

~ The
Chief Justice

APPOINTMENT *and* INFLUENCE

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that the more administrative experience a chief has—and each necessarily has more over time—the more items that chief will place on the reform agenda. The most senior chief justice requests nearly twice as many agenda items as an inexperienced chief, with a decade of service being the pivotal turning point for chiefs. Interestingly, they find no evidence that chiefs attempt to be strategic by taking into consideration legislative-judicial relations, divided government, economic constraints, or public opinion in crafting their reform agendas. Instead, chiefs simply ask for more over time and are more likely to ask for judicial improvements or institutional maintenance as their tenures progress.

In chapter 15, Shawn C. Fettig and Sara C. Benesh examine the extent to which the behavior of chiefs on the bench is driven by their concern for the Court's institutional legitimacy. As Danelski posited, task leadership—persuasion—and social leadership—conciliation—are connected with unanimity, which is connected with legitimacy. And Fettig and Benesh tackle legitimacy by exploring whether chiefs consider public opinion. Specifically, they examine personal correspondence and firsthand accounts of chiefs, associate justices, and clerks. They find evidence that chiefs act with more than just their own policy preferences in mind. Internal Court documents reveal that chiefs strategically use the power to assign opinions to mitigate the potential negative effects that decisions might have on the public. They show that chiefs view unanimity as a way to bolster public opinion. Chiefs manage opinion assignment, coalition formation, and opinion writing to minimize conflict and maintain the Court's prestige among the other branches of government. For example, chiefs self-assign “great cases” and choose marginal coalition members—justices who defect from their ideological blocs—in close cases. In all, the authors conclude that chiefs have been successful as the Court has consistently been among the most trusted institutions by the American people.

What each of these chapters demonstrates is that chiefs are uniquely positioned to exert their influence both on the bench and off, both for the benefit of the Supreme Court and for the federal judiciary in general. In doing so, chiefs should be viewed less in ideological or partisan terms—as they routinely are in studies of judicial decision making—and more as administrative leaders who put the institutional maintenance of both the Supreme Court and the federal judiciary above their personal attitudes about individual cases or areas of the law. In this sense, these chapters suggest that there is a very real difference between associate justices of the Supreme Court and chief justices of the United States.

14 ~ The Chief Justice as Administrative Leader

Explaining Agenda Size

RICHARD L. VINING JR. AND TEENA WILHELM

As is clear from the other chapters in this book, the bulk of scholarship on the Chief Justice of the United States analyzes his roles as task and social leader of the Supreme Court. These concepts, developed a half-century ago, dominate social scientific studies of Supreme Court leadership. Much less scholarly attention is devoted to the chief justice's role as the administrative leader of the federal judiciary. We believe this is a significant oversight given the importance of these duties. Leadership of the federal judicial branch gives the chief justice additional formal and statutory obligations.¹ The United States Code establishes more than eighty duties for the chief justice including service as chairman of the Judicial Conference of the United States and Federal Judicial Center.² His numerous duties and status as “first among equals” make the chief justice the most visible and consequential representative of the federal judiciary. As such, he has the ability to be the leading spokesperson for the judicial branch.

In this chapter we examine a consequential aspect of the chief justice's administrative duties, his ability to set the agenda for reforms to judicial administration and procedure. We identify the reform agenda of the chief justice by studying the content of the Year-End Report on the Federal Judiciary. The chief justice has issued this report at the end of each year since 1975. It is similar to the State of the Union Address issued by the president, including both retrospective commentary and goals for the new year, but it deals primarily with the judiciary. The Year-End Report on the Federal Judiciary receives substantial media attention and provides information to elites and the public about the reform agenda of the Third Branch. Despite

its high profile and status as a rare opportunity for the courts to promote their needs, we know little about the forces that shape its content.

We examine the specific items advanced by the chief justice and their eventual success (or failure) in Congress elsewhere.³ Here we assess determinants of the size of the agenda advanced by the chief justice each year. We focus on two alternative explanations: strategic considerations and administrative experience. Strategic considerations include political and economic conditions that can limit what is possible in American politics. The administrative experience of a chief justice is likely to foster interest in judicial reform and increase awareness of defects in the machinery of justice. We analyze the overall size of the chief justice's agenda as well as a subset of important requests with more substantial potential impacts. Our results indicate that experience in the administrative role is the more influential explanation.

The Chief Justice as Administrator, Spokesperson, and Advocate

When an individual is asked to be instrumental on behalf of the billion-dollar agency called "The Federal Courts" (with some two thousand judges, thirty thousand in staff, and hundreds of facilities) and also to be successful jurisprudentially as a disinterested adjudicator, one role cannot help but bleed into the other. Each role amplifies the power of, distracts from, and imposes costs on the other.

