

*It is a truth  
universally  
acknowledged,  
that a law student  
in possession of  
a desire to become  
a law professor,  
must be in want of  
a judicial clerkship.<sup>†</sup>*

# Academic Feeder Judges

*Are clerkships the key to academia?*

by Howard M. Wasserman\*

The legal community is familiar with “feeder judges” — federal lower-court (primarily court of appeals) judges who have a substantial number of law clerks go on to clerk for justices on the Supreme Court of the United States.<sup>1</sup> During the Burger Court (1969–1986), having at least one prior clerkship became a de facto prerequisite to a Supreme Court clerkship. This created a network effect in which certain appellate judges became known for placing clerks with the justices, increasing the number of law students applying to clerk for those feeder judges with the hope of securing a subsequent clerkship on the High Court.<sup>2</sup> During the Rehnquist Court (1986–2004), ten lower-court judges placed more than 20 clerks, with a second-tier of 16 judges placing eight or more.<sup>3</sup> From 2004 (one year prior to the start of the Roberts Court) through 2018, 11 lower-court judges produced 20 or more Supreme Court clerks and another 20 lower-court judges produced eight or more Supreme Court clerks.<sup>4</sup>

While not as formally necessary to a law-teaching position, a judicial clerkship is one step in the common path to the legal academy. Clerkships appeal to high-achieving law students at top

law schools, many of whom gravitate towards law teaching. Clerkships launch former clerks into other legal positions (including government, private practice, and further clerkships) and short-term pre-tenure teaching positions (such as fellowships and Visiting Assistant Professorships<sup>5</sup>) that provide further experience and credentials for a permanent teaching job. And clerkships accord a mark of prestige that appeals to current faculty members — who clerked early in their careers — in identifying promising new colleagues, especially from among candidates who clerked for “their” judges.

Given the intimate (if not essential) connection between clerkships and legal academia, the time is right to identify “academic feeder judges” — the judges for whom significant numbers of current U.S. law professors clerked at the beginning of their careers and the judges who “pro-

duce” law professors from the ranks of their former clerks.

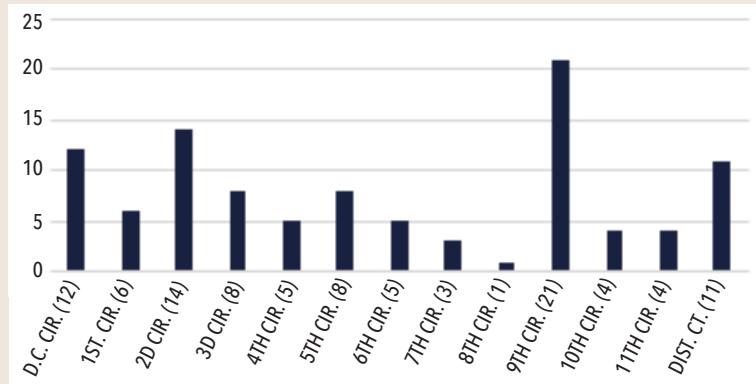
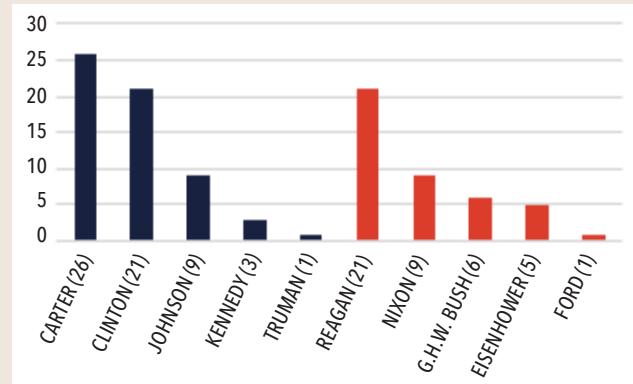
**Given the intimate (if not essential) connection between clerkships and legal academia, the time is right to identify “academic feeder judges” for whom significant numbers of current U.S. law professors clerked at the beginning of their careers.**

most professors provide this information in at least one of those spaces.

The analysis is limited to full-time permanent teaching, research, and clinical faculty at American Bar Association (ABA)-accredited, Association of American Law Schools ▶

## Methodology

This study identifies law faculty as of fall 2019 with judicial clerkships in their background — what I call “academic former clerks.” It relies on self-reporting — faculty presentation to the world about past clerkships through biographies and publicly available curricula vitae on their law school websites. This methodology risks missing some academic former clerks who choose not to include the clerkship experience in their online information or who do not post their CVs. But I expect that

**FIGURE 1: COURTS****FIGURE 2: APPOINTING PRESIDENT**

(AALS)-member or AALS-fee-paying law schools as of the time of the study. It includes tenured, untenured/tenure-track, and untenured/non-tenure-track contract faculty and lecturers. It does not include adjuncts and other part-time faculty who are not primarily academics. It also does not include short-term visitors and fellows, many of whom are recent law clerks occupying temporary entry-level positions as a stepping-stone to an academic career. And it does not include former law clerks teaching at non-U.S. law schools or working in non-law academic disciplines.

According to the AALS, there were 9,329 full-time law faculty in fall 2019.<sup>6</sup> Online biographies and posted CVs identified 3,641 full-time faculty with judicial clerking experience, representing more than 35 percent of full-time faculty. Approximately 200 faculty members identified the courts on which they clerked but not the judges. This left more than 3,400 current full-time faculty who clerked for at least one identified judge.

From these 3,400 faculty members, I identified 325 federal lower-court judges with at least three former clerks in teaching. For the judges in that group, I gathered data on court, appointing president, and years of service;<sup>7</sup> cur-

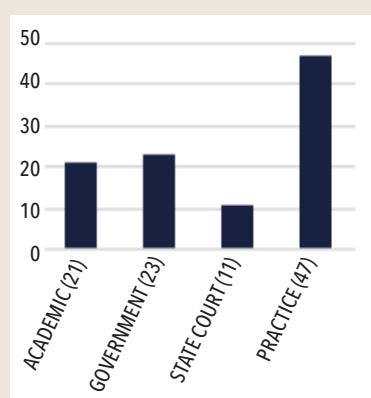
rent status (active, retired,<sup>8</sup> senior,<sup>9</sup> resigned,<sup>10</sup> or deceased); primary career prior to appointment to the federal bench (academy, government, private practice, or state bench); number of academic former clerks; per-year average (academic former clerks divided by years on the bench); and rankings of the schools at which former clerks teach.<sup>11</sup> All biographical and historical information about judges is drawn from the Federal Judicial Center's online *Biographical Directory of Article III Federal Judges, 1789-Present*.<sup>12</sup> From this group, I created the following studies of former clerks:<sup>13</sup>

1. One-hundred-two federal lower-court judges, most on courts of appeals, with eight or more academic former clerks.
2. Fifty-one federal district judges with three or more academic former clerks.
3. Fifty-two federal lower-court judges appointed since 1995 with three or more academic former clerks.
4. Eighteen state-court judges with two or more academic former clerks.
5. Current and former justices of the Supreme Court of the United States.

6. Fifty-one federal lower-court judges, focusing on academic former clerks who did not also clerk for SCOTUS.

The link between judicial clerkship and academic job is less direct than the link between lower-court clerkship and SCOTUS clerkship. A SCOTUS clerk obtains her position on the strength of being a clerk for a feeder judge and that feeder judge's recommendation, typically a direct line from lower-court chambers to SCOTUS chambers within one or two years of the first clerkship. Being a "Judge X Clerk" or "Justice Y Clerk" helps secure an academic position, especially with a strong recommendation from the jurist. But that position comes several years later, the clerkship and recommendation forming one piece of the hiring faculty's prediction of whether an entry-level faculty candidate is likely to be a productive scholar and effective teacher.

