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Uncharted Leadership

A Study of Leadership in the Judicial Branch

by

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A Study of Leadership in the Judicial Branch

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This paper is the final product of a research oriented project in which I studied leadership within the federal judicial system, specifically the Supreme Court of the United States. This project was an in depth study of the amount, style, and effect of Leadership in the Judicial branch. Through this study I hoped to explore a major component of government which has somehow been ignored when studying leadership at the national level.

Although the majority of my research was done by reading and evaluating books, periodicals, and any prior reports related to the subject, I also utilized the potentially limitless applications of the Internet in my search for information. I incorporated some first hand observations into my study including a trip to the United States Supreme Court, to conduct an interview with the Clerk of the United States Supreme Court, who is in an ideal position to view and report on the leadership amongst the Supreme Court Justices.
This project has special meaning for me because I intend to enter the field of law. I created this project in hopes that it would give me a unique insight into the effect that I may be able to have on this country and possibly the world by being a participant in the legal proceedings of this nation. I believe that this project will benefit the field of Leadership Studies immeasurably, if for no other reason than that it will be exploring a relatively uncharted region of Leadership.

I began this project with the intent of studying several different types of leadership as practiced in different areas within the judicial branch. I was interested in studying:

- The leadership exercised by the Supreme Court as a check in America’s elaborate system of checks and balances;
- The effect of appointing a leader to a position for life;
- The politics involved in Supreme Court appointments, and to what extent the justices adhere to party lines;
- The leadership amongst the justices, specifically the effect of having one justice appointed to be Chief Justice by a foreign entity.
In this project I set out to study not only leadership but also followership. I intended to study the effect that Supreme Court Decisions had on this country by researching the reaction of the American masses to the leadership of the Judicial Branch, on certain controversial cases of the past such as Brown v. Board of Education and Roe v. Wade.

Upon beginning the research phase of my project I came to the realization that I was going to have to modify certain aspects of my study. My preliminary research produced leadership scenarios which I had never thought to study. One such example is the leadership roles of the Chief Justice in his three different capacities, those being the chief adjudicator of the high court, the head administrator of the Supreme court building, and the "Third Branch Chieftain" as symbolic head of the Judicial branch of our government. I realized that my study would not be complete without a study of the leadership of the Chief Justice, his effectiveness as an administrator, his personal responsibilities as the figure head of the judicial branch, and his national responsibilities as the chief adjudicator.
of the land. I realized that in order to have a successful project it would be necessary for me to remain as flexible and open minded as possible. By having a flexible outline I would have the freedom to explore new leadership scenarios with the hopes of incorporating them into the final project.
"The Administration of justice is the firmest pillar of government." -George Washington 1789

As most are well aware, The United States Government is divided into two major entities, Federal (National) and State. The Federal Government is further divided into three separate branches, the legislative branch (Congress), the executive branch (The President, administrative offices, and the military), and the judicial branch (the courts). All three branches are separate entities but interrelated in that each one acts as a check on the other two. The powers of all of these branches stem from the U.S. Constitution. It is the Constitution which grants the judicial branch equality with and independence from both the legislative and executive branches. The guidelines calling for the establishment of the judicial branch are spelled out in Article III, Section 1 of the Constitution. Which reads as follows:

The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the superior
and inferior Courts shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

This section calls for the establishment of the courts and ensures that the judges will be appointed for life barring the, "impeachment for and conviction of Treason, Bribery, or other high Crimes and Misdemeanors."¹ This section also ensures that neither the President nor Congress can reduce the salary of a federal judge. These two features make the federal judiciary very unique, and also do a lot to ensure that justice will be done. Justice is more likely as a result of the elimination of politics from the judicial branch. By ensuring that judges and justices are appointed for life the founding fathers were able to eliminate the need for judges to remain popular for the purpose of reelection. History has proven that often times the most popular action is not the best one for the long term welfare of the country. Politicians must make decisions and statements that are popular, they must do what they can to

