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# Looking at Judiciary Leadership from the Demand Side:

## Judges: “Invisible Leaders”?

Jeswald W. Salacuse

While the literature on leadership is vast and continues to expand at a rapid rate and while educational programs and courses on leadership exist at academic institutions of all levels and quality, judges and the judiciary are hardly ever considered fit subjects of study by leadership scholars and teachers. For them, “leaders” worthy of the name are to be found in corporate executive suites, presidential palaces, military commands, and even professional football teams, but not in the courts. As a result, in virtually all well-known books on leadership, judges are invisible. Moreover, even within the body of legal literature, in-depth studies on judges as leaders are scant.

Judiciaries, like corporations, armies, and governments, are fundamentally social organizations. Like all social organizations, they require leadership to function effectively and achieve their goals. This fact has not escaped certain historians, particularly those who study the U.S. Supreme Court. They have underscored the crucial role that the Chief Justice, as leader of a coequal branch of government, has played in leading the Court and in thereby profoundly influencing the development of the American constitutional system. John Marshall and Earl Warren have drawn particular attention for their qualities as judicial leaders, as the very titles of two highly regarded biographies—Jean Edward Smith’s *John Marshall—Definer of a Nation* (1996) and Bernard Schwartz’s *Super Chief—Earl Warren and His Supreme Court* (1983)—make clear from the outset.

Marshall laid the foundations for constitutional government in the United States not only through his legal ability but equally important through his skill at leading the other Supreme Court justices to forge unanimous opinions on key issues—much to the consternation of Marshall’s political adversary, President Thomas Jefferson, whose other appointees to the Court, much to Jefferson’s dismay, seemed all too willing to join Chief Justice Marshall in his decisions.<sup>1</sup> Before Marshall’s arrival at the Court, its six justices wrote separate opinions in each case they decided. Marshall viewed this practice as limiting the Court’s strength. In a feat of judicial leadership with far-reaching consequences, he convinced the other justices that speaking with one voice would increase the court’s institutional strength and influence. He urged them for each case to write one opinion embodying their decision. In his first three years on the court, Marshall participated in 42

cases. He wrote all the decisions and all of them were unanimous. Later when President James Madison appointed Joseph Story to the Supreme Court in 1811, he assured a dubious Jefferson that Story would remain faithful to Jeffersonian principles. Within a short time, Story had become Marshall’s strongest supporter, while expressing the worry that Jefferson’s continuing influence “would destroy the government of his country.”<sup>2</sup> In his thirty-four years as Chief Justice, John Marshall presided over more than 1,000 cases with fewer than a dozen dissents—surely a remarkable feat of judicial leadership.

Similarly, Earl Warren skillfully led the court in the desegregation cases, beginning with *Brown v. Board of Education*, to render unanimous opinions, a factor that was crucial in giving those decisions legitimacy in the eyes of the public. When *Brown* was first argued while Warren’s predecessor Fred Vinson was Chief Justice, the Court appeared to be strongly divided. As Felix Frankfurter would later write, “I have no doubt that if the *Segregation* cases had reached decision last Term there would have been four dissenters—Vinson, Reed, Jackson and Clark.... That would have been a catastrophe.”<sup>3</sup> The Court reheard the case after Warren became Chief Justice. Its decision in 1954 was unanimous. The only differences between the two terms were the death of Vinson, the appointment of Earl Warren as Chief, and the interjection of Warren’s compelling leadership into the Court’s deliberations.<sup>4</sup>

While both Marshall and Warren may have been overlooked by leadership scholars, they and countless other members of the U.S. judiciary have contributed in many ways through their leadership to building both a strong judicial system and a democratic and prosperous society for the country. One of the factors that distinguish Marshall, Warren, and other chief judges from traditional corporate CEOs, military commanders, and many political officials, of course, is that as judicial chiefs they had no real or legal authority over the judges they were supposed to lead on their courts. Thus, in thinking about judicial leadership, one question that needs to be addressed is what is it that enabled Marshall, Warren, and other similarly placed Chiefs to lead other judges and what lessons about judicial leadership can we learn from them today. More broadly, at least four important questions are central to a consideration of judiciary leadership:

### Footnotes

1. JEAN EDWARD SMITH, JOHN MARSHALL: DEFINER OF A NATION 448 (Henry Holt 1996).
2. Michael J. Glennon, *The Case that Made the Court*, WOODROW WILSON Q., Summer 2003, at 20-28.
3. QUOTED IN BERNARD SCHWARTZ, SUPER CHIEF—EARL WARREN AND HIS SUPREME COURT 72 (New York University Press 1983).

