

To: Jennifer Henfey, Board Liaison, NALP Board of Directors

Cc: Fred Thrasher, NALP Deputy Director

From: Michele Hoff, Chair, Judicial Clerkship Section

Date: February 4, 2021

Re: Judicial Clerkship Section Quarterly Report

Below please find a summary of the section's activities and concerns from this quarter.

I. Leadership Team

Section Chair	Michele Hoff, Georgetown University Law Center mh1845@georgetown.edu (202) 662-9612
Annual Education Conference, Bulletin Article and Webinar Planning Workgroup Vice-Chairs	Elizabeth Crane, University of South Carolina School of Law ecrane@mailbox.sc.edu Blair Edwards, Boston University School of Law edwards2@bu.edu
Federal Law Clerk Hiring Plan Workgroup Vice-Chairs	Elizabeth Peck, Cornell School of Law ep83@cornell.edu Greta Trakul, University of Michigan School of Law gtrakul@umich.edu
OSCAR Workgroup Vice Chair	Marilyn Drees, Yale marilyn.drees@yale.edu
State Court Workgroup Vice-Chairs	Jennifer Pollard, University of Maryland School of Law jpollard@law.umaryland.edu Tamara Stephen, Brooklyn Law School tamara.stephen@brooklaw.edu
Member Relations Workgroup Vice-Chairs	Janet Siegel Brown, Northwestern University School of Law jbrown@law.northwestern.edu Andrea Saavedra, Columbia University School of Law acs2126@columbia.edu

Knowledge Management Workgroup Vice-Chair	Alfred “AJ” Finch, University of Iowa School of Law alfred-finch@uiowa.edu
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II. Section Meetings

The section did not hold a section call this quarter (in part because so many section members reported being busy with winter OCI activities). But, the section members were busy with a number of big happenings focused around federal court hiring and OSCAR, including:

- OSCAR Feedback Survey Finalized – The OSCAR and Federal Law Clerk Hiring Workgroups prepared a memo for the OSCAR Judge’s Workgroup (OWG) based on the responses received from section members about OSCAR and the pilot hiring plan. The survey has received nearly 70 responses, which included a significant amount of thoughtful feedback from section members. The memo to the OWG, which is attached to this report, was shared on NALP Connect for section members to review.
- OSCAR Timelines Announced – OSCAR announced that access dates and application release dates for the classes of 2022 and 2023. These timelines will mirror those used in the first two years of the pilot program. (Full details of the timelines are available online at: https://oscar.uscourts.gov/federal_law_clerk_hiring_pilot.)
- The OSCAR NextGen Platform – The new OSCAR platform went live to all users in November 2020. Law schools have reported having a variety of problems with the system since it launched. OSCAR, through its vendor, is actively working to address the problems that law school and clerkship applicants have reported. Some of the most impactful issues that have been reported include (1) missing and/or duplicated recommenders in the system, (2) the auto-attach feature for recommendation letters being non-functional, and (3) law school transcript not properly uploading (including size issues, encryption issues, etc.).

The section continues to work on:

- 2021 AEC Programs – The section had a number of proposals accepted for the 2021 conference, including (1) Beyond Article III Clerkships, (2) When Clerkships are Not Your Only Job, (3) Clerkships on the Public Interest Path, (4) OSCAR Next Gen Presentation, and (5) Diversity and Clerkships: Update on the ABF Project.
- Upcoming Bulletin Articles – The section will be submitting a few articles for the NALP Bulletin in the coming months. We have had to shuffle some of the articles around due to commitments that arose for the slated authors and the need to secure new authors.

III. Environmental Scanning

Many of the concerns that came up within the section this quarter include:

