

THE NEED FOR LEADERS IN COURT ADMINISTRATION*

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"Leadership" is one of the 10 critical competencies for court administrators included in the National Association for Court Management's (NACM) Core Competency Curriculum Guidelines. In explaining why leadership is important, NACM states: "Leadership is the energy behind every court system and court accomplishment. . . . Absent leadership excellence, courts and court systems cannot take or maintain effective action." Like virtually all writers about leadership, NACM explains leadership, in part, by contrasting it to management.

Management deals with complexity. Leadership deals with change and growth. Managers oversee and use control mechanisms to maintain predictability and to ensure coordination, follow-through, and accountability. They know how to get things done. Leaders think about, create, and inspire others to act upon dreams, missions, strategic intent, and purpose. Courts have an obvious need for both management and leadership.

Courts need leaders, but how do they find them? Can courts train people to be leaders? Can court administrators be leaders or can only judges be leaders? Are we talking about "leaders" or people who have responsibility to run an organization? Can court administrators devise and implement new ideas without being leaders? There are three components of the leadership issue: the qualities and skills possessed by leaders, whether leadership can be taught (or learned), and the consequences of having a leader or leaders in a court.

Leaders' qualities and skills

Much of the business writing about leadership, plus the NACM quote above, implies the qualities and skills of leaders, but do not specifically identify them. As just one example, NACM says leaders "deal with change and growth." (Emphasis added.) They do, but how? What enables them to deal with change and growth? The literature goes off in many directions. The Core Competencies' discussion of the "knowledge, skills, and abilities" of leaders is a good summary of the key points in much of the literature. NACM offers 50 bulleted items identifying the knowledge, skills, or abilities leaders should possess, allocated among five major qualities. Those five qualities are:

- Be credible in action
- Create focus through vision and purpose
- Manage interdependencies: work beyond the boundaries
- Create a high-performance work environment
- Do skillful and continual diagnosis

NACM's list would not be a bad list of the characteristics a strong court administrator should possess, whether such a person is called a "leader" or a "manager." "Vision and purpose" are the only items on this list not normally stipulated during the hiring process for a court administrator. Even so, a court seeking a strong manager might desire one who has a vision of what courts should be and who would be purposeful in achieving it, if the judges were comfortable with the administrator's vision. Few courts give any indication that a new vision of courts is one of the things desired in an administrator, however.

Ronald Stupak has offered a list indicating how a leader approaches his or her job. "A leader," he says:

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| Creates futures | Is opportunity driven |
| Sets directions | Uses positive power |
| Does the right thing | Communicates meaning |
| Is strategically driven | Is performance anchored |
| Motivates people | Is a change-maker |
| Is value anchored | Is an option generator |
| Is a boundary crosser | Cultivates networks |
| Positions from imagination | |

Another list suggests "the best managerial tools" are "judgment, warmth, communication skills, and intuition." Regarding the need for warmth, Manfred Kits de Vries, an international expert on leadership, refers to the "teddy bear factor: Do people feel comfortable with you? Do they want to be close to you?" A corporate board sought a new leader who would demonstrate "technical competence, . . . people skills, conceptual skills (meaning imagination and creativity), judgment and taste, and character."

Before proceeding, I should be clear about the difference between "leaders" and those who lead organizations. Many people lead organizations. They may from time to time be referred to as leaders, but not in the sense used here. Leaders may head organizations, but leaders need not have the highest title. Particularly in courts, a judge may have the title of "chief judge"¹ but not be the judges' leader. A court may have a court administrator, but that person may or may not possess leadership qualities. In short, one's title does not define leaders or leadership. A person's qualities and vision do.

There are a lot of lists about what leaders do and the results they produce. Some merely refer to the same things as Stupak with a different label. Some lists contain a new thought or two. Rather than provide more lists, I would like to focus on two concepts that seem to be seminal for leaders: emotional intelligence and the ability to match leaders' and followers' values and needs in such a way that followers see the leader's values as congruent with their own and thus work with the leader for change. Empathy overlaps a leader's ability to identify and then reinforce another's values and needs so the other becomes a follower, but it is different.

