

Supreme Court Leadership and the Role of Soft Power

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Introduction and Purpose:

The Supreme Court of the United States—the most powerful legal institution in the country—is a relative mystery in comparison to its federal government counterparts. While the decision making processes and leadership structures within the Executive and Legislative Branches are well established, such aspects of the Supreme Court are not as firm and tend to vary. Furthermore, as the Supreme Court does not receive the same degree of media attention or public awareness and scrutiny as the other branches of government—potentially the result of electoral politics—it remains isolated only furthering its obscure nature.

As such, the purpose of this piece is to examine judicial leadership on the Supreme Court of the United States using Justice David Souter as the primary case study. Through the lens of David Souter, the piece analyzes the relationship—if any—between the use of *soft power* and one's ability to influence and lead on the Court. It is hoped that such an analysis will reveal, at least in part, the way in which Supreme Court decisions are made, the role individual leaders on the Court have in the creation of such decisions, and the necessary attributes one needs in order to lead most effectively.

Definitions:

For the purpose of this piece, leadership is defined as “the process of persuasion or example by which an individual (or leadership team) includes a group to pursue objectives held by the leader or shared by the leader and his or her followers.”¹ Not to be confused with status or power, this definition assumes that the specific goal in question is that of the leader and can be, but is not necessarily, the goal of those being influenced as well. Furthermore, this definition

¹ Gardner, John W. “On Leadership,” *The Free Press*. New York, NY 1990

holds that it is one's actions that demonstrate leadership rather than one's potential ability. To restate, simply having the ability to lead and influence the Court is not enough, one's actions must demonstrate leadership.

Soft power is defined as "the ability to get what you want through attraction rather than coercion or payments."² While this definition was created by author and scholar Joseph Nye in hopes of illustrating the importance of such power in international affairs, it is quite applicable to this study. As Supreme Court Justices do not rely on hard power—such as force or coercion—to obtain their desired ends and have relatively little to no formal authority over one another, they must use alternative and often more subtle means of exerting influence. While there are numerous components to soft power, the two examined in this work are judicial ideology and temperament.

Judicial ideology or jurisprudence is a set of values, principles, and beliefs which shape the way in which one interprets the law. Such terms refer to the way an individual perceives the law, the Constitution, and the role of these entities in regard to serving the general public. While the foundations of one's judicial ideology are susceptible to change making one's overall philosophy similarly malleable, it is worth noting that one's ideology is generally rooted in years of education, legal experience, and personal belief systems.

Lastly, the term temperament is defined as one's normal or natural manner of thinking, behaving, and acting. One's temperament encompasses a range of qualities including personality, character, work habits, previous life experiences, and behavior when interacting with

² Nye, Joseph. "Soft Power: The Means to Success in World Politics." Perseus Books Group: New York, NY. 2004

others.³ As a deeply human institution, the more personal examination of temperament seems vital when analyzing the Supreme Court.

Background: David Hackett Souter

David Hackett Souter's rise to one of the most prominent legal positions in the country has quite humble, yet impressive origins. Born in Melrose, Massachusetts September 17, 1939, at age 11 Souter and his family moved to East Weare, New Hampshire to live on a farmhouse his grandparents built. While always polite and at times quite charming, Souter was not known for being social and spent a majority of his time at home. While living in East Weare, he attended Concord High School where he, as always, excelled academically.⁴

After high school, Souter went on to Harvard University where he graduated magna cum laude and Phi Beta Kappa, studied at Oxford as a Rhodes Scholar, and then returned to Harvard to go to law school. At Harvard Law, much like high school, Souter received good marks, was polite and charming, but was by no means the center of social activity. The dichotomy of his social life can be seen in that some of his former classmates could not remember him, while others claim that he was quite charming and had a number of women friends.⁵

After law school, Souter went to work for a private law firm in Concord, New Hampshire. However, after only two years in private practice, his interest in public service led him to the Attorney General's office in 1968. Souter quickly climbed through the ranks becoming Assistant Attorney General, Deputy Attorney General, and eventually the Attorney General of New Hampshire in 1976. As Attorney General, Souter gained a reputation of being

³Rosen, Jeffrey. *"The Supreme Court: The Personalities and Rivalries that Defined America"* Times Books/Henry Holt and Company: New York, NY, 2007

⁴Yarbrough, Tinsley E. "David Hackett Souter: Traditional Republican of the Rehnquist Court," Oxford University Press: New York, NY. 2005.