4. Justice Frankfurter compared Warren’s manner of presiding over the court with Toscanini leading an orchestra, while Justice Potter Stewart called him “the leader leader,” saying of Warren: “he was an instinctive leader whom you respected and for whom you had affection and ... as the presiding member of our conference he was just ideal.” *Id.*, at 31.

1. What is the essence of effective judicial leadership? 2. What are the tasks of leadership that judges and other members of the judiciary are required to carry out? 3. What are the essential skills and qualities that judicial leaders must possess to perform those tasks? And 4. How may these skills and qualities be taught to and developed in members of the judiciary through judicial leadership education? The purpose of this article is to explore those questions.

Finding answers to these questions is significantly complicated by the great diversity of judicial systems among American states and the differing leadership roles played by key actors within those systems. The development of national judicial leadership educational programs and theories must somehow find commonalities among fifty states and a federal system whose judiciaries differ widely in fundamental ways. Chief justices, for example, can be elected to that position by the public or by their fellow justices. Some serve for life, others for two-year terms. Similarly, trial court presiding judges can be elected by the local bench or appointed by the chief justice or a state's Supreme Court. Most serve terms of one or two years, but some remain the presiding judge for a decade or more. Moreover, the role of the chief justice in some states is limited to leading a state's Supreme Court, while in other states the chief justice is seen as leading the judiciary.

In addition, the leadership challenges faced by presiding judges are complicated by the degree to which trial courts depend upon human and other resources not under the control of the judiciary. In some states, for example, court clerks are employees of an independently elected or appointed clerk of court responsible for keeping court records. Court security in most states is provided by sheriffs or police chiefs. Trial courts also can have supervisory responsibilities for services such as probation, public defenders, and other essential justice system functions. Senior administrators also play differing roles from state to state. Moreover, at both the state and trial court level, they have longer tenures in office than their judicial counterparts, a factor that may affect the extent to which initiatives of a chief justice or a presiding judge continue once they have stepped down from their leadership positions. The diverse nature of leadership roles and systems within state judiciaries thus raises fundamental questions as to how a course or a book on judicial leadership should treat such diversity.

## THE DEFINITIONS AND DOMAINS OF JUDICIARY LEADERSHIP

The search for the meaning of leadership has become the modern alchemy of organizational management. Although everyone agrees that leadership is important, indeed vital, for the success of all organizations, a clear understanding of its nature has eluded scholars and practitioners, just as the means for turning lead into gold eluded medieval alchemists. In the search for the meaning of leadership during the last hundred

years, scholars have developed and pursued a series of theories. One of the first of these was the "great person theory," sometimes called "trait theory," that sought to explain leadership by focusing on the personal characteristics of famous leaders and how they differed from people who were not leaders. Much of this work assumed that leaders had special personal talents denied ordinary mortals that enabled them to lead groups, organizations, and nations. The great person theory not only influenced organizational scholars but also seemed to animate scholarly histories, as well as folklore, that told the stories of famous national leaders from Alexander the Great to Nelson Mandela.

Eventually, trait theory would cause scholars to focus on what leaders actually do, prompting the development of a new scholarly orientation that concentrated on leadership style. Further study led to the realization that the ability of a person to lead effectively depended on the circumstances in which that person was called to lead since an individual with admirable theoretical leadership traits might succeed in one situation while failing in different circumstances. In short, the ability to lead was contingent on circumstances. Thus, scholars looked for the explanation of leadership in the situations that give rise to effective leadership, and less to the personal traits or the styles of the leaders concerned.<sup>5</sup> A person who is an effective leader in one situation, for example, as CEO of a multinational corporation, could prove to be a disaster in another situation, say, as president of a university.

