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## The Federal Law Clerk Hiring Pilot and the Coronavirus Pandemic

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## The Federal Law Clerk Hiring Pilot and the Coronavirus Pandemic

*Carl Tobias\**

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Just when law students attained a comfort level with the arcane intricacies of the federal law clerk employment process, as increasingly exacerbated by the second year of an experimental hiring pilot plan,<sup>1</sup> the coronavirus attacked the country and has been ravaging it ever since. To date, the virus has inflicted the most profound harm on the jurisdictions that comprise all of the “coastal elite circuits” that span the District of Columbia north to Maine, as well as the United States Courts of Appeals for the Seventh and Ninth Circuits, which apply the pilot.<sup>2</sup> I recently evaluated the pilot’s state of play before the coronavirus dramatically infested the United States.<sup>3</sup> This piece examines impacts that the coronavirus’ rampant spread putatively has on law clerk employment and how students, courts, and judges can address these problematic circumstances.

At the outset, several caveats deserve explicit recognition. First, the pandemic’s intensity, geographic scope, duration, and complicated effects remain very difficult to predict. Second, relatively few procedures that jurists deploy to implement the hiring system are easily accessible. How many judges currently honor the nascent pilot is also unclear. For example, more than half of the courts of appeals have not adopted it, but some of those courts’ jurists follow the plan, even as specific members on tribunals complying with the pilot still reject the

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<sup>1</sup> See *Federal Law Clerk Hiring Plan*, ADMIN. OFFICE OF THE U.S. COURTS (2018), [https://web.archive.org/web/20180508115305/https://oscar.uscourts.gov/federal\\_law\\_clerk\\_hiring\\_pilot](https://web.archive.org/web/20180508115305/https://oscar.uscourts.gov/federal_law_clerk_hiring_pilot) [<https://perma.cc/L8PM-7ZE4>] [hereinafter *Hiring Plan*]; *Federal Law Clerk Hiring Plan, 2nd Pilot Year*, ADMIN. OFFICE OF THE U.S. COURTS (2019), [https://oscar.uscourts.gov/federal\\_law\\_clerk\\_hiring\\_pilot](https://oscar.uscourts.gov/federal_law_clerk_hiring_pilot) [<https://perma.cc/UZ28-RNZU>] [hereinafter *2nd Pilot Year*]; Will Baude, *A Proposal for a New Clerkship Hiring Plan (When the Current One Collapses)*, REASON (Feb. 10, 2020, 3:55 PM), <https://reason.com/2020/02/10/a-proposal-for-a-new-federal-clerkship-hiring-plan-when-the-current-one-collapses> [<https://perma.cc/QS24-DKAP>] (assessing the experimental pilot plan and proffering suggestions for a new plan when the pilot fails, which Baude predicts).

<sup>2</sup> *Coronavirus Disease 2019 (COVID-19) Cases in the U.S.*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated June 24, 2020) [<https://perma.cc/GM3G-VYHU>]; see Karen Sloan, *Clerkship Candidates and Judges Give the Hire-By-Zoom Model High Marks*, RECORDER (June 23, 2020, 4:19 PM), <https://www.law.com/therecorder/2020/06/23/the-pandemic-pushed-clerkship-hiring-to-zoom%E2%81%A0-and-law-students-liked-it-403-51844/?slreturn=20200524163933> [<https://perma.cc/EAW9-76RL>] (“Like everything from the law school classes to the bar exam, COVID-19 has also upended the status quo in federal clerk hiring.”)

<sup>3</sup> Carl Tobias, *2021 Federal Clerkships: Can Order Emerge From Chaos?*, 94 S. CAL. L. REV. POSTSCRIPT 1 (2020).

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plan.<sup>4</sup> Moreover, the salient notice, application, clerkship interview, and offer measures, plus COVID-19 strictures, on which judges depend, vary substantially throughout the nation, within particular appellate courts and district courts, and even in specific courthouses.

#### I. FEDERAL COURT PROCEDURES THAT ADDRESS COVID-19

The practices that jurists deploy to combat the aggressive coronavirus reflect numerous factors, including court levels, geography, and the severity of the pandemic. The commands that encourage social distancing restrict oral arguments, court hearings, and trials in civil and criminal actions, which demand that judges, litigants, jurors, counsel, and court employees personally interact. Even though the coronavirus has affected courts, jurists, parties, and lawyers across the entire country, the procedures' ubiquity and stringency have been greatest within the trial courts that are located where the virus has perpetrated the most virulent impacts, notably Boston, Chicago, Detroit, the District of Columbia, Houston, Los Angeles, Miami, New York, and San Francisco.

The appellate courts have understandably emphasized changes that involve oral argument because this essentially constitutes the aspect of their operations where interpersonal communications are particularly likely to occur. For example, most courts of appeals recently chose to delay arguments that the tribunals had calendared in spring weeks, and the U.S. Court of Appeals for the Fourth Circuit waived the requirement that all cases designated for publication receive arguments.<sup>5</sup> Quite a few

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<sup>4</sup> See Karen Sloan, *Law Deans Implore Federal Judges to Follow Clerk Hiring Plan*, LAW.COM (Jan. 29, 2020, 2:11 PM) <https://law.com/2020/01/29/law-deans-implore-federal-judges-to-follow-law-clerk-hiring-plan> [<https://perma.cc/74HH-RNV8>]; Sloan, *supra* note 2 (noting that the ad hoc committee on law clerk hiring “has not released how many judges are following the timeline of the plan, which is voluntary,” and “[j]udges on the D.C., First, Second, Third and Ninth Circuits have indicated that they are following the plan, though most district courts have not signed on even if individual judges are abiding by it”).

<sup>5</sup> Standing Order 20-01, Temporary Suspension of Argument Requirement for Published Opinions (4th Cir. 2020), <https://www.ca4.uscourts.gov/docs/pdfs/noticestandingorder20-01.pdf?sfvrsn=8> [<https://perma.cc/7PYD-AGHZ>]; Amendment to Standing Order 20-01, Temporary Suspension of Argument Requirement for Published Opinions (4th Cir. 2020), <https://www.ca4.uscourts.gov/docs/pdfs/amendedstandingorder20-01.pdf?sfvrsn=0> [<https://perma.cc/B4C2-22AL>]; see *Judiciary Preparedness for Coronavirus (COVID-19)*, ADMIN. OFFICE OF THE U.S. COURTS (Mar. 12, 2020), <https://uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-COVID-19> [<https://perma.cc/6G5Z-ZH2M>] [hereinafter *AO Judiciary Preparedness*] (providing the federal court administrative arm's compilation of appellate court and district court measures that resist the spread of the coronavirus pandemic).

of these appellate courts and district courts, especially the Ninth Circuit, apply technological innovations, specifically conferencing by telephone and video, which could facilitate arguments plus some related operational constituents, encompassing, for instance, arraignments and plea agreements, which implicate criminal matters, and certain grand jury sessions.<sup>6</sup>

