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Sample Instructions to Law Clerks

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Sample Instructions to Law Clerks

Sample A

Law Clerks for Judges of the Ninth Circuit Court of Appeals

*Frederick G. Hamley**

General Responsibilities

1. The office of law clerk on this court is a professional position. You should therefore adopt a professional attitude at the outset. Do the best you can with every task assigned you. Your judge and the court are your clients—give them competent service. Take a personal interest in the work of the court and promote its standing as an institution.

2. You will soon discover that the case load is heavy, the work is arduous, and that in order to keep abreast of your duties you will need to employ industrious work habits. Maintain regular office hours. Confer as needed with other law clerks and keep up enough contact with them so that you have general familiarity with the whole flow of court business, and can help each other in solving perplexing problems. But hold socializing with other law clerks during office hours to a minimum—it wastes too much time. This caution is especially important concerning the relationship between two law clerks for the same judge.

3. Cultivate efficient, time-saving ways of doing your work. Don't slide into slipshod practices just because your particular judge may exercise light supervision. Experiment with different ways of doing things. Put accuracy and competent output ahead of speed, but learn how to combine the three. When your judge is away from the office keep right on your routine just as if he might pop in any minute. This is a mark of professional responsibility.

4. Make this a year of continuing legal education and an intensive training period in preparation for your professional life. This

* Circuit Judge, United States Court of Appeals for the Ninth Circuit. Judge Hamley prepared this memorandum from a lecture that he delivered in 1970 before the Ninth Circuit law clerks. Although it describes the general clerking procedure in the Ninth Circuit, the personal preferences or idiosyncrasies of a particular judge may require his clerk to depart somewhat from these instructions.

will ease the transition when you complete your clerkship year. It will also make you more valuable to your future law office and to your future clients. Do not be afraid to spend some evening or weekend time on such court-related activities as reading slip opinions or law review articles. You should keep current on the slip opinions of the Ninth Circuit and the Supreme Court, and you may not have time to do this during working hours. Unless your judge tells you not to, jot down a penciled notation at the top of each slip opinion you read, indicating the prime issue of the case. This will help you later when you are checking for late cases on a particular point.

5. The position of law clerk is a confidential one. You will come into possession of information concerning the processing of appeals which must remain secret until the opinions are filed. You may, unless instructed otherwise by your judge, discuss court cases with other law clerks, provided you cannot be overheard by others not connected with the court. But do not discuss undecided cases with your wife or anyone else outside the court. Do not talk out of court about controversies or disagreements within the court.

6. Your prime loyalty is to your judge. To the extent that he wants you to do so, and with most judges this is considerable, urge upon him your views even though contrary to his. But remember that the responsibility for decision is his. Once your judge has made up his mind about the rationale or outcome of an opinion, help him express his views in the most effective way, even though your views differ. Do nothing to undermine your judge, his work, or his decisions, with the other judges on the court.

Preparing Pre-Argument Memoranda

7. All of the judges on this court read the briefs before oral argument. Some have their law clerks prepare "bench" memoranda, based mainly on a review of the briefs, and usually involving little basic research. Such memoranda, summarizing the facts and issues, are utilized by some judges to assist them during the argument and in the conference which follows. Memoranda of this type are not particularly helpful when it comes to drafting an opinion, because they do not represent much research.

8. In preparing "bench" memoranda, brevity is essential. Seldom should such a memorandum exceed two pages in length. There should first be a brief statement of the nature of the case, what was decided below, and who is appealing. Then a seriatim but concise statement of the substantial issues with very little citation of authority. If your judge wants you to, you can express a tentative view

of how the case should be decided.

9. Some judges have their law clerks prepare more elaborate pre-argument memoranda, going far beyond a review of the briefs. Memoranda of this kind require a study of the record and exhibits, and legal research. They are helpful not only at the time of argument and the conference which follows, but in the drafting of opinions. The way to go about preparing this kind of pre-argument memorandum is much the same as described later in discussing post-argument research memoranda.

10. Some judges do not ask their law clerks to draft any pre-argument memoranda. They prefer to have their law clerks devote their full time to other duties which will be described. Judges who do not ask their law clerks to prepare pre-argument memoranda usually jot down a few notes about the case in the back of one of the briefs, or dictate short memoranda of their own after reading the briefs.