More recent scholarship has sought to explain leadership in terms of the relationships that exist between leaders and their followers. For example, in his seminal study *Leadership*, the eminent historian James MacGregor Burns relied on a relational theory of leadership in drawing a fundamental distinction between *transactional leadership*, which focuses on leading others by mediating among their competing interests, and *transformational leadership*, which leads people by changing their attitudes and beliefs.<sup>6</sup> This multiplicity of explanations and definitions of leadership has served to complicate the search for its essence. But while fashions of studying and interpreting leadership have changed over time, no one has yet seriously suggested that leadership study be abandoned as alchemy finally was.<sup>7</sup>

The word "leadership" expresses a complex and at the same time flexible concept that has allowed scholars and practitioners to define it in many ways. The English word "leader" is derived from the old English *laedan*, which meant to show the way, to be ahead of—an expression that conjures up images of shepherds walking in front of their flocks so as to lead them to a particular destination. It also implies the notion of sheep willingly following a shepherd. In this respect, it is to be distinguished from the

**"What are the tasks of leadership that judges and other members of the judiciary are required to carry out?"**

5. WILLIAM A. WELSH, *LEADERS AND ELITES* (Holt Rinehart and Winston 1979).  
6. JAMES MACGREGOR BURNS, *LEADERSHIP* (HarperCollins 1978).  
7. For brief histories of leadership scholarship, see LEE G. BOLMAN & TERRENCE E. DEAL, *REFRAMING ORGANIZATIONS—*

*ARTISTRY, CHOICE, AND LEADERSHIP* 337-369 (5th ed. 2013); Deanne den Hartog, *A Serious Topic for the Social Sciences*, *EUR. BUS. F.*, Summer 2003, at 7; and Robert Goffee and Gareth Jones, *Why Should Anyone Be Led By You?*, *HARV. BUS. REV.*, Sept.-Oct. 2000, at 63, 64.

**“Leadership is not accidental, but a willed, deliberate activity.”**

idea of driving a herd of cattle from the rear by using force. The modern English word “leadership” also suggests the action of showing the way, of moving a group of people willingly toward an objective. Many languages, including French and Spanish, seem to have no precise

equivalent for the English words “leader” or “leadership.” As a result, the English words for these terms have found their way into those languages. So, French books and articles on politics and management often refer to “*le leader*,” and French books have titles like “*Comment Trouver Le Leader en Vous*” (“How to Find the Leader in You”) and “*Le Leader de Demain*” (“The Leader of Tomorrow”). In Spanish, the word *el lider*, which seems to have supplanted the more indigenous “*jefe*,” is also derived from English.

Leadership implies the existence of followers. To be a leader you need persons who will follow you. One person alone on a desert island could never be a leader. The arrival on that island of another survivor from a shipwreck creates the potential for leadership. Not only does leadership require the presence of other persons, it also requires that those persons be willing to follow the leader in an indicated direction.

Leadership, as we understand it today, is, of course, much more than merely showing the way. It also implies the ability to persuade or cause persons to whom the way is shown to move willingly in that direction. History is filled with prophets who have tried to show the way but have failed to move their potential flocks. We may revere their wisdom today and lament the ignorance of those who rejected them, but we cannot say they were leaders. They were not leaders precisely because no one would follow them. To be a leader, you must have the ability to cause other persons to move in the direction that you want them to go. Leadership is not accidental, but a willed, deliberate activity. The test of leadership is followership.

For purposes of this article, then, we may define leadership as “*the ability through communication to cause individuals to act willingly in a desired way to advance the interests of a group or organization.*” The precise action desired of followers and the needed acts of leadership to achieve that action will vary according to the situation and the circumstances. As we will see, effective communication by the leader is a principal tool of leadership regardless of the environment in which that leader may function.

Traditionally, organizational leadership is seen as vested in a single individual. In many situations, however, teams, units, or in the case of courts “productive pairs”<sup>8</sup> may exercise some or all of an organization’s leadership powers. Indeed, one of a leader’s tasks may be to foster or create such leadership teams.

In thinking about judicial leadership, one can conceive of it as being exercised in three separate domains: 1) within the judicial system itself; 2) within the judicial system’s interactions and relationships with other branches of government; and 3) within the community at large.