—Judith Resnik and Lane Dilg, "Responding to a Democratic Deficit"⁴

Mainstream political science research mostly neglects the role of the chief justice as head of the federal judiciary. His formal administrative role includes a host of statutory obligations including management, budgetary duties, and oversight. He performs these tasks while also doing the work required of him as a member of the Supreme Court of the United States.⁵ Many of these responsibilities are obscure to the public and elites, but sometimes they capture their attention. For example, the role of the chief justice in selecting members of the Foreign Intelligence Surveillance Court was scrutinized in the summer of 2013 after leaks revealed the existence of government spying programs collecting data on citizens' telephone and e-mail communication. Chief Justice John G. Roberts, Jr., chose the members of this court beginning in 2005 and appointed Republicans and former executive branch employees at a far greater rate than had his predecessors

Warren E. Burger and William H. Rehnquist.⁶ This prompted concerns about bias and excessive deference to the president with regard to national security and intrusive surveillance. As this single example demonstrates, the chief justice has unmatched influence on the operations of the judiciary well beyond his activities within the Supreme Court Building.

The primary source of the chief justice's administrative responsibility is his leadership of the Judicial Conference of the United States, established in 1922 after extensive lobbying by Chief Justice William H. Taft, though it was then known as the Conference of Senior Circuit Judges. The purpose of this organization was to oversee intercircuit assignments and facilitate communication among federal judges. The chief justice served as the chair of the conference and soon became its "public relations director." The Judicial Conference began making recommendations about funding, judge-ships, and legislation soon after it was established. Under both Chief Justice Taft and his successor, Chief Justice Charles Evans Hughes, the reports of conference activities provided to the press and legislators tended to reflect the priorities of the chief justice. Although the conference served as a "voice" for the needs of the judiciary, Taft established that the chief justice remained the "primary national spokesperson" for the courts. These lobbying activities became routine, and Congress gradually vested the conference with additional responsibilities. Today the Judicial Conference oversees the performance of many statutory duties of the Administrative Office of the U.S. Courts as well as legislative relations, rules, and procedures for the federal judiciary. It is also obligated statutorily to provide Congress its policy recommendations for the federal judiciary, including commentary on pending legislation. As the presiding officer of the Judicial Conference, the chief justice is exposed to the operative needs of the federal judiciary.⁷

The chief justice is the primary spokesperson for the federal judiciary. While associate justices make public appearances, some of them regularly, the nature of their commentary differs from that of the chief justice. Associate justices sometimes take on the occasional speech, the visiting lectureship, or the writing of a book. These activities in the public eye typically deal with their duties and responsibilities on the Court or the nature of judging and law. The chief justice also comments on these topics but is also more likely than his colleagues to speak out publicly about administrative needs.

Because the chief justice is both the administrative leader and spokesperson for the judicial branch, he is uniquely suited to establish the agenda for the federal courts and advocate its enactment. This promotion of the judiciary's needs is necessary because the courts are dependent on the elected

branches as a function of constitutional design. The Third Branch relies on Congress for both institutional maintenance and judicial improvements and must compete with other national priorities for congressional attention.

How can a chief justice advocate for the needs of the federal judiciary? One option is to use his political capital to advance the needs of the federal courts. According to Russell Wheeler, “[e]very chief justice has to decide how much political capital the office has and how to spend that capital on Congress, the bar, the press, and others.”⁸ He can do so in two ways. First, he may choose to use his informal influence and personal relationships to lobby elites to enact the goals of the judiciary. Chief Justice Warren E. Burger used this method early in his tenure.⁹ In addition, a chief justice can advocate publicly for improvements to the judiciary. This is akin to presidential efforts to “go public,”¹⁰ though the chief justice’s audience is likely to include policymakers as well as the American people.

An overt manifestation of a chief’s advocacy for the federal judiciary (and expending of political capital) occurs in his Year-End Report on the Federal Judiciary. This report is compiled every year by the chief justice and has recently become the subject of scholarly analysis.¹¹ These reports have been issued by Burger (1976–1985), Rehnquist (1986–2004), and Roberts (2005–present). The chief justice is at liberty to include in year-end reports the content of his choice, including, but not limited to, recommendations for judicial improvements or reforms. The issue areas to which Burger, Rehnquist, and Roberts drew attention in their year-end reports are summarized in table 14.1.¹² It is evident that chief justices emphasize

TABLE 14.1. Issue Areas of Agenda Items in Year-End Report on the Federal Judiciary, by Chief Justice

Issue area	Number of requests		
	Warren Burger (1975–85)	William Rehnquist (1986–2004)	John Roberts (2005–12)
Budget	4	14	2
Housekeeping	11	2	1
Additional Judgeships	16	19	0
Jurisdiction Change	19	6	0
Legislative Policies	10	12	0
Salary / Benefits	9	17	4
Structural Reorganization	12	3	0
Study Request	7	2	0
Vacancies	0	11	2
Total	88	86	9

Note: *N* = 183

different priorities. Burger devoted more attention to housekeeping, jurisdiction change, structural reorganization, and study requests than his successors. Rehnquist focused more on budget issues and judicial vacancies than either Burger or Roberts. Chief Justice Roberts has asked for relatively few agenda items, with the plurality of his explicit requests related to judicial salaries and benefits.

