

# HARVARD AND YALE ASCENDANT: THE LEGAL EDUCATION OF THE JUSTICES FROM HOLMES TO KAGAN

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*With the confirmation of Elena Kagan as a justice of the U.S. Supreme Court, eight of the nine sitting justices have graduated from only two law schools—Harvard and Yale. This Article frames this development in the historical context of the legal education of the justices confirmed between 1902 and 2010. What this historical review makes clear is that the Ivy League dominance of the Supreme Court is a relatively recent occurrence whose beginnings can be traced to Antonin Scalia’s 1986 confirmation. Prior to that time, although Harvard and Yale were consistently represented among the justices, they did not constitute a majority of sitting members. In addition to this strictly historical assessment of the justices’ education, this Article also attempts to ascertain why the Harvard-Yale trend has arisen and whether this trend may have deleterious effects on the future of the Court. In concluding, the Article recommends that when the next vacancy arises, the president should look outside the confines of Harvard and Yale for a qualified nominee.*

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## INTRODUCTION

The rote and maddening repetition of the phrase “judicial monastery”<sup>1</sup> by Senator Patrick Leahy in his press conference reacting to the nomination of

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1. By “judicial monastery,” Leahy specifically means the federal courts of appeals, where all eight of the other sitting justices had served prior to their confirmations. The term is meant derisively, and is supposed to highlight the lack of experiential diversity that sitting judges brings to the U.S. Supreme Court and their purported aloofness from the cares and concerns of contemporary America. See David Ingram, *Leahy on Managing the Kagan Hearing*, NAT’L L.J., June 28, 2010, at 6, available at <http://www.law.com/jsp/article.jsp?id=1202463059568>.

Solicitor General Elena Kagan to the Supreme Court, in which he focused on the experiential diversity she would allegedly bring to the high court, obfuscated Justice Kagan's educational similarity with the sitting justices.<sup>2</sup> The nomination may not have gone to an alumnus of a federal appellate court, but it was bestowed on an Ivy League law graduate for the tenth consecutive time, dating back to Justice Scalia's 1986 confirmation. Even this phrase hides more than it clarifies, as out of these ten nominations, nine have been Harvard or Yale law graduates, while Justice Ginsburg attended Harvard Law School before transferring to, and graduating from, Columbia Law School.<sup>3</sup> The confirmation of Justice Kagan now marks the first time in the history of the Supreme Court that all nine sitting justices have been graduates of Ivy League law schools.<sup>4</sup> In fact, as seen from this angle, it is fitting that Justice Kagan has taken the place not only of the last remaining Protestant on the Court, but also of its last non-Ivy League holdout: Justice Stevens, a graduate of Northwestern Law School in Chicago.<sup>5</sup>

Despite Senator Leahy's focus on noneducational bases for asserting that Kagan represents diversity, other legal commentators had noted the step that Kagan's confirmation would represent to the Supreme Court.<sup>6</sup> Yet these observations are not new—similar comments were made at the time of the nominations of Chief Justice Roberts and Associate Justice Alito, Harvard and Yale Law School graduates, respectively.<sup>7</sup> What is new is the Ivy League predominance in the nomination of Supreme Court justices, especially the predominance of Harvard and Yale graduates to the exclusion of nearly all others.<sup>8</sup> In essence, candidates who received their legal education in a locale other than Cambridge

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2. For the audio of Senator Leahy's press conference, see Patrick Leahy, *Press Conference on Supreme Court Nominee Elena Kagan*, LEAHY.SENATE.GOV (May 10, 2010), <http://leahy.senate.gov/press/multimedia/?id=cef9d187-6713-4d96-bc99-c286e87681a5>. For an edited transcript of his remarks, see Patrick Leahy, *Comment on the President's Nomination of Elena Kagan to Be an Associate Justice of the United States Supreme Court*, LEAHY.SENATE.GOV (May 10, 2010), [http://leahy.senate.gov/press/press\\_releases/release/?id=eb9a962b-17f3-46a9-99fe-ac6b5fa7768d](http://leahy.senate.gov/press/press_releases/release/?id=eb9a962b-17f3-46a9-99fe-ac6b5fa7768d).

3. See TIMOTHY L. HALL, *SUPREME COURT JUSTICES: A BIOGRAPHICAL DICTIONARY* 425 (2001).

4. In fact, at the time of Holmes's 1902 confirmation, only two justices had graduated from Harvard Law School, Horace Gary and Benjamin Curtis, while none had graduated from Yale Law School. See generally *id.* at 1–234 (recounting biographical information for all the justices through Holmes).

5. See Evan Thomas, *Twilight of the WASPs*, NEWSWK., May 31, 2010, at 34.

6. See Christopher Edley, Jr., *The Elite, No Apology Needed*, WASH. POST, May 16, 2010, at B1; Jonathan Turley, Op-Ed., *It's Their Private Court*, L.A. TIMES, May 12, 2010, at A17; Larry Abramson, *The Harvard-Yalification of the Supreme Court*, NPR (May 16, 2010), <http://www.npr.org/templates/story/story.php?storyId=126802460>.

7. See Richard Cohen, *Ivy-Covered Court*, WASH. POST, Nov. 15, 2005, at A21.

8. See *id.*

or New Haven should lower their aspirations.<sup>9</sup> They may very well attain a seat on a federal appellate court, or perhaps a state supreme court, but if past is prologue, they have no hope of setting up an office in the Marble Palace.

The purpose of this Article is simple—to explore the trends in the legal education of the Supreme Court justices from the beginning of the twentieth century through the latest nomination. Part I analyzes these trends through a number of different comparisons, including broad trends in the 110 years under observation, the number of Ivy League law graduates as a percentage of total nominees in the relevant time frames, and the increasing predominance of Ivy League law graduates as an absolute function of the composition of the Court. These comparisons make clear that the Ivy League is not continuing any historical pattern of predominance but is in fact only recently ascendant. The trend towards Harvard and Yale law graduates is very new in the context of the 110 years surveyed here, commencing only with the 1986 nomination of Antonin Scalia. Part II offers several explanations for why this is the case. In concluding, this Article concurs with the opinion of many in academia and the profession that when the next vacancy on the Court occurs, the president should seek a qualified candidate educated somewhere other than Harvard or Yale.

### I. LEGAL EDUCATION OF THE JUSTICES: 1902–2010<sup>10</sup>

A number of preliminary issues must be addressed prior to assessing the trends in the legal education of those justices confirmed in this and the last century. The first is the relevant time frame. For the purposes of this Article, the analysis begins with the first confirmation in the twentieth century, that of Oliver Wendell Holmes, Jr., in 1902. The reason for setting this as the relevant starting point of the instant investigation is that the law school as an educational entity only began to gain traction in the latter third of the nineteenth century.<sup>11</sup> Prior to that, and even for a significant part of the twentieth century, “reading law,” that is, apprenticing with an already-barred attorney, was the far more common way of entering the legal profession.<sup>12</sup> Beginning the

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9. See Karen Sloan, *For High Court, Harvard or Yale Degree Is a Virtual Prerequisite*, LEGAL INTELLIGENCER, May 12, 2010, at 4.

10. Part I of this Article is based on the information compiled in the Appendix pertaining to where the justices received their legal educations. An explanation and attribution of the sources used is included as a preface to the Appendix’s table listing the educational backgrounds of the justices.