The endeavor to resist the destructive coronavirus appears rather complex at the trial court level, partly because major components, namely many grand jury sessions and jury trials, by definition require that human beings interact, which confounds efforts to practice social distancing, and the trial courts presently include substantially more jurists than the appellate courts. A plentiful number of judges have halted or slowed relatively ample civil filings and criminal prosecutions, even though the Speedy Trial Act compels prioritization of criminal proceedings. For instance, the Eastern District of Virginia and many of the remaining ninety-three district courts throughout the country stopped or postponed criminal litigation, and three of the four district courts in California suspended the Act's deadlines to relieve significant case backlogs that the districts foresee once the pandemic subsides.<sup>7</sup>

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<sup>6</sup> *COVID-19 Notice*, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (Mar. 26, 2020), <http://cdn.ca9.uscourts.gov/datastore/general/2020/03/16/COVID-19%20Notice.pdf> [<https://perma.cc/QMK2-QVGP>]. Even the Supreme Court Justices are using telephonic arguments. Press Release, U.S. Supreme Court, *The Court Will Hear Telephonic Oral Arguments* (Apr. 13, 2020), [https://supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-13-20](https://supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20) [<https://perma.cc/JA4G-URE9>]; see Adam Liptak, *Supreme Court Hears First Arguments Via Phone*, N.Y. TIMES, May 4, 2020, at A20; *Courts Deliver Justice Virtually Amid Coronavirus Outbreak*, ADMIN. OFFICE OF THE U.S. COURTS (Apr. 8, 2020), <https://www.uscourts.gov/news/2020/04/08/courts-deliver-justice-virtually-amid-coronavirus-outbreak> [<https://perma.cc/7DT3-LWW2>] (providing additional court measures that resist the spread of the coronavirus pandemic); *AO Judiciary Preparedness*, *supra* note 5.

<sup>7</sup> *E.g.*, General Order 2020-06, *In re: Administrative Order Regarding Computation of Time Under the Speedy Trial Act*, 18 U.S.C. § 3161 (E.D. Va. 2020), <http://www.vaed.uscourts.gov/notices/Gen%20Order%202020-06%20Speedy%20Trial.pdf> [<https://perma.cc/F2BL-A3QR>]; JUDICIAL COUNCIL OF THE NINTH CIRCUIT, *REPORT OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT REGARDING A JUDICIAL EMERGENCY DECLARED IN THE CENTRAL DISTRICT OF CALIFORNIA* (2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/04/10/JC%20Order%20and%20Report%20re%20Judicial%20Emergency%20in%20CA-C.pdf> [<https://perma.cc/7Y4Q-2N96>]; see also *Courts Begin to Consider Guidelines for Reopening*, ADMIN. OFFICE OF THE U.S. COURTS (Apr. 27, 2020), <https://www.uscourts.gov/news/2020/04/27/courts-begin-consider-guidelines-reopening> [<https://perma.cc/9GMF-CBQQ>]. For measures that treat various litigation components, such as grand juries and trials, which attempt to strike an appropriate balance between the need for social distancing to resist the coronavirus' spread and the need for courts to insure the delivery of justice, see COVID-19 JUDICIAL TASK FORCE, *REPORT OF THE JURY SUBGROUP: CONDUCTING JURY TRIALS & CONVENING GRAND JURIES*

Collecting those procedures may necessitate that aspirants conduct some research, although prospects can felicitously secure most practices from numerous appellate court and district court websites, the U.S. Courts Administrative Office (“AO”) compilations, and press services, including, for example, Bloomberg and Law 360.

Calibrating precisely what these activities might entail for clerkship employment seems particularly difficult to anticipate. Because the coronavirus appeared to slow most appellate courts’ resolution of appeals and practically shuttered numerous district courts, when the pandemic abates, courts and jurists will realize pent-up litigation demand to which the recent California district actions clearly attest. However, the situations can differ around the nation vis-à-vis, for example, the court hierarchy, the coronavirus’ magnitude and persistence, the comparative number and strictness of procedures that courts invoke, the length of the measures’ enforcement, the number of vacancies that individual courts experience, how expeditiously President Donald Trump and the United States Senate can fill the many openings, and how substantial case backlogs might be.

## II. FEDERAL CLERKSHIP EMPLOYMENT HISTORY

For a number of years, the hiring process worked rather ineffectively because judges disagreed on the strongest approach.<sup>8</sup> Over the 1990s, three highly-respected appellate court jurists designed a plan, which suggested employing February 1st as the earliest date when 2L students may proffer, and judges receive, clerk applications, while Circuit Judges Edward Becker, Stephen Breyer, and Guido Calabresi recommended that jurists not schedule interviews or extend offers until March 1st.<sup>9</sup> This proposal seemingly provoked considerable valuable thinking about law clerk hiring, which apparently supplied the impetus for the creation of a later plan that essentially relied on Labor Day as the crucial

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DURING THE PANDEMIC (2020), [https://www.uscourts.gov/sites/default/files/combined\\_jury\\_trial\\_post\\_covid\\_doc\\_6.10.20.pdf](https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf) [<https://perma.cc/6E5T-G3FX>]; sources cited *supra* notes 5–6.

<sup>8</sup> Various plans faltered because some judges wanted freedom of action, opposed cartels, or were apparently so determined to hire the strongest clerks that they eschewed requirements in the plans. Tobias, *supra* note 3, at 4 n.10; see Catherine Rampell, *Judges Compete for Clerks on Lawless Terrain*, N.Y. TIMES, Sept. 23, 2011, at B1.

<sup>9</sup> See Edward R. Becker, Stephen G. Breyer & Guido Calabresi, *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 YALE L. J. 207, 212-15 (1994); Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L.J. 1707, 1712 (1991) (criticizing the recommendation proffered by Becker, Breyer, and Calabresi and other efforts to create clerkship hiring plans).

time when 3L students could submit applications.<sup>10</sup> This plan functioned relatively smoothly ahead of 2013 when the judges who serve on the U.S. Court of Appeals for the D.C. Circuit, who had meticulously honored previous systems, including the latest from 2003, declared that the plan lacked efficacy and that the jurists would select clerks when they wished.<sup>11</sup>

The notice ignited a hiring firestorm that has persisted ever since; the firestorm's impacts might enhance uncertainty during this clerkship employment season and the future.<sup>12</sup> Numerous judges abandoned the 2003 plan over subsequent years because the regime fostered "exploding offers," inefficiency, cheating, and secrecy.<sup>13</sup> Other jurists closely followed this plan and more recent Administrative Office guidance, but dilemmas raised by numbers of their judicial colleagues and many law schools led the AO to officially jettison the plan early in 2014, while substituting numerous voluntary "best practices to support transparency" and calling for jurists to deploy online mechanisms for receiving applications, conducting interviews and extending offers.<sup>14</sup> The Administrative Office notice that granted 1L students OSCAR access fueled employment, which rather gradually crept up when additional judges offered first year students clerkships.<sup>15</sup> Growing

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<sup>10</sup> See Carl Tobias, *Salvaging the 2013 Federal Law Clerk Hiring Season*, 91 WASH. U. L. REV. 243, 244 (2013).

