The Washington Post

AN INDEPENDENT NEWSPAPER TUESDAY, FEBRUARY 16, 1971 PAGE A12

The Chief Justice as Administrator-in-Chief

Chief Justice Warren E. Burger made a significant contribution to the administration of justice in the United States when he championed administrative reform of the federal courts and, in particular, when he urged congressional passage of acts providing for court executives. It would be a mistake and a misfortune, however, if he were to conceive of his role as essentially that of a court administrator. The Chief Justiceship of the United States is primarily a judicial, not an executive, office. It can properly be used through its chairmanship of the U.S. Judicial Conference, to influence other justices, and courts below the level of the Supreme Court, by example and by quiet, unobtrusive counsel. But it should not be used in the bludgeoning and authoritarian way in which the Chief Justice thrust himself last week into the affairs of the newly reorganized District of Columbia court system.

Under the D.C. court reorganization bill enacted by Congress last summer, all the local courts are to be served by a single administrative officer chosen by a committee of local judges from a list of three nominees submitted by Rowland F. Kirks, the director of the Administrative Office of U.S. Courts. The three names submitted by Mr. Kirks did not include that of the present clerk of the D.C. Superior Court, Joseph M. Burton. Twenty-nine of the 38 judges of the Superior Court circulated a memorandum saying that they considered Mr. Burton uniquely qualified for the court executive position. An impasse developed. Undoubtedly the authority to disregard the wishes of the Superior Court judges was given to Mr. Kirks under the reorganization act; and perhaps it was imprudent of the judges to challenge that authority. Undoubtedly it was desirable to have the impasse resolved. The Chief Justice might have resolved it by talking quietly and confidentially with Harold H. Greene, the chief judge of the Superior Court, and soliciting his cooperation. Instead, the Chief Justice resolved it by sending Judge Greene a letter so peremptory in tone as to seem a ukase and so tactless in language as to insure resentment among the judges whom he scolded as though they were schoolboys.

"The course on which you have embarked," the Chief Justice wrote to Chief Judge Greene, "were it to be tolerated, would inevitably discredit the basic idea of improved court management." And later in the letter, he said: "From the fact that some of your judges seem to join you in the ill-advised course you are now on, I can only assume you failed to communicate to them the basic ideas we discussed or that, having done so, they, like you, reject change."

This is a fantastic way to talk to a chief judge and to the members of a court which, since Harold Greene assumed the chief judgeship, has probably undergone more modernization than any other court in the country. Mr. Burton, the court's clerk, has himself been responsible for a good deal of its reorganization and for the innovation of new methods and such new techniques as computerization. The judges of the Superior Court were guilty of nothing more horrendous than a desire to hold on to the services of an incumbent who thoroughly understood the court's needs and who had amply demonstrated his competence. It is really a pretty good testimonial to Mr. Burton's abilities that at least 30 out of 38 judges wanted to retain him.

The Chief Justice has undoubtedly won a victory of sorts. But he has won it by throwing his weight around pretty recklessly. One more such victory and his chances of achieving a pervasive reform of judicial administration through leadership and persuasion will be effectively undone. The Chief Justice will now have his way—thanks largely to the deference paid to his high office by Judge Greene, and thanks also to Judge Greene's desire to avoid disruptive controversy within the judiciary. One cannot help concluding, however, that the Chief Judge of the Superior Court has displayed rather more judicial statesmanship than the Chief Justice of the United States.