**Leadership within the judicial system itself:** In any society, the judicial system exists to carry out certain needed social functions and consists of actors who must perform a diverse set of designated actions and tasks to carry out those functions. Thus, Marshall and Warren led their Supreme Court colleagues, all of whom were individuals having their own independent and diverging wills and interests, to exercise the judicial function in a desired way that each Chief Justice believed would benefit the country and the Court. Conceptually, this domain of leadership may be divided into two sub-domains: 1) the jurisprudential sub-domain, which relates to the various judicial decisions made by courts, and 2) the administrative sub-domain, which relates to various other operations of the court system.

**Leadership in the judicial system’s interactions and relations with other branches of government:** To perform its functions effectively, the judicial system needs to obtain resources, support, and cooperation from other branches of government. It usually befalls judicial leaders to secure these vital elements as part of their leadership roles. Exercising judicial leadership in this domain is greatly complicated by the fact that state and local court systems are increasingly battle grounds for seeking partisan advantage. As a result, the legislative and executive branches of government, alone or with the support of special interest groups, may seek to curb the authority of the judiciary. Judicial leaders therefore have the responsibility to protect courts from attacks on their judicial independence, a function requiring a special set of skills that many judges do not possess or are reluctant to exercise.

**Leadership in the wider community.** Because of their status, social positions, and abilities, judges are often called upon to play various leadership roles, formal and informal, within the communities in which they live. Sometimes, the subject of their leadership concerns the interests of the judiciary and sometimes it concerns broader social interests. One historic example of the latter situation was the appointment by President Johnson of Earl Warren to head what would become known as the “Warren Commission” to investigate the assassination of President John F. Kennedy. Less publicized but nonetheless important community activities for judges may include chairing civic committees investigating issues such as police brutality, the opioid crisis, and the treatment of undocumented persons. Important questions to address with respect to this leadership domain are the nature of the benefits and costs and the challenges and risks for members of the judiciary in assuming and playing these non-judicial leadership roles in their communities.

The same individual, for example, a chief justice, may be called upon to exercise leadership in all three of these domains; however, success in all three is complicated by the existence of significant differences among the three, particularly with respect to the persons to be led, the leadership goals to be pursued, and the institutional settings to be navigated. The existence of these

8. CENTER FOR APPLIED RESEARCH, BRIEFING NOTE: PRODUCTIVE PAIRS (2010), at <http://www.cfar.com/sites/default/files/>

[resources/BN\\_Productive\\_Pairs.pdf](#)

three domains also raises certain questions in designing a course on judicial leadership. First, which domain or domains should such a course focus on or emphasize? Second, what are the principal leadership challenges in each of the three domains and how should each be addressed? Third, what teaching techniques and materials are appropriate to train judges to operate successfully in each domain?

### THE TASKS OF JUDICIAL LEADERSHIP

In conceptualizing leadership, one may borrow from the field of market economics. Like markets, leadership has both a supply side and a demand side. Most discussions of leadership look at the subject from the leader's perspective, from the viewpoint of individuals who are supposed to supply organizations with this elusive but supposedly essential quality. So, scholars of leadership tell us what leaders do and how they do it, and leaders themselves in their memoirs recount their triumphs and failures. They are looking at leadership primarily from "the supply side." While an understanding of leadership from the leader's perspective is undoubtedly illuminating, it is equally important to examine leadership from the follower's point of view, that is, from "the demand side"—to ask what is it that organizations need and want from their leaders. Indeed, that organizational perspective may be the most important since the whole purpose of leadership is to serve the organization, not the leader.

### DEMAND-SIDE LEADERSHIP

So, what is it that organizations need from their leaders? More specifically, with respect to judicial leadership: What specifically does the judiciary need and want from its leaders?

It is often said that people in organizations want and need to be led.<sup>9</sup> But what exactly do organizations and institutions, employees and associates expect, want, and need from their leaders? When a corporate vice president says that his company needs "better leadership," what exactly does he mean? When a professor complains of her university's "poor leadership," what precisely is she concerned about? When a museum trustee calls for more "effective museum leadership," what is it that she is seeking? When court administrators complain of judges' "inadequate leadership," what are they really talking about? As consumers of leadership, what is it that all these people feel they need but are not getting?

One way of trying to answer this question is to look at the tasks and functions that followers expect of their leaders. In a previous publication,<sup>10</sup> I identified seven daily tasks of leadership that leaders are expected to accomplish to serve their organizations. This article will use that seven-point framework in discussing the tasks of judicial leadership.

