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**To:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )

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CREATOR: Rachel Brand [REDACTED] P6/b(6)  
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Very weird article about S Ct clerks in the Legal Times, if you didn't already see it.

>Clerks Taking Detours on Road to High Court

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>Tony Mauro

>American Lawyer Media

>10-21-2002

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>It's the time-honored path for incoming U.S. Supreme Court law clerks:

>First they clerk for a top-notch federal appeals court judge, then they

>immediately proceed to their prestigious positions at the Supreme Court.

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>Not anymore. A dramatically increasing number of high court clerks are

>adding an intermediate step to the path, spending a year or more at a

>top law firm or elsewhere, after their appeals court stint and before

>clerking at the high court.

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>Fully 60 percent of this term's high court law clerks -- 21 out of 35 --

>spent at least the last year doing something other than clerking at an

>appeals court, according to a listing of the clerks released by the

>Court. All nine justices have at least one clerk who is more than a year

>past a lower-court clerkship, while two justices -- Sandra Day O'Connor

>and Ruth Bader Ginsburg -- have filled their complement of four clerks

>with individuals in this category.

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>By comparison, only six of last term's 34 clerks took a similar detour.

>The rest came straight from lower-court clerkships.

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>The trend is adding a new element to the fierce competition among law

>firms to hire ex-Supreme Court law clerks, the best of whom can be

>assured of receiving hiring bonuses upward of \$85,000.

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>"We are aggressively going after obviously talented appeals court clerks

>who are in the running for Supreme Court clerkships," says Gene Assaf,

>recruiting partner in the Washington, D.C., office of Kirkland & Ellis.

>Assaf says five current Supreme Court clerks have previously spent a

>summer or more at Kirkland.

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>The justices themselves are encouraging the trend, in an apparent desire  
>to recruit a more seasoned and varied mix of clerks -- including  
>minorities and applicants from schools other than Harvard and Yale whose  
>resumes might gain luster from an extra year or so of post-appeals  
>court, post-law school work.

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>"Hiring only law review editors from Harvard" does not increase  
>diversity, says University of Kansas School of Law Dean Stephen  
>McAllister, himself a former law clerk. "But waiting to see what people  
>do their first few years out of law school might help diversify the  
>pool." David Stras, a Kansas alumnus, is clerking for Justice Clarence  
>Thomas this term after spending a year at Sidley Austin Brown & Wood,  
>following his clerkship for Judge J. Michael Luttig of the 4th U.S.  
>Circuit Court of Appeals.

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>Some justices also apparently want to do their part to help calm the  
>feeding frenzy that has led appeals judges in recent years to hire  
>clerks earlier and earlier in their law school careers. Ginsburg, for  
>one, is apparently delaying her hiring this term to mirror the  
>successful moratorium on clerk hiring under way among appeals judges.

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>This is a significant shift for Ginsburg and other justices like  
>O'Connor, who often hired early, sometimes seeking out superstar  
>third-year law students on the basis of second-year grades. Other  
>justices hire applicants as they leave law school or as they are just  
>beginning their appeals court clerkships. "Some of them pick way too  
>early, while we are still grading the students' papers" from the first  
>semester of their third year or earlier, says Yale Law School professor  
>Akhil Amar.

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>In this new, nontraditional route to the high court, a significant  
>number apply and are hired while they are on their post-appeals court  
>detours.

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>Others are hired late in their appeals court clerkships, but before they  
>go off to another job.

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>"Some of the justices are trying to generate this gap by hiring clerks  
>for a year out and telling them do something else for a year," says  
>Carter Phillips of Sidley Austin Brown & Wood. "The justices perceive it  
>as an advantage if their clerks have had some prior experience at a firm  
>doing Supreme Court work." Phillips says an incoming associate in his  
>office already knows she will clerk for Justice Clarence Thomas next  
>term.

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>Sending associates off to the Supreme Court is something of a gamble for  
>law firms. Ethical rules require that they sever all ties with their  
>firms during their clerkships, and they cannot be guaranteed a position  
>when their year at the high court is over. Some have not returned to  
>their former firms.

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>"We wait until the end of the term before we talk to them again," says  
>Kirkland's Assaf. "Then we go into overdrive in July, August and  
>September."

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>The gamble is worth it, says Phillips. "I'll take my chances." He adds  
>that in the new environment, "you have to take the long view on  
>recruiting," knowing that an associate who goes off to the Supreme Court  
>and then goes into public service or academia may eventually return.

