

THE PENNSYLVANIA STATE UNIVERSITY
SCHREYER HONORS COLLEGE

DEPARTMENT OF POLITICAL SCIENCE

QUANTIFYING QUALITY: AN EMPIRICAL ANALYSIS OF FORMER SUPREME COURT
CLERKS' PERFORMANCE BEFORE THE SUPREME COURT

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SPRING 2015

A thesis
submitted in partial fulfillment
of the requirements
for baccalaureate degrees
in Political Science and History
with honors in Political Science

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ABSTRACT

I examine former Supreme Court law clerks' performance before the Roberts Court in several respects. As the Court's ultimate insiders, the clerks enjoy several theoretical advantages compared to their non-clerk counterparts. I explore whether the clerks are able to translate advantages in theory to influence in performance. To do so, I analyze that performance first on a more general level: whether clerks are among the tightening circle of Supreme Court advocates and how their performance compares to their nonclerk counterparts in regards to the Court as a whole. Then I take a more granular look at their performance. I examine their influence from an individual justice vote level. I measure their performance across issue areas to determine whether they have significantly higher influence in certain areas and less in others. I analyze the former clerks' performance by individual justice to determine which justices the clerks have more influence over and whether they do so representing the conservative position, the liberal position or both. I examine whether the former clerks can outperform their peers more in front of the justice they clerked for. Finally, I compare the clerks' performance against the most experienced advocates without that experience. Through these analyses, I hope to offer a near-comprehensive analysis of the former clerks' performance before the Court.

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ACKNOWLEDGEMENTS

I would like to thank my parents for serving as my role models and giving me their unconditional support throughout my life, specifically throughout my college career. I would also like to thank my friends for motivating me and keeping me on track during my thesis writing saga.

In addition, I would like to thank my Thesis Supervisor, Christopher Zorn, for his guidance and support throughout the process, without which this thesis would not have been possible. His understanding of both the field and statistical analysis, along with his patience throughout, were invaluable to writing this thesis.

Chapter 1

Introduction

In 2008, Texas Solicitor General Ted Cruz found himself in a sticky situation. Texas had placed a convicted and confessed murderer on death row. The problem? The convicted murder was a Mexican national entitled to Mexican consular assistance under a U.S. treaty obligation and Texas had not afforded that assistance. Now, the World Court had issued a directive ordering the case's reopening. Even more worrisome, President Bush agreed with the World Court and ordered the cases reopened. Cruz had to convince the U.S. Supreme Court that the state of Texas should be allowed to flout the combination of the World Court's directive, the United States' treaty obligations, and the President's order. Understandably, the media gave him less than a prayer.

The solution lay in issue framing. Having clerked for Chief Justice Rehnquist, what Cruz may have known, and what the media may not, is that the Rehnquist Court was increasingly skeptical of centralized power. So the advocate and future senator turned a treaty obligation case into a separation of powers case, arguing the President had no power to order reopening the case without Congressional approval. Texas, Cruz claimed, was really just trying to protect Congress' prerogative against executive overextension. In Cruz's telling, Texas was the one following the treaty and the President the one defying it. Cruz, and his separation of powers narrative, won the case 6-3 (New Yorker 2014).

An intimate understanding of the Supreme Court's workings, and the resulting ability to tailor narratives as Cruz did, has become all but essential for advocates before it. In recent years, pressure from the Court itself has intensified that trend. The justices bluntly state their desire to hear from knowledgeable advocates. Commenting on criminal justice lawyers arguing their first case before the Court, Justice Kagan remarked, "it is if they are arguing with one hand tied behind their back" (Reuters 2014). Justice Sotomayor was even more direct, remarking she thought it was "malpractice for any lawyer who thinks 'this is my one shot before the Supreme Court and I have to take it'" (Reuters 2014). For one such "malpractice" example, consider the oral argument in *Brandt Revocable Trust v. United States* in which Justice Scalia mocked a first-time lawyer for reading his argument verbatim (Blackman 2014).

Parties before the Court have taken the justices' words to heart. An "elite cadre of lawyers has emerged as first among equals, giving their clients a disproportionate chance to influence the law of the land" (Reuters 2014). That is, the always small circle of Supreme Court advocates has tightened even further. The million dollar question before us is whether those advocates live up to the hype. Today we focus on the elite group most likely to be a part of the elite class: former Supreme Court law clerks ("former SC clerks", "former clerks", or "clerks").

Former Supreme Court Law Clerks

Former Supreme Court clerks offer an ideal group for analyzing influence on the Court. In this section, we analyze the clerks' experiences before, during, and after their clerkships that may confer advantages in the advocacy stage. I begin by outlining the care surrounding the justices' selection of their clerks. Then, I detail the clerks' experiences within the Supreme Court insofar as it affords them advantages that may carry forward when they become advocates. Finally, I look at the intangible advantages that clerks enjoy years after their clerkships expire. The combination of rigorous selection and unique experience forms the theoretical basis that may explain their later performance.

First, justices personally and carefully cull their four allotted clerks per year (five per year for the Chief Justice) through a process in which “the hiring decision criteria and their application are strictly up to each Justice”—that is, one for which there is no Court standard or guidelines (Souter 1999). As a result, each justice tailors their clerks hiring process to their own idiosyncratic preferences. As the chosen clerks will work at the highest levels of the law, the Justices take a rigorous “belt-and-suspenders” approach to their selection (Thomas 1999). However, the clerks are uniformly of elite quality. Few candidates will be considered who “ha[ve] not come to the very top of the law school classes in the most demanding law schools” (Souter 1999). One justice, Justice Thomas, hires exclusively from law school students who are “in the single digits in class rank” (Thomas 1999).

The justices' hiring patterns bear out their remarks. For example, they demonstrate preferences for their favored institutions. Justices Stevens taught at Northwestern Law and therefore hired more Northwestern Law graduates. Justice Breyer did the same for Harvard Law

graduates, Justice Ginsburg for Columbia Law, and Justice Scalia for the University of Chicago (Leiter 2010). They also demonstrate preferences for those sharing the same political and legal ideology. During the Burger and Rehnquist Courts, the conservative justices were over five times more likely than the liberal justices to select a Republican clerk (Peppers and Zorn 2008). Well over half of clerks during OT 2000-2010 arrived from just three law schools (which also happen to be the nation's top three law schools) (Leiter 2010). From 1950-2004, 24% were former heads of the law review, 63%, though not heads, served in management or on the editorial boards of law reviews, 7% were law review members without any other leadership position and the majority of the remainder served in management positions on secondary journals (Peppers 2006).

In sum, the justices' statements on the hiring process and their hiring data theoretically give former clerks two distinct advantages. First, the justices' rigorous selection process forms the foundation of a relationship between justice and clerk, making the justice more predisposed to voting for their former clerk's position. Second, the clerks already arrive at the Court as the best of the best in the nation.

Once on the Court, the clerks gain incredible insight into the Court's inner workings. For a year, these select few work closely with their justice in chambers sorting petitions for *writ of certiorari* and preparing the justices for oral argument. On the former responsibility, several studies find evidence that clerks acquire a deep understanding of their justice because of the continuous need to keep their justices' predispositions in mind when making *certiorari* recommendations. Palmer and Brenner find a significant relationship between Justice Burton's conference vote-on-the-merits and his law clerks' bench memo recommendations (Palmer and Brenner 1995). From the high agreement rate, Palmer and Brenner conclude his clerks ably understood Justice Burton's positions and ably anticipated his votes. Black and Boyd go a step

further: using Justice Blackmun's papers, the two authors find that the clerks' *writ of certiorari* recommendations interact "with the quality of the petition and the comparative ideology of the voting...at times, this can lead to justice voting we would not otherwise expect" (Black and Boyd 2012). More specifically, they find "conditional evidence of clerks influencing the likelihood of justices voting against their prior beliefs in decisions to grant or deny cert" (Black and Boyd 2012). Clerks also extensively discuss cases with their justice. Commenting on those discussions, former Roberts clerk Christopher DiPompeo likened them to "one hundred oral arguments" over the course the clerkship (DiPompeo 2015).