Reviewing Drafts of Opinions Prepared by the Law Clerk's Judge

11. Most judges who ask their law clerks to review the judge's draft of opinions want more than a check of the accuracy of citations, the Shepardizing of cases cited, and the correction of grammar, punctuation and spelling. They want the law clerk to determine:

- (a) Whether the court of appeals and the district court had jurisdiction,
- (b) Whether the facts stated in the draft opinion are correct and sufficiently complete so that the losing party cannot justly claim that the court disregarded relevant facts which would have made a difference in the result,
- (c) Whether the principal points of the losing side have been stated and adequately discussed,
- (d) Whether, as to each legal holding, sound rationale has been stated and the correct result has been reached, based upon controlling authority, persuasive precedent, and sound text discussion,
- (e) Whether the cases cited in the draft opinions stand for the rule attributed to them,
- (f) Whether the holding of the opinion has been announced in a direct and precise manner,
- (g) In the event a remand has been ordered, whether adequate instruction has been given as to the further proceedings to be had.

12. This kind of review of draft opinions requires a thoroughgoing understanding of the case and a careful analysis of each sentence and paragraph of the opinion. A good way to start such a task is first to read the draft opinion, and then read all of the briefs. You may be confronted at once with some basic problem, possibly drawing into question the rationale or result reached in the draft opinion.

If faced with such a quandary at the outset, it is usually a good idea, after making a sufficient study of the matter to convince yourself that you have a substantial problem, to confer with your judge about it before proceeding to a more complete processing of the draft opinion. In the long run, this may save time for both the judge and you.

13. Some judges, in preparing draft opinions, will make marginal references to the briefs and records in support of statements contained in the draft, just as you will be expected to do in preparing research memoranda. If he does so, this will assist you in verifying such statements. If he has not provided such record references, you must yourself search the briefs and record for such verification. In the latter event, add marginal references to his draft, providing support for his statements. Of course if you find the record to be contrary to your judge's draft statement, you will need to call this to his attention.

14. Your research on questions of law discussed in your judge's draft opinion should start with a reading of the cases, statutes, or other authorities he has cited. Check the spelling of case captions and the accuracy of the volume and page given. Shepardize each case through the latest Shepard's supplement. If the point is complex or of first impression, pursue original research until you are satisfied as to the correctness of the legal discussion in the draft opinion.

15. If you have a strong feeling that your judge has reached the wrong result, or has reached the right result for the wrong reason, present your views to him, either in such an initial conference or at least when you have completed your work on the draft. It is not necessary to come in with some basic criticism of the draft opinion in order to convince your judge that you are industrious and perceptive. But if you have a substantial disagreement of the kind described, he will want to have you bring it to his attention. If you are fairly sure of your position, and have developed some documentation, be willing to argue with him, if he is inclined to hear you out. If you do not have a firm conviction on a particular point, but do have some serious doubts, give your judge a chance to consider your misgivings.

16. If and when your judge decides not to adopt your views, accept his determination in good spirit, and help him make the best possible presentation of his views. As stated above, the responsibility for decision is his. He must give consideration to many factors which may not be fully apparent to you. He has to take into account

the views of his colleagues on the panel, the necessity of respecting past panel decisions, the balancing of the need for stability in the law with the merit of new trends in legal thinking.

17. If you think some paragraph or section of the opinion is stated in an ineffective manner, do not be content to make a general criticism of this kind. Draft substitute language for your judge's consideration. This will give him a better idea of your criticism and a good start towards correcting the weakness.

18. Some judges will want a conference with a law clerk who has carefully reviewed their draft opinion, for the purpose of going over the draft in the light of your suggested revisions. Frequently this is done paragraph by paragraph. In some cases it may be advisable to document suggested revisions by references to the brief, record or authorities, all set out in a separate memorandum keyed to the draft opinion. In the case of suggested minor revisions, it is ordinarily acceptable to indicate them lightly in pencil on the draft opinion, so that the judge can accept or reject them as he rereads the draft.

Post-Argument Research Memoranda

19. Practically all judges have their law clerks devote a substantial part of their time to the preparation of research memoranda after oral argument and before preparation of the draft opinion. A good starting point is to read the briefs, taking notes as you go along of the principal issues and the pages in each brief where such issues are discussed. You will find such a subject-matter index to the briefs most helpful in complex cases. Of course there are many relatively simple appeals where this is not necessary.

20. Check the clerk's transcript to see if the trial court wrote an opinion and, if so, give it a careful reading. You may be able to recommend to your judge that the judgment be affirmed for the reasons stated in the district court opinion.

