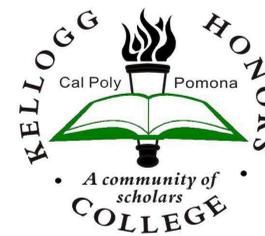




# Do Attorneys Matter: A Deeper Look at Supreme Court Decision-Making



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## Abstract:

The Supreme Court is the ultimate decision maker in determining what laws we follow in our everyday lives, but is the Court's opinion affected by the parties who present cases to the Court? This paper examines whether attorneys within the last decade have been able to affect the outcome on cases that are partisanly divided in the Supreme Court. This paper will argue that when a politically polarized issue is heard before the Supreme Court, the justices are more likely to be influenced by their own previously held political beliefs as opposed to the argument made by the attorneys before the Court. This study uses quantitative analysis, specifically a content analysis, focusing on oral arguments that have been heard before the Supreme Court. Through this analysis, I was able to find that an attorney does not have an effect, especially in cases that are partisanly divided. Justices in the Supreme Court are basing their decisions off of issues they know to be true or off their own interpretation of the Constitution. Therefore an attorney's oral argument is not the primary reason for a justice's decision making.

## Argument:

When a politically polarized issue is heard before the Supreme Court, the justices are more likely to be influenced by their own previously held political beliefs as opposed to the argument made by the attorney's before the court.

## Methodology:

Content analysis of 100 Supreme Court cases w/ top 3 attorneys  
-Paul D. Clement, Edwin S. Kneeder, and Michael R. Dreeben  
-Cases between 2006-2016  
Supreme Court cases coded for:  
-How the liberal justices voted  
-How the conservative justices voted  
-The similarities between the oral argument & opinions  
-The number of implied questions the Justices asked  
-Whether the case is politically polarized

## Question:

Within the last decade, are attorneys in the Supreme Court able to affect the outcome of partisan cases?



## Literature Review:

There are three key ways that studies have utilized in terms of Supreme Court decision making: the attitudinal, the legal/professional and the rational choice model. The attitudinal model, it states that judges decide cases in terms of their ideological attitudes and biases to reach a conclusion or outcome for the case presented to them. The legal/professional model argues that judges use facts and law in order to decide the outcome of the case. Rational choice is weighing cost and benefits against one another to determine what is better for the people, as well as the society. The Supreme Court can be influenced by a number of different things, a few influences can come from public influences, amicus curie briefs, and arguments from the solicitor general. These impacts however, are relatively weak. The clerks in the Supreme Court offices agreed that many amicus curiae briefs are a waste of time and money. There is literature out there to suggest that an attorney's oral argument does have an effect on the Supreme Court justices that effect differs in significance. A Justice's position fluctuates constantly throughout the process before they cast their final vote, therefore the vote can be influenced by an outside effect. Oral arguments can assist Justices in understanding complex legal or factual issues. Oral arguments are needed in order to demonstrate new information that a Justice was not aware of before. How an attorney presents their position during their oral argument is key to the outcome they receive from the Justices. We have seen throughout time that changes have occurred in the Supreme Court, one of those changes is shortening the amount of time an attorney gets for an oral argument, and it has been found however that this does not have a dramatic effect on the outcome of the case.

The literature talks about ways that an attorney could have an effect in the Supreme Court and ways that they do not have an effect. First, looking at the ways that an attorney may have an effect, the literature says that attorneys can assist justices in understanding complex legal or factual issues. The attorney can also have an effect, based upon how they present their case. If an attorney presents their case with confidence and they are prepared then they are more likely to have an influence on the Supreme Court. The last way that an attorney can be influential is through credibility. Credibility means that an attorney is likely to have more of an impact on the Supreme Court if they are more experienced/appeared in front of the Supreme Court more times. The literature says that it is also possible for attorneys to not have an effect on the Supreme Court. The evidence for this was shown by the oral arguments for attorneys being cut substantially throughout the years. Despite this cut in time, the decision-making of the Supreme Court justices did not seem to be altered. Lastly, an attorney may not have an effect because they are constantly asked questions. The attorney cannot anticipate what questions are going to be asked of them and they end up being thrown off. This eventually leads to the justices arguing with one another and no longer being impacted by the attorney.

## Results:

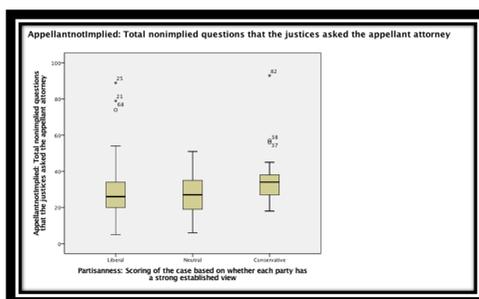
Does issue polarization affect the way the justices voted?

	F-value	Significance
The number of conservative justices who voted YES	11.390	.000
The number of conservative justices who voted NO	13.087	.000
The number of liberal justices who voted YES	40.122	.000
The number of liberal justices who voted NO	41.144	.000

Does the issue polarization impact whether or not the decision is unanimous?

	Value	Asymptotic Significance (2-sided)
Pearson Chi-Square	10.687	.005

	F-Value	Significance
Questions that were asked to the Appellant that were NOT implied	1.714	.029



## Conclusion:

Based on my data an attorney does not have an affect on the Supreme Court, especially when the case is partisanly divided.

One-way ANOVA between Issue Polarization and Appellant Implied

	F-Value	Significance
Questions that were asked to the appellant that were implied	.875	.634

One-way ANOVA between Issue Polarization and Appellee Implied

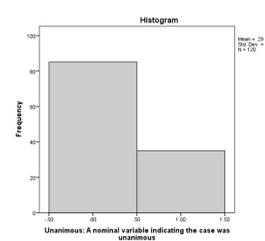
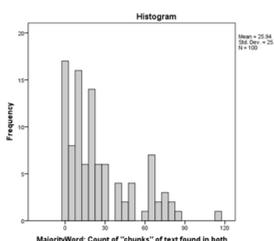
	F-Value	Significance
Questions that were asked to the appellee that were implied	1.033	.434

One-way ANOVA between Issue Polarization and Appellee Not Implied

	F-Value	Significance
Questions that were asked to the appellee that were NOT implied	1.019	.464

One-way ANOVA between Issue Polarization and Word similarities in Opinions

	F-Value	Significance
Majority Word	.453	.637
Concurring Word	1.629	.205
Dissenting Word	.327	.722



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