The Year-End Report on the Federal Judiciary is an opportunity for the chief justice to communicate to an audience wider than judges and lawyers or a few members of Congress. It receives coverage in national media outlets, legal trade publications, law journals, and websites and thus gives a higher profile to the proposals contained within it. For example, following the 2012 year-end report journalists affiliated with major newspapers, newswires, and news websites all reported Chief Justice Roberts’s messages about the judiciary’s budget appropriations and desire that vacant judgeships be filled.¹³ With this visibility, the chief justice has a pulpit from which to present requests regarding the federal judiciary and therefore spend his political capital. Consequently, the reports represent his policy agenda for the judicial branch.¹⁴ The factors that determine the size of this agenda, and the extent to which a chief justice will include important items in his report, are the subjects of this analysis.

Agenda Setting by the Chief Justice: Theory

In his 2009 Year-End Report on the Federal Judiciary, Chief Justice Roberts declined to include any reform proposals or requests for congressional action. Instead, Roberts acknowledged the public’s hardship during economic recession and included only a reference to “critical needs of the judiciary” that “remain to be addressed.”¹⁵ His decision to omit requests for judicial improvements suggests two possibilities. The first is that he anticipated a slim likelihood that he would achieve them given current political and economic conditions. If so, this indicates that the chief justice is strategic and anticipatory when he creates his agenda. A second possibility is that he limited his agenda as a function of his relative inexperience as leader of the federal courts. Roberts was the chief justice for four years when the 2009 year-end report was drafted, and he had never requested more than three agenda items in a single report. If this is the case, then administrative experience carries weight as a chief justice creates his judicial agenda.

To assess the extent that strategy and experience determine a chief justice’s judicial agenda, we develop a theoretical framework. This includes discussion of the chief justice’s goals and strategy in building his policy

agenda. Importantly, we draw from the research on agenda setting in the presidency literature to shape this framework.¹⁶

Goals of the Chief Justice. While the chief executive has goals that include policy enactment, re-election, and historical significance, a chief justice has more specialized motives.¹⁷ A chief justice is motivated by policy concerns and historical significance, but not at all with re-election.¹⁸ As administrative leader of the federal courts, his goals also relate to the health of that branch of government.

Much of his work within the Court, whether shaping the docket,¹⁹ voting on the merits,²⁰ or assigning opinions,²¹ reflects his policy goals. The extra-judicial activities of the chief justice, including staffing specialized courts and the Judicial Conference,²² do so as well. In addition, the chief justice has goals related to the functions and health of the federal judiciary.²³ His administrative goals include, for example, caseload management, jurisdictional issues, and securing adequate budgetary resources for the federal courts. They may also include limiting the role of courts and promoting judicial independence. Both his policy and administrative goals are likely to be reflected in his agenda-setting activities.

Strategies of the Chief Justice. A wealth of research in the last two decades examines the strategic behavior of Supreme Court justices. This literature gives substantial scrutiny to the chief justice. We now know that chief justices are strategic with regard to setting the docket,²⁴ manipulating conference discussion,²⁵ self-assigning the majority opinion or choosing an ideological proximate,²⁶ and using their votes or opinion assignments to maintain majority coalitions.²⁷ Prior research, though limited in scope, indicates that the chief justice is also strategic when he carries out his administrative duties. Nixon found that both Warren Burger and William Rehnquist manipulated the rosters of the Executive Committee of the Judicial Conference to pursue a conservative policy agenda.²⁸

If the chief justice is a strategic actor with goals related to policy and judicial administration, he is likely to consider the contemporaneous policy environment when crafting his agenda. The most important component of this environment is Congress. A rational and strategic chief executive must consider the success of potential agenda items in Congress before he gives them his support.²⁹ It stands to reason that a chief justice has similar concerns about the potential success of his agenda and will determine whether he is faced with support or constraint in the legislative body. Eshbaugh-Soha calls this the "rule of anticipative reactions."³⁰

A strategic chief justice may also include some rational calculation about his own political capital. This capital is likely to be influenced substantially by the status of the institution he leads. If the Supreme Court is unpopular

with either the public or lawmakers, we expect that the chief justice will have less clout to wield in his advocacy efforts. A chief justice whose Court is known for unpopular decisions may have less political capital to spend in support of the federal judiciary.

