

Leadership in the Criminal Justice System

I. Introduction

District attorneys and judges are often viewed merely as cogs in the criminal justice system – vital cogs, but cogs nonetheless. The district attorney’s duties are viewed simply as presenting evidence and serving justice. The judge is viewed as just presiding over the trial, instructing the jury, and passing a sentence when needed. However, such views of district attorneys and judges are overly simplistic. The Leadership for Lawyers class has given us a new perspective on leadership, and we feel that district attorneys and judges are placed in roles with tremendous leadership potential. Each hearing and trial carries heavy implications on the lives of those involved. As a result, not only is the potential to exercise leadership great, it is an absolute necessity.

In this paper, we will study the traditional roles and duties of district attorneys and judges. We will also provide a discussion of the qualities and characteristics discussed in this class that we believe are particularly relevant to the roles of district attorneys and judges. Lastly, we will analyze the views of some individuals in these positions regarding how they view themselves as leaders with respect to the qualities and characteristics of leaders discussed in class. The individuals whose views we will analyze include those of a current district attorney, a sitting judge who was formerly a district attorney, and a sitting judge who was formerly a civil litigator. The diversity of

the interviewees provided the necessary insight for us properly evaluate the concepts and themes of leadership for lawyers and, in particular, judges and district attorneys.

II. The Roles of District Attorneys and Judges

A. *District Attorneys*

District attorneys, according to Ballentine's Law Dictionary, are public officials elected or appointed to conduct suits on behalf of their respective districts in a state.

District attorneys typically represent the state government in the prosecution of alleged criminals. They are considered lawyers for the people, and are advocates for justice.

According to the National District Attorney's Association, district attorneys protect the rights and safety of the people. By holding positions of power in their districts and as officers of the government, district attorneys effectively speak for the government.

To us, the most compelling aspect of a district attorney's job is the level of discretion they are afforded. They not only determine who to prosecute, but these individuals also decide what charges defendants will face. At the trial phase, the attorney determines who the witnesses are, when they will testify, and what pieces of evidence to introduce to the jury. With this wide range of discretion and power, it is easy to see how imprudent decisions on the part of a district attorney will lead to unnecessary harm to both the criminal justice system and to the individuals involved. The district attorneys have to make difficult decisions regarding who to prosecute and what sentences to seek. In doing this, not only are they serving in their role as administrators of justice but they also are helping to set the policies of the community.

B. Judges

Judges represent the epitome of power in the minds of the general public when discussing trials. They preside over the court, demanding respect and ensuring that the trial proceed smoothly and justly. Like a district attorney, the decisions of judges may greatly affect the outcome of the trial. Not only are they in charge of making crucial evidentiary rulings, they are also in charge of instructing the jurors as to the law and deliberation procedures. If judges are not viewed as credible and fair leaders of the court, the criminal justice system will be unable to operate as it was intended.

Judicial leadership is not confined to the courtroom and the course of a single trial. Instead, through judicial activism, judges have the power to make decisions and rulings that echo through society. Though many view the label of “judicial activism” as a slight, referring to a judge exceeding his duties and entering the realm of law making, the notion of judicial activism can be reconciled with a judge taking on the role of a leader.

Black’s Law Dictionary defines judicial activism as “judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.” Merriam-Webster's Dictionary of Law defines judicial activism as “the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.” Regardless of how one defines judicial activism, critics point to judicial activism as usurping the power of the legislation. This may take the form of overturning laws as being unconstitutional, overturning judicial precedent, or interpreting statutes seemingly contrary to the intent of the legislature.

By exercising judicial activism, judges are effectively setting policy, and taking on a leadership role. Judges who try to avoid being labeled as judicial activists may choose to influence the conduct and the policy within their communities in other, perhaps less-criticized, ways. Judges, like the district attorneys, can play a crucial role in setting the conduct and policy of their communities without engaging in judicial activism. Often, judges can have an effect on the conduct and policy of their communities when sentencing criminals at trial under their broad sentencing power.

III. Leadership Qualities

Burdened with constitutional and ethical obligations, how do district attorneys and judges engage in the exemplary leadership qualities depicted in The Leadership Challenge? Kouzes and Posner have stated that the five leadership qualities: 1) Model The Way, 2) Inspire a Shared Vision, 3) Challenge the Process, 4) Enable Other to Act, and 5) Encourage the Heart have withstood the test of time,¹ but how do they stand up in publicly prominent roles such as those of a judge or a district attorney?

Modeling the way is about earning the right and the respect to lead through direct involvement and action.² District attorneys and judges must clarify their values and set the example that wish for their communities to adopt. Leaders who inspire a shared vision have a desire to make something happen, to change the way things are, and to create something that no one else has ever created before.³ If a district attorney or a judge cannot envision possibilities, and cannot successfully communicate their visions, they also cannot enlist others in a shared vision. Successful leaders also challenge the

¹James M. Kouzes & Barry Z. Posner, The Leadership Challenge, 4th Edition, 14, (2007).

² Id. at 16.

³ Id. at 17.

process. Challenging the process involves searching for opportunities to innovate, grow, and improve.⁴ Good leaders enable others to act. Teamwork, trust, and empowerment are essential elements in enabling others to act.⁵ Finally, leadership requires leaders to encourage the heart. Encouraging the heart allows a strong sense of collective identity and community spirit to be built.⁶

In order for a lawyer to be a successful leader, or a leader who people are willing to follow, it is critical for the lawyer to inspire a shared vision. Successful leaders are credible. A credible leader is generally one who is honest, competent, and inspiring. To inspire a shared vision, a leader must be more than credible; a leader must also be forward-looking. A leader must have a vision for the future, and know where he or she is going, in order to compel others to willingly follow his or her lead.

IV. District Attorneys as Leaders

With a few notable exceptions, district attorneys are generally viewed as being honest and ethical. They are expected to have integrity and character, and to be competent in their positions of power. These views and expectations, along with the power granted to district attorneys, leave them as ideal leaders in their office as well as in their communities. Like all leaders, district attorneys must be problem solvers. Often, problems that a district attorney must solve are those related to a shared vision, namely “justice for all.” While the quest for justice is a generic shared vision that district attorneys promote, district attorneys generally have individual shared visions that are either part of the generic shared vision, or complement the generic shared vision.