The first task is **direction**. Every organization, large and small, looks to its leader to articulate and help establish the goals of the organization. That does not mean that the leader simply declares his or her vision for the organization and then orders its mem-

bers to follow it. The process of goal setting in a complex organization with a diverse group of followers and constituents is usually complicated, lengthy, and elaborate. For example, Goldman Sachs needed nearly a decade of discussions among its partners to decide

to convert itself from a partnership to a publicly traded international corporation. Mere articulation of a vision for the future is not enough. Leaders must also convince their followers to accept it. Indeed, a leader's principal function may be to orchestrate a process whereby the followers can participate in defining and shaping the vision that is to guide the organization's future development. In the early days of the U.S. Supreme Court's existence, John Marshall persistently pointed the way to his colleagues to make the Court a strong and influential part of our country's nascent government. Marshall's belief in a strong central government for his new government was born, it is said, from his experience of being part of an ill-equipped and ill-fed Revolutionary army that suffered terribly through a miserable winter at Valley Forge, an experience that a stronger government, Marshall believed, would have prevented or ameliorated.

Organizations not only demand that leaders point the way but, like shepherds directing their flock, they also need to oversee the organization's movement in that direction. Many failures of corporate governance, such as the collapse of Enron in 2001 and the sub-prime mortgage crisis of 2007, which led to financial loss, civil suits, and even criminal charges, have been the result of failed oversight by corporate leaders. Effective performance of the task of direction includes oversight to assure that the organization avoids the legal, ethical, and financial traps that lie in wait as it moves forward, especially when it is moving onto terrain that it has never entered before.

The second everyday leadership skill is **integration**, that is, community building. All organizations require their leaders to bring together diverse persons, each with individual wills, differing interests, and varied backgrounds, to work for the common interests of the organization. All leaders seek in varying degrees to integrate the persons they lead into a single organization, team, or community. Many persons, driven by their individual interests, resist efforts at integration, a fact that requires the application of innovative approaches to the process, including creative problem-solving negotiation. John Marshall sought to build that sense of community among the judges of the court. He persuaded them to live together in same boarding house in Washington, D.C., where they ate dinner together and discussed life and their cases over a bottle of claret, usually supplied by Marshall himself. Warren, a skilled and successful politician and former governor of California, also fostered a sense of community within the Court. When Felix Frankfurter compared Warren to Toscanini, the great conductor of the New York Philharmonic, he was not praising Warren's musical knowledge. Rather, he was

**"Like markets, leadership has both a supply side and a demand side."**

9. See, e.g., ROBERT H. ROSEN WITH PAUL BROWN, *LEADING PEOPLE: THE EIGHT PROVEN PRINCIPLES FOR SUCCESS IN BUSINESS 7* (Penguin Books 1996).

10. JESWALD W. SALACUSE, *LEADING LEADERS—HOW TO MANAGE*

*SMART, TALENTED, RICH, AND POWERFUL PEOPLE (AMACOM 2006). See also, JESWALD W. SALACUSE, REAL LEADERS NEGOTIATE! GAINING, USING, AND KEEPING THE POWER TO LEAD THROUGH NEGOTIATION (Palgrave Macmillan 2017).*



**“A final task of leadership is trust creation.”**

lauding Warren’s skill at integrating the members of the Court into a cohesive community since it is the fundamental role of a conductor to integrate excellent individual musicians into a great orchestra.

The third leadership challenge is **conflict management**. All organizations consist of persons with different and often competing interests, a factor that invariably results in conflict among its members. Individuals in the same organization may struggle over turf, resources, responsibilities, and policies. Indeed, most organizations, no matter how harmonious they appear on the surface, are rife with conflict. When an organization’s members are unable to resolve their disputes, they usually look to their leaders to settle the matter. Leaders normally do so in one of two ways, by arbitration, in which they impose a solution on disputants, or by mediation, a process in which they, like Jimmy Carter at Camp David or George Mitchell in Northern Ireland, help the contending parties reach a negotiated settlement of their disagreement. Chief Justices and presiding judges must often mediate conflicts between their judicial colleagues. William Rehnquist, it is said, sometimes intervened in the occasional testy relationship between Sandra Day O’Connor and Antonin Scalia to foster the effective functioning of the Supreme Court. It is rumored that on one occasion he called Scalia and left a message on his voice mail: “Nino, you’re pissing off Sandy. Stop it.”