- How will students manage clerkship applications and a later OCI period – This remains a concern within the section as a winter OCI season is now playing out. Many schools are still worried about how their students will be able to manage their OCI searches, their summer job searches more generally, and their clerkship application processes.
- Whether the problems with the new OSCAR platform will impact the hiring season – Law schools are continuing to discover technical issues with the new OSCAR site. OSCAR has been very open and responsive to the concerns that users are bringing to their attention. OSCAR is working with its vendor to resolve these issues, but not all issues are getting fixed quickly. For example, many schools rely on the auto-attach feature in OSCAR to efficiently upload letters of recommendation for their applicants. Currently that feature is not working at all, and no anticipated resolution date is available yet.
- The impact of multiple virtual and/or hybrid semesters on applicants – Clerkship advisors continue to hear concerns from their potential clerkship applicants about their ability to secure meaningful letters of recommendation from their faculty members and legal supervisors in light of the virtual and/or hybrid nature of their law school experiences so far. This concern seems to be magnified for applicants who identify as first-generation professionals and/or students of color.
- How much and what kind of clerkship programming to host in spring 2021 – Schools are rethinking their spring clerkship programming, and in particular networking style programs. Many schools are concerned about lack of attendance and/or engagement given the increased Zoom fatigue they are witnessing among their student populations.
- Small Group Focal Meeting – An ad hoc group of section members held a small group conversation in order to brainstorm and share ideas about creating and working with faculty clerkship committees. There has been a suggestion to coordinate more of these kinds of micro-focused conversations in the months ahead.

IV. Upcoming Section Calls

The section plans to hold its next general meeting on Wednesday, March 2, 2021 at 2 p.m. ET. We are also hoping to explore the idea of holding additional small group meetings in the coming months. (Some of the potential topics may include: (1) alumni clerkship databases, (2) tracking “off-plan” judges, (3) diversity clerkship initiatives, and (4) implementing and promoting clerkship-oriented coursework.)

TO: Hon. Robert Bacharach, Chair, OSCAR Working Group
Laura Simon, OSCAR Program Manager

FROM: NALP OSCAR Working Group

DATE: November 23, 2020

RE: Feedback on the Most Recent Hiring Season

Thank you for allowing us the opportunity to share with you the experiences and feedback of NALP's law school members concerning the most recent hiring season. 2020 was a significant season both due to the pandemic's upheaval and also the conclusion of the federal law clerk hiring plan's two-year pilot period. We reached out to NALP member law schools through the Judicial Clerkship Section to gather input from law school clerkship advisors. To collect and synthesize information most efficiently, we distributed a questionnaire as broadly as possible, reaching more than 110 NALP Judicial Clerkship Section member schools. Responses were received from 67 schools in all five major geographical regions of the country, which represented approximately 61% of the recipients. For convenient reference, when we use "schools" in this memorandum, it refers to schools that responded to the survey.

A) SEASON IN REVIEW

In reviewing the most recent hiring season, respondents were prompted to provide feedback in three (3) key areas: applicants and applications, interviewing, and OSCAR information reliability.

1) Applicants and Applications

Forty-six percent (46%) of the respondents reported an increase in Class of 2021 applicants this summer compared to the Class of 2020 last summer. Schools reporting an increase in applications from the Class of 2021 attributed the increase to an inherent interest in clerking (85%), concerns about the economy/legal market (60%), and uncertainty due to the pandemic (50%).

Approximately 17% of schools reported a decrease in applicants from the Class of 2021 compared to the Class of 2020 last summer. They also cited uncertainty due to the pandemic (55%) as a reason for students choosing not to apply for clerkships.

Schools also noted an overall increase in electronic applications both via email and OSCAR this past summer.

Below are some representative comments regarding applicants and applications:

- *There should be an effort to discourage paper applications altogether and try to coalesce under OSCAR or at least move toward establishing submission of applications via email for all judges. Perhaps giving judges an email address specifically dedicated to receiving clerkship applications.*

- *Our office (and entire law school) was remote during the hiring season so we did not send any paper letters. Any judges that requested paper letters, we had to send via email and noted that we were working remotely and appreciated them accepting the letters electronically. Unfortunately, we had a few judges who refused electronic letters and we had to find a way to safely send the letters. We did notice a shift to more email and OSCAR applications. We hope the trend continues to be that judges will take on OSCAR as it is administratively a lot more efficient to have all the materials in one location and so applicants can update applications (transcripts) as necessary.*

Based on the feedback shared by schools, the ability to manage and support the judicial clerkship application process electronically (either by email or via OSCAR submission) was lauded, particularly given the increased volume of applications noted by many and the circumstances presented by the current COVID-19 pandemic. Although electronic submissions were preferred, the feedback continues to reflect a strong desire for a dedicated and uniform electronic process for application submission to judges which the OSCAR system provides. Overall, schools expressed hope that judges will continue to adopt and consistently use OSCAR in the years ahead.

