Greetings to friends and alumni of the Department of Political Science at the University of Vermont! After a very snowy winter and a very rainy spring, we have said goodbye to our graduating class of students and are looking forward to welcoming our incoming and returning students in the fall (after a sunny and warm summer, of course). In the upcoming academic year, the department will again be able to offer a nice variety of law-related courses, taught by our core public law faculty. It is my pleasure to inform you that Alec Ewald, one of our public law colleagues, was recently promoted to Associate Professor with tenure. Alex Zakaras, who teaches courses in the political theory area, was also promoted to Associate Professor with tenure. Confusing name similarity aside, Alec and Alex are fantastic colleagues, teachers, and scholars, so their promotions are very well deserved. We were also pleased to welcome Martha Thomas to our faculty this year. Martha received her Ph.D. from Penn State in 2010 and joins us to teach in the international relations field. She’s already proven to be a great addition to our faculty.

Each year in this newsletter I find myself noting that although Alec Ewald, Ellen Andersen, and I comprise the formal core of public law faculty in the department, many of our colleagues have research and teaching interests in law-related areas as well. This year is no different. Two such colleagues have contributed short pieces to this newsletter. In a piece co-authored with a former student, Garrison Nelson examines President Nixon’s legacy on contention in the Supreme Court appointment process. Peter VonDoeppe explains variation in government interference with judiciaries in African countries.

In addition, as in previous years, I have asked two students to contribute pieces to this newsletter as well. Allison Lehrer (UVM ’11) discusses the need for increased female representation on the federal judiciary, in a piece based on her award-winning honors thesis. Katie Levasseur (UVM ’12) recounts her
involvement in spearheading a successful effort to amend the Constitution of the State of Vermont. These two students represent just a slice of the impressive work that many of our students do inside and outside of the classroom.

Yet again this year, we have a number of recent graduates going on to law school and graduate school in the fall. Our students have been admitted to many law schools across the country, including Georgetown, Tulane, Wake Forest, Pepperdine, Suffolk, Villanova, Miami, and Northeastern, among many others. Information we have received from many of you about where you went to law school and your subsequent professional experiences has been very useful for us in our pre-law advising capacity. In addition, I am particularly appreciative to those who have offered to be available to our current and future students for pre-law advising purposes. If you would like for me to add you to my list of alumni contacts for current or future students in the Political Science Department, please let me know. Also, law-related internship experience is very valuable to our students interested in pursuing related careers. If you would be able to and are interested in bringing in student interns, please let me know.

As always, I am pleased to have an opportunity to keep in touch with our alumni, and hope to keep you informed of any speakers or events of interest to you in the coming year. I have been delighted by our alumni’s interest in our pre-law advising program and in assisting our students. Please feel free to contact me (Lisa.M.Holmes@uvm.edu) with any questions or suggestions, or to let me know what you are up to or if your contact information has changed. Enjoy the summer!

Lisa Holmes
Associate Professor and Pre-law Advisor

From the Student Perspective ........

Female Judges on the Federal Courts

Allison Lehrer (UVM ’11)

A president has the opportunity to leave a lasting legacy on policy and government through the lifetime tenured judges he appoints to the federal court system. Throughout U.S. history, the “traditional” appointee has been the white male; however, since President Carter signed Executive Order 11972 in 1977, presidents have been committed to appointing qualified female and minority candidates. The commitment to women has become particularly strong at the highest level of the judiciary – three of the last four nominees to the Supreme Court have been female. This pattern of appointments suggests there is a desire to actively recruit women judges to the federal courts, but leaves little explanation as to why. To attempt to answer this question I have applied four dimensions of political representation, as outlined by Hanna Pitkin, to female judges in the federal judiciary.

Though representation theories are most often applied to legislatures, it is also appropriate to apply it to our court system, as the judicial branch is part of representative government. Pitkin defines four types of representation. Formalistic representation analyzes the way the representatives obtained the position. Because the president appoints judges, we can understand why a female judge was selected based on his motivation. Descriptive representation analyzes the resemblance of the representative to his constituents. For female judges in the judiciary, the analysis is twofold – one, do the backgrounds of female judges resemble those of traditional federal judges, and two, does the percentage of female judges in the federal courts resemble the percentage of women in our population? Symbolic representation analyzes the constituents’ reaction to the representative. If a female judge were a symbolic representative, she would convey some greater meaning than simply being a judge – does she become a role model for young women, or does she
perhaps increase the legitimacy of the judiciary? Lastly, substantive representation analyzes the activities of the representative. Once he or she obtains office, does the representative further the interests of his constituents? The substantive representation analysis for the judiciary seeks to determine if female judges are generally more sensitive to women’s interests than male judges. Through my analysis of female political representation in the federal judiciary, I have determined that the presidential commitment to appointing women to the courts must grow.

