

Chief Justices as Leaders: Roles & Challenges

By William Raftery

State chief justices are not only the leaders of an individual appellate court, but often exercise leadership and administrative authority over an entire state's judicial branch. How far that authority goes and how individual chief justices exercise that leadership varies and may change depending on whether the chief justice is addressing leadership of their individual appellate court or as a leader in the justice system as a whole.

In September 1950, the newly formed Conference of Chief Justices, or CCJ, held its second meeting in Richmond, Virginia. The first speaker was Chief Justice Carl Weygandt of Ohio, who led a “Discussion of the Administration of a State Judicial Department.” Chief Justice Weygandt first detailed the administration of the Ohio Supreme Court itself, such as case writing and docket/calendaring, arguing that alone would be a full-time job. The second portion delved into his administrative duties as “head of the state judicial system,” including becoming familiar with how courts were functioning throughout the state and personally monitoring the process/progress. Weygandt concluded by advocating that all chief justices be the head of their respective state judicial systems with administrative and policy control over them. Rising immediately after, Chief Justice W. H. Duckworth, who would become Georgia’s longest serving chief justice (1938-1968), announced he would resign

immediately there in Richmond if the responsibilities for ensuring “the judicial machinery [was] running smoothly and efficiently” for the entire state judiciary were added to his own.¹

The Richmond debate described above continues to this day in all 50 states. As a constitutional and statutory matter, history has sided with Weygandt: state constitutions or statutes in 48 of the 50 states—all but Maine and Mississippi—declare that the state’s chief justice (individually, collectively with the state’s supreme court, or in California and Utah as head of the judicial council), is the administrative head of the state’s judicial system. Yet despite these provisions, the question remains: What is “administrative leadership” made up of?

The debate about the modern state chief justices is wrapped up in the larger trend over the last century of state court unification. Unification was a response to the highly fractured and locally-focused court system that had developed in the

Table A: Responsibilities of the Chief Justice

<i>Officer/body</i>	<i>Status</i>	<i>States</i>
The Chief Justice	is administrative head/executive officer	23
	has administrative power/control	5
	other language	1
The Judicial Council (chaired by the CJ)	has administrative power	2
The Supreme Court (led by the CJ)	has superintending control or power	9
	has administrative control or power	5
	other language	3
Total States		48

Source: National Center for State Courts, 2017.

United States since the American Revolution and was essentially borrowed from the structure present in Great Britain circa 1750. Local justice, dispensed and administered locally meant very little state-level (or in Great Britain national/parliamentary) responsibility or control. It also meant a multitude of courts often with overlapping jurisdictions. By the late 18th century, the system in place in the now-United Kingdom began to be more centralized and less fragmented through what became known as the Judicature Acts. In the United States, this reform effort took on the name “unification” and attempted to create a single court of justice in each state, made up of no more than two types of trial courts.² Atop this newly centralized and streamlined court system was to sit the chief justice, but this was a highly contentious proposition. Critics argued administrative responsibility for the judiciary should be handled by the state attorneys general, a practice that had been in place at the federal level since at least the Civil War. Reformers disagreed, insisting that the judiciary should administer itself, but were unsure on what a chief justice-as-administrator might look like. The first proposition was found in the American Judicature Society’s *Bulletin VII-A* and suggested the chief justice was to serve as a mini-governor, with power not only to allocate and move judges and non-judicial employees, but the power to hire and fire as well.³ Day-to-day operations were to be handled by a cabinet of sorts, the judicial council. In *Judicial Administration*, W.F. Willoughby disagreed somewhat, instead arguing that the chief justice should be a “business manager” involved in the daily activity of individual courts throughout a state through an office of the clerk appointed by the chief justice.⁴ The third offering of a modern chief justice was formulated by Roscoe Pound in his 1940 *Organization of Courts*.⁵ Like Willoughby, he focused much more on the role of the chief justice in daily administrative matters, to the point that he recommended that the chief justice be elected solely for the role of administrator and not to hear cases at all. In Pound’s vision, the chief justice as “superintendent” would simply not have the time to be a jurist anymore.