2) Interviewing

While reported interview methods included video, telephone, and in-person, responding schools unanimously support continuing video interviews in lieu of in-person interviews in the future. Schools noted the many benefits of video interviewing: (1) it saved all candidates money and time; (2) it protected the health and safety of everyone involved in the process; and (3) it reduced financial barriers resulting in a more level playing field for diverse and historically underrepresented applicants. Overwhelmingly, the vast majority of schools responded that students rarely or never reported encountering issues with their environment (e.g., poor Wi-Fi, no quiet space) nor did the video platforms used interfere with their ability to participate in interviews.

Below are some representative comments regarding video interviews:

- *Beyond the pandemic, the opportunity for applicants to choose to conduct video interviews is a benefit. It significantly impacts the travel costs and other obligations students may have, especially non-traditional, diverse and first generation.*
- *Makes the process more accessible to low-income students, including public interest focused students.*
- *Students hope video interviews will remain the default approach even when travel is more possible.*
- *If interviewing continues during the 2L summer, video interviews are strongly preferred because they are not as disruptive to a 2L summer program.*

While the COVID-19 pandemic necessitated the widespread adoption of alternatives to in-person interviews, schools view these options as a welcome addition for applicants given the various reasons stated above.

3) OSCAR Information Reliability

Fifty-six percent (56%) of schools expressed confidence in the reliability of clerkship hiring information posted on OSCAR. Still, 44% were neutral or not confident at all in the information.

While neither OSCAR staff nor law schools can constantly monitor every OSCAR entry to ensure the information is accurate, stale and static information creates confusion and frustration among applicants. Schools conveyed continued hope that more judges would post their positions on OSCAR and then ensure that chambers staff regularly updated those postings throughout the hiring season. Many schools reported having to undertake significant outreach efforts to the chambers of judges who do not post their positions on OSCAR. This is a drain on schools' resources which could be more efficiently directed to help increase the applicant pool, review materials, and prepare applicants to excel in their interviews. Similarly, schools expressed concerns that multiple calls to chambers due to the absence or staleness of information on OSCAR substantially burdens judges' staff.

Below are some representative comments regarding OSCAR information reliability:

- *The information in OSCAR in our experience is incomplete due to not all judges using OSCAR conscientiously. Our school separately must conduct our own outreach to target judges.*
- *There are still a number of [judge] profiles that contain out-of-date or contradictory information. There are also too many judges who do not utilize the filled marker on their positions. This leads applicants to believe that the positions are still potentially available, when in reality they have been filled for months.*
- *[T]he information [on OSCAR] is considered reliable [by students], but applicants are often frustrated by the lack of information and the time that the information is provided. For example, for the June 15, 2020 opening date, some judges did not list that they would be accepting applications until days before - so there was a lack of clarity as to whether that judge was hiring. It would be very helpful to have a date by which judges who are hiring on the plan list their open positions (preferably a month before the opening day of the plan).*

Recognizing the tremendous efforts made by the OSCAR staff to educate judicial staff and to update OSCAR records, static or inaccurate information on the platform still remains a matter of concern. Although more than half of schools responded positively, issues surrounding the reliability of information in the platform may erode future user confidence and increase the likelihood of that law schools and applicants will use alternate means of obtaining information.

B) THE FEDERAL LAW CLERK HIRING PLAN PILOT

Although the federal law clerk hiring plan was implemented by a separate group of judges and is not overseen by the OSCAR Working Group (OWG), the plan does have an impact on OSCAR's operations. As 2020 marked the end of the initial pilot phase of the hiring plan, we thought it could be useful to gather some feedback based on the first two years. We hope this information offers useful insights into the ongoing conversations and decisions on OSCAR and the hiring plan.

1) Strong Support for Basic Hiring Plan Tenets

On the threshold question, respondents overwhelmingly prefer a hiring plan (84%) over an unregulated approach. In addition, a substantial majority concurred that applicants should have completed two years of law school before initially applying; most favored opening applications during the summer after second year or the fall of third year. Many comments echoed the points

made during initial discussions of the plan two years ago. A definite date allowed schools and applicants to plan better and helped set expectations. Students benefited from more time to develop academically, gain some experience in the law, and build relationships with faculty. Setting the initial application period after the second year of law school was a step toward leveling the field, particularly for those from traditionally underrepresented groups.