The clerks' insight and influence crucially extend to the opinion writing stage. Existing evidence "suggests that SCOTUS...law clerks write significant parts of the opinions of the Court, including the majority opinions that reflect the logic behind the Court's decisions and serve as the guidelines for future judicial decisions" (Kaheny, Szmer, Hansen and Scheurer 2015). That fact carries tremendous impact. Majority opinions reflect the law of the land. Writing them requires not only an intimate knowledge of the "author" justice but often also a deep knowledge of the other majority coalition justices' preferences (Maltzman and Walbeck (2000) describing the Court as an "interacting group of justices, each seeking to guide the Court's majority opinion toward their individual ideals" (p 18)). As writers of these opinions that later become the precedents they apply as advocates, former clerks presumably gain an understanding of the justices and their preferences second only to the justices themselves.

The clerks often enjoy close relationships with the justices even after their clerkships end. In the past, justices have noted when former clerks were arguing before them. Justice Blackmun wrote a note to himself that describing an attorney as a "Marshall clerk" and called another a "Brennan clerk" (Blackmun Papers). Their experiences in chamber foreshadow the close

relationship many clerks come to enjoy with those justices (*Ibid*). Justices are on record preferring insiders: Justice Breyer “values their understanding of how the high court operates” because he “want[s] people to know how the court works” (Reuters). Some of the former clerks continue to socialize with their justice years after the fact—two justices attended a former clerk’s wedding and invite that clerk to their holiday parties (*Ibid*). While anecdotal, these examples convey the close relationships Supreme Court clerkships create.

Given these fact, it is little wonder clients and firms covet former clerks. The clerks are the insider’s insider. Put succinctly, the clerks’ theoretical advantages “include an insider’s view of judicial decision making in our nation’s highest court, the opportunity to form lifelong relationships with Supreme Court justices...[and] some say, the opportunity to write their own policy preferences into the Constitution of the United States” (Peppers 2). I aim to test whether the clerks’ knowledge of the justices’ preferences, as demonstrated in the higher agreement rates, translates to superior outcomes when arguing on the other side of the courtroom—whether they can convert that experience and knowledge into delivering value for their side.

First, I will examine the trend of former Supreme Court law clerk advocacy—whether the Court’s increasingly favored advocate group includes this specific subset. Then, I will explore this subgroup’s performance in general—how their advocacy record compare to the non-clerk population before taking an in-depth dive into their performance in a variety of contexts. I will aim to determine what effect, if any, former clerks have when arguing the Court’s highest profile cases. Turning to a greater level of specificity, the former clerks’ performance will be analyzed in several contexts designed to tease out answers to several questions of where, how, and who—where former clerks have the greatest influence, how much value-add their advocacy provides, and on whom they have the most impact. The first will be addressed by analyzing former clerks’

performance by issue area—in what legal areas do the former clerks enjoy an advantage and how much that advantage is. The question of how will be answered using justice-level voting data—that is, rather than measure how much former clerks’ advocacy impacts the overall win rate, I aim to find how many individual votes a clerk statistically brings over to his/her side. Next, we turn to the justices themselves. Analyzing by both the ideological position the former clerks represent and the ideological position of the justices themselves, I aim to discover if former clerks influence certain justices more than others, and whether that influence is robust to variation in clerks when presenting liberal and conservative positions.

Influencing the Court

While many have examined the impact advocates can have on the Supreme Court, none have focused specifically on former Supreme Court clerks to this depth and breadth. Several studies come close in their analysis of either advocates in general or other specific groups and they offer key foundation for this study. First, several studies indicate that it is possible to influence the Court—implying the law is not static but can be influenced by presentation. Corley’s analysis of the relationship between party briefs and the justices’ opinions indicated that language from higher quality briefs, as measured by whether the advocate was a member of the Washington elite, was substantially more likely to make it into the justices’ opinions. Taking that as a proxy for influence, the study concluded that the quality of briefs have the potential to influence the justices’ decisions (Corley 2008). While Corley measured influence as a percentage of the parties’ briefs which made it into the majority opinion, I measure influence as whether the parties convince the Court to vote in their direction—whether they secure a favorable verdict for

their side. I focus on the outcomes rather than the briefs and former Supreme Court clerks rather than members of the Washington elite. The outcome-centered approach gets to the heart of the question of whether advocates are more successful instead of stopping at the intermediate question of whether they have influence in released opinions.

Another study assessed the effectiveness of oral argument, the step after the briefs. McAtee and McGuire studied whether and how legal arguments affected the Court during the 1977-1982 terms using Justice Blackmun's oral argument grades for advocates. It found the "quality of legal advocacy has a marked effect on the members of the Court" and posited that "what makes experienced advocacy so useful to the justices is that it enables them to overcome their lack of complete information" (McAtee and McGuire 2007). I aim to measure both this component and the written component and whether select group's advocacy as a whole significantly influences the Court.

Johnson et al. examine the effect before the effect. They take advantage of the recently released Blackmun papers, which included "grades" for advocates, to determine whether specific groups offer higher quality representation as determined by those grades. Johnson et al. then determine whether higher quality representation has an effect on the final merits vote. They confirm their expectations for both. Specific to this study, they find former clerks generally earn higher grades for advocacy (Johnson 2006). More generally, they find higher grade favorably translate to votes on the merits. This study more straightforwardly ties that relationship together—skipping the argument quality measurement and directly attempting to tie advocate group with the end results. That is, it cuts out an intermediate step and concisely offers the result most relevant to those interested in hiring Supreme Court advocates: if those advocates actually influence the Court and exactly how much they do.

The combination of these studies proves, or at least strongly implies, that the law does not exist in a vacuum unchangeable by case presentation. Rather, as Cruz showed in *Medellin*, advocates can present the same fact pattern as different issues resulting in, presumably, different results. If the Court can be influenced, then the question becomes which group(s) do the influencing. I aim to discover if my specific subgroup, the former clerks, are among those able to influence the Court more than their peers.

More specifically, recent studies have found that two other specific subgroups, those advocates with more arguments before the Court and advocates working in the Solicitor General's Office, also outperformed their peers by significant amounts before the Court (Corley 2008 and McGuire 1995). Beyond reaffirming the principle that certain groups of advocates can outperform their peers, these studies offer control variables for my study. Knowing which groups already outperform before the Court, I compare their performance against the clerks to better isolate former law clerk status as an independent variable.

Chapter 2 Hypotheses

To test the expectation that, because of their unique experiences and advantages, former Supreme Court law clerks will outperform their peers before the Court, I offer a variety of hypotheses beginning with the general then proceeding to the specific. The first hypotheses are the more general ones. I examine whether former SC clerks outperform their peers broadly. Then I break down the results into several areas in a bid for specificity. Here, I analyze former SC clerks' performance in regards to narrow categories and ideologies. Throughout this analysis, I choose to study solely the Roberts' Court Era for two reasons: first, data from the Roberts' Court offers the most current and therefore the most constructive results for future clients; and second, data sources are more complete and reliable for the Roberts Court. Further, I selected only cases which had both oral argument and an opinion released to best assess the clerks' total influence.

General Hypotheses

Increasing Composition

As the circle of choice Supreme Court advocates tightens, former clerks naturally should be included. 31 of the 66 of the most influential Roberts Court advocates, as measured by their ability to get their petitions heard by the Court, are former clerks (Reuters). I expect a flight to quality explains the tightening circle. Prized for their insider experience, clerks should benefit from this emphasis on quality and connections. This leads to:

H1: The proportion of advocates who are former clerks rose between the start of the Roberts Court and the end of the 2012 term.