⁵Yarbrough, Tinsley E., "David Hackett Souter: Traditional Republican of the Rehnquist Court,"

“tough on crime” while also receiving notice for his public criticisms of affirmative action.

Many of his colleagues and political counterparts regarded Souter as a moderate conservative.⁶

Soon after being appointed Attorney General, Souter was appointed to the New Hampshire State Superior Court as an Associate Justice in 1978 and to the State Supreme Court in 1983. After some time on the Supreme Court of New Hampshire, Souter was appointed to the U.S. Court of Appeals First Circuit in 1990; this appointment was influenced heavily by U.S. Senator Warren Rudman of New Hampshire (former Attorney General of New Hampshire and had appointed Souter as Deputy Attorney General). Throughout his career as a state and federal judge, Souter was known for his carefully reasoned opinions and his ability to objectively view the merits of individual cases regardless of personal belief. He was not on the U.S. Court of Appeals long due to the retirement of Supreme Court Justice William Brennan. As a result of Brennan’s retirement, President H.W. Bush had the opportunity to appoint a new Supreme Court Justice.⁷

President Bush, motivated by his negative experience as Vice President surrounding the controversial nomination of Robert Bork, wanted to appoint a justice that would not be controversial in the Senate—especially due to the Democratic majority in the Senate at the time—that would also be less liberal than Brennan. While Souter satisfied both these general criteria, his legal background did not fully indicate his views regarding the Constitution or prominent social issues such as abortion, religion in the public sphere, and state’s rights. Regardless of such ambiguity, based on the advice of Senator Warren Rudman (the now Senator of New Hampshire) and Bush’s Chief of Staff John Sununu (former Governor of New Hampshire), Souter was appointed by President Bush on July 25, 1990 and took his seat on the

⁶*Ibid*

⁷ *Ibid*

Supreme Court October 9, 1990. As Bush had hoped, Souter was easily confirmed through the Senate by a vote of 90-9.⁸

At first, it took Souter a few terms to become comfortable with his position on the Court. He finished his first term with the lowest opinion-writing rate of all justices with the highest rate of agreement with the majority at 91%.⁹ Furthermore, in his first two years he was more likely to vote with the conservative or pro-government majorities especially in deciding criminal procedure cases. However, Souter's position on the Court in regard to judicial ideology changed dramatically in 1992 as he became one of the more moderate to liberal justices consistently voting in favor of Court precedent, limiting religion in the public sphere, and reaffirming and expanding the right to privacy.¹⁰ Throughout his long tenure, Souter has been involved in a number of high profile cases encompassing a broad range of social and constitutional issues. That being said, the more prominent cases of his career include *Planned Parenthood v. Casey*, *Lee v. Weisman*, and *Bush v. Gore*.

Analysis:

Judicial Ideology

While traditional analysis of one's judicial ideology aims to determine how an individual views a particular case or issue in hopes of predicting one's potential ruling or vote, this piece examines one's jurisprudence in regard to its ability to influence and persuade others. As one of many soft power mechanisms available to a justice, one's jurisprudence has great potential in regard to garnering the support of one's colleagues. It is the contention of this work that a more pragmatic and centrist judicial ideology allows a justice to more effectively influence others. In

⁸ *Ibid*

⁹ *Ibid*. Pg. 160-161

¹⁰ *Ibid*. Pg. X

contrast to those individuals whose ideologies exist on the far right or far left of the legal spectrum, an individual whose ideological perspective remains in the center has an increased ability to appeal to and influence any and all individuals due to its unbiased, flexible, non-political nature (assumed or otherwise). In essence, a centrist judicial ideology increases one's ability to persuade and affect others for it has the potential to incorporate (or at least not exclude) other's positions while being more easily accepted and respected by others.