⁴ Id. at 19.

⁵ Id. at 21.

⁶ Id. at 23.

As leaders, district attorneys make difficult decisions and set directions for their respective districts. The decisions made by district attorneys include determining which policies to promote, and determining which cases to prosecute. The challenges presented to district attorneys that require real leadership often differ depending upon factors including, but not limited to, the location of their respective districts and the social climate in their respective districts. In other words, a district attorney may select initiatives to pursue and cases to prosecute based upon the particular problems which are prevalent within his or her district. For example, the district attorney of Los Angeles is currently facing a particular challenge involving the extradition of criminals who flee to nearby Mexico in order to avoid death sentences.

To confront challenges head-on and solve problems within their communities, district attorneys often form task forces which address specific tasks or issues that are present and ongoing concerns within their districts. Often, the ability to identify an appropriate area in which to establish a task force requires a leader to be forward-looking such that he or she is able to anticipate which problems could potentially become epidemic in the future in the absence of action. Task forces have been formed in many districts to address issues from gun-control to sexual abuse.

In addition to being leaders in the world of criminal and misdemeanor prosecution, many district attorneys are community leaders as well. District attorneys are in a unique position to develop programs to assist individuals and communities victimized by criminal behavior. That is, in addition to prosecuting victimizers, district attorneys are often leaders in assisting victims. The district attorney of New York County, for example, has developed programs that are intended to force landlords to rid

their buildings of criminals who present a threat to other tenants, and programs which aid victims of crime. Many district attorneys have developed community programs which come to the aid of victims of elder abuse, hate crimes, identity theft, and stalking.

In an ideal world, a district attorney would be able to address every challenge, and to solve every problem. However, the world is not ideal, and practical constraints often force a district attorney to select particular challenges to address, and particular problems to solve. Monetary considerations and resource, e.g., manpower, allocation considerations compel a district attorney to select from among all the challenges and problems he or she would ideally like to address.

Leadership considerations often come into play when a district attorney selects challenges to address, policies to support, stands to take, problems to solve, etc. In selecting which cases to prosecute, the district attorney may consider the message he or she would like to send the community, and whether that message is consistent with the shared vision he or she is promoting as a leader. Any task forces formed may be formed in areas which are particularly relevant to the shared vision. Community programs may be selected based on which community programs best serve the shared vision.

To be an effective leader as a district attorney, a district attorney must first establish credibility. To gain credibility, not only must he be an expert in the field of criminal law, but a district attorney must also possess the ethics and integrity that will gain the respect of his peers, his opposition, and his community. The notion of expertise is widely considered in determining the type of cases an individual will prosecute.⁷ This is increasingly vital due to the estimated rise in rates and types of crimes. Using the

⁷ 50 S.C. L. Rev. 699, 700.

juvenile justice system as an example, statistics show that juvenile murders rose 150% between 1985 and 1993; aggravated assault rose by over 120% from 1983 to 1994; and arrests for weapons offenses rose by 93% from 1985 to 1994.⁸ Not only are the rates of crimes rising, but the levels of violence of these crimes are also seeing an upward trend. It has become vital that prosecutors dealing with such cases receive appropriate training and be selected on the basis of their skill and competence.⁹ Expertise is not limited to juvenile prosecutions, but it provides a great example of why an attorney's expertise is imperative. Many juveniles being prosecuted today will become the adult criminals of tomorrow.¹⁰ Thus, special attention should be given when prosecuting these cases, as juveniles may be more inclined to be rehabilitated than most adult offenders.¹¹ Due to this factor, "it is vital to have a single, trained, experienced deputy who can evaluate the case, the juvenile's criminal and social history and the [dispositional] alternatives" in determining the route that will serve both the best interest of the society and the juvenile.¹²

In addition to being an expert in the field of criminal law, a prosecutor must possess integrity and abide by ethical rules to garner credibility. This is reflected in ABA Model Rules of Professional Conduct. Specifically, the model rules require that the prosecutor act in a manner that will ensure that a defendant is not prejudiced. Examples include only pursuing charges that are supported by probable cause and disclosing any evidence that may be helpful to the defense.¹³ By abiding to these rules, a prosecutor

⁸ Id. at 699.

⁹ See National Dist. Attorneys Ass'n, National Prosecution Standards 92.1d, at 251 (2d ed. 1991).

¹⁰ 50 S.C. L. Rev. at 702.

¹¹ Id.

¹² National Dist. Attorneys Ass'n, Resource Manual and Policy Positions on Juvenile Crime Issues 3 (1996).

¹³ ABA Model Rules of Professional Conduct Rule 3.8.

maintains that credibility of himself, the district attorney's office, and the criminal justice system.

A. *Modeling the Way*

In "modeling the way," a district attorney must clearly articulate his personal values and ensure that his actions are consistent with these values. From the broadest standpoint, a prosecutor's values should be centered on serving justice.¹⁴ However, justice is such a vague and subjective term. Each individual district attorney must determine what he believes in. Is he in favor of heavily pursuing the death penalty in his county, or is life sufficient? Is plea bargaining strongly encouraged, or is the letter of the law to be upheld in every situation? These are all specific considerations that must be made by a district attorney in becoming a leader. Without a clear and articulate value system, the head prosecutor cannot lead his constituents.

B. *Inspiring a Shared Vision*

A district attorney must inspire a shared vision amongst all the prosecutors in the county. This vision will likely be a marriage between the district attorney's personal view and his ideals of justice, and the ideals of the community that elects the district attorney. Further, this must be the type of vision with a capital V, i.e., "big V vision," as discussed in class. It cannot be limited to a vision for each individual case. Instead, a forward thinking district attorney must see the big picture, with the understanding that it may take time to fulfill his vision of justice in the community.