11. See Melvin I. Urofsky, *Louis D. Brandeis: His Days at Harvard Law School*, EXPERIENCE, No. 2, 2010, at 13.

12. See, e.g., MELVIN I. UROFSKY, *LOUIS D. BRANDEIS: A LIFE* 25 (2009); John H. Wilkerson, Jr., *Milestones and Memories of Jones School of Law: From Reading Law to Accredited Law School*, 71 ALA. LAW. 138, 138 (2010).

current assessment at the dawn of the twentieth century is then the most obvious place to begin an analysis of legal education, as increasingly the justices confirmed since 1902 were graduates of law schools. A corollary to this issue is that this Article is concerned only with law school *graduates*. As the law school gained traction, some studied for short periods of time, left law school and apprenticed with a lawyer without graduating, and then entered the bar via the apprenticeship. This hybrid education is disregarded for present purposes, and only those who actually graduated from a law school are counted towards that law school's presence as a function of absolute composition on the Court. Additionally, this Article confines itself to the initial legal education, the juris doctorate or LL.B (bachelor of laws). It is only the school from which a justice earned his or her basic law degree that is counted as relevant. For instance, Justices Lewis Powell and Sherman Minton earned graduate degrees in law from Harvard and Yale, respectively, but their juris doctorates were from Washington and Lee University and Indiana University.<sup>13</sup> It is the latter degrees, rather than the Ivy League LL.M.s, that are the focus here. Finally, the comparisons in Subparts A and B focus on Harvard and Yale graduates rather than on Ivy League graduates generally because it is graduates from these two schools that have come to predominate, rather than the Ivy League law schools generally. No Cornell law graduate has been nominated to the Court in the relevant time frame, and the only University of Pennsylvania graduate is Justice Owen Roberts, confirmed in 1930. Columbia may seem like an obvious choice for inclusion, as the sole non-Harvard or Yale graduate on the current Court is a Columbia alumnus, yet Justice Ginsburg was the first Columbia law graduate to be appointed since William Douglas's 1939 confirmation. As this Article is concerned with recent trends and how they will play out into the future, Columbia graduates do not provide a modern basis for comparison.

With these preliminaries in hand, this Part proceeds in the following manner. Subpart A compares the percentages of Harvard and Yale graduates as a function of the total number of confirmed justices over the course of the eleven decades spanning 1902 through 2010. Subpart B compares the percentages of Harvard and Yale justices as a function of the composition of the sitting Court over the same metrics. The results of Subparts A and B are obviously interrelated and make clear that the preference for Harvard and Yale graduates is of recent vintage, and that over the past thirty years, the Court has increasingly become a bastion of such graduates to the exclusion of other elite law school graduates.

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13. See HALL, *supra* note 3, at 393 (regarding Justice Powell), 346 (regarding Justice Minton).

A. Harvard & Yale Confirmees

Although the focus of this Article is on Harvard and Yale law graduates confirmed as justices of the Supreme Court, these two schools have only recently shared this connection. The fortunes of these two law schools in placing graduates on the High Court have not always been as closely linked in the Court’s history as they are at present. Before addressing the distinct fortunes of these two elite institutions, however, it is worth noting that nominations from these schools as a percentage of total nominations have increased dramatically in just the past three decades.

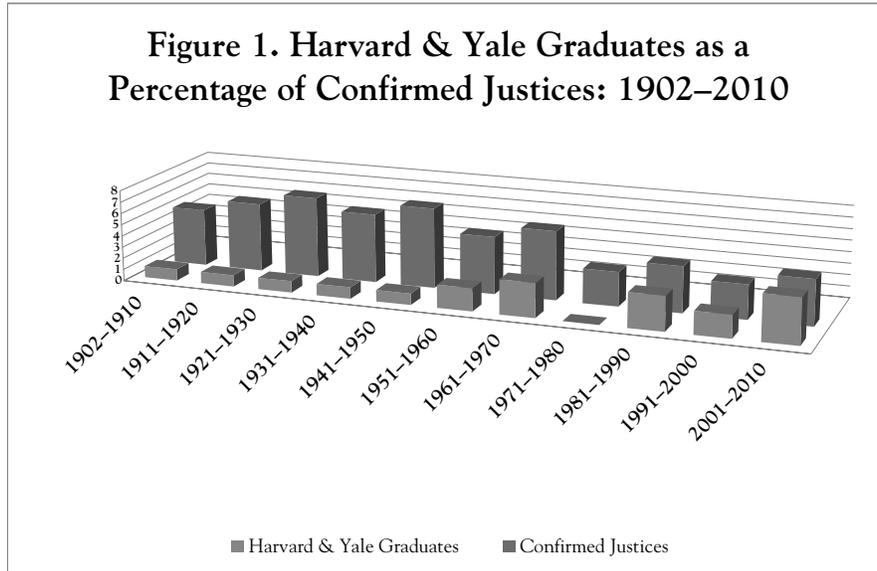


Figure 1 is a decade-by-decade comparison of the total confirmations in that decade and the number of Harvard and Yale graduates confirmed as justices. In every relevant decade except for one, 1971 to 1980, at least one Harvard or Yale graduate was confirmed as a Supreme Court justice. Nonetheless, in the five decades beginning with Holmes’s confirmation in 1902, only one such justice was confirmed in each relevant time period. Accordingly, between 1902 and 1950, only five Harvard graduates were included out of thirty-one confirmed justices (including chief justices). Thus, in the first half of the twentieth century, graduates from Harvard or Yale accounted for approximately 16 percent of the confirmed justices. Moreover, in no decade did Harvard or Yale graduates

account for more than 20 percent of the confirmed justices in that decade. In fact, although neither Harvard nor Yale dominated the Court in this time frame, Columbia did have the sort of preeminence in placing justices that the former two schools currently enjoy. Out of the eight confirmed justices between 1925 and 1939, four were Columbia men, three of whom were graduates. The fourth Columbia justice, Benjamin Cardozo, finished the traditional two-year program of study at Columbia law but left prior to completing the newly instituted third year.<sup>14</sup> From 1930 through 1945, there were never less than two Columbia graduates on the Court, while there were three such graduates between 1932 and 1941. Alas, after the 1939 confirmation of William Douglas, Columbia would not have another graduate on the Court until Ginsburg's 1993 confirmation, a span of fifty-four years.

It was only in the 1950s that the fortunes of Harvard and Yale began to rise, albeit not dramatically. Between 1951 and 1960, two Harvard and Yale justices were confirmed out of five total confirmations. In the 1960s, three graduates were confirmed out of a total of six confirmations. The percentage of Harvard and Yale graduates having never previously risen above 20 percent, these two decades saw the percentage rise first to 40 percent, and then to 50 percent. The 1970s were a setback of sorts—the three justices appointed during this period were graduates of Washington & Lee University, Stanford, and Northwestern (Justices Powell, Rehnquist, and Stevens, respectively). Since 1981, however, only one justice of the eleven confirmed was not educated at an Ivy League law school, and only two of the eleven have not graduated from either Harvard or Yale. In the 1980s, Harvard and Yale accounted for 75 percent of the nominees; in the 1990s, 67 percent, and since 2000, 100 percent.

Between 1902 and 2010, fifty-six justices were confirmed to the U.S. Supreme Court. Included in this number are nineteen Harvard and Yale law graduates, accounting for a total of approximately 34 percent. Since 1980, Harvard and Yale graduates have accounted for approximately 82 percent of confirmed justices. The dominance of these institutions is thus a new development in the history of the Supreme Court, not simply a continuation of a dominance that has always existed. Although the trend in Figure 1 begins in the 1980s, there was no Ivy League confirmation in that decade until the 1986 confirmation of Scalia. Thus, it is only over the course of the past twenty-four years that these two institutions have come to dominate the Supreme Court confirmation process. Attempting to explain this result will be the subject of Part II.