In terms of Justice Souter, his tenure provides unique insight as his judicial ideology shifted in his first few years on the Court. When Souter was initially appointed to the Supreme Court by President H.W. Bush, conservatives and liberals alike thought of him as a moderate conservative embracing an originalist or original meaning approach to the Constitution.¹¹ Loosely based on legal positions previously taken as the Attorney General and as a judge on the State Supreme Court of New Hampshire, Souter generally derived meaning from a more literal interpretation of the law leaving little to no room for judicial activism. While such a description of Souter's ideology is off base, the beginning of his Supreme Court tenure reflected such a judicial ideology as he voted alongside outspoken originalist Justice Antonin Scalia in 85% of cases.¹²

To further illustrate this point, much of Souter's judicial conservatism can be traced to his state judicial record in regard to criminal proceedings, specifically the death penalty. In 1976 following the Supreme Court upholding of capital punishment, the New Hampshire House of Representatives considered reinstating the death penalty in certain murder cases. Then Attorney General Souter, who was and is not known for being politically involved in such matters, testified before the house judiciary committee supporting the constitutionality and legal utility of

¹¹ *Ibid.* Pg. IX

¹² Toobin, Jeffrey. "The Nine: Inside the Secret World of the Supreme Court," Doubleday: New York, NY. 2007

the proposed capital punishment legislation. While testifying, Souter stated that, “for a certain, limited class of crime I do not believe life imprisonment is sufficient penalty.”¹³ He went on to argue in favor of the death penalty as a primary deterrent to crime and that a reduction of such capital punishment would lessen the inhibitions of people to commit a crime. Souter, led by his jurisprudence, argued in favor of the constitutionality of the death penalty for there is no direct ban of such punishment in the Constitution leaving such a matter up to the states to individually decide.¹⁴

However, Justice Souter’s confirmation hearings may have indicated a more moderate philosophy than initially perceived. In his hearing before the Senate Judiciary Committee, Souter embraced original meaning as the core to constitutional construction, but clearly stated that he gave a more flexible reading of the Constitution. Speaking on that issue, Souter stated that “it is the meaning, which in most cases is a principle, intended to be established [by the constitutional provision] as opposed simply to the specific application that the particular provision was meant to have and that was in the minds of those who proposed and framed and adopted it in the first place.”¹⁵ From this statement, it is apparent that while Souter’s judicial ideology can appear conservative, it is far more malleable and case-based than originally demonstrated in his first two terms on the Court.

Whether it was the result of increased comfort and confidence, the substance of the cases being heard, or an actual change in judicial ideology, Justice Souter quickly joined the more moderate and liberal members of the Court in his voting. While still retaining an originalist approach in certain aspects of the law such as criminal proceedings, Souter consistently voted in favor of the separation of church and state, the right to privacy, as well as creating precedent in

¹³ Yardbrough, Tinsley E. “David Hackett Souter: Traditional Republican of the Rehnquist Court,” pg. 36

¹⁴ *Ibid.* Pg. 36

¹⁵ *Ibid.* Pg. IX

affirmative action cases in higher education.¹⁶ Furthermore, this newly adopted moderate position drastically increased his ability to influence others on the Court. While not necessarily altering the degree to which Souter voted in the majority, such a judicial ideology allowed Souter to better shape the majority opinion in satisfying his wants. A powerful example of such increased leadership as a result of one's moderate ideology can be seen in the 1992 case *Planned Parenthood v. Casey*.

In *Planned Parenthood v. Casey*, the state of Pennsylvania amended its abortion law in 1988 and 1989 with the following provisions: a requirement of informed consent and a 24 hour waiting period before an abortion procedure, a requirement of the consent of one parent or a judicial bypass for minors seeking an abortion, and the requirement of a married woman seeking an abortion to indicate that she notified her husband of her intent to abort the fetus.¹⁷ In the initial conference concerning this case, it appeared as though the majority of justices would vote in favor of upholding the Pennsylvania law and, in effect, overturn the core precedent established in the *Roe v. Wade* case in 1973. Chief Justice Rehnquist assigned the majority opinion to himself with his initial draft memo clearly indicating his intention to overturn the notion of a woman's fundamental right to an abortion.¹⁸

However, Justice Souter did not agree with Rehnquist's position. While initially opposed to abortion as seen in his statements regarding failed 1977 New Hampshire legislation aimed at increasing abortion rights, Souter would not vote to overturn *Roe v. Wade*.¹⁹ As an ardent supporter of stare decisis, Souter believed in upholding established legal precedent with the opportunity for incremental change in laws; he did not support rash, sweeping change and as

¹⁶ *Ibid.* Pg. X

¹⁷ U.S. Supreme Court Media. "Planned Parenthood v Casey," *Oyez.org*. < http://www.oyez.org/cases/1990-1999/1991/1991_91_744/> (accessed February 2, 2009)