The numbers thus tell a correlative rather than causal story — who professors happen to have clerked for. In labeling these judges academic "feeders," I adopt the familiar parlance as an analogy. While I occasionally describe judges as "producing" or "placing" academics, it is shorthand to connect the

**FIGURE 3: PRIOR POSITION**

judge to her former clerks and the law professor to her former judge. It does not suggest that judges “feed” law faculties as they “feed” SCOTUS. Nor does it suggest the judge “got” the former clerk an academic job, as she might have “gotten” the former clerk a later, higher clerkship, often with one phone call.

This study offers a snapshot of judges and their academic former clerks serving on U.S. law faculties as of fall 2019, one point in time. This study performed 25 years ago would have produced different results; this study repeated 25 years hence will produce different results. Nevertheless, we can learn something from this snapshot of the courts and the academy — telling us where we were, where we are, and where we might go.

#### I. ALL LOWER-COURT JUDGES

The core study examines federal lower-court judges, who represent the main academic feeders. I identified 325 judges with at least three academic former clerks. From that, I focus on a top group of 102 judges with at least eight academic former clerks. This excludes 223 judges, two-thirds of those studied. This illustrates the bunching among judges at lower numbers of academic former clerks,

leaving less room for distinctions. Table 1 (see appendix online at [judicature.duke.edu](http://judicature.duke.edu)) presents the top 102 lower-court judges.

The clear “winner” is Guido Calabresi, senior judge on the Second Circuit, appointed by President Bill Clinton in 1994 following a long career as a leading legal theorist and as a professor and dean at Yale Law School. Forty-three former Calabresi clerks are in the legal academy, 27 at top-25 law schools.

Calabresi leads a clear top seven with 20 or more academic former clerks. Joining him are Stephen Reinhardt (Ninth Circuit, died in 2018), Stephen Williams (D.C. Circuit, died in 2020), Dorothy Nelson (Ninth Circuit, senior judge), Richard Posner (Seventh Circuit, retired in 2017), Harry Edwards (D.C. Circuit, senior judge), and Patricia Wald (D.C. Circuit, retired in 1999, died in 2019). Ninety-one of the 102 served on the courts of appeals. Of the 11 district judges, the highest ranked are Jack Weinstein (Eastern District of New York, senior judge),<sup>14</sup> with 14 academic former clerks, and Marilyn Hall Patel (Northern District of California, retired in 2012) and Louis Pollak (Eastern District of Pennsylvania, died in 2012), each with 13.

Figures 1–3 (above and previous page) illustrate biographical information for these top 102 judges.

**Figure 1. Courts.** The Ninth Circuit’s lead is unsurprising, as it is the largest regional circuit, with 29 approved active judgeships — more judges means more clerks, which means more future academics from among those clerks. The D.C. Circuit is regarded as the “junior Supreme Court” and the most prestigious circuit,<sup>15</sup> from which we would expect legal academics to emerge. The circuits represented expands going down the list of judges.

**Figure 2. Appointing President.** In 1978, Congress enacted the Omnibus Judgeship Act,<sup>16</sup> creating 152 new Article III judgeships, which President Jimmy Carter filled during the following two years of his term. Many judges on the list were appointed in that two-year span; many remain on the bench or produced substantial numbers of academic former clerks prior to leaving the bench.

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**Figure 3. Prior Position.** Five of the top seven feeder judges were academics before joining the bench — Calabresi at Yale, Williams at University of Colorado, Nelson at University of Southern California, Posner at The University of Chicago, and Edwards at University of Michigan and at Harvard. Two of the top district judges joined the bench from the academy — Weinstein (Columbia) and Pollak (Yale and Penn).

This top group includes 22 women, five African Americans, and two Hispanics. ▶

Fifty-four remain on the bench, 17 on active status.

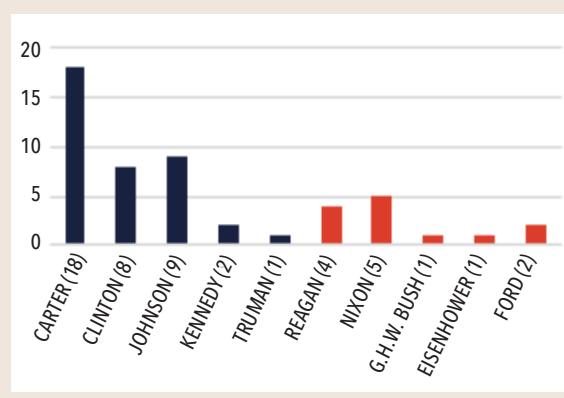
Frequency measures the number of academic former clerks per year on the bench; this can be framed as how often a former clerk enters teaching or as the number of clerks per judicial term who enter teaching. Unsurprisingly, Calabresi leads, with 1.68 academic former clerks per year on the bench, meaning an average of more than 1.5 Calabresi clerks from each term has entered teaching. Reinhardt, Williams, Nelson, Posner, Wald, and William Norris (Ninth Circuit, retired in 1997) are at or a bit below one clerk per term. Abner Mikva (D.C. Circuit, retired in 1994) stands at .8, with 12 academic former clerks in 15 years on the bench.<sup>17</sup> Seventeen judges are at or above .5 per term — that is, an average of one-half clerk per term entered teaching, meaning one academic from every two years of law clerks.

The judges with the most academic former clerks also have the greatest distribution of academic former clerks at top-tier law schools. The top seven judges have 60–75 percent of their academic former clerks at top-25 schools and a higher percentage at top-50 schools. The distribution broadens as we move down the list, with smaller percentages of former clerks at top-25 schools. But most judges on the list have approximately half of their academic former clerks within the top-50 schools and a substantial majority within the top-100 schools, reflecting the value of the clerkship, especially a federal appellate clerkship, as an academic credential.

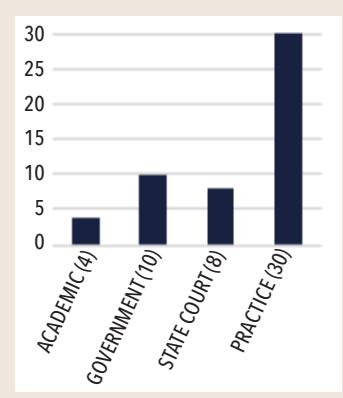
## II. FEDERAL DISTRICT JUDGES

The vast majority of academic feeder judges serve on federal courts of appeals. Many law professors were top students at top law schools, who grav-

**FIGURE 4: APPOINTING PRESIDENT**



**FIGURE 5: PRIOR POSITION**



itate towards the perceived greater prestige of appellate clerkships, including with the hope (sometimes realized, usually not) of landing a Supreme Court clerkship. But many law professors clerked on the federal trial courts, either alone or in addition to the court of appeals. Some court of appeals judges prefer prior clerking experience, hiring their clerks from current trial-court clerkships rather than from law school.

The top 102 judges with eight or more academic former clerks, described in Part I and Table 1 (see tables in appendix online at [judicature.duke.edu](http://judicature.duke.edu)), include 11 district judges. Part II and Table 2 present 51 judges who spent their careers on the federal district courts and who have four or more academic former clerks.

Figures 4–6 (above and at right) illustrate biographical information for these 51 district judges.