The formalistic analysis concludes that presidents appoint women judges to ultimately court women voters. By adding females to the federal courts, presidents are attempting to please interest groups who in return will mobilize key constituents for the president. For Democratic presidents, it is easier to increase diversity while furthering their ideological agendas, as there is a larger pool of liberal female judges. Republican presidents often forgo diversity in exchange for creating a more conservative bench, but as the number of conservative females increases, this tradeoff will likely dissipate.

The descriptive analysis concludes that female judges have similar backgrounds to their male counterparts. Though there is a fear that nontraditional (non-white male) judges will be less qualified, female judges have more or less the same educational background and level of wealth, and slightly more judicial experience. Despite similar qualifications, females are only about 29% of federal court judges. This is vastly unrepresentative of the percentage of females in our population.

The symbolic analysis suggests that it is important to have female judges because they create role models for young women as well as for women looking to get involved in the legal institution. The effect for young women is greatest for the courts with highest visibility, while the presence of women judges in the lower courts sends a particularly strong message to females with an interest in law and government. The effect of female judges on legitimacy in the judiciary is unclear, and I suggest more research be done to reach a solid conclusion.

Finally, the substantive analysis finds that women are more likely to find for the plaintiff in sex discrimination cases. On the circuit courts and Supreme Court, where multiple judges preside, the presence of one female has a statistically significant influence on the male judges in the panel. When a female judge is present, male judges will be more likely to vote for the plaintiff is sex discrimination cases as well. Though sex discrimination cases are only a small portion of the federal docket, any difference in jurisprudence suggests that female judges are necessary to achieve a more fair judicial system.

The findings for formalistic representation suggest that some commitment to appointing females will always exist in order to court voters; however, the current rate of appointments is not adequate. Though close to 50% of Obama’s appointees have been female, women still remain a minority (around 29%) of federal court judges. Due to the substantive, symbolic, and descriptive implications of having female judges in the federal judiciary, future presidents must be committed to eliminating the gap between the percentage of females in the population and the percentage of federal female judges. Though we have significantly increased female judicial representation since the Carter Administration, this should not distract us from the fact that there is still progress to be made. As Justice O’Connor has said, “Despite the encouraging and wonderful gains and the changes for women which have occurred in my lifetime, there is still room to advance and to promote correction of the remaining deficiencies and imbalances.”

Allison Lehrer is from New York City. She is the recipient of the 2010 Alan Wertheimer Outstanding Honors Thesis award and is the co-recipient of the 2010 Departmental Prize for American Politics. This article is based on her honors thesis, entitled “Diversity on the Bench: The Appointment of Women to the Federal Courts.”
**Amending the Vermont Constitution**

Katie Levasseur (UVM ’12)

In November of 2007, I was encouraged to pursue an internship opportunity, the Girls Rock the Capitol Legislative Internships, through the Girls Scout Council of Vermont (now the Girls Scouts of the Green and White Mountains). A senior at St Johnsbury Academy in St Johnsbury, Vermont and dead set on pursuing a physical therapy degree in college, I was quite the skeptic. With the strong encouragement of my government teacher, I applied, and was very surprised when I was accepted to the program. I had always been interested in government, especially since taking AP Government and participating in We the People, but had never really considered it as an area of focus, after all, I was going to be a physical therapist!

Within two months of starting the internship during the spring 2008 legislative session, all of that changed. At our Girls Rock the Capitol meetings, we discussed politics, legislation, and elections. Somewhere in the discussion of the primary elections, it occurred to me that my birthday fell at the end of October, and I would not be eighteen until just a few days before the 2008 presidential election, but the primary elections were scheduled for September. I was heartbroken. What about MY voice in the primary elections? Shouldn’t I be able to help my party choose our general election candidate? Two of the other Girls Rock the Capitol interns and I put our heads together on the issue, and decided that we wanted to do what Maryland and approximately a dozen other states had done. We wanted to make the change to allow anyone who attains the age of eighteen by the time of the general election to vote in the primary elections.