**Education** is the fourth everyday leadership task. Leaders educate, coach, guide, and advise the people they lead. Through that process, leaders give the necessary knowledge and skills that empower the persons led to carry out the jobs of the organization effectively. The traditional view is that leaders give orders to get things done in organizations. In fact, many modern leaders achieve their goals through advice and counsel. Generally, the more decentralized the organization and the more educated its members, the more important advice and education become as a tool of leadership. This is especially true when leading highly educated professionals such as judges who are often loath to seek help and quick to reject attempts to educate them.

The fifth daily skill of leadership is **motivation**. Persons in an organization look to the leader to motivate them, encourage them, and strengthen them to do the right thing for the organization. But to find the effective incentives that will move people in productive ways, leaders may have to engage in a process of negotiation with them. For example, to retain a valued judicial colleague who is contemplating leaving the bench to return to the practice of law, a presiding judge will have to patiently probe to understand what interests are driving that colleague and how the judicial branch can satisfy those interests to avoid a departure. A presiding judge may have to engage in the same kind of exploration to motivate a judicial colleague who has developed a habit of recessing court early in the afternoon to adopt more reasonable hours of work.

**Representation** is the sixth daily leadership task. Leaders are

constantly representing the organizations they lead, whether they are negotiating a labor contract or attending a reception given by a customer, persuading the company’s board of directors to improve the bonus system, or seeking to arrange a merger with another corporation. In the case of the judiciary, the Chief Justice is often the judicial system’s principal representative to the outside world in seeking the support needed from the other branches of government or the society at large to obtain the resources needed by the judiciary to function. Such representative acts may be formal, for example, making an annual speech on the State of the Judiciary or attendance at or participation in various official ceremonies, like the inauguration of a new governor, or substantive, such as meeting with legislative committees to negotiate the judiciary’s share of the state budget. The task of representation has three basic functions that are vital to the life of the organization: 1) resource acquisition; 2) relationship management; and 3) image projection.

A chief justice or presiding judge may carry out these functions daily as he or she negotiates with the legislature over the court’s budget, maintains constructive working relationships with legislative leaders, and constantly communicates to the public and politicians the judiciary’s independence and commitment to the rule of law. Chief Justice John Roberts was carrying out an important task of judicial leadership in November 2018 when in response to a comment by President Trump that a ruling against his administration had been made by an “Obama judge,” he stated: “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”<sup>11</sup>

A final task of leadership is **trust creation** or, more specifically, earning the trust of the persons led. Creating trust is a vital skill, and having the trust of persons you lead is an invaluable asset. Without it, leaders will find it difficult, if not impossible, to direct, integrate, resolve conflicts among, educate, motivate, or represent the persons in their organizations. In short, without trust, a leader cannot lead effectively. Creating and maintaining the trust of an organization’s members, who are often skeptical of new initiatives, raises special challenges for its leader.

From the demand side, trust by followers in a leader is ultimately founded on followers’ belief that their leader’s actions will advance, or at least not injure, their interests. Therefore, leaders need to recognize that people trust them not because of the leader’s charisma, vision, or charm but because of their individual calculations about their interests. Accordingly, to build trust, leaders should keep the following principles in mind: 1) Leaders need to work to understand the interests of the people they lead; 2) Trust building takes time, so be prepared to invest the necessary time in the process; 3) Leaders need to find ways to demonstrate that their interests are the same as their followers; 4) Trust building proceeds by increments, so effective leaders have a plan for a sequence of trust-building measures; 5) The provision of information and a stance of openness to the persons

11. Pete Williams & Associated Press, *Chief Justice Roberts Slams Trump for Comment about “Obama Judge,”* NBC NEWS, Nov. 21, 2018, at <https://www.nbcnews.com/politics/supreme->

