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The Clerkship-Academia Continuum

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In the spring 2021 edition of *Judicature* (Vol. 105 No. 1), Florida International University Law Professor Howard Wasserman published data analyzing the number of current law professors who have served in clerkships and for which judges those professors clerked. His study offered a compelling picture of “academic feeder judges,” or those on the bench whose clerks tended to matriculate professionally in large numbers within the halls of the academy. Among his many findings, Wasserman noted that a large percentage of those former-clerks-turned-law-professors clerked for a relatively small number of federal judges, that those judges were mostly appointed by Democratic presidents, and that many top “feeders” had served as academics themselves.

Wasserman maintained that the relationship between clerkships and academic jobs is correlative, not causal. But his study, at minimum, amplified the general assumption that a federal clerkship is, if not a direct line to an academic job, a high-value credential for any young lawyer aiming for a path to university placement.

We asked two law professors, **MERRITT MCALISTER** at the University of Florida, and **KATHERINE MIMS CROCKER** of William & Mary Law School, to reflect on Wasserman’s findings and to offer a personal account of how their clerkships shaped their lives. Their essays follow. — *Editors*

The privilege and responsibility of clerkships

I’m an accidental academic — and clerking for a federal judge has everything to do with it. I didn’t attend Harvard, Yale, or Stanford for law school (or any other school within the top 10 or 20 of the *U.S. News & World Report* annual rankings). I didn’t complete an academic fellowship or earn an advanced degree (other than my J.D.). I didn’t clerk for a lower court feeder judge on any of Professor Howard Wasserman’s very interesting lists. And yet I have a tenure-track job at a top public law school teaching subjects I love, writing about the federal appellate court system, and mentoring students about ►

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clerkships. I'm a statistical anomaly of sorts (that is, last year only three of 88 entry-level academic hires arrived without a fellowship or advanced degree and only a clerkship).¹

The accident — a happy one — of my being an academic was made possible (perhaps entirely) by the equally unlikely event that Justice John Paul Stevens would select me as his law clerk for his final term on the Supreme Court of the United States. Justice Stevens, of course, is on Professor Wasserman's list of top Supreme Court academic feeder judges. But my path to Justice Stevens was atypical — and I tell my story here to underscore the enormous privilege that clerking confers and the responsibility of federal judges to bestow that privilege thoughtfully.

I am a proud graduate of the University of Georgia School of Law and a proud former law clerk to Judge R. Lanier Anderson III of the U.S. Court of Appeals for the Eleventh Circuit. I had incredible professors who encouraged me to think deeply about the law and to reach far — indeed, to aspire to clerk on the Supreme Court. My experience with Judge Anderson taught me to focus carefully on the record and about the limits of judging within a system of precedential constraint. I also learned that, if all federal judges are cut in Judge Anderson's mold, they are kind, thoughtful, good people trying to do their best in a difficult job.

Once I got over a healthy dose of imposter syndrome, I realized that I could do the work of being Justice

Stevens's law clerk, too. I was as good a lawyer and writer as many of my law-clerk peers (though not all — I worked with some truly dazzling legal minds). Where we went to school and for whom we clerked before mattered less than where we were then; the flash of lightning that brought each of us to One First Street for a year was an equalizer.

And it was, truly, a lightning strike. I counsel students at the University of Florida Levin College of Law who are as talented as I who will never see the inside of a justice's chambers at the Supreme Court. And it is an accident of circumstances that will set their career path in one direction and that set mine in another. The chance that Justice Stevens pulled my application from the pile changed the course of my career and, frankly, my life. It's something I don't always talk about in such blunt terms — even when advising students who are interested in serving as law clerks to federal judges. Clerkships — especially clerkships at the highest level of our federal system — open doors to opportunities that allow for career choice and freedom. I am an academic because Justice Stevens hired me. The value of that elite credential has far outweighed the very sizeable bonus I earned for it when I entered private practice after clerking. The privilege — in every sense of the word — that comes with clerking is enormous. Clerkships open career doors that sometimes remain closed to those without it; Professor Wasserman's academic feeder judges' data under-

score that observation. Former law clerks to elite federal judges — myself included, now — don't become law professors because they were law clerks, necessarily, but those credentials perform signaling functions and create networks and opportunities that those without the same credentials often must work harder to achieve.

