

PEOPLE'S PARITY PROJECT AT UCONN LAW



Imbalanced Justice: Professional Diversity of the Connecticut Judicial Bench

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Summary

State courts hold incredible sway over the lives of Connecticut residents, deciding cases on topics ranging from child custody to land use, murder trials to car accidents. Despite this immense power, little attention has been paid to the professional backgrounds of the judges hearing these cases – even though research shows those backgrounds have significant impacts on case outcomes for those appearing before them.

At the federal level, the Biden administration has taken notice that judges' career backgrounds matter, taking deliberate steps to diversify the professional backgrounds of federal judges by nominating more judges with experience in legal aid, public defense, and civil rights law. (1) However, no such push for professional diversity has been made in the Connecticut state courts; although the demographic diversity of the state bench has increased in recent years, little attention has been paid to the legal experience of the judges elevated to decide on state law and the fates of our residents. (2,3)

Despite the legal profession's claims of objectivity under the law, as detailed below, it cannot be denied that judges' prior experiences influence their decisions. This report expands on efforts at the federal level to understand the legal backgrounds of the judges deciding on the rights and privileges of our residents by analyzing the professional diversity of the state bench in Connecticut.

Along the lines of similar studies focused on the federal level, analysis of the legal backgrounds of state judges reveals a severely disproportionate representation of corporate attorneys and criminal prosecutors, particularly relative to legal aid attorneys and public defenders. By understanding this overrepresentation of certain career paths on the state bench, the Connecticut executive and legislative branches can better understand the impact future judicial nominations are likely to have on their residents' practical outcomes in court, and on the development of substantive law under state statute and the Connecticut constitution.



Why Professional Diversity Matters

Before being elevated to the bench, judges can have a wealth of different professional experiences. Although the mythology of the law presents judges as objective arbiters of truth, both anecdotal observations from judges themselves and empirical studies reveal the unavoidable fact that judges' prior experiences, both personal and professional, influence their decisions on the bench.

Reflecting on the legacy of their colleague Justice Thurgood Marshall, several U.S. Supreme Court justices noted the unique perspective he brought to the bench. Many of these justices, such as Justice Lewis Powell credited that perspective to Justice Marshall's position as the first Black

justice, stating that "a member of a previously excluded group can bring insights to the Court that the rest of its members lack." (4)

Others, however, noted that Justice Marshall brought a unique professional experience to the Court. Justice Byron White noted that both Marshall's experience as a Black man in the United States and his career as a civil rights attorney gave him experience "none of us could claim to match," adding that those experiences also influenced White and his colleagues in their decision making. (5) Justice William Brennan stated that, from both a personal and professional perspective, Marshall "spoke from first-hand knowledge of the law's failure to fulfill its promised protections for so many Americans." (6)

Perhaps most illuminating, Justice Powell remarked that Justice Marshall “would tell us things that we knew but would rather forget; and he told us much that we did not know due to the limitations of our own experience.”

Powell’s acknowledgement of the implicit biases and ignorance of certain issues that judges hold is an important reminder of the value of diversity on the bench. As the only public defender to ever sit on the Connecticut Supreme Court, Joette Katz, noted in a recent article, “Chief Justice Roberts [famously described] the role of a judge as calling ‘balls and strikes.’ Less remembered is Sen. Hern Kohl’s response that no two umpires have the same strike zone.” (7) Only a bench reflective of the full spectrum of both demographic identities and professional legal experiences has the potential to move us to a judiciary where judges could fill in each other’s blind spots, or average out to a fair “strike zone.”

This idea is not merely speculative. Empirical studies have borne out the impact of professional diversity that these judges naturally intuited. A recent study of federal criminal sentencing from 2010 to 2019 showed that judges without any criminal defense experience handed down significantly harsher sentences than those with public defense experience. (8) Another study analyzing employment cases found that judges with prior experience as criminal prosecutors or representing corporations were significantly more likely to find in favor of corporate defendants in employment cases than judges with experience representing individuals. (9) With the great number of specialties that exist in the law, extrapolating these results across case types would indicate that an overreliance on certain types of attorneys as judicial candidates would yield significantly skewed results for individuals in the legal system.