Experience. In addition to strategic considerations, the agenda promoted by the chief justice may also be influenced by his own administrative experience. Studies of judicial politics frequently consider whether junior justices experience a "freshman effect" or "acclimation effect" while they become acquainted with their jobs and colleagues.³¹ We posit that a similar phenomenon may occur for chief justices given that their numerous administrative duties include tasks unrelated to their previous professional experience. Although many federal judges have experience as chief judges or members of administrative bodies, including the Judicial Conference, none of these positions presides over a similar range of duties or number of judicial branch employees. As a chief justice retains his position for a longer period of time, we expect he will be more aware of the vital needs of the federal judiciary and more invested in his administrative duties beyond leading the Supreme Court.

Policy Scope. Not all policy proposals requested by the chief justice are equal. Some advocate relatively minor changes, while others would change substantially the relationship between the judiciary and the American people. In general, we expect that a chief justice will approach important policies differently than minor (routine) ones. Specifically, he may choose to focus on important policy changes when the political environment is most likely to facilitate their adoption. We specify more explicitly what constitutes important and routine policies in our analysis section below.

Hypotheses

Our theoretical expectations about the effects of strategy and administrative experience on the chief justice's agenda motivate several hypotheses. His policy agenda, as expressed in the Year-End Report on the Federal Judiciary, reflects what the chief justice believes is both important and feasible in the year ahead. Our hypotheses relate to both the overall size of the agenda and the number of important agenda items requested each year.

Strategic Considerations

Congress. The expected reaction of Congress is likely to be a leading consideration when the chief justice creates his agenda. The success of his requests is a specific goal for the chief justice, and it requires the support of

legislative majorities in the House and Senate. Satisfaction with the judicial branch affects how Congress responds to courts. For example, legislative overrides often follow Supreme Court rulings contrary to congressional preferences,³² and lawmakers sometimes react to judicial activity by changing courts' jurisdiction.³³ On the other hand, satisfaction with the Supreme Court's output is correlated with budget increases.³⁴

One way for the chief justice to determine the mood of Congress relative to the federal courts is to consider the quantity of court-curbing bills that Congress produced in the previous year. These bills are "legislative proposal[s] to restrict, remove, or otherwise limit judicial power" and signify hostility toward the federal courts.³⁵ They present a strategic tool that Congress uses to announce discontent with judicial behavior. We posit that more court-curbing bills in a given year indicates that relations between Congress and the judiciary are strained. Accordingly, if a chief justice is strategic as he creates his judicial agenda, *we expect that the chief justice will advocate fewer agenda items, as well as fewer important proposals, when the number of court-curbing bills is higher.* We use data compiled by Clark updated through 2012 to measure the quantity of court-curbing bills each year.³⁶

In addition to legislative-judicial relations, a chief justice is also likely to consider the overall political climate. The presence of divided government is a strong signal that the legislative process may be more difficult to traverse. Unified or divided control of the elected branches is a key determinant of policy outputs.³⁷ In addition, party control of Congress affects some aspects of judicial policy, including expansion of the judiciary.³⁸ Thus a chief justice is likely to anticipate that his judicial policy will have a greater chance of success during periods of unified government than otherwise. If a chief justice is strategic as he creates his judicial agenda, *we expect that divided government will be associated with fewer items on the agenda of the chief justice, important or otherwise.* We measure divided government using a binary variable indicating its presence or absence.

Public Opinion. Popular perceptions of the Supreme Court are a source of prestige and political capital for the chief justice. Accordingly, we posit that the chief justice is likely to adjust the size and scope of his agenda in response to public opinion about the Third Branch. Studies of the executive branch frequently cite public approval as an important predictor of policy success.³⁹ Although the chief justice is a less visible political figure than the president, the general public still forms opinions about the Supreme Court and federal judiciary that reflect on him. These opinions are important to the judicial branch as perceptions about its legitimacy shape its dependence on the elected branches and subnational governments to enforce its rulings. Furthermore, Congress is likely aware of these opin-

ions, especially in the wake of highly visible (and possibly contentious) Supreme Court opinions. Given that legislators depend on their constituents for re-election and attempt to please them,⁴⁰ Congress has little electoral incentive to shirk constituent preferences in favor of an institution out of step with the public. For these reasons, we expect that *an increase in public disapproval of the Supreme Court is associated with a reduction in both the total agenda size and total number of important items on the agenda of the chief justice.*

Economic Constraints. Economic constraints influence all outcomes in the policy process. The chief justice is likely aware that economic conditions influence how Congress may respond to his agenda items. When the economy is performing well and economic recovery is not the primary priority of lawmakers, Congress may be more amenable to legislation concerning the federal courts. Given this, if a chief justice is strategic, *we expect that greater economic growth is associated with an increase in the overall number of legislative requests made by the chief justice, whether these requests are routine or important.*

Experience. Other than strategic considerations, the size and scope of the agenda of a chief justice may alternatively be influenced by the duration of his tenure in the office. Judicial scholars have long examined whether Supreme Court justices experience a "freshman effect" or otherwise alter their behavior during the course of their careers. These shifts, when observed, are attributed to socialization, small group dynamics, or increasing comfort with the role and duties of a Supreme Court justice. We expect that similar behavior is observable in the administrative leadership of the chief justice. Individuals are nominated and confirmed for seats on the Supreme Court as a result of their judicial philosophies, professional qualifications, integrity, and temperament. Little emphasis is placed on their interest in administrative duties or ability to accomplish them. It is likely, though, that chief justices become more comfortable with these responsibilities, and more skilled at them, over time. As a result, *we expect that the overall agenda of the chief justice, as well as the number of important agenda items, will increase in size as his tenure in the center seat lengthens.*

The variables we use to test our hypotheses, as well as our data sources, are described in table 14.2. We also present the mean, range, and expected effect of each explanatory factor.

