Courting Success: The Supreme Court Fellows Program at 35

Terence Lau, *University of Dayton*
Jon Gould, *George Mason University*
Lauren Bell, *Randolph-Macon College*
John Domurad
Courting Success: The Supreme Court Fellows Program at 35

Jon B. Gould, George Mason University
Lauren C. Bell, Randolph-Macon College
Terence J. Lau, University of Dayton
John M. Domurad, U.S. District Court for the Northern District of New York

In 1973, then-Chief Justice Warren Burger, at the suggestion of his administrative assistant, Mark Cannon, created the Judicial Fellows Program to allow scholars to engage in “challenging work for a year” at the Supreme Court and other federal judicial agencies (Tobias 1996, 510). The program is designed to attract, in Justice Ruth Bader Ginsburg’s words, “bright-minded, caring, uncommonly fine humans, people who remain . . . in permanent fellowship with the Federal Judiciary” after their year (Ginsburg 1998, 3).

In 1979, Cannon, along with his research associate and former fellow, Jeffrey Morris, published an article in this journal called “Inside the Courts: The Judicial Fellows Program” (Cannon and Morris 1979). The article detailed the genesis and early history of the program, its initial funding, the selection process, the fellows’ experiences, and their post-fellowship careers. At the time the article was published, the fellows program had existed for six years and counted 14 participants. Twenty-nine years later, the ranks of fellows has swelled to 104, an increase of 87%. Other than a name change in 2003 to the “Supreme Court Fellows Program” (Johnson 2006), what has happened to the program in the three decades since that article was published? Based on an original survey of Supreme Court Fellows Program (SCFP) alumni, this article offers a look at the SCFP at 35, updates Cannon and Morris’ (1979) article, and offers reflections on the utility of the Supreme Court fellowship for political scientists and others with a particular interest in public law.

The Supreme Court Fellows Program

The Supreme Court Fellows Program is one of three major professional fellowships, each designed to bring early- and mid-career professionals to Washington, D.C., to serve in one of the three branches of the federal government. The other programs are the APSA Congressional Fellowship Program (CFP), founded in 1953, and the White House Fellows Program (WHFP)², founded in 1964. The CFP’s goal is to teach about the political process through practical experience (Biggs 2006; Ceccoli 2006; Shogan 2006). The program counts more than 1,900 alumni and annually enrolls approximately 30–35 fellows. Fellows serve as full-time staffers in congressional offices for 10 months and are drawn from the ranks of political scientists, journalists, communications scholars, federal executives, health policy executives (through the Robert Wood Johnson Foundation), and international scholars (through the German Marshall Fund, Asia Foundation, Fulbright Scholars, and American Australian Association).

Eleven years after the founding of the CFP, President Lyndon Johnson announced the creation of the White House Fellows Program. The purpose of the program is to “provide gifted and highly motivated young Americans with some first-hand experience in the process of governing the Nation and a sense of personal involvement in the leadership of society” (White House Fellows Program). A non-partisan program, fellows spend a year working as full-time, paid special assistants to senior White House staff, the vice-president, Cabinet secretaries, and other government officials. The program has nearly 600 alumni.

At a little more than 100 alumni, and with four fellows selected every year, the Supreme Court Fellows Program is the youngest and smallest of the fellowship programs. SCFP fellows are placed as full-time employees at one of the four sponsoring agencies within the federal judiciary for a year. Although the fellows’ start and end dates are flexible, the fellowship program approximates the academic year and coincides with the annual term of the Court.

Fellows may be placed at the Supreme Court of the United States (based in the Office of the Administrative Assistant to the Chief Justice), the Administrative Office of the U.S. Courts, the Federal Judicial Center, or the United States Sentencing Commission. In addition to their work assignments, SCFP fellows participate in an education program that includes attendance at luncheon seminars...
with leaders in the federal legal and law enforcement communities, trips to attend conferences, and participation as observers in various meetings and conferences involving the justices and other federal and foreign senior judges.

Fellowship candidates must have at least one post-graduate degree, two or more years of professional experience, and multi-disciplinary training and experience, including familiarity with the judicial process. After applications are submitted in November, a review panel selects approximately 15 to 20 semifinalists for review by the Supreme Court Fellows Commission. The commissioners, appointed by the chief justice, then select eight finalists who visit Washington in January for an orientation session, reception, and individual interviews with representatives of the agencies and the commissioners. Immediately thereafter, the commissioners select the four fellows for the coming year and place fellows in their respective agencies.

What Do Supreme Court Fellows Do?

The experience of Supreme Court fellows depends to a large extent on the agency in which they are placed. Fellows who worked in the office of the Administrative Assistant to the Chief Justice (AA) reported in our survey that their primary responsibilities were presentations about the Court to visiting dignitaries, State Department delegations, and other important visitors to the vourt. Fellows in this office also reported that they were given responsibility for specialized projects such as “research for the Chief Justice on legislative activity,” and “working on speeches and reports for the Chief Justice.” Nearly all of the alumni fellows who worked in the AA’s office counted supervision of the office’s college interns among their primary responsibilities.