However, it is not merely enough to have a vision. The district attorney must ensure that those working with and around him share this vision. To be an effective leader, the district attorney must create and foster an environment where the prosecutors

¹⁴ <http://www.kcdaa.org/docs/Advance%20Sheet/Advance%20Sheet-Feb08.pdf> (p. 6).

under him are passionate about what they are doing and take pride in what they are doing, generating better performance. To do so, he must develop a central theme that will ignite the passion of his fellow prosecutors. This theme must make it clear to those around the district attorney what his stance on crime is. The vision may be centered upon prosecuting crimes to the fullest and strictest sentences; or it may be a theme built around crime prevention and proactive solutions. Regardless, a district attorney must hire those that share this vision. For those already working under him, he must inspire them and explain why this path is the most effective one in serving justice.

C. Challenging the Process

In order for a district attorney and his fellow prosecutors to “challenge the process” and to make changes to the status quo, they must be willing to take the initiative and be proactive in their work. Traditionally, a prosecutor was merely viewed as an individual trying to prove the guilt of a defendant – a task done solely in the courtroom. However, more and more, it is common for prosecutors to get involved in the community.¹⁵ It is now becoming more commonplace for prosecutors to go “into the community to serve on multi-agency task forces, involve themselves in school activities, attend, sponsor and organize conferences, engage in public speaking, train police and other law enforcement and justice officials, work with public health and social service providers, all the while developing genuine expertise in their substantive areas as well as in law.”¹⁶

In addition, an increasing number of staff positions are given to non-prosecutors such as victim-witness advocates, media and journalism specialists, and public health and

¹⁵ http://www.hks.harvard.edu/criminaljustice/publications/da_cp_ag.pdf (p. 4).

¹⁶ Id.

crime prevention experts.¹⁷ These individuals assist the district attorney in exercising “outsight” – gaining feedback and staying sensitive to external realities – that is vital to installing a more effective process.

Further, district attorneys should not be caught up in the notion that political success and reelection means success as a prosecutor. Obviously, it’s a positive to have the support of the community, but sometimes challenging the process means going against the desires and wishes of the outside community. Seeking justice won’t always guarantee public support in every instance, but a prosecutor must abide by that oath. A district attorney often has as difficult of a time as judges have, when it comes to challenging the process.

Based on the Ms. Lohman’s comments and the research on Mr. Nifong, it is clear that one crucial external pressure that a district attorney faces is political influence. A good leader should challenge this process, which in this context means that a district attorney should maintain an impartial and open mind without regard for outside influences. Politics has long been a factor when it comes to decisions on when to prosecute. However, a good district attorney ought to be able to preserve an analytical outlook with the proper legal ramifications in mind before partaking in reckless prosecution. Mr. Nifong is the epitome of a district attorney who succumbed to both his selfish motives and political pressure when he chose to ignore overwhelming evidence and press forward with the prosecution of the Duke students.

D. Enabling Others to Act

The very nature of a district attorney’s office demands the delegation of power and the enabling of others to act. Given the volume and diversity of cases, it is almost

¹⁷ Id.

imperative that a district attorney delegate authority to his staff in order to ensure efficiency and competency. Unity and synergy in a district attorney's office and, thus, enabling others to act, is crucial in order to ensure that the right people are prosecuted for the right reason.

District attorney offices are generally divided into multiple prosecution units, each headed by a supervisor.¹⁸ In order for this hierarchy to be successful, it is essential to foster a collaborative mindset. The supervisor must be willing to give his time to listen and be open to the thoughts and opinions of lower level district attorneys. By working together, the shared vision will be promoted, as opposed to each individual prosecuting his or her case in a manner that reflects their own belief of justice.

E. Encouraging the Heart

Through internal recognition and celebration, the district attorney's office can foster unity and encourage proper goals. Instead of being motivated by a concern for conviction rates, the district attorney's office needs to acknowledge the efforts of prosecutors. This is one aspect that needs work based on our observations.¹⁹ Often, when a jury returns with a guilty verdict, the prosecutor has merely "done his job." When the jury returns with a not guilty verdict, the prosecutor has failed. As the leader of the office, the district attorney should recognize the hours, diligence, and struggles imparted on each attorney, regardless of the end result. Such encouragement will foster a spirit of community that is essential in order to succeed.

D. Mr. Nifong—A Failed Leader

¹⁸ <http://www.orangecountyda.com/home/index.asp?page=183>

¹⁹ David Kao has clerked for both the Orange County DA and Santa Clara County DA.

Just like many lawyers, district attorneys often believe their sole job is advocacy. As a result, not much thought is given to the power of the position and its potential to guide and lead the community's policy. Ms. Dale Lohman is a Santa Clara deputy district attorney who graduated at the top of her class from Santa Clara Law School. When interviewed about her position, she noted that she had not considered herself as a leader. Upon reflection, however, she agreed that as a district attorney, she possessed great power and responsibility. She notes that prosecutors must be cautious and careful with the charges brought and the determination of which individuals to be prosecuted.

When Ms. Lohman was asked about how she viewed herself as a leader, she was surprised at the question and said that she did not consider herself a leader. This reaction highlights one of the most important lessons from the interview. Many people who do not consider themselves to be leaders are in fact in great leadership roles. It provides a needed reminder to all people and attorneys in general to examine their position and reflect on how it is a position of leadership. This step will help the individual decide whether or not they wish to assume further steps to undertake the role of leadership their career entails.

Ms. Lohman also cautioned about the importance of the decisions district attorneys make with regard to the filing of charges. She noted that sexual assault charges carry a high social stigma that may follow a person regardless of whether they are found to be innocent. She indicated that with the great power to devastate peoples' lives comes great responsibility to not wield it without great care. This provides another lesson for lawyers in general. Whether in a civil or criminal arena, filing charges or a complaint can

devastate peoples' lives and reputations. It is important to be ethical and reflective when making these leadership decisions to move forward with an action.