Analysis

In our analysis, we construct separate models explaining (1) the total number of items on the agenda of the chief justice and (2) the number of important items on his agenda. Because each of our dependent variables is a

count, we use Poisson regression models. The models are relatively parsimonious, with four independent variables and two control variables. The independent variables indicate key aspects of the political and economic environment during the tenure of the chief justice as well as his level of administrative experience. Our controls include the calendar year in order to capture trends related to changing behavior by chief justices over time, as well as the number of agenda items requested by the Judicial Conference each year in its fall report.⁴¹ Our data include all years in which the Year-End Report on the Federal Judiciary was issued prior to 2013 (1975 to 2012; $N = 38$).

To differentiate between important and routine agenda items in the Year-End Report on the Federal Judiciary, we develop a policy scope typology adapted from Eshbaugh-Soha's research on the president's agenda.⁴² He categorized items on the president's agenda based on two dimensions defined by time and importance. In our typology, we focus on the latter dimension as analysis of Year-End Reports reveal an overwhelming focus

TABLE 14.2. Summary Statistics

Variable	Mean (s.d.)	Range	Expected Effect	Data Source
<i>Dependent Variable(s)</i>				
Total agenda items (Model 1)	4.66 (3.29)	0–13	n/a	Year-End Report on the Federal Judiciary
Total important items (Model 2)	2.29 (1.89)	0–6	n/a	Year-End Report on the Federal Judiciary
<i>Independent Variables</i>				
Chief Justice tenure	8.74 (5.22)	0.25–18.25	+	Federal Judicial Center
Court-curbing bills	7.66 (8.03)	0–32	–	Clark (2009), updated via Thomas.gov
Public disapproval of Supreme Court	14.98 (2.59)	10.3–20.9	–	General Social Survey
GDP growth	2.76 (2.09)	–3.1–7.2	+	Bureau of Economic Analysis
<i>Control Variables</i>				
Year	1993.5 (11.11)	1975–2012	n/a	n/a
Judicial conference agenda size	15.55 (11.27)	3.48	n/a	Report of the Judicial Conference (September/ October)

Note: $N = 38$

on long-term goals by the chief justices. Rather than short-term political goals or contemporary national problems, chief justices tend to focus on judicial procedure, structural reorganization, systemic social problems, the creation of judgeships, and jurisdiction change.⁴³

We identify important agenda items requested by the chief justices as those with the greatest impact and cost.⁴⁴ Agenda items are considered important if they would create or eliminate a judicial body, create ten or more judgeships, or alter substantially the relationship between Americans and the judicial system. We classify requests for ten or more judgeships as important because they differ in kind from requests for fewer new positions. Although we use ten judgeships as our metric for importance, an examination of requests in the year-end report reveals that requests for new judgeships tend to be either few in number, focused narrowly on specific courts with overwhelming caseloads, or number in the dozens or hundreds.⁴⁵ The latter subset includes proposals that would affect either access to justice or jury service, including, for example, the elimination of federal diversity jurisdiction and reducing the Supreme Court's mandatory jurisdiction. Although federal judges would likely disagree, we do not identify as important any requests that improve the salaries, benefits, or working conditions of individual judges. We regard these as routine matters with a limited impact on the American people. Table 14.3 illustrates the general issue areas covered by the chief justices⁴⁶ and the relative frequency of which these policies are important versus routine. Overall, 87 of 177 agenda items in our data are identified as "important."

TABLE 14.3. Routine and Important Agenda Items in Year-End Report on the Federal Judiciary, by Issue Area

Issue Area	Routine	Important
Budget	20	0
Housekeeping	5	5
Judgeships	7	28
Jurisdiction	3	22
Legislative policy	7	13
Salary and benefits	30	0
Structural reform	7	8
Study request	9	0
Vacancies	2	11

Note: $N = 177$ agenda items; 87 identified as important. Four housekeeping items and 2 legislative policy items excluded due to coding ambiguity. See text for details.

Results

The results of our statistical analysis are presented in table 14.4. Our findings strongly support administrative experience as a determinant for the size of the chief justice's agenda. We find no evidence that indicates strategic considerations shape the size or relative importance of the chief justice's agenda. Notably, we do not find important differences in the factors predicting the size of the agenda and the number of important items. Both are influenced primarily by chief justice experience and trends observed over time.