21. Before you get into the heavy work on your research memorandum, satisfy yourself that both the court of appeals and the district court or administrative agency, as the case may be, has or had jurisdiction. If jurisdiction is lacking in the court of appeals, the appeal must be dismissed. If it was lacking in the trial court or administrative agency, you affirm on jurisdictional grounds if the trial court or agency refused to give relief, and you reverse and remand for dismissal of the proceeding on jurisdictional grounds if the trial court or administrative agency purported to give affirmative relief. Problems of jurisdiction usually revolve around the ques-

tions of whether the appeal is being taken from a final decision, and whether the notice of appeal was timely.

22. If you are satisfied that there is no jurisdictional problem, perhaps the next logical step is to develop a concise but adequate statement of the essential general facts pertaining to the case as a whole. These facts would cover such matters as the names of the parties, the general nature of the controversy, how the action arose, whether the trial was to a jury, the nature of the judgment, and the principal issues presented on the appeal. You should ordinarily reserve development and description of detailed facts relevant to specific issues until you reach the discussion of each such issue in your memorandum.

23. Oftentimes there is no real dispute concerning the facts. You can usually ascertain the extent of agreement on the facts by comparing the statement of facts in the opening and answering briefs. To the extent that they are in agreement it is not ordinarily necessary to search the record for support. However, as to facts concerning which the parties are in disagreement, you will need to go to the record on appeal, including the exhibits. The exhibits will not ordinarily be with your office copy of the record on appeal. You can obtain them by telephoning the clerk's office and picking them up at the counter in the clerk's office, or having them mailed to you if your office is not in San Francisco.

24. Document your statement of facts with references to the briefs, records and exhibits. A good way to record such documentation is by marginal notations, although your judge may prefer that you incorporate such references in the body of your memorandum. If you are quite certain how the appeal is going to come out, lean over backwards to be sure the facts favorable to the losing party are fairly and adequately stated. It is sometimes good practice to take the essential facts right out of the losing party's brief, assuming of course that they do not undermine the conclusion you are reaching.

25. After you have developed and stated the general facts of the case, proceed to a discussion of the substantial issues, one at a time. You may need to state, at this point, additional facts pertaining to individual issues. You are not obliged to take up the issues in the same order they are discussed in the briefs. Quite often a different order of presentation will be more logical or effective. For example, if it looks as if reversal is necessary, proceed at once to the point or points which require reversal. Then turn to other questions of substance, because your judge may not be convinced that your reversal points have merit, or he may want to consider deciding

additional points which may arise in further district court proceedings.

26. It is in preparing your discussion of the issues that you will be getting into heavy legal research. Examine the principal authorities cited in the briefs and district court opinion to see if they stand for the rule they are said to support. Check them through Shepard to see if they are still the law. Institute original research of your own, based upon such sources as the federal digest system, the annotations in U.S.C.A., the index of legal periodicals, A.L.R. digest, textbooks, the restatements of the law, the model and uniform codes, and special reports such as the well-annotated ABA reports on the Standards for Criminal Justice.

27. There are of course many cases in which extensive initial research will not be necessary. If you find a dispositive statute precisely construed in a controlling decision, not much else is required. If you find a decision of the United States Supreme Court, or of the Ninth Circuit, which deals specifically with your problem, and it has not been undermined by later Ninth Circuit or Supreme Court decisions, it is not necessary to set out a long list of other decisions to the same effect.

28. Remember that decisions in point from other courts of appeals are persuasive precedent, but not controlling. Federal district court opinions cited in Federal Supplement are helpful if you are dealing with a question concerning which there is no appellate authority. But remember that district court opinions are not authoritative unless they have been affirmed on appeal. In cases in which district court jurisdiction rests on diversity of citizenship, a decision in point from the state where the case arose is controlling whether you agree with it or not.

29. While your research may have to be extensive in some cases try to keep your research memoranda within reasonable bounds. If the briefs are only fifteen pages each, your judge will usually not want to read a forty-page research memorandum.

30. Some of the judges may ask their law clerks, from time to time, to prepare a research memorandum in the form of a draft opinion. You must understand that a judge making such a suggestion may not use any of such a draft opinion. However, on occasion, he may find portions of such a draft in such close accord with his own thinking that he can utilize the draft language.

