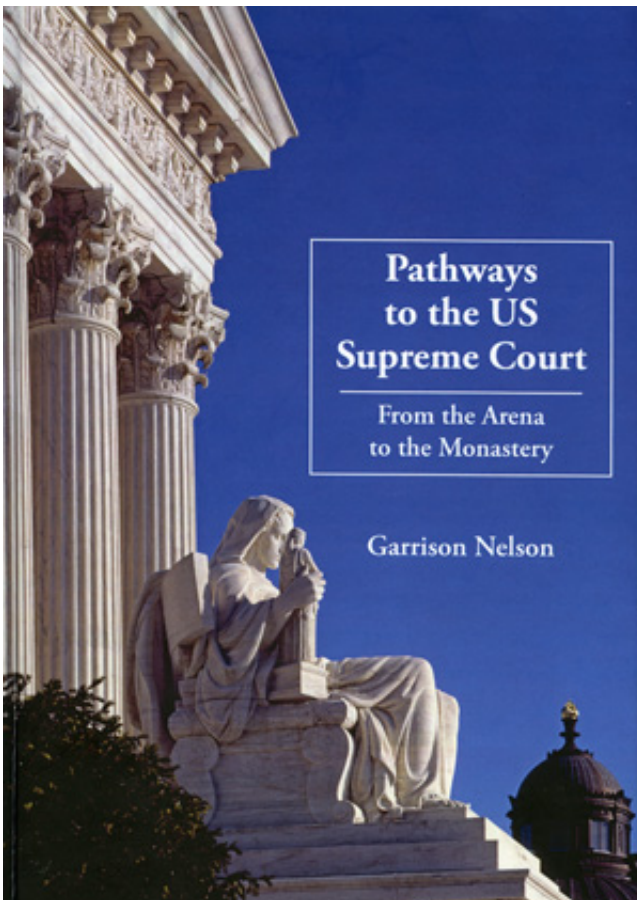


Path to supreme court runs through 'judicial monastery'

January 23 2014, by Jon Reidel



There was a time when awaiting a decision by the United States Supreme Court actually held some suspense. That ended in 2006, says Professor Garrison Nelson, the first year when all nine justices came from federal

judgeships and, after a lengthy grooming process, had been nominated based heavily on ideological leanings. Since then, decisions have become predictable for even the casual court observer. How and why the court became that way, however, remains a hotly debated topic.

Nelson, professor of political science, tackles this issue in his new book, *Pathways to the U.S. Supreme Court: From the Arena to the Monastery*, by providing a detailed history starting in 1789 of how all 112 Supreme Court justices reached the nation's highest court. By placing justices into four categories, Nelson shows how the court evolved from individuals with life experience outside the judiciary to one with political ideologues vetted through a process starting in law school and ending with an appointment to the Supreme Court via a federal judgeship, also known as the "judicial monastery."

"Justices used to be non-judicial careerists with more life experience taken from a broader 'arena' like Congress, the cabinet, or governorships who had to answer to voters and face scrutiny," says Nelson, adding 44 of the first 88 Supreme Court nominations were previously governors, senators, members of the House or cabinet members. "They knew the full dimensions of the American political process, were sensitive to public opinion, and would do 'the right thing;' whereas justices who have remained in the 'monastery' of the judiciary are cloistered from the real world of American politics, bury themselves in legal minutiae and seldom see the whole picture."

Nelson's four paths to the Supreme Court include a collateral route (former members of the House, Senate, cabinet members, and governors); diagonal (second-tier post like solicitor general or other sub-cabinet posts); and vertical (former judges from the 'judicial monastery'). Some justices took a non-governmental external career path through private law offices or as academics at [law schools](#). The overwhelming majority (47.3 percent) took the vertical route via the

'judicial monastery' – a term coined by President William Howard Taft while describing his future career as a chief justice – followed by collateral (30.4); diagonal (11.6); and external (10.7).