What came out of these reform efforts was a mixture of elements from all three modes of administration, but ultimately few states embraced enough elements to carry them forward entirely. Judges remain elected or appointed by outside forces, rather than selected by the chief justice as the American Judicature Society wanted. Most states

continue to retain independently elected clerks of court rather than use Willoughby’s statewide office of the clerk model; Montana still retains an elected supreme court clerk,⁶ with Indiana only having abandoned the practice in 2004.⁷ And Pound’s vision of a chief justice who is entirely dedicated to be a superintendent was never embraced anywhere. Certain elements of these would later manifest in the creation of administrative offices of the courts and the position of state court administrator but not to the extent originally envisioned.

The result was a multifaceted role for state chief justices, one that often relied heavily on mechanisms other than ones related to formal power. The former chief justice of Texas Wallace Jefferson and former presiding judge of the Maricopa (Arizona) Superior Court Barbara Rodriguez Mundell described this condition as one of “herding lions” of independently elected judges and court clerks that reflect local distinctions and the desire for local and individual autonomy.⁸ This is not to say that chief justices are utterly powerless and exercise no leadership, but only that the mechanism and extent may differ by state. That said, there are several major themes that repeat throughout each state.

Leadership, but of What?

Often the extent and form of authority a chief justice exercises will depend entirely on the scope or arena involved.

Court Leader

To take the most basic example, a chief justice is the leader of an appellate court. Within that arena their administrative and similar authorities are perhaps at their clearest, but not always without contention. In part, this is a result of that fact that the other justices are themselves independently elected or chosen. On questions that range from who should select the clerk of the court to how money appropriated to the court for its operations should be expended, a chief justice’s leadership may be challenged.

Judicial Leader

Moving out beyond the individual appellate court, the leadership of chief justices can be observed in their interactions over the collection of courts that make up the judicial branch of a state. Here, the structure of the branch plays an essential role, and the structures were first described in the 1970s as constellations, confederations, federations and unions.⁹ In a constellation system, judges and

courts have few formal ties to the chief justice outside of appellate review. Confederations are clusters or groupings of trial courts into divisions that act together. This can be formalized and set in statute within the judiciary, as is the case of Georgia, which has separate councils for most trial courts (e.g. Council of Superior Court Judges). It can also manifest outside the branch in the form of groups of judges, independently elected clerks, and others that form their own organizations and associations. In federations, the chief justice can exercise strong central authority over multiple local court units but not all or every facet of these courts. For example, a chief justice may be able to exercise leadership over the state-controlled or state-funded courts of general jurisdiction but may find local municipal/justice of the peace courts remain autonomous. Moreover, in those states that still retain courts in which members of the executive branch serve as judges (such as alderman's or mayor's courts) or where the clerks of court remain independently elected, a chief justice may find their options more curtailed. Finally, unions are those states that have achieved perfect or near-perfect unification with no locally-controlled or -operated courts and with all authority, both formal and informal, in the hands of a central authority either in the form of the chief justice or the chief justice's designee (state court administrator). Most states fall in to category of a constellation, confederation or federation. Today, these are spoken of more broadly as "loosely coupled" organizations.¹⁰

Justice Leader

Finally, a chief justice can be said to exercise leadership in the arena of judicial administration and the state's overall commitment to justice. This views the chief justice's leadership not as specifically tied to courts, but to issues, such as just and fair deliberations, and the laws and policies related thereto. In speaking of matters related to sentencing, juvenile justice, legal aid and state bars, chief justices will often address issues related to the entire justice system that do not fit squarely into a single court or are limited even to the judiciary. State of the judiciary addresses will often contain elements such as these.¹¹

Leadership, but How?

Of the forms of leadership exercised by chief justices, most appear focused on efforts to gain a majority or build agreement. While this may seem to fit nicely with the role of an appellate judge sit-

ting on a case seeking to gain a majority in support of their opinion, on occasion the same skills set fails to translate elsewhere. For example, when Alabama Chief Justice Sue Bell Cobb resigned from office in 2011, it was not because she was unable to work with her fellow jurists but in large part because she was unable to make headway in the state legislature's treatment of the judicial branch in terms of funding levels.¹²

Collegial Leadership

Although not the only form of leadership, often chief justices will transfer the same functions they attempt to exercise inside the court's adjudicative deliberations, namely the pursuit of consensus/unanimity, into the leadership arena outside of their court.