31. Preparation of a research memorandum in the form of a draft opinion is a challenging assignment. You will find that the creative task of preparing a draft opinion presents difficulties and

perplexities not confronted in checking a judge's draft of opinion or preparing an ordinary research memorandum. You will need to go through all of the steps of preparing a research memorandum, and then you must transform it into a concise and sharp opinion, eliminating all that is unnecessary and injecting an authoritative note that is absent from ordinary research memoranda. The first thing you will discover is that whereas after your research you may be inclined fifty-two percent one way and forty-eight percent the other, when you start writing a draft opinion you become an advocate for the side you believe must win. One reading your draft would probably not know of the uncertainties and agony of decision which you experienced. Your draft opinion will probably read about ninety-five percent one way.

32. In preparing a research memorandum in the form of a draft opinion you will have to pay some attention to the form of opinions your judge likes. For example, you will want to follow his way of citing authority unless you can convince him to change it. Read some of his opinions. Remember, though, that few judges hold up their own opinions as models of perfection. If you perceive how you can improve upon his form of opinion you might do so and see if your judge likes the change. If he often uses excessively long sentences try short, incisive sentences. If some of his paragraphs run the better part of a page, hold your paragraphs to four or five sentences. If he has the habit of writing in the passive tense, use active verbs in your draft opinion. If he has a tendency towards a liberal use of adjectives and adverbs, eliminate as many as you can from your own writing. He may like the change.

33. Here are some helpful suggestions contained in the Report on Internal Operating Procedures of Appellate Courts, prepared by the American Bar Association Section of Judicial Administration in 1961:

Avoid trite and hackneyed phrases such as "well-settled" and "constrained to hold." Limit the use of italics for the purpose of emphasis. It implies that the reader is not alert enough to catch the point without special help. Avoid dogmatic statements such as "clearly," "plainly," and "without doubt." Avoid stilted works like "said," "hereinafter," "before-mentioned," "learned trial court." Avoid deprecatory words such as "mere" or "merely." Interested attorneys may not agree with such a characterization.

Minimize the use of Latin phrases—it looks too pretentious. Avoid timid or passive expressions such as "it seems to us" or "it would appear to be." Avoid expressions such as "a cursory examination is sufficient" or "this point need not long detain us." The losing lawyer will feel the examination has been too cursory and that the court should have detained itself a little longer. The phrase "no citation of authority is needed" is redundant. If the citation of authority is not needed the informed reader will know it. But where this ex-

pression is used many will suspect that a citation was really needed but could not be found.

34. Despite all that is said above, it is quite likely that many of your research memoranda in the form of draft opinions will be in cases calling for brief per curiams where there will be only a limited opportunity to display your writing ability.

Checking Opinions Placed in Circulation by Other Judges

35. Some judges quite regularly ask their law clerks to check the opinions prepared by other judges, which they must act upon. Other judges rarely assign this duty to their law clerks. If your judge wants you to perform this task you had better get definite instructions from him as to how thorough he wants such a review to be. Remember, too, that such a task is ordinarily to be given priority over your other works, since the judges themselves are expected to give priority to the task of acting upon the opinions of other judges.

Miscellaneous Duties of Law Clerks

36. You will probably have many duties of a minor nature in addition to the four principal tasks which have been described. Your judge will probably want you to maintain his office library and to do proof reading with the other law clerk or the secretary. You will most certainly be called upon from time to time to obtain books from the library. Not infrequently your judge may ask you to interrupt what you are doing and find some authority on a particular issue he is working on in another case.

37. Sometimes your judge will call you in to try out on you a particular rationale he has developed for dealing with a particular problem or to pick your brains concerning a legal question which is giving him trouble. He may want you to do some immediate research on a particular point which is before him at the moment. These are just the kind of interruptions and sudden assignments that will be thrust upon you when you start in active practice. If you develop the ability, in your law clerk year, to handle such interruptions quickly and effectively, and then turn back to your prior assignment without delay, it will stand you in good stead in your early years in a law office.

Relationship with Clerk's Office and Library

38. In the course of your law clerk duties you will necessarily be in frequent contact with the office of the Clerk of this court, and with the court law library. The Clerk and the Librarian, and their

staffs, realize that your duties require you to make such contacts, and they are prepared to assist you promptly and courteously. You must realize, however, that they have heavy responsibilities which can be met only by maintaining specific procedures. You should abide by those procedures to the best of your ability.