¹⁸ Toobin, Jeffrey. "The Nine: Inside the Secret World of the Supreme Court,"

¹⁹ Yardbrough, Tinsley E. "David Hackett Souter: Traditional Republican of the Rehnquist Court," pg. 34

such did not find the proposed action of Rehnquist and others to be a suitable solution. To achieve his ends, Souter approached other judicial moderates Justice O'Connor and Justice Kennedy in hopes of convincing them to alter their vote in his favor.²⁰

In regard to Justice O'Connor, Souter approached her in her private chambers (an uncommon act for justices) to discuss the case. As mentioned, Souter was uncomfortable ruling against the precedent established by *Roe*, but was conflicted by his simultaneous desire to uphold a state's ability to draft and enact legislation. In contrast, Justice O'Connor was not a strong defender of *Roe*, but she was personally appalled by the Pennsylvania law's requirement of a married woman to notify her husband before seeking an abortion and was weary of the political and social implications of a decision overturning *Roe*.²¹ While the positions of the two justices were not perfectly aligned, their flexible, case-based ideologies allowed them to create a joint solution reflecting the core arguments of both positions. For example, in the final majority opinion Justice O'Connor created an "undue burden" test to replace the previous trimester system used to determine the legality of an abortion or the constitutionality of an abortion law. While Souter was not an initial proponent of this controversial test, it did not limit his ability to support the opinion as a whole as his core position—a need to maintain legal precedent and not overturn *Roe*—was satisfied.²²

In regard to Justice Kennedy, Souter was able to convince him to abandon his previous support for Rehnquist by stressing the potential ramifications associated with overturning the precedent established by the *Roe* case. Always one for theatrics, Justice Kennedy quickly sided with Souter and O'Connor and the three—who became known as the "troika"—set out in secret

²⁰Toobin, Jeffrey. "The Nine: Inside the Secret World of the Supreme Court,"

²¹*Ibid*

²²*Ibid* and U.S. Supreme Court Media. "Planned Parenthood v Casey," [Oyez.org](http://www.oyez.org). <
http://www.oyez.org/cases/1990-1999/1991/1991_91_744/>

to write a joint majority that would garner the necessary votes to win. In the end, their opinion became that of the majority in a 5-4 ruling upholding the core of *Roe v. Wade*, creating a new standard in determining the validity of abortion law in the “undue burden” test, while reaffirming the notion of state’s rights in upholding the majority of the Pennsylvania law (only overturning a married woman’s requirement to notify her husband) simultaneously.²³

This case exemplifies the way in which a centrist, moderate judicial philosophy can allow one to lead effectively on the Court. In 1992, Souter was in no way a ranking member of the Court and unlike the initial constructor of the majority opinion, Chief Justice Rehnquist, Souter lacked the formal leadership associated with creating consensus among his colleagues. However, Justice Souter was able to both persuade the individuals necessary to achieve his goal while remaining adequately flexible in order to accept the positions of Justices O’Connor and Kennedy.

Perhaps the best means of illustrating this point is through a counterpoint and there is no better counterpoint to the importance of a centrist, moderate judicial ideology than Justice Antonin Scalia. As the most renowned originalists on the Court, Scalia’s unwavering judicial ideology as well as his tendency to write inflammatory memos and opinions severely limits his ability to be a leader. Because of this ideological rigidity, he (as well as others on the far right and far left of the judicial spectrum) is ill-equipped to form coalitions, persuade his peers, or to make the compromises necessary in reaching a decision. Many controversial cases are decided by one vote and in such cases those individuals who can effectively compromise and persuade their colleagues will most likely achieve their desired results.

Before moving forward and turning our attention to one’s temperament, it is important to note that the *Planned Parenthood v. Casey* case is one of the only instances of Justice David

²³ *Ibid*

Souter using his moderate jurisprudence to such effective use. More often than not Souter maintains his centrist or liberal perspective, but does not use his position in the relative center of the Court to significantly influence the outcome of a case. This finding tends to indicate that while a moderate judicial ideology is a necessary component to being an effective, consistent leader on the Court that one must have more than the “proper” judicial ideology if he or she wants to lead.

Temperament

An examination of temperament, while linked to judicial ideology, aims to identify the necessary personality traits one must have in order to be an effective leader. More specifically, one must be well liked and respected by their colleagues while being passionate and motivated by the mission and workings of the Court. While there are a multitude of traits necessary to achieve such a description, these traits are essential in influencing and persuading others.