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¹The Constitution of the United States; Article II, Section 4.
remain in the good graces of the voting public. For this reason they often engage in what could be termed reactionary leadership. This is to say that they do not make any major decisions without the prior knowledge that they will have the support of the masses. Their decisions and actions as leaders are in effect just reactions to popular sentiment. Political leaders will often consult polls to find out how they should handle a situation. Of course there have been political leaders who have ignored the polls and public opinion, but they run the constant risk of alienating a sizable portion of their voting public and destroying their chances for reelection. Federal judges do not bother themselves with polls and public opinion, because they do not have the added burden of being on the unending campaign trail. They are appointed for life and therefore are free to make the decisions that they believe are in the best interest of the country, or are most in tune with the sentiment of the Constitution. Perhaps the Clerk of the United States Supreme Court said it best when he said, "Once appointed, (to the bench) the only thing that the Justices
have to answer to is the Constitution."² Do not however, be misled by the fact that once on the bench Judges are unaffected by politics, because politics play a large part in who is selected for the bench. It is no small secret that Presidents often try to pack the courts with as many judges holding their particular partisan views as possible. Ronald Reagan for example, "appointed almost half of all lower court judges 372 out of 736 and elevated Rehnquist to chief justice, as well as appointed three other justices to the court."³ This "court packing" can also be studied when studying leadership in the Judicial Branch. Presidents can only serve for at most eight years but they can appoint judges who will serve for life and give the president a chance to influence the policies of the nation well beyond his tenure as a national leader. There is however no guarantee that the appointed judge will make decisions strictly along party lines. For example Chief Justice Earl Warren and Justice Brennan, two men responsible for some of the most liberal decisions to come out of the court in

recent history, were appointed by Dwight D. Eisenhower, who was known to be a conservative. Along the same lines many were disappointed when Justices Kennedy, O'Conner and Souter all of whom were appointed by Reagan and Bush, voted to uphold Roe v. Wade in a decision on Planned Parenthood of Southeastern Pennsylvania v. Casey. All of these instances illustrate that politics do not play a major role in the leadership of members of the federal judiciary. The fact that the judicial branch is the only branch of government that shapes politics but is not shaped by them makes it hard to understand why it's leadership has not been studied more.

In order to accurately assess the leadership found in the Judicial Branch of our government, one must first understand the structure of the courts. At the bottom level of the structure there are 94 district courts. Ninety one of these courts are located in the states and D.C. and the three additional courts are territorial courts which are located in Guam, the Virgin Islands, and Northern Mariana Island.

^O'brien 110.
These courts are the first level for a person involved in a federal suit. If that person is unhappy with the verdict of their case then they can appeal, causing the case to be heard again in appeals court. There are only thirteen courts of appeals. The country is divided into 11 major sections. Each of these sections is comprised of between three and nine states, and there is a court of appeal for each of these sections. In addition to these 11 Circuit Courts of Appeals, there is one for D.C. and one for the Federal Circuit, bringing the total number to 13. If a person is dissatisfied with the decision of a court of appeals then that person can request that their case be heard in the U.S. Supreme Court. The Court will however only review cases that they feel involve a great matter of national importance, and of those cases reviewed will only except a very small percentage to be heard. To illustrate the small percentage of cases actually heard by the Supreme Court, in 1994 6996 cases were docketed and only 93 of those were heard before the Supreme Court. On average approximately 8000 cases are docketed and approximately 100

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5Souter, William K. Memorandum to the Judicial Conference. 1 Sept. 1995.
are heard. Out of this structure of federal courts we see the leadership in the Judicial branch beginning to emerge. Many people feel that Leadership in the Judicial Branch rests in the Supreme Court. This is however a radical misconception. The Supreme Court, as powerful as it may be, does not lead the Federal Judiciary. The Supreme Court has the final say when it comes to court cases, but it does not have any say in the policy and procedures of the entire Federal Judiciary. The entity that does have this power and is the leader of the Judicial Branch is the Judicial Conference.