39. You will be given a first-hand briefing on the operation of the Clerk's office and the court library. You will be informed of the procedures to be followed. In the unlikely event that any problem should arise in connection with your contacts with these two offices, do not make an issue of it yourself, but take the matter to your judge. The judges and the Clerk's office and the court library have a fine working relationship and misunderstandings, if any, can be quickly ironed out if you give your judge a chance.

Conclusion

40. Should any of these suggestions turn out to be contrary to the wishes of your own judge, you are of course to follow his instructions. But you will find all of the judges of the Ninth Circuit willing to consider changes in procedure. If, in the course of your clerkship year, you believe you have found some ways of improving the utilization of law clerks in your judge's office, call them to his attention. But it would not be wise to institute a substantial change in the regular routine of your judge's office, or in the way he has directed that your work be done, without advance clearance from him.

41. All of the judges of the Ninth Circuit wish you a pleasant and constructive year. We are proud of the kind of lawyers our "alumni" law clerks have become. We also expect to be proud of the kind of lawyers you will make.

Sample B

Duties of Law Clerks

*Ruggero J. Aldisert**

There are a variety of tasks which the law clerks must perform together or individually. The requirements vary with the needs of the moment. Here is at least a partial list.

1. **BENCH MEMOS** You will have to prepare pre-argument bench memos. There is no precise manner in which they can at all times be prepared. However, the following is a format which can generally be used:

(1) The first inquiry is to jurisdiction: Is there jurisdiction in the Court of Appeals (was there a final appealable order)? Is there jurisdiction in the District Court?

(2) State the posture of the case; what happened in the District Court? Jury verdict? Nonjury? Who is appealing?

(3) State the facts which are relevant.

(4) State the issues raised (by counsel or yourself should you see one which is missing).

(5) Discuss the questions raised in this order:

(a) As raised by appellant;

(b) As answered by appellee and/or court below, and

(c) Your evaluation.

(6) Recommend a disposition of the case.

Sometimes you will have lengthy facts and little discussion, many issues or few, etc. It all depends upon the case. Refer freely to page references in the briefs and appendices.

There is no order to assignment of preparation of bench memos. I may start the memo myself. Either of the law clerks may. Each of us, as the spirit moves us, may add on the memo.

2. **CHAMBERS ROUTINE**

(a) *Hours of work.* Law clerks are expected to work Monday through Friday from 9 until 5, with a one-hour lunch period. You need not report in to say good morning to me or to say good night. My secretary's hours are longer. My own hours, longer still. I reserve the right to ask you to work longer hours under certain circumstances. You will be given a key which will admit you to the chambers' suite proper. This will not admit you to my private chambers which is under a separate key.

* Circuit Judge, United States Court of Appeals for the Third Circuit.

(b) *Chamber Procedures.* I encourage your talking to me or discussing matters with me *at all times*. I ask only that the following amenities be observed: ring me on the interphone, dial 3, and ask to come in. I will tell you if it is okay. If I get a phone call while you are with me, please leave the room and I will get back to you. Reason: most of my calls are personal; discussions are for judges' ears only.

I never answer the telephone for incoming calls. If the secretary is not in and you answer the phone, you never say that I am in chambers. You will check to see. And we never talk to unidentified callers.

(c) *Routine for argument list.* The secretary prepares a list of the cases by number and places the cases in the appropriate locations in the library. These are "open bins." Thus, when one is not working on the case, it is available for examination by either of the other two. This way, the Judge does not tie up cases he is not working on. Nor should the law clerks.

(d) When we receive draft opinions written by the other judges of a panel on which I have served, they must be scrutinized before my concurrence is returned to make sure that they are sound. It is my practice to return to the writing judge my concurrence as soon as possible. These have a high priority.

(e) I read all slip opinions of the Supreme Court and the Third Circuit, and it is important for the clerks to do likewise. It is surprising how often they are citable. If any Third Circuit draft opinion strikes a clerk as unsound, it should be brought to my attention at once. There is no way to correct an unsound opinion unless a request to the writing panel is made, and if they are unwilling to recede then a judge must promptly initiate a request for en banc.

3. SECRETARY

My secretary has been with me for a number of years, both on this court and in the Court of Common Pleas. She is not only a competent aide to me, but she is my friend and shares my confidences. Please treat her at all times with the utmost of respect. She is thoroughly familiar with office procedures and my personal idiosyncrasies. When in doubt about chamber practice, do not hesitate to consult her.