As described above, several groups have been able to demonstrate value-added in Supreme Court advocacy. Johnson, Wahlbeck and Spriggs found former SC clerks as among those offering superior advocacy quality before the Court. They posit that advantage occurs because “after working at the Court for a year or two, clerks become adept at understanding which arguments are likely to garner five votes” (Johnson, Wahlbeck and Spriggs 2006). On a related note, Brenner and Palmer’s findings on significant clerk recommendation/justice vote matching reinforces the point of the clerks’ understanding of the justices’ thought processes. The combination of experience and understanding leads to the hypothesis that:

H2: Former SC Clerks are significantly more likely to secure favorable outcomes arguing before the Court.

Saliency

If they are strong enough, the justices’ predispositions leave little room for any advocacy to have an effect. Spaeth and Segal (1999) find that legal precedent affects judicial decision-making substantially more in low saliency cases. Assuming the justices have fewer preconceived notions about less salient cases, that would mean advocates may enjoy greater effectiveness in less salient cases. Unah and Hancock’s conclusion that in high saliency cases, “justices vote primarily their attitudes regardless of the information provided by the solicitor general or interest groups,” creates a high bar for former SC clerks to meet (Hancock and Unah). I expect that constraint to apply to the clerks as well.

H3: Former SC clerks will see their effectiveness decrease in more salient cases.

Granular Hypothesis

Vote-Level

Aside from the broad court level, influence can be measured on an individual vote level. With only nine justices, every vote is valuable and can shift a case's outcome.

H4: Arguments by former clerks will increase the probability that a justice will cast his or her vote in support of a litigant

Issue Area

Members of the Supreme Court have idiosyncrasies in regards to particular issues. Justice Kennedy is the “foremost defender of freedom of speech principles” (Bhagwat and Struhar 2012). Justice Ginsburg “led the drive” for women’s rights even before her Court appointment (Bloomberg 2015). And Justice Roberts has been labeled “the most favorable to business” interests (Epstein Landes and Posner 2013). Former SC clerks are (were) in the best position to learn those idiosyncrasies through their time spent within the Court. They have extensive experience crafting recommendations and even Court opinions to suit those preferences. That experience should only increase their ability to tailor arguments relative to their non-clerk counterparts.

H5: Former SC clerks will outperform their peers in all defined issue areas.

Ideology

As nearly of century of prior research has shown, ideology matters. It impacts how a justice initially perceives a case and how they will eventually rule on that case. Through their

clerkship experience, former clerks would be in the best position to learn the justices' ideologies and tailor arguments accordingly. I hypothesize that will allow the former clerks to outperform regardless of both the ideological position of their side or the justices.

H6: Former clerks will outperform nonclerks irrespective of their side's ideological position

H7: Former clerks will outperform nonclerks irrespective of any individual justice's ideological position

Clerk Before Their Justice

As detailed above, former clerks work closely with their justice during their clerkship term. For example, they necessarily must learn their justices' mindset in order to draft acceptable memoranda. I hypothesize that experience will lead them to outperform others in front of the justice they clerked for.

H8: Clerks will significantly outperform non-clerks in securing the support of the justice for whom they clerk

Clerkship vs. Experience

While the former clerks gain experience and insight into the Court during their clerkship in chambers, others can gain experience and insight through repetition: by arguing in front of the Court. I hypothesize the insider experience will win out regardless of experience.

H9: Former clerks will outperform the non-clerks, even those with the highest levels of Supreme Court experience.

Each hypothesis aims to add, in a small way, to our knowledge of the former clerks' performance before the Court. By analyzing their performance by ideology, issue area, specific justice, and the Court as a whole, this analysis seeks to pinpoint the clerks' strong and weak Supreme Court advocacy areas. This generates empirical data both for further academy study and for client use. More broadly, this study aims to explore a Supreme Court advocate subgroup which is increasingly in demand and rising in prominence.

Chapter 3 Gatekeeping: Do Former Clerks Have an Effect?

This section examines the first three, more general, hypotheses: whether former clerks form an increasing proportion of the overall advocate pool in recent years; whether they outperform their non-clerk peers in general; and whether former clerks outperform their non-clerk peers in more salient cases. I hypothesized an affirmative answer to the former two questions and predict a null result for the last. Given the justices' stated preferences for knowledgeable advocates and the known insider advantages the clerks have, I expect parties having business before the Court to realize those benefits and increase hiring accordingly. Those same advantages also give the clerks an edge in advocacy. Their knowledge and understanding of both the justices themselves and the issues important to them grants the former clerks a powerful edge in issue presentation and argument. However, I expect the justices' predispositions to control in salient cases.

Methods

To address these questions, I created a new database consisting of the Roberts Court cases, the advocates who argued those cases, which of those advocates were former Supreme Court law clerks, and which side won the case. For the list of cases and advocates, I utilized the IIT Chicago-Kent College of Law Oyez Database. I limited my selection solely to cases in which the Court ordered oral argument and issued a majority opinion to avoid inconsistencies within the Oyez Database and to fully measure the clerks' impact. This methodology allows the measurement of the clerks' effect in total—from the brief writing stage to the end of oral argument. I then employed various means to determine whether the advocates were former

Supreme Court law clerks. Here, I largely relied on the Peppers database (Peppers 2006), firm profiles, and assorted searches. Finally, I relied on the Win variable in the Supreme Court Database's Case Centered Data for which side won their case. I separate the advocates into petitioner and respondent to control for Epstein's finding that petitioners win a lopsided 62% of cases compared to 38% for the respondent (Epstein, Landes, and Posner 2010).

To determine the proportion of former clerk advocates within the general population, I took the number of cases with former clerks as advocates per term and divided it by the total number of cases (again, only in cases in which there was both oral argument and a released decision). To compare former clerks' performance against the non-clerk population, I estimate logistic regression for the advocates' performance in three parts. First, I compare the performance of former clerks against non-clerks when the clerks argue in favor of the petitioner. Second, I conduct the same comparison, but with the clerks arguing for the respondent. Finally, I fit a logistic regression for when both advocates are clerks. These results are then tested while controlling for two additional factors: cases in which the United States is a party and for case salience. I chose the former control because those advocate represent parties which are co-equal branches to the Court under our separation of powers doctrine. I expect the court will afford these parties more deference and therefore control for this factor to better isolate the clerks' effect.

Coding

I coded whether a former clerk advocated for the petitioner (*Petitioner Clerk*: 1 for former clerks and 0 if not), then the same for whether a former clerk advocated for the petitioner under a different variable (*Respondent Clerk*: 1 for former clerk, 0 if not), and finally the same

for whether a former clerk represented both sides (“Both Clerk”: again, 1 for former clerk, 0 if not) also under a different variable. I adopted the Spaeth Database’s coding of the winning side (1 if Petitioner, 0 if Respondent) and adapted that variable slightly to create the *Petitioner Win* variable (1 if Petitioner won, 0 if Petitioner lost) for usability purposes. The rationale behind Spaeth’s coding, in which the petitioner wins if the disposition was anything other than “affirmed”, “denied”, or “dismissed”, is sound as petitioner would naturally seek “reversals” only. All three of the mentioned outcomes would generally be contrary to petitioners’ intentions. The salience variable was drawn from the Epstein-Segal study, which used newspaper coverage after opinion releases to code cases as 1 for salient and 0 for non-salient (Epstein Segal 2000).