In terms of substantive impact, each additional year of service is associated with a rate increase of 1.05 agenda items and 1.06 important agenda items. This relationship is shown in figure 14.1. The most senior chief justice is predicted to request nearly twice as many agenda items as an inexperienced chief justice. Our data reveal that a decade of service in the position is pivotal. The mean number of requests in the first ten years is 4.0; the number increases to 6.75 per year during the remainder of his tenure. A similar trend is present for important agenda items, with an average of 1.81 per year during the first decade of service and a mean of 3.06 each year afterward. This trend is present for all three chief justices in our data, though Chief Justice Roberts has not served long enough to reach conclusions about the size of his agenda as a seasoned administrator. Notably, our

TABLE 14.4. Poisson Regression Results

	Model 1: Agenda Size		Model 2: Number of Important Agenda Items	
	Coefficient (r.s.e.)	Z	Coefficient (r.s.e.)	Z
Chief Justice Tenure	0.06 (0.02)	3.43	0.05 (0.02)	2.68
Court-Curbing bills	-0.004 (0.01)	0.67	-0.02 (0.01)	0.07
Public Disapproval of Supreme Court	-0.03 (0.03)	-0.82	-0.07 (0.05)	-1.53
GDP Growth	-0.04 (0.04)	-1.18	-0.04 (0.04)	-0.87
<i>Control Variables</i>				
Year	-0.04 (0.01)	-4.31	-0.06 (0.01)	-4.09
Judicial Conference Agenda Size	-0.002 (0.01)	-0.34	0.01 (0.01)	0.78

Note: $N = 38$; "r.s.e." = robust standard error.

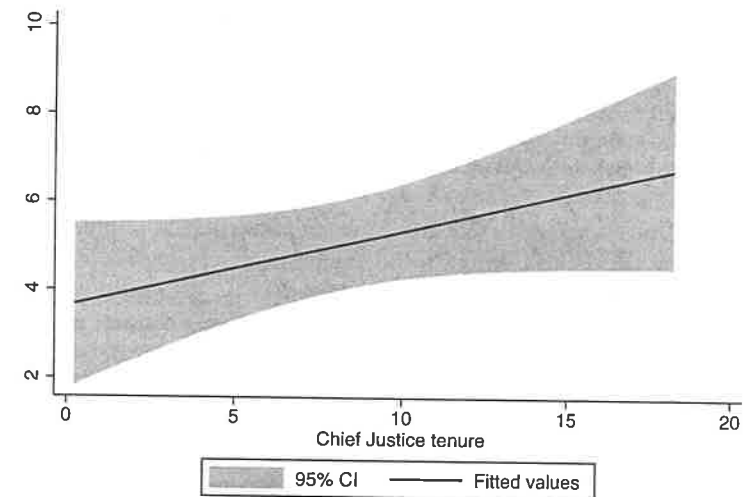


Fig. 14.1. Number of agenda items requested by chief justices

results are robust even when Roberts's years as chief justice are omitted from the analysis.

As we have already stated, none of the variables that indicate strategy on behalf of a chief justice reach statistical significance. Our lone remaining statistically significant variable is the control for the calendar year when the report was issued. We find that the size of the total agenda and the count of important items both decrease over time, all else being equal. We speculate this is due in part to the gradual, permanent removal of items from the wish list of the chief justice as problems of the mid-twentieth-century federal courts were solved. Chief Justice Burger came to office when the Third Branch was in relative disrepair, and he presented more extensive sets of proposed reforms than his successors. The mean agenda size was 7.45 items for Burger (1975–1985), 4.53 for Rehnquist, and 1.0 for Roberts.

Discussion and Conclusions

While the president is responsive to his political environment and strategic in crafting his agenda for Congress, we find no evidence that the chief

justice does the same. Even though it may be logical that a chief justice would anticipate the policy environment in which he operates, including legislative-judicial relations, divided government, and economic constraints, none of these factors reached statistical significance in our models. Instead, administrative experience matters a great deal. Importantly, our results demonstrate that a chief justice who has passed the decade mark in his position will ask more of Congress than he did in his earlier tenure. Furthermore, he is also more likely to ask for judicial improvements or institutional maintenance that are of greater consequence. Overall our results show that in his relations with Congress, a chief justice is influenced more by his experience than his political leverage.