My secretary is responsible for the management of my chambers and the flow of work. Her time is occupied with my work so it will be necessary for you to type or to write legibly your bench memos and the rough drafts of opinions. She will prepare all government transportation requests for travel.

The Third Circuit pool secretary is stationed in my chambers. She is our librarian and works on special assignments for me and my secretary. She is familiar with our chamber practice and will be a source of consultation for you.

4. THE LIBRARY

The library is the most important tool you will have, and it is of sufficient quality and quantity that you will rarely have to venture outside for additional sources of law. I suppose everyone who has been doing legal research will eventually settle on his own methodology for use of a library, and I am sure you will begin your work here with some of your own predispositions toward certain reference works. Here, however, are some suggestions as to the use of the library for the type of work you will be doing on the Court of Appeals.

Being on the United States Court of Appeals' staff, it is immediately obvious that you will be engaged in predominantly federal question type of work. Although you will get a few diversity cases along the way, most of your work will be federal. Ergo, you will be approaching the reference material with that orientation.

The most important portion of federal law is Third Circuit law. The guiding rule of law clerk research is: **WHEREVER POSSIBLE USE A THIRD CIRCUIT CASE**. The reason is obvious upon reflection; the Circuits at times differ, if not diametrically, often with a slight slant. Cases are overruled only en banc and not by panels. We all should not have to do what quite often only three should.

The two sets you will have occasion to use the most are F.2d and U.S.C.A. Many of our cases involve a statute, and U.S.C.A. is an excellent source for initial research work on statutes. The headnotes used in the set are virtually always accurate (you still have to read the case, of course—**NEVER** rely only on headnotes) and, because in most instances the cases cite or construe the particular section of the statute with which you are concerned, they are generally on point.

There are good secondary materials in the library which you may often have to resort to. In West, use the descriptive word index as your first approach, then go to the key system. Do not hesitate to use Corpus Juris as a lead to a case, and ALR. I subscribe to the law reviews from Harvard, Columbia, NYU, The University of Pittsburgh, Duquesne, Georgia and Seton Hall.

I never depend on the cases cited in the briefs. Original research is *always* the order of the day in an opinion assigned to me.

Please develop habits and techniques of thorough research.

It may be that you will see books you think I should have in my library. These may come through advertisements sent to the Judge, which the secretary will give to you.

Occasionally material will come in from the Administrative Office, e.g., Report of the Judicial Conference, which will have to be filed. There is a separate section for that.

5. TRIPS

I usually take one law clerk with me to regular panel sittings and to the en bancs. The two law clerks will divide up trips.

(a) *Duties.* The travelling law clerk will pack two brief cases on the Friday before the trip. One will be the Judge's own, into which will be placed all Monday motions, and Monday's motions for argument. The other brief case will contain one set of briefs (the set used and marked by the Judge) and thin appendices. If appendices are too thick, mail them to Philadelphia sufficiently in advance.

The travelling clerk will sit in the courtroom each session, listen to the oral arguments and make notes of new citations not in the briefs and what he considers of importance, especially if he is persuaded that what is then presented has changed his pre-hearing view of the case. The clerk should read all the bench memos before argument so that he will be familiar with the background of each case. Before the judges' conference following argument the clerk should be available for advice.

The travelling law clerk is also my personal bailiff. He must see that I am in the robing room on time, although my practice is to have the law clerk robe me in my Philadelphia chambers.

The travelling law clerk should ascertain, before I go on the bench, that the court crier has arranged my seat properly, that he has provided a good supply of sharp pencils, ice water and writing pads. He must insure that I have *all briefs and appendices* at my spot. He should ascertain from me, before I go on the bench, that I have my reading glasses and some candy in my pockets.

The travelling law clerk may normally leave Philadelphia chambers at five o'clock, but unlike the Pittsburgh practice, I want to know when you are leaving. There may be something I want to talk about. Normally then, you are subject to more call in Philadelphia than you are in Pittsburgh.

Other additional duties of travelling law clerk:

(1) If I do not phone Pittsburgh chambers before I go on the bench, please phone for me and get a report of the morning mail. Ditto, the afternoon mail.

(2) Act as a receptionist for visitors. Use the secretary's office instead of

the law clerk's office there except for Wednesdays, when the secretary normally travels.

(3) As we have no chamber library in Philadelphia, the travelling clerk gets books as needed.