The Judicial Conference is a body comprised of 27 federal judges. The Chief Justice of the United States serves as the presiding officer. Also on the conference are the Chief Judges from each of the thirteen courts of appeals mentioned earlier, the chief judge of the Court of International Trade and twelve district judges from the regional circuits (not including the federal circuit court of appeals). These last twelve members are appointed by the

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6O'Brien 190.
judges of their circuit and serve three year terms. The Judicial Conference began as The Conference of Senior Circuit Judges which was created by Congress in 1922, with the mission to, "serve as the principal policy making body concerned with the administration of the United States Courts. The name was changed in 1948 as Congress enacted section 331 of title 28 United States Code, the mission however remained the same. Section 331 of title 28 outlined that the Conference was to:

1. Make a comprehensive survey of the conditions of business in the courts of the United States;

2. Prepare plans for the assignment of judges to or from courts of appeals or district courts, where necessary;

3. Submit suggestions to the various courts in the interest of promoting uniformity of management procedures and the expeditious conduct of court business;

4. Exercise authority provided in section 372(c) of title 28 for the review of circuit council conduct and disability orders filed under that section; and

5. Carry on a continuous study of the operation and
effect of the general rules of practice and procedure in use within the federal courts, as prescribed by the Supreme Court pursuant to law.

The Judicial Conference is also charged with supervising the Director of The Administrative Office of the United States, in his duties as administrative officer of the courts of the United States. Section 331 of title 28 also states that the Chief Justice is supposed to submit an annual report of the proceedings of the Judicial Conference to Congress, complete with any recommendations for legislation.

This Judicial Conference is typically summoned by the Chief Justice two times a year, with an annual meeting being held in September and a semi-annual session in March. Attendance is mandatory except with the excuse of the Chief Justice. The majority of the Conference's work is accomplished through an extensive network of committees, which are created to address a variety of specific subjects pertaining to the courts, such as automation, personnel, judicial salaries and benefits, sentencing and probation. The conference also has an executive committee comprised of
seven members whose job it is to review the jurisdictions of
the committees and publish operating procedures for those
committees. The actual committee appointments are made by
the Chief Justice and are in effect for three years,
becoming effective on the first of October each year. As of
1991 there were 21 different committees which met to set
policy. The first of these committees is the Executive
Committee which acts as the senior executive portion of the
conference. The remaining committees are fairly self
explanatory, they are the Committee on the Administrative
Office, The Committee on Automation and Technology, The
Committee on Administration of the Bankruptcy System, The
Committee on the Bicentennial of the Constitution, The
Committee on the Budget, The Committee on the Codes of
Conduct, The Committee on Court Administration and Case
Management, The Committee on Court and Judicial Security,
The Committee on Criminal Law and Probation Administration;
and the Committees on Defender Services, Federal-State
Jurisdiction, Intercircuit Assignments, The Judicial Branch,
Judicial Ethics, Judicial Resources, Long Range Planning,
Administration of the Magistrates System, Review of the
Circuit Council Conduct and Disability, Rules of Practice and Procedure, and finally The Committee on Space and Facilities. As is evident by the names of these committees, each one deals with reviewing the existing behavior and creating guidelines for future conduct in a very specific portion of the Judicial Branch. It is through these committees that what little changes do take place in the Judicial Branch, are initiated. If in the course of its research a Committee finds a way to improve the Branch, they raise this issue when the entire Judicial Conference convenes in either September or March. The Judicial Conference as a whole then has the authority to either submit suggestions to the lower courts on ways that they can improve their court, or draft a proposal for new legislation to be delivered to Congress. The leadership which is exercised in this process could be compared to empowerment in the corporate world. The judges analyze their own workplace and then come up with suggestion to make it more effective. They can then take these suggestion to a group of their peers and if they all approve of the suggestions they can either implement them or take the necessary steps
to see that they are implemented by proposing legislation to Congress. It is interesting that the very management style and leadership ideas that have recently taken corporate America by storm, are in fact practices which have been in place since 1922 in America's third Branch of Government, and are just now being recognized as an effective means of leadership.