However, that overreliance on judges with a small range of professional backgrounds is exactly what researchers have found at the federal level. Studies of professional diversity on the federal bench have consistently found a significant overrepresentation of prosecutors and corporate attorneys. (10) Additionally, judges with backgrounds in legal aid, public defense, and civil rights are particularly underrepresented. (8) This skewed professional representation on the federal bench may be expected to cause more negative outcomes for criminal defendants and civil plaintiffs. To counter this effect, increasing the professional diversity of the bench has been a specific aim of the Biden administration. (1)

Despite the growing attention to this issue at the federal level, professional diversity of state benches remains understudied. Significant efforts have been made to analyze racial and gender representation in state courts. (3, 11) Highlighting the lack of demographic diversity at the state level has led states, including Connecticut, to prioritize more demographically diverse pools of judicial nominees and improve the representativeness of their courts. (2, 12) However, Connecticut has made no such explicit effort to increase the professional diversity of the bench, and there has been a significant lack of attention to the number of judges with pro-people backgrounds such as legal aid, public defense, and civil rights.

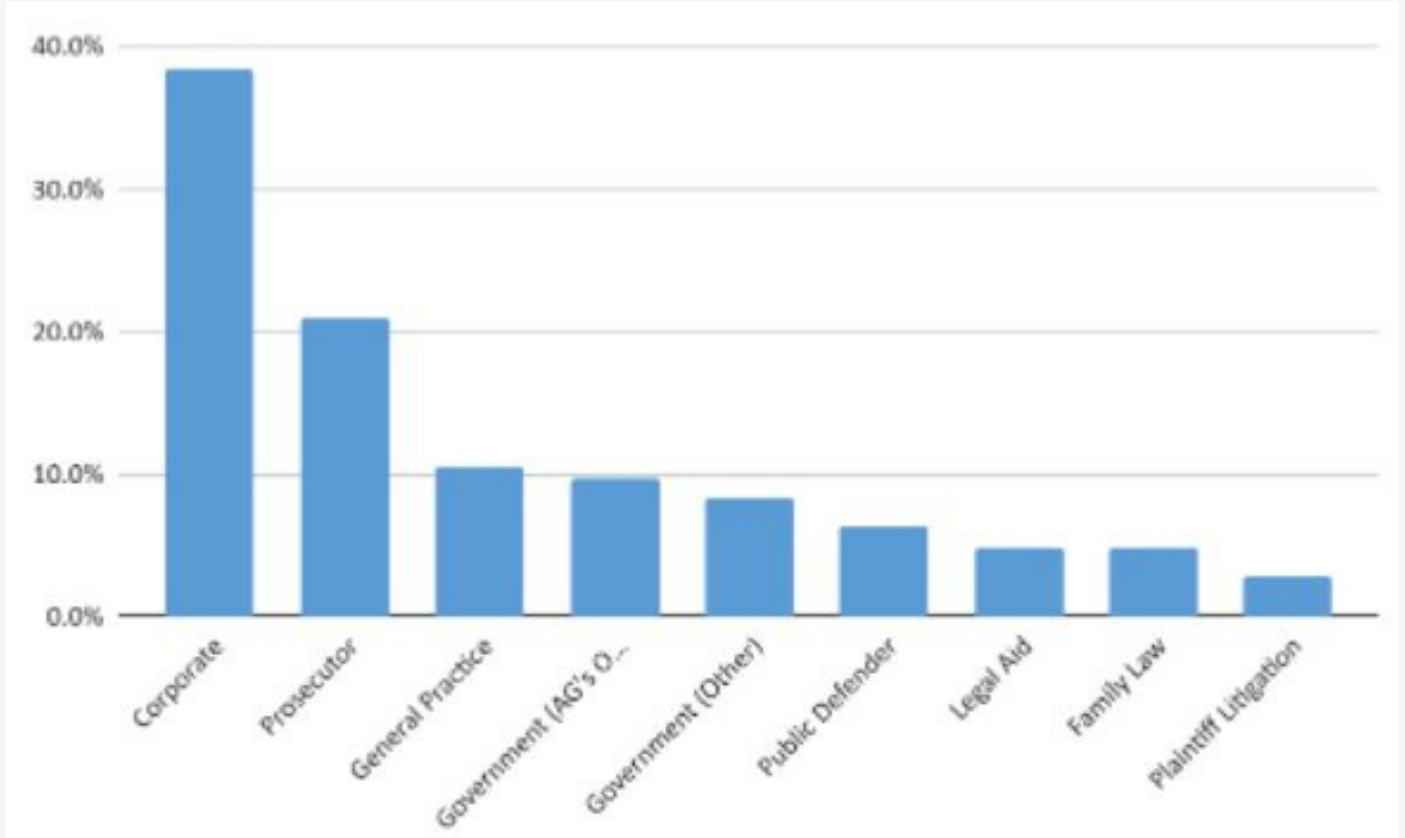
This report seeks to highlight the lack of professional diversity on the Connecticut bench. It will further make recommendations on how attorneys with underrepresented professional experiences can be identified and elevated to correct this issue.