<sup>11</sup> See Carl Tobias, *Tips for Capturing 2014 Federal Court Clerkships*, 66 VAND. L. REV. EN BANC 145, 146 (2013); David Lat, *The Law Clerk Hiring Plan: Really, Really Dead Now*, ABOVE THE LAW (Jan. 30, 2013, 12:38 PM), <https://abovethelaw.com/2013/01/the-law-clerk-hiring-plan-really-really-dead-now> [https://perma.cc/MK8U].

<sup>12</sup> See Sloan, *supra* note 4. The pilot purportedly treats what many observers contend is a "two-track hiring process." Letter from Kerry Abrams, Dean & Professor of Law, Duke Univ. Sch. of Law, et al., to the Members of the Federal Judiciary (Jan. 22, 2020), <https://images.law.com/contrib/content/uploads/documents/292/60749/Deans-Letter-to-the-Federal-Judiciary-January-20201.pdf> [https://perma.cc/4HUX-YR3R]; see Sloan, *supra* note 2 ("The confluence of the COVID-19 pandemic and the final year of a two-year pilot program intended to standardize federal law clerk hiring has created plenty of uncertainty over this year's clerk selection process and what the future holds.")

<sup>13</sup> Exploding offers are ones that expire immediately once students do not accept them. Tobias, *supra* note 3, at 4 n.10; see Debra Strauss, *Top Ten Tips to the Judicial Clerkship Interview*, ABOVE THE LAW (Jan. 22, 2015, 6:59 PM), <https://abovethelaw.com/career-files/top-tips-to-the-judicial-clerkship-interview> [https://perma.cc/59NH-CAMS].

<sup>14</sup> Memorandum from Judge John D. Bates, Admin. Office of the U.S. Courts Director, to U.S. Judges (Jan. 13, 2014), [https://oscar.uscourts.gov/assets/Federal\\_Law\\_Clerk\\_Hiring-January\\_13\\_2014.pdf](https://oscar.uscourts.gov/assets/Federal_Law_Clerk_Hiring-January_13_2014.pdf) [https://perma.cc/H9LV-VZ8U]; see also Tobias, *supra* note 3, at 5 n.17 (reproducing the Administrative Office best practices).

<sup>15</sup> "OSCAR, the Online System for Clerkship Application and Review, is a web-based system for federal law clerk recruitment." *What Is OSCAR*, ADMIN. OFFICE OF THE U.S. COURTS, <https://oscar.uscourts.gov/about> (last visited June 16, 2020)



dissatisfaction, which plenty of jurists, law schools, professors, and students voiced with the relatively cryptic 2014 guidance, prompted the AO, numerous judges, and copious law school deans to urge reconsideration of the clerk hiring process and fashion certain modifications.

In February 2018, the Administrative Office carefully announced a new 2020-21 hiring pilot, which merits consideration because specific jurists dutifully respected the plan last season or probably will this year.<sup>16</sup> The Chief Judges of the U.S. Courts of Appeals for the D.C., Second, Seventh, and Ninth Circuits, as well as the deans of preeminent law schools proposed this regime, which they contended would improve student engagement in the application process and in clerking, transparency, and uniformity.<sup>17</sup> Jurists on those courts, the U.S. Courts of Appeals for the First and Third Circuits, and the U.S. District Courts for the Districts of Connecticut, D.C., and Massachusetts subscribed to the new pilot.<sup>18</sup> The AO chose February OSCAR access for the 2020-21 classes, which submitted applications by mid-June, permitted judges to extend, and students correspondingly to accept practically upon

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[<https://perma.cc/6EZS-KZEK>]. Although numerous judges hired clerks earlier, a number employed 2Ls after January because they probably chose to await three semesters of grades. See David Lat, *Clerkship-Seeking 2Ls, Start Your Engines*, ABOVE THE LAW (Nov. 4, 2013, 2:03 PM), <https://abovethelaw.com/2013/11/clerkship-seeking-2l-start-your-engines/> [<https://perma.cc/V5HV-7B6U>]; *infra* note 39.

<sup>16</sup> *Hiring Plan*, *supra* note 1; David Lat, *Order in the Court, Order in the Court: The Law Clerk Hiring Plan Returns!*, ABOVE THE LAW (Mar. 1, 2018, 7:43 PM), <https://abovethelaw.com/2018/03/order-in-the-court-the-law-clerk-hiring-plan-returns> [<https://perma.cc/7ZD3-WNWX>].

<sup>17</sup> See Letter from the Ad Hoc Comm. on Law Clerk Hiring to Federal Judges (Feb. 28, 2018), [https://oscar.uscourts.gov/\\_assets/Ad\\_Hoc\\_Committee\\_on\\_Law\\_Clerk\\_Hiring\\_Announcement](https://oscar.uscourts.gov/_assets/Ad_Hoc_Committee_on_Law_Clerk_Hiring_Announcement) [<https://perma.cc/Y5TK-ZP5Z>]; *Judicial Clerkship Info for Career Services*, NALP (Dec. 2019), <https://www.nalp.org/judicialclerkshipinfoforcareerservices> [<https://perma.cc/5SRA-WXAK>]; Karen Sloan, *Federal Judicial Clerkship Process Revamped Due To COVID-19*, LAW.COM (Apr. 30, 2020, 1:30 PM), <https://law.com/2020/04/30/federal-judicial-clerkship-hiring-process-revamped-due-to-covid-19> [<https://perma.cc/DC6T-PRZK>] (explaining the changes made to the pilot, which encouraged all federal judges to accept online applications and to conduct remote interviews, procedures that COVID-19 necessitated).