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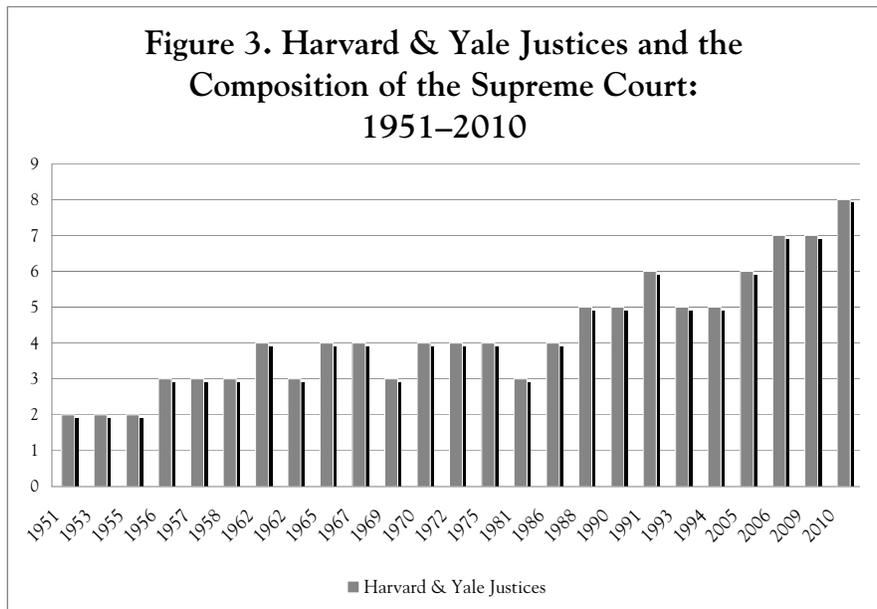
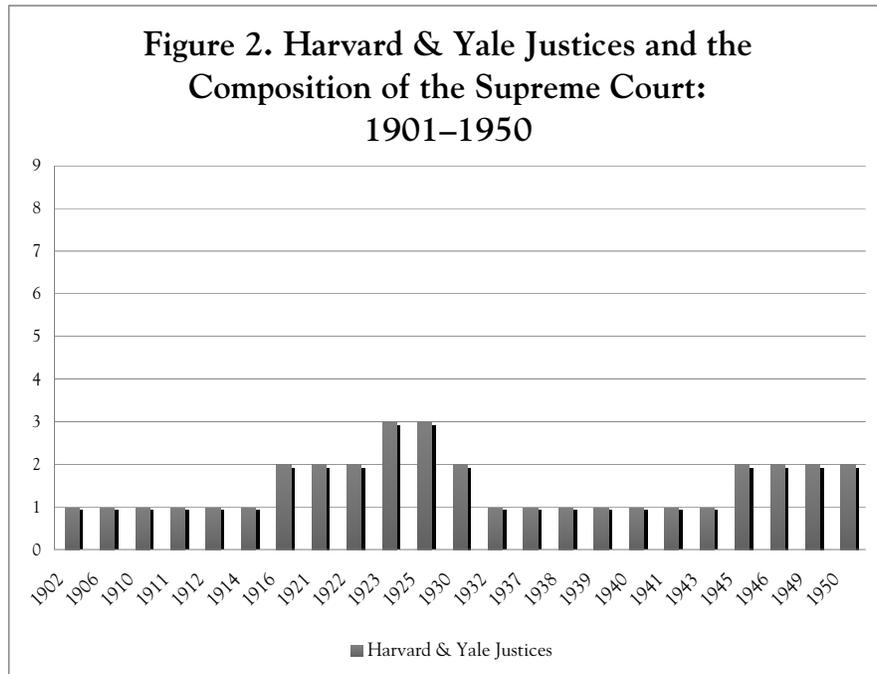
14. ANDREW L. KAUFMAN, *CARDOZO* 48–49 (1998).

It is also worth noting that the fortunes of Harvard and Yale have not always been so intertwined on the Supreme Court. Since the 1902 confirmation of Holmes, the Supreme Court has never been without at least one Harvard law graduate. Although Holmes was “alone” for fourteen years, he was joined in 1916 by Louis Brandeis and, in 1923, by Edward Terry Sanford. When Holmes left the Court in 1932, Brandeis sat alone as a Harvard graduate until his retirement in 1939, when he was replaced by Justice Frankfurter, a Harvard law legend. Without charting the entire course of Harvard’s fortunes on the Supreme Court, it is simply important to note that in the 108 years since Holmes took his seat, there has never been a moment that the Court was without at least one Harvard graduate, and it usually has multiple graduates. Yale Law School, however, did not place a graduate on the Court until the 1958 confirmation of Potter Stewart. Nonetheless, beginning with Stewart, three of the next four confirmations were Yale law graduates, with the inclusion of Justices Byron White and Abe Fortas. From 1965 through the 1969 retirement of Fortas, the Court could boast three Yale graduates as opposed to only one Harvard graduate, Justice Brennan. Yet after Fortas’s 1965 confirmation, Yale would have to wait thirty-six years before the confirmation of Justice Thomas in 1991. In all, thirteen Harvard graduates have been confirmed to the Supreme Court, spanning the entire time period between 1902 and the present, whereas six Yale graduates have been confirmed, spanning the time period between 1958 and the present. These divergent histories only began to converge as recently as the 1990s, when, between the 1991 confirmation of Justice Thomas and the 2010 nomination of Kagan, Yale matched Harvard nominee for nominee, three to three.

#### B. Harvard & Yale Justices as a Function of Court Composition

In addition to reviewing how Harvard and Yale graduates have fared as a percentage of confirmed justices over the course of the preceding eleven decades, it is also worth charting how this trend has altered the composition of the Court over time. It seems obvious that as Harvard and Yale graduates accounted for an increasing percentage of confirmed justices, this affected the composition of The Nine, but the following two figures are meant to graphically represent how sharp the increase in such graduates has been over the course of the preceding twenty-four years. Figure 2 plots the number of Harvard and Yale graduates as a function of the total composition of the Court over the period of 1901 through 1950, while Figure 3 plots the same data over the period of 1951 through 2010. The *x*-axis is plotted by confirmation year, that is, a year in which one or more justices were confirmed to the Supreme Court. In all cases but one, the

confirmation of multiple justices during a one-year period did not affect the plotting of the relevant information. In the one year that it did, 1962, the year is included twice, first representing the confirmation of Justice White, a Yale law graduate, and secondly representing the confirmation of Justice Goldberg, a Northwestern law graduate.



During the 1901–1950 time frame, in which no Yale law graduates were on the Court, Harvard graduates as a function of total composition peaked at 33 percent between the 1923 confirmation of Sanford and his death in 1930. Prior to Sanford's confirmation, seven years were spent with Holmes and Brandeis together on the Court, while the preceding fourteen years saw Holmes as the sole Harvard graduate. After Sanford's death, Holmes and Brandeis were again the only Harvard law graduates on the Court for two years, and following Holmes's death, Harvard enjoyed only one justice, split between Brandeis and his successor, Frankfurter, from 1932 until the 1945 confirmation of Justice Harold Burton. Harvard graduates were undoubtedly a fixture on the Court between 1901 and 1950, but they never constituted a majority of the sitting justices.