Through the course of this interview with Ms. Lohman, it became evident that the misjudgment by a district attorney may not only destroy the life of a defendant, but may set the example for a culture of discretionary abuse or irresponsibility. A prime example of the impact of a district attorney's decisions is illustrated in the recent case involving Duke Lacrosse players. In that case, three lacrosse players were accused of sexually assaulting a female at a team party.²⁰ Despite insufficient evidence to prosecute the defendants, the District Attorney intensely pursued the matter. Driven by political aspirations, he violated not only his ethical duties but also his duties as the lead prosecutor of Durham County.²¹ Allegedly, in his mission to garner support for his personal political campaign, he overzealously sought to convict the lacrosse players. Criticisms include going public with a series of accusations that were later shown to be false; unduly influencing the police investigation; manipulating potential witnesses; breaking the basic principle of false-identification prevention by not using filter photos; and refusing to hear exculpatory evidence prior to indictment along with making misleading statements regarding the vital DNA evidence.²²

Mr. Nifong's action had both a small-scale and the potential for a larger scale impact. On a small and immediate level, the lives of the three young men were forever altered. Not only were they subject to the emotional and physical stress caused by these accusations, their reputations were stained and dragged through the mud. They were thrust into the public spotlight and bombarded with undue criticism and condemnation.

²⁰ http://en.wikipedia.org/wiki/Mike_Nifong

²¹ <http://www.foxnews.com/story/0,2933,283282,00.html>

²² <http://nbcports.msnbc.com/id/19155890/>

In addition to the players themselves, this pain and suffering extended to their friends and family. More distressing, however, Nifong's actions demonstrate the potential and ease that an individual in the position of a district attorney can negatively affect society. If all district attorneys succumb to their personal interests and put these motivations ahead of their duty to seek justice, the very principles of the legal system will be uprooted.

Mr. Nifong exemplifies what a leader should not be and hopefully is an aberration among district attorneys. His actions demonstrated a lack of integrity, foresight, and vision. As a prosecutor he diminished his credibility, along with the credibility of his office, and betrayed the trust of his constituents. As a leader, he tarnished the reputation of his subordinates.

Nifong's downfall originated from a lack of vision, more specifically his vision was distorted by selfish goals. Upon taking office, a district attorney should have a clear vision that centers on serving justice and protecting the community. By straying from this vision, Nifong unequivocally declared his own vision and compromised the integrity of his office. Unfortunately in Nifong's case, it appeared that no one in his office nor the police department recognized how far Nifong strayed from the vision that a district attorney should have.

V. Judges as Leaders

Like district attorneys, judges are also community leaders. While judges do not select challenges to address or policies to support, judges take a significant leadership role within their communities. For a judge to be an effective leader, he or she must be credible, and also be an expert in his or her field. While judges generally do not set

policy, the decisions made by judges in their leadership roles can have a significant affect on policy.

We were fortunate enough to have two judges willing to provide insight into the relationship between their profession and leadership. These individuals are lawyers whose career paths and choices are not identical, yet still possess the qualities and virtues our class discussed and recognize as essential for being a leader especially within the legal community. Specifically, these individuals are those with which some students worked for, had as professors or associated with on a professional level.

We developed a list of questions derived generally from the theme of leadership as discussed in class as well incorporating aspects from the various backgrounds and the current positions these people currently hold. Following these questions and their answers, we comment generally on the answers and link them back to the class on the themes discussed throughout the semester. The overall section again is an attempt to gain practical insight into our academic discussion of leadership from individuals who are practicing lawyers as well as community leaders.

The first judge presides over Department Seven of the downtown Superior Court of Santa Clara County. This person is widely regarded and respected for his dedication and impartiality he brings to the courtroom. Judge Socrates Manoukian has been a judge for Santa Clara County for the last 13 years. He has adjudicated and presided over civil and criminal trials. Before his career on the bench, the Honorable Manoukian worked for many years as a civil litigator in Southern California. Mr. Manoukian also takes teaches for the Law School at Santa Clara University teaching California Civil Procedure. Due to

the depth of his experience and expertise in law, Mr. Manoukian was an excellent and informed resource to opine on leadership within the legal community.²³

Questions/Responses:

1. What qualities or attributes does one need to possess in order to be a successful leader?

In my opinion successful leaders need to be patient, thoughtful and have a vision. Leaders must understand how people think and approach a problem. In this community, a good leader must be able to reach out across social and geographical boundaries and build consensus. They must do so without compromising basic core values. Leaders must also have the courage to do what they believe is correct even though it may not be popular.

2. As a judge, how do you view your role as a community leader? How does this role balance with your obligation to the law?

This is a very good question, and it is the subject of much discussion among judges. A judge should not do anything to compromise the foremost responsibility of the impartiality. Many judges think they need to take activist roles in educating the public about certain laws. I do not believe it is a good idea for judges to get cozy with the special-interest groups that appear in front of them. For example, judges should not get too friendly with police officer organizations, district attorney organizations, or for that matter groups that represent certain criminal defendants or social or political groups that actively try to change the laws. Some judges get very involved in groups that to advocacy work for domestic violence victims, but while the cause is noble, that might compromise the appearance of impartiality. [For example], several years ago, a judge put up posters in the hallway courthouse with a referral number for victims of domestic

²³ The following responses are verbatim responses the Honorable Socrates P. Manoukian provided.

violence. I arrange to have them removed. What would you think if you were someone who was unjustly accused of domestic violence, and you see an advocacy poster on the hallway to the judge's chambers?

3. Do you feel that the political pressures or policies of the people or the policy makers dictate how you should perform your job?

This is very true. Many times legislators enact laws and expect the judges to do whatever is necessary to validate them. However, in general it is the responsibility of the Legislature to enact laws that they believe are in the best interests of the community. For example, punishment for criminal cases has been dictated by the Legislature. It is the responsibility of the judges to respect those enactments and other enactments as long as other constitutional principles are not violated.

4. Do you find yourself in situations where you feel obligated to adjudicate cases which you feel are unjust because of your duty to uphold the law?

I do not recall ever finding myself in this situation. However, if a judge is presented with a case that the judge feels is one heading to an unjust result, the judge must recuse himself or herself and not hear the case. Now, for example, a judge may disagree about the drug laws. However, those have been fairly well adjudicated by appellate courts. If the judge cannot impose the sentence that is mandated for a statute found to be constitutional by a higher court, the judge should not hear the case.