"There's a naiveté to justices on the court today who are a product of going straight to law school, to the Justice Department, to a clerkship, to being a low-level judge and then to a federal court," says Nelson. "You are in your own bubble with actual real-world experience."

Law schools as ideological vetting grounds

Because ideological reliability has become a major criterion for service on the Supreme Court, Nelson says there is no better place to establish it than in the nation's law schools. A select number have become "early ideological vetting grounds" for potential conservative judges, he says, thanks in part to the establishment of the Federalist Society for Law and Public Policy Studies in 1982 at Yale Law School by young conservatives. The organization spread quickly to other elite law schools, adding to the exclusiveness of a farm system that relies heavily on the Ivy League, producer of 17 of the last 25 Supreme Court judges including 10 from Harvard and six from Yale.

Nelson takes the vetting process one step further by pointing out that every year a few outstanding young law school graduates are asked to clerk for Supreme Court justices with no fewer than six of the 14 justices who served between 1992 and 2013 having clerked for prior Supreme Court justices.

"They have basically created a pipeline from law school to the Supreme Court, which will eliminate any surprises," says Nelson, adding that Democrats don't have a similar system in place because they have never treated the Supreme Court as seriously as Republicans. "With the Federalists placing their members into judicial clerkships and low level

posts in the government, their members learned how the beast operated. As the experience of their members grew and their networks expanded, better placements could be found for them and no better place existed than in the Justice Department when it was headed by Republican Attorneys General."

Considering that chief justices Burger and Rehnquist followed this path, Nelson says it should come as no surprise that current justices Scalia, Roberts, and Alito also served under Republican attorneys general, while Clarence Thomas followed a convergent path via the Equal Employment Opportunity Commission.

"All four had been vetted as solid conservatives long before they faced the microphones and cameras of the Senate Judiciary Committee," writes Nelson, who traces the beginning of the shift of the Supreme Court to President D. Dwight Eisenhower telling his attorney general to nominate only judges. "The key finding in this book is not that being a federal judge made a Supreme Court justice more conservative, but that being a conservative increased the possibility that one could become a federal judge and even a Supreme Court justice when those seats opened in Republican administrations."

A book 50 years in the making

Nelson credits his former boss U.S. Sen. Patrick Leahy, for whom Nelson worked during Leahy's 1974 senatorial campaign, for inspiring him to write the book. "There are logical reasons why presidents increasingly have turned to the judicial monastery in choosing candidates for our highest courts, breaking with the earlier pattern of drawing from wider life experiences," writes Leahy, who has participated in 15 Supreme Court confirmation hearings. "For years, for the good of the Court and the country, I have urged presidents to cast a wider net. Garrison Nelson brings into sharp focus this trend, the context, and the

implications for the Court and the country. His findings could not be more timely or more important."

In many ways, Nelson's latest book is the one he's wanted to write since penning his first tome in 1966 as a graduate student. He's spent his career as a congressional expert, compiling the definitive seven-volume set Committees of the U.S. Congress, which covers every member's committee assignments and actions from 1789 to 2010. But that's not how he planned it. His first love was judicial process, which he was hoping to study at the University of Iowa.

"I read an article about the Supreme Court as an undergraduate at Boston University by a professor at Iowa named John Schmidhauser," recalls Nelson. "I said I'd love to study under this guy, so I pack up and move to Iowa City in 1964 to study judicial process. When I got out there, I was told that Schmidhauser was running for the U.S. House of Representatives, but that I shouldn't worry because he was going to lose against an incumbent."

As it turned out, Schmidhauser pulled out a shocking win against the seven-term Congressman. In the meantime, Nelson had signed up for a Constitutional law course and never looked back. "Had he not won, I would have been a judicial guy like my grandfather who was a lawyer. This book is a return to my first love."

Provided by University of Vermont

Citation: Path to supreme court runs through 'judicial monastery' (2014, January 23) retrieved 11 May 2024 from <https://medicalxpress.com/news/2014-01-path-supreme-court-judicial-monastery.html>

This document is subject to copyright. Apart from any fair dealing for the purpose of private

study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.