That's not to say that non-clerks don't get hired for all sorts of fantastic jobs, including academic ones; of course, they do. But the clerkship creates a glide-path for some of us. I try not to take that for granted for even a second. I am the beneficiary of enormous privilege — privilege that allowed me to be a statistical anomaly. Privilege I owe to Justice Stevens and, before him, to Judge Anderson, who both took a chance on me, despite the fact that I didn't take the traditional path to either of those opportunities. Sometimes clerkships perpetuate privilege because they go to those for whom many doors are already open. Sometimes they open doors anew. For me, it was the latter. And there's not a moment I'm not grateful for it — and cognizant of how lucky I am to have the best job in the world (short of, perhaps, being a federal judge).



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¹ Sarah Lawsky, *Spring Reported Entry-Level Hiring Report 2020*, PRAWFSBLAWG, May 15, 2020, <https://prawfsblawg.blogs.com/prawfsblawg/2020/05/spring-reported-entry-level-hiring-report-2020-1.html>.

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Creating a community of collaborators

Serving as a law clerk was integral to my becoming a law professor. I was very fortunate to clerk for Justice Antonin Scalia of the Supreme Court of the United States and Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit. After a few years of private practice, I pursued an academic fellowship at Duke Law School, and I'm now an assistant professor of law at William & Mary Law School.

Both Justice Scalia and Judge Wilkinson have had numerous clerks turn into academics (as Professor Howard Wasserman's article reflects), and my experience working for them revealed some possible reasons why. Both judges are known for their written opinions. Their rigorous drafting processes showed me the investment necessary to create such complex pieces. Both judges are also known for their own scholarly achievements, and I learned a great deal about thinking beyond current doctrine by watching how they approached issues. Justice Scalia, for example, was eager to debate a wide range of considerations, and Judge Wilkinson was able to see points that often eluded others.

Multiple aspects of interacting with Justice Scalia and Judge Wilkinson themselves contributed to my desire and eventual ability to become a law professor. But one of the most significant ways in which my clerkships

influenced my professional journey came through the vibrant exchange of ideas that the judges fostered throughout their chambers — and, at the Supreme Court, among chambers. Justice Scalia drew all his clerks around his desk for intense discussions about case details. Judge Wilkinson encouraged us to help hone one another's work product, and we became earnest editors. No matter how well I thought I had studied a case, no matter how well I thought I had drafted an opinion assignment, my co-clerks helped make my understanding deeper and my composition better.

Two of my co-clerks — Matthew Shapiro and Aaron Tang — worked for Judge Wilkinson with me and then went to work at the Supreme Court the next year as well. They both became law professors, too, and I continue to count them among the smartest and most thoughtful people I know. Other clerkship colleagues have gone on to become state solicitors general, leaders in the civil-rights and environmental fields, heads of law-firm litigation groups, parents of more adorable (and articulate) children than I can count, and so much more. It's an impressive and inspiring group of people, and I continue to benefit from all they've taught me.

Ideological divides, it bears mentioning, were far less relevant to how the clerks on either court engaged with each other than one might assume. Iron can sharpen iron regardless of where it comes from. While I went on from Judge Wilkinson's chambers to clerk for Justice Scalia, for instance,

Matt went on to clerk for Chief Justice John Roberts, and Aaron went on to clerk for Justice Sonia Sotomayor.

For me, academia provides a way to replicate the collaborative and cross-cutting intellectual culture I experienced while clerking. As a law professor, I get to work every day with brilliant and inquisitive colleagues seeking to make sense of a world that often seems senseless. And I get to assist a wonderful set of students in crafting career paths as rewarding as the one I have been privileged to pursue.



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