5. In our Leadership for Lawyers class, we have discussed that lawyers are often not viewed as great leaders, how do you feel about this assertion?

This may be the view of some but certainly not mine. The laws in this country have changed because of courageous lawyers who have stood up in the face of adversity to represent unpopular clients. When all is said and done, I believe the public does in fact realize that.

6. Do you have any comments regarding the role of a DA, lawyer or a Judge in setting policy/precedent for any novel areas of law or new policy focuses?

Certainly the role of a deputy district attorney or of a lawyer in private practice or a public defender includes advocacy for change in policy or defining new precedent. I am a member of the Civil Committee of the California Judges Association. We have many occasions to review proposed legislation. Unless it affects a matter of procedure through the court, we affirmatively state that we do not take a position on the legislation.

7. Please feel free to add any other thoughts you consider relevant to this paper.

In general, I followed the Prime Directive from the Star Trek series: that is, do not interfere unless you absolutely have to. I believe that educated and responsible attorneys can do a better job of advocacy for their clients when the judge is not trying to change policy in a substantive law manner. I have also said that judicial authority is like salt: we all need a little but too much will kill you. The fact of the matter is, as I have told you in the California Civil Procedure class, judges are not fungible items. It is important to know the personality of each judge before whom you appear. California is at the forefront of judicial education. There are many good educational opportunities for judges to improve their skills and learn substantive and procedural law. Of course it is always easy to find fault with a few judges but most of us are conscientious people who work hard and try to do the right thing at the end of the day.

Commentary:

Mr. Manoukian touched on a variety of topics addressed throughout the semester. Although the answers were from the judicial perspective, these can be broadly understood and extrapolated to the legal profession. The first issue he addressed was what characteristics he believed a leader should possess. He specifically mentioned

having patience, being thoughtful, having vision, identifying with the diverse community and building unity, having uncompromising core values and exercising courage in the face of adversity. These values were all touched upon the first and second week of class.

From the laundry list of traits our class developed, Mr. Manoukian directly and indirectly emphasized three vital and necessary components of a successful leader—vision, courage and integrity. We wholeheartedly agree with this assessment, and as class progressed, it became fundamental that any leader must possess these values in order to be most successful in whatever facet of leadership that person chooses whether acknowledged or discreet.

In particular to his role as a judge, Mr. Manoukian focused on maintaining impartiality, being knowledgeable and educating oneself to hone his or her expertise. These insights are pivotal to establishing credibility. In a profession where reputation is paramount, having credibility amongst peers is perhaps the most important component of being a leader. As both the Judges stressed, having credibility on the bench is essential. Two areas common to both of their responses was the role of impartiality and separation of powers.

Being an impartial judicial officer is obvious since our legal system is predicated upon blind justice. However, impartiality transcends beyond the legal world because it allows leaders to gain perspective and achieve a fuller understanding of the tasks and challenges they will face as the respective leader.

The second commonality was the role of separation of powers whereby a judge must follow the requisite responsibilities and duties. While the judges are leaders, in practice they are to apply the law as proscribed by the Legislature, but they additionally

serve as checks to ensure constitutional rights and principles are preserved under the law. For these Judges, this entails not being a judicial activist. For leadership in general, a successful leader must know their role and its responsibility to ensure that they follow it without violating the authority they possess. Since leadership is predicated on credibility, abusing the power and authority of the relative position will most assuredly destroy any and all credibility.

The two areas of Mr. Manoukian emphasized directly related to themes discussed in class. Being knowledgeable and having a willingness to supplement your base knowledge is elemental since the law is dynamic. Expertise whether in an area of law or any other career is a central to being a leader. Additionally, when the expert has the motivation to become more educated in that field, it reflects not only in their leadership but serves to enhance the reputation they already possess. Knowledge and the drive to become more knowledgeable not only facilitate the role of leader but also motivate people to excel in life.

Mr. Manoukian talked about having courage to do what may not be popular. In class, we discussed leaders changing the status quo. Although leaders should not overstep the authority, often times challenging the status quo is necessary even if it is unpopular. The judge relayed the fact that laws in our country have changed due to courageous people fighting against adversity. This is undoubtedly one area where lawyers can stand out as leaders. Challenging the norm is not always popular, but lawyers have the education, means and access to courts, which enables them to fight for a position that is just and fair.

Specifically related to lawyers, the Judge left the lasting impression that lawyers are to be educated and responsible. We are to advocate for our clients but maintain our sense of integrity. Lastly, one underlying theme in the responses was that not all people garner the accolades for being leaders, but whether we as lawyers or as people strive to accomplish our endeavors with integrity, vision and courage, we are then successful leaders whether tacitly or publicly.

The next judge presides over Department 45 in the Hall of Justice for the Superior Court of Santa Clara County. The Honorable Griffin Bonini first began to serve on the bench in 2004. He currently presides over Domestic Violence criminal cases. Prior to being elected, this Santa Clara Law School alum, served as a Deputy District Attorney prosecuting cases for nine years. Mr. Bonini also worked as a Civil Litigator for over four years. Despite graduating from law School in 1991, Mr. Bonini gained extensive experience through his diverse background, and he has developed an impeccable reputation not only as a lawyer but also as an educator. In addition to serving as a judge, Mr. Bonini serves as an instructor for Trial Techniques at Santa Clara School of Law as well as lecturing for many other clinics and schools. Speaking for the students that have taken Trial Techniques, his expertise is enhanced by his engaging and funny personality. For these reasons, Mr. Bonini like Mr. Manoukian is an excellent and informative person to shed light on Leadership in the Law.²⁴

Questions/Responses:

1. What qualities or attributes does one need to possess in order to be a successful leader?

²⁴ The following responses are verbatim responses The Honorable Griffin Bonini provided.

Obviously, many qualities go into being a successful leader. Two qualities that I think are most important for a judge are consistency and predictability. Litigants, lawyers, witnesses, victims, defendants all need to know that when they walk into court similar situations will be treated similarly. Even the appearance of disparate treatment can significantly hurt the credibility of the court.

