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# When the Courtiers Return to the Marble Palace: The Impact of U.S. Supreme Court Lawyers' Prior Appellate Clerkship Experiences

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## Abstract

Most Supreme Court (SCOTUS) clerk studies explore selection, or impact, during the clerkship. The existing research examining the benefits of clerking for those returning to the Court suggests relational expertise from clerking for a specific justice, not process expertise from the clerkship, enhances SCOTUS oral argument success. Our study suggests the benefits of prior appellate clerkships likely stem from both relational and process expertise. Specifically, justices tend to favor parties represented by former US Court of Appeals (USCA) clerks who never clerked for the SCOTUS and prior SCOTUS clerks, even when the clerk did not serve in the justice's chambers.

**Keywords:** U.S. Supreme Court; law clerks; attorneys; lawyers

## Introduction

Those responsible for hiring lawyers seem to believe clerkships are a hallowed steppingstone to a successful legal career. Former federal appellate and US Supreme Court (SCOTUS) law clerks are often employed in prestigious positions at large law firms, the Office of the Solicitor General (OSG), elite law schools, and even the US Supreme Court. Firms currently pay former Supreme Court clerks \$500,000 signing bonuses (Zaretsky 2024), and US Courts of Appeals (USCA) clerks receive between \$50,000 and \$150,000 (Rubino 2024). Presumably, the exorbitant sums at least in part reflect the value the firms attach to these experiences. In this paper, we examine one possible benefit from prior federal appellate clerkships – do they provide advantages when the former clerks deliver oral arguments before the Supreme Court?

Since Peppers' *Courtiers of the Marble Palace* (2006), many studies have examined the selection of Supreme Court clerks (e.g., Kromphardt 2014; Kaheny et al. 2015; Badas and Stauffer 2023; Badas, Sanders, and Stauffer 2024) and the influence law

clerks wield while serving the judge (e.g., Ward and Weiden 2006; Peppers and Zorn 2008; Black and Boyd 2012; Blake, Hacker, and Hopwood 2015; Kromphardt 2015; 2017; Mascini and Holvast 2024; Bonica et al. 2019). Similarly, quite a few scholars have explored the influence of attorneys on the US Supreme Court (e.g., McGuire 1995; Johnson, Wahlbeck, and Spriggs 2006; Corley 2008; Black and Owens 2013; Gleason, Jones, and McBean 2019; Gleason 2020; Nelson and Epstein 2022) and other courts (e.g., Haynie and Sill 2007; Kaheny, Szmer, and Sarver 2011; Sheehan and Randazzo 2012; Szmer, Songer, and Bowie 2016). We know attorney characteristics, including prior Supreme Court clerkships, affect brief (Hazelton and Hinkle 2022) and oral argument quality (Johnson, Wahlbeck, and Spriggs 2006), but does clerkship experience affect judicial decisions?

Surprisingly, scant attention has been devoted to this question, though three recent studies have provided initial insights. Liu and Kastlelec (2023) conclude that the Supreme Court grants more cert positions when former clerks sign the petitioner's brief, while Hazelton and Hinkle (2022) find that former clerks write briefs that are more likely to persuade individual justices on the merits. Finally, Black and Owens (2021) conclude that justices are more likely to side with orally arguing attorneys who clerked in their chambers, but the effect does not extend to other justices' former clerks.

We build on this research by further exploring the potential advantages former appellate law clerks may have when arguing before the Court. In general, prior studies of attorney influence find that relational expertise is the most typical causal mechanism (Sandefur 2015). This comes from prior interactions with the judges before whom they will litigate, and includes enhanced understanding of the behavioral patterns of the judge, as well as credibility. Existing research also suggests this is the likely causal mechanism for the influence of prior clerkships. Indeed, Black and Owens (2021) find that oral advocates who previously served as Supreme Court clerks are more likely to garner the vote of the justice under whom they served, but not the other justices serving on the Court.

Of course, lower appellate court clerks also have insights into the nature of the appellate process, and process expertise is an alternative causal mechanism for attorney influence (Liu and Kastlelec 2023). Therefore, unlike any prior study we could identify (either as a main independent variable or control), we test whether former US Courts of Appeals clerks who never subsequently clerked for the Supreme Court benefit from that experience. Like former Supreme Court clerks, intermediate federal appellate clerks develop an expertise in general appellate procedures, like brief writing and oral arguments. Unlike many former Supreme Court clerks, however, they do not develop the relational capital with the justices that leads to relational expertise.

Like Black and Owens (2021), we find that former Supreme Court clerks are more likely to persuade the justice for whom they clerked. But they are also more likely to garner the votes of the other justices, too. And most importantly, former US Courts of Appeals clerks who never clerked for the Supreme Court are about equally as influential as former SCOTUS clerks arguing before the High Court. Importantly, our results suggest that prior appellate clerks can benefit from both relational and process expertise.

This study provides several contributions to the study of law and courts. As noted, we provide insight into the causal mechanisms that might explain how attorneys can influence the justices through oral arguments. Additionally, understanding the

influence of former clerks is particularly important given their disproportionate prevalence in the Supreme Court bar (O'Connor and Hermann 1995). Also, when former clerks are more likely to influence an important policymaking institution, this raises normative concerns. As previously noted, they are typically highly paid, suggesting they are more likely to work for litigants with more resources. This could result in further societal inequities. In Addition, to the extent that Courts should decide cases based on the validity of the quality of the underlying argument, and not the qualities of the attorneys making the arguments, this also potentially undermines the legal process (Black and Owens 2021). Finally, as others have noted (e.g., Black and Owens 2021), this provides insights for analogous contexts like lobbying, where the advocate's process and relational expertise and contacts are also potentially beneficial (e.g., Salisbury et al. 1989; Molinengo, Stasiak, and Freeth 2021).