**Figure 4. Appointing President.** The partisan skew is more noticeable with district judges. The substantial number of Carter appointees illustrates an interesting point. Many Carter appointees served more than 30 years on the district courts. Some might have been considered for elevation to the court of appeals by a Democratic president, but Democrats were out of the White

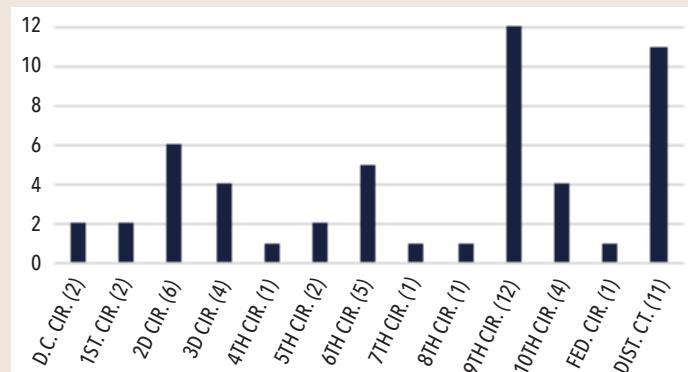
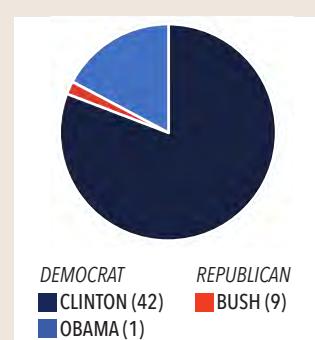
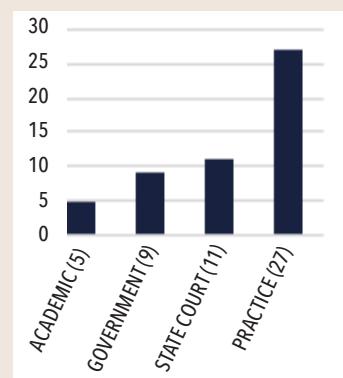
House for 12 years following the election of Ronald Reagan in 1980. By the time Bill Clinton entered the White House in 1993, many judges in this group were too old to be politically beneficial as court of appeals appointees.<sup>18</sup>

**Figure 5. Prior Position.** Most district judges came from private practice. Four came from the legal academy: Weinstein taught at Columbia; Pollak taught and was dean at Yale and Penn; Thelton Henderson (Central District of California, senior judge,) taught at Stanford and Golden Gate University; and Israel Glasser (Eastern District of New York, senior judge) was a faculty member and dean at Brooklyn Law School.

Thirteen of the 51 judges are women and three are African American. Fourteen remain on the bench, two on active status.

More than half the judges cluster in five districts — Southern District of New York, which includes Manhattan (13); Northern District of California, which includes San Francisco (6); Eastern District of New York, which includes Brooklyn (5); Eastern District of Pennsylvania, which includes Philadelphia (5); and District of Massachusetts (5).

Academic former district clerks are broadly distributed across groups of

**FIGURE 6: COURTS****FIGURE 7: APPOINTING PRESIDENT****FIGURE 8: PRIOR POSITION**

law schools. One outlier is Kimba Wood (Southern District of New York, senior judge): All nine academic former clerks teach at top-50 schools, eight in the top 25.<sup>19</sup> Eight of Patel's 13 academic former clerks teach at top-25 schools.

### III. FEDERAL JUDGES APPOINTED SINCE 1995

Unsurprisingly, the raw numbers skew towards longer-serving judges. A judge who has employed three to four law clerks every year for 35 years on the bench produces more former clerks and more former clerks who enter legal academia. In addition, a permanent academic career often begins five or more years following completion of the clerkship. Former clerks take other clerkships (potentially on the Supreme Court), enter government service or private practice, pursue further graduate education,<sup>20</sup> or take short-term fellowships or visitorships;<sup>21</sup>

all provide legal experience, credentials, and time to prepare for permanent academic positions, especially by publishing and teaching.

Recent appointees have fewer former clerks and less time for those former clerks to complete the multi-year path from clerkship to law faculty, meaning fewer opportunities to produce academic former clerks. Former clerks for early Barack Obama appointees might begin hitting the academic job market in the next few years,

while former clerks for Donald Trump appointees may be several years away.

This part examines judges appointed since 1995, a period covering 25 years to when this study was written, offering a picture of academic former clerks from relatively newer judges. This covers all George W. Bush and Obama appointments, the last five years of Clinton appointments, and

the first three years of Trump appointments. It extends to judges with three or more academic former clerks, accounting for bunching within categories while providing a sufficient sample of judges to compensate for the lag between clerkship and academia. This establishes a group of judges who have been on the bench long enough to produce significant numbers of former clerks and academic former clerks and who are likely to remain on the bench for another decade or more with time to produce more former clerks and more academic former clerks.

Table 3 (see appendix online at [judicature.duke.edu](http://judicature.duke.edu)) shows 52 judges, appointed since 1995, with three or more academic former clerks. Sixteen appeared among the top-102 feeders in Part I and Table 1, while Calabresi, appointed in 1994, missed the beginning of this window by one year.

*Figure 6. Courts.* The Ninth Circuit continues to lead the list with 12 judges, followed by the Second Circuit with six. But the distribution is broader within this smaller group. The Sixth Circuit emerges with five judges, including Karen Nelson Moore, a Clinton appointee with ten academic former clerks, and Jeffrey Sutton, a George W. Bush appointee and long-list potential Republican SCOTUS ▶

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appointee, with four. Eleven district judges are in this mix, all in the range of 3-4 former clerks.

**Figure 7. Appointing President.** No Trump appointee has produced an academic, likely because none has been on the bench long enough, and insufficient time has lapsed since the end of any clerkship to begin an academic career. The most recent appointee on the list is Raymond Lohier (Second Circuit), a 2010 Obama appointee, with four academic former clerks. Late-Clinton appointees have served longer than Bush appointees, offering more time for former clerks to land teaching jobs.

**Figure 8. Prior Position.** William Fletcher (Ninth Circuit) taught at University of California-Berkeley; Robert Katzmann (Second Circuit, senior judge,) taught at Georgetown University; Moore taught at Case Western Reserve University; Jay Bybee (Ninth Circuit, senior judge) taught at Louisiana State University and University of Nevada-Las Vegas; and Michael McConnell (Tenth Circuit, resigned in 2009) taught at University of Chicago and University of Utah.

These five former academics represent 9.6 percent of the 52 judges on the post-1995 list. By contrast, 20 percent of the top-102 overall judges in Table 1 joined the bench from the academy, including five of the top seven and ten of the top 30. The dramatic reduction may indicate a change in the path from the academy to the bench. Presidents are appointing fewer judges from the academy. Alternatively, the former academics who reached the bench intersperse government service with their academic appointments. For example, prior to his 2003 appointment to the Ninth Circuit, Bybee worked in the executive branch for both Presidents Bush, including as head of the Office of Legal Counsel for George W. Bush.<sup>22</sup>

Sixteen judges in this group are women, three are African American, and two are Hispanic. All but five remain on the bench, and 27 maintain active status; many should add to their totals in the coming years and should be higher on the overall list 20 years from now. The lower end of this group again bunches — ten recent appointees have four academic former clerks and 18 have three. The distribution across classes of law schools remains broad, with a smaller percentage of academic former clerks at top-25 schools.

Table 4 (*available in an appendix online at judicature.duke.edu*) offers a different way to represent academic feeders among newer judges — projecting from current rate of placement after 25 years or less on the bench to a 35-year judicial career. Thirty-five years represents a reasonable benchmark. It is close to the median time on the bench for the top-30 judges (36 years) and the median time on the bench for the top seven (37 years). The 60 judges in Table I with 11 or more academic former clerks served (or continue to serve) judicial careers of between 35 and 40 years.

The 35-year benchmark assumes similarities of age, age at appointment, interest, health, and circumstances, although variance will affect length of service and numbers of academic former clerks. It also assumes that frequency of clerks entering teach-

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ing remains steady over a judicial career. But frequency might accelerate as a judge serves longer, produces academic former clerks, and develops a reputation for having law clerks enter teaching, making her chambers attractive to clerks with academic ambitions. If frequency increases over time (something this study does not measure), numbers for some judges could rise higher.

Two judges — Robert Sack (Second Circuit, senior judge), and Thomas Ambro (Third Circuit) — project into the coveted 20-30 range.<sup>23</sup> Five others — A. Wallace Tashima (Ninth Circuit, senior judge), Kermit Lipez (First Circuit, senior judge), M. Margaret McKeown (Ninth Circuit), Bybee, and Lohier — project into the upper teens. Seven judges who did not make the (admittedly arbitrary) eight-clerk cut in Table I would exceed eight in 35 years, five reaching into double digits — Marsha Berzon (Ninth Circuit), Julio Fuentes (Third Circuit, senior judge), Chester Straub (Second Circuit, senior judge), Milan Smith (Ninth Circuit), and Lohier.