In addition, we also do not find evidence that the chief justice considers his own political capital when he determines the size of his agenda. This means that as an administrative leader, the chief justice is not susceptible to the changing mood of the American public with regard to his Court. Put another way, a chief justice will ask (or not ask) Congress for the needs of the federal judiciary without regard for public opinion. Of course, this could be a result of the relatively positive perceptions of the federal judiciary (particularly the Supreme Court) by the American public, especially when compared to the elected branches. Even after contentious decisions such as *Bush v. Gore*,⁴⁷ the Supreme Court maintains consistent levels of perceived legitimacy in public opinion polls.⁴⁸

We believe it is important that the chief justice does not manipulate the size of his agenda in response to the political and economic environment. This is contrary to expectations expressed in studies of executive branch politics and underscores the need to devote further study to the role of the chief justice as administrative leader. Administrative experience helps determine the chief justice's ability and/or willingness to ask Congress for judicial improvements, which has important consequences for the judicial branch. This suggests that of the many hats that the chief justice wears, chief administrator of the federal courts may be one that fits better the longer it is worn.

NOTES

1. Russell R. Wheeler, "Chief Justice Rehnquist as Third Branch Leader," *Judicature* 89 (2005): 117.

2. See Judith Resnik and Lane Dilg, "Responding to a Democratic Deficit: Limiting the Powers and the Term of the Chief Justice of the United States," *Uni-*

versity of Pennsylvania Law Review 154 (2006). The administrative duties of the chief justices are sufficiently onerous that he has been provided an administrative assistant, known as a counselor to the Chief Justice, since 1972 (86 Stat. 46). The relevant statute is currently 28 U.S.C § 677.

3. See Richard L. Vining and Teena Wilhelm, "The Chief Justice as Advocate-in-Chief: Examining the Year-End Report on the Federal Judiciary," *Judicature* 95 (2012).

4. Resnik and Dilg, "Responding to a Democratic Deficit," 1575.

5. For more about the work of the chief justice, see Resnik and Dilg, "Responding to a Democratic Deficit," and Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," *QAH Magazine of History* 13 (1998).

6. See Charlie Savage, "Roberts's Picks Reshaping Secret Surveillance Court," *New York Times*, July 26, 2013.

7. See Peter G. Fish, *The Politics of Federal Judicial Administration* (Princeton: Princeton University Press, 1973); and Post, "Judicial Management," for more information regarding the Judicial Conference and the chief's duties.

8. Wheeler, "Chief Justice Rehnquist as Third Branch Leader," 118.

9. See Mark W. Cannon, "Innovation in the Administration of Justice, 1969-1981: An Overview," *Policy Studies Journal* 10 (1982).

10. See Samuel Kernell, *Going Public: New Strategies of Presidential Leadership*, 3rd ed. (Washington, DC: CQ Press, 1997).

11. See Vining and Wilhelm, "The Chief Justice as Advocate-in-Chief," for a history and content analysis of these reports. See also Resnik and Dilg, "Responding to a Democratic Deficit."

12. Adapted from Vining and Wilhelm, "The Chief Justice as Advocate-in-Chief," 273.

13. E.g., Robert Barnes, "Roberts Stresses Frugality in Year-End Federal Judiciary Report," *Washington Post*, Jan. 1, 2013; Adam Liptak, "Chief Justice Prods Congress to Resolve Budget Talks and Control National Debt," *New York Times*, Jan. 1, 2013; Pete Yost, "Roberts Urges Full Financial Support for the Court," *Associated Press*, Dec. 31, 2012; and Bill Mears, "Chief Justice Laments 'Fiscal Cliff' Effects on Federal Courts," *CNN Wire*, Dec. 31, 2012.

14. While we argue that the Year-End Report on the Federal Judiciary expresses the preferences of the chief justice, we acknowledge that it is written with assistance from staff including the administrative assistant and Supreme Court fellows. The extent to which these actors influence the content of the report is beyond the scope of our inquiry.

15. Adam Liptak, "A Busy Year for Judiciary, Roberts Says," *New York Times*, Jan. 1, 2010.

16. This literature includes Jon R. Bond and Richard Fleisher, *The President in the Legislative Arena* (Chicago: University of Chicago Press, 1990). But also see Mark A. Peterson, *Legislating Together: The White House and Capitol Hill from Eisenhower to Reagan* (Cambridge, MA: Harvard University Press, 1990); Paul C. Light, *The President's Agenda: Domestic Policy Choice from Kennedy to Reagan*, 3rd ed. (Baltimore: Johns Hopkins University Press, 1999); and Brandice Canes-Wrone, "The President's Legislative Influence from Public Appeals," *American Journal of Political*

Science 45 (2001); Matthew Eshbaugh-Soha, "The Politics of Presidential Agendas," *Political Research Quarterly* 58 (2005); Jeff Yates and Andrew Whitford, "Institutional Foundations of the President's Issue Agenda," *Political Research Quarterly* 58 (2005); George C. Edwards III, and B. Dan Wood, "Who Influences Whom? The President, Congress, and the Media," *American Political Science Review* 93 (1999); and Jeffrey Cummins, "State of the Union Addresses and the President's Legislative Success," *Congress and the Presidency* 37 (2010).