We begin by discussing existing studies and examining what we know about attorneys' impact on judicial decision-making, the role of clerks, and the impact of clerks arguing before the Supreme Court. We synthesize these literatures to develop expectations regarding the effects of prior federal appellate clerkships on Supreme Court decision-making. Then, we lay out our research design, and present and interpret the analyses.

### Supreme Court litigator effects

Like any other political actor, justices often face uncertainty about the information needed to decide cases. They receive this information in part from attorneys, and through briefs and oral arguments. Both mechanisms provide opportunities for attorneys to persuasively convey legal, factual, and policy-related information (Johnson 2004; Hazelton and Hinkle 2022). Lawyers can influence decisions when they use briefs to frame issues strategically (Wedeking 2010). That justices' opinions often borrow text from briefs (Corley 2008) and are more likely to do so when they are well-written (Collins, Corley, and Hamner 2015), suggests justices do rely on them, at least partially, for information. Because briefs frame issues in a nuanced decision-making environment, justices rely on them to identify legal questions. Indeed, the first substantive section of Supreme Court briefs must clearly stipulate the issues at hand, giving the petitioner's attorney the power of first impression (Haire and Moyer 2007).

Certain aspects of the legal team writing the brief can also influence the composition. Larger teams, as well as teams with more experienced lawyers and Supreme Court clerks tend to draft briefs with more information (Hazelton and Hinkle 2022). Similarly, larger and more experienced teams are more likely to include more strategic citations targeted at the median justice, and more uses of future-tense verbs (Hazelton and Hinkle 2022). Due to their sheer nuance, briefs play a more prominent role in the drafting of a majority opinion than who wins or loses (Hazelton and Hinkle 2022).

Lawyers can also influence the justices through oral argument. Although justices come to oral arguments having read the legal briefs and lower court records (or rather, at least having read a summary written by a law clerk), at the margins, justices are capable of being persuaded by oral arguments, especially in non-salient cases (McAtee and McGuire 2007) and those involving issues outside their substantive expertise (Szmer and Ginn 2014). Oral arguments facilitate the justices'

understanding of the legal, policy, and factual aspects of a case (Johnson 2004). Prior evidence suggests the quality of the oral argument influences justices' votes (Johnson, Wahlbeck, and Spriggs 2006). Indeed, justices are more likely to switch their pre-oral argument positions after higher quality arguments (Ringsmuth, Bryan, and Johnson 2013).

While oral argument quality can influence the justices' decisions, what makes an argument more influential? Sandefur (2015) suggests that a lawyer's influence on outcomes is a function of both relational and process expertise, though there is substantially more empirical evidence supporting the beneficial effects of relational lawyer expertise. In the oral argument context, relational expertise is essentially the personal connections between the judge and the attorney, while process expertise is the attorney's knowledge of appellate litigation in general, and, more specifically, the aspects and styles of oral arguments that enhance their persuasiveness.

The relational versus process expertise typology also dovetails with the message-learning theory of persuasion, where the source of the argument attempts to persuade a target (or recipient). Arguments are more persuasive when they are presented by credible sources (Pornpitakpan 2004). Higher quality arguments are also more influential. While understudied, quality arguments are logical, well-organized and expressed, and supported by strong evidence (O'Keefe 2013). As we shall see, relational expertise tends to enhance source credibility, while process expertise can result in higher quality arguments.

In our context, Supreme Court litigation, the justices are the recipients of the arguments, and the litigators are the source. The existing literature on lawyer influence fits within the message-learning model. Much of the extant literature focuses on attorney characteristics that are also measures of source credibility, and the causal mechanisms are usually relationship-based.

For example, more experienced advocates tend to present higher quality oral arguments (Johnson, Wahlbeck, and Spriggs 2006) and write more influential briefs (Corley 2008), in part because they have an existing relationship with the justices. Specifically, repeat players have a clear incentive to be more honest, and the justices trust them because they have been honest in the past (McGuire 1995). Indeed, in an extremely thorough and conservative test of the impact of attorney experience, controlling for a variety of factors and using matching techniques, Nelson and Epstein (2022) find powerful evidence that more experienced Supreme Court attorneys are more likely to win. Additionally, attorneys working for the OSG, the quintessential repeat player, have higher probabilities of winning before the Supreme Court than they do when they later work in private practice – even though they have more experience in the latter instance (Black and Owens 2013). In other words, there is something about working for the OSG that enhances the perceived credibility of the attorney.

Justices also tend to side with attorneys that work in Washington, DC (McGuire 1993). This could be a proxy for social interaction with the justices, which likely bolsters source credibility. Put another way, Washington elite lawyers can develop relational expertise with the Court through social networks.

Research also suggests some heuristics may systematically bias assessments of source credibility. While attorney gender does not influence Supreme Court outcomes (Hack and Jenkins 2022), evidence suggests context and language choice condition the effects of gender on justices' votes. For example, female lawyers are more successful advocates in women's issues cases (Szmer, Sarver, and Kaheny 2010),

while male and female lawyers are more successful when they communicate in accordance with gendered expectations (Gleason 2019; Gleason, Jones, and McBean 2019).<sup>1</sup> Finally, federal appellate judges tend to side with more physically attractive oral advocates (Waterbury 2024).

In addition to source credibility, the message-learning theory of persuasion posits that argument quality matters. Oral arguments are likely more persuasive when they effectively communicate sound, logical legal arguments. While legal argumentation quality is difficult to measure, some evidence suggests that it does in fact influence the justices.<sup>2</sup> For example, when Justice Blackmun informally assigned a higher grade to an attorney's oral argument in his personal notes, the other justices were more likely to side with the attorney (Johnson, Wahlbeck, and Spriggs 2006). Moreover, issue framing in litigant briefs also influences litigant success before the Court (Wedeking 2010). While argument quality is challenging to quantify, attorney characteristics like prior litigation experience, working for the OSG or in DC, and attending an elite school correlate with oral argument quality (Johnson, Wahlbeck, and Spriggs 2006). This might derive from the underlying ability to analyze, synthesize, and communicate complex information (Szmer and Ginn 2014).