Several judges in this group could represent the next wave of academic feeder judges. Lohier has four academic former clerks in a decade on the bench. At that rate of .44 academic clerks per term, he should reach ten clerks in another 14 years, meaning by his quar-

ter-century mark on the bench, and at least 15 clerks in a 35-year career. Notably, Lohier turns 56 in 2021, so a 40-to-45-year judicial career (and 20 academic former clerks) is not out of the question. Bybee's eight in 16 years projects to 17 in 35 years. Sutton (Sixth Circuit, appointed in 2003) has four academic former clerks in 16 years, a rate of .25 per year, and a projection of eight by 35 years; Jennifer Walker Elrod (Fifth Circuit, appointed in 2007) has three in 12 years, the same .25 rate, and the same projection of eight. Like Lohier, Elrod is in her early 50s and a 45-year judicial career is possible, which would project to more than ten academic former clerks.

McConnell offers an interesting what-if scenario. He was a leading constitutional law and law-and-religion scholar in a teaching career at University of Chicago and University of Utah. He was appointed to the Tenth Circuit in 2002 by George H.W. Bush but resigned in 2009 to join the Stanford law faculty. In less than seven years on the bench, McConnell produced six academic former clerks, half at top-25 schools, a frequency of .86 academics per year, almost one clerk per term entering teaching. Over a 35-year career, this would have projected to more than 30 academic former clerks, numbers similar to Williams, Posner, and Dorothy Nelson near the top of the overall feeder group.

A final notable piece is the relative paucity of more-recent district-court appointees. Of the 11 district judges in Tables 3 and 4, none has more than three academic former clerks. Five project to five or more academic former clerks in 35-year careers. This contrasts with the larger list of 51 district judges in Part II and Table 2; it includes longer-serving judges: 24 judges with six or more academic for-

mer clerks, 11 with eight or more, two with 13, and one with 14.

#### IV. STATE COURTS

Table 5 shows 18 state-court judges (all but one on the state's highest court) with two or more academic former clerks. Matthew Tobriner (Supreme Court of California, retired in 1982) tops the list with eight.

The breakdown reflects the perceived decreased prestige of state courts and thus of state-court clerkships as a path to academia. Of the 18 jurists, only Denise Johnson (Supreme Court of Vermont, appointed in 1990), John Broderick (Supreme Court of New Hampshire, appointed in 1995), and Roderick Ireland (Supreme Judicial Court of Massachusetts, appointed in 1997) joined their respective courts post-1990. Only six of 18 remained on their respective courts post-2000, and none remains in active service.

#### V. SCOTUS EFFECTS

A Supreme Court clerkship offers a traditional and unique credential and path to law teaching, particularly at elite schools.<sup>24</sup> This part considers the effect of Supreme Court clerkships on academic placement.

**A. Supreme Court Clerks in Academia**  
Table 6 shows academic former clerks for current justices and Table 7 shows academic former clerks for former justices. Both tables (*see appendix online at judicature.duke.edu*) show the breakdown by the U.S. News rankings of the law schools at which former clerks teach.

More than 30 former clerks for each of David Souter, John Paul Stevens, Sandra Day O'Connor, and Thurgood Marshall remain on law faculties. Ruth Bader Ginsburg — a law professor at Rutgers and Columbia

before joining the bench, who died in September 2020 — has 29 former clerks in teaching.

Among current justices, Stephen Breyer, a former law professor at Harvard, has 24 academic former clerks. From there, however, the drop on the current Court is steep, to Clarence Thomas's 13 (in 28 years on the Court, a rate of less than one academic for every two terms of law clerks), and the remaining justices in single digits.

Because these are raw numbers, time on the Court matters. Other than Thomas and Breyer, the current justices have served for 15 or fewer years. Sonia Sotomayor, appointed in 2009, has nine academic former clerks,<sup>25</sup> triple John Roberts and Samuel Alito, both appointed four years earlier. Elena Kagan, a former professor at University of Chicago and dean at Harvard, appointed in 2010, has the same number of academic former clerks as Roberts and Alito. Neil Gorsuch (appointed by President Trump in 2017), Brett Kavanaugh (appointed in 2018), and Amy Coney Barrett (appointed in 2020) have not been on the Court long enough to have clerks enter teaching, for the same reasons as many lower-court judges discussed in Part III.<sup>26</sup> Stephanie Barclay did take a leave from her faculty position at Brigham Young University, a top-50 law school, to clerk for Gorsuch during October Term 2019.<sup>27</sup>

A notable-but-unsurprising fact is that a significant percentage of academic former Supreme Court clerks, regardless of overall number of placements for that justice, land at top-25 schools. All three of Kagan's academic former clerks and two of Roberts's academic former clerks teach at top-25 schools, while eight of Sotomayor's nine teach in the top 50.



### B. Non-SCOTUS Clerks in Academia

The primary focus of this study has been identifying the academic feeders from among lower-court judges. As an academic candidate, a former SCOTUS clerk is viewed less as a “Court of Appeals Judge X clerk” than as a “Justice Y clerk.” Or she is viewed as both. Either way, the High Court clerkship does some of the work in establishing the candidate’s elite academic credentials. It also confounds whether the lower-court judge serves as academic feeder or whether the lower-court judge serves as SCOTUS feeder with the SCOTUS clerkship serving as the academic feeder.

The lower-court judges identified as academic feeders overlap with the lower-court judges recognized as SCOTUS feeders. Of Todd Peppers’s top SCOTUS feeders for 1986–2004, 20 of the top 28 have at least eight academic former clerks.<sup>28</sup> Of Artemus Ward’s and David Weiden’s top SCOTUS feeders for 1962–2002, eight of the top ten remain in the top 102 for academics, including 15 of the top 24 judges by frequency.<sup>29</sup> Of the 11 lower-court judges who have placed 20 or more clerks on SCOTUS since 2004, seven have ten or more academic former clerks.<sup>30</sup> Of the 20 lower-court judges who have placed between eight and 18 clerks on SCOTUS, nine have eight or more former clerks in teaching.<sup>31</sup> Using similar data, Adam Feldman identified ten “most central” judges in producing Supreme Court clerks; seven appear in the top 102 (Table 1) and an eighth, Sutton, is among the leaders for post-1995 appointees and in 35-year-projection (Tables 3 and 4).<sup>32</sup>

Table 8 (see appendix online at [judicature.duke.edu](http://judicature.duke.edu)) identifies “non-SCOTUS-feeder judges” with 11 or more academic former clerks. It reorders the lower-court judges in Table

1, isolating numbers of academic former clerks for whom the lower-court clerkship represented the highest clerking credential (or one of several highest clerking credentials).

Calabresi remains atop the list, based on pure numbers; removing 15 SCOTUS clerks, he has produced nearly 30 academic former clerks. Dorothy Nelson, Reinhardt, and Williams remain in the top four. Of the remaining judges at the top of Table 1, Posner drops to eighth (from 28 to 16 academic former clerks), Wald to 23rd (20 to 12); and Edwards to 26th (23 to 11). SCOTUS clerks represent more than half of academic former clerks for several judges near the top of Table 1. David Tatel (D.C. Circuit) drops from 19 academic former clerks to nine; J. Harvie Wilkinson (Fourth Circuit) from 18 to seven; Pierre Leval (Second Circuit, senior judge) from 18 to 11; Michael Boudin (First Circuit, senior judge) from 16 to seven; and Garland from 15 to eight. Each judge is (or was, in Garland’s case) recognized SCOTUS feeders, so much of their academic feeding overlaps with their SCOTUS feeding.

Meanwhile, Judith Rogers (D.C. Circuit), Dolores Sloviter (Third Circuit, senior judge), James Browning (Ninth Circuit, died in 2012), Damon Keith (Sixth Circuit, died in 2019), John Noonan (Ninth Circuit, died in 2017), John Walker (Second Circuit, senior judge), and Jane Roth (Third Circuit, senior judge) have high numbers of academic former clerks, none of whom clerked for SCOTUS. Betty Fletcher (Ninth Circuit, senior judge, died in 2012), Jon Newman (Second Circuit, senior judge), and Weinstein each had one former clerk pass through the High Court. At the lower end, the extreme is J. Skelly Wright (D.C. Circuit, died in 1988), a known feeder judge during the Warren and Burger Courts.<sup>33</sup> Of 11 for-

mer Wright clerks remaining in law teaching, ten clerked on SCOTUS.