Results

Figure 1 Overall Clerk Percentage by Term (Bar Chart)

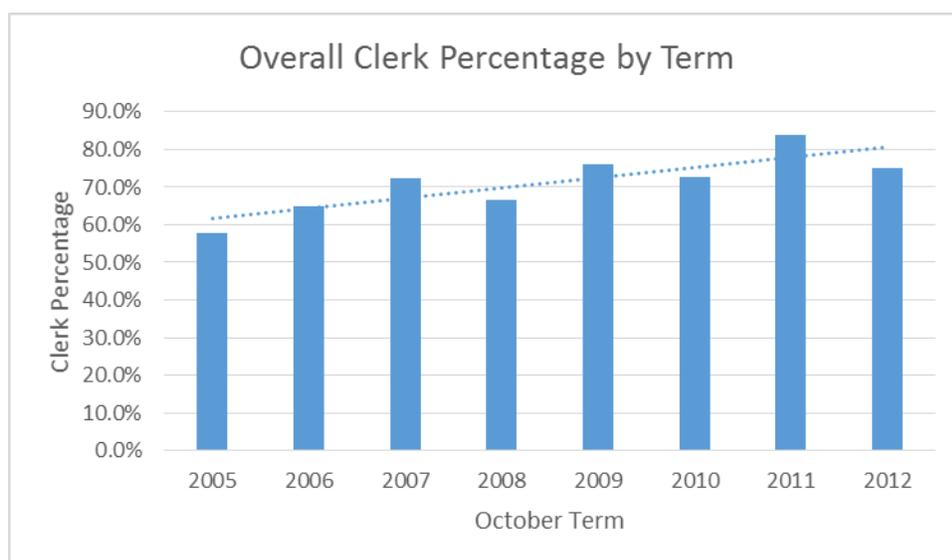


Figure 2 Clerk Percentages by Term (Line Graph)

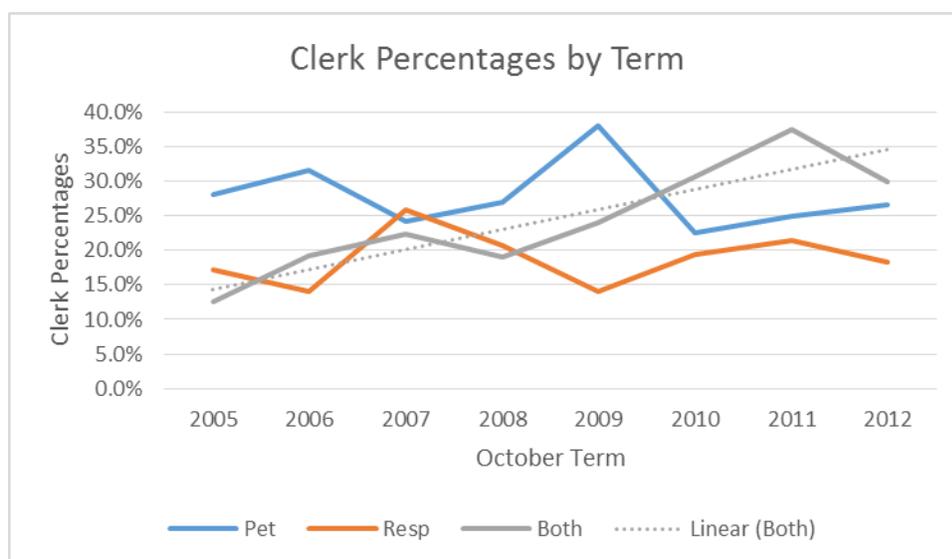


Figure 1 shows an uneven but general increase in the proportion of cases argued by former clerks, supporting H1. Despite the relatively high starting percentage (57.8%), former clerks represented significantly more cases as the Roberts Court progressed. Their representation percentage peaked in 2011 when former clerks served as advocates on at least one side in 83.9% of cases in which there was both oral argument and a released decision. Interestingly, while the *proportion* of cases with clerks rose moderately, the *number* of clerks arguing rose even more significantly. Figure 2 reveals that while the proportion of cases with a clerk as either the petitioner or respondent largely remained the same (combining for roughly 45%), the proportion of cases with clerks arguing on both sides roughly doubled. Given that those cases had two or more clerks arguing by definition, the number of clerks likely rose by more than the proportion of clerks did. The results take on greater significance given their small number in relation in the overall number of advocates.

Table 1: Clerks Overall Performance

Variables	(Model 1) Petitioner Win	(Model 2) Petitioner Win	(Model 3) Petitioner Win
Clerk for Petitioner	0.363* (0.271)	0.330 (0.273)	0.450* (0.343)
Clerk for Respondent	-0.603** (0.279)	-0.592** (0.280)	-0.739** (0.352)
Both Clerk	0.0581 (0.272)	0.048 (0.273)	0.343 (0.381)
U.S. as Petitioner		-0.0915 (0.448)	-0.202 (0.570)
U.S. as Respondent		-0.424* (0.284)	-0.658** (0.374)
Salience			-0.117 (0.465)
Constant	0.726*** (0.182)	0.799*** (0.190)	0.888*** (0.236)
Observations	470	470	292

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Table 1 offers strong support for H2 in both directions. Clerks advocating brought significant advantages to both petitioners and respondents. A clerk arguing on the petitioner side increased their clients' win percentage by 43.7% when arguing against a non-clerk. Having a clerk represent respondents had a greater effect increasing a clients' win percentage by 54.7%. The results from the *Both Clerk* variable also confirm the above. In cases where clerks argued both sides, each's effect was effectively negated, leaving little advantage for either side. In Table 1, the variable yielded the expected insignificant null result. In Model 2, controlling for the U.S. as a party did not significantly impact the clerks' effects. Both the direction and the magnitude of the results remained relatively consistent.

Model 3, with the salience control, implies that the clerks' effect persists even after controlling for case salience thereby rejecting H3.

Discussion

The first two hypothesis form the foundation for the rest of the study. The first hypothesis regarding the increasing proportion of clerks arguing before the Court strengthens the study's significance. Due both to the high number of clerks already arguing and the increased demand for their services, careful empirical analysis into their performance becomes more valuable for those having business before the Court. The resulting findings have more value as they evaluate a significant subgroup of Supreme Court advocates.

The support for the second hypothesis' results is also promising for the rest of the study. The coefficients were all signed in the correct direction with meaningful strength and statistical significance. These pointed results suggest even stronger findings may exist under the surface when greater levels of specificity are sought and narrower tests applied. As is, the Table 1 results clearly support the hiring of clerks for Supreme Court advocacy. In regards to the former clerks' stronger performance on the respondent side, similar to the analysis above, a diminishing marginal effect may be the culprit. As petitioners already enjoy a 62% win rate, there exists less room for improvement, less room for the clerks to value-add. The most surprising fact about the United States as a party finding was how little it controlled. With the weight of the federal government, sides representing the United States did not outperform non-U.S. advocates in any significant way. If anything, having the U.S. argue on the petitioner side lowered win chances. I postulate that this may be due to an ideological gap between the U.S. government agencies bringing the cases and the Supreme Court. For future testing, it may be worthwhile to explore whether the correlation of the ideology of the administration and the Court plays a role in the success rate of the U.S. governments' cases.

Model 3's results regarding case salience are surprising. Two flaws in the salience variable may explain part of the results. First, the case salience variable only extends to cases argued up to the October 2011 term so that leaves out a sizeable portion of the dataset. Second, as that variable only measures newspaper coverage after the case's decision, the newspapers' reporting bias may create an imperfect definition of salience. Newspapers are understandably motivated by a desire to sell copies and generate online page views. That motivation means their notion of salience is necessarily post-facto and may differ from the legal community's. For example, newspapers may be more likely to write on cases in which there was a change in the law or that pertains to its readership's demographics. In their critique of the measure, Clark, Lax and Rice note that the post-facto NYT measure "flips the causal chronology, rendering disquieting many claims of causal inference in which salience affects behavior" (Clark, Lax and Rice 2015).

Chapter 4

A Bid for Specificity

In this section, I examine former clerks' performance more narrowly in wide range of contexts. This section's purpose is to explore the more general results and break down the clerks' performance in more granular fashion—to answer the questions of how, where, and who. First, I examine the clerks' performance on an individual vote level rather than the more general case level analysis above to determine just how much former clerks impact decision-making. Next, I split the clerks' performance by issue area to determine where clerks have the greatest or least effects. Finally, I examine the clerks' performance through the lens of each justice to determine which justices the clerks are able to influence and just how much that influence is.