Alternatively, prior experience might enhance process expertise. In other words, repeat players learn how to prepare for oral arguments, write briefs, and communicate to the justices in ways that are more likely to prove influential (Szmer and Ginn 2014). In addition to source credibility heuristics, these characteristics can be conceptualized as proxy measures for the ability to construct high-quality legal arguments.

### The potential influence of former law clerks

The experience of clerking for the US Supreme Court provides an opportunity to develop relational and process expertise that may only be rivaled (or surpassed) by working in the OSG. SCOTUS clerks are closely involved in all aspects of the Supreme Court process: reading briefs, writing bench and cert memos, drafting opinions, and observing arguments (Peppers 2006; Ward and Weiden 2006). In fact, their distinct styles are even detectable in the justices' opinions, but their influence only looms as large as internal office procedures allow (Wahlbeck, Spriggs, and Sigelman 2002). They have a unique vantage point into the justices' decision-making, and occasionally influence judicial outcomes. As Justice Scalia once said, "I thrash out the cases with my law clerks much more than my colleagues" (Baum 2019, 116). They are not only advantaged in experience, but also in credibility, especially with the justices for whom they clerked.

We posit at least two potential advantages for former clerks. First, they worked with one of the justices for at least a year. After the Warren Court, justices have typically treated their clerks like "law firm associates," trusting them with complex tasks like drafting judicial opinions (Peppers 2006). Besides working together well beyond forty hours a week for a year, the justices regularly socialize with their own

<sup>1</sup>We conducted a robustness check where we interacted women's issues, and five of the six main variables are significant at the two-tailed level, while one variable (Pet. Clerk for USCA Highest) is significant at the one-tailed level. Our results are presented in the [Appendix A.9](#).

<sup>2</sup>Indeed, argument quality is an understudied aspect of persuasion theory in general, perhaps due to different effects on persuasive effectiveness when the medium, goals, and framing change. (O'Keefe 2013).

clerks – whether it be at lunch, at the justices’ homes, or on the basketball court (e.g., Worthen 2012). Anecdotally, we know many justices tend to treat former clerks akin to family members and often continue to be a part of their lives well after the clerk’s year on the Court ends (Ward and Weiden 2006). This relational expertise stemming from interactions with the clerk’s justice should enhance the perceived credibility of former Supreme Court law clerks when arguing before their former boss. Additionally, they should have special insight into the arguments that are most likely to persuade the justice for whom they once worked – another aspect of relational expertise. More generally, to the extent other justices are aware that an oral advocate once served as a SCOTUS clerk, this should also enhance source credibility.

Second, the clerks have a special vantage point to learn the appellate process. They observe and participate in the internal workings of the Court (Peppers 2006; Ward and Weiden 2006). This starts with agenda-setting. Clerks typically write memos summarizing the lower court decision and the arguments for and against granting certiorari. This process involves reading the briefs submitted by the litigants and amici curiae, as well as the lower court record (Blake, Hacker, and Hopwood 2015; Goelzhauser and Vouvalis 2015). Presently, all but Justices Alito’s and Gorsuch’s clerks are part of the cert pool (Liu and Kastlelec 2023). While each of their four clerks divvy up the 8,000 or more petitions and provide short summaries to them, the other twenty-eight clerks in the pool divide the petitions evenly and write longer memos for the other seven justices (Ward and Weiden 2006). This means the typical law clerk writes roughly five cert memos per week during their yearlong clerkship (Blake, Hacker, and Hopwood 2015). As a result, when former clerks are on either a cert petition or amicus brief, the Supreme Court is five times more likely to grant cert to former clerks compared to petitions from non-clerks (Liu and Kastlelec 2023).

Similarly, among those cases accepted for plenary review, clerks in most chambers are assigned a quarter of the cases. They likely read all the accompanying merits and amicus briefs and write bench memos for their justice to prepare them for oral arguments (Johnson, Stras, and Black 2014). They meet with the justice to discuss the case at various stages of the plenary process, including prior to oral argument, between oral argument and the justices’ conferences, and after the conference (Peppers 2006). While they do not play a direct role in oral arguments (beyond writing bench memos), the clerks frequently observe them (Marder 2015). Law clerks also usually draft the justices’ opinions (Ward and Weiden 2006). In other words, the clerks likely develop Supreme Court process expertise.<sup>3</sup>

A Supreme Court clerkship is not the only early career path that can enhance orally arguing attorney success. While they do not develop relational expertise with the justices, US Courts of Appeals clerks do learn about the general appellate process – much of which is analogous to Supreme Court procedures (Bowie, Songer, and Szmer 2014). Like Supreme Court clerks, they write bench memos, observe oral arguments, draft opinions, and review the opinions produced by other chambers (Richman and Reynolds 2012; Peppers, Giles, and Tainer-Parkins 2014). These

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<sup>3</sup>Of course, due to a combination of the selection processes for federal appellate clerks, and the career opportunities open to former clerks, they tend to share many characteristics with elite appellate litigators that likely correlate with success as an orally arguing attorney before the Supreme Court. Fortunately, as discussed below, since we control for these factors, we are less concerned with this alternative set of causal mechanisms. However, for a substantial discussion of these factors and why they should be accounted for in studies examining clerk effects, please see [Appendix A.0](#).

experiences might provide some of the same posited advantages of Supreme Court clerkships. Specifically, the analogous experiences provide appellate process expertise, which in turn should enhance the ability to deliver high quality legal arguments.