Since the 1956 appointment of William Brennan from Harvard, the Supreme Court has never had less than three Harvard or Yale graduates represented among its members. Between 1956 and 1986, the number of Harvard and Yale graduates oscillated between three and four, but not even the fallow 1970s dented their numbers, as all three non-Ivy League justices confirmed between 1972 and 1975 replaced non-Harvard and non-Yale graduates. Not until the 1988 confirmation of Anthony Kennedy did Harvard and Yale graduates represent a majority of the justices, a first in the Court's history. This majority grew to six with the confirmation of Justice Thomas from Yale in 1991, reverted to five when Columbia graduate Ginsburg took the place of the retiring Yale graduate White in 1993, and remained at five the following year when Breyer replaced Blackmun, trading Harvard for Harvard. In 2005 and 2006, the number moved from five to six to seven, as Roberts and Alito, from Harvard and Yale, respectively, replaced the departing Stanford graduates, Justices O'Connor and Rehnquist. Kagan's confirmation represents the penultimate change to the Court in replacing Justice Stevens, leaving Ginsburg as the lone non-Harvard, non-Yale graduate.

The Supreme Court with Kagan as junior justice now has eight Harvard or Yale law graduates, but as late as 1981 these graduates accounted for only three justices—33 percent of the Court—whereas even in 1986 Harvard and Yale did not yet hold, and had never before held, a majority of the justiceships. Justice Kennedy's 1988 appointment, in the wake of Scalia's trendsetting 1986 confirmation, not only created the majority, but represents an event horizon of sorts, past which Harvard and Yale graduates have become virtually the sole pool of nominees for justiceships, with the necessary result that the composition of the Court has trended dramatically in the direction of these institutions in the past two-and-a-half decades. Again, the Harvard-Yale dominance is a recent trend rather than a continuation.

## II. WHY THE TREND, AND SHOULD ANYONE CARE?

If the confirmation rate of Harvard and Yale law graduates has exploded over the previous two decades, the question remains: Why has this occurred? The first potential explanation is that as the importance of a formal law school education increased, the elite law schools themselves took on an increased importance relative to other law schools. When Justice Holmes was confirmed in 1902, he joined a Court that contained only two other law school graduates, Justices John Marshall Harlan and David Brewer, who studied at the law faculty of Transylvania and Albany Law School, respectively. Not until the 1910 confirmation of Justice Horace Lurton, an alumnus of Cumberland Law School, was another justice also a law school graduate. Between the 1902 confirmation of Holmes and the 1941 confirmation of Justice Robert Jackson—the last confirmed justice who did not graduate from law school—eleven of the twenty-six confirmed justices were not law school graduates. Not until the 1957 confirmation of Charles Whittaker, who replaced the retiring Stanley Reed, was the Court composed entirely of law school graduates.

This trend towards law school education as the desired route into the legal profession initially trod local or regional lines. Harvard Law School may have been a preeminent and nationally renowned institution at the time of Justice Brandeis's attendance, but it stood alone in that category.<sup>15</sup> Columbia and Harvard were just beginning to gain national traction in the late nineteenth and early twentieth centuries and were still dominated by a relatively local, rather than a nationally representative, student body.<sup>16</sup> Justice Cardozo, who was attending Columbia Law School at this time, was decidedly equivocal about his education there.<sup>17</sup> Yale Law School began gaining national status only in the 1920s.<sup>18</sup> This increase in its reputation paid dividends with the confirmations

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15. See UROFSKY, *supra* note 12, at 25–26.

16. See *id.* (regarding Harvard); JAMES F. SIMON, INDEPENDENT JOURNEY: THE LIFE OF WILLIAM O. DOUGLAS 66 (1980) (regarding Columbia).

17. See KAUFMAN, *supra* note 14, at 49. In a 1929 address to the Broome County Bar Association, Cardozo reflected on his law school experience:

I sometimes think I might escape some of the mistakes I am sure I often make if I had had the training which is given in the law schools of today. As ill luck would have it, I went to Columbia Law School in the transition days when the old order was passing into the new, the text book system into the case one, now, we are told at times, to be in turn supplanted by something else. . . . As I look back on it now, it seems as if we didn't have any instruction worthy of the name. We just grew up into lawyers, or rather into members of the bar.

Benjamin N. Cardozo, *The Bench and the Bar*, 34 N.Y. ST. B.J. 444, 448 (1962).

18. See Robert Stevens, *History of the Yale Law School: Provenance and Perspective*, in HISTORY OF THE YALE LAW SCHOOL 10–16 (Anthony T. Kronman ed., 2004) (exploring the rise in Yale Law School's reputation from its founding through the 1956 appointment of Eugene Rostow as dean).

in the late 1950s and early 1960s of three justices. Regionally elite law schools, which trained the best and brightest of the local students, filled this gap of institutions with national reputations. The Stanford of Rehnquist and O'Connor falls within this category, as does the Colorado of Wiley Rutledge, the Berkeley of Earl Warren, the Indiana of Sherman Minton, the Washington & Lee of Joseph Lamar and Lewis Powell, and the Cincinnati of Willis Van Devanter and William Howard Taft, to name just a few of the schools represented by the confirmed justices in this time period.<sup>19</sup> Yet as the elite institutions developed elite, nationally recognized law schools, students from across the country aspired to attend not just Harvard, but Yale and Columbia on the East Coast, as well as Stanford and Berkeley on the West Coast. As the importance of legal education grew, these elite institutions rose in prominence, attracting more of the best and brightest and placing them in the highest and most prestigious levels of government and private practice, from which judges and justices are often picked. Seen in this light, then, the increasing dominance of these institutions is indicative of a more general trend in the development of legal education and the legal profession in the twentieth century.

This thesis is sound in theory, but false in reality. The Supreme Court is not dominated by the graduates of elite law schools generally; it is dominated by the graduates of two elite law schools. Since the trend towards favoring Harvard and Yale commenced in the 1951 to 1960 decade in Figure 3, NYU, Penn, the University of Michigan, the University of Chicago, and the University of Virginia have had no graduates confirmed to positions on the Court, while Berkeley has had only one, Chief Justice Warren, confirmed in 1953. Harvard and Yale have dominated, with a combined fourteen graduates being confirmed, while Columbia has placed one graduate on the Court, and Stanford two, although none since 1981. Thus, the Supreme Court is not dominated by the top ten law schools but by two out of that ten.<sup>20</sup> Moving out of the top ten, only Northwestern is represented during this time period, with Justices Stevens and Goldberg, while Duke, Cornell, and Georgetown have not placed a graduate on the Court since 1902. Thus, the rise of the elite law schools does not itself explain the rise in the fortunes of Harvard and Yale to the exclusion of the remainder. Nor is there any basis for concluding that these two schools

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19. See, e.g., JOAN BISKUPIC, SANDRA DAY O'CONNOR 24–25 (2005) (dating the beginning of Stanford's rise in national reputation to the 1946 appointment of Carl Spaeth as dean of the law school); JIM NEWTON, JUSTICE FOR ALL: EARL WARREN AND THE NATION HE MADE 35 (2006) (noting the relative youth of Berkeley at the time of Warren's arrival and its appeal to local, California elites); Sandra Day O'Connor, *Foreword: Fiftieth Anniversary Remarks*, 50 STAN. L. REV. 1 (1997) ("Fifty years ago, Stanford Law School began a transformation from regional respectability to national preeminence.").