Vote Level

Methods

To answer the question of how much, I turn to the same merged database as before to fit a normal linear regression in place of a logistic one for a slightly modified outcome. The only change is to replace Spaeth's *Win* variable with a *Petitioner Votes* variable which records the number of votes the petitioner garnered. The latter variable is uncontroversial as it represents a simple count of how many justices were in the majority for a given case. I then estimated a regression on the results controlled for the same factors as listed above: cases in which the United States was a party and case salience. This model examines H4.

Coding

The *Petitioner Votes* variable is coded 0-9 reflecting how many justices voted for the petitioner.

Results

Table 2 Clerks' Performance (Vote Level)

Variables	(Model 1) Petitioner Votes	(Model 2) Petitioner Votes	(Model 3) Petitioner Votes
Clerk as Petitioner	0.596* (0.365)	0.541* (0.367)	0.783** (0.435)
Clerk as Respondent	-1.155*** (0.406)	-1.129*** (0.406)	-1.158*** (0.494)
Both Clerk	0.207 (0.378)	0.198 (0.378)	0.441 (0.488)
US as Petitioner		0.350 (0.617)	0.472 (0.751)
US as Respondent		-0.548* (0.411)	-0.567 (0.525)
Salience			-0.535 (0.610)
Constant	5.504*** (0.255)	5.570*** (0.265)	5.609*** (0.315)
Observations	470	470	292
R-squared	0.039	0.044	0.064

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 2 supports H4 for clerks advocating on behalf of the respondent and rejects that hypothesis for clerks arguing on the petitioner. Former clerks' influence on the respondent side comes in moderately higher than one vote and is relatively consistent across all controls. Their value-add on the petitioner side begins at 0.596, roughly half the impact they had on the respondent side. The added value drops slightly when controlled for cases in which the United

States was a party but then rises significantly in the model that also controls for case salience. Again, the *Both Clerk* variable further confirms the results by having no significant results. Similar to the above, a diminishing marginal return effect may explain part of the gap between the clerks' petitioner and respondent performance. The *Salience* variable's possible weaknesses described above may explain Model 3's results. As attempted legal changes would more likely be represented by petitioner, clerks successfully representing petitioners would have a higher chance of having their cases reported on in the newspaper post-facto.

Issue Area

In this section, we take a deeper dive into the preceding sections' results. To this point, we have analyzed results almost without regards to case-level differences—as if each case is similarly situated in how the justices consider them. However, each Court, as a result of the idiosyncrasies of the justices who compose it, may be predisposed to voting for or against certain issue areas. For example, the current Roberts Court “generally has a conservative, pro-business majority” (Reuters). While a birds-eye view is valuable in determining the clerks' general performance, a nuanced view offers greater insight into exactly which areas clerks add value and visa versa. This keeps in line with our focus on real-world implications. This analysis gives prospective clients and firms empirical insight into whether or not to retain a former clerk in a particular instance. This section analyzes H5: whether former clerks outperform across all issue areas.

Methods

I returned to the merged dataset with case-centered data this time fitting individual logistic regressions and linear regressions for each of 7 issue areas. I utilized Spaeth's issue area coding (Spaeth 2015) with slight modifications. Before generating the models in this area, I combined like-variables which did not have sufficient N values to yield significant results on their own. I further explain the merging in the coding section directly below.

Coding

I began with Spaeth's coding of issue area and merged like-variables as needed for statistically significant n-values to achieve viable sample sizes. Criminal Procedure remained coded a 1, Civil Rights remained a 2, but the amalgamation of First Amendment, Due Process, and Privacy were merged into one variable as they related the general field of Civil Liberties and none had sufficient n-values to stand alone. Attorneys and Unions were also combined due to their high predisposition to be statutory cases and a similar n-value issue. Economic Activity remained the same as did Judicial Power. The miscellaneous category includes Spaeth's interstate relations variable and Spaeth's own miscellaneous variable. This category proved harder to group but there was little option given the small number of cases present

Results

Table 3 Clerks' Performance by Issue Area (Outcome = Petitioner Win)

Variables	(Model 1) Criminal Procedure	(Model 2) Civil Rights	(Model 3) First Amendment, Due Process and Privacy	(Model 4) Attorney + Unions	(Model 5) Economic Activity	(Model 6) Judicial Power	(Model 7) Misc.
Clerk as Petitioner	-0.622 (0.449)	1.306 (1.188)	17.65 (2,148)	0.405 (1.443)	1.006* (0.681)	-0.778 (1.019)	1.022 (1.033)
Clerk as Respondent	-0.518 (0.511)	-0.737 (0.714)		-0.693 (1.658)	-1.540** (0.786)	-1.740* (1.083)	-0.588 (1.366)
Both Clerk	-0.330 (0.559)	0.325 (0.795)	0.916 (0.854)	0.916 (1.396)	-0.123 (0.630)	-0.795 (1.092)	1.204 (1.133)
U.S. as Petitioner	-0.425 (0.618)		-17.42 (2,148)		-0.301 (1.301)		
U.S. as Respondent	-0.653* (0.403)		0.916 (1.253)		1.865* (1.208)	-2.034* (1.304)	
Constant	1.254*** (0.338)	1.179** (0.572)	-0.223 (0.509)	0.693 (0.866)	0.405 (0.527)	1.877** (0.840)	-0.511 (0.730)
Observations	144	75	37	18	105	47	26

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

While they were successful in general, the former clerks did not offer significant value-add in many specific issue areas. Former clerks were able to outperform on both sides of the case in regards to economic activity cases with strong coefficients on both of those sides (1.006 on the petitioner and -1.540 on the respondent). Clerks were also able to add significant value on judicial power cases when arguing on the respondent side. However, the overall results were not as significant as the vast majority of models yielded insignificant results. For example, in the *Criminal Procedure* model, clerks arguing for the petitioner actually damaged clients' success rates and the First Amendment, Due Process and Privacy models yielded insignificant results. At first glance, it appears that apart from a few exceptions, the clerks do not offer value add in

specific issue areas. Weak N values help explain the results. In Models 3 (First Amendment, Due Process, and Privacy), 4 (Attorneys and Unions), and 7 (Miscellaneous), lower N values reduced the results' reliability. For example, the Clerk as Petitioner variable yielded a 17.65 coefficient for Model 3. Nevertheless, the clerks' relative weak performance in regards to issue area rejects H5's assumption that the clerks would be able to outperform in all issue areas.

Ideology

The justices repeatedly and publically deny ideology's effect on their jurisprudence. In his 2005 hearing, the future Chief Justice Roberts claimed a justice's job is "to call balls and strikes and not to pitch or bat" (Roberts Confirmation Hearing 2005). During her own hearing, Justice Sotomayor pledged "fidelity to the law" (Sotomayor Confirmation Hearing 2009) which "perpetuated the notion that the law is some objective standard that can be applied uniformly to cases" (The Week 2014). Some in academia also dispute the justices' characterization. In First Amendment cases, Epstein, Parker and Segal found "the justices are much less apt to protect expression rights when the expresser is from the opposite ideological team...it's hard to imagine the in-group bias we identify here is cabined to the First Amendment" (Epstein, Parker, and Segal 2013). In the section below, we analyze the former clerks' performance in regards to ideology. This section employs ideology both as a control and as a factor to be explored. This section examines H6: whether former clerks outperform in regards to ideology and H7: whether the former clerks outperform regardless of an individual justice's ideology.

More or Less

In this subsection, we analyze a dynamic three-part relationship between the former clerks, their justices, and their ideology. We examine not only whether the former clerks' influence in regards to the ideological position they represent, but how that effect relates to the strength of the justices' ideologies.

Methods

I employed the Supreme Court Database's Justice Centered Data for this analysis. I operationalized my variables by creating a new *Liberal Justice Vote* variable to measure whether a justice cast a liberal vote. I further create variables "Liberal Clerk" and "Conservative Clerk" to denote cases in which former clerks represented the liberal position and the conservative position, respectively. Then, I merged in the Martin-Quinn scores to place the justices' ideological positions on a liberal/conservative spectrum per year. The Martin-Quinn scores approximate a justices' ideological "score" using a dynamic item response theory model also derived from the Supreme Court Database (Martin-Quinn 2014). I then estimated a logistical regression on all three of the above, *Liberal Justice Vote*, *Liberal/Conservative Clerk*, and Martin-Quinn score, to determine the clerks' performance as ideology changes.