17. For a discussion of executive goals, see Light, *President's Agenda*.

18. Regarding the tenure of the chief justice, it is noteworthy that there have been only seventeen chiefs since the position's inception. Since the modern chief justiceship (Taft in 1921), there have been only eight chief justices compared to sixteen presidents. The average tenure for a chief justice in this time period has been 11.47 years (including Chief Justice Roberts). With fewer turnovers and an extended tenure for the chief justice compared to that of the chief executive, the pressing goal of historical significance is likely limited. A president may have only four or eight years to accomplish his goals, but a chief likely has many more. In fact, Roberts could yet have twenty years or longer to make his mark on his Court and the federal judiciary.

19. Gregory A. Caldeira and John R. Wright, "The Discuss List: Agenda Building in the Supreme Court," *Law & Society Review* 24 (1990)

20. Forrest Maltzman and Paul J. Wahlbeck, "May It Please the Chief? Opinion Assignments in the Rehnquist Court," *American Journal of Political Science* 40 (1996).

21. David J. Danelski, "The Influence of the Chief Justice in the Decisional Process of the Supreme Court," in *American Court Systems: Readings in Judicial Process and Behavior*, 2nd ed., ed. Sheldon Goldman and Austin Sarat (New York: Longman, 1989).

22. David C. Nixon, "Policy-Making by Different Means: The Chief Justice's Attempts to Shape Policy Through the Judicial Conference of the United States," *Rationality and Society* 15 (2003).

23. See Fish, *The Politics of Federal Judicial Administration*; Vining and Wilhelm, "The Chief Justice as Advocate-in-Chief."

24. Caldeira and Wright, "The Discuss List."

25. Lee Epstein and Jack Knight, *The Choices Justices Make* (Washington, DC: CQ Press, 1998).

26. Maltzman and Wahlbeck, "May It Please the Chief."

27. Danelski, "Influence of the Chief Justice."

28. Nixon, "Policy-Making."

29. See e.g. Eshbaugh-Soha, "The Politics of Presidential Agendas"; Peterson, *Legislating Together*; Douglas Rivers and Nancy L. Rose, "Passing the President's Program: Public Opinion and Presidential Influence in Congress," *American Journal of Political Science* 29 (1985).

30. Eshbaugh-Soha, "The Politics of Presidential Agendas," 258.

31. See Timothy M. Hagle, "'Freshman Effects' for Supreme Court Justices," *American Journal of Political Science* 37 (1993); Saul Brenner and Timothy M. Hagle, "Opinion Writing and Acclimation Effect," *Political Behavior* 18 (1996); Sandra L. Wood et al., "'Acclimation Effects' for Supreme Court Justices: A Cross-Validation, 1888-1940," *American Journal of Political Science* 42 (1998).

32. Jeb Barnes, *Overruled?: Legislative Overrides, Pluralism, and Contemporary Court-Congress Relations* (Stanford, CA: Stanford University Press, 2004).

33. John B. Oakley, "Recent Statutory Changes in the Law of Federal Jurisdiction and Venue: The Judicial Improvements Acts of 1988 and 1990," *University of California, Davis Law Review* 24 (1991).

34. Eugenia Toma, "A Contractual Model of the Voting Behavior of the Supreme Court: The Role of the Chief Justice," *International Review of Law and Economics* 16 (1996).

35. Tom S. Clark, "The Separation of Powers, Court Curbing, and Judicial Legitimacy," *American Journal of Political Science* 53 (2009), 978.

36. *Ibid.*

37. See e.g. George C. Edwards III, Andrew Barrett, and Jeffrey Peake, "The Legislative Impact of Divided Government," *American Journal of Political Science* 41 (1997); David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-2002*, 2nd ed. (New Haven: Yale University Press, 2005).

38. John M. De Figuerido and Emerson H. Tiller, "Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion of the Federal Judiciary," *Journal of Law and Economics* 39 (1996); John M. De Figuerido et al., "Congress and the Political Expansion of the U.S. District Courts," *American Law and Economics Review* 2 (2000).

39. See e.g. Edwards, Barrett, and Peake, "The Legislative Impact of Divided Government"; Eshbaugh-Soha, "The Politics of Presidential Agendas"; Richard E. Neustadt, *Presidential Power* (New York: Wiley, 1990).

40. E.g. Douglas R. Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1992); David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

41. This indicates whether the size of the reform agenda presented by the chief justice depends on the number of requests made by his fellow federal judges.

42. Eshbaugh-Soha, "Presidential Agendas."

43. Vining and Wilhelm, "The Chief Justice as Advocate-in-Chief."

44. See Eshbaugh-Soha, "The Politics of Presidential Agendas," 260.

45. See also Figuerido and Tiller, "Congressional Control"; and De Figuerido et al., "Congress and Political Expansion."

46. See Vining and Wilhelm, "The Chief Justice as Advocate-in-Chief."

47. 531 U.S. 98 (2000).

48. Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, 8th ed. (Washington, DC: CQ Press, 2012).