20. I will not say the top two, as rankings change and are obviously hot-button topics.

represent an elite within an elite from a purely educational perspective; that is, there is nothing to suggest that a Harvard and Yale education is so superior to an education at, say, Berkeley, that the former graduates should always be preferred to the latter in the context of appointments. As Jonathan Turley has written,

[T]here is no objective basis for favoring these two schools. Annual rankings from law schools on publication or reputation or student scores show relatively small differences in the top 20 law schools. The actual scores of the small pool of students in the top tier vary by only a few points. While Harvard and Yale are routinely ranked in the top spots, the faculties and student bodies are not viewed as manifestly superior to such competitors as Stanford, Chicago, Michigan or other top schools.<sup>21</sup>

Judge Louis Pollak reached this same conclusion in a recent law review article, in which he offered a revised ranking of law schools by broad subgroups rather than through a strictly hierarchical ranking.<sup>22</sup> His ranking, based exclusively on peer assessment scores of the law schools, placed the University of Chicago, Columbia, Harvard, Stanford, and Yale together in an undifferentiated top group, followed by Berkeley, Michigan, NYU, Penn, and the University of Virginia in the second group, and finally UCLA, Cornell, Duke, Georgetown, Northwestern, and Texas in the third.<sup>23</sup> Without delving too far into the ranking thicket, it is also worth noting that at least one ranking of the law schools based on the number of “Super Lawyers” produced would question certain top schools’ traditional rankings dominance.<sup>24</sup> Harvard did possess the most graduates selected for inclusion as Super Lawyers in 2009, but Yale ranked only tenth, one spot above the University of California, Hastings.<sup>25</sup> In short, there is no objective metric that would consistently differentiate a Harvard or Yale legal education from an education at another elite law school, and thus no objective basis for the recent turn towards graduates from these schools. Accordingly, the rise of the law school education in the twentieth century does not fully or satisfactorily explain the current dominance of Harvard and Yale graduates on the Court.

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21. Turley, *supra* note 6.

22. Louis H. Pollak, *Why Trying to Rank Law Schools Numerically Is a Non-Productive Undertaking: An Article on the U.S. News & World Report 2009 List of “The Top 100 Schools”*, 1 DREXEL L. REV. 52, 61–65 (2009).

23. *Id.* at 66–67.

24. See *Rankings*, PARTNER’S REP. FOR L. FIRM OWNERS, Aug. 2010, at 9. “Super Lawyers” is a ratings service that identifies exceptional practicing lawyers based on a variety of metrics and in approximately seventy different practice areas. See *Super Lawyers Selection Process*, SUPER LAWYERS, [http://www.superlawyers.com/about/selection\\_process.html](http://www.superlawyers.com/about/selection_process.html) (last visited Nov. 15, 2010) (explaining the selection process).

25. *Id.*

Timothy O'Neill offers a second potential explanation that fits within a more general examination of the confirmed justices over the preceding two decades. O'Neill posits that the remarkable similarity of the justices' educational and professional backgrounds, including the unifying characteristic that all were sitting and relatively uncontroversial judges on federal appellate courts, can be traced to the debacle of the Bork confirmation hearings in 1987.<sup>26</sup> This is a seductive thesis that approximately fits the relevant timeline—it was Scalia's 1986 confirmation, followed by the 1988 confirmation of Kennedy, the third choice to replace the retiring Lewis Powell, that proved to be the event horizon in the subsequent dominance of the Court by Harvard and Yale graduates. The more general thrust of O'Neill's argument is also seductive: that presidents wanted to nominate candidates above reproach, which meant, among other things, that candidates have the most impressive educational backgrounds possible. Yet as convincing as O'Neill is, this explanation seems to run afoul of the same problem as the preceding explanation. To say that presidents need a nominee beyond reproach from an educational perspective is one thing; to say that this means only Harvard and Yale graduates should be nominated is quite another. Other top-ten graduates would seemingly be as much beyond reproach as the Harvard and Yale nominees actually offered, as would graduates from elite law schools outside the top ten, including the Dukes, Georgetown, and Cornell. O'Neill's thesis makes intuitive sense but again falls upon the rough shoals of reality—it is not only elite education that presidents are seemingly looking for but education at an elite-of-two within that broader elite.

Explicit in O'Neill's argument and implicit in Senator Leahy's "judicial monastery" rhetoric, is the notion that by focusing on the courts of appeals for nominees, presidents have unduly limited the justices' experiential diversity.<sup>27</sup> This argument further claims that narrowly focusing on sitting appellate judges in the nomination process may restrict the diversity of the educational backgrounds of those eventually confirmed.<sup>28</sup> Nominees outside the courts of appeals have, of course, produced Justice Hugo Black, a senator from Alabama and a graduate of the University of Alabama School of Law,<sup>29</sup> and Chief Justice

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26. See Timothy P. O'Neill, "The Stepford Justices": *The Need for Experiential Diversity on the Roberts Court*, 60 OKLA. L. REV. 701 (2007).

27. See *id.* at 722–24.

28. *Id.* at 724 (noting that all justices confirmed since Bork's failed nomination have been graduates of Harvard, Yale, or Columbia).

29. See HALL, *supra* note 3, at 304. Black was elected as a senator in 1927 and served in the Senate until his August 17, 1937 confirmation to the Supreme Court. *Id.*

Earl Warren, governor of California and a Berkeley law graduate.<sup>30</sup> But it is not clear that a broader sweep in the nomination process by considering nonjudicial candidates would engender greater educational diversity on the Court. The only governor seriously mentioned in the past two nomination cycles was Jennifer Granholm of Michigan, a Harvard law graduate.<sup>31</sup> No senators have been seriously considered, and Janet Napolitano, current secretary of the Department of Homeland Security, former governor of Arizona, and University of Virginia law graduate, is the only executive branch candidate to have received any serious speculation.<sup>32</sup> Accordingly, it seems the results of any broader consideration of candidates would have only mixed results in breaking the Harvard-Yale hold.

Furthermore, if Senator Leahy's and Professor O'Neill's point is more generally that sitting judges represent only narrow educational backgrounds, then the point is not valid. For instance, of the sixteen active judges on the U.S. Court of Appeals for the Sixth Circuit, which exercises federal appellate jurisdiction in the states of Kentucky, Michigan, Ohio, and Tennessee, eight law schools are represented. Although Harvard and Yale law graduates account for four of the sitting judges, this is only 25 percent of the court. Moreover, Akron law graduates account for as many judges as either Harvard or Yale, and the University of Michigan dominates the court with four graduates.<sup>33</sup> Even on the U.S. Court of Appeals for the District of Columbia Circuit, regarded as the second highest court in the United States and a stepping stone to the Supreme Court, Harvard and Yale graduates account for only three of the nine active judges. Other law schools represented on that court include the University of North Carolina (with two judges), the University of Chicago (two), UCLA (one), and the University of Virginia (one). These trends are generally consistent with the courts of appeals as a whole, which evidence a great deal of educational diversity in the judges' backgrounds. There are a number of reasons for this diversity, the most apparent being the influence of senators in the nomination process and the focus on qualified local candidates who are more likely to be the product of local or regional law schools. But the simple

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30. See *id.* at 350–51. Warren was elected governor of California in 1942, reelected in 1946 and 1950, and was serving in that capacity when he was nominated to be chief justice by President Eisenhower. *Id.*

31. See Mark Sherman, *The I-95 Court? Five of Supreme Court's Nine Justices Hail From Boston-New York-New Jersey Corridor*, PITT. POST-GAZETTE, May 9, 2010, at A8.

32. See Noah Schaffer, *A Quick Word With ... David A. Logan, Dean and Professor of Law, Roger Williams University School of Law, Bristol*, R.I. LAW. WKLY., Apr. 26, 2010, at 3.

