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# Law clerks: unsung heroes of the judicial process

By [Judge Mel Dickstein](#) | 08/28/2017



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*This is the 12th in [a series of occasional commentaries on the judicial system](#) from the perspective of a District Court judge.*

It's difficult for people in our community to understand what happens in court. How do judges make decisions? Why do judges issue opinions? How does the decisional process work? These are among

the issues I've tried to address. But there's an important part of the process I've yet to comment on, and that anyone doing business with the courts should understand:

Behind every good judge there's a good clerk — or two.

Law clerks are the unsung heroes of the judicial process. They are critically important to the skilled handling of the legal and administrative matters that come before a judge. Judges, even the best judges, are often only as good as their clerks. That's a huge responsibility for a clerk, but also a huge responsibility for the judge. The judge has to select their law clerks carefully, and then train them so they produce legal product that reflects the quality the judge expects.



Judge Mel Dickstein

Most often law clerks are young lawyers, straight out of law school. They serve for a period of time — one to three years is fairly typical — assisting a judge in writing legal opinions, researching legal and procedural issues, and inputting information into the court computer systems to accurately reflect the up-to-date work of the court. A good law clerk must be highly intelligent, a good writer, attendant to detail, efficient, and motivated to turn out a work product of excellence.

In renaissance Italy, it wasn't unusual for famous painters to rely on apprentices to assist them with their work. When the apprentice reached a level of excellence, the painter might trust them with painting portions of their work — an arm or leg, a tree, a face — it all depended on the apprentice's skills. A judge's work with their clerks is similar in some respects. When a law clerk first begins in my chambers, I carefully review the clerk's work, edit it, and in some cases, entirely rewrite it. Even the simplest task is subject to scrutiny. But as clerks prove themselves they are given more authority; their work is still reviewed, but edited less often.

## Clerks regularly impact decisions

My clerks don't decide cases, but they regularly impact my decision. I carefully review motions, supporting briefs, case decisions and exhibits before hearing a motion. When the hearing is complete, I typically sit down with my clerk, and together we review the arguments, and the most important cases. We decide if additional research is needed, or I make a decision and explain to my clerk the basis for it. In more complex matters we create an outline. Then my clerk has the difficult job of preparing a first draft of the decision — it's the exception when I write the first draft. In the course of preparing the order, my clerk may come upon a new case or review an existing case that sheds new light on how the issues before me should be decided — which may be different from what I had originally intended. We'll then carefully discuss the new information and I'll determine if my decision should change.

To be sure, my clerks and I don't always see eye to eye. Sometimes my clerks see the strength of an argument differently. Sometimes I conclude they're right. The hard work of making difficult decisions, however, should be the judge's. Judges, more than young lawyers, have the knowledge, training and

experience upon which to make the most difficult decisions. But clerks bring a second perspective that can have a significant impact.

## Analysis and research

Clerks also have to learn the degree of analysis a judge requires. Some issues can be dealt with in a fairly straightforward manner, while others take careful parsing of the applicable law. Sometimes my clerks can rely upon the law cited by the lawyers for each side in their legal briefs. Other times, clerks have to perform independent research in order to find the cases that provide the legal analysis required to correctly rule on an issue.

Law clerks are also the judge's public face to the world. When a lawyer or unrepresented litigant calls my chambers to ask a question or schedule a hearing, my clerks represent me in their communications. And while I want them to be as helpful as they can be, they also have to understand their limitations. Judges aren't permitted to give legal advice, so my clerks can't tell a lawyer or self-represented litigant what to do, or how to do it. The line between what they can say and what they can't say is often a fine one, difficult to navigate. It takes good judgment, and a calm demeanor for my clerks to perform successfully.

Law clerks, of course, don't only work with a judge in chambers: they also assist during trial. I take notes during trial, but I also have to focus on each question and answer in order to rule on objections when they arise. As a result, the careful notes my clerks take can often be of great help. Clerks also work with the jury office, escort prospective jurors to the courtroom, and oversee civil juries during their deliberations. They also work closely with the judge in preparing jury instructions, a critical part of the decisional process.

## Dealing with the public

Flexibility in dealing with the public is another critical skill clerks must bring to the job. Most litigants my clerks deal with are quite nice. But from time to time my clerks must deal with very difficult people. On at least one occasion my clerks had to stop answering phone calls from an abusive litigant whose mental illness made it difficult to engage in normal conversation.

Every clerk brings a different dimension to the job. My first clerk was simply wonderful — intelligent, nice beyond words, and hard working. A number of my clerks have had the type of sophisticated analytical ability that enables them to succeed in the law at any level. One clerk had an almost photographic memory; she could remember the details of cases I'd heard years before as though they were brand new.

Another clerk I worked with was tremendously hard working. During one two-week period she worked with me every day until 10 at night to address a series of trial motions prior to a hotly contested product liability trial. We learned the hard way that in the summer the air conditioning in the Government Center turns off at 7:30 p.m. Still another clerk lit up the office and made each day more pleasant as a result — her work product was excellent as well because she really cared about getting every decision right.

During the last 15 years I've been blessed with many fine law clerks. I hope I've imparted something of use to them. I hope their experiences were positive, and they came away from the job better lawyers with more insight into the legal process than many of their peers in practice. What I know for certain is that it's been wonderful to work with them, and I'm better for their help.

*Mel Dickstein is a judge in Hennepin County District Court, where he handles a mix of civil and criminal cases. He is a former partner in the law firm Robins Kaplan.*

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