To the Members of the Federal Judiciary:

Last year, we – along with dozens of other law school deans – wrote in support of the clerkship hiring pilot adopted by much of the federal judiciary. Before “the Pilot” was put in place, federal judges were hiring students at the end of their first year, sometimes even before spring grades were out. As a result, the existing hiring process undermined the purpose of the first year, which, as we wrote in 2017, aims not just “to lay the foundation for legal education...[but] to encourage experimentation and learning for its own sake.” Simply put, the pre-Pilot hiring process provided all of our students too short a runway to launch successfully into such an important professional opportunity. Indeed, the process resulted in information disparity and access inequality for the many first-generation professional students in our ranks who, in their first year, may not have as much immediate information as others about the value of clerking or the process of applying for clerkships.

We are happy to report that, in its first year, the Pilot has already made, on balance, a positive impact at our schools. Without the pressure to apply in the first year, our 2L students applying to judges who have subscribed to the Pilot have had more freedom in choosing their classes and extra-curricular activities. They have also gained additional time to forge stronger relationships with professors. Whether students choose to clerk or not to clerk, any decision made at the conclusion of 2L rests on a sounder footing because it’s being made after two full years of professional training.

Though you can better assess this consideration, we also think it likely that hiring decisions made at the conclusion of 2L are better informed. By the end of the second year, students have more classes under their belt, law journals have selected their members and boards, and student groups have chosen their leaders. Faculty writing recommendation letters have had a great deal more time to work with the students for whom they write.

In addition, at all of our schools, there appears to be substantial support for the Pilot among faculty, students, and young alumni law clerks alike.

For all of these reasons, we all support the Pilot as an improvement over the state of affairs that preceded it, and we have taken steps to encourage its adoption as broadly as possible.

After the completion of the second year of the Pilot this summer, we expect that there will be an assessment of its overall performance and an examination of how best to move forward. We imagine that the Judicial Conference may be well situated to undertake that examination and to contemplate the adoption of a long-term policy for the federal judiciary as a whole. In anticipation of that work, we want to note some of the complications presented by
aspects of the Pilot in its current form. Because an unknown number of judges have not signed onto the Pilot, and because information about who has and hasn’t done so is not easily available, a two-track hiring process has emerged that has caused some confusion and concern among students and faculty. Indeed, at schools that have sought to support the Pilot by asking faculty not to provide recommendations or place calls to any federal judge until the dates specified in the Pilot, some students have found it hard to understand why they cannot get their school’s support for applications to judges who, by the Pilot’s own terms, have validly exercised the option not to join it. Moreover, the confusion wrought by the present two-track system may have the unintended consequence of actually benefiting those who have a greater comfort level with the process at the outset rather than those who develop that comfort level over time.

We reiterate, however, that we all regard the Pilot as an improvement over the situation that preceded it. We think the problems with the two-track process that we have identified here could be greatly mitigated if more individual judges decided to participate in the Pilot or, preferably, if the Judicial Conference were to adopt a generally applicable policy along the lines of the Pilot going forward.

In the meantime, we are delighted that the Pilot will be amended to include a one-day reading period this year, which will bring some needed flexibility into the process. As we assess our own policies going forward, moreover, we look forward to receiving survey feedback from participating judges about their experience with the Pilot and how to further the Pilot’s goals, including ensuring equal opportunity to a diverse pool of clerkship candidates. We are grateful to you and others who have worked to create a fairer and more rational system of clerkship applications for our students and our profession by proposing, and adhering to, the Pilot.

Sincerely,

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