Methods

Names of all judges in the Connecticut Supreme Court, Appellate Court, and Superior Courts as of January 2022 were collected from the Connecticut Judicial Branch website (www.jud.ct.gov). For Supreme and Appellate Court judges, their biographies published on the aforementioned website were used to categorize their professional experience. Because biographies are not published for Superior Court judges, their professional backgrounds were collected from reliable sources such as Governor's Office press releases and media reports.

Judges' prior jobs were grouped into the following categories: corporate, criminal prosecution, general practice, government (Attorney General's Office), government (other), public defense, public interest, family law, and plaintiff civil rights litigation. Certain government positions, such as experience as corporation counsel for municipalities were counted as corporate experience. For judges with experience across multiple categories, the judges were included in counts for each of the categories into which their experiences fit. Judges without reliable career information available on the internet remained uncategorized and were excluded from the count.

Results

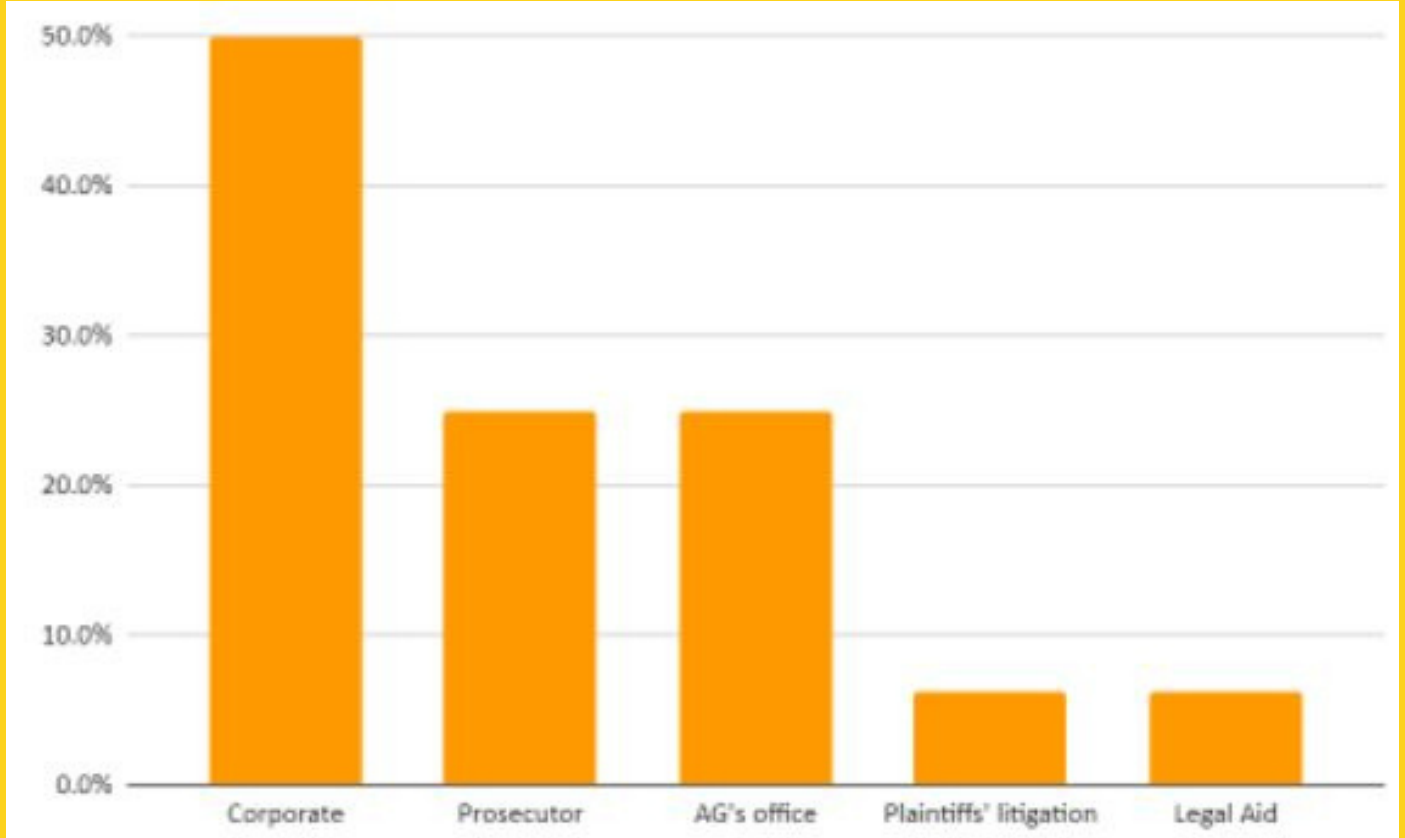


The backgrounds of 136 judges were collected and categorized, with 7 remaining excluded because their prior positions could not be identified.

Aggregating the professional experience of judges across all Connecticut courts, similar trends to federal courts were found. Over half of Connecticut judges have experience either as corporate attorneys or criminal prosecutors (38.5 % and 21.0 %, respectively). By contrast, only 6.3 % have public defense experience and 4.9 % have legal aid experience. Even combining all fields where practitioners represent individuals, such as legal aid, public defense, family law, and plaintiff litigation, judges with these pro-people backgrounds represented less than one fifth of all judges.

Figure 1: Legal experience of all Connecticut judges.

Results



In the appellate courts, the disparities were even more stark. 50.0% of judges had corporate experience and 25.0% had been criminal prosecutors. In contrast, one justice of the Supreme Court (6.3% of appellate judges) had legal aid experience, and there was not a single public defender. One other justice had a mixed practice that included representation of individual plaintiffs in civil litigation.