## Hypotheses

Based on the prior literature examining Supreme Court advocacy and persuasion theory, Supreme Court clerks should have two distinct advantages over similarly situated non-clerks: enhanced source credibility, or relational expertise, and process expertise, which should yield higher quality arguments. First, they develop source credibility from their personal interactions with the justices. Second, prior Supreme Court clerks develop process expertise by observing and participating in the inner-workings of most aspects of the Court's procedures, and they have a deep insight into the specific decision-making processes of a Supreme Court justice. These advantages should enable the former clerks to deliver more persuasive arguments, both substantively and stylistically.

The literature specifically focusing on Supreme Court clerkships is more mixed, but the weight of the findings suggests clerkships matter. The evidence suggests clerks write more persuasive cert and merits briefs. When a former clerk signs a petitioner's brief, the probability of granting cert increases dramatically (Liu and Kastellec 2023), and justices are more likely to side with the litigant who hired more former clerks to write merits briefs (Hazelton and Hinkle 2022). Supreme Court opinions also borrow more language from amicus briefs written by more clerks (Hazelton and Hinkle 2022), though the finding does not extend to merits briefs. Additionally, former SCOTUS clerks deliver higher quality oral arguments (Johnson, Wahlbeck, and Spriggs 2006). Interestingly, Black and Owens (2021) find that individual justices are more likely to side with parties who hire their own former clerks to deliver oral arguments, but the effect does not extend to clerks who worked for other justices. This suggests that relational expertise, not process expertise, is the primary source of the clerk advantage.

Of course, our study varies from the prior studies in that we incorporate controls for all of the experiential factors discussed above that should correlate with both oral argument quality: law school quality and achievement (i.e., did they graduate with honors and/or serve on the editorial board of a law review), and whether they clerked for the US Courts of Appeals.<sup>4</sup>

Based on the theory discussed above, as well as the Black and Owens (2021) finding, we posit the following hypothesis to test the benefits of relational expertise that stem from working for a particular justice:

<sup>4</sup>Two of the four studies do control for law school quality. Johnson, Wahlbeck, and Spriggs (2006) include a measure similar to ours, while Liu and Kastellec (2023) control for clerks who attended Harvard or Yale. Black and Owens (2021) do not control for any of the factors, though they do discuss a robustness check looking at aggregate bivariate correlations comparing prior Court of Appeals clerks with prior SCOTUS clerks. Interestingly, their robustness check suggests Court of Appeals clerkships are about as beneficial as prior SCOTUS clerkships. Finally, Hazelton and Hinkle (2022) do not control for any of these factors, which is not surprising given that prior SCOTUS clerkships are just one of a broad array of controls, and they additionally control for some of the aspects of brief quality that likely act as a mediating variable for the impact of clerk experience.

***H<sub>1</sub>***: Supreme Court justices are more likely to side with orally arguing attorneys who previously clerked for that justice, than other Supreme Court oral advocates.

Additionally, the general process expertise developed during the SCOTUS clerkship leads us to hypothesize:

***H<sub>2</sub>***: Supreme Court justices are more likely to side with orally arguing attorneys who previously clerked for a different Supreme Court justice, compared to other orally arguing attorneys.

Like Supreme Court clerks, US Courts of Appeals law clerks also have an insider's perspective into the inner workings of a federal appellate court. Federal intermediate appellate clerks read hundreds of briefs, write memos analyzing cases, regularly observe oral arguments, and receive mentorship from an appellate judge (Peppers, Giles, and Tainer-Parkins 2014; Peppers 2020). While they do not develop the same source credibility/relational expertise that comes from repeated personal interactions with Supreme Court justices, and the justices are less likely to be aware of the credentials associated with the lower court clerkships, former US Courts of Appeals clerks should have similar levels of process expertise. This should enable them to present more stylistically and substantively persuasive arguments than otherwise similarly situated non-clerks.<sup>5</sup> This leads to our third hypothesis:

***H<sub>3</sub>***: Supreme Court justices are more likely to side with orally arguing attorneys who previously clerked for the US Courts of Appeals, but not the US Supreme Court, compared to other orally arguing attorneys.

## Research design

The data cover the 1993–2014 US Supreme Court terms.<sup>6</sup> Unless otherwise noted, we used the Supreme Court Database (Spaeth et al. 2022) for case and litigant information. To test whether justices are more likely to side with their own clerks (*H<sub>1</sub>*), the unit of analysis is the justice's vote in the case. The binary dependent variable equals one when the justice votes for the petitioner. Given the dependent variable and the data structure, we estimate the model using logistic regression with White-Huber standard errors clustered by justice. Finally, we operationalize most of our attorney, party, and amicus variables with variables for both the petitioner and respondent. Unless otherwise noted, we expect positive coefficients for the petitioner variables, and negative coefficients for the respondent measures.

We are primarily concerned with understanding the extent to which lawyers with prior Supreme Court and US intermediate appellate clerkships have advantages over

<sup>5</sup>Additionally, while US Courts of Appeals clerkships are less selective than Supreme Court clerkships, as previously discussed, the same characteristics – law school quality and grades, along with law review membership – are the main criteria that influence selection (Peppers, Giles, and Tainer-Parkins 2014). As noted below, however, we control for these factors, allowing us to somewhat isolate the effects of process expertise.