Except for research projects, the work assignments for the fellows in the agencies outside the Court were less consistent than those for the fellows assigned to the Court itself. Fellows who served at the Administrative Office of the U.S. Courts (AO) frequently mentioned research as a primary responsibility, but the topics they explored were quite varied. Projects ranged from helping to draft the “Long Range Plan for the Federal Courts” to “drafting and finalizing” training materials for judges. Fellows at the Federal Judicial Center (FJC) likewise frequently cited research among the tasks they were assigned, but like their counterparts in the AO, their work assignments were varied. One cited “lecturing to federal judges about the writ of habeas corpus,” another stated that it was her job “to write a monograph on judicial efforts to promote civil settlements.” Another FJC fellow “conducted a study of the use of special masters in the federal courts.” Other fellows at the FJC participated in ongoing projects, including “a study of judicial management of complex asbestos class actions,” and “a study of management training programs for top-level administrators in the federal judiciary.”

Former fellows who were placed at the U.S. Sentencing Commission (USSC), like their other agency counterparts, also cited research; for fellows at the Commission, these projects almost always focused on aspects of the federal sentencing guidelines, including the guidelines’ criminal history scores, the sex offense guidelines, and sentencing disparity. Fellows at the USSC who were attorneys also reported engaging in such projects as “redrafting parts of the guidelines,” “work[ing] as a staff attorney in the Office of General Counsel,” and “act[ing] as a visiting prosecutor.”

Because work assignments vary depending on the fellows’ unique skill sets, the fellows’ placements, and what is occurring within the federal judiciary during the fellowship year, we asked alumni to tell us about their most interesting experiences during the fellowship year. Their answers not only shed light on the work done by the fellows in the various fellowship assignments, but also offer insights into the evolution of the Court itself. For example, a fellow from 1975–1976 reported working on a film entitled The Supreme Court, the first film ever made inside the Supreme Court; a fellow from 1978–1979 noted that his assignments included writing a “white paper on introducing computers to the Supreme Court.” A fellow from 1997–1998 “worked as a part of the Electronic Court Files project team,” visiting courts that were piloting the program to increase the use of electronic filing technology.

Collectively, SCFP alumni reported that they:

• Helped to plan the funeral service for Justice Thurgood Marshall and Chief Justice William Rehnquist’s role in the inauguration of President Bill Clinton.
• Aided the transition from Chief Justice Burger to Chief Justice Rehnquist.
• Attended the swearing-in ceremonies for Justices David Souter and Samuel Alito and Chief Justice John G. Roberts.
• Attended the funeral services for Chief Justices Burger and Rehnquist.
• Observed the biannual meetings of the Judicial Conference of the United States.
• Dined with many current and former justices of the Court, leaders in the federal government, and statutory officers of the Court.
• Attended the annual lecture series sponsored by the Supreme Court Historical Society.
• Participated in Justice Sandra Day O’Connor’s exercise class at the Supreme Court.

Who Are the Fellows?

Fellows generally come to the SCFP from prestigious academic backgrounds. Sixty percent of responding alumni had multiple graduate degrees at the time of their appointment, many of these a J.D./Ph.D. Looking at their highest graduate degree, 80% of respondents were educated at institutions registering in the top quartile of ranked programs; in fact, 40% came from institutions or programs ranked in the top 10 of their field.

Although the fellows’ work assignments during their fellowship years tend to focus on judicial education and discrete policy issues of concern to the federal courts, the overwhelming majority of former fellows did not have prior federal court experience in their backgrounds (although 80% of program alumni earned a law degree prior to their fellowship year). Indeed, there are multiple career pathways to the Supreme Court fellowship. Of the 65 SCFP alumni who responded to our survey, three served in the military prior to their appointments; eight alumni worked as state or federal court or agency personnel; seven were government attorneys, including one alumnus who served as an assistant U.S. attorney at the time of her appointment. One alumnus was an administrative law judge before being appointed. Two alumni were attorneys in private practice. Three came to the fellowship from executive positions in non-profit organizations; one was a Ph.D. student; another was a post-doctorate fellow; and one served as a law school research associate.

True to Chief Justice Burger’s vision that the SCFP should be aimed at academics and other scholars of the law and courts, 36 (55%) of the responding alumni were academics serving as faculty members in colleges, universities,
and law schools at the time of their selection to the program. Two additional respondents were working as administrators at academic institutions. Among the academics, 14 (21% of all respondents) were working as political scientists at the time of their appointments.