### VI. JUDICIAL SNAPSHOT: CONCLUSIONS AND LIMITATIONS

The question is what to do with this information or if it tells us anything. This part offers several descriptive and normative points, while recognizing some limitations on the study.

#### A. Not Causal or Advisory, but Correlative

It is facile to say these results prove that budding academics should clerk for Guido Calabresi or Dorothy Nelson or Harry Edwards if given the opportunity, because doing so will lead to a great career in law teaching. A budding anything in the legal profession should clerk for Guido Calabresi or Dorothy Nelson or Harry Edwards if given the opportunity, because doing so will lead to a great career in law. Nor do I expect a clerkship applicant to choose between Judge X and Judge Y based on these numbers, although the information may be of interest to the judges and to potential clerks with academic ambitions. Nor is this an attempt at a causal argument — the clerkship is not a proximate cause for a person “getting” an academic job. These numbers instead reveal a correlation between the clerking credential and the academic job and between particular judges and clerks interested in law teaching.

This is not to minimize the importance of the clerkship or the name recognition of the judge in obtaining teaching jobs, which remain critical pieces of a teaching candidate’s CV. Many judges serve as important, often personal, references for entry-level candidates. Being a “Judge X Clerk” or “Justice Y Clerk,” perhaps with a strong recommendation from the

jurist, helps secure an academic position.

Clerking and law teaching connect in natural ways. Both attract high-achieving law students from top law schools. Both demand people personally and financially able to relocate for short-term jobs, perhaps multiple times. Someone may land a one- or two-year clerkship in a different state from where she attended law school (or plans to practice) or multiple clerkships in different states; someone may move multiple times in two or three years for different clerking opportunities. An academic candidate has least control over where she lands a job, and a professor may teach or visit<sup>34</sup> at many schools in different locations over her career. The recent rise of VAPs, fellowships, and other entry-level teaching

programs<sup>35</sup> adds a layer of short-term, geographically shifting work on the academic career path. A potential academic might attend law school in one place, clerk for one year in another place, move to a third place for a two-year fellowship, then move elsewhere when she lands a permanent faculty position. Finally, clerking and law teaching require someone personally and financially able to earn less money.

## Fewer modern faculty members move directly from chambers (especially lower-court chambers) to tenure-track faculty positions. Candidates seek further education or teaching experience and time to engage in scholarly writing and publishing through VAP and fellowship programs; all provide more significant credentials for a position in the modern law school.

the Justice and from the Justice about the law clerk to the dean of the hiring law school.<sup>37</sup>

Fewer modern faculty members move directly from chambers (especially lower-court chambers) to tenure-track faculty positions. Candidates seek further education<sup>38</sup> or teaching experience and time to engage in scholarly writing and publishing through VAP and fellowship programs;<sup>39</sup> all provide more

Although their pay is substantial compared with other academics and most occupations, law professors earn less than their counterparts in private practice.

But the modern legal academy and the modern academic hiring process attenuate causal connections among judge, clerkship, and academic position.

The nature of academic hiring and the requirements for teaching jobs have changed. Two or three generations ago, the clerkship was the essential credential, and a call from the judge or justice to the law-school dean was the ticket to the teaching job. Louis Brandeis favored clerks whom he believed would become law teachers.<sup>36</sup> It was a direct path from Harvard Law School to Brandeis Chambers to faculty office with a call or letter from Felix Frankfurter (then on the Harvard faculty) about the law student to

significant credentials for a position in the modern law school. Of course, such pre-tenure-track programs appear to hire potential academics based on law school, academic performance, and clerkship; that is, the credentials that corralled a tenure-track job two generations ago now corral the fellowship that corrals the tenure-track job.<sup>40</sup> The clerkship remains vital, but one step removed — rather than the clerkship helping a candidate obtain a tenure-track teaching job, the clerkship helps her obtain the fellowship or VAP, which helps her obtain the teaching job. This formalizes the several-year gap between finishing a clerkship and entering teaching, given the need to spend time in pre-faculty positions.

The Great Recession of 2008 appears to have exacerbated the disconnect between clerkship and teaching. The economic downturn slowed faculty hiring, reducing the number of academic opportunities for recent clerks and for clerks from recently appointed judges. According to data collected by the legal-academic blog *PrawfsBlawg*, the number of self-reported new faculty hires reached 167 in 2008 and dropped from 155 in 2011 to 62 in 2017.<sup>41</sup> A different study showed a reduction of more than 1,400 full-time faculty positions between 2010 and 2016,<sup>42</sup> following a decade (1998–2008) during which law faculties grew by more than 40 percent.<sup>43</sup>

New hires rose to 82 in 2019 and 88 in 2020 but remain about half of new hires for each year in the late 2000s.<sup>44</sup> And any limited recovery in academic hiring may be slowed — if not halted and reversed — by the unknown but potentially catastrophic economic effects of COVID-19 on legal education,<sup>45</sup> which may include a new round of hiring freezes and faculty downsizing, reducing available academic opportunities. ▶

This change in the hiring landscape colors the study in two respects. The high numbers of academic former clerks from top judges reflect the times in which their former clerks entered the legal academy. It was easier for Calabresi or Nelson or Posner to produce academic former clerks in 2008, when 167 new professors were hired in the middle of a decade of faculty expansion. Lohier's four academic former clerks in a decade or Bybee's seven in 16 years are stronger than raw numbers suggest, given that their former clerks entered a market in which half as many teaching jobs were to be had. Presuming faculty hiring never returns to pre-2011 numbers, newer judges, even those whose former clerks seek to enter teaching, may never reach similar placement levels. The new academic feeder judge may produce academic former clerks in the teens rather than 20s or 30s. Fewer academic jobs and more post-clerkship requirements mean longer clerkship-to-faculty lags, lower numbers, and more time on the bench needed to produce a large group of former clerks and thus academic former clerks.

Finally, the changing nature of law practice perhaps affects academic hiring on the money-and-geography axis. Many law firms maintain dedicated Supreme Court and appellate practices, creating a specialized Supreme Court and appellate bar.<sup>46</sup> This new practice area offers former law clerks a place to specialize in writing and speaking on high-level constitutional and public-law issues, an opportunity that a generation or two ago was available primarily to academics. A former federal clerk can engage in prestigious and desirable "sexy" legal work while making law-firm money and living and working in her chosen major city. The academy is no longer the sole or primary path to

specializing in a particular type of prestige legal work.

#### B. Political Imbalance

The political imbalance among feeder judges is striking. Sixty of the top 102 judges with eight or more former clerks in teaching are Democratic appointees. Thirty-nine of 51 district judges with four or more academic former clerks are Democratic appointees. Forty-three of 52 recent (1995-present) judges are Democratic appointees.

Comparing two recent appointees illustrates the imbalance. Lohier (Obama appointee to the Second Circuit in 2010) and Elrod (George W. Bush appointee to the Fifth Circuit in 2007) are close in age and were appointed three years apart. As of this study, Lohier has one more academic former clerk in three fewer years on the bench and more than three times the annual rate. Lohier projects to 15 academic former clerks in 35 years, while Elrod projects to eight or nine in the same period.