Daniel Goleman, co-chair of the Consortium for Research in Emotional Intelligence in Organizations, Rutgers University Graduate School of Applied and Professional Psychology, was one of the first two to identify and explain emotional intelligence and why it is important. The concept is known in court administration, but it is not well known.² There are five components of emotional intelligence: self-awareness, self-regulation, motivation, empathy, and social skill. A self-aware person displays candor with others and an ability to assess oneself realistically. “[H]ealthy leaders are very talented in self-observation and self-analysis” Self-regulation is an internal ability to reject or hold in check an impulsive urge to act, but it is more. It also is a propensity for reflection, thoughtfulness, a comfort with ambiguity and change, and integrity. Motivation is the drive within a leader to achieve beyond expectations, including his or her own, and a desire to achieve for achievement’s sake. According to Goleman, “Socially skilled people tend to have a wide circle of acquaintances, and they have a knack for finding common ground with people of all kinds — a knack for building rapport.” John D. Mayer, a professor of psychology at the University of New Hampshire who is credited along with Goleman with defining emotional intelligence in the early 1990s, talks of emotional intelligence in the following terms:

. . . emotional intelligence is the ability to accurately perceive your own and others’ emotions; to understand the signals that emotions send about relationships; and to manage your own and others’ emotions. It doesn’t necessarily include the qualities (like optimism, initiative, and self-confidence) that some popular definitions ascribe to it.

Why is it important to understand emotional intelligence? Goleman explains:

When I analyzed all this data [from the efforts of 188 companies to identify leaders and ingredients that make good leaders,] I found dramatic results. To be sure, intellect was a driver of outstanding performance. Cognitive skills such as big-picture thinking and long-term vision were particularly important. But when I calculated the ratio of technical skills, IQ, and emotional intelligence as ingredients of excellent performance, emotional intelligence proved to be twice as important as the others for jobs at all levels.

Emotional intelligence is highly personal and highly internal. Most lists describe the results of being a leader, not the traits that enable one to achieve those results. Emotional intelligence provides those insights. The traits are largely overlooked when courts talk about desiring leaders. Typical job interviews for court administrator positions involve asking about accomplishments in one’s current position. They ask about how an applicant overcame a difficult situation or dealt with a difficult employee. They focus on “technical competence,” but seldom, if ever, go into the other qualities that more fully define a

leader. They almost never seek to learn about an applicant’s emotional intelligence.

James MacGregor Burns authored a seminal book on leadership in 1978. The book contains many insights, but one of the most important is the relationship between leaders and followers. Many people, even today, think of leaders as people who can make others do what the leader wants them to do. Burns defines leadership “as leaders inducing followers to act for certain goals that represent the values and the motivation . . . of both leaders and followers. And the genius of leadership lies in the manner in which leaders see and act in their own and their followers’ values and motivations.” (Emphasis is in original.) Burns identifies three types of leadership.

- *Transactional.* Leaders approach followers with an eye to exchanging one thing for another: jobs for votes or subsidies for campaign contributions. [Note that this balancing and compromising is a feature attributed by some to managers.]
- *Transforming.* Recognizes and exploits an existing need or demand of a potential follower, but also looks for potential motives in followers, seeks to satisfy higher needs, and engages the full person of the follower.
- *Moral.* First, leaders and those they lead have a relationship not only of power but of mutual needs, aspirations, and values; second, . . . followers have adequate knowledge of alternative leaders and programs and the capacity to choose among those alternatives, and, third, leaders take responsibility for their commitments. Moral leadership emerges from, and always returns to, the fundamental wants and needs, aspirations, and values of the followers.

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To effect change in courts, leadership must be at least transforming. To effect lasting and transformational changes, leadership must be moral. There is little or no power, per se, one can exercise in courts because all judges are politically equal and no judge can be fired by another judge. Only persuasion is effective to get a critical mass of judges on board with a

major change. Once judges are on board, only persuasion — backed occasionally by the power judges could wield in the courtroom — will bring along all the stakeholders who are in courts but not of them.

Courts are ready-made for the exercise of both transformational leadership and moral leadership. The values of law and of courts — due process, fairness, the appearance of doing justice, access, even-handedness, preserving societal order while protecting individuals from arbitrary government power — already are known to and accepted by judges and virtually all the key stakeholders and the general citizenry. Courts do not have to seek or create shared values to which both leaders and followers can ascribe, they already exist and are accepted. Leaders listen — another skill ascribed to leaders and to good managers — and help others to see the congruence between what they want and what the leader wants. When that congruence

occurs, as in efforts to reduce delay or enhance access, change is possible and often is transforming.

What difference do leaders make?

Leaders are change agents; they change an institution's direction. They see the present context for an organization, reject it, and create a new context. Then they persuade others to adopt their new context and seek to make it happen. They often reinvent organizations, just as IBM left the mainframe computer business and today is largely a consulting and information integration company and just as Western Union used to deliver telegrams and now is a retail personal finance company.

The judicial branch needs effective organizations. Courts need integrity. Courts need to improve the service they now provide. Courts also need new ways to think about the value they provide. On the other hand, courts do not need to create new businesses because, in important ways, they cannot. They do not need to slough off the old or cease to defend the old.