33. In addition to the law schools mentioned, the University of Virginia, the University of Chicago, Ohio State University, Vanderbilt University, and the University of Pennsylvania all account for at least one sitting judge.

fact remains that turning to sitting judges in the Supreme Court confirmation process has not necessarily led to the Harvard-Yale duopoly.

The dominance of Harvard and Yale graduates on the Supreme Court may also be seen as simply a result of both institutions' preeminence as suppliers of the class of candidates who may be considered for future nomination.<sup>34</sup> These two schools dominate in sending clerks to the federal courts of appeals and the Supreme Court and have increasingly come to dominate legal academia as well.<sup>35</sup> These positions lead to a greater likelihood of political appointments, whether they are in the executive or judicial branch, which may then place the candidate squarely in the eyes of a president seeking a Supreme Court nomination. The question then becomes less why these graduates have come to form a supermajority on the Supreme Court, but why other law schools have not been as successful in placing their graduates within the range of such an appointment through clerkships, government work, or academia. In this light, it is something of a self-perpetuating dominance. Justice Scalia has often remarked that he will choose his clerks only from the very top of the top tier, half-joking that he would not have hired Jeffrey Sutton as a law clerk had he not inherited him from the retiring Lewis Powell.<sup>36</sup> Sutton is a "lowly" Ohio State law graduate, although he has since been confirmed as a judge on the Sixth Circuit Court of Appeals.<sup>37</sup> This seems the most likely explanation, but if so, it points to a cyclical nature in the confirmation process and the clear possibility that the current dominance may not be permanent. As Jeffrey Fisher, a Stanford law professor, has noted, "Stanford has had justices in the past, and I assume we will again in the future. The people who went to top law schools will get the top jobs."<sup>38</sup>

On the other hand, a "cultural" version of Scalia's sentiment may point to a continuation of Harvard and Yale nominees. Just as Scalia and the justices select their clerks from a small bevy of law schools, a president may believe he

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34. Cf. Anthony Ciolli, *The Legal Employment Market: Determinants of Elite Firm Placement and How Law Schools Stack Up*, 45 JURIMETRICS 413, 430 (2005) (finding that a law school's reputation is the most significant predictor of post-law school employment).

35. See Sloan, *supra* note 9; see also Emmanuel O. Iheukwumere, *Arguing Against Elitism*, PA. LAW. July/Aug. 2010, at 48, 49 (noting that Harvard and Yale graduates accounted for approximately 50 percent of the clerks hired by the Supreme Court between 2004 and 2010); Robert J. Borthwick & Jordan R. Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 27 (1991) (finding that Harvard graduates accounted for 13 percent of professors, and Yale graduates 8.3 percent).

36. See Abramson, *supra* note 6 ("Well, I wouldn't have hired Jeff Sutton, for God's sake, he went to Ohio State."); Turley, *supra* note 6.

37. See *Biographical Directory of Federal Judges, Sutton, Jeffrey S.*, FED. JUDICIAL CTR., <http://www.fjc.gov/servlet/nGetInfo?jid=3010&cid=999&ctype=na&instate=na> (last visited Nov. 15, 2010).

38. Sloan, *supra* note 9.

will have an easier time selling a nominee from Harvard or Yale based on the cultural renown that both schools share. Both names are readily recognizable by the populace at large, and in the coliseum of confirmation politics and battles, such an educational background represents at least one unimpeachable credential that can be agreed upon by all combatants. This cultural consciousness may mean that it is easier to sell a nominee to the president's constituencies if the Harvard or Yale brand is employed, even if candidates from Columbia, Penn, Michigan, and Stanford are objectively as qualified as the eventual nominee. Outside the other unquestionably elite law schools the issue is even more starkly framed, as in the case of Harriet Miers, whose legal education at Southern Methodist University served as a lightning rod for criticism over her nomination to the Court.<sup>39</sup> In short, the game becomes one of politics rather than qualification, and on some level, that has always been the case—the pool of potential nominees all have stellar credentials and qualifications, so the nomination often comes down to other factors, some of them intangible. If this is the case, the dominance of these two schools will most likely continue into the future, even if it is not quite as pronounced as it is at present.

Regardless of the reason, should anybody care that only Harvard and Yale nominees have been confirmed in recent memory if these justices are eminently qualified individuals? To begin, if Fisher is correct that the current dominance is simply a self-correcting aberration, there is nothing to be worried about as the Harvard-Yale duopoly will subside with the subsequent appointment of graduates of other elite law schools. It's not clear that this will be the case, however, as the trend has been dominant now for twenty-four years and has shown little sign of subsiding if the "short list" of candidates the Obama administration has compiled in the last two years is a realistic indication of what future nominees may look like. This is not to say that the administration would certainly go with another Harvard or Yale graduate, only that the most likely candidates have these credentials. And for the second time, with the nomination of Kagan, Obama cast aside the eminently qualified Texas Law graduate Diane Wood, a current judge on the Seventh Circuit whose legal experience and education would bring at least as much diversity to the Court as Kagan.<sup>40</sup>

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39. See Mary Alice Robbins, *Applications Fall at Most Texas Law Schools*, TEX. LAW., Oct. 2, 2006, at 1, available at <http://www.law.com/jsp/article.jsp?id=900005464043> ("At the time of Miers' nomination, there was a heated, snobbish battle over her credentials that often centered around the SMU law school. Conservative commentators branded it an institution of lower learning, unworthy of birthing a Supreme Court justice.").

40. Following law school, and prior to her appointment to the Seventh Circuit, Wood clerked for Irving Goldberg on the U.S. Court of Appeals for the Fifth Circuit and Justice Blackmun on the Supreme Court, practiced law in the U.S. State Department and Covington & Burling, taught at the law schools of Georgetown University and the University of Chicago, and served in high level appointments in

In addition, to say simply that the trend may not continue into the future is no reason not to question the current prominence of Harvard and Yale graduates on the Court.

It is also clear that the rise of the Harvard and Yale justices has not led to a period of confluence in adjudication. Justices Alito and Sotomayor share the exact same educational background yet view constitutional adjudication in remarkably different lights. Justice Thomas represents a third viewpoint, not entirely consistent with Alito's.<sup>41</sup> Across the Harvard justices, Scalia represents the originalists while Brennan represents the "living Constitution" school, two antithetical visions of how the Constitution should be interpreted. Quite simply, a legal education at Harvard or Yale does not lead inexorably to one viewpoint, meaning that diversity of opinion is not necessarily compromised by the prominence of only two law schools on the Supreme Court. Life and career experience informs judicial decisions and provides a far greater point of departure than where an education was obtained. Of course, three years in New Haven or Cambridge would be remarkably different from three years in Austin, Palo Alto, or Durham, so the question is not simply whether the concentration leads only to singular viewpoints, but whether the Court would benefit from the introduction of justices whose life and educational experiences have taken them outside the purview of the Ivies.

On this point, the opinion of legal commentators seems relatively consistent that candidates outside the Ivy League schools, especially Harvard and Yale, should be examined as vacancies occur in the coming years. This opinion is shared by many graduates of Harvard and Yale in legal academia, including Giovanna Shay of the Western New England College School of Law and Mark Tushnet of Harvard Law School,<sup>42</sup> as well as prominent commentator and Northwestern graduate Jonathan Turley.<sup>43</sup> Turley went so far as to declare that "[t]he favoritism shown Harvard and Yale should be viewed not just as incestuous but as scandalous. It undermines educational institutions across the country by maintaining a clearly arbitrary and capricious basis for selection. It also runs against the grain of a nation based on meritocracy and opportunity."<sup>44</sup> The

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the Justice Department. See *Biographical Directory of Federal Judges: Wood, Diane Pamela*, FED. JUDICIAL CTR., <http://www.fjc.gov/servlet/nGetInfo?jid=2636&cid=999&ctype=na&instate=na> (last visited Nov. 18, 2010).