The Connecticut appellate bench is overwhelmingly made up of judges with experience representing larger interests, such as corporations and governments, rather than individuals. Although the 25% of the appellate bench with experience in the Attorney General's office has sometimes represented individuals when enforcing employment laws and other individual protections, more often they have defended the state government against claims by individuals or other entities.

Figure 2: Legal experience of Connecticut Supreme Court justices and Appellate Court judges..

Recommendations

To ensure that the Connecticut bench is representative of the broad spectrum of legal experiences and thus able to better serve the people in need of justice in the courtroom, the state must make a deliberate effort to identify and nominate qualified judges from public interest backgrounds and to improve the pipeline of attorneys entering these fields. We suggest the following state-specific changes to ensure a robust pipeline of potential judges with public interest backgrounds and to elevate more attorneys with a diversity of professional experiences to the bench: 1) counter public interest drift in law school, 2) lower student debt burden, 3) increase state judicial clerkship and judicial internship pay, and 4) commit to increasing the professional diversity of the state bench.

Countering Public Interest Drift

Empirical data have shown that a significant proportion of students enter law school intending to enter public interest legal professions, but by their second years have shifted their goals toward entering large law firms. (13, 14) Increased effort should be made by law schools in the state to ensure there are adequate opportunities and funding for students interested in public interest work. Additionally, law schools should highlight public interest pathways to the judiciary in partnership with judges from public interest backgrounds so that the current pro-corporate and prosecutorial bias of the state bench does not discourage students who aspire to become judges from entering public interest careers in the first place.

Case Highlight

Larmel v. Metro North

To highlight the potential impact of the professional backgrounds of the state's judges, consider *Larmel v. Metro North*. In this case, a plaintiff was injured on a Metro North commuter train, and her suit was sent to arbitration. When trying to bring suit under a separate statute, by a 4-2 vote, the Connecticut Supreme Court, with only two justices with experience representing individuals in tort claims, decided that an arbitration decision was equivalent to a trial on the merits, despite the fact that individuals are at a significant disadvantage in arbitration proceedings against corporations (Center for Popular Democracy, "Justice for Sale: How Corporations Use Forced Arbitration to Exploit Working Families," April 2017).