As just one example of this duality, but one that may prove to be very important, consider problem-solving courts. Problem-solving courts are a new way of doing business for some types of cases, but they are not a new business. They have broken the context of courts and created a new context for thinking about what courts do and how they do it. Even if, as I believe will happen, the problem-solving approach continues to expand in its application, courts cannot slough off the adversarial process, however. Some cases still require that safety valve. Centuries of practice, procedures, and provisions of constitutional law compel courts — for decades if not centuries to come — to retain the capacity to resolve disputes using traditional rules of evidence and the adversarial process. Courts cannot get out of the dispute resolution, honest government, lawful government, and security-providing business. Courts can use different techniques as they fill these roles, however, which means courts must continue to invent and change while they continue to preserve their function and roles. Good managers can fill these needs. In the context of this discussion, courts need excellent managers more than leaders.

It is very hard for administrators to be leaders in courts. Or, perhaps more accurately, it is very hard for administrators to be the visible leaders of significant change. Judges need to be seen by most important stakeholders as involved and committed before stakeholders will believe that a court is committed to a significant change. Judges need to see that judicial leaders in their court are committed and involved before the others will come on board. Normally, it is judges who must articulate the values and the moral positions that will make fellow judges willing followers. Administrators can be leaders in the sense of having vision, of understanding and articulating effectively the values that will move early adopting judges to sign on,

and having the character and integrity needed to bring staff along to a shared vision. These are important qualities; when a court has them in an administrator, it is blessed. But a court whose only leader is the administrator will not achieve whatever vision the administrator may have. And the administrator will feel discouraged and may become isolated, as he or she will be too far out in front of the judiciary to be effective at the day-to-day management level as well as at the long-range change level.

NACM is correct that courts need both leaders and managers, but they need good managers more than leaders. NACM's Core Competencies embrace both judicial and staff leaders, so NACM's call

for leadership is not misplaced. To the extent that it suggests that courts need administrators who can and will fill the leadership role, it probably suggests too much.

Teaching leadership

The difference between leaders and managers is hidden within NACM's and Stupak's lists. It lies in how they view the world, including their work world, in how they interact with ideas and people, and in who they are. NACM and a number of others say that leadership is, "to

a significant extent, learnable." It is learnable only to the extent that one learns from living; the lessons gained from life are not learnable from a book nor by following a prescribed curriculum in a classroom or through distance learning. Leaders do not emerge from training, they have innate qualities that grow and strengthen over time as they have a variety of experiences in and out of their work environments, as they take risks, make mistakes, and maybe even fail,³ and as they listen to and learn from others. Gloria Anderson, a newspaper executive and editor, says, "You can't make being a leader your principle goal, any more than you can make being happy your goal. In both cases, it has to be the result, not the cause."

Warren Bennis, a recognized authority on leadership, makes the point repeatedly:

[The leaders interviewed by Bennis about leadership agree on two basic points:] First, they all agree that leaders are made, not born, and made more by themselves than by any external means. Second, they agree that no leader sets out to be a leader per se, but rather to express him- or herself freely and fully. That is, leaders have no interest in proving themselves, but an abiding interest in expressing themselves.

No leader sets out to be a leader. People set out to live their lives, expressing themselves fully. When that expression is of value, they become leaders. So the point is not to become a leader. The point is to become yourself completely — all



your skills, gifts, and energies — in order to make your vision manifest.

As Bennis further notes specifically about training people to be leaders, “I would argue that more leaders have been made by accident, circumstance, sheer grit, or will than have been made by all the leadership courses put together ... Leadership courses can only teach skills. They can’t teach character or vision — and indeed they don’t even try. Developing character and vision is the way leaders invent themselves.” Richard Ferry, co-founder of Korn/Ferry International, an executive search firm, has observed: “You can’t really create leaders. How do you teach people to make decisions, for example? All you can do is develop the talents people have.”

Leaders are discovered, not trained. Managers are fashioned by socialization efforts during a lifetime. Many of these socialization skills can be taught. But leaders “emerge” from the process of “personal mastery, which impels an individual to struggle for psychological and social change.”

One cannot teach intellect, although one certainly can improve knowledge. One cannot teach how to fashion a long-term vision, although techniques may help big-picture thinking. Most of all, one cannot teach emotional intelligence. Without a doubt, technical skills and knowledge can be imparted through training. That is the guiding vision of NACM’s Core Competencies. The qualities and experiences that result in the emergence of leaders, however, cannot be captured and presented in workshops to teach people how to be leaders. Leadership is a personal quality gained over time by people who possess qualities that make them open to life’s lessons and who relate in a particular way to others, neither of which can be captured in a lesson plan.

NACM is right in the discussion of the leadership competency that courts need leaders. It is not right, however, when it says leadership can be learned, implying classroom or on-the-job training. We need to know how and why leaders are different in order to understand

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how to recognize leadership qualities. We need to nurture and train those with leadership capacity in technical skills and in a broad range of work and life experiences so their leadership qualities can grow and meld with technical skills. We cannot take someone without leadership qualities and train them to be leaders. Nor should we take good, even outstanding managers and expect them to be leaders.