In regard to David Souter, he is one of most liked and respected members of the Supreme Court.²⁴ His polite, mild-mannered, thoughtful, and witty personality allows him to have congenial relations with all members of the Court while developing particularly strong friendships with Justices Breyer, O’Connor, and Ginsburg. While he generally declines, the fondness for Souter can be seen in the routine invitations to social gatherings in the Washington, DC area as well as numerous vacation spots by justices and other political and social elites.²⁵ In addition, the professional manner in which Souter approaches his role as a justice only furthers the degree to which he is respected. Souter does not make inflammatory remarks targeting his colleagues or the reputation of the Court, is always attentive during oral argument and

²⁴ Totenberg, Nina. “Interview,” 2009 and Rosen, Jeffery “Interview,” 2009

²⁵ Toobin, Jeffrey. “The Nine: Inside the Secret World of the Supreme Court,”

conference discussion, and is willing to discuss the merits of a case. These traits foster the degree to which his colleagues like and respect him increasing his ability to be influential on the Court.²⁶

While the above description may appear to be merely anecdotal, it is consistent with Souter's personality and relationships throughout his life. While never the center of attention, Souter maintains a good natured disposition that appeals to almost all individuals. Because of this good nature and the strong relations formed from it, fellow justices are more willing to listen to his rationale, to approach him when looking for assistance, and to be approached when he is looking to garner support for a particular issue or cause. While such traits may go unnoticed by simply examining the way in which a justice votes, these often unseen temperamental characteristics can significantly alter the outcome of a case.

While there are most likely a number of cases—or at least a few—in which Souter's positive temperament has assisted him, at least in part, in shaping the majority in his favor, *Planned Parenthood v. Casey* again serves as the most explicit example of such leadership. Looking at the facts of the case, one can easily postulate as to how Souter's temperament assisted him in influencing Justices O'Connor and Kennedy. His friendship with the two justices made approaching them in chambers a more comfortable, profitable task; undoubtedly, Souter's positive relationship also granted him a greater degree of influence in the eventual shaping of the cases majority opinion. Their close friendship—especially that of Justices Souter and O'Connor—coupled with Souter's reasoned, calm approach to achieving an acceptable solution was one of the driving forces in the troika's success.²⁷

²⁶ Totenberg, Nina. "Interview," 2009

²⁷ Toobin, Jeffrey. "The Nine: Inside the Secret World of the Supreme Court,"

However, despite his congenial personality there is one area of Justice Souter's temperament that, if improved, would only strengthen his ability to lead on the Court—passion. More so than other justices, Souter does not appear to be as emotionally involved in his work. His distaste for living in Washington, DC; the dread he feels before returning each summer; and public comments such as this, “when the term of the court starts I undergo a sort of annual intellectual lobotomy and it lasts until the following summer when I sort of cram what I can into the summertime,”²⁸ serves as further evidence as to Souter's lack of passion surrounding the Court.²⁹ While some may argue that such a trait is appropriate for a justice as it will not bias one's rulings, this lack of passion conversely limits one's ability to lead.

To put it simply, the lifestyle and work associated with being a Supreme Court justice does not invoke the necessary energy, passion, or motivation in Justice Souter and as a result he is not the successful leader he could be. Without such passion, Souter is less able to convince a colleague as to the merits of his opinion or to join his position. If he is not passionate about a particular case, issue, or the role of the Supreme Court in general, how can he then motivate one of his colleagues as to its importance? Thus, no matter how well reasoned, well liked, or respected Souter may be on the Court, he is missing a key ingredient in regard to temperament limiting his ability to more effectively lead.

To again provide the counter example of Justice Scalia, Scalia's natural disposition tends to make him a less effective leader on the Court. While he can be quite charming and is generally liked off the Court by his colleagues, his reputation for inflammatory dissents and oral remarks aimed to antagonize and attack fellow justices makes him a difficult individual to work

²⁸ Salcedo, Michelle. “Supreme Court Justice Souter to leave ‘best job in worst city’.” Associated Press. 1 May 2009 < http://www.gopusa.com/news/2009/may/0501_souter_sc1.shtml > (accessed 1 May 2009)