2. As a district attorney or judge, how do you view your role as a community leader? How does this role balance with your obligations to the law?

It is interesting that you asked this question. Our court recently had a leadership conference. The focus of the conference was on judges acting as community leaders. The emphasis was on judges going out into the community and participating in committees. Extracurricular activities (that is, activities outside of court) are not what I think are important for a judge. For me, being a “leader” means being a competent, intelligent, evenhanded judge in court. For example, on our court we have quite a few judges who spend hours and hours participating on committees for this or that issue. Unfortunately, many of these judges are not very good at being judges. I don't care how many committees you serve on. If you do not control your courtroom, earn the respect of the attorneys and individuals that appear in front of you, and know the substantive law in the area in which your court practices, you will never be a leader.

3. Do you feel that the political pressures or policies of the people or the policymakers dictate how you should perform your job?

No. This is one of the most common misconceptions about being a judge. Many people believe that a judgeship is a political position, similar to an elected legislator or executive. Nothing could be further from the truth. Politics play no role in my day-to-day activities. We are independent judicial officers and are treated as such. In my 3 1/2 years on the bench no one has ever pressured me or even suggested that my decisions

should be influenced by anything other than established legal precedent. I do not know, or care, about the political views of my colleagues and staff. Maybe politics plays a greater role in higher level appellate courts where more public-policy decisions are made, but they matter little in trial courts.

4. Do you find yourself in situations where you feel obligated to adjudicate cases which you feel are unjust because of your duty to uphold the law? What do you consider when using your discretionary powers?

I do not feel obligated to adjudicate cases that I feel are unjust. Mainly, because it is not my role to decide which cases get prosecuted. Following the separation of powers is a critical part of being a judge. The elected district attorney, through her assigned deputies, decides which cases to prosecute in our county. That is exclusively an executive branch function. I may disagree with the charges being brought by the district attorney, but it is not my decision. That being said, sentencing is the prerogative of the court. In California, trial judges have broad discretion in sentencing choices. Although certain cases have mandatory sentencing requirements; in most cases the judge can choose from granting probation up to a lengthy prison sentence. In exceptional cases, the Court has the authority to dismiss charges in the interest of justice pursuant to penal code section 1385. This, however, is a necessarily rare occurrence and is usually only done for very minor charges.

5. Do you have any comments regarding the role of a district attorney, lawyer or a judge in setting policy/precedent for any novel areas of law or new policy focuses?

Judges should rarely, if ever, make policy decisions. When a judge “makes” policy he/she is correctly criticized for judicial activism. This is especially true at the federal level where judges are not elected and hold their positions for life. (Question:

What is the difference between God and a federal judge? Answer: God doesn't think he's a federal judge). Policy decisions should be made by elected officials.

Commentary:

Mr. Bonini in his responses answered them more from his role as a Judge. Two requisite qualities he articulated that judges should possess are predictability and consistency. The parties that enter a court should be aware that they will be treated similarly to preceding parties in comparable circumstances. If the judge does not exercise these qualities in his treatment of the parties, the credibility of the court is hampered. Although he limited his analysis to judges, this reasoning is analogous to the role of leader. Leaders need to be consistent and predictable with their respective roles because it not only establishes their credibility but likewise provides a reliable and unwavering basis that enables and enhances their ability to be successful.

Most interesting to us was the response to the role as community leader. Mr. Bonini discussed that often judges become involved with the community, and although commendable, many of these judges are not performing at peak capacity as judges. First and foremost, the judge needs to hone the skill set necessary to be an effective judge. Specifically, the judge should be competent, intelligent and evenhanded. First and foremost, the judge needs to utilize these skills to earn the respect of his peers and the legal community in order to be recognized as a leader.

This touches on an all too often forgotten reality that people need to master their responsibility and role before they become involved in other activities. Effective leaders must initially sharpen and master their roles before they involve themselves in outside

obligations. Even though it is noble to serve a selfless purpose, the leader cannot abdicate his primary responsibilities.

In particular to his role of judge and leader, Mr. Bonini like Mr. Manoukian relayed that a judge must first recognize and understand his role in the system to be effective. He stressed the importance of separation of powers where the judge should be an activist. This is the role reserved for the elected officials who are the people making legislation. The judge should not set policy and should be immune from the pressures to do so. Again, this directly relates to knowing your role.

In order to be an effective leader, the first responsibility entails understanding the framework within which to function. Knowing the parameters allows one to fully immerse oneself and effectively lead. When the leaders deviate from their roles, the structure becomes susceptible to dissension and internal breakdown. When the roles are carefully delineated and fully understood, the system operates in harmony. Naturally, the leader must set the trend and the others will follow suit. Essentially, leadership necessitates self-discipline. This is not only applicable to judges but for leaders of all kinds. Discipline is a necessary ingredient to leadership. Leaders that display discipline will be responsible and when combined with intelligence and competence, then the leader will achieve a credibility that allows other people to view the person as a successful leader.

Lastly, Mr. Bonini touched a theme we had discussed throughout the whole semester. In his response about judges knowing their roles and being effective in the courtroom before they can be leaders, the judge must have the respect and be knowledgeable about the substantive law. Essentially, this boils down to two points—

credibility and expertise. For the judge, he must earn the respect of the parties entering his court. Part of earning the respect and establishing his credibility as judge requires not just understanding the law but knowing the substantive areas of law that are the issue of dispute. In our class, having credibility and being an expert were the two most fundamental and vital components of being a successful leader. When the leader displays both these qualities, he will be the most effective leader within his field. In whatever field or facet of life, the first and most foremost aspects the leader must achieve is establishing credibility and showing the requisite expertise in that particular area.

VI. Analysis

A. *Modeling the Way*

To “Model the Way” can be summed up as knowing what you care for, and then practicing what you preach. Both judges interviewed reflected on the importance of impartiality and fairness. From their responses, it is clearly discernible that both Judge Manoukian and Judge Bonini believe in having an open and fair courtroom, and understand the importance of distancing themselves from any appearance of impropriety. To effectively model the behavior they expect in their courtrooms, both judges hark on the importance of clarifying the rules and etiquette they expect from those who appear in front of them. Although their positions give them authority, their actions and behavior validates their authority.