That political imbalance shows among former SCOTUS clerks. Among the current justices with the most academic former clerks (Breyer, Thomas, Sotomayor), two are Democratic appointees—and Breyer has more than twice the number as Thomas in three fewer years on the Court. Brandeis envisioned the Supreme Court clerkship as a path to law teaching when he developed the model in the 1920s and '30s.<sup>47</sup> The numbers backed that up through the Warren and Burger Courts,

**Sixty of the top 102 judges with eight or more former clerks in teaching are Democratic appointees.**

**Thirty-nine of 51 district judges with four or more academic former clerks are Democratic appointees.**

with close to a quarter or more of clerks for each justice, regardless of appointing president or ideology, entering legal academia, including 43 percent of Marshall clerks.<sup>48</sup>

But William Nelson and his co-authors argue that the SCOTUS-to-academia path changed on the Rehnquist Court, specifically the Rehnquist Court as constituted from 1994–2005.<sup>49</sup> Of the five conservative-leaning justices, three had less than 20 percent of former clerks enter teaching.<sup>50</sup> Only

Antonin Scalia – a faculty member at University of Chicago prior to joining the federal bench – produced academics at a rate of approximately 25 percent, which would have placed him on the lower end of the Warren and Burger Courts.<sup>51</sup> And Scalia famously hired one "counter-clerk" each term – a clerk who did not share his conservative/originalist/textualist jurisprudence and would check the Justice's failure to adhere to his methodology<sup>52</sup> – many of whom entered law teaching.<sup>53</sup> By contrast, O'Connor and the four liberal-leaning justices of the Rehnquist Court placed clerks at rates similar to their predecessors, with Souter continuing Marshall's tradition of almost 45 percent of former clerks entering teaching.<sup>54</sup>

There are benign explanations for this political imbalance. The creation of new judgeships in 1978 presented Carter with an unusually large number of vacancies to fill between 1978 and

1980. Assuming a delay of five years from clerkship to teaching job, clerks for late-Clinton and early-Bush appointees hit the teaching market during a decade of expanding faculties and waves of faculty hiring, while late-Bush and Obama appointees hit the teaching market during a steep downturn in the hiring market.

A less benign explanation is that the imbalance demonstrates the long-complained-of anti-conservative bias on law faculties and in law-faculty hiring.<sup>55</sup> Party affiliation may be an accurate indicator of judicial ideology, and judges may hire ideologically sympathetic clerks, whether because judges seek matching clerks or because prospective clerks seek matching judges.<sup>56</sup> It is less clear how ideological preferences shape these practices on lower courts, especially district courts.<sup>57</sup> But the possibility of an ideological link to a purportedly conservative judge (or justice) may follow a purportedly conservative former clerk into the academy, where any hiring bias affects her chances at a teaching job.

One indicator in the coming decade may be the teaching-market success of former clerks for Trump-appointed judges. Working with a Republican-controlled Senate in his one term, President Trump appointed 226 judges, including 54 appellate judges.<sup>58</sup> Many were prominent, conservative, and ideological, selected with the assistance of Leonard Leo and the Federalist Society.<sup>59</sup> They include several successful legal academics, including Stephanos Bibas (Third Circuit), a faculty member at the University of Pennsylvania; David Stras (Eighth Circuit), a faculty member at the University of Minnesota;<sup>60</sup> and Barrett, a faculty member at Notre Dame. If these conservative judges

attract similarly conservative clerks who then seek academic positions, the clerks' success or failure in becoming academic former clerks may suggest something about hiring bias.

Two facts may confound that conclusion. One is COVID-19's unknown long-term negative effects on faculty hiring, with Trump-appointee former clerks entering an unfavorable job market, similar to that of 2011–2017.<sup>61</sup> A second may be Trump's status as an outlier president — he was impeached twice and ended his term in office without acknowledging the election results or participating in the peaceful transition of presidential administrations. But many Trump judicial appointees were "traditional" Republican judges whom any Republican president would have appointed. That should be especially true for the court of appeals judges likely to attract budding academics as law clerks.

### C. Changing Courts

#### 1. Federal lower-court judges

The list of academic feeders among lower-court judges skews towards court of appeals judges, with hiring schools apparently viewing those clerkships as more prestigious and those former clerks as more desirable candidates. That skew is becoming more pronounced.

Part I found 11 district judges in the top-102 judges (with eight or more academic former clerks). But none of those 11 was appointed post-1990; the latest, Kimba Wood, was appointed in 1988 and she is the last remaining on the bench. Of 51 district judges with three or more academic former clerks (Table 2), five were appointed post-1990 and 13 remain on the bench. The 52 recent (1995–present) appointees (Table 3) include 11 district judges; all are at the lower end of the group with three aca-

demic former clerks, and none projects to more than six over a 35-year career. In other words, fewer former district-court clerks are entering legal academia. Many former district-court clerks on law faculties are on the back-end of their careers and are not being replaced by more recent clerks for current district judges.

Perhaps district-judge placements are the most direct victim of the decrease in faculty hiring. If, post-2008, 75 candidates get new teaching jobs each year rather than 160, the relative "prestige" of an appellate clerkship may explain schools hiring former appellate clerks, with no positions remaining for former district-court clerks. In addition, alternative paths to the academy perhaps make former district clerks less appealing as candidates compared with a non-clerk candidate holding a Ph.D. or coming from an academic or public-interest fellowship with publications and some teaching experience.

#### 2. State court judges

This trend is more pronounced with state-court judges, with only 18 state-court judges having two or more former clerks on current law faculties. And none of those 18 remains in active service. This is not to disparage state-court judges or the law professors who began their careers on state supreme courts, either years ago or more recently. But it reflects the common perception of a loss in prestige of state courts and the conclusion by law graduates with eyes toward teaching careers that federal courts, at any level, represent a better path to the academy.

Several considerations might explain the change as to state-court judges.

There are more than 1,300 state high- and intermediate-appellate-court judges, compared with fewer than 900 Article III federal judges. ▶

State-court judges may enjoy shorter careers on the bench, as a majority of states impose mandatory retirement by 70-to-75 years of age.<sup>62</sup> It becomes impossible for one state-court judge to emerge as a feeder over a 35- or 40-year career. And a state judge who develops such a reputation may find herself appointed to the federal bench, from which her clerks can follow the easier and more common path to the legal academy. Of the 51 district judges in Part II and Table 2, 11 joined the federal bench from the state bench, three since 1990. Of the 52 judges appointed since 1995 (Part III and Table 3) with three or more clerks, ten joined the federal bench from the state bench.

Another consideration is jurisdiction. State courts focus on state law; law school curricula less so. Thirty-four states have adopted the Uniform Bar Examination. The Uniform Commercial Code and other uniform laws can be used to teach state law courses (Contracts, Torts, Property) in a non-state-specific way. And scholars in these areas likely write on general principles in these uniform laws, not the specifics of one state. The state-specific clerkship on a state's highest court may be less appealing to a budding academic or to a law-school hiring committee. Even if state constitutional law stages a comeback,<sup>63</sup> constitutional law courses remain focused on the Constitution of the United States and its various amendments.

## Sack, Ambro, Bybee, Katzmann, Tashima, Lipez, McKeown, Fletcher, and Lohier “project” close to or more than 20 academic former clerks, should they continue at their current rates and remain on the bench for 35 or more years.

### D. Where We Are and Where We Are Going

This study remains a snapshot of the clerkship/academic pipeline, capturing one moment in time — law faculties as of fall 2019. The names and numbers of judges and professors would have looked different 25 years ago; they will look different if this study is repeated 25 years from now.

The snapshot nature results from the regular flow of clerks (who typically work in chambers for one year, two years at most), judges, and law professors. Judges join and leave the bench and hire new batches of three or four clerks each year; the longer

a judge serves on the bench, the more clerks she hires and the more opportunities to hire future academics. People join and leave law faculties each year. Academics should outlast their judges — a 25-year-old who clerks for a 60-year-old judge and embarks on a 50-year academic career will be on a law faculty long after her judge has left the bench. Federal judges serve for many years, producing many former clerks who remain in their teaching jobs for many years.