Coding

The *Liberal Clerk* and *Conservative_Clerk* variables were derived from The Supreme Court Database's *Direction of Lower Court Decision variable*. I coded the petitioner's clerks as representing the liberal side (Liberal Clerk) if the lower court decision was conservative and the clerks as representing the conservative side (Conservative Clerk) if the lower court decision was

liberal. The Liberal Justice Vote variable was derived from the Supreme Court Database's *Decision Direction Variable*. Each justices' vote was coded as a 1 if the justice voted with the side representing the liberal position in the case and 0 if not. The Martin-Quinn scores are as represented on the Martin-Quinn Database with values rising in accordance with the strength of the justices' conservatism.

Results

Table 4 Clerks' Impact on Ideology

Variables	(Model 1) Liberal Justice Vote
Martin-Quinn Score	-0.205*** (0.0370)
Liberal Clerk	0.542*** (0.201)
Martin-Quinn x Liberal Clerk	-0.0507 (0.0569)
Conservative Clerk	-0.501*** (0.188)
Martin-Quinn x Conservative Clerk	-0.155*** (0.0612)
Both Clerk	0.201 (0.275)
Martin-Quinn x Both Clerk	0.0953 (0.0863)
Constant	0.0244 (0.130)
Observations	4,125

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 3 confirmed the former clerks' influence when representing both the liberal and conservative direction and therefore supports H6. Representing the liberal positions, clerks added

a very significant 71.9% positive differential to their side; that figure was an also very significant 60.6% when the clerks represented conservative positions. The two coefficients are noteworthy both for the strength of the coefficients and their strong statistical significance. It is clear that the former clerks' added value extends to both sides of the aisle. The strength of ideology analysis also yielded interesting results. While the clerks' performance did not change as the justices' vote became more liberal, the model found significant results on the conservative side.

Comparing the coefficients, former clerks' arguing to increasingly conservative justices had almost triple the effect as their counterparts arguing to increasingly liberal positions (and with a good deal more significance). This means the justices become more receptive to conservative positions brought by former clerks as the justices themselves become more conservative. Table 3's model also shows that if the Court continues to trend conservative, that trend should correspondingly raise the former clerks' value. For further evaluation, we examine this trend by individual justice below.

Justices

Above, we analyzed the clerks' performance generally by vote count and by issue area. In this section, we train the microscope on the justices themselves and take a detailed look at our results by individual and specific justice in the context of ideology. This breakdown adds to the preceding analysis in two distinct ways. First, it allows us to determine, in addition to where the clerks have impact and how much that impact is, who the clerks impact—that is, which specific justices are most influenced by former clerks' advocacy. Such analysis has tremendous real world implications. First, and most obvious, it allows us to analyze whether former clerks offer value-add in regards to the Court's current swing justice, Justice Kennedy. With the Court's

current composition, Justice Kennedy often makes the decision in the Court's ideologically split decisions. That is, the Court's four liberals (Justices Ginsburg, Sotomayor, Kagan, and Breyer) line up on one side, the Court's four conservatives (Justices Roberts, Alito, Scalia, and Thomas) band up together on the other, leaving Justice Kennedy in the middle. Therefore, the results of this section will be noteworthy no matter what the results are. Either the former clerks will prove superior in persuading the Court's swing justice and confirm their status as the go-to advocate group or the analysis will yield a null result which would undercut that position. Beyond the focus on Justice Kennedy, analysis at the level of individual justices also offers empirical evidence to the clerks' persuasive value on the other Court members as well. This becomes useful in cases in which the justices' known idiosyncrasies predict unconventional outcomes. This section analyzes H7: whether former clerks will outperform nonclerks irrespective of any justices' ideological position.

Methodology

I begin with the Supreme Court Database's Justice-Centered Data and cull it for the Roberts Court Era. Here, I made the decision to exclude the justices who no longer serve on the Court. This was done to keep the focus on the current Court and maximize this study's real-world utility. Above, I fit the logistic regressions for the Court as a whole and by Martin-Quinn scores. Here, I put a face to those scores and estimate the logistic regressions separately by justice to further isolate former clerks' effect. This narrow process essentially clusters the dataset above. Whereas the above analysis analyzes votes as a whole, the one below assigns those votes to a particular justice and therefore analyzes the clerks' impact on individual justices. In the figure below, the justices are ordered by Martin-Quinn score from liberal to conservative.

Coding

The *Liberal Clerk*, *Conservative Clerk*, and *Both Clerk* variables are the same ones generate above and the Liberal Justice Vote outcome also remained the same. One note, some justices had lower N value because they were appointed to the Court after the Roberts Court began. For example, President Obama appointed Justice Kagan to the Court beginning in the October 2010 term therefore she has heard fewer cases than some of her colleagues.

Results

Table 5 Clerks' Performance by Justice

VARIABLES	Model 1 Ginsburg	Model 2 Sotomayor	Model 3 Kagan	Model 4 Breyer	Model 5 Kennedy	Model 6 Roberts	Model 7 Alito	Model 8 Scalia	Model 9 Thomas
Clerk as Liberal	0.733*** (0.304)	1.168*** (0.467)	0.898* (0.569)	0.603** (0.292)	0.265 (0.273)	0.401* (0.277)	0.722*** (0.289)	0.456** (0.275)	0.248 (0.278)
Clerk as Conservative	-0.237 (0.247)	-0.101 (0.382)	0.438 (0.469)	-0.302 (0.248)	-0.621*** (0.258)	-0.746*** (0.274)	-0.828*** (0.304)	-0.947*** (0.277)	-1.029*** (0.288)
Both Clerk	0.128 (0.415)	-0.482 (0.597)	-0.814 (0.735)	-0.0860 (0.397)	0.470 (0.387)	0.534 (0.400)	0.329 (0.424)	0.328 (0.404)	0.633 (0.413)
US as Liberal	0.309 (0.597)	0.891 (1.124)	(omit)	0.507 (0.600)	0.508 (0.521)	0.945** (0.536)	0.693 (0.569)	0.751* (0.528)	0.878** (0.526)
US as Conservative	-0.140 (0.271)	0.0538 (0.385)	-0.114 (0.466)	0.0655 (0.267)	0.386* (0.264)	0.309 (0.270)	-0.338 (0.301)	0.492** (0.270)	0.170 (0.279)
Constant	0.429** (0.179)	0.0897 (0.282)	0.278 (0.334)	0.271 (0.177)	-0.296* (0.177)	-0.514*** (0.181)	-0.599*** (0.198)	-0.467*** (0.179)	-0.527*** (0.181)
Observations	466	220	151	460	465	460	431	466	465

