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The Voices Behind Black-Robed Jurists (Times Union)

John Caher

The voices behind black-robed jurists

Law clerks play important roles in the judicial system

By John Caher

Staff writer

A major ruling is handed down by a judge and quotes from his decision are reported in newspapers and legal publications as pearls of judicial wisdom.

But in many cases, the words don't truly belong to the jurist wearing black robes. Rather, they may have been written by a young attorney — sometimes fresh out of law school — who holds a coveted, sometimes lucrative and potentially influential post with a less-than-impressive title: clerk.

If not quite the powers behind the bench, judicial law clerks are often the voice and conscience. They research cases, advise judges on points of law, play devil's advocate on crucial legal issues and draft decisions.

"They see the court from behind the bench and get an opportunity to play judge. We ask them to make recommendations, to recommend how a case ought to come out," according to Michael J. Novack, who as clerk to the Third Department, state Supreme Court Appellate Division, supervises the law clerks who serve the court.

Novack is an administrative clerk, a career position unlike clerks who serve a brief tenure and move on.

Longtime clerks, like Alison Andrews of Clifton Park, write decisions signed by the judge, although they say the jurist actually makes the ruling.

"I write complete decisions," said Andrews, clerk for U.S. Magistrate Ralph W. Smith Jr. in Albany for the last five years. "It's a fact of life with law clerks."

Even temporary clerks leave their mark on judicial decrees.

"We have first crack at writing an opinion," said Helen Kim, a 1987 Yale Law School graduate who just finished a one-year clerkship in Albany with Judge Roger J. Miner of the Second Circuit U.S. Court of Appeals.

"If he agrees with everything you say, it can go out as it stands," Kim said. "But that depends on whether you got it right the first time."

Yet for all their influence and potential sway on matters major and minor, clerks are almost always relegated to the shadows and virtually never receive public credit for their labors.

The anonymity doesn't bother Michael E. Stafford, a 38-year-old attorney who has served as state Supreme Court Justice Lawrence E. Kahn's law clerk since 1975, or David M. Freedman, part-time clerk to Albany County Judge Joseph Harris for the last four years. Although the public isn't aware of their impact, the local legal community is, Stafford and Freedman said.

"He gets the glory," Stafford said of Kahn. "If we get reversed, he gets the criticism. But in the final analysis, it is a joint effort. He knows that. I know that. The lawyers know that."

Although he wouldn't turn down a judgeship, Stafford said he is content to remain on the sidelines.

"If someday I get to be a judge, that is fine," Stafford said. "If I stay a law secretary forever, that's OK. I'm on the cutting edge of decisions that deal with separation of powers, the Constitution — questions that affect the citizens of New York every day. I like that. I like that a lot."

But Stafford's tenure as a clerk is unusual. Typically, clerks are prime law school graduates willing to tolerate a couple years of behind-the-scenes work and long, tedious hours of law library research in hopes the experience will put them on the fast-track to the legal hierarchy.

"Professionally, a law clerk to a judge is a top position for a person coming out of law school," said Donald M. Sheraw, chief clerk to the Court of Appeals, the state's highest court.

"To be able to work with the legal authorities and the minds that are



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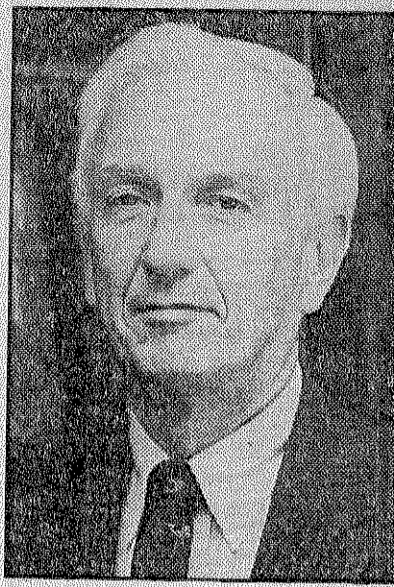
around here is a tremendous learning experience," Sheraw said. "They are a hot commodity."

Starting clerks, particularly in the federal court system, earn meager wages compared to the salaries paid first-year associates in major law firms. U.S. Supreme Court clerks, who normally serve for only a year, earn just \$33,218, said Kathy Arberg, spokeswoman for the court.

The salaries are higher in the top state courts. Court of Appeals clerks, for instance, start at \$42,000 and clerkships in the Appellate Division pay \$36,170 — more than many young lawyers earn in Albany, but less than a top prospect can command in a New York, Buffalo, Boston or Washington firm.

But the short-term financial sacrifice is usually rewarded later with a higher-paying, career clerkship or a lucrative post with a top firm.

Meave Tooher, clerk to U.S. District Judge Con. G. Cholakis in Albany, said the experience is considered so valuable major metropolitan firms compete



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— Ralph Smith Jr., U.S. magistrate

for former clerks by offering bonuses as high as \$10,000.

"It's somewhat ironic that leaving this job you can earn more than the judge you were serving," said Tooher, 29, a full-time clerk since June 1986 who plans to use her position as a springboard to a criminal law practice.

Kim left her job with Judge Miner Friday to join a large Manhattan law firm — Paul, Weiss, Rifkind, Wharton & Garrison. Although Kim said she was not given a bonus for her clerking experience, she said the firm did hold the job offer — first tendered a year ago — open so she could work with Miner.

Aileen Brown, a June graduate of Albany Law School who just landed a clerkship with the Appellate Division, hopes a one-year position will help her win a post with a major law firm.

"The Appellate Division has very high standards," Brown said, who graduated 21st in a class of 214. "The firms recognize that."

Former clerks are also highly

prized, said attorney Kevin Kelley, a member of the recruitment committee for Krolick & DeGraff, a 40-lawyer firm in Albany.

"They are in demand in the Capital District," Kelley said. "As a general rule, clerks have a very good academic background and they have good experience working with a judge both in research and writing and in practical experience."

Clerkships historically have been launching pads for successful careers in law and government. Some of the top jurists in the nation and state — including U.S. Chief Justice William Rehnquist, New York Court of Appeals Judge Joseph W. Bellacosa and state Supreme Court Justices Daniel Prior and Harold Hughes — were once law clerks. So too were Gov. Mario M. Cuomo and his special counsel, Fabian Palomino, who clerked for former Court of Appeals Judge Adrian P. Burke in 1956 and 1957.

"You get to hone the skills of research and writing by being involved in a very direct way in assisting a judge," said Bellacosa, a Guelderland resident who was clerk to an Appellate Division justice and to the Court of Appeals before his appointment to the high court in 1987.

Freedman views his part-time clerkship with Harris as a continuation of his legal education and a chance to refine the skills he needs for his private practice.

"He (Harris) is brilliant," Freedman said. "His writing ability is tremendous. It is a great learning experience."

Judges see their clerks as trusted advisers.

Kahn refers to Stafford as his "partner" rather than his clerk. Smith said Andrews plays an essential role in his court since judicial ethics codes bar him from discussing pending cases with anyone other than his clerk.

"About the only person you have to kick ideas around with is your law clerk," Smith said. "You work so closely with a clerk that the clerk understands your judicial philosophy and would propose opinions that are not inconsistent with it."

Despite their philosophical and judicial compatibility, Smith said he and Andrews don't always agree on how a case or legal issue should be resolved.

"I don't always win," he added. "Disagreements don't always end with my keeping my initial opinion."