Three long-ago examples illustrate the point. Twelve former clerks for David Bazelon (Harry Truman appointee to the D.C. Circuit, died in 1993) and 11 former clerks for J. Skelly Wright (John Kennedy appointee to the same court, died in 1988) remain in the legal

academy. Both numbers almost certainly were higher in 1985, when both were on the bench and large numbers of their former clerks were in the heart of their teaching careers. Nine former clerks for Henry Friendly (Dwight Eisenhower appointee to the Second Circuit, died in 1986) remain in the academy, a number that would have been higher in 1985. Friendly was known for hiring clerks from across the political spectrum, many of whom became prominent legal scholars of all ideological stripes.<sup>64</sup>

In a similar vein, if this study is repeated in 2055, far fewer former Calabresi, Posner, or Wald clerks will remain on law faculties. The question is whose former clerks will replace them. Eighteen of the judges in Table 1 retain active status, including nine judges with 11 or more academic former clerks; their numbers and their positions on this list should rise over the coming decades. Based on Table 4, Sack, Ambro, Bybee, Katzmann, Tashima, Lipez, McKeown, Fletcher, and Lohier “project” close to or more than 20 academic former clerks, should they continue at their current rates and remain on the bench for 35 or more years.

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<sup>†</sup> With apologies. JANE AUSTEN, PRIDE AND PREJUDICE (1813).



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- 1 ARTEMUS WARD & DAVID L. WEIDEN, SORCERERS' APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT 107–08 (2006); TODD C. PEPPERS, COURTIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK 31–34 (2006); Alexandra G. Hess, *The Collapse of the House That Ruth Built: The Impact of the Feeder System on Female Judges and the Federal Judiciary*, 1970–2014, 24 AM. U. J. GENDER SOC. POL'Y & L. 61 (2015); William E. Nelson et al., *The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?*, 62 VAND. L. REV. 1721, 1778–79 (2009); Brad Snyder, *The Judicial Genealogy (and Mythology) of John Roberts: Clerkships from Gray to Brandeis to Friendly to Roberts*, 71 OHIO ST. L.J. 1149, 1216 (2010).
- 2 Ward & Weiden, *supra* note 1, at 76–85; Snyder, *supra* note 1, at 1216.
- 3 Peppers, *supra* note 1, at 33–34.
- 4 These statistics were drawn from annual reporting by *Above the Law* on clerks for the upcoming Supreme Court term dating to 2004. See, e.g., David Lat, *Supreme Court Hiring Watch*, *ABOVE THE LAW* (Jun. 18, 2019, 6:18 PM), <https://abovethelaw.com/2019/06/supreme-court-clerk-hiring-watch-the-return-of-the-tiger-cub/>.
- 5 Olyfunmilayo B. Arewa, Andrew P. Morrissey, & William D. Henderson, *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 995–96 (2014); Gerald F. Hess, Michael Hunter Schwartz, & Nancy Levitt, *Fifty Ways to Promote Teaching and Learning*, 67 J. LEGAL EDUC. 696, 698 & n.7 (2018); Lucinda Jesson, *So You Want to Be a Law Professor*, 59 J. LEGAL EDUC. 450, 452–53 (2010); Jessica Erickson, *Final Reflections on VAP/Fellowship Interview Series*, PRAWFSBLAWG (Dec. 10, 2019), <https://prawfsblawg.blogs.com/prawfsblawg/2019/12/final-reflections-on-vapfellowship-interview-series.html>.
- 6 Legal Education at a Glance, ASS'N OF AM. L. SCHS. (Jan. 25, 2021), <https://www.aals.org/wp-content/uploads/2021/01/2020-Legal-Ed-at-a-Glance.pdf>.

- 7 Many judges on the list were appointed to the district court, then elevated to the court of appeals, either by the same president or a successor. For simplicity and space, the table lists the judge's highest court of service and the president and year of the original appointment to the federal bench. For example, Judge Jane Roth was appointed to the District of Delaware by President Reagan in 1985, then elevated to the Third Circuit by President George H.W. Bush in 1991. On the table, she is listed as on the Third Circuit, but appointed by President Reagan, with service from 1985–present.
- 8 A federal judge can "retire from the office" on full salary under the "Rule of 80," where age + years of service equal 80. 28 U.S.C. § 371(a), (c).
- 9 A judge who satisfies the requirements for retirement can assume "senior status," retiring from "regular service" but retaining "the office." *Id.* § 371(b)(1), (c). Marin K. Levy, *The Promise of Senior Judges*, 115 NW. U. L. REV. 1227, 1240 (2021). This can create some uncertainty, because a senior judge can cease doing judicial work while retaining the designation of senior status. The Federal Judicial Center biographies categorize a judge as retired only if she submits a letter announcing retirement; otherwise, she is designated as "senior," regardless of whether she continues to perform judicial functions.
- 10 FJC categorizes a judge as "resigned" when she leaves the bench prior to satisfying the Rule of 80.
- 11 Rankings are based on U.S. NEWS & WORLD REPORT 2021 Law School Rankings, available at <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>. Schools are divided into five brackets—Top-25, 26–50, 51–100, 101–150, 151–and below.
- 12 FED. JUD. CTR., <https://www.fjc.gov/history/judges>.
- 13 Eight tables containing this information are available for viewing and download at the JUDICATURE website ([judicature.duke.edu](http://judicature.duke.edu)) and can be viewed in conjunction with the article. Information in print and online in this article, such as a judge's current status, was accurate as of press time, but may have changed.
- 14 Weinstein ceased performing judicial functions in 2020. See Alan Feuer, *A Legal Lion Lays Down His Gavel With a Ruling of 'Love, Not Hate'*, N.Y. TIMES, Feb. 17, 2020. But the FJC continues to record his status as "senior judge." See *supra* note 9.
- 15 See, e.g., Christopher J. Banks, *The Politics of En Banc Review in the "Mini Supreme Court"*, 13 J.L. & POL. 377, 379 (1997).
- 16 Pub. L. No. 95–486, 92 Stat. 1629 (1978).
- 17 Mikva left the bench after 15 years to serve as White House Counsel under President Clinton, then went on to teach at the University of Chicago. A 35-year judicial career might have placed him well into the 20s. Mikva's figure of current academic former clerks does not include Elena Kagan, who taught at Chicago and served as Dean at Harvard but left the academy to pursue other endeavors.
- 18 To give one example: Louis Pollak, appointed by President Carter to the district court at age 56 in 1978, was 71 by the time President Clinton took office in 1993. Pollak assumed senior status in 1991, took a reduced district court caseload, and spent 20 years regularly sitting by designa-
- tion on courts of appeals, particularly the Third Circuit, creating a unique hybrid trial/appellate clerkship.
- 19 A respected trial-court judge, Wood was President Clinton's choice for Attorney General, only to have the nomination withdrawn when it was revealed that Wood had employed an undocumented immigrant as her children's nanny (at a time when it was legal to do so). See STEPHEN L. CARTER, *THE CONFIRMATION MESS: CLEANING UP THE FEDERAL APPOINTMENTS PROCESS* 207 & n.3 (1994).
- 20 Many law professors earn Ph.D.s in a discipline in addition to their law degrees, either while in law school or following law school and clerking. Cf. Justin McCrary, Joy Milligan, & James Phillips, *The Ph.D. Rises in American Law Schools, 1960–2011: What Does It Mean for Legal Education?*, 65 J. LEGAL EDUC. 543 (2016). Yale Law School offers a Ph.D. program in law, a research-focused graduate degree that allows a transition from J.D. and clerkship to teaching. <https://law.yale.edu/studying-law-yale/degree-programs/graduate-programs/phd-program>.
- 21 Hess, Schwartz, & Levitt, *supra* note 5, at 698 & n.7; *supra* note 5.
- 22 Bybee gained notoriety for signing the legal memorandum authorizing "enhanced interrogation techniques." Keith A. Petty, *Professional Responsibility Compliance and National Security Attorneys: Adopting the Normative Framework of Internalized Legal Ethics*, 2011 UTAH L. REV. 1563, 1605–07; Jesselyn Radack, *Tortured Legal Ethics: The Role of the Government Advisor in the War on Terror*, 77 U. COLO. L. REV. 1, 37 (2006).
- 23 Merrick Garland (D.C. Circuit) would have topped this group, but he left the bench in 2021, after less than 25 years, to become Attorney General under President Biden. This marked Garland's second potential move off the D.C. Circuit. Five years before becoming Attorney General, Garland was nominated by President Obama to fill the Supreme Court seat vacated by the 2016 death of Antonin Scalia; the Republican-controlled Senate never acted on the nomination, preserving the vacancy for the next president. Jonathan H. Adler, *The Senate Has No Constitutional Obligation to Consider Nominees*, 24 GEO. MASON L. REV. 15 (2016); Robin Bradley Kar & Jason Mazzone, *The Garland Affair: What History and the Constitution Really Say About President Obama's Powers to Appoint a Replacement for Justice Scalia*, 91 N.Y.U. L. REV. ONLINE 53 (2016).
- 24 Nelson et al., *supra* note 1, at 1757–58.
- 25 Eleven current full-time law teachers clerked for Sotomayor in her six years on the Southern District of New York and 12 years on the Second Circuit.
- 26 Gorsuch produced three academics in a decade on the Tenth Circuit and Kavanaugh three in 12 years on the D.C. Circuit. Barrett served on the Seventh Circuit for less than three years before her elevation, not enough time to produce any academics.
- 27 BYU's Law Professor Stephanie Barclay to clerk for Justice Neil Gorsuch, BYU Law News, <https://law.byu.edu/news/byu-laws-professor-stephanie-barclay-to-clerk-for-justice-neil-gorsuch>.
- 28 Peppers, *supra* note 1, at 33–34.
- 29 Ward & Weiden, *supra* note 1, at 76–85.
- 30 Data based on *Above the Law* reporting of SCOTUS clerk hiring. See *supra* note 4.