41. See generally Stephen E. Gottlieb, *The Jurisprudence of the Roberts Court* (Feb. 27, 2009) (unpublished manuscript), available at <http://ssrn.com/abstract=1393413> (exploring the different jurisprudential approaches of the justices and their voting patterns in a range of cases).

42. See Sloan, *supra* note 9.

43. Turley, *supra* note 6.

44. *Id.*

underlying point is that there are few, if any, objective metrics on which to favor two law schools to the exclusion of other unquestionably elite institutions.

### CONCLUSION

When Michelle and Robert King were creating the CBS drama *The Good Wife*, they decided to make the two main characters, lawyers Alicia Florrick and Will Gardner, Georgetown law alumni. Michelle King explained the rationale behind their choice of law school: “We wanted to highlight that they were smart, highly successful people without falling into the every-bright-fictional-character-went-to-Harvard-or-Yale trap.”<sup>45</sup> Harvard and Yale law graduates undoubtedly represent some of the best and brightest entrants to the legal profession every year, and it has not been the purpose of this Article to question that in any way. The concluding point is, however, that an applicant pool for the Supreme Court, or any other legal position, composed entirely of Harvard and Yale law graduates does not exhaust the range of highly intelligent, competent, and driven candidates who may be able to bring significant life, educational, or professional experience to bear on issues of grave and pressing importance. When the next vacancy does occur on the Court, President Obama, or his successor, would be wise to look outside Cambridge and New Haven for a qualified candidate. There is no shortage of these in the legal profession, although this point seems to have been obscured in the past two and a half decades. Such diversity would bring a boon to schools currently unrepresented on the Court, and it would bring diversity to that very Court that has so often trumpeted how important diverse views and experiences can be.<sup>46</sup> Although it is impossible to quantify what would be lost if Harvard and Yale perpetuate their current hold on the Court, it is easy to see what could have been lost had such dominance pervaded the mindset of presidents in the last century. The Court may never have had a Hugo Black, John Marshall Harlan II, Thurgood Marshall, Sandra Day O’Connor, Wiley Rutledge, or John Paul Stevens. The Court and the country benefited from the service of these men and women as justices, and both can benefit again by casting a wider net in the next nomination cycle.

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45. Ann W. Parks, *It’s That Georgetown Thing: CBS TV Series Features Fictional Law “Alums”*, GEO. U.L. CTR. (Nov. 19, 2009), <http://www.law.georgetown.edu/news/webstory/11.19.09.html>.

46. See *Grutter v. Bollinger*, 539 U.S. 306, 327–43 (2003) (holding that the University of Michigan Law School’s use of diversity factors in its admissions process constituted a compelling state interest on account of the many benefits that diversity may bring to the educational process); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978) (noting that diversity, when utilized in the proper way, may constitute a compelling interest for a race-based admissions process).

## APPENDIX

The primary source utilized in compiling the educational data regarding the justices was Timothy L. Hall's *Supreme Court Justices: A Biographical Dictionary* (2001). In the table below, a page number follows the educational institution (or lack thereof) listed for each justice, which corresponds to that justice's biographical sketch in Hall's *Dictionary*. A citation is only given for the justice's first appearance in this table.

Hall's *Dictionary* does not include information for the justices confirmed after Justice Breyer. For Chief Justice Roberts and Justice Alito, the source used was the *Encyclopedia of the Supreme Court of the United States* (David Tanenhaus ed., 2008). Roberts's educational information is contained on page 261 of Volume 4, and Alito's is on page 50 of Volume 1. Educational information for both Justices Sotomayor and Kagan was included in their submissions to the Senate Judiciary Committee. See *Nomination of Judge Sonia Sotomayor to Be an Associate Justice of the Supreme Court: Hearings Before the S. Comm. on the Judiciary*, 111th Cong. 152 (2009); *Nomination of Elena Kagan to Be an Associate Justice of the Supreme Court: Hearings Before the S. Comm. on the Judiciary*, 111th Cong. (2010).

In addition to these specific resources, both the Federal Judicial Center and the United States Supreme Court provide information regarding the justices' educational backgrounds on their websites. See *Biographical Directory of Federal Judges*, FED. JUDICIAL CTR., <http://www.fjc.gov/history/home.nsf/page/judges.html> (last visited Nov. 15, 2010); *Members of the Supreme Court of the United States*, SUP. CT. U.S. <http://www.supremecourt.gov/about/members.aspx> (last visited Nov. 15, 2010).

## EDUCATION OF THE JUSTICES: APPOINTMENTS SINCE 1900

Justice and Nomination Year	Other Sitting Justices							
2010 Kagan (Harvard)	Roberts (Harvard)	Scalia (Harvard)	Kennedy (Harvard)	Thomas (Yale)	Ginsburg (Columbia)	Breyer (Harvard)	Alito (Yale)	Sotomayor (Yale)
2009 Sotomayor (Yale)	Roberts (Harvard)	Stevens (North-western)	Scalia (Harvard)	Kennedy (Harvard)	Thomas (Yale)	Ginsburg (Columbia)	Breyer (Harvard)	Alito (Yale)
2006 Alito (Yale)	Roberts (Harvard)	Stevens (North-western)	Scalia (Harvard)	Kennedy (Harvard)	Souter (Harvard)	Thomas (Yale)	Ginsburg (Columbia)	Breyer (Harvard)
2005 Roberts (Harvard)	Stevens (North-western)	O'Connor (Stanford)	Scalia (Harvard)	Kennedy (Harvard)	Souter (Harvard)	Thomas (Yale)	Ginsburg (Columbia)	Breyer (Harvard)
1994 Breyer (Harvard, 429)	Rehnquist (Stanford)	Stevens (North-western)	O'Connor (Stanford)	Scalia (Harvard)	Kennedy (Harvard)	Souter (Harvard)	Thomas (Yale)	Ginsburg (Columbia)
1993 Ginsburg (Columbia, 425)	Rehnquist (Stanford)	Blackmun (Harvard)	Stevens (North-western)	O'Connor (Stanford)	Scalia (Harvard)	Kennedy (Harvard)	Souter (Harvard)	Thomas (Yale)
1991 Thomas (Yale, 421)	Rehnquist (Stanford)	White (Yale)	Blackmun (Harvard)	Stevens (North-western)	O'Connor (Stanford)	Scalia (Harvard)	Kennedy (Harvard)	Souter (Harvard)

1990 Souter (Harvard, 417)	Rehnquist (Stanford)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Stevens (North- western)	O'Connor (Stanford)	Scalia (Harvard)	Kennedy (Harvard)
1988 Kennedy (Harvard, 413)	Rehnquist (Stanford)	Brennan (Harvard)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Stevens (North- western)	O'Connor (Stanford)	Scalia (Harvard)
1986 Scalia (Harvard, 409)	Rehnquist (Stanford)	Brennan (Harvard)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Powell (W&L)	Stevens (North- western)	O'Connor (Stanford)
1981 O'Connor (Stanford, 405)	Burger (St. Paul)	Brennan (Harvard)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Powell (W&L)	Rehnquist (Stanford)	Stevens (North- western)
1975 Stevens (North- western, 401)	Burger (St. Paul)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Powell (W&L)	Rehnquist (Stanford)
1972 Rehnquist (Stanford, 397)	Burger (St. Paul)	Douglas (Columbia)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Powell (W&L)
1972 Powell (W&L, 393)	Burger (St. Paul)	Douglas (Columbia)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Marshall (Howard)	Blackmun (Harvard)	Rehnquist (Stanford)
1970 Blackmun (Harvard, 389)	Burger (St. Paul)	Black (Alabama)	Douglas (Columbia)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Marshall (Howard)
1969 Burger (St. Paul, 385)	Black (Alabama)	Douglas (Columbia)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Marshall (Howard)	—