Although SCFP alumni have assorted professional experience, their demographics are not as diverse. Of the 65 respondents, 41 (63%) were male, which is consistent with the proportion of fellows who have served during the program’s history. The program’s emphasis on applicants that are already established in their careers is evident; respondents’ ages ranged from 28 to 50, with an average of 38. The ranks of former fellows are almost entirely White (62 of 65, or 95% of respondents), with only two Hispanic alumni and one African-American alumnus responding to the survey; these numbers track closely with the overall population of former fellows.

Geographically, the SCFP has cast a wide net; former fellows came to the program from 23 states and the District of Columbia and two other countries (Sweden and Haiti), according to the survey results. Eleven additional states are represented on the SCFP alumni web site, indicating that alumni either came from these states or accepted positions in them at some point after their fellowship year concluded.

What Do the Fellows Gain from the Fellowship?

Using a series of open-ended questions, we asked SCFP alumni to tell us what they perceived to be the primary benefits of the fellowship program. Their responses clustered around three responses: 1) A “behind the scenes” look at the federal judiciary leading to a deeper appreciation for how the judicial branch operates; 2) Opportunities for professional development, both during the fellowship year and after; and 3) Contacts within the judiciary and with other fellows.

Fellows noted that the opportunities to “peer behind the velvet curtains” at the Supreme Court have been of great benefit to them. One fellow described the experience as being a “judicial tourist,” while another mentioned how much he valued being “behind the scenes to observe how the Third Branch—SCOTUS, Judicial Conference, FJC, AO, etc.—function.” Another program alumnus noted that “[t]he fellowship provided an opportunity to learn a great deal about the federal court system available to few in this country.” Several former fellows noted with appreciation the opportunities to observe oral arguments at the Court. One wrote: “The top benefit is the opportunity to attend oral argument at the Supreme Court—to the extent that the fellow’s work load permits,” and another indicated that he had attended “60+” oral arguments during his fellowship year.

In general, former Supreme Court fellows reported that the fellowship allowed them to push beyond the limits of their textbook training in the law or judicial politics to a fuller understanding of the operation of the federal judiciary independently and within the context of the federal system of government. As one alumnus wrote: “The fellowship utterly transformed my career by allowing me to apply my theoretical knowledge, obtained through years of study, to the ‘real world’ of the Marble Palace.” Another agreed, noting: “I have a much more nuanced sense now of how decisions are made regarding the federal courts. I also can appreciate better than before the relationship between academic and practical expertise. This experience allowed me to see how practical knowledge informs political decision-making, and to ponder the loose ties to academic work.”

Fellows who came to the program from the ranks of academe overwhelmingly praised the SCFP as contributing to their future professional success. Many of their comments highlighted the ways in which the fellowship provides a “vast” benefit in the classroom. One fellow noted: “[The fellowship] provided fascinating insights into the federal judicial system, and, in particular, the Supreme Court, that were invaluable in my subsequent teaching career in the field of public law.” Others cited the fellowship as important for specific subject areas in which they taught. For example, one former law professor noted: “If you are lucky enough to work inside the Supreme Court, constitutional law comes alive. It did for me; my year highlighted the vital place of the person in our constitutional law.” Another law professor said: “The fellowship enriched my understanding of federal court administration, which has been of great benefit in my teaching.” Another law professor noted: “As a civil procedure professor, my knowledge of and appreciation of the rulemaking process was profoundly affected by my fellowship. It made me a better academic, which in turn has (to the best of my knowledge) advanced my career and led to other opportunities for me in the field of civil procedure.”

The benefit of the fellowship most frequently cited by former fellows is the contacts that they made during their fellowship years. Comments such as “I developed close relationships with a number of judges and administrators, some of which continue” are typical of the responses we received to this question. Program alumni commented frequently on the enduring nature of these contacts, saying they “continue to be a resource both personally and professionally.” Former fellows also cited the opportunities to network with the other SCFP fellows as well as with fellows from the other branches of government. Said an alumnus: “One of the major attractions of the fellowship is the fellows themselves; I regard my co-fellows and many program alumni as lifelong friends and unequalled professional contacts.”

What Do the Agencies Gain from the Fellows?

Agencies benefit from the presence of talented professionals who can be assigned to projects over the course of the year. Although there is the problem of fellows having to “ramp up” at the beginning of the year and then make way for a new fellow as they are “coming into their own,” agency staff report that fellows are useful additions to their offices, oftentimes permitting the agency the luxury of pursuing a research project it otherwise would not have been able to consider. At other times, fellows join existing work groups of agency staff, offering new perspectives in pushing projects forward. As the deputy director of the Federal Judicial Center has said:

Each fellow brings not only great talent, ability, and experience, but also a fresh set of eyes and ideas that stimulate improvements in what we do and how we do it. Recent fellows have made critical contributions to Center projects as varied as a research program on how courts process capital habeas cases, drafting a publication on international law, and organizing briefings and materials for foreign judges and officials. We have also been fortunate insofar as our fellows have made themselves full members of the staff, willing to undertake tasks outside their primary responsibilities in order to help the Center meet its mission requirements.