Figure 3 Clerk Representing Liberal Position Effect Coefficient Graph

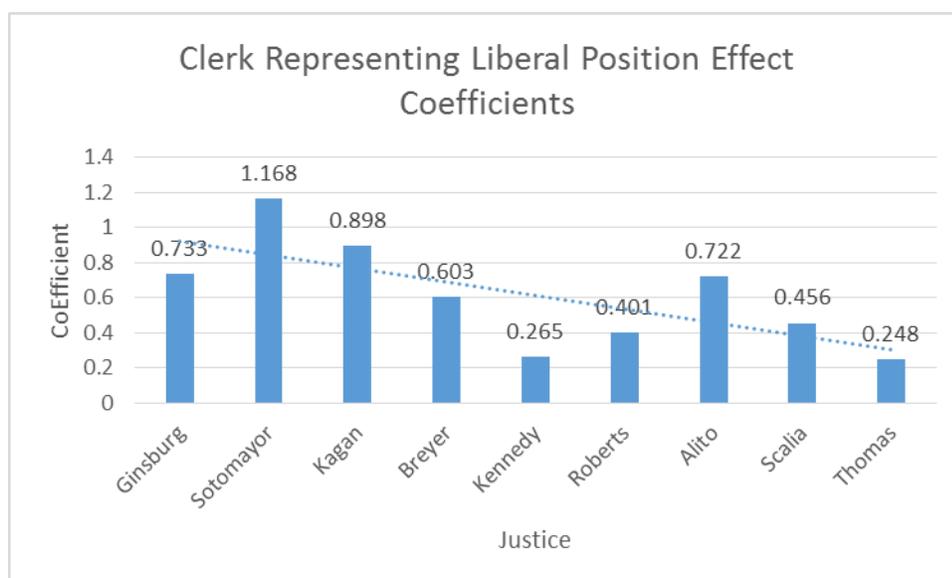


Figure 4 Clerk Representing Conservative Position Effect Coefficient Graph

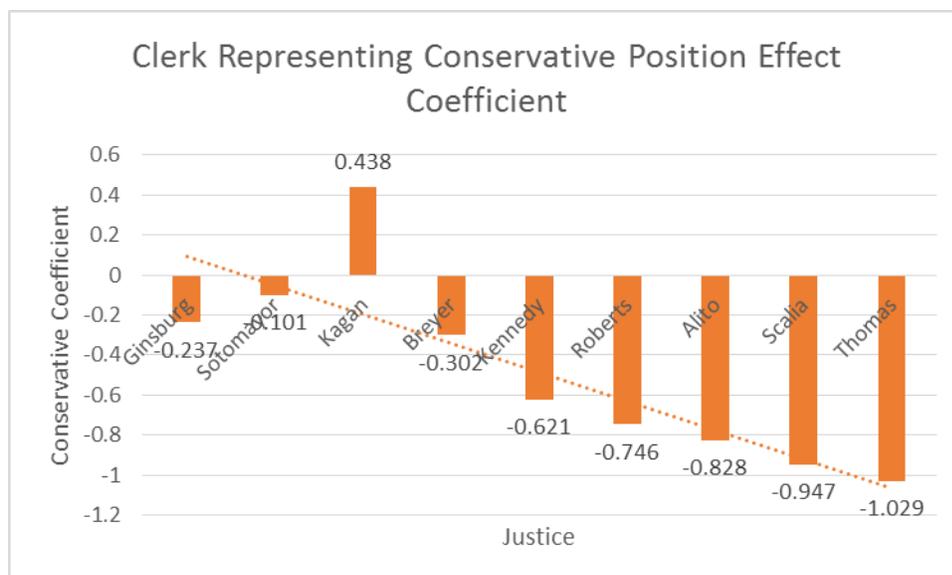


Table 4 generated both conventional and surprising results which affirmed H7 in part and rejected H7 in part. First, the conventional. Former clerks unsurprisingly generated stronger results when advocating for the side the justices were ideologically predisposed to favor. For

example, former clerks advocating for conservative positions only had significant results arguing in front of the conservative justices (Kennedy, Roberts, Alito, Scalia, and Thomas). Like our results above predicted, the more conservative the justice, the more effect the clerks had when arguing conservative positions. Measured by the coefficients' strength, that effect increased in linear fashion. It began with a -0.621 coefficient with Justice Kennedy, moderately increased to -0.746 with Justice Roberts, then moderately increased to -0.828 with Justice Alito before jumping up to -0.947 for Justice Scalia and then topping out at Justice Thomas' -1.029. This data is visually represented in Figure 3 along with its trendline.

For clerks advocating for liberal positions and for the liberal justices themselves, the effect was less straightforward. First, the strength of the former clerks' effect did not increase linearly as it had with the clerks arguing conservative positions with the conservative justices. While the coefficients' signs were all positive, they proved more scattershot in their distribution. Clerks arguing liberal positions with the most conservative liberal justice, Justice Breyer, generated a very significant 0.603 coefficient. The coefficient was 0.898 for Justice Kagan though with low significance (the lowest significance value of any clerk arguing a position ideologically compatible with the respective justice). That value rises to 1.168 for Justice Sotomayor before breaking the trend and falling to Justice Ginsburg's 0.733. Compared to the clerks arguing conservative positions, the clerks advocating for liberal positions did generate significant results before ideologically dissimilar (conservative) justices. Clerks advocating liberal positions had a highly significant 0.722 coefficient before Justice Alito and produced significant values for Chief Justice Roberts (0.401) and surprisingly for Justice Scalia (0.456) as well. This information is visually represented in Figure 4 along with its trendline. Compared with

Figure 3's strongly negative trendline once the conservative justices are measured, Figure 4's trendline has a weaker slope in regards to the liberal justices.

This section lends insight into when to choose clerks. Considering the above results, a client should hire a clerk if they represent the conservative position and expect one of the Court's five conservative justices to cast the dispositive vote. If a client represents a liberal position, they should hire a clerk when they expect either one of the liberal clerks or Justices Alito, Roberts, and Scalia to make the difference. Unfortunately for these clients, having a former clerk does not seem to make much of an impact on Justice Kennedy when starting from a liberal position.

Justice-Clerk

Clerks should theoretically know their "own" justices best. While the clerks have some familiarity with the other justices due to the need to tailor opinions and memos, they work most closely with the justice who hired them. As detailed above, that selection process is rigorous. Each justice personally select the clerks based on his or her own individual criteria and then the pair work closely together for the clerks' one year terms. The opportunity to work so closely with one specific justice should translate into significant results when the former clerks advocate in front of their justice. This section aims to further pinpoint the clerks' effect. Its results will allow clients to further tailor their selection of advocate to better tailor arguments to win over a desired justice. This section analyzes H8: whether former clerks will outperform more in front of the justices they clerked for.

Methodology

I used the merged Oyez, Supreme Court Database, and hand-compiled clerks database described above. If a clerk was arguing the case, I noted if the justice he or she clerked for voted with the clerks' position in a given case. At this point, the analysis hit a problem with small sample sizes. As clerks are barred from arguing in front of the Court for two years post-clerkship (Washingtonian 2013), that severely limited the former clerk advocate pool for certain justices. That meant Justices Kagan, Sotomayor, Alito and Roberts did not have sufficiently large numbers of former clerks to generate reliable regression results. The other justices also had limited Ns with only justices Thomas (31), Breyer (47), and Scalia (62) having values greater than 30. Therefore, I settled for a straightforward descriptive analysis, specifically I examined what percentage of cases each justice voted with their former clerks' position coding a case 1 if the justice voted for his/her clerk's position in a case and 0 if they did not.

Results

Table 6 Justice-Clerk Agreement Table

<i>Justice</i>	<i>Vote With %</i>	<i>Vote Against %</i>	<i>Cases</i>
Justice Thomas	74.19%	25.81%	31
Justice Breyer	63.83%	36.17%	47
Justice Scalia	62.90%	37.10%	62
Justice Ginsburg	62.50%	37.50%	16
Justice Kennedy	56.00%	44.00%	25
Justice Roberts	50%	50.00%	2
Justice Alito	50%	50.00%	4
Justice Sotomayor	0%	100.00%	1
Justice Kagan	N/A	N/A	0

All justices who have had the opportunity had voted with their clerks more than 50% of the time. The justice with the highest agreement rate was also the Court's most conservative, Justice Thomas. Unfortunately, small sample sizes hamper this section's effectiveness. Justices Kagan, Sotomayor, Roberts, and Alito have N of four or fewer which preclude significant results. As a result, these findings neither confirm nor deny H8.

Clerkship vs. Experience

Finally, we test the clerks' performance against other high performers. As noted above, Johnson finds experience is also highly correlated with strong Supreme Court performance (Johnson, Wahlbeck and Spriggs 2006). While former clerks gain insight into the Court's thought process through their time in chambers, those without that experience can also gain that knowledge through several arguments and learning from that give and take. Corley notes that "after writing numerous briefs and appearing before the Court a number of times, experienced attorneys become quite proficient at understanding which arguments are likely to be successful" (Corley 2008). In this section, we compare the clerks' performance with the most experienced non-clerk advocates in better isolate the clerkship's specific value-add. This lets us indirectly compare the value of insider experience against experience from more conventional means. This section studies H9: whether clerks can outperform the most experienced nonclerks.