1967 Marshall (Howard, 381)	Warren (Berkeley)	Black (Alabama)	Douglas (Columbia)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)	White (Yale)	Fortas (Yale)
1965 Fortas (Yale, 377)	Warren (Berkeley)	Black (Alabama)	Douglas (Columbia)	Clark (Texas)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)	White (Yale)
1962 Goldberg (North- western, 373)	Warren (Berkeley)	Black (Alabama)	Douglas (Columbia)	Clark (Texas)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)	White (Yale)
1962 White (Yale, 369)	Warren (Berkeley)	Black (Alabama)	Frankfurter (Harvard)	Douglas (Columbia)	Clark (Texas)	Harlan (NYLS)	Brennan (Harvard)	Stewart (Yale)
1958 Stewart (Yale, 366)	Warren (Berkeley)	Black (Alabama)	Frankfurter (Harvard)	Douglas (Columbia)	Clark (Texas)	Harlan (NYLS)	Brennan (Harvard)	Whittaker (Kansas City)
1957 Whittaker (Kansas City, 363)	Warren (Berkeley)	Black (Alabama)	Frankfurter (Harvard)	Douglas (Columbia)	Burton (Harvard)	Clark (Texas)	Harlan (NYLS)	Brennan (Harvard)
1956 Brennan (Harvard, 359)	Warren (Berkeley)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Burton (Harvard)	Clark (Texas)	Harlan (NYLS)
1955 Harlan (NYLS, 355)	Warren (Berkeley)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Burton (Harvard)	Clark (Texas)	Minton (Indiana)
1953 Warren (Berkeley, 350)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Jackson (N/A)	Burton (Harvard)	Clark (Texas)	Minton (Indiana)

1949 Minton (Indiana, 346)	Vinson (Centre)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Jackson (N/A)	Burton (Harvard)	Clark (Texas)
1949 Clark (Texas, 342)	Vinson (Centre)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Jackson (N/A)	Rutledge (Colorado)	Burton (Harvard)
1946 Vinson (Centre, 338)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Murphy (Michigan)	Jackson (N/A)	Rutledge (Colorado)	Burton (Harvard)
1945 Burton (Harvard, 335)	Stone (Columbia)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Murphy (Michigan)	Jackson (N/A)	Rutledge (Colorado)
1943 Rutledge (Colorado, 331)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Murphy (Michigan)	Jackson (N/A)
1941 Jackson (N/A, 327)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Murphy (Michigan)	Byrnes (N/A)
1941 Byrnes (N/A, 324)	Hughes (Columbia)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)	Murphy (Michigan)
1940 Murphy (Michigan, 320)	Hughes (Columbia)	McReynolds (UVa)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)	Douglas (Columbia)
1939 Douglas (Columbia, 316)	Hughes (Columbia)	McReynolds (UVa)	Butler (N/A)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	Frankfurter (Harvard)

1939 Frankfurter (Harvard, 312)	Hughes (Columbia)	McReynolds (UVa)	Butler (N/A)	Stone (Columbia)	O. Roberts (Penn)	Black (Alabama)	Reed (N/A)	—
1938 Reed (N/A, 308)	Hughes (Columbia)	McReynolds (UVa)	Brandeis (Harvard)	Butler (N/A)	Stone (Columbia)	O. Roberts (Penn)	Cardozo (N/A)	Black (Alabama)
1937 Black (Alabama, 304)	Hughes (Columbia)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)	Stone (Columbia)	O. Roberts (Penn)	Cardozo (N/A)
1932 Cardozo (N/A, 300)	Hughes (Columbia)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)	Stone (Columbia)	O. Roberts (Penn)
1930 O. Roberts (Penn, 296)	Hughes (Columbia)	Holmes (Harvard)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)	Stone (Columbia)
1930 Hughes (Columbia, 248)	Holmes (Harvard)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)	Sanford (Harvard)	Stone (Columbia)
1925 Stone (Columbia, 291)	Taft (Cincy)	Holmes (Harvard)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)	Sanford (Harvard)
1923 Sanford (Harvard, 288)	Taft (Cincy)	McKenna (N/A)	Holmes (Harvard)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	Butler (N/A)
1923 Butler (N/A, 284)	Taft (Cincy)	McKenna (N/A)	Holmes (Harvard)	Van Devanter (Cincy)	McReynolds (UVa)	Brandeis (Harvard)	Sutherland (N/A)	—

1922 Sutherland (N/A, 280)	Taft (Cincy)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Van Devanter (Cincy)	Pitney (N/A)	McReynolds (UVa)	Brandeis (Harvard)
1921 Taft (Cincy, 276)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Van Devanter (Cincy)	Pitney (N/A)	McReynolds (UVa)	Brandeis (Harvard)	Clarke (N/A)
1916 Clarke (N/A, 272)	White (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Van Devanter (Cincy)	Pitney (N/A)	McReynolds (UVa)	Brandeis (Harvard)
1916 Brandeis (Harvard, 268)	White (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Van Devanter (Cincy)	Pitney (N/A)	McReynolds (UVa)	—
1914 Mc Reynolds (UVa, 263)	White (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Hughes (Columbia)	Van Devanter (Cincy)	Lamar (N/A)	Pitney (N/A)
1912 Pitney (N/A, 260)	White (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Lurton (Cumber- land)	Hughes (Columbia)	Van Devanter (Cincy)	Lamar (N/A)
1911 Lamar (N/A, 257)	White (N/A)	Harlan I (Transyl- vania)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Lurton (Cumber- land)	Hughes (Columbia)	Van Devanter (Cincy)
1911 Van Devanter (Cincy, 253)	White (N/A)	Harlan I (Transyl- vania)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Lurton (Cumber- land)	Hughes (Columbia)	Lamar (W&L)
1910 Hughes (Columbia, 248)	White (N/A)	Harlan I (Transyl- vania)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Moody (N/A)	Lurton (Cumber- land)	—

1910 Lurton (Cumberland, 244)	Fuller (N/A)	Harlan I (Transylvania)	Brewer (Albany)	White (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)	Moody (N/A)
1906 Moody (N/A, 240)	Fuller (N/A)	Harlan I (Transylvania)	Brewer (Albany)	White (N/A)	Peckham (N/A)	McKenna (N/A)	Holmes (Harvard)	Day (N/A)
1903 Day (N/A, 236)	Fuller (N/A)	Harlan I (Transylvania)	Brewer (Albany)	Brown (N/A)	White (N/A)	Peckham (N/A)	McKenna (N/A)	Holmes (Harvard)
1902 Holmes (Harvard, 231)	Fuller (N/A, 199)	Harlan I (Transylvania, 174)	Brewer (Albany, 203)	Brown (N/A, 207)	Shiras (N/A, 211)	White (N/A, 219)	Peckham (N/A, 223)	McKenna (N/A, 227)