<sup>31</sup> Data based on *Above the Law* reporting of SCOTUS clerk hiring. See *supra* note 4.

<sup>32</sup> Adam Feldman, *A Formula for Supreme Court Clerkships? Harvard and Garland*, EMPIRICAL SCOTUS, Aug. 10, 2016, <https://empiricalscotus.com/formula/>.

<sup>33</sup> PEPPERS, *supra* note 1, at 32.

<sup>34</sup> Tess Ryan-Wilkinson, *On Visiting*, MEDIUM (Jan. 6, 2020), <https://medium.com/@tesswr/on-visiting-585f1abdec2e>.

<sup>35</sup> Arewa et al., *supra* note 5, at 995–96; Hess, Schwartz, & Levit, *supra* note 5, at 698 & n.7; Jesson, *supra* note 5, at 452–53.

<sup>36</sup> Nelson et al., *supra* note 1, at 1757–58; Snyder, *supra* note 1, at 1162.

<sup>37</sup> Nelson et al., *supra* note 1, at 1757–58; Snyder, *supra* note 1, at 1162.

<sup>38</sup> See *supra* note 20.

<sup>39</sup> Arewa et al., *supra* note 5, at 995–96; Hess, Schwartz, & Levit, *supra* note 5, at 698 & n.7; Jesson, *supra* note 5, at 452–53.

<sup>40</sup> Hess, Schwartz, & Levit, *supra* note 5, at 995–96.

<sup>41</sup> Sarah Lawsky, *Spring Reported Entry-Level Hiring Report 2020*, PRAWFSBLAWG (May 15, 2020), <https://prawfsblawg.blogs.com/prawfsblawg/2020/05/spring-reported-entry-level-hiring-report-2020-1.html>.

<sup>42</sup> BENJAMIN A. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 90 (2019); Eric A. Chiappinelli, *Just Like Pulling Teeth: How Dental Education's Crisis Shows the Way Forward for Law Schools*, 48 SETON HALL L. REV. 1, 10–11 (2017).

<sup>43</sup> Barton, *supra* note 42, at 90.

<sup>44</sup> Lawsky, *supra* note 41.

<sup>45</sup> Gabriel Kuris, *The Impact of the Coronavirus on Legal Education*, U.S. NEWS & WORLD REPORT (Mar. 23, 2020), <https://www.usnews.com/education/>

<sup>46</sup> blogs/law-admissions-lowdown/articles/the-impact-of-the-coronavirus-on-legal-education.

<sup>47</sup> Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court By Transforming the Bar*, 96 GEO. L.J. 1487, 1498–1501 (2008); Jeremy Pilaar, *The Making of the Supreme Court Bar: How Business Created a Solicitor General for the Private Sector*, 117 MICH. L. REV. ONLINE 75, 75–76 (2018); Joseph W. Swan-son, *Experience Matters: The Rise of a Supreme Court Bar and its Effect on Certiorari*, 9 J. APP. PRAC. & PROCESS 175, 176–78 (2007).

<sup>48</sup> Nelson et al., *supra* note 1, at 1757–58.

<sup>49</sup> Nelson et al., *supra* note 1, at 1764–65.

<sup>50</sup> That nine-member Court served unchanged for 11 years and one month, the second-longest-serving unchanged Court in history and the longest-serving since Congress set the Court's size at nine justices in 1869. Howard M. Wasserman, *New courts (Updated)*, PRAWFSBLAWG (Sept. 20, 2020), <https://prawfsblawg.blogs.com/prawfsblawg/2020/09/new-courts.html>.

<sup>51</sup> Nelson et al., *supra* note 1, at 1780–81.

<sup>52</sup> *Id.*

<sup>53</sup> Ian Samuel, *The Counter-Clerks of Justice Scalia*, 10 N.Y.U. J. OF LAW & LIB. 1, 2–3 (2016); Gil Seinfeld, *Reflections of a Counterclerk*, 114 MICH. L. REV. 111, 113 (2016). Thanks to Christine Chabot for suggesting this point.

<sup>54</sup> Samuel, *supra* note 52, at 4–8.

<sup>55</sup> Nelson et al., *supra* note 1, at 1782.

<sup>56</sup> See, e.g., Adam Bonica, Adam Chilton, Kyle Roze-ma, & Maya Sen, *The Legal Academy's Ideological Uniformity*, 47 J. LEGAL STUD. 1, 3 (2018); John O. McGinnis, Matthew A. Schwartz & Benjamin Tisdell, *The Patterns and Implications of Political Contributions by Elite Law Schools*, 94 GEO. L.J. 1167, 1168–69 (2005); James C. Phillips, *Political Discrimination and Law Professor Hiring*, 12 N.Y.U. J. L. & LIBERTY 560, 565–66 (2019); but see Michael Vitiello, *Liberal Bias in the Legal Academy: Overstated and Undervalued*, 77 MISS. L.J. 507, 510–11 (2007).

<sup>57</sup> Lawrence Baum, *Hiring Supreme Court Law Clerks: Probing the Ideological Linkage Between Judges and Justices*, 98 MARQ. L. REV. 333, 335 (2014); Paul Horwitz, *Clerking for Grown-Ups: A Tribute to Judge Ed Carnes*, 69 ALA. L. REV. 663, 673 (2018); but see Snyder, *supra* note 1, at 1210 (describing practice of Second Circuit Judge Henry Friendly, a conservative Republican, to hire clerks from across the political spectrum).

<sup>58</sup> Baum, *supra* note 56, at 335; Horwitz, *supra* note 56, at 673.

<sup>59</sup> John Gramlich, *How Trump compares with other recent presidents in appointing federal judges*, PEW RESEARCH CTR.: FACTLINK (Jan. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/>.

<sup>60</sup> Carl Tobias, *President Donald Trump and Federal Bench Diversity*, 74 WASH. & LEE L. REV. ONLINE 400, 411–12 (2018); Daniel Bush, *Trump's conservative picks will impact courts for decades*, PBS.ORG (Oct. 25, 2019), <https://www.pbs.org/newshour/politics/trumps-conservative-picks-will-impact-courts-for-decades>.

<sup>61</sup> Stras left teaching to serve on the Minnesota Supreme Court before being appointed to the federal court.

<sup>62</sup> See *supra* note 45 and accompanying text.

<sup>63</sup> William E. Raftery, *Mandatory Retirement Ages*, NAT'L CTR. FOR STATE CTS. (2010), <https://cdm16501.contentdm.oclc.org/digital/collection/judicial/id/308>.

<sup>64</sup> Jeffrey S. Sutton, *51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF CONSTITUTIONAL LAW* (2018).



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