On the recommendation of our Girl Scout advisor, we approached Senator Jeanette White of Windham County with our idea. It was Senator White who told us that in order to make this possible, we would have to amend the Vermont Constitution. In order to do so, a bill must originate in the Senate, receive a two-thirds vote, and then receive a majority vote in the House. It also must be re-passed by majority votes by a newly elected legislature first in the Senate, then in the House. It then must be passed by a majority of the state’s voters via ballot referendum. Only Senates elected during non-presidential elections may initiate amendments. By chance, we had proposed the amendment to Senator White at the exact right time.

Senator White brought the bill (known as PR 5) up in the Senate Committee on Government Operations, and the bill began rolling. That spring, I testified in front of both the House and Senate committees on Government Operations. I also tracked the roll-call vote in both the House and the Senate. From conversations with members on the different committees and from the questioning I underwent while testifying, I found that for the most part, people did not see the need for such an amendment. I became the “poster-girl” of that need.

In the fall of 2008 I traipsed off to Simmons College in Massachusetts to become a physical therapist. In my second semester there, I happily transferred into their political science department, and in the fall of 2009, I gladly transferred home to UVM. PR 5 was instrumental in my decision to change my major, and my decision to ultimately complete my undergraduate education at UVM.

In the 2009-2010 legislative sessions, the bill passed the House and Senate again. In the spring of 2010, I was able to intern with Senator White and spend a significant amount of time testifying on the amendment again, as well as lobbying individual senators and representatives who had voted against the bill in 2008. When the amendment became more well known in 2010, I was surprised to battle a lot of opposition from many town clerks, many of whom viewed the amendment as unnecessary and more work for them. Nonetheless, I was ecstatic when the bill passed both houses again in 2010.
The biggest challenge by far was the general public referendum. I wrote several letters to editors of Vermont newspapers, started a Facebook campaign, and had a brief interview with VPR to raise awareness of the issue. On election night, when the votes were tallied, over 80% of the general public had supported the referendum, and it will now be enacted for the 2012 Presidential election.

The experience of proposing, lobbying for, and working to ensure the passage of a Vermont Constitutional Amendment has been invaluable in shaping my educational and career ambitions, which include graduating with a Masters in Public Policy and working as a public policy consultant and/or political analyst. The State of Vermont offers us a unique connection with our politicians and our political system. In no other state can you literally walk into the statehouse with an idea and have your voice heard and respected in such a capacity, especially at the tender age of seventeen.

Katie Levasseur is from Burlington, Vermont. In the fall, she will be beginning her senior year at UVM, where she is majoring in Political Science and minoring in Business Administration and Economics.

From the Faculty........

From Consensus to Conflict: Changing the Supreme Court Confirmation Process, 1937-2010.

Garrison Nelson
University of Vermont

Maggie Taylor (UVM ’08)
Teach for America, Oakland, CA

Since 1937 and the failure of Franklin Roosevelt’s “Court-packing” plan, political scientists have been conscious of the political factors that enter into the Senate confirmation of Supreme Court Justices. Although FDR may have “politicized” the process, it was not until 1968 and the election of Richard Nixon that the confirmation process truly changed and remains so today. During the past seventy years, two separate eras are identified: an Era of Consensus, 1937-1967 and an Era of Contention, 1968-2010.

It was the battle over President Lyndon B. Johnson’s nomination of Associate Justice Abe Fortas to replace Earl Warren as Chief Justice in 1968 that was the line of demarcation. Fortas was confirmed by a voice vote in 1965 only fourteen days after his nomination. He faced an entirely different political atmosphere in 1968. Johnson’s loss of popularity had led him to withdraw from a 1968 re-election bid and he was a “lame duck” at the time of the second Fortas appointment. With public opinion polls predicting a presidential triumph for Republican nominee and former Vice President Richard Nixon, anti-Warren senators engaged in a successful filibuster to block the Fortas appointment, thus guaranteeing that the next Chief Justice would be a Nixon appointee. Also lost in the 100-day Fortas battle was Johnson’s nomination of his childhood chum Federal Judge Homer Thornberry as the Associate to fill Fortas’s seat once he had been elevated to Chief. While only 58 pages of testimony were recorded in the initial Fortas selection, 1448 pages were submitted in the Fortas-Thornberry hearings.