B. *Inspiring a Shared Vision*

The second exemplary principle of leadership, “Inspiring a Shared Vision,” appears to be especially difficult in the role of judges and district attorney, given the

natural dichotomy of litigation and the courtroom. Judge Manoukian and Judge Bonini are clear that they want to make sure the justice is served and the law is upheld. The district attorney's vision seems equally clear in protecting and upholding the values of the public. But, how can judges prevent the attorneys in their courtrooms from using every trick in the book to gain what may be the most miniscule of advantages? Based on their responses, the judges were very clear in their goals of having a fair and open courtroom. To this extent, it is possible to see that judges have a clear vision of efficiency and fairness. Because attorneys are likely to appear in front of these judges more than once, it is highly likely that by establishing certain standards and goals, judges can convince the naturally adversarial defense and prosecution sides that it would be in everyone's best interest to conduct themselves properly. As Judge Manoukian himself stated, "Judges are not fungible items. It is important to know the personality of each judge before you appear."²⁵

C. Challenging the Process

Kouzes and Posner loudly declared that all leaders challenge the process.²⁶ Applied to judges, perhaps the first thing that comes to mind in terms of challenging the process is judicial activism. Given the responses of Judge Manoukian and Judge Bonini in regards to judicial activism, it appears that they would not be able to meet this criterion for being a leader. Both judges seem adamant that it is not the role of the judiciary to make policy decisions. How, then, do we resolve this apparent contradiction? Upon a deeper inspection in the responses provided by Judge Manoukian and Judge Bonini, however, this contradiction becomes resolvable. Judge Manoukian stated that he sits on a

²⁵ Interview with Socrates Manoukian, Judge, Superior Court of California, County of Santa Clara, in San Jose, Cal. (March 31, 2008).

²⁶ James M. Kouzes & Barry Z. Posner, *The Leadership Challenge*, 4th Edition, 18.

board that reviews legislation without taking position, and that he believes that many courageous lawyers have helped shape and change the laws of the country.²⁷ Implicit in his response is the fact that Judge Manoukian does firmly believe in challenging the process, however, he places this burden on the many lawyers and advocates in the country. Judge Manoukian can be said to indirectly engage in judicial activism. Judge Bonini's response also carries with it an implication that a judge has some ability to challenge the process during the sentencing phase. Judge Bonini made reference to California Penal Code Section 1385, which grants a judge the ability to override sentencing requirements and, hence, challenge the process within the realm of power authorized to them judicially.²⁸

D. Enabling Others to Act

While judges have the sole power of authority in their courtrooms, they would be unable to do their jobs without the unity of their staffs. From the court reporter to the law clerks that provide research, a judge's efficiency and success is dependent on the trust he develops with his staff. A clerk's research is only as valid as the trust and faith a judge places on the clerk's work. While not specifically commented on by Judge Manoukian and Judge Bonini, the fact that they have been able to be so successful over the years is reflected in the strong unity that they have with members of their staffs, as well as the attorneys that walk into their courtrooms. Because of the disparity in power between a judge and members of his staff and even attorneys in his courtroom, it is critical that the judge be the first one to trust others and to establish that, when proper, he will delegate control. By demonstrating "trust in others before asking for trust from them" judges

²⁷ Interview with Socrates Manoukian, Judge, Superior Court of California.

²⁸ Interview with Griffin Bonini, Judge, Superior Court of California, County of Santa Clara, in San Jose, Cal. (April 1, 2008).

satisfy Kouzes and Posner fourth exemplary leadership quality of “enabling others to act.”²⁹

Kouzes and Posner state that sensitivity to people’s needs and interest is a key ingredient to building the trust that is needed to enable others to act.³⁰ The responses of both Judge Manoukian and Judge Bonini display their implicit sensitivity to people’s needs. Judge Manoukian, while understanding that advocacy work for domestic violence victims is a noble cause, removed posters from the courthouse which had referral numbers for victims of domestic abuse.³¹ By doing so, he demonstrated sensitivity to people’s needs, specifically the needs of those who are unjustly accused of domestic abuse. Demonstrating sensitivity to people’s needs allows Judge Manoukian to build trust. Judge Bonini has made it a point not know the political views of his colleagues or his staff.³² On its face, this comment would seem to imply that Judge Bonini is doing the opposite of promoting trust. However, by not knowing the political view of his colleagues or his staff, Judge Bonini is in fact demonstrating sensitivity to people’s needs and, therefore, promoting trust. Political views can be quite volatile, and people often make judgments based solely on the political views of others. Judge Bonini is able to foster the trust of his colleagues and staff because they can be comfortable in the knowledge that he is not motivated or influenced by their particular political views.

E. Encouraging the Heart

To lead is a burdensome task, to follow can be even more burdensome. The fifth and last exemplary leadership quality is the ability of a leader to motivate, or as Kouzes

²⁹ James M. Kouzes & Barry Z. Posner, The Leadership Challenge, 4th Edition, 227.

³⁰ Id. at 230.

³¹ Interview with Socrates Manoukian, Judge, Superior Court of California.

³² Interview with Griffin Bonini, Judge, Superior Court of California.

and Posner put it, to “encourage the heart.” The practice of law, in itself, is wearisome. Trying a case can be even more draining. Despite the excruciating toll involved in their professional endeavors, judges are nevertheless able to strive daily to ensure that justice is served. Judge Manoukian and Judge Bonini take great pride in their work. They are able to persevere because they are able to strengthen others while strengthening themselves. In order to do so, a judge must recognize the work of their staffs and give commendations as necessary. Judges also need to respect the lawyers that appear in front of them, and to acknowledge a lawyer’s diligence to the same extent that they wish to be acknowledged. This is done as Justice Bonini illustrates by earning “the respect of the attorneys and individuals that appear in front of you” and by knowing “the substantive law in the area which your court practices.”³³ In a sense, by doing his homework, a judge encourages the people in front of him to do theirs.