<sup>18</sup> Most appellate courts leave the decision on honoring the pilot to each circuit, district, magistrate, and bankruptcy judge. Judges in the D.C., Second, and Seventh Circuits followed prior plans and the pilot, and some judges in the Ninth Circuit have honored neither. Comparatively small numbers of appellate court judges apparently follow the plan. See Baude, *supra* note 1; Jack Goldsmith (@jackgoldsmith), TWITTER (July 15, 2019, 2:51 PM), <https://twitter.com/jackgoldsmith/status/1150839301929930752> [<https://perma.cc/TR94-L6K9>]. The identical appellate courts and district courts follow the pilot for 2020 and 2021 hiring. See Sloan, *supra* note 2.

receipt, clerkship offers, and imposed a ban regarding the use of exploding offers.<sup>19</sup>

Several professors who scrutinize appellate court employment detected that numbers of jurists honored the pilot, yet many others avoided the construct.<sup>20</sup> The scholars ascertained that constricted transparency benefited students and law schools with inside information, and the pilot could still have allowed judges to hire clerks early and issue exploding offers because some court members did not respect the pilot while OSCAR adopted comparatively few proscriptions that it rigorously enforced.<sup>21</sup> Moreover, the professors articulated concern that numerous jurists who support the nascent pilot are Democratic Presidents' confidantes situated along the coastlines whom progressive aspirants may favor, while copious judges who seem to oppose the pilot in turn are GOP chief executives' appointees with chambers across the heartland whom conservative students prefer.<sup>22</sup>

### III. THE PILOT'S SECOND YEAR AND THE EFFECTS OF COVID-19

Despite the above-canvassed issues and feedback from law schools regarding the coronavirus disease's adverse effects on clerkship applicants, the OSCAR Administration Program Office ("OAPO")

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<sup>19</sup> In 2020, judges did receive applications on June 15, and they could have interviewed and hired on the next day (adding a one-day period for judges to read applications). See *2nd Pilot Year*, *supra* note 1; Sloan, *supra* note 2; see also Baude, *supra* note 1; Strauss, *supra* note 13; *infra* note 21.

<sup>20</sup> The professors were unsure exactly what occurred partly because significant pressure to follow the pilot limited transparency and because reliable information was difficult to secure. See Will Baude, *Some Reluctant Skepticism About the New Law Clerk Hiring Plan*, REASON (Aug. 27, 2018, 10:36 AM), <https://reason.com/2018/08/27/some-reluctant-skepticism-about-the-new> [<https://perma.cc/L2A4-9W24>]; Letter from Kerry Abrams to Members of the Federal Judiciary, *supra* note 12; Aaron Nielson, *D.C. Circuit Review - Reviewed: Why I Fear the D.C. Circuit's Approach to Clerkship Hiring Is Misguided*, YALE J. ON REG. (Aug. 24, 2018), <https://yalejreg.com/nc/d-c-circuit-review-reviewed-why-i-fear-the-d-c-circuits-approach-to-clerkship-hiring-is-misguided> [<https://perma.cc/5RSL-HU6A>].

<sup>21</sup> These phenomena plagued earlier hiring plans. See sources cited *supra* notes 16, 20.

<sup>22</sup> See Baude, *supra* note 20 (suggesting that the patterns may provide a system that half of the bench adopts and half of the judiciary eschews, so that if students cluster by area and ideology, the regime may be stable). However, the pilot can frustrate those students who want to clerk for judges in both camps or in many geographic areas. Goldsmith, *supra* note 20 (suggesting that progressive students can seek fewer clerkships because most progressive judges follow the plan and they hire later). Goldsmith and Baude predict the plan's demise. See Karen Sloan, *Ahead of the Curve: Not Everyone Loves the Federal Clerk Hiring Plan*, LAW.COM (Feb. 3, 2020, 9:00 PM), <https://www.law.com/2020/02/03/ahead-of-the-curve-not-everyone-loves-the-federal-clerk-hiring-plan/> [<https://perma.cc/AC5A-VMBH>].

supplied clerkship guidance, but it, and numbers of jurists who comply with the experimental pilot, appeared reluctant to change the second year of the pilot.<sup>23</sup> The OAPO did, however, appreciate the important effects that law school closures impose on paper clerkship applications and faculty recommendation letters and acknowledged that safe in-person clerkship interviews were at “risk due to travel restrictions and courthouse closures.”<sup>24</sup> This feedback concomitantly sparked Administrative Office and OSCAR Working Group collaboration about efficaciously communicating the relevant hardships to all of the judges with concerted pleas that they depend on OSCAR to receive “online applications only [and] video conferencing and conference calls [for] interviews.”<sup>25</sup> The OAPO ended this update by directly stating that it would continue monitoring how the pandemic affects recruitment while informing specific participants of hiring changes.<sup>26</sup>

On April 17, the D.C., Second, Seventh, and Ninth Circuit Chief Judges who assembled the new pilot distributed a letter to their federal court colleagues, which emphasized that the online OSCAR mechanism is the best way to easily send and receive clerkship applications, given the present coronavirus situation, because this approach decreases the necessity for selection participants to sort paper submissions.<sup>27</sup> These health risks prompted imploring “students and judges to conduct the ensuing interviews [by] audio- or video- conference.”<sup>28</sup> The authors

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<sup>23</sup> See *Update on Law Clerk Hiring During COVID-19*, OSCAR, [https://oscar.uscourts.gov/blog\\_post/\\_1/352/Update\\_on\\_Law\\_Clerk\\_Hiring\\_During\\_COVID-19](https://oscar.uscourts.gov/blog_post/_1/352/Update_on_Law_Clerk_Hiring_During_COVID-19) (last updated May 28, 2020) [<https://perma.cc/H4MT-MM8F>] [hereinafter *Update*].

<sup>24</sup> *Id.*

<sup>25</sup> See *id.* In late May, the OAPO urged that judges help aspirants by receiving all clerkship applications and conducting all clerkship interviews online. *Judges Urged to Go All-Electronic in Clerkship Hiring*, ADMIN. OFFICE OF THE U.S. COURTS (May 28, 2020), <https://www.uscourts.gov/news/2020/05/28/judges-urged-go-all-electronic-clerkship-hiring> [<https://perma.cc/9DH2-U749>] (“Online tools are practical and essential in conducting law clerk hiring during the COVID-19 pandemic, while protecting your safety, the safety of applicants, and remaining compliant with travel restrictions and stay-at-home orders.”). The OSCAR Working Group comprises federal judges and law schools’ clerkship advisors, who advise the Administrative Office regarding OSCAR and clerkship employment, and the Working Group concurred with the OAPO.

<sup>26</sup> The OAPO suggested that those with “feedback or concerns, please contact the OSCAR Program Office.” *Update*, *supra* note 23.

<sup>27</sup> Letter from the Ad Hoc Comm. on Law Clerk Hiring to Colleagues (Apr. 17, 2020), [https://oscar.uscourts.gov/assets/Ad\\_Hoc\\_Committee\\_Update\\_on\\_COVID-19](https://oscar.uscourts.gov/assets/Ad_Hoc_Committee_Update_on_COVID-19) [<https://perma.cc/F5Y8-8BJ4>].

<sup>28</sup> The tools mitigate risks to students, jurists, and court personnel and avoid travel uncertainty and difficulty. *Id.*; see Sloan, *supra* note 2 (“It seems that the majority of federal judges, who are a notoriously difficult group to corral, complied with that

distinctly recognized “how difficult the current period is for students,” jurists, and court personnel, but the virus’ uncertain length meant that retaining the employment application, interview, and offer schedules as planned seemed practical.<sup>29</sup> Considerable evidence indicates that some off-pilot judges have finished hiring clerks, while others delayed, and will later resume, the employment process.