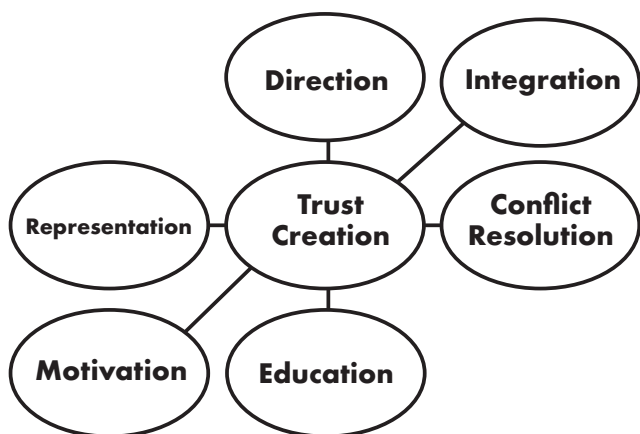
[court/rare-rebuke-chief-justice-roberts-slams-trump-comment-about-obama-n939016](https://www.nbcnews.com/politics/supreme-court/rare-rebuke-chief-justice-roberts-slams-trump-comment-about-obama-n939016).

led are important building blocks of trust building; and 6) Trust building requires that leaders be consistent and predicable in their actions.

The seven tasks of leadership, while conceptually separate, are interrelated in practice. Helping a judicial organization find an agreed-upon direction may also facilitate its integration, since a common goal gives a sense of unity to its members. Similarly, arriving at a common agreement on organizational direction may first require a leader to engage in extensive education of its members about the external threats and opportunities that face the organization. All good leaders perform each of these tasks every day. No leader has the luxury of focusing on one to the exclusion of all others. Leaders must multitask constantly. If they don't, they may not stay leaders for long. The diagram below illustrates the interconnections among the seven tasks of leadership:

Few leaders do all seven tasks equally well. Some leaders perform certain of these tasks more effectively than others because of differences in natural abilities or personal preferences. An outgoing, gregarious chief justice, who in a previous life had been a politician, may spend more time on and be more effective in representing the judiciary to various outside constituencies than in mediating the internal conflicts among judicial colleagues that are paralyzing the court and keeping it from adopting a new management system. While resolving internal conflicts should be

## 7 Daily Tasks of Leadership



a matter of priority at this particular moment in the history of the court, the chief justice without the ability or the desire to engage in conflict resolution may find more satisfying, not to say easier, ways to exercise leadership by spending time working on what he or she considers “essential matters” of representation.

For both leaders and followers, it is therefore vital to understand the individual tasks of leadership in all their complexity so that leaders may deliver this vital commodity more effectively and followers may better evaluate and use what is being delivered.

### IMPARTING THE SKILLS OF JUDICIAL LEADERSHIP: A SUGGESTED CURRICULUM FOR THE DEMAND SIDE

What, then, are the specific skills needed by persons to lead judiciaries effectively? More concretely, what skills should a training program on judicial leadership seek to impart to its partici-

pants? A curriculum on judicial leadership should consider the inclusion of at least the following four topics: 1) Communications; 2) Negotiation; 3) Dispute Resolution; and 4) Pedagogy.

#### COMMUNICATION

It will be recalled that this article adopted as a working definition that leadership is “*the ability through communication to cause individuals to act willingly in a desired way to advance the interests of a group or organization.*” Communication is an essential skill for any leader. Thus, a judicial leadership course might seek to impart basic communication skills to course participants. Leaders communicate with their followers in many ways, but one can basically divide leadership communications into two types: mass-produced and tailor-made. Mass-produced communications, like speeches at conventions, television appearances, memorandums to staff, and tweets, are designed to reach and move large numbers of persons at one time. Tailor-made communications, like those that happen in private meetings and telephone conversations, are shaped and directed at influencing specific individuals. Judges and judicial administrators, of course, must engage in both types.

**“[A] close examination of what effective leaders do reveals that negotiation is an important tool of leadership within organizations.”**

#### NEGOTIATION

Many leaders, particularly in highly structured, hierarchical institutions such as the military and traditional manufacturing corporations, see little role for negotiation in leading the people in their organizations. For them, leadership is a matter of command and control to be achieved by the using their authority and “charisma.” Certain leaders of state courts may also see their roles in similar terms. On the other hand, a close examination of what effective leaders do reveals that negotiation is an important tool of leadership within organizations. Certainly, Earl Warren applied that skill, honed through years of experience as a politician, to lead the Supreme Court during his tenure as Chief Justice. Courses on negotiation have become staples in professional education from Harvard Business School to West Point Military Academy. Such courses should also have a role in training judges to exercise leadership in the judiciary.