The changes were obvious. From 1937 to 1967, twenty-three nominations were submitted and twenty-two were confirmed (95.7%). Only Republican John Marshall Harlan II’s initial confirmation was delayed. Among the nominees, there were ten “collaterals” (45.5%) – with frontline political experience – U.S. Senators Hugo Black of Alabama, James Byrnes of South Carolina, and Harold Burton of Ohio; former Cabinet members Attorneys General Frank Murphy, Harlan Fiske Stone as Chief, Robert Jackson, and Tom Clark, Secretary of the Treasury Fred Vinson, Secretary of Labor Arthur Goldberg; and California Governor Earl Warren. Four appointees were “diagonals” (18.2%) – second-line political experience – SEC Chair Douglas,
Solicitors General Stanley Reed and Thurgood Marshall and Deputy Attorney General Byron White. Six appointees were “verticals” (27.3%) – from the lower courts – Federal Judges Wiley Rutledge, Sherman Minton, John M. Harlan II, Charles Whittaker, and Potter Stewart and New Jersey Judge William Brennan. Two appointees were “externals” (9.1%) – outside the government – Harvard Law Professor Felix Frankfurter and private attorney Abe Fortas.

Conservative Republicans and Southern Democrats had become convinced that the Brown v. Board of Education (1954) decision that overturned Plessy v. Ferguson (1896) authored by Chief Justice and ex-Governor Earl Warren was decided because the Court was loaded with non-judges who had no respect for judicial precedents. Cited as examples of the non-judges were ex-Senators Black and Burton, ex-Cabinet members Jackson and Clark, ex-Solicitor General Reed and ex-SEC Chair Douglas, and former Professor Frankfurter. Only Sherman Minton had directly come to the 1954 Court from the federal bench and he was a former U.S. Senator from Indiana. It was this belief that only judges were respectful of judicial precedents that led President Eisenhower to name Judges Harlan II, Brennan, Whittaker, and Stewart in his subsequent Court appointments.

That belief dominated the Contention Era as none of the twenty-five appointments came from the collateral locations of Congress, the Cabinet or the governorships. Nineteen of the twenty-five appointments (76%) were from the lower bench – vertical nominees Arizona Judge Sandra Day O’Connor and Federal Judges Homer Thornberry, Warren Burger, Clement Haynsworth, G. Harrold Carswell, Harry Blackmun, John Paul Stevens, Antonin Scalia, Robert Bork, Douglas Ginsburg, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Steven Breyer, John Roberts (twice), Samuel Alito, and Sonia Sotomayor. The six other nominations included the two “externals” private attorneys Fortas and Lewis Powell, Jr. and four “diagonals” – William H. Rehnquist who came to the Court as Assistant Attorney General and was named twice; Harriet Miers, President George W. Bush’s White House Counsel, and Elena Kagan, President Barack Obama’s Solicitor General. Although both Fortas and Rehnquist were on the Court at the time of their nominations to be Chief, their penultimate pre-Court locations were used to classify them. Elena Kagan is the first non-judge confirmed by the Senate since Rehnquist’s initial confirmation in 1972.

During the Consensus Era, only four of the twenty-three nominations (17.4%) – Harlan II’s reappointment and the initial ones of Brennan, Whittaker, and Stewart – were made during a time of divided government when Republican President Eisenhower faced a Democratic Senate. Bipartisan consensus was so high during that era that Democratic presidents Franklin Roosevelt and Harry Truman appointed Republicans – Harlan Fiske Stone as Chief and Harold Burton as Associate respectively and Republican Eisenhower named Democrat Brennan to the Court.

During the Contentious Era, twelve of the twenty-five nominations were submitted by Republican presidents to Democratic Senates (48%). While all 22 nominees were confirmed in the consensus era – with only one delay; only seventeen of the twenty-five nominees in the contention era were confirmed (68%). Four nominations were rejected outright – Abe Fortas as Chief, Clement Haynsworth, G. Harrold Carswell, and Robert Bork and four were withdrawn – Homer Thornberry, Douglas Ginsburg, Harriet Miers, and John Roberts’ initial appointment as Associate. Roberts would later be confirmed as Chief Justice. Divided government accounted for three of the voted rejections – Haynsworth, Carswell, and Bork and one of the withdrawals—Douglas Ginsburg.