In short, quite a few elements, particularly COVID-19’s intensity and duration, can leave this season unclear.<sup>30</sup> Essential is the number of jurists who respect the pilot and where they have chambers, and how judges who reject the pilot or the OSCAR system proceed.<sup>31</sup> Other elements that contribute to uncertainty are the lack of empirical data on what has transpired since 2013 as well as over the pilot’s initial year.

#### IV. ACTION PLANNING DURING THE PANDEMIC

The complications entailed when smoothly implementing the pilot’s second year, as exacerbated by pandemic-caused uncertainties, indicate that this hiring season will be exceptionally problematic to navigate. These ideas demonstrate that students need at once to be more creative, rigorous, persistent, flexible, and careful. This season will be so different and unpredictable that students ought to cautiously explore, and consider instituting, rather nontraditional endeavors. For instance, aspirants can scrutinize excluding most appellate court jurists, conservatives might apply to numerous Democratic confirmees, progressives may apply to a number of Republican confirmees, and many students could assess clerking in places epitomized by North

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recommendation [to interview candidates remotely] from the ad-hoc committee on law clerk hiring and are interviewing clerks remotely,” and “[r]emote interviewing helped equalize the playing field [by ‘eliminating travel costs and easing the logistics of multiple interviews’].”)

<sup>29</sup> The Chief Judges of all four appellate courts asserted that maintaining the employment, application, interview, and offer dates would retain pragmatic safeguards, hoped that the ideas would help all clerkship employment participants safely and efficiently navigate the pilot, and reminded them of the June dates. *Id.* How many judges follow the pilot remains unclear. *See supra* notes 18, 20.

<sup>30</sup> This season may only clarify in June after OSCAR has released applications to judges or when the judiciary reviews information on the pilot and reconsiders participation, including when to hire students after the 1L year. *See* Letter from the Ad Hoc Comm. on Law Clerk Hiring to Colleagues, *supra* note 27. For later seasons, the courts must systematically collect, analyze, and scrutinize relevant empirical data and improve the pilot or craft a new plan. *See* Sloan, *supra* note 2; Baude, *supra* note 1 (suggesting how to improve hiring after the pilot fails).

<sup>31</sup> How many of the latter judges learned of, and how comprehensively and rigorously they applied, the AO best practices are very important. *See supra* note 14.

Dakota and Oklahoma, which students may have recently deemed less congenial.

Aspirants ought to deploy a finely-calibrated multifactor analysis in contemplating when and where to pursue employment. One necessary constituent should be the pandemic, which includes relative severity at particular times for specific locales. Calculating those phenomena may allow projections of when strictures could decrease, tribunals reopen, and hiring needs be conclusively ascertained, especially in light of pent-up demand for litigation's swift resolution.<sup>32</sup> People can also derive constructive estimates from the quantity and stringency of mechanisms that courts use to address the pandemic.<sup>33</sup>

A related vital component would be timing. When applicants are considering judges who subscribe to the pilot, they can rely on the June 15 date on which the Administrative Office will first release aspirant packets for jurists. When students contemplate applying to judges who ignore the plan or OSCAR, students could draw on tips discussed earlier, and below, for identifying these jurists plus later clues for soliciting additional helpful material on the judges' clerkship employment processes.<sup>34</sup>

Another factor is the tribunal level. Highly coveted appellate court slots are fewer, and while numerous court of appeals jurists hired clerks and extended offers more promptly than district judges, the season is ending. Thus, numbers of prospects might want to carefully assess confining searches for appellate clerkships.<sup>35</sup>

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<sup>32</sup> These data are on Center for Disease Control and Prevention (CDC) and numerous medical center websites as well as Administrative Office, court, and press websites, such as Bloomberg and Law360. *See, e.g., Coronavirus Disease 2019 (COVID-19): Forecasts of Total Deaths*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html> [<https://perma.cc/46GZ-T3XN>]; *Coronavirus Resource Center*, JOHNS HOPKINS UNIV. & MED., <https://coronavirus.jhu.edu/> [<https://perma.cc/Y268-27SL>]; *COVID-19 Projections*, DOMO, <https://www.domo.com/covid19/projections/> [<https://perma.cc/5JSQ-N5WC>]; sources cited *supra* notes 5–7.

<sup>33</sup> *See, e.g.*, sources cited *supra* notes 5–7.

<sup>34</sup> *See supra* Parts III–IV; *infra* Parts VI–VIII.

<sup>35</sup> Students might consider additional factors in conducting the suggested multifactor assessment. For instance, aspirants with strong preferences could have applied first to off-plan judges, who were able to ignore the June 15 date. Location lacks textual analysis because clerking is so valuable that location merits less relevance. In the final analysis, students must carefully assess what is best for them professionally and personally. *See infra* Part VI.

## V. FEDERAL APPELLATE CLERKSHIPS

As previously stated, numerous court of appeals jurists have completed hiring, which means that prospects need to stress applying to district clerkship openings. Indeed, practically all 280 circuit judges quickly hired, but a few have seats remaining partly because of delay attributable to the coronavirus' rampant spread.<sup>36</sup> Most appeals court jurists acted prior to set deadlines, which others robustly honored.<sup>37</sup> These phenomena indicate that persons who hope to serve with judges not observing the pilot, and students who may want to capture positions on the D.C., First, Second, Third, Seventh, and Ninth Circuits, which do respect the plan, must act speedily. Clerkships for nearly everyone who follows the pilot are extremely competitive. Appellate court jurists make the final decisions in virtually every appealed case, many of which raise fascinating substantive questions, or inhabit urban places, like New York and Chicago, so a myriad of aspirants bring district clerking or practice experience.<sup>38</sup>

However, a small number of judges in the remaining areas employ clerks after their colleagues hire. For example, designation of locales as coronavirus "hotspots" and icy Alaska or Connecticut winters and blazing Las Vegas or Los Angeles summers could discourage many potential applicants. Jurists, whose clerkships are not so prestigious or encompass comparatively rural locales, which certain aspirants desire less,<sup>39</sup> might still need to hire.<sup>40</sup> Prospects should realize that most

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<sup>36</sup> I premise this assertion on communications with the individuals referenced in the introductory author footnote *supra*.

<sup>37</sup> For much relevant history, see *supra* Part II.

<sup>38</sup> Josh Blackman, *Three Thought Experiments: How Can Congress Structurally Reform the Federal Clerkship Program?*, REASON (Feb. 21, 2020), <https://reason.com/2020/02/21/three-thought-experiments-how-can-congress-structurally-reform-the-federal-clerkship-program/> [<https://perma.cc/M4YX-M4R9>]; Annelena Lobb, *More Lawyers Are Working Before They're Clerking*, WALL ST. J. (Feb. 28, 2006), <https://www.wsj.com/articles/SB114062950921880286> [<https://perma.cc/YLM7-68BF>]; Goldsmith, *supra* note 18. COVID-19 has most severely affected large urban cities. Those impacts may slow hiring, but the effects appear to have minimally dampened the interest of students who prefer clerking and living in urban locales.