Lowering Student Debt Burden

The average law school graduate owed over \$160,000 in debt. (15) Within this average, there are significant demographic disparities, with Black law school graduates on average carrying 97% higher debt loads than white law students. and women taking longer to pay off their debt due to lower average salaries. (13) The incredible debt burden that law school graduates carry leaves public interest work out of reach for too many. Legal aid attorneys and public defenders often earn less than their area's median income, while nationwide, first-year associates at private law firms could expect starting salaries of around

\$135,000 in 2017. (16, 17) For many graduates with high amounts of student loan debt, the high salaries of private law firms may be hard to resist, regardless of how much they may have wished to go into public interest law.

Connecticut could help address this issue by lowering tuition at the University of Connecticut School of Law and providing additional scholarship opportunities for students willing to commit to public interest work. The vast majority of UConn Law graduates remain in state, so lowering tuition would have an outsized impact on the debt burden of law school graduates here. (18) For graduates of all law schools, Connecticut should consider funding a bonus program or other loan repayment option for law school graduates who pursue public interest careers within the state.

Increasing State Judicial Clerkship Pay

Judicial clerkships are often seen as the keys to elite positions within the legal profession, whether private, public, or academic. (19, 20) However, clerkship salaries in Connecticut are on par with public interest positions in Connecticut and thus are significantly lower than those in the private sector. (21) Temporary assistant clerks in Connecticut earn little more than minimum wage. (22) These positions are often seen as the first step on the path to becoming a judge. Increasing the pay for these positions would allow a broader range of students to enter the field and gain this qualification for the bench.

Case Highlight

State v. Griffin

In this case, police officers told the defendant that they would arrest his family members, falsely told him that he was facing the death penalty, and falsely indicated that he would face a lesser charge if he gave a confession, eventually coercing a confession from the defendant. By a 5-1 vote, the Connecticut Supreme Court, with two former prosecutors but no justices with criminal defense backgrounds, found that the confession was given voluntarily.

Commit to Increased Nominations of Attorneys with Public Interest Experience

As this report shows, public interest attorneys are severely underrepresented on the state bench. In addition to addressing pipeline issues as detailed above, it is important that the the Judicial Selection Commission, the Governor's office, and the General Assembly all commit to addressing these disparities. The Commission and Governor should prioritize identifying candidates with underrepresented professional backgrounds, and when considering candidates before them, the Judiciary Committee should consider their professional backgrounds and what the overall slate of nominees represents professionally. Nominating officials to the Judicial Selection Commission should also consider the backgrounds of their nominees and whether they are committed to professional diversity on the state bench.

Finally, with Justice Christine Keller, the only appellate-level judge in Connecticut with public interest experience, about to take senior status, the Commission, Governor, and General Assembly should commit to replacing her with another justice with legal aid, public defense, or civil rights experience to ensure that we do not lose our sole voice of public interest law on the bench.

Conclusion

Despite the impact judges' professional backgrounds have on their decisions on the bench, little attention has been paid to the professional diversity of Connecticut's bench. This report shows that judges with corporate and prosecutorial backgrounds, who have been shown on average to generate more negative outcomes for individuals against corporate or state interests, make up a significant majority of the state's judges, particularly at the appellate level.

By committing to appoint more judges with public interest backgrounds and providing increased opportunities for public interest minded law students to pursue clerkships and other opportunities that could someday support their own nominations, this disparity could be addressed to the benefit of our residents. Connecticut has made significant improvements in balancing the demographic composition of the judiciary, but for a truly representative bench that will protect the interests of all who appear before them, the state must commit to ensuring professional diversity as well.