Consultative Leadership

Unlike collegial or cooperative models, in which consensus and majorities are highly cherished and desired, the emphasis of chief justices who seek consultation tends to be on gathering information for policy. This can be seen in states whose chief justices have created or who have the responsibility for naming a host of ad hoc and permanent committees and commissions. State access to justice commissions and similar entities are not necessarily created with an eye towards developing a model court order but instead are focused on identifying a problem and offering solutions.

Cooperative Leadership

Particularly where the purpose is to develop a policy where a court, courts or the entire judiciary are intended to carry out a future directive, chief justices will often exercise cooperative leadership in seeking to obtain majority support for some final standard or product, even if coupled with a minority (perhaps a large one), that will feel bound to carry out the agreed upon decision. Statewide development of standards and court rules are usually developed in this fashion.

Command Leadership

Particularly in instances where a decision needs to be made with time constraints, chief justices often have the formal authority to issue orders related to the administration of courts. These decisions are frequently coupled with some other form of leadership, such as cooperative or consultative. A task force may recommend a policy, or concerns over inclement weather may prompt local judges to

consider shutting down a courthouse, but it would be the chief justice's order that executes the plan or closes the courthouses in the state.

Collaborative Leadership

Unlike other varieties of leadership in which the chief justice is directly tied to the decision and implementation, collaborative leadership deliberately places the “leader” outside of the determination and deliberation context. The leadership here is in the acts of convincing and convening, what has been described in the past as the “good offices” of a particular person. To take one recent example, North Carolina Chief Justice Mark Martin convened a Commission on the Administration of Law and Justice in 2015 with committees dedicated to issues such as civil justice, legal professionalism and legal technology.¹³

The role of chief justices as leaders within their respective states is one that remains in flux, with challenges, styles and methods unheard of 60 years ago. That role continues to evolve as states face new challenges and new individuals take up the robe of a jurist, the mantle of an administrator, and the position of leader for their state's judiciary.

Notes

¹ Conference of Chief Justices. (1950). “Minutes of Meeting held September 15-17, 1950”. In Conference of Chief Justices Resolutions 1949-1985. (1985). National Center for State Courts. Accessed March 15, 2017 <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/782>

² See Kales, A. (1921). “The English judicature Acts.” *Journal of the American Judicature Society*, 4, 133-146.

³ American Judicature Society (1917). “The State-Wide Judicature Act.” *Bulletins of the American Judicature Society*, VII-A.

⁴ Willoughby, W.F. (1929). *Principles of Judicial Administration*. (Washington DC: The Brookings Institution)

⁵ Pound, R. (1940). *Organization of Courts*. (Boston: Little, Brown and Company).

⁶ Mont. Code Ann. § 3-2-401

⁷ Indiana Public Law 14-2004. The elected supreme court clerk was allowed to remain in office until the end of his term in 2007.

⁸ Rodriguez Mundell, B. and Jefferson, W. (2011). *Herd-ing Lions: Shared Leadership of State Trial Courts*. Accessed March 15, 2017 <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1858>

⁹ Henderson, T. et al. (1984) *Significance of Judicial Structure - The Effect of Unification on Trial Court Operations*. (Washington DC: U.S. Department of Justice, National Institute of Justice).

¹⁰ McQueen, M. (2011). *Governance: The Final Frontier*. Accessed March 15, 2017 <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/ctadmin/id/2001/rec/2>

¹¹ For a listing of recent examples related to sentencing, see Boston Globe. (March 12, 2017). Editorial: All voices, even judges', belong in reform debate. Accessed March 15, 2017 <https://www.bostonglobe.com/opinion/editorials/2017/03/12/all-voices-even-judges-belong-reform-debate/uVToEkB0CPzH6EUgppHsxl/story.html>

¹² Cobb, S. B. (2011). Statement of Chief Justice Sue Bell Cobb. Accessed March 15, 2017 <http://ftpcontent4.worldnow.com/wsfj/linkedwebdocs/CJCobb%20Statement%20062911.pdf>

¹³ North Carolina Commission on the Administration of Law and Justice. (2016). About. Accessed March 15, 2017 <https://nccalj.org/about>

About the Author

William E. Raftery, PhD is a Senior Knowledge and Information Services analyst with the National Center for State Courts in Williamsburg, Va. His current work includes research on legislative-judicial relations, judicial selection, judicial conduct, and court security. He is the editor of *Gavel to Gavel*, a review of state legislation affecting the courts.