<sup>39</sup> They include certain areas, such as Omaha, Roswell, or Macon, which are located in the U.S. Courts of Appeals for the Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits. See Jack Goldsmith (@jacklgoldsmith), TWITTER (Feb. 10, 2020, 2:46 PM), <https://twitter.com/jacklgoldsmith/status/1226957000350658560> [<https://perma.cc/68U8-L26Z>] (urging that students apply to judges who do not serve on the "so-called elite federal circuits").

<sup>40</sup> Some judges may honor the pilot or await grades. The latter seems unlikely, as COVID-19 led most schools to use pass-fail grades, but even students graded normally will change their class ranks little by the fourth semester. See Karen Sloan, *With*

clerks actually work for just one year. Therefore, a paltry number of judges may have slots,<sup>41</sup> but time is fleeting.

## VI. FEDERAL DISTRICT CLERKSHIPS REPRISED

Persons ought to assiduously employ the ideas cataloged above by consulting the Administrative Office views, jurists' OSCAR listings, and court websites, especially for information on clerkships and on procedures that tribunals have adopted to resist COVID-19. Applicants could also expedite their searches by referencing a representative compilation of how district judges and courts proceeded after January 2013.<sup>42</sup> They must remember that later hiring by jurists in numerous districts, mixed compliance with the new pilot last season, and the complications which attend the coronavirus' advent indicate that confusion and variability could result again.<sup>43</sup>

Many judges picked clerks earlier in the seasons following 2013 until last year when the nascent pilot applied. Numerous factors, including prestige, geography, and competition, show that aspirants can rely on heavily and lightly populated districts when establishing salutary 2021 priorities, but the coronavirus' rise and spread could alter certain dynamics. Numbers of jurists had already employed 2Ls by May for Arizona, Colorado, Northern Ohio, Maryland, Northern Georgia, and Missouri clerkship seats.<sup>44</sup> Finally, numerous judges provided rather

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*Pass/Fail Now the Norm, Outlier Law Schools Face Student Backlash*, LAW.COM (Mar. 31, 2020, 2:19 PM), <https://www.law.com/2020/03/31/with-passfail-now-the-norm-outlier-law-schools-face-student-backlash/?slreturn=20200515111756> [https://perma.cc/WGG2-PG2B].

<sup>41</sup> 2020 OSCAR listings actually include 2021 clerkships. E.g., *Weekly Update: New Positions Posted (May 4 - May 11, 2020)*, OSCAR (May 11, 2020), [https://oscar.uscourts.gov/blog\\_post/\\_1/360/Weekly\\_Update\\_New\\_Positions\\_Posted\\_May\\_4\\_-\\_May\\_11\\_2020](https://oscar.uscourts.gov/blog_post/_1/360/Weekly_Update_New_Positions_Posted_May_4_-_May_11_2020) [https://perma.cc/6AV7-CPE2]; *Weekly Update: New Positions Posted (May 11 - May 18, 2020)*, OSCAR (May 18, 2020), [https://oscar.uscourts.gov/blog\\_post/\\_1/361/Weekly\\_Update\\_New\\_Positions\\_Posted\\_May\\_11\\_-\\_May\\_18\\_2020](https://oscar.uscourts.gov/blog_post/_1/361/Weekly_Update_New_Positions_Posted_May_11_-_May_18_2020) [https://perma.cc/6N6F-QCFN].

<sup>42</sup> For access to the representative compilation, see Tobias, *supra* note 3, at 8.

<sup>43</sup> These factors enhance previous information's worth because how most judges will proceed remains unclear. The pilot guidance is voluntary, while many judges have hired later since 2013 and may keep following that and other earlier ideas. See Sloan, *supra* note 2. Similar to appellate courts, little evidence suggests that students have decreased interest in clerking on urban district courts, which COVID-19 has affected the most, but COVID 19's impacts may have slowed hiring. See sources cited *supra* note 38.

<sup>44</sup> These are examples, and they are not meant to be representative. They are premised on the factors in the text and communications with the individuals referenced in the introductory author footnote *supra*. Population density also correlates with COVID-19 outbreaks in California, Illinois, Michigan, and New York. See sources cited

minimal information, although some have placed employment constructs on their websites.<sup>45</sup>

## VII. ADDITIONAL INFORMATION

Applicants could depend on the above-mentioned lessons derived from observing clerkship employment over the last six years and how this peculiar season commenced, albeit with certain adjustments for the complications ascribed to COVID-19. People should avidly consult the material that numbers of jurists post on OSCAR and websites that courts maintain, although students ought to recognize that some jurists deploy neither of these resources. Aspirants must remember, while cautiously acting upon, the critical distinction between judges who now respect the pilot and those who eschew this plan or OSCAR. Securing the latter judges' clerkships is more difficult but potentially rewarding, as discovering their timing necessitates research that might prove crucial.

One approach that students had previously deployed when soliciting productive concepts was respectfully telephoning and emailing chambers to seek advice from law clerks or judicial assistants, notably for jurists who ignore or endorse OSCAR, yet may disregard its requirements. Those efforts yielded instructive data related to hiring procedures, namely who scrutinizes candidates and essential time periods that control applications, clerkship interviews, and offers. The coronavirus might somewhat hamper this device's efficacy because the primary sources of useful information, especially clerks or judicial assistants, will probably not be working in the offices. However, most conscientious staff would likely retrieve messages that aspirants leave

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*supra* note 32. However, most district courts have so many judges that each needs verification. Some judges in additional districts lacked clerks by April because they post slots in the year when aspirants clerk. Certain judges in other districts still had clerkships positions available in fall of students' third year because they move later.

<sup>45</sup> In 2013, one district court posted jurists' rules; some of its judges used rolling clerkship review but did not interview or offer until June 28 of that year. *Law Clerk Hiring Information*, U.S. DIST. COURT, S.D.N.Y. (2013), <https://www.nysd.uscourts.gov/judges/law-clerk-hiring-informations> [<https://perma.cc/Q9A6-2SK8>]. For recent examples, see *Job Announcement - Judicial Law Clerk to Chief U.S. Bankruptcy Judge - Harrisburg, PA*, U.S. BANKR. COURT, MIDDLE DIST. OF PA. (2020), <http://www.pamb.uscourts.gov/news/job-announcement-judicial-law-clerk-chief-us-bankruptcy-judge-harrisburg-pa> [<https://perma.cc/9BEM-3CMS>]; *Vacancy Announcement*, U.S. COURTS, MONT. (2020), <https://www.mtd.uscourts.gov/sites/mtd/files/SPW%20law%20clerk%20announcement%202020.pdf> [<https://perma.cc/NC79-QR59>]; *Vacancy Announcement*, U.S. DIST. COURT, MD. (2019), <https://www.mdd.uscourts.gov/sites/mdd/files/Supervising%20Pro%20Se%20Staff%20Attorney%20vacancy.pdf> [<https://perma.cc/EUA6-KZKT>]; see also Baude, *supra* note 1 (suggesting that requiring judges to post clerkship openings on the internet could level the playing field).