The Chief Justice has typically been an individual who has had a lot of impact on the Judicial Branch. Often times we identify a leader based on his ability to successfully guide the organization into an unknown realm. This unknown realm can be a new organizational structure, a new product line, a new marketing technique or even just a new way of thinking (which was described by Thomas Kuhn as being a paradigm shift). With this standard in mind, some of the most effective chief justices have been John Marshall, William Taft, and Warren Burger. We all learn of John Marshall's leadership as young children in our elementary school history classes. John Marshall is the man who gave the Supreme Court the power of Judicial Review. This was an
instrumental event because it gave the Judicial Branch the power of the other two branches. To say that John Marshall gave the power of Judicial Review is a bit misleading, in actuality it was not John Marshall but rather John Marshall's interpretation of the Judiciary Act of 1789, that gave the power of Judicial Review. The case which made judicial history was Marbury v. Madison, an 1803 case in which the Supreme Court did something that was previously unheard of in striking down an act of Congress. It was Marshall's interpretation of the Judiciary Act of 1789 which lead to this decision. Marshall felt that the Judiciary Act expanded the courts original jurisdiction under Article III of the Constitution to include the power to review the action of state and federal legislatures in order to determine if the laws which they pass are constitutional or not. This was a landmark decision because prior to this time the court did not have the power to act as a check on the other branches of the government as a matter of fact in the Federalist 78 Alexander Hamilton said that the Judicial Branch, "may truly be said to have neither FORCE nor WILL, but merely judgement..." he went on to declare it to be,
"beyond comparison the weakest of the three departments of power." With that one decision in the case of Marbury v. Madison, John Marshall elevated an entire branch of the government to noteworthy status. Giving what was formerly the weakest of the three branches, the strength to overturn the work of the others. John Marshall was perhaps the greatest leader that the Supreme Court ever possessed. He served as the Chief Justice for over thirty-four years, presiding over the court during the Presidencies of John Adams, Thomas Jefferson, John Monroe, James Madison, John Quincy Adams, and Andrew Jackson. After the Marbury v. Madison decision the Marshall court overturned several state laws reaffirming its power of Judicial Review. However, it was not until 1857 that the Supreme Court challenged Congress again in the Taney Court's decision in Dred Scott v. Samford. 

The next great leader to sit on the bench was William


8O'brien 53.
Taft who was in the unique position of having appointed his predecessor. Former President William Taft was appointed to the bench as the chief justice in 1921 by President Harding. When Taft was appointed to the bench the first thing that he set out to do ultimately proved to be the next step in Marshall's original advancement of the power of the Supreme Court. Upon his appointment, Taft instantly set out to construct the court's own building. Up until this point in time the Court had been housed in the Capitol, first in a distant corner of the basement and later on the ground floor between the two houses. Taft saw this location in the Capitol as somehow symbolic of the lack of power that the Judicial Branch had originally been thought to possess. Taft felt that by housing the court within the Capitol it symbolized the fact that the Court was a small part of and therefore under the control of the Congress.

Many of the leadership scholars today will support the fact that sometimes as a leader it becomes necessary to go against the will of the followers if what you seek is in their own best interest, and the best interest of the
organization. This is exactly what Taft did. The Court had just unanimously turned down the motion to move the courts location from the Capitol to a larger area in the Congressional Library Building in 1896. At the time that Taft was appointed to the bench his fellow justices were still very much opposed to the idea of leaving the Capitol. Taft however envisioned a marble palace of justice, as symbolic as it was practical. He wanted a building to symbolize the independence and strength which Marshall had established for the court. Despite the lack of support which he received from the other justices Taft continued to lobby Congress for the building until the money was granted in 1925. Taft had died by the time the 10 million dollar building was completed in 1935, so he never got the chance to see what was probably his greatest contribution to the Judicial Branch. It was not so much the building itself, but the message it sent to the country and the other two branches of government that made this contribution so significant. Taft's visionary leadership allowed him to see beyond the sentiment that was popular at the time, to a time where the Supreme Court would be a major force in the U.S.
Government and would need the large building whose opulence, others on his court felt was an embarrassment. The building which Taft envisioned would represent the new courts role in American Politics. Taft later remarked that, "the function of the Supreme Court (had become) not the remedy of a particular litigant's wrong but the consideration of cases whose decision involves principles, the application of which are of wide public or governmental interest, and which should be authoritatively declared by the final court."9 The new building was a way to symbolize the new found independence, equality and responsibility that the court now enjoyed.