References

1. Colleen Long, *Biden Seeking Professional Diversity in His Judicial Picks*, Associated Press, <https://apnews.com/article/joe-biden-us-supreme-court-business-congress-race-and-ethnicity-e775b084ed2943c9c328a4726b21b579> (February 10, 2022).
2. Mark Pazniokas, *Lamont to Nominate Diverse First Class of Trial Judges*, Connecticut Mirror, <https://ctmirror.org/2021/02/16/lamont-to-nominate-diverse-first-class-of-trial-judges/> (February 16, 2021).
3. See Janna Adelstein and Alicia Bannon, *State Supreme Court Diversity – April 2021 Update*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-april-2021-update> (2021) (reports professional backgrounds of Connecticut Supreme Court justices but not Appellate or Superior Court judges).
4. Barbara A. Perry, *A “Representative” Supreme Court?: The Impact of Race, Religion, and Gender on Appointments*, 137 (1991).
5. Byron R. White, *A Tribute to Justice Thurgood Marshall*, 44 *Stan. L. Rev.* 1215, 1215-16 (1992).
6. William J. Brennan, Jr., *A Tribute to Justice Thurgood Marshall*, 105 *Harv. L. Rev.*, 23, 23 (1991).
7. Joette Katz, *Another Positive that Sets SCOTUS Nominee Ketanji Brown Jackson Apart*, *Conn. L. Trib.*, <https://www.law.com/ctlawtribune/2022/03/08/another-positive-that-sets-scotus-nominee-ketanji-brown-jackson-apart/> (March 8, 2022).
8. Allison P. Harris, *Maya Sen Working Paper. How Judges’ Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing*, <https://scholar.harvard.edu/msen/public-defenders> (accessed March 12, 2022).
9. Joanna Shepherd, *Jobs, Judges, and Justice: The Relationship Between Professional Diversity and Judicial Decisions*, http://demandjustice.org/wp-content/uploads/2021/02/Jobs-Judges-and-Justices_Demand-Justice_Joanna-Shepherd-Report_2021.pdf (2021).
10. Maggie Jo Buchanan, *Pipelines to Power: Encouraging Professional Diversity on the Federal Appellate Bench*, Center for American Progress, <https://www.americanprogress.org/article/pipelines-power-encouraging-professional-diversity-federal-appellate-bench/> (August 13, 2020).
11. Tracey E. George and Albert H. Yoon, *The Gavel Gap: Who Sits in Judgment on State Courts?*, American Constitution Society for Law and Policy, <https://www.acslaw.org/wp-content/uploads/2018/02/gavel-gap-report.pdf>.
12. Alli Gerkman, *Connecticut: For a Diverse Judiciary, Malloy Willing to Buck Tradition*, Institute for the Advancement of the American Legal System, <https://iaals.du.edu/blog/connecticut-diverse-judiciary-malloy-willing-buck-tradition> (2012).
13. John Bliss, *From Idealists to Hired Guns?: An Empirical Analysis of “Public Interest Drift in Law School*, *UC Davis L. Rev.* Vol. 51, 1973-2032 (2018).
14. John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Lawyers in a Period of Market Crisis*, 42 *Law & Social Inquiry* 3, 855-897 (2016).
15. Melanie Hanson, *Average Law School Debt*, Educationdata.org, <https://educationdata.org/average-law-school-debt> (December 5, 2021).
16. Sonia Weiser, *Lawyers by Day, Uber Drivers and Bartenders by Night*, *New York Times*, <https://www.nytimes.com/2019/06/03/nyregion/legal-aid-lawyers-salary-ny.html> (June 3, 2019).
17. Debra Cassens Weiss, *What is the Starting Pay for Public Defenders? Low Salaries Discourage Applicants*, *American Bar Association Journal*, <https://www.abajournal.com/news/article/what-is-the-starting-pay-for-public-defenders-low-salaries-discourage-applicants> (October 21, 2021).
18. University of Connecticut, *Employment Summary for 2020 Graduates*, <https://law.uconn.edu/wp-content/uploads/sites/3082/2021/07/210428-ABA-Employment-and-Salary-Data-Class-of-2020-FINAL.pdf> (April 28, 2021).
19. William H. Simon, *Judicial Clerkships and Elite Professional Culture*, 36 *J. Legal Educ.* 129 (1986).
20. Howard M. Wasserman, *Academic Feeder Judges: Are Clerkships the Key to Academia?*, 105 *Judicature* 1, <https://judicature.duke.edu/articles/academic-feeder-judges-are-clerkships-the-key-to-academia/> (Spring 2021).
21. State of Connecticut Judicial Branch, *Law Clerk Application Information*, <https://www.jud.ct.gov/external/supapp/lawclerkapps.html> (viewed March 9, 2022).
22. State of Connecticut Judicial Branch, *Temporary Assistant Clerk I*, <https://www.jud.ct.gov/external/news/jobs/TAC.htm> (viewed March 9, 2022).