<sup>6</sup>To isolate the effects of the orally arguing attorneys, we only include cases where one orally arguing attorney represents each side. This includes 90.5% of total cases.

other attorneys. Given the dependent variable coding (vote for or against the petitioner) combined with the adversarial nature of Supreme Court litigation, for each concept, we include separate binary variables for each side. For example, to test the influence of prior US Supreme Court clerkships, we include four variables. Petitioner Clerk for SCOTUS Justice and Respondent Clerk for SCOTUS Justice are each coded one if the orally arguing attorney for that side previously clerked with the Supreme Court for the particular justice casting the vote, and zero otherwise. Similarly, Petitioner Clerk for Different SCOTUS Justice and Respondent Clerk for Different SCOTUS Justice are coded one if the orally arguing attorney for that side previously clerked with a Supreme Court justice who is not the particular justice casting the vote. We determined whether the attorney clerked for the High Court using a list of clerks we received from the Supreme Court Public Information Office. Similarly, to test the effects of a prior clerkship with the US Court of Appeals, we created Petitioner Clerk for USCA Highest and Respondent Clerk for USCA Highest. We coded each variable one if the attorney for that side clerked for a US Court of Appeals judge *but did not clerk for the Supreme Court*, and zero otherwise. We used a variety of sources to determine whether the attorney previously clerked for the intermediate US appellate courts, including Martindale-Hubbell, websites like [lawyers.com](http://lawyers.com), and employer websites.

As previously discussed, clerks typically graduate from elite law schools with academic accolades, including top grades and service on the law review editorial board. We already know from prior research that graduates of the top law schools tend to deliver higher quality oral arguments (Johnson, Wahlbeck, and Spriggs 2006). Presumably, performance in law school correlates with the ability to construct legally sound arguments. We therefore include both (Petitioner and Respondent) Attorney Law School and Attorney Honors. We identified the law school using online sources, including Martindale-Hubbell, [lawyers.com](http://lawyers.com), as well as employer and state bar membership websites. The law school measure is coded one if the attorney graduated from an elite law school.<sup>7</sup> The honors variable is coded one if the lawyer graduated with some form of law school honors (e.g., honors or Latin honors), was a member of a major law school honor society (e.g., the Order of the Coif), and/or served on the law review editorial board. We collected both measures using a variety of sources from Martindale-Hubbell, [lawyers.com](http://lawyers.com), and legal employer websites to law review mastheads and written lists of Order of the Coif members.

Once clerks graduate from law school, they tend to work in the District of Columbia.<sup>8</sup> We also know that attorneys headquartered in DC typically deliver higher quality oral arguments (Johnson, Wahlbeck, and Spriggs 2006), and there is some evidence that they produce more influential party briefs (Corley 2008). Given

<sup>7</sup>Like Szmer and Ginn (2014), we used Slotnick's (1983) designation of the following fifteen elite law schools: Yale, Harvard, Stanford, Columbia, Cornell, Chicago, Berkeley, Pennsylvania, NYU, Virginia, Michigan, Northwestern, Duke, Texas, and UCLA. Szmer and Ginn (2014) find that the Slotnick (1983) measure is highly correlated with several independent measures. First, the 2008 *U.S. News and World Report* rankings included fourteen of the fifteen schools. Additionally, the Slotnick measure shares thirteen of the fifteen schools that produced the most Supreme Court clerks between 1950–2011, with fourteen in the top sixteen, and all fifteen in the top twenty-one. Turning to the top producers of Court of Appeals judges, the Slotnick measure includes the first nine schools, and eleven of the top sixteen from the 2008 *U.S. News and World Report* rankings.

<sup>8</sup>Former US Supreme Court clerks that argued before the Court in our dataset are 2.39 times as likely to work for private DC firms than non-Supreme Court clerks.

these observed tendencies, we include binary variables for each side coded one if the orally arguing attorney works for a private DC firm, and zero otherwise.

Former Supreme Court clerks are more likely to litigate before the Court (O'Connor and Hermann 1995) and prior litigation experience increases the quality of oral arguments (Johnson, Wahlbeck, and Spriggs 2006), the influence of legal briefs (Corley 2008), and success before the court (McGuire 1995). Given the likely correlation between both the focal (prior clerkships) and dependent variables, we include measures of prior litigation experience for each side's orally arguing attorney. Each variable is the count of the number of Supreme Court oral arguments delivered by the attorney in prior terms. Given the likelihood of diminishing marginal returns from each additional argument, we log the experience measures.<sup>9</sup>

Recent studies suggest attorney gender may also influence Supreme Court justices' decisions, at least in certain contexts (e.g., Szmer, Sarver, and Kaheny 2010; Gleason 2019). Additionally, the Supreme Court hires more male law clerks (Szmer, Kaheny, and Christensen 2014). We therefore include Petitioner and Respondent Attorney Gender variables, each coded one if a woman delivered the argument for that side, and zero if it was presented by a man. In most instances, we determined attorney gender by the gender-based honorific used in the argument transcripts.<sup>10</sup>

Supreme Court clerks make up a significant portion of OSG employees (see Appendix A.0), so it is crucial that we consider the attorney's past and present associations with the OSG. Previous employment with the OSG is represented by the binary variables, Petitioner Former OSG and Respondent Former OSG.

We also include several controls for OSG participation on the merits, and other aspects of party capability. For example, as we previously discussed, elite employers (e.g., the OSG, large law firms) tend to hire former appellate clerks. Moreover, they typically represent parties with more resources, like the United States and large corporations. Therefore, we include a standard measure of party capability employed in many studies, including Collins (2008b) and Black and Owens (2012). The 10-point scale ranges from 1 (poor individual) to 10 (the United States, which is almost always represented by the OSG).<sup>11</sup> Litigants with higher values presumably have more resources and experience.

We also include variables to account for the influence of amici curiae. First, parties tend to win when they are supported by more amicus curiae briefs (Collins 2008b). Therefore, we include a measure of the difference between the number of amicus briefs filed supporting the Petitioner and Respondent, Amicus Briefs Difference. We expect the coefficients for Amicus Brief Difference to be positive.

Similarly, when the OSG submits an amicus brief siding with a party, that party tends to win (Collins 2008b). We accounted for this with two binary variables, OSG

<sup>9</sup>Since the values can equal zero, and the natural log is undefined at zero, we first added one for each observation.