The next leader to make significant changes in the Supreme Court was Warren E. Burger who was appointed to the court in 1969 by President Nixon. Burger's major area of interest outside of hearing cases was the administrative overhaul of the court. Burger realized that the courts docket was continuing to grow but the court was being run practically the same as it was when the court received a

9O'Brien 145.
fraction of the cases that they were currently receiving. He pushed therefore for technological and managerial improvements which would increase productivity and efficiency in both the Supreme Court and in the lower courts. To use his words, a "sort of overhaul (was) needed up and down the line." Burger not only brought computers and photocopiers to the court but he also asked congress to create an Office of Administrative Assistant to assist the Chief in the administrative responsibilities involved in running the court. Burger was also responsible for bringing new specialized offices to the court such as the Legal Office, Personnel and Organizational Development Office, Curator's Office, and the Data Systems Division. It can be said that for better or for worse, Chief Justice Burger introduced a bureaucracy into the court. Many people did not receive this well, fearing that it would limit their access to the Chief and viewing it as "empire building". Whether we agree or disagree with the changes that Burger made, they were still progressive changes which have shaped the Supreme Court and changes which are significant enough

\[10\] O'brein 177.
In addition to the specific individuals that have made significant contributions to the Federal Judiciary through their leadership as Chief Justice, there are also certain levels of leadership that are inherent in the position of Chief Justice. Currently the role of Chief Justice is one that is a compilation of several different responsibilities. The Chief Justice is not only the Chief Adjudicator of the nation but he is also the Head administrator of the Supreme Court, and the symbolic figure head of the Judicial Branch. The Chief Justice is a member of a number of committees, including the aforementioned Judicial Conference, and the board of the Federal Judicial Center. This is an incredible amount of influence for one person to have. It is also an incredible amount of responsibility. Many have begun to wonder if the Chief Justice of the late twentieth century has too much on him. There are those who feel that his actual decision making and case reviewing time will suffer as a result of the increased administrative responsibilities. Is this too much for one man? According
to those close to him, no it is not. William K. Souter the Clerk of the United States Supreme Court said of the situation:

"...it is not to much on him (because) everything runs itself...there are several managers of the court in charge of different areas such as personnel, and budget, they take care of things...no leadership is needed...he (the Chief Justice) went to the Gary Cooper school of acting—YUP!, NOPE!—with more NOPE's than YUP's."\(^\text{11}\)

It is doubtful that "no leadership is needed" by the Chief Justice. What the clerk was probably trying to say was that just because the Chief Justice is in charge of those areas of the court does not mean that he is responsible for doing all of the work in those areas. Just as with leaders in the corporate world, the elaborate bureaucratic structures often keep the leader from having to make anything but the final decision.

Another area of the Supreme Court that was studied for leadership was the interaction of the justices. It would

\(^\text{11}\)Souter, William. Personal Interview. 3 April 1996.
seem that because these nine individuals are in such close contact with one another, listening to, considering, and debating issues that are pertinent to the American way of life, leadership is going to be not only present but prevalent. Often times when a group of people that is around this size works with one another to solve a problem or make a decision, a leader inevitably emerges from the group. This leader is often times not the appointed leader of the group but is instead someone that everyone in the group respects as a leader due to their accumulation of idiosyncratic credit. For some reason the Supreme Court of the United States does not fit this popular mold. The Supreme Court is never in a position to experience emergent leadership because the court does not come together to solve any problems. The justices of the court all hear the case together but they deliberate on it separately and do all of the research separately, they then reconvene with their vote and write the opinions, one majority opinion and one dissenting opinion. When Justice Potter Stewart joined the Supreme Court he remarked that he expected to find, "one law firm with nine partners, if you will, the law clerks being
the associates." 12 Justice Stewart believed that everyone would be working together and collaborating to produce a final group product. Justice Harlan later informed him that, "...here it is like nine firms sometimes practicing law against one another." 13 This independence is very important to the process of the Supreme Court. It does a lot to eliminate certain group phenomena such as "group think" that could be dangerous when deciding issues of such importance. Perhaps this is a scenario where it could do more harm than good to have a strong leader in the group. If there happened to be a justice who was a very persuasive and charismatic leader and went around to every justice and convinced them to vote his way every time, it could limit the free thought of the other justices and could cause them to make a decision that was not the best decision for the country. As it stands now, even though the justices debate back and forth, there is little room for a persuasive justice to overly influence the court. As Justice John Harlan said, "Decisions of the court are not the product of