#### DISPUTE RESOLUTION

Related to negotiation is the skill of dispute resolution, the ability to facilitate the settlement of disputes and conflicts among other persons. While courts are increasingly resorting to mediation to resolve disputes among actual and potential litigants, the proposed course would consider the subject from the standpoint of judicial leadership. It might, for example, consider the role of the chief judge in mediating disagreement among colleagues on the court to arrive at decisions in cases. Earl Warren’s leadership in achieving unanimous decisions in the desegregation cases relied significantly on his ability to mediate among the differing views of his Supreme Court colleagues. Indeed, the skills of mediation among persons of differing interests and perspectives is fundamental to the task of organizational integration.

**PEDAGOGY**

Effective leaders are good teachers. Unfortunately, many persons in leadership positions undervalue or fail to recognize the importance of their teaching roles. In my own experience in conducting executive training programs, I have found that the leadership task that participants were least drawn to among the seven has consistently been education, while at the same time acknowledging its crucial importance for the future of their organizations. The reason for this reluctance seems to be that the executives generally felt ill-prepared to deal meaningfully with the educational challenges of their organizations. Few law and business school programs, for example, explicitly teach their students, once they are in the workplace, how to educate their subordinates.

Any training program in judiciary leadership should include material on the basic techniques of educating the people they lead. Drawing on established pedagogical theories, frameworks and techniques, a course in judiciary leadership should first heighten the awareness and appreciation of participants' educational roles arising out of their leadership positions and then offer strategies and tactics for fulfilling those roles effectively.

**CONCLUSION: A SUGGESTED FUTURE AGENDA FOR JUDICIARY LEADERSHIP EDUCATION**

The purpose of this article has been to stimulate discussion on the nature of judiciary leadership and how it may be developed through education and training. It has sought to achieve that goal by raising important questions that designers of judiciary leadership courses should address. In view of the great diversity of judicial systems throughout the United States, this article has refrained from offering a detailed judiciary leadership curriculum applicable to all U.S. states and situations. Instead, it closes by suggesting the following agenda of questions that persons seeking to design judiciary-leadership-training programs might consider.

1. Who should be the audience for a program on judicial leadership?
2. What are the specific judicial leadership problems and challenges that such a course should address? To what extent are they specific to systems and situations or common to judicial systems in general?
3. What should be the specific goals of such a program?

4. What specific domains of leadership should be its focus?
5. How should a program on judicial leadership address the great diversity of leadership roles existing among different state judicial systems and within them?
6. What pedagogical methods should such a course employ?
7. What is the essence of effective judicial leadership?
8. What are the tasks of judicial leadership that the judicial system and society expects of judicial leaders?
9. What are the essential skills and qualities that judicial leaders must have?
10. How may these skills and qualities be taught and developed through an educational program?
11. What can such a program teach leaders about ways of maintaining judicial independence in times of strong political partisanship?
12. What are the risks and challenges that face judiciary members who assume positions of community leadership outside of the strict confines of the judiciary? How should a leadership course address those challenges?
13. What specifically does the judiciary want and need from its leaders?
14. Does the seven-point framework discussed earlier reflect accurately the tasks that judicial leaders must carry out in the specific state or locality? Would the application of this framework to the specific contexts of individual judiciaries help leaders to better understand and carry out their roles?
15. What specific skills are needed to carry out the tasks demanded of judicial leaders?
16. How should an educational program seek to inculcate such skills in program participants?



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**Answers to Crossword**  
from page 82

V	E	R	B	S	C	O	E	D	C	O	S	P	
A	C	A	R	E	A	L	O	E	A	L	O	N	T
M	R	F	O	X	P	E	N	A	P	E	N	A	
P	U	T	O	U	T	O	F	F	A	M	I	N	E
O	N	E	L	O	T	E	N	D	T	I	M	E	
L	I	P	O	D	O	R	A	V	A	S	S	A	Y
N	A	N	H	I	E	O	P	E	N	F	O	R	H
T	R	E	S	B	N	E	G	B	E	L	S		
S	T	O	I	C	A	L	D	R	E	A	D	S	
S	F	L	A	R	E								
B	U	S	I	N	E	S							
E	L	E	V	E									
T	N	U	T	N	O	N							
H	E	R	E										