<sup>10</sup>However, given only three women have ever served as the US Solicitor General (Elena Kagan, Elizabeth Prelogar, and acting Solicitor General Barbara Underwood), and only two served during the period of our analysis, Solicitor General gender was easy to ascertain.

<sup>11</sup>We followed the Collins (2008b) coding conventions (1 = poor individual; 2 = minority individual; 3 = individual; 4 = interest groups and unions; 5 = small business; 6 = business; 7 = corporation; 8 = local government; 9 = state government; 10 US Government). For the 3% of missing values for both the petitioner and respondent sides, we used mean imputation, which resulted in the missing values taking on party capabilities (6.32) comparable to a business (6).

Amicus for Petitioner and OSG Amicus for Respondent, each coded one if the Solicitor General was an amicus curiae arguing a position consistent with the corresponding party's claim, and zero otherwise. Finally, we control for amicus oral arguments. Petitioner and Respondent Amicus Oral Arguments are each coded one when there is an oral argument by an amicus curiae arguing for that respective side.

Given the prominence of ideology in models of Supreme Court decision-making, we also include the Ideological Congruence between the justice and the petitioner. We use the Segal and Cover (1989) ideology scores for the justices to estimate their ideology for the term. For petitioner preference, we used the ideological direction of the lower court case (i.e., petitioner preferred a liberal outcome if the lower court decision was conservative and vice versa). Since higher Segal-Cover values range from 0 to 1 and indicate increasing levels of liberalism, we use the raw scores when the petitioner asserts a liberal claim, and one minus the score when the petitioner asserts a conservative claim.<sup>12</sup> Since higher values indicate increasing ideological congruence between the justice and the petitioner, the coefficient should be positive.

Finally, we accounted for case characteristics that are standard across the literature.<sup>13</sup> We included issue area binary variables for Case Criminal Issue and Case Economic Issue, as such cases receive more public scrutiny (Hall 2010). Criminal cases attract immense amicus activity from various advocacy groups (Buckler 2015), and statistical models that predict judicial votes do exceptionally well in economic cases (Ruger et al. 2004). Given the justices' policy sensitivity to criminal and economic cases and agreeing to hear the case at all, we expect justices to vote for the petitioner and the coefficient to be positive.

We then employed a measure for Case Salience, which is a binary variable that indicates whether the case was covered on the front page of the *New York Times* (Collins and Cooper 2016). We expect case salience to be negative because justices are more likely to follow their own personal policy preferences rather than the attorneys' argument in salient cases (McAtee and McGuire 2007) and are less inclined to vote in line with the solicitor general amicus brief in salient cases (Bailey, Kamoie, and Maltzman 2004), suggesting that justices are less likely to vote in favor of the petitioner.

In addition, we used a measure for Case Legal Importance, coded one if the case struck down a law as unconstitutional or altered legal precedent (Epstein and Segal 2000; Corley 2010). Important cases have higher public visibility (Benesh and Reddick 2002), and are often controversial (Baum 1978). As such, we expect Case Legal Importance would result in a positive coefficient as the Supreme Court often takes on lower court decisions that they believe require a reevaluation or clear resolution (Black and Owens 2009).

Moreover, we considered Case Complexity, which represents the factor scores of the number of legal provisions, legal issues, and the number of special opinions in the

<sup>12</sup>We use the Segal-Cover measure because it is exogenous. Of course, it is not dynamic, which is a limitation. As a robustness check, we use the justices' Martin and Quinn (2002) scores for the justices generate ideological congruence, again using the direction of the lower court opinion to determine petitioner preference. Our results, presented in Appendix A.3, are significant in a two-tailed test except for petitioner clerks who have served at the USCA, but not the Supreme Court – the coefficient is only one-tailed test at the 0.05 level.

<sup>13</sup>We conduct a robustness check without characteristics and the substantive results remain the same. Our results are presented in Appendix A.8.

case (Maltzman, Spriggs, and Wahlbeck 2000). Previous works on Supreme Court decision-making have included the case complexity variable to capture the interpretability of the case (Johnson, Wahlbeck, and Spriggs 2006; Collins 2008a; Ring-smuth, Bryan, and Johnson 2013). Similar to our expectations for Case Legal Importance, we predict that Case Complexity will result in positive coefficients as the Supreme Court takes on cases to reassess the decision (Black and Owens 2009).

Lastly, we included Lack of Legal Dissensus in Lower Court, a binary variable indicating whether there was a lack of dissent or concurrence in the lower court (Corley, Steigerwalt, and Ward 2013). Dissensus suggests ambiguity of a correct legal answer (Edelman, Klein, and Lindquist 2008), but when the lower courts stand united in their decision in favor of the respondent, we expect a negative coefficient, as justices would be less likely to vote in favor of the petitioner.

### Analysis

The logistic regression results are presented in Figure 1 using average marginal effects (AMEs). (See Appendix A.2 for a table including logistic regression coefficients and standard errors.) For binary variables, the AMEs are the difference of the predicted probability (averaged across all values of the covariates) that the justice voted for the petitioner when the variable is set to one and zero. Figure 1 is a plot of the AMEs where the circles reflect point estimates and the horizontal lines are confidence intervals. When the confidence intervals are all to the left of the vertical zero line, the variable has a significant negative effect on the probability of a justice’s vote for the petitioner; when the confidence interval is entirely to the right of the zero line, the variable has a significant positive effect on the dependent variable. If the horizontal confidence interval line intersects with the vertical zero line, the variable is not statistically significant. We expected positive effects for the petitioner variables and