on chamber telephones and directly respond to numbers of emails; thus, persistence will be important.<sup>46</sup>

### VIII. ADDITIONAL CLERKSHIPS

When eager applicants solicit clerkships from plentiful active status appellate court and district court jurists, committed aspirants ought to review courts that, and judges whom, they may have ignored or not contemplated. These encompass appellate court, district court, and Article I tribunals. Senior appeals court and trial court jurists, whose age means that they have greater susceptibility to the coronavirus, are classic illustrations.<sup>47</sup> Related are chief judges, who typically acquire one more clerk when they receive elevation.<sup>48</sup> Students need to remember that magistrate judges, whom the Article III jurists in the ninety-four district courts appoint, and federal judges who serve the U.S. territories, including Guam and the Virgin Islands, also hire numerous clerks.<sup>49</sup>

Another promising source could be President Trump's judicial appointees; the chief executive can fill seventy-one vacant trial court positions, and competition is less rigorous for those appointees'

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<sup>46</sup> Many appellate courts and district courts have relied substantially on working remotely to combat the spread of the virus. *See* sources cited *supra* notes 5–7 and accompanying text. Nevertheless, minimal evidence suggests that this phenomenon has deterred students from applying, but it may complicate efforts to secure valuable information and might have slowed the employment process. *See supra* note 38 and accompanying text. Students may access names, telephone numbers, and emails through the JUDICIAL YELLOW BOOK (2020), FORSTER-LONG, THE AMERICAN BENCH (2020), online services, and clerk of court offices.

<sup>47</sup> Active judges are eligible to assume senior status when they are sixty-five years old and have completed fifteen years of judicial service. Most senior judges carry lighter caseloads, and have fewer clerks, than active judges. It remains unclear how COVID-19 might affect senior judges' law clerk hiring. For example, senior judges could help address mounting backlogs that the virus creates, but they may have greater need to work remotely than active judges. 28 U.S.C. § 371 (2000); *see* Joseph Goldstein, *The Oldest Bench Ever*, SLATE, Jan. 18, 2011, <https://slate.com/news-and-politics/2011/01/federal-judges-are-getting-older-and-more-often-senile.html> [https://perma.cc/5JTY-LUS8] (discussing the role that law clerks might play when clerking for those senior judges who may experience mental difficulties). *See generally* David R. Stras & Ryan W. Scott, *Are Senior Judges Unconstitutional?*, 92 CORNELL L. REV. 453 (2007) (providing background on senior judges).

<sup>48</sup> 28 U.S.C. § 136 (1982); *see* FEDERAL JUDICIAL CENTER, DESKBOOK FOR CHIEF JUDGES OF U.S. DISTRICT COURTS (4th ed. 2014).

<sup>49</sup> 28 U.S.C. § 631 (2010) (regarding magistrate judges); 48 U.S.C. §§ 1424 (2004), 1612 (1984) (regarding federal judges for Guam & the Virgin Islands).

clerkships because few students track them.<sup>50</sup> However, the Senate has confirmed only ten nominees this year, partly because the virus stalled (and might continue delaying) the appointments process.<sup>51</sup> However, the Senate's return from a protracted hiatus attributable substantially to the coronavirus, and the body's duration that remains, suggest that thirty-plus nominees will duly receive confirmation.<sup>52</sup>

## IX. APPLICATIONS

Aspirants may seek direction on jurists whom they could target from knowledgeable professors or from 3Ls, while securing persuasive faculty recommendation letters. Judges receive applications from many students, who should consider the opening time the deadline because numerous jurists employ clerks on a rolling basis. Aspirants must judiciously choose, as OSCAR's cap regarding clerkship applications has been 100,<sup>53</sup> although lack of transparency may complicate this. When students use paper submissions, they need to put materials in a single package that will foster accurate tracking, which seems elementary in a pandemic when usual systems frequently are disturbed. During ordinary hiring seasons, the colossal number of applications

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<sup>50</sup> *Current Judicial Vacancies*, ADMIN. OFFICE OF THE U.S. COURTS (June 16, 2020), <https://uscourts.gov/judges-judgeships/judicial-vacancies/current-judicial-vacancies> [<https://perma.cc/GH9X-K85U>]; see *Archive of Judicial Vacancies*, ADMIN. OFFICE OF THE U.S. COURTS <https://uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies> [<https://perma.cc/HTU5-JLGT>] [hereinafter Confirmation List] (following "Confirmation List" hyperlink for the years 2017-2020). *But see* Leah Litman, *On Clerkships & Wasted Opportunities*, TAKE CARE (Dec. 23, 2019), <https://takecareblog.com/blog/on-clerkships-and-wasted-opportunities> [<https://perma.cc/X5L6-7B4N>]; Joe Patrice, *Donald Trump's Devaluation of the Federal Clerkship*, ABOVE THE LAW, (Mar. 6, 2020, 2:04 PM), <https://abovethelaw.com/2020/03/donald-trumps-devaluation-of-the-federal-clerkship> [<https://perma.cc/Q287-DJWR>].

<sup>51</sup> See Confirmation List, *supra* note 50.

<sup>52</sup> 166 CONG. REC. S2,195 (daily ed. May 4, 2020) (statement of Sen. McConnell) ("The Senate is back in session because we have important work to do for the nation. Critical posts throughout the Federal Government . . . remain vacant. Qualified nominees who have been held up for too long already have become even more necessary during these uncertain times."). *But see* Russell Wheeler, *How Close Is President Trump to His Goal of Record-Setting Judicial Appointments?*, BROOKINGS INSTIT. (May 5, 2020), <https://brookings.edu/blog/fixgov/2020/05/05/how-close-is-president-trump-to-his-goal-of-record-setting-judicial-appointments> [<https://perma.cc/P4AE-CGZV>]. Some students and employers have expressed concern regarding the advisability of clerking for Trump appointees whom they deem overly conservative or not qualified. See sources cited *supra* note 50.

<sup>53</sup> *OSCAR Version 7: Limit of 100 Clerkship Applications*, OSCAR (Apr. 8, 2013, 11:10 AM), [https://oscar.uscourts.gov/blog\\_post/\\_1/13/OSCAR\\_Version\\_7\\_Limit\\_of\\_100\\_Clerkship\\_Applications](https://oscar.uscourts.gov/blog_post/_1/13/OSCAR_Version_7_Limit_of_100_Clerkship_Applications) [<https://perma.cc/TPZ4-XEYH>].

