

## CLERKING AT THE SUPREME COURT

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hen Sandra Day O'Connor '52 (BA '50) WAS APPOINTED TO THE UNITED STATES SUPREME COURT, SHE FAMOUSLY REMARKED THAT IT WAS "LIKE BEING STRUCK BY LIGHTNING." • For those Stanford Law School graduates who are selected to clerk for a U.S. Supreme Court justice, the moment they learn of their good fortune is similarly electrifying. And no wonder. Each year more than 1,000 applications are submitted to the Supreme Court for only 35 spots. • The position dates back to the late 1800's when a Harvard Law School graduate was hired as a legal assistant to the Court each year. But as Stanford Law School gained in prominence, so too did the success of its graduates in securing a clerkship. Stanford Law School records date back to 1949 when Warren Christopher '49 clerked for Justice William Douglas. And many have followed in his footsteps—from Marshall Small '51 (BA '49) to Alan Austin '74 to Buzz Thompson JD/MBA '76 (BA '72) to Susan Creighton '84. And, of course, one famed former clerk rose to Chief Justice—the Honorable William Rehnquist '52 (BA '48, MA '48), who clerked for Justice Robert H. Jackson. Today, approximately 110 Stanford Law School alumni count themselves as former Supreme Court clerks. • Despite the prestige of these positions, details about Supreme Court clerkships remain cloudy, much like details about the Court itself. Still, some light can be shed on the experience, thanks to a number of Stanford Law alumni who have served as Supreme Court clerks and who shared a few of their recollections with *Stanford Lawyer*.

The application process for a Supreme Court clerkship is similar to that for any clerkship, assuming one has garnered the stellar grades and extracurricular activities that are de rigueur for such a position. It is customary to apply to all the justices, according to Ben Horwich '03, who had the unusual experience of clerking in the 2005–2006 term for Justice O'Connor and for Justice Samuel Alito following O'Connor's retirement.

"I think," Horwich recalls, smiling, "apart from being customary and respectful, applying to all the justices had the added benefit of allowing you to answer 'yes' to Justice O'Connor's inevitable question, 'Did you apply to all the justices?' She was very concerned that applicants treat the process and the justices with that sort of evenhanded respect."

Once the applications are in, the waiting begins. Some are lucky enough to be granted an interview and then offered the position while their graduation gowns are still warm. Class of 2007 graduates Jameson Jones, David Thompson, and Lindsey Powell have already heard that they will be clerking at the Court in the 2008–2009 term: Jones and Thompson for Justice Antonin Scalia and Powell for Justice John Paul Stevens.

Others must wait a little longer. Chris Walker '06 applied to all the justices in 2006 and didn't get an interview.

"Then, out of the blue I got a call to interview with Justice Kennedy for the following term, months before I thought the interview cycle would begin," says Walker. He interviewed in April and got an offer a couple of days later for the 2008–2009 term.

Hearing the news that one has been selected for an interview kicks the process into high gear, especially for those who will meet with one of the more demanding justices, such as Justice Scalia. According to one alum who prefers to remain anonymous, the justice likes to meet with a candidate first for a 20- to 30-minute informal chat, which is relaxed and gives him a feel for his potential clerk's personality and legal reasoning.

Then it's time for the infamous "Scalia clerk grilling," which has been compared by some to an oral final, the topic being "law, all of it." The Scalia clerks enjoy having a spirited tag-team debate with the candidate, covering everything from statutory interpretation to *stare decisis* to the background of the Constitution.

Walker also underwent a "clerk grilling" before interviewing with Justice Kennedy—but it didn't dim his memory of that first meeting. "We talked substantively and personally, and it was an incredible experience. Justice Kennedy is such a kind and caring person and the interview was inspiring."

A phone call from the justice

extending the offer is next. Kelly Klaus '92, who clerked for Justice Kennedy in the 1995–1996 term, says he's sure receiving the call felt much better than being hit by lightning. Eric Feigin '05, who is clerking for Justice Stephen Breyer (BA '59) in the 2007–2008 term, says that receiving the call "was kind of surreal and definitely took a while to sink in." David Cooper '04, who clerked for Justice Kennedy in the 2005–2006 term, says he felt a little stunned: "Not quite struck by lightning, more like a big shot of static electricity."

Strict rules of confidentiality prevent the clerks from sharing much detail about their actual work at the Court. In general, however, there are three main aspects to the job, according to

Cooper—reviewing petitions for certiorari and writing memos for the "cert pool"; writing bench memos on pending cases and discussing cases with the justice; and assisting in drafting opinions.

As for the subjective experience, Horwich says, "In a way, it's this amazing thing to be advising the top judges in our country on the biggest legal issues there are." He adds, however, "On another level, it is just your job. And at the end of it all, you are only there for a year and then you move on. You are just a small part of it all."

Still, clerking at the Court has unquestionably been a highlight of these alums' legal careers. Klaus says, "It was the most rewarding professional

experience I've ever had. I loved every minute of it." And Joshua Lipshutz '05, who clerked for Justice Scalia in the 2006–2007 term, notes that it exceeded even his highest expectations.

Clerking has some more tangible benefits as well. There are, for example, those \$250,000 signing bonuses recently reported by *The New York Times*, which clerks receive when hired by certain law firms. And most former clerks report experiencing a "halo effect," a feeling that they are accorded instant intellectual respect and given better opportunities—or the opportunities come sooner—than they otherwise would. Klaus agrees but adds a cautionary note: "It certainly is a powerful door-opening credential. What you do after you walk in the door, of course, has nothing to do with that clerkship or any other."

But can anything really compare with clerking for the Supreme Court? Julian Davis Mortenson '02, who clerked for Justice David Souter in the 2003–2004 term, says, "It was an amazing time, but you move on and start looking to contribute in new ways." Klaus and Horwich echo that sentiment, both doubting that clerking would stay as interesting and challenging over the long haul as practicing law.

In contrast, Thompson and Michelle Friedland '00 (BS '94), who clerked for Justice O'Connor in the 2001–2002 term, say they can't imagine anything more exhilarating than clerking at the Supreme Court—other than perhaps actually being a Supreme Court justice.

Such an outcome for any of these clerks certainly would not be all that shocking. **SL**



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