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>One current high court clerk whose prior appellate clerkship was four  
>years ago is Rachel Brand, who is working for Justice Anthony Kennedy.  
>In 1998, Brand clerked for Harvard Law School Professor Charles Fried  
>when he was a judge on the Supreme Judicial Court of Massachusetts --  
>itself a nontraditional clerkship, making her the only current clerk to  
>have worked for a state, rather than a federal appeals court judge. She  
>went from Fried's chambers to the now defunct firm Cooper, Carvin &  
>Rosenthal and then, after the 2000 election, to the Bush administration  
>as an assistant White House counsel.

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>She applied for the Supreme Court clerkship last year.

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>"Justice Kennedy was looking for people who had clerked on a state  
>court," recalls Fried who, in his current post at Harvard, frequently  
>recommends former students for high court clerkships. "The justices have  
>finally woken up to the fact that they can afford to wait for the  
>recommendation of the judge below," says Fried.

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>Harvard's clerkship adviser Kirsten Solberg says she has been hearing  
>more and more from older Harvard alumni who want help applying for  
>Supreme Court clerkships. And former clerks from Harvard, she adds, are  
>passing the word that good potential clerks "should apply more than one  
>time." Sometimes, she says, justices who have a surplus of good  
>applicants in one term encourage others to try again in subsequent  
>years.

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>Some veterans of the process expressed concern that having too many  
>clerks with post-appeals court experience might have a downside. "The  
>mentality that 'my judge is always right,' which you kind of need as a  
>clerk, is a little harder for lawyers who have been out in the world,"  
>says Sidley Austin's Phillips, only half-jokingly.

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>Judge J. Harvie Wilkinson III of the 4th Circuit, a former high court  
>clerk who now sends many of his own clerks to the Supreme Court, adds,  
>"There is a value to coming directly from the appellate court. There is  
>a freshness of perspective, and you are in touch with what is going on  
>in the law schools."

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>But Wilkinson, who wrote a book about his own Supreme Court clerkship in  
>1974, also sees the new trend of hiring more seasoned clerks in a  
>positive light.

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>"I think there is a recognition [among the justices] that clerks bear a  
>great deal of responsibility," he says. "The justices still call the  
>shots, but they are looking for someone with a degree of maturity, and  
>different kinds of experience."

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>That view was seconded by Kenneth Geller of Mayer, Brown, Rowe & Maw, a  
>firm with a strong Supreme Court practice. Law clerks have clout, Geller  
>says, "whether the justices admit it or not," especially when it comes  
>to screening incoming cases. With the pooling arrangement that eight of

>the nine justices use, petitions are often reviewed in detail by only  
>one law clerk.  
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>"We labor over these cert petitions, and it's a sham. In many cases, the  
>justices never look at them at all," says Geller. If the law clerks who  
>do review the petitions have an extra measure of experience and  
>maturity, says Geller, "it's a good development."  
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>MINORITY REPORT  
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>Meanwhile, this year's group of law clerks includes seven minorities.  
>Seven was the number two years ago -- and the most ever in a single  
>term. There were five minorities in the clerk ranks last term.  
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>Comparisons to past years are slightly skewed by the fact that, for the  
>first time in recent memory, Justice John Paul Stevens hired four law  
>clerks instead of his usual three. Justices are allowed to hire up to  
>four clerks, and all did so except for Chief Justice William Rehnquist,  
>who stuck to his usual three. As a result of Stevens' additional hire,  
>this term's class of clerks numbers 35 instead of the 34 of past terms.  
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>The Court itself does not release information about the clerks'  
>demographics, so the tally is based on observation and interviews with  
>people who know the clerks.  
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>Two of the current clerks are black: Troy McKenzie, clerking for  
>Stevens, and Maritza Okata, on the staff of Justice Stephen Breyer.  
>Cristina Rodriguez, a clerk for Justice Sandra Day O'Connor, is  
>Hispanic. Four clerks are of Asian heritage: Robert Hur, clerking for  
>Rehnquist; Brian Matsui, a clerk for Justice Anthony Kennedy; Derek Ho,  
>a clerk for David Souter; and Priya Aiyar, a Breyer clerk. There are no  
>racial or ethnic minority clerks in the chambers of Justices Antonin  
>Scalia, Clarence Thomas and Ruth Bader Ginsburg.  
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>Thirteen of the 35 clerks are women, down from 14 last term. Scalia is  
>the only justice with no female clerks this term; he had one woman clerk  
>last term. Kennedy clerk Rachel Brand is his first female clerk in four  
>years.  
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