VII. Conclusion

In our class, having credibility and being an expert were the two most fundamental and vital components of being a successful leader. When the leader displays both these qualities, he will be the most effective leader within his field. In whatever field or facet of life, the first and most foremost aspects the leader must achieve are establishing credibility and showing the requisite expertise in that particular area.

Because these qualities are so important to hone, people in the legal field must take heed of Ms. Lohman’s comments regarding not viewing herself as a leader. One cannot be a successful leader who consciously sharpens leadership skills if one does not take the time to reflect on whether you are on fact in a leadership position. Realization of your position and its leadership nature are essential if one is going to gain the qualities to

³³ Interview with Griffin Bonini, Judge, Superior Court of California.

be a more successful leader. After recognizing that one's position may entail some leadership capacity, the person must then focus on the five qualities that are essential to being an exemplary leader as set forth by Kouzes and Posner. Those five leadership qualities are 1) Model The Way, 2) Inspire a Shared Vision, 3) Challenge the Process, 4) Enable Other to Act, and 5) Encourage the Heart.³⁴ The five leadership qualities manifest themselves in the publicly prominent roles of judges and district attorneys.

Because of the nature of the judicial position, many who have never entered a courtroom possess the misconception that judges are partial to special interest groups and the political factions that help fund judicial election campaigns. As one commentator pointed out, "Due to the very nature of political elections and the cost of winning an election, judges have a 'powerful incentive' . . . to push the envelope of judicial conduct."³⁵ From a policy standpoint, judges need to dispel such myths, otherwise their credibility is forfeited with consequences that threaten the very fundamental notions of the legal system.

In the interviews with Judge Manoukian and Judge Bonini, they reflected upon one of the most crucial but overlooked leadership qualities in a judge, that being the importance of maintaining an appearance of fairness and distancing oneself from anything which may imply impropriety. They, like all good judges, should be commended that such a quality has gone unrecognized and overlooked; this implies that people take this for granted and come before their courtrooms with a presumption of being adjudicated fairly and without bias. Judge Manoukian and Judge Bonini have established and maintained credibility with those who enter their courtroom by both

³⁴James M. Kouzes & Barry Z. Posner, *The Leadership Challenge*, 4th Edition, 14, (2007).

³⁵Angela C. Cameron, *The Journal of the Legal Profession*, 28 J. Legal Prof. 115, 123 (2003).

carefully monitoring what groups they associate with and what functions that are seen at. An even more poignant example of how they lead the way, both Judge Manoukian and Judge Bonini acknowledge that they too are human and subject to emotional bias. In those circumstances, they each stated that they would recuse themselves. Judge Manoukian and Judge Bonini should be lauded for recognizing "even if a judge were able to put aside bias and self-interest in a particular case, the appearance of impropriety remains, and is itself a serious problem that casts disrepute upon the judiciary."³⁶ The judges who fall into this trap are those that are unable to leave their egos at the door, and who ultimately end up jeopardizing the integrity of the system in the process.

From a distance, a judge appears to sit calmly and maybe even leisurely behind his bench, garbed in the traditionally unassuming robe. Underneath this tranquil facade exists a leader burdened with a tremendous amount of responsibility – the responsibility to adjudicate fairly, openly, and knowledgeably. Leaders often talk of a vision, a goal, and a need to inspire such vision to all those who would follow them. What, then, ought to be the vision of a judge? The most obvious answer is to uphold the law. Some respond saying the vision ought to be ensuring that justice is served, others contend vision is making a social change. Despite these differences, most can readily agree that a judge should inspire a vision of executing their duties openly and fairly. This involves not only maintaining an appearance of propriety outside the courtroom, as discussed above, but carrying out their courtroom processes in an open and fair manner as well. A key method in achieving this is for judges to inform and inspire lawyers to learn about their jurisprudential style. A lost and neglected art in advocacy nowadays is knowing the

³⁶ *Reems v. St. Joseph's Hosp. & Health Ctr.*, 536 N.W.2d 666, 676 (N.D. 1995).

judges, not necessarily having a personal acquaintanceship but rather having some notions of their thought process.³⁷ Judge Manoukian addresses this by emphasizing the importance of knowing each judge before one appears as well as commenting on how judges are not fungible items. Judicial leaders need to open their courtrooms and welcome curious lawyers who wish to probe their mind; allowing others to understand what a judge's legal thought process is inevitably creates an environment of fairness and ought to be a shared vision for all judges.

A major criticism of the American legal system is the long and overly drawn out process each case entails. Many have pointed the blame at lawyers, while others have condemned the legal system as a whole. Ironically enough, very few lay the fault at the judge's feet. Those in the profession however, take a different perspective on who is to blame:

To many experienced trial lawyers, American trial judges are not part of the solution, but a rather large part of the problem. It ought to be evident that none of the lamentable conditions of courtroom delays, inefficiency and congestion could exist if American trial judges were not equally as incompetent as the lawyers they so roundly condemn.³⁸

One of the exemplary leadership principles discussed all semester was how to encourage the heart. Statements like that in Sklar's article indicate a disconnect between the judge as the leader, his followers, and those who appear before them. Such a disconnect breaks the team unity and, when applied to a courtroom scenario, sows discord causing prolonged delays in trial. Fortunately, both Judge Manoukian and Judge Bonini are able to encourage those who appear in their courtrooms to conduct themselves efficiently and

³⁷ Thomas H Fegan, *Get into the Judge's Mind, Not Their Skin*, Chicago Daily Law Bulletin, Thursday, June 29, 2000.

³⁸ Daniel M. Sklar, *Judicial Incompetence: A Plea for Reform*, 69 A.B.A.J. 1598 (1983).

properly. They do so by keeping up with the substantive law in their areas of jurisprudence and showing respect to the lawyers who have come prepared before them as well the system which they have sworn to uphold. In doing so, Judge Manoukian and Judge Bonini demonstrate that judicial leadership is more than just ensuring that justice is done, it entails guaranteeing that justice is done as swiftly and efficiently as possible.