Voice votes confirmed fifteen nominations in the Consensus Era while no voice vote occurred after 1965 as each of the 21 nominations had recorded votes. In the seven record votes of the Consensus Era, an average of 77 senators voted with 11.86 negative votes while the average number of recorded votes in the Contentious Era was 96.29 with 22.43 negative votes. The mean number of days from presidential submission to first Senate hearing in the Consensus Era
was only 15.1 days and the mean number of days elapsing from submission to final Senate action was only 27.3 days while in the Contentious Era though the means of elapsed days from submission to initial hearing were 28.81 days and 60.04 days to final action. Greater time meant closer scrutiny as revealed also in the number of pages of Senate testimony and committee reports which grew from a mean of 88.3 pages in the Consensus Era to 1166.1 pages in the Contentious one.

Richard Nixon who campaigned against the Supreme Court in 1968 wished to change its composition and its selection procedures and the contention that he brought to the process remains in place today. The disappearance of elected officials and their replacement by a Court comprised almost solely of federal judges is yet another of the negative legacies of the Nixon era.

Garrison Nelson is Professor of Political Science and a member of the department since 1968. His latest books are the co-authored “The Austin-Boston Connection: Five Decades of House Democratic Leadership” (Texas A+M University Press, 2009) and Committees in the U.S. Congress, 1993-2010 (CQ Press, 2010), the 7th volume in his compilation of congressional committee assignments dating back to 1789.


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Why Do Governments Interfere with the Courts in Some Places and Not Others? Some Insights from Africa.

Peter VonDoepp
University of Vermont

One of the key challenges for societies moving from authoritarian to democratic forms of rule concerns the development of viable and effective judicial institutions. The rule of law is of course critical for the consolidation of democracy. And independent and autonomous judiciaries are a key means toward that end given their potential role in checking other branches of government and protecting individual rights. Yet governments in transitional polities are not always willing to allow judiciaries to exercise their authority in an unfettered manner. In some contexts the courts are the target of open interference or more subtle forms of manipulation that undermine their potential to play an independence role in the political system. In others, however, governments exercise more restraint, allowing the courts more opportunities to contribute to democratic governance.

A team of scholars from the University of Vermont and Beloit College recently conducted research in five newly democratic countries in Africa to understand this issue more fully. The team began by examining the actions of different governments toward judiciaries, specifically assessing the extent of interference that the courts had experienced under different administrations. We found great variance across countries. In Uganda, for example, the courts have experienced very high levels of interference, including efforts to remove the legal authority of the courts, irregular appointments of individuals to the bench, open threats against judges, and even physical harassment of judicial personnel. In Namibia, by contrast, the courts have enjoyed relatively high levels of operational autonomy. Differences such as these among the cases allowed us to “rank” different governments in terms of the extent to which they
interfered with the courts. These are listed in the table below:

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Our effort to make sense of the differences among governments exposed weaknesses in existing understandings of government behavior towards the courts, and brought attention to issues that scholars had previously failed to address. Existing theory has argued that government actions toward the courts are driven largely by the larger electoral context. Our findings revealed, however, that the extent of electoral competition did not shape the behavior of governments across the different African contexts. Far more critical were two factors. The first was how “insecure” the political environment was. Where incumbents faced high prospects of being illegally displaced from power and high costs in actually losing power, government interference with the courts was far more acute. Rather than think primarily about elections, leaders in insecure African environments tend to think about the securing power in the present term, and will undermine the courts toward that end. The second factor was the extent to which the courts showed that they were willing to render anti-government decisions in political cases – thereby creating a clear and present threat to the government.

The findings remind us that power-holders may operate with very different logics in contexts where political life is more tumultuous and unpredictable – even if those contexts are also characterized by regular elections. They also highlight that judges are themselves important players in the process of judicial development – something that has not always been emphasized in much of the scholarship on judicial politics in new democracies.

*Peter VonDoepp is Associate Professor of Political Science at the University of Vermont. His research focuses on African politics with specific attention to democratization-related issues. His most recent book, “Judicial Politics in New Democracies: Cases from Southern Africa” (Lynne Rienner, 2009), examines judicial development in new southern African democracies.*