing parents, spouses with excellent employment situations, or young children) in particular locales might not have wanted, or even been able, to exercise additional educational options.[48] Moreover, an applicant may have been unaware at the time of matriculation that her choices of law school could limit her future clerking opportunities, or the student might simply have received uninformed or bad advice.[49]

In the final analysis, federal judges should remember the cogent observation of the dean at one of the premier public law schools, an individual with impeccable credentials: a former Rhodes Scholar, editor-in-chief of an elite law review, and clerk on the D.C. Circuit. This professor asserted that quite a few of the best students at most American

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46. Kozinski, *supra* note 13, at 1708-09; Wald, *supra* note 4, at 153.

47. *See* Kozinski, *supra* note 13, at 1722 ("if you have two young, male hot dogs you may deem it particularly important to have a third clerk who is a bit older, or female, or who has had a prior career").

48. This is likely to be more true of women, who overwhelmingly assume such responsibilities.

49. For example, I know someone who attended the public law school where I grew up partly on the advice of an attorney in my hometown, who had attended Harvard. The lawyer suggested that the individual might as well attend the state institution if the person were not planning to attend Harvard, even though two elite private law schools which recently ranked in the top ten had accepted him. *See A Long Shot At Best, supra* note 22, at 72 (ranking the University of Chicago and Duke University in the top ten).

law schools could be equally excellent attorneys and clerks. Indeed, Chief Justice Warren Burger and Justice Thurgood Marshall would never have served on the Supreme Court if the Presidents who appointed them had selected only graduates of elite institutions.

CONCLUSION

Justice Breyer, Judge Becker and Judge Calabresi have rendered an invaluable service to the federal bench, to legal education and to law students by developing, implementing and publicizing the March 1 Solution to the law clerk hiring problem. Everyone involved in this process should seriously consider their suggestions for improvement as well as the recommendations above. The adoption of an autumn Benchmark Starting Date seems preferable to March 1, and judges ought to rethink their rejection of the later deadline. Until the judiciary subscribes to that solution, judges, schools and students should institute the suggestions that I have provided for reducing the advantages of those situated on the coastlines.