Below are some representative comments expressing support for tenets of a basic hiring plan:

- *A hiring plan provides students (and judges) with some sense of expectation as to when applications will be considered and how early is too early to apply. An unregulated approach is very taxing on students who feel pressured to apply extremely early or decide not to apply as they feel they are too late. Many students - and particularly first generation students - do not even understand what a clerkship is early in their law school careers, and many stellar applicants may not have their best grades in their first two semesters.*
- *[A Hiring Plan] takes the pressure off students when they are early in their law school career and focused on getting their bearings. In my experience, this also increases participation by diverse students (e.g. students of color, low-income students, first generation students), who tend to be less knowledgeable about clerking upon arrival at law school.*
- *A hiring plan allows students to develop relationships with professors/recommenders, decide whether/where they might want to clerk, and find their academic footing in law school. I strongly believe that, for all of these reasons, a hiring plan with a launch date at the end of the 2L year results in a better clerk-judge fit.*

2) Concerns with Current Hiring Plan

Despite the significant support for a hiring plan in general, a number of comments expressed concerns about the hiring plan in its current formulation. The concerns primarily focused on two issues: judge participation rates and the length of the reading period.

a) Judge Participation

When asked about their perception of judicial participation in the hiring plan in their region, responses were mixed. A majority of respondents felt that more than half the judges in their region complied with the plan, and about a third of those perceived that most judges complied. The remaining respondents felt compliance was less consistent. Perceptions on participation varied noticeably by region, from very high confidence in the Northeast to much lower confidence in the Southeast.

Below are some representative comments regarding concerns with the judge participation:

- *The hiring plan is voluntary and not all judges follow it. This likely disadvantages students at schools downstream in the US News rankings and may also disadvantage diverse candidates.*
- *[H]aving a date that not all judges follow or abide by presents its own set of challenges and creates a lot of uncertainty and confusion for students.*
- *[T]here are inconsistencies within jurisdictions; we've experienced some judges in jurisdictions that adopted the plan deciding that they would not abide by the plan, and we've*

had judges in jurisdictions that didn't adopt the plan decide that they would abide by the plan.

- *Students were left floundering due to a lack of information and no resources to apply to judges who weren't following the plan.*

b) Reading Period

Schools were overwhelmingly supportive of the addition of a reading period in the second year of the plan. Some believed that 24 hours was insufficient time for meaningful review of applications. Without time for meaningful review, some schools expressed concern that judges relied primarily on school rankings to identify applicants to interview, which had the unintended consequence of harming the very students the plan hoped to help.

Below are some representative comments regarding the reading period:

- *If you have judges receiving between 300 and 900 applications, 24 hours is not going to make a difference: judges have to set more and more stringent triage mechanisms that will be based on school rank (only these particular schools), or on class rank (only the top 25% of Harvard/Yale/Stanford and only the top 10% of T14s and only the top 5% of the top 50 schools —> and that is generous). You need to give at least a week before anyone should be able to do interviews. And you need to require that judges indicate whether they plan to follow the plan or not.*
- *You should provide at least a reading period of a week to give any school a chance to be reviewed. In 24 hours, the judges probably don't look at 75% of the applicants, so if you continue this plan a few more [years], schools like ours will have a much harder time convincing students to apply for clerkships.*

3) Interaction with OSCAR

Recognizing that the OWG does not set the parameters of the hiring plan, it does decide the point at which the students who are subject to the plan receive access to OSCAR itself. Forty-eight (48%) of schools prefer that students be granted access to OSCAR roughly 4-6 months prior to the application release date (which aligns with the first two years of the hiring plan). Thirty percent (30%) said they preferred access at the beginning of 2L year, 10% said immediately after 1L year, and 13% chose “other.”

C) CONCLUSION

Despite the pandemic, the hiring season was remarkably smooth and applications remained robust. The wide-spread use of video interviewing conferred unexpected benefits beyond simply allowing hiring to proceed during this socially distanced summer. Challenges certainly remain with the compression of the initial round of interviewing and the uncertainty around the accuracy of clerkship information in OSCAR. We are glad to work with the OWG to better understand and address those challenges.