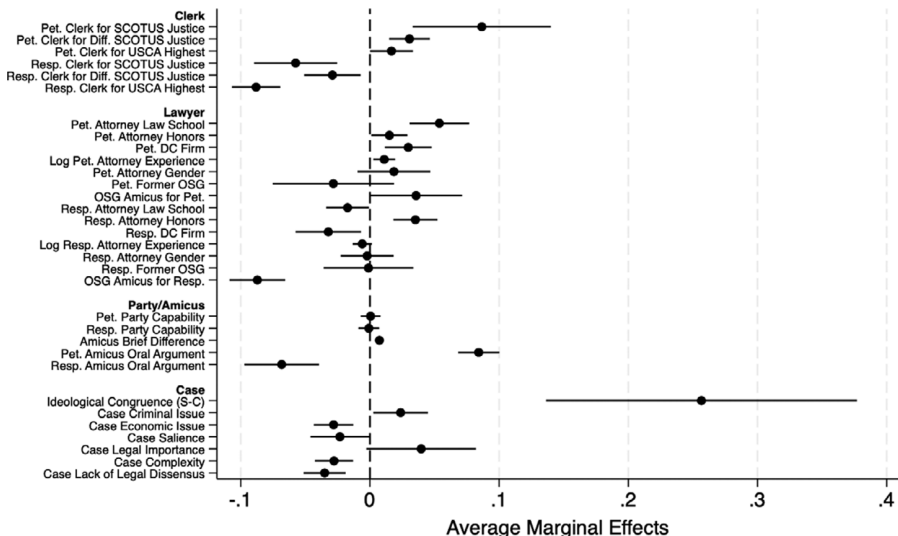


Figure 1. Coefficient Plot of Logistic Regression Model Using Average Marginal Effects.

negative effects for the respondent variables. Coefficients are statistically significant at the two-tailed 0.05 level unless otherwise specified.

As predicted, clerkship (both USSC and appellate) matters even when controlling for all other factors. The AME for the Petitioner (0.40) Supreme Court Clerk who formerly clerked for the justice casting the vote is statistically significant, while the AME for the Respondent (-0.27) is also statistically significant. Based on percent changes in the AMEs, former Supreme Court clerks are around 12.0% more likely to win the vote of the Supreme Court justice they clerked for as the petitioner attorney, even when controlling for attorney capability with variables like experience and elite law school status. Respondent attorneys who formally clerked for the Supreme Court are roughly 9.7% more likely to win the vote of the Supreme Court justice whom they previously served.

We then consider how former Supreme Court clerks fare with Supreme Court justices they did not serve under. The AMEs for the Petitioner (0.14) and Respondent (-0.13) Supreme Court Clerk who did not clerk for the specific vote-casting justice are statistically significant. In fact, former Supreme Court clerks are about 4.9% more likely to win the vote of the Supreme Court justice they did not clerk for as the petitioner attorney, even when controlling for attorney capability with variables like experience and elite law school status. Respondent attorneys who formally clerked for the Supreme Court are approximately 4.7% more likely to win the vote of a Supreme Court justice, even if they had served with a different justice.

Former US Court of Appeals clerks also enjoy some advantage before the Court – even when not having served as a Supreme Court clerk. The AME of a justice siding with the petitioner when their orally arguing attorney is a former appellate clerk who did not serve on the SCOTUS is 0.08 and is statistically significant. In other words, former appellate clerks who argue as petitioner attorney are 2.7% more likely to win the vote of a Supreme Court justice. The coefficient for the respondent variable provides striking evidence of the benefits from clerking for the US Court of Appeals. The AME is -0.41, which is similar in effect to petitioners who were previously Supreme Court clerks. On average, Supreme Court justices are more than 14.5% less likely to side with the petitioner when facing a respondent represented by a former US Court of Appeals clerk (that never served as a Supreme Court clerk).

Overall, the results suggest that former clerks benefit from both enhanced credibility that stems from relational expertise, and the ability to craft more persuasive arguments that comes from process expertise. The stronger effects of clerking for the specific Supreme Court justice compared to a different justice suggest there are enhanced benefits stemming from the relational advantage. However, the relatively significant benefits that come from hiring a US Court of Appeals clerk suggest that the clerkship advantage is not merely a function of familiarity with Supreme Court justices. US intermediate appellate clerks that do not go on to clerk for the Supreme Court do not have the same personal interactions with the justices. Instead, there must be something about the clerkship experience in general that prepares lawyers for success before the US Supreme Court. If it is not the enhanced credibility that comes from familiarity, it could be process expertise.

Alternatively, the observed benefits of clerking at either level could arise from the other characteristics that appellate clerks share with elite oral advocates. We control for all of characteristics correlated with both types of clerkships in the model. Among the characteristics correlated with clerkships, elite law school seems to exert the most

influence on the justices' votes. For example, when the petitioner's orally arguing attorney graduated from a school like Harvard or Michigan, the probability of the justice siding with the elite graduate increases by 0.25.<sup>14</sup>

Other attorney-level characteristics that influence the justices' votes include whether the petitioner attorney received honors or served on law review in law school (the respondent variable is significant, but in the unexpected direction), whether the petitioner and respondent attorneys are private attorneys for a DC firm, and the petitioner attorney's prior litigation experience (the respondent variable is only significant one-tailed).

The party and amicus variables largely conform to our expectations. Justices tend to side with the OSG when it submits an amicus brief. Amicus brief differences and petitioners with amicus representation in oral arguments are more likely to move the justices' votes toward the petitioners. Respondent amicus oral argument representation makes it less likely for justices to vote for petitioners. We find no effects for the party capability variables. This could be due to the significant number of attorney quality variables, which likely account for a large portion of the party capability advantage at this level (Sheehan, Mishler, and Songer 1992).