²⁹ Totenberg, Nina. “Interview,” 2009 and Vogue, Ariana and Sara Just. “Justice Souter to Retire from the Supreme Court.” ABCNews.com. < <http://abcnews.go.com/Politics/SCOTUS/story?id=7476066&page=1> > (accessed 30 April 2009)

with. For example, Scalia's equating of one Justice Breyer's opinions as "sheer applesauce"³⁰ or his stating that an opinion of Justice O'Connor "could not be taken seriously,"³¹ not only makes the possibility of compromise less likely in the specific case being discussed, it also damages the working relationship between the individuals for the future. Such action lessens the degree to which one is respected on the Court as well as impedes one's ability to compromise and exert influence. As such, and related to the leadership impediments discussed as a result of one's rigid judicial ideology, the on-the-Court temperament of Justice Scalia makes him less approachable, less compromising, and therefore less effective as consensus builder and leader.

Findings and Conclusion:

From this examination, one can see that while Justice Souter has the majority of soft power traits necessary to be a successful leader on the Supreme Court, he is not. Other than *Casey* where Souter used both his centrist judicial ideology and mild-mannered, approachable temperament to his advantage, he does not consistently exemplify judicial leadership. More often than not, he votes and writes his opinions in a similar fashion to that of his colleagues while making little to no effort to persuade others in supporting a particular cause. As implied above, such inaction is most likely the result of Souter's lack of passion and drive. Without a certain degree of intrinsic motivation Souter's ability to influence others is greatly reduced; this lack of motivation will most likely remain the most significant impediment to Souter's success as a leader.

What is most interesting about David Souter is that during his tenure as a judge on the Supreme Court of New Hampshire he was regarded as the leader of the court. Souter is

³⁰ Scalia, Antonin: Justice Scalia on the Record (2008)

³¹ Scalia, Antonin: Justice Scalia on the Record (2008) and Toobin, Jeffrey. "The Nine: Inside the Secret World of the Supreme Court,"

remembered for leading oral arguments, shaping the conversation between judges both during conferences and through the writing of opinions, and being quite persuasive when speaking with fellow justices about his opinion.³² While there are a number of potential explanations for such a change in Souter's on-the-court demeanor—substance of the cases, different working environments the differing Courts, level of personal interest, perceived role of a State Supreme Court Judge and a U.S. Supreme Court Justice, etc.—it appears as though Souter's interest and passion for the work diminishes the farther away from his hometown of East Weare, New Hampshire he is.

While there are many leadership lessons to be derived from this examination, the most prominent is that simply having the qualities to be a strong leader—in this case soft power—does not give one the impetus to act. Regardless of one's specific traits, without action, subtle or bold, it is unlikely that one will consistently and successfully influence others. As seen in Justice Souter, he appears to have most of the necessary soft power traits to be a strong judicial leader. However, his lack of drive and motivation significantly limits his ability to use such positive attributes to his advantage. In essence, one must have the necessary traits to be effective as well as the passion and motivation to act in order to be a consistent, strong leader.

On a more secondary level, this piece illustrates the importance of remaining in the center of a group's ideological perspective. By doing so, one remains approachable and unbiased increasing his or her legitimacy. Furthermore, by remaining ideologically neutral one is better suited in satisfying the diverse and often conflicting needs of a group. In addition, this piece also illustrates the need to be respected by one's colleagues. Without such respect—as seen in the example of Justice Scalia—one's ability to lead is greatly diminished regardless of other positive

³² Yardbrough, Tinsley E. "David Hackett Souter: Traditional Republican of the Rehnquist Court,"

attributes. One could be the most intelligent, passionate individual, but without the respect of one's colleagues it is unlikely that one will be able to effectively lead.

While this piece by no means covers all aspects of judicial leadership, it provides unique insight in to how decisions on the Supreme Court are made and the role of associate justices in influencing and persuading others on the Court. By examining the often overlooked Justice Souter, one can see that it is not the formal position of power that makes one an effective leader on the Supreme Court, but rather the traits of an individual justice that determines one's ability to influence others.

Interestingly enough, at the conclusion of this work Justice Souter announced his retirement from the Supreme Court. While he did not provide details as to why he is retiring at the early age of 69 (in comparison to other justices), many analysts cite his distaste of Washington, DC as one of the primary factors. As such, Souter's retirement has provided President Obama his first opportunity to nominate a Supreme Court justice. While Obama may not be interested in appointing a strong judicial leader, it is clear that there are many factors beyond one's judicial record that must be considered when appointing an individual to the Supreme Court.

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