Methodology

I use a ranked list of most-experienced Supreme Court advocates (Kedar 2013) and separate out the top ten advocates, ranked by number of cases, who have not had a Supreme Court clerkship. I then separate those advocates out by whether they argued for the petitioner or

the respondent side. Next, I fit a regression on those two variables, the clerk variables, and the United States as a party variables to explore the interaction between them and determine their respective success rates when cross-controlled. The list of the top 10 non-clerk advocates with the most experience arguing before the Court is listed in Table 5 below.

Table 7 Top 10 Most Experienced Non-Clerk Advocates

Advocate	2013 Position	21st Century Arguments	All time
Edwin S. Kneeder	Deputy Solicitor General	47	116
Michael R. Dreeben	Deputy Solicitor General	45	83
Theodore B. Olson	Gibson Dunn & Crutcher LLP	45	58
Seth P. Waxman	WilmerHale LLP	34	61
Patricia A. Millett	Akin, Gump, et al. LLP	24	31
Lisa S. Blatt	Arnold and Porter	22	30
Thomas S. Goldstein	Goldstein & Russell PC	22	25
James A. Feldman	Solo Practice	19	46
Jeffrey P. Minear	<i>Inactive</i>	15	56
David P. Salmons	Bingham McCutchen LLP	14	14

Coding

I created two additional variables: *Non-Clerk Top 10 as Petitioner* and *Non-Clerk Top 10 as Respondent*. The former is coded 1 if one of the non-clerk 10 represented the petitioner and 0 if not. The latter variable is coded 1 if one of the non-clerk represented the respondent and 0 if not. The rest of the variables are coded the same as above.

Results

Table 8 Clerks and Top Ten

VARIABLES	(Model 1) Petitioner Win
Clerk as Petitioner	0.390* (0.280)
Clerk as Respondent	-0.696*** (0.287)
Clerks on Both Sides	0.0360 (0.278)
Non-Clerk Top 10 as Petitioner	0.566** (0.334)
Non-Clerk Top 10 as Respondent	-0.715*** (0.289)
U.S. as Petitioner	-0.216 (0.452)
U.S. as Respondent	-0.329 (0.287)
Constant	0.825*** (0.207)
Observations	470

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

The ten most experienced non-clerks moderately outperformed the clerks on the petitioner side and the two were not statistically different on the respondent side. This rejects H9. The former had a coefficient of 0.566 compared to the former clerks' 0.390 with more significance. On the respondent side, the non-clerks had a correlation coefficient of -0.715 compared to the former clerks' -0.696 (a difference of .019) with similarly strong significance values. The statistical tie on the respondent side and the comparatively moderate underperformance on the petitioner side means the former clerks offer results similar to the most experienced advocates in the field, some working at the Solicitor General's Office and some

formerly so. The results in this section indicate that there is a nuanced choice to be made by clients between hiring a former clerk and the most veteran advocates without that experience. But whichever is chosen, both offer significant value-add though the most veteran advocates may have the edge on the petitioner side.

Conclusion

Previous studies have indicated certain advocate groups are correlated with higher advocacy quality, have higher chances of being cited by the Court, and have higher chances of having their cases heard by the Court. This study conducts a comprehensive analysis of one of the most interesting of advocate groups, former Supreme Court law clerks, focused solely on the results they deliver. In doing so, it offers empirical results to support the former clerks' theoretical advantages. The sizeable correlation coefficients and the strong significance values confirm the clerks' value-added in a variety of scenarios. This affirmatively answers our overall research regarding whether the former clerks can translate their unique experiences into superior results from the advocate side of the bench.

For future analysis, four weaknesses could be addressed. First, the database could be improved. Rather than rely on a derived database for a list of advocates (Oyez), one more grounded in primary documents should be compiled based on the names on the briefs. Second, rather than rely on secondary sources and searches to determine whether the advocate was a former clerk, an official list should be obtained and referenced instead. Third, Clark, Lax, and Rice make a strong point regarding the weakness of a post-facto salience measure. A substitute measure which tracks coverage prior to opinion release should be used. A future analysis should acquire said list to compare the clerks' performance against other top advocate groups such as the Solicitor General's Office.

The analysis offers detailed insight into when clerks add value and when they have less effect. Beginning with the most significant finding, while former clerks add value across the ideological spectrum of justices when arguing a liberal position (all except Justices Kennedy and Thomas), the clerks only added value in front of the conservative justices when arguing from a

conservative position (Justices Kennedy, Roberts, Alito, Scalia, Thomas). This success is somewhat cabined by their inability to influence the Court's swing justice when arguing an ideologically incompatible position. Comparatively, the clerks' added value is similar to the Court's most veteran advocates when representing the respondent and marginally less so when representing the petitioner. These analyses should offer clients with business before the Court valuable empirical information as to whether or not to retain a former clerk. The answer, the models suggest, is a strong yes.

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EDUCATION

The Pennsylvania State University | The Schreyer Honors College
The College of Liberal Arts | Bachelor of Arts in Political Science
The College of Liberal Arts | Bachelor of Arts in History
The Paterno Fellows Program

University Park, PA
Class of May 2015

RELEVANT EXPERIENCE

District of Columbia Office of the Attorney General

Legal Intern- Civil Litigation Division

Washington, DC

Jun 2013 – Aug 2013

- Drafted motions to dismiss, to compel and motions for summary judgment after synthesizing volumes of client information and analyzing through the scope of applicable case law
- Composed settlement memorandums integrating client documents and legal arguments into concise requests for settlement authority

Washington Partners, LLC

Legislative Intern

Washington, DC

Jun 2014 – Aug 2014

- Attended events then drafted memoranda on education-related topics for a variety of clients in the field
- Researched topics including but not limited to STEM education, principal/teacher relationships and school quality across regions and tailored findings for client needs

Organizing for America

Organizing Fellow

Bristol, PA

May 2012 – Aug 2012

- Co-founded a youth-to-youth political engagement group which met weekly and tripled in size during fellowship tenure
- Helped to create, then personally organized and managed, an autonomous neighborhood volunteer team
- Created handbook for neighborhood team leaders to train them in database usage for canvassing and phone banking events

LEADERSHIP EXPERIENCE

Pennsylvania State University Journal of International Affairs

Executive Editor

University Park, PA

May 2013- Present

- Organized the article enrollment process by organizing associate editors to solicit submissions from over 80 schools across the nation.
- Recruited, interviewed, and screened new associate editors in a collaborative effort with other members of the Executive Team
- Mentored new associate editors in the workings and functionalities of both the journal and the editing process

Associate Editor

- Enlisted professors with relevant experience and expertise to aid in the editing process and collaborated with professors throughout said process

Penn State Mock Trial

Fundraising Coordinator

University Park, PA

May 2012 – May 2013

- Raised over \$5,000 compared to previous year through the exploration and execution of common-interest partnerships with various sponsors including local businesses
- Served as the official liaison between the organization and a variety of outside groups for fundraising purposes

Fall/Spring Team Captain

Jan 2012 – May 2014

- Prepared a team composed of new and returning mock trial members for competition

PSU Special Living Option- The GLOBE

House Representative

University Park, PA

May 2012 – May 2013

- Represented resident interests to the Executive board and fostered cross-community engagement with broader Penn State
- Planned and executed various events throughout the year to encourage both the residents and the larger Penn State community to connect and interact with global issues

HONORS

2014 Intercollegiate Outstanding Attorney (American Mock Trial Association)

March 2014

Phi Beta Kappa Honor Society

March 2014- Present

Schreyer Academic Excellence Scholarship

Aug 2011- Present

Boris E. Cohen Memorial Scholarship

May 2012- Present

Thomas R. And Joan G. Dye Scholarship

Dec 2013- Present