The case-level characteristics that move the justices' votes toward the petitioners include ideological congruence, whether the case is a criminal case, and whether the case was of legal importance. These three control variables conform with our expectations. The characteristics that move the justices' votes away from the petitioners include whether the case was an economic issue, whether the case was salient, whether the case was complex, and whether there was lack of legal dissensus. Here, the case variables conform with our expectations, except for the Case Economic Issue and Case Complexity variables, which may suggest that the Court may perceive economic and complex cases as legally important.

## Discussion and conclusion

Overall, the results from our model conform to our three hypotheses. Former Supreme Court clerks and former Courts of Appeals respondents are more successful oral advocates, even after controlling for a variety of factors typically correlated with both litigation success and prior clerkships. While the effects for our main independent variables may appear small relative to other factors that predict litigation success (e.g., the OSG amicus variables), we believe these effects are still meaningful.

These findings contribute to the law and courts literature in several ways. This is the first study to examine the impact of prior US Courts of Appeals clerkships, and our results suggest that experience increases the persuasiveness of Supreme Court oral advocates. Additionally, unlike other earlier studies (i.e., Black and Owens 2021), we find that former Supreme Court clerks also have an advantage when arguing before the Court that extends beyond their former justice. Combined, these two novel findings further advance theories underlying how attorneys can influence judicial decision-making. Specifically, while most studies find evidence of the benefits of relational expertise – as we do through the significant benefits that stem from prior

<sup>14</sup>For a robustness check, we include a scaled attorney capability score that combines attorney law school, attorney honors, whether the attorney works in a DC law firm, attorney experience, and whether the attorney formerly worked for the OSG in Appendix A.4. The results remain consistent with the main results.

clerkship with the specific justice – our findings also suggest Supreme Court oral advocates also benefit from process expertise. This may have implications for more political forms of advocacy, especially lobbying.

Beyond studying a novel question and advancing theories underlying legal and political advocacy, our findings also have policy implications. Put simply, the “haves” have more access to former clerks. In our data, for example, individual litigants are significantly less likely to hire former federal appellate clerks to deliver oral arguments (34%), compared to businesses/corporations (49%) and the federal government (90%). Those with more resources can hire clerks more frequently, and that translates to more success before the most important policymaking court.

Like most studies, ours is not without its limitations. To be clear, we only observe correlations, not causal relationships. We might have more causal leverage if we had estimated the treatment effects using coarsened exact matching (CEM), for example. However, we took a different approach to prior studies using CEM. Given the tradeoffs in precision that increase with each matching criterion, including the many attorney covariates – a strength of our study – would diminish precision (see Ripollone et al. 2020).<sup>15</sup> Moreover, this enabled us to include multiple additional controls for the backgrounds of the attorneys (e.g., law school quality and performance) that potentially influence both outcomes and clerkship attainment, without sacrificing power.

Additionally, we use relatively parsimonious measures of the different clerkship variables. Specifically, we break them down into only six categories. However, doing this could mask effects from the overlaps in some of the categories. Specifically, the model we present does not distinguish between former SCOTUS clerks who clerked at the Court of Appeals (88%) from those that did not clerk for the lower appellate court (12%). As a robustness check, we estimated two versions of the model (presented in Appendices A.5 and A.6). The first model uses additional variables distinguishing between SCOTUS clerks who also clerked for the lower appellate court, and those that did not. Both variables that indicate the attorney clerked for the USCA but not the SCOTUS were still significant. Of the eight SCOTUS clerk variables, four were significant two-tailed, and two were significant one-tailed. Only former Supreme Court clerks without USCA clerkship experience who argued for the petitioner were not statistically significant. Of course, these variables were typically zero. As such, in a second analysis, presented in Appendix A.6, we estimated the model excluding cases where at least one of the orally arguing attorneys was a Supreme Court clerk who never clerked for the Court of Appeals. All six clerkship variables were significant in the posited direction.

Future research can build off this study to further examine how different types of expertise and experience can further influence the success of appellate advocates. For example, we focus on oral arguments. But appellate clerks spend more time reading and summarizing briefs than observing oral arguments, suggesting the benefits from these prior clerkships might lead to even greater process expertise advantage when crafting briefs. While there is evidence that brief teams with more former SCOTUS clerks are more influential (Hazelton and Hinkle 2022), differentiating between

<sup>15</sup>As an additional robust check to ensure that the controls did not bias the results, we estimated the model without the covariates (see Appendix A.7). The results of the hypotheses tests do not change.

former SCOTUS and Court of Appeals clerks could provide further insights into whether process expertise is more beneficial for brief writers.

Additionally, we only examine federal appellate clerkship experiences. While it is difficult to collect lower court clerkship data, future research should attempt to discern whether US District Court, and state-level clerkships provide advantages for appellate and trial litigants. Given that appellate clerks work in a more analogous setting to Supreme Court advocacy, we would expect more benefits from clerkships at state courts of last resort, and perhaps state intermediate appellate courts, compared to trial court clerkships at both levels.

Finally, future studies could further expand upon the different types of prior experiences. For example, most studies of Supreme Court advocacy measure prior litigation experience as the number of prior cases the attorney participated in at the US Supreme Court. This should reflect both process and relational expertise. Further research could expand upon this in at least two ways. First, they could calculate prior experience before the Court overall, and before each specific justice. This would help parse out the benefits of relational and process expertise. Additionally, our findings suggest possible benefits from prior appellate litigation experience before other courts, like the US Courts of Appeals and state courts of last resort. Including those measures in subsequent research could further enhance our understanding of the underlying causal mechanisms like process and relational expertise.

**Supplementary material.** The supplementary material for this article can be found at <http://doi.org/10.1017/jlc.2025.3>.

**Data availability statement.** The replication data and code necessary to reproduce our results are available via the *Journal of Law and Courts* Dataverse at <https://doi.org/10.7910/DVN/HVPLMI>.

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