What Happens Next to Former Fellows?

Interestingly, the vast majority of fellows return to the fields in which they
were working immediately prior to the fellowship, many even to the same jobs. Thirty-one of the 36 (86%) responding alumni who had been professors returned to academia, 24 (66%) of them to the same position. Fifteen of the 17 (88%) responding alumni who had worked in the government continued in a similar capacity, although only four of these respondents returned to the same job. Over the course of their careers alumni show more mobility. Even among the academicians, 56% of respondents have moved to a new position, whether teaching at a different institution, entering academic administration, or, in the case of five responding alumni, leaving academia for government or private legal practice.

Those fellows who return to academia report that the fellowship has been useful in their teaching and scholarship. One program alumnus wrote: "I now teach Comparative Constitutional Law, which I would not have had the confidence to do before my fellowship.” Others noted that their experiences as fellows led to new research endeavors. For example, one fellow noted that the fellowship “opened two fields that I have written in—judicial administration and the history of courts,” while another reported that “research that I began at the FJC subsequently provided a roadmap for my subsequent scholarly development. I have now written extensively on the federal rulemaking process, class action and complex litigation, and mass tort litigation.” A third noted: “I developed an interest in Bankruptcy [while a fellow], I am now a Bankruptcy professor. I publish in this area, speak in this area, and teach in this area.”

Constructive Improvements

SCFP alumni were overwhelmingly positive about the experience they had as fellows. In fact, 62 of the 65 respondents (95%) reported that the fellowship had benefited them professionally. Nevertheless, alumni respondents offered some suggestions for improving the fellowship program into the future. First, program alumni would like to strengthen the connection between the fellows and the Court, especially for the three fellows who do not have offices in the Court itself. Alumni report that they would have liked “more opportunities” to meet and interact with the justices. Alumni who expressed this view had specific suggestions for how to build a stronger connection between the fellows and the Court. One fellow proposed: “If there is any way that the fellows could work with the justices on matters not pertaining to actual cases, this would enrich the experience considerably: for example, presentations that the justices will make, research in preparation for meetings with foreign judges.”

Second, program alumni believe that the SCFP would be strengthened if additional resources were invested in the program. Several former fellows praised the travel opportunities the fellows had, but noted that more travel opportunities would have enhanced their experiences as fellows. Alumni also contrasted the Supreme Court Fellows Program with the better-funded White House Fellows Program. One noted: “It [SCFP] deserves visibility equal to the White House Fellows Program,” while another wrote: “[c]ompared to the WHF, the SCFP program is much less defined and I think suffers as a result.”

Third, and related, SCFP alumni would like to see “more interaction with fellows in other branches” of the federal government. One former fellow wrote: “There needed to be better ties with the Congressional Fellows and the White House Fellows.” Another said: “We had some links with the White House Fellows Program, but these were not pursued until later in our fellowship year.”

By far, however, the most frequently cited improvement would be to standardize the experience across the four agency placements. In response to the open-ended survey questions, some fellows expressed concern about the consistency of work assignments. As one former fellow wrote: “I was fortunate to work with a very open and welcoming group of researchers who allowed me to follow my curiosity about projects in the division, but I know that some other fellows had more difficulty finding a focus for their work.” Alumni respondents believe that the program would be strengthened by “[d]eveloping a stronger notion of what the fellows should be doing” at the agencies and if “[i]ndividual agencies [took] more responsibility to ensure that the fellow has interesting work.” Another idea that several fellows suggested was the addition of a formal orientation at the outset of the fellowship year to “support the fellows . . . and supplement the work experience in the different agencies.”

Notes

* The authors were the 2006–2007 U.S. Supreme Court Fellows. In addition to the Supreme Court Fellows Program alumni who contributed their recollections to this project, the authors thank the staffs of the Administrative Assistant to the Supreme Court and the Federal Judicial Center, especially Annie Miller and Nicholle Reisdorff, for their assistance.
1. During May and June 2007, the authors contacted more than 100 SCFP alumni and encouraged them to take an online survey using the Federal Judicial Center’s web surveying capabilities. The survey asked demographic questions, questioned respondents about their pre- and post-fellowship educational and career experiences, and asked substantive open-ended questions about the respondents’ impressions (positive and negative) of the fellowship, respondents’ responsibilities while serving as fellows, and the benefits of the fellowship for their careers. The response rate was 65%.
2. www.whitehouse.gov/fellows/about/purpose.html.
3. For law schools, rankings come from U.S. News and World Report. The ranking of doctoral programs is less precise, based on rankings by disciplinary associations where available or by the ranking of the institution as a whole in U.S. News.
References