(4) On Monday morning the travelling law clerk shall immediately augment the materials on each case to be argued by adding those appendices which I do not carry to Philadelphia. This is extremely important. Please do not make me remind you of this.

6. FINAL CITE CHECKING BEFORE FINAL DRAFT GOES TO PANEL

It is, of course, important that all citations and quotations be checked for accuracy. The requisite accuracy is two-fold: reference to the various cited authority must be in a correct form of citation according to the "Whitebook" (formerly "Bluebook") or my practices, whichever is applicable. This means that it is important to know and understand the Whitebook and my practices, etc., as well as be determined that no matter how dull, each citation will be thoroughly checked. As you will discover after a while, the former is far easier than the latter.

As to the former, little really is required. Cases are cited by, in order, case name (with the form of case name including proper abbreviations according to the Whitebook), followed by a comma, the reporter citation (again from the Whitebook form), the court of decision and the date of decision in parenthesis, and then the subsequent history, etc., or explanatory information. For example:

Ichabod Schmaltz, Inc. v. Percival Pud & Co., 409 F.2d 69 (3d Cir. 1969).

One other SOP should be mentioned. When you are citing to a case not yet reported (*i.e.* still in slip decision), the proper form is this:

Grunge v. Grublefarg, ___ F.2d ___ (3d Cir., No. 25,835, Mar. 1, 1969).

IT IS BEST TO DO THINGS THE WHITEBOOK WAY WHERE POSSIBLE.

Once the opinion is carefully checked, typewritten and approved and sent to the Clerk's Office for filing, it will soon reappear in slip. Approximately two months later it will make another appearance in the form of galley from West Publishing Company. One should use printer's marks in order to make the occasional corrections necessary. If you do not know what printer's marks to use and cannot tell from those already on the galley made by the printer, there is a section in the rear section of Webster's Collegiate Dictionary which will tell you which ones to use.

The galley will return from West along with an envelope for you to send it to them. Simply make the necessary corrections and send it back. I'm not interested in the procedure myself.

In addition to cite checking it is of the utmost importance for the clerks to read draft opinions with a jaundiced editorial eye. If you can say the same thing more clearly or succinctly than I have said it, the draft should be changed. Or if I have said something that is not correct, especially *factually*, modification is imperative. The primary responsibility of a clerk is to keep the judge out of trouble!!!

7. ALDISERT OPINION BOOK AND INDEX

An important function of the law clerk is to keep the Aldisert index current. The procedure starts when the secretary makes a Xerox copy of all printed opinions, per curiam, concurring or dissenting written by me. She then delivers this to the law clerk who indicates what should be indexed. This is a cross reference indexed by subject matter of appropriate references to excerpts from our cases.

8. PRIORITY OF RESPONSIBILITIES IN OPINION PREPARATION

The law clerks have responsibilities, *in the following order of importance*:

- (a) Ascertain the accuracy of the statement of law contained in the cited case or statute.
- (b) Insure that the factual synopsis in our opinion fairly, accurately, and honestly reflects the record.
- (c) Insure the accuracy of quotations from cases and statutes.
- (d) Insure that case names are spelled properly.
- (e) Insure that case and statute citations are accurate.
- (f) Eliminate any mistakes in grammar or spelling.
- (g) Edit the copy with the view toward (1) shortening and (2) improving the readability of the opinion. BUT NEVER MARK UP MY OWN COPY. I *always* want to compare my draft with your suggested draft.

9. CONFIDENTIALITY

The judge-law clerk relationship is protected by a confidentiality relationship as respected as a lawyer-client or a priest-penitent. What you see or hear in these chambers stays here. It will not be transmitted to your family, friends or public. Moreover, always be very discreet in your discussions with law clerks or other judges. It is appropriate to discuss, in the abstract, problems and issues presented in the cases, but it is improper to convey personal impressions of these chambers to other chambers. This is effectuated on a judge-to-judge basis.

10. YOUR RELATION WITH ME

You were not selected by me to be a "yes man." I value your opinions and your intellectual independence. Prior to the decision-making of the court, I invite your impressions and solicit your views. You are not to express a viewpoint simply to please me during the process of decisionmaking. Nevertheless, there is only one judge in

these chambers. Once a decision is made, your role changes. Although you are my intellectual equal, it is I, and only I, who has the judge's commission. It is my ultimate decision that will control. And when the decision is in, that is it.