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demand that cover letters be succinct. This requirement becomes even more essential for this season, as judges deal with virus-driven exigencies, including temporal pressures and disruption of normal chamber workplace routines. Cover letters must explain not only why aspirants have massive competence but also how cooperatively they would act in chambers. Applicants send three recommendation letters: two of which professors create and one a lawyer drafts. The writing sample ought to be concise enough that it promotes reading, yet sufficiently lengthy to evince deft analytical, critical research, and impeccable drafting capabilities.

#### X. INTERVIEWS

During normal times, ensuing interviews acutely resemble law firm “call-backs,” even though facets might be particular to the judiciary and numerous individual jurists.<sup>54</sup> Judges can have relatively diverse points of views, expectations, interests, and requirements. They clearly are smart, diligent, ethical, and independent, while possessing balanced temperament. Candidates need to learn a substantial amount regarding jurists’ differing backgrounds: undergraduate and law schools attended, career histories, and circumstances of appointment.<sup>55</sup> Prospects should concomitantly peruse judges’ writing, especially opinions.

Students necessarily must predict numerous lines of inquiry that jurists and staff might explore by, for instance, contacting present and earlier clerks. Interviews’ salient purposes are carefully detecting whether aspirants exhibit the requisite competence and can collegially interact with other people. Applicants ought to evidence solicitude for chamber personnel, as court staff have to perform smoothly on a team and judges value their perspectives. The questions, therefore, could implicate an expansive spectrum from court treatment of doctrinal areas, notably capital punishment, voting rights, and campaign financing, to questions on literature, art, or philosophical ideas.

The virus can dramatically modify the regular dynamics by substituting remote for in-person interviews. Students must closely evaluate the ostensible deleterious ramifications when interviews essentially are not conducted in person. The dynamics that effectively attend interviews convened on Skype and telephonic or video conferences, which the AOPO and the chief judges who developed the pilot implored judges to employ, may profoundly enhance the anxiety

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<sup>54</sup> Law school career counselors maintain summaries of interviews. See Strauss, *supra* note 13.

<sup>55</sup> See sources cited *supra* note 46 and accompanying text.

for numerous students while proving fatal to others.<sup>56</sup> Therefore, familiarity with the technology can be imperative, so astute preparation will be essential. Career Development Office staff will be valuable resources who help students professionally conduct themselves by staging practice interviews as well as by tendering suggestions regarding proper attire and how to deftly negotiate remote equipment and deploy appropriate video backgrounds.

Some jurists could reject final decisions respecting offers at interviews because they conscientiously wish to meet each prospect, while tapping someone who appears particularly capable and can serve as a robust teammate with the court professionals.<sup>57</sup> Growing numbers of judges seem to provide offers during interviews or upon their end, so aspirants must be ready for this possibility.

## XI. OFFERS

Jurists employ diverse approaches to extending offers, yet crucial features of the process are similar to practices that numerous law journals deploy when choosing manuscripts. Most judges expect immediate acceptances, a complication that is effectively analogous to law review “short fuse” or exploding offers.<sup>58</sup> Jurists might withdraw offers that potential clerks do not speedily accept when they are proffered in telephone conversations, which some astute writers characterize as “vanishing offers,” even though the currently-applicable pilot bars that measure.<sup>59</sup>

Many judges courteously grant applicants one week to make clerking determinations. Aspirants with iron stomachs could attempt to leverage the opportunities for clerkships that they perceive as more desirable.<sup>60</sup> Certain jurists apparently can encourage leveraging by requesting that students duly inform them at offers’ extension.<sup>61</sup> The pilot and the virus

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<sup>56</sup> See sources cited *supra* notes 23–29 and accompanying text; see also Sloan, *supra* note 2 (finding that most judges and students were satisfied with remote interviewing).

<sup>57</sup> See Kozinski, *supra* note 9, at 1722 (“[I]f you have two young, male hot dogs you may [want] . . . a third law clerk who is a bit older, or female, or who has had a prior career.”); Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152, 153 (1990).

<sup>58</sup> See Kozinski, *supra* note 9, at 1716; Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 535 (1995); Wald, *supra* note 57, at 152, 156.

<sup>59</sup> Kozinski, *supra* note 9, at 1716; see Rampell, *supra* note 8. Judges who hire early frequently invoke this procedure.

<sup>60</sup> This practice resembles law review leveraging. See Tobias, *supra* note 58, at 537–38; Wald, *supra* note 57, at 156.

<sup>61</sup> See Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. CHI. L. REV. 739, 816–20 (2001). Judges use diverse means to not offer. See Staci

could deprive applicants of the luxury to shop offers, which earlier plans clearly allowed. For instance, under the plan that governed before the AO jettisoned it during 2014 and the regime that applied until the pilot became effective in 2019, some judges granted aspirants one week or more to consider offers.<sup>62</sup> This practice allowed students time for interviewing with other jurists who might extend them offers. The complications that the virus imposes on travel, accordingly, mean that the pilot's forty-eight-hour rule sharply circumscribes prospects' ability to shop offers.<sup>63</sup>

Administrative Office best practices correspondingly ask judges to supply comprehensive information regarding hiring procedures, while they directly afford students reasonable time for considering offers, but fail to prohibit swift acceptances.<sup>64</sup> Nevertheless, the pilot distinctly mandates that candidates receive forty-eight hours to accept their offers.<sup>65</sup> Most jurists who use OSCAR post notice online that they have filled openings. Some judges who employ paper applications do not. Students who lack interviews by autumn can assume that most jurists have hired clerks.

#### CONCLUSION

I hope that these suggestions for attaining clerkships and hiring clerks in a pandemic are constructive. If judges and students follow the recommendations provided, they can simultaneously effectuate a fairer, prompter, and safer hiring process. Once the season finishes, the OAPO must collect, analyze, and synthesize pertinent empirical data while significantly improving the pilot or creating a new plan.

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Zaretsky, *Rejection Letter of the Day: You're Not Prestigious Enough to Clerk in My Less-Than-Prestigious Court*, ABOVE THE LAW (Feb. 25, 2014, 1:30 PM), <https://abovethelaw.com/2014/02/rejection-letter-of-the-day-youre-not-prestigious-enough-to-clerk-in-my-less-than-prestigious-court> [https://perma.cc/V6T6-B8VZ].

<sup>62</sup> See *supra* notes 8–15 and accompanying text.

<sup>63</sup> This assumes that judges will honor the forty-eight-hour rule, although some jurists may not. Of course, students who are located in large metropolitan areas where numerous judges maintain chambers may have sufficient time for in-person interviews with multiple judges. Other students might be able to quickly secure video, Skype or telephone interviews, and offers within forty-eight hours, but these interviews will be less effective than in-person interviews.

<sup>64</sup> See Tobias, *supra* note 3, at 5 n.17; *supra* notes 14, 19.

<sup>65</sup> *Hiring Plan*, *supra* note 1; Nielson, *supra* note 20 (arguing that forty-eight hours comprises insufficient time for making this important decision); Sloan, *supra* note 2 (describing dynamics created by compressed timeline).