12 O'brien 155.
13 O'brien 155.
an institutional approach...They are the result merely of a tally of individual votes cast after the illuminating influences of collective debate."¹⁴ There is actually little group interaction or leadership that can be studied when considering the justices of the Supreme Court. Chief Justice Rehnquist said it very well when he remarked, "When one puts on the robe one enters a world...which sets great store by individual performance and much less store upon the virtue of being a team player."¹⁵

This project began as a study of leadership in the Judicial Branch. I began my research with the idea that I would be breaking ground in the field of leadership studies by exposing the leadership in a segment of society that had not previously been explored. I expected to find leadership out of the Judicial Conference, the Chief Justice, the Supreme Court, and amongst the Justices. I managed to locate and identify some aspects and examples of leadership

¹⁴O'brien 156.
¹⁵O'brien 156.
but not nearly as many as I had hoped to. What I began to realize was that the true leadership in the Judicial Branch had taken place over two hundred years ago when the founding fathers conceived the idea of the judicial branch and wrote the Constitution. The visionary leadership of these men would have been an interesting thing to study. They put in place a system that except for minor details and adjustments runs itself. For this reason there was not to much to study in the way of leadership today. The Judicial Branch is a very conservative entity which can not afford too many drastic changes. The legal issues that are dealt with are much to sensitive to be considered in an environment where one judge in one courtroom may conduct one kind of case and another judge in another court room may conduct another. There needs to be a high level of consistency in order to ensure that everyone has an equal trial. This need for consistency further decreases the value that is placed on innovative leadership in the Judicial Branch. There is however leadership exercised by the Judicial Conference in the policy making and shaping that they do in order to ensure an efficiently and consistently run Branch of
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Government. There has also been leadership by Chief Justices of the past such as John Marshall and his establishment of Judicial Review, Howard Taft and his views on the symbolic gestures needed to reaffirm the independence and strength of the court, and Warren Burger's views on bringing a bureaucratic structure to the Supreme Court in an effort to increase productivity and effectiveness.

In my studies I also came across leadership on the part of lower level judges such as Judge Robert Ward, a Manhattan federal judge who has deliberately disobeyed the 1994 decision on the part of the Judicial Conference to discontinue the use of cameras in the courtroom. Judge Ward has laid down a direct challenge to the Judicial Conference because he believes that cameras should be allowed in the court rooms. What his actions have reminded judges of is the fact that the Judicial Conference is merely able to suggest policy to judges and submit proposals for legislation to Congress. As David Sellers, the spokesperson for the Judicial Conference says about the group, "it assists, it advises, it guides, it takes positions. But, it
does not make law."\textsuperscript{16} The leadership and the courage displayed by Judge Ward in going against approximately sixty years of tradition and precedent to disobey the Judicial Conference is something that can not be ignored when attempting to identify leadership in the Judicial Branch. Leadership does exist in the Judicial Branch, but the structure of the Branch limits an individuals ability to make significant changes. Leadership is limited not only by the structure of the Judicial Branch but also by the very unaggressive nature of a court system in that it must wait for a case to be brought before it before the court can make a decision and a statement on the issue. The Judicial Branch is, to put it plainly, a reactive and not an active branch of government.

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