What courts need

If creating and having administrators who are leaders is not an appropriate developmental goal, what would be more appropriate? As noted in NACM’s Core Competency on Leadership, courts need leaders. There is a greater need at this point, however: appropriate

training for both administrators and judges focused on management skills. Administrators need to know what management is, how to be a good manager, the skill and knowledge needed to manage, how to foster and support new ideas, and how to recognize and grow those with leadership potential. They need to appreciate that if a leader emerges from their staff, they need not feel threatened, but should encourage and mentor that person as an ally and possible successor. Judges need to know what management is, how to be an employee without jeopardizing one’s electability or adjudicatory independence, and how to oversee the work of their administrator without imposing their individual judgment about how things should be done or specific outcomes that must be achieved.

Abraham Zeleznik, then of the Harvard Business School, most succinctly defined “managers” in a way that resonates for courts.

. . . a manager is a problem solver. The manager asks: “What problems have to be solved and what are the best ways to achieve results so that people can contribute to this organization?” . . . to be a manager, [requires] persistence, tough-mindedness, hard work, intelligence, analytical ability, and perhaps most important, tolerance and good will. . . . Managers tend to view work as an enabling process involving some combination of people and ideas interacting to establish strategies and make decisions. They help the process along by calculating the interests in opposition, planning when controversial issues should surface, and reducing tensions. In this enabling process, managers’ tactics appear flexible . . .

[What a manager does includes] reconciling differences, seeking compromises, and establishing a balance of power . . .

Managers see themselves as conservators and regulators of an existing order of affairs with which they personally identify and from which they gain rewards. A manager’s sense of self-worth is enhanced by perpetuating and strengthening existing institutions. He or she is performing a role that is in harmony with the ideals of duty and responsibility.

Many court administrators can relate immediately to this description of a manager as being close to what they do (or understand they should be doing). Regrettably, some judges do not accord administrators even the scope of authority suggested by Zeleznik, far less the freedom to operate in a leadership role. Regrettably, their judge-employers view too many administrators more as administrative assistants than as strong managers.

I submit that courts need strong managers who are allowed to function as executives. Courts need strong managers for two reasons. Unless a court administrator is a strong manager, he or she cannot contribute effectively to a court’s independence, both as an administrative unit and as a branch of government. Many judges appear to believe that the attainment of an independent branch depends on their management and political skills and strength to the exclusion of an independently empowered administrator. Judges who hold this view are not in touch with the complexity of court administration, the

reality that administration is beyond the capacity of part-time manager-judges, and that court management should be a team undertaking. They do not see the weaknesses of a model that has judges as the primary (or final) instrument in managing daily operations.⁴ Changing the minds of these judges remains one of the challenges of court administration in the twenty-first century.

The second reason for having strong managers has just been suggested. Court administration that is effective requires a strong chief judge-administrator team that has two equals who recognize and respect each other's strengths and undertake to cover for each other's weaknesses. If the court administrator is not strong, the team will not be strong. If the team is not strong, the court will not gain the full benefits that professional management can bring.⁵ With the growing demands on courts as public institutions, courts need strong and effective professional management. This is as true for a court of three or four judges as for a court with one hundred judges. The public does not distinguish by size. The court with three or four judges is as much a major and critical institution in its community as the court with 100 judges is in a major city, perhaps even more so. In an increasingly complex judicial environment, full-time judges who are part-time managers will not be able to respond sufficiently to daily demands. The field of court administration is not advanced by a discussion of how to use an administrative assistant effectively.

As great as the need is for strong managers and a strong management team, the more difficult and long-standing issue for court administrators is to convince judges to let their administrators exercise their assigned responsibility without being second-guessed or overridden. To exercise their freedom effectively, court administrators must be strong managers who are recognized by judges as having skills and qualities judges do not necessarily possess. The judges who feel they do possess those qualities and skills have to be convinced that both they and the institution are better served by letting someone be an administrator who can devote full and daily attention to administration and has the needed qualities and skills. Judges should set the parameters of the position and get out of the way. If the administrator cannot perform, he or she should be fired, but not vetoed or undermined on individual decisions, either within the court or with outside stakeholders. Judges who believe they can and should serve as the *de facto* or *ad hoc* administrator, either in their "free" time, i.e., when they are not in court and working on cases, or when they choose to, undermine both their administrator and the effectiveness of the organization. Having a court administrator who is a strong manager does not assure a court that it can be effective administratively, but such an administrator at least gives a court a better chance.

The judicial branch benefits when there are administrators at either the state or local level — and hopefully both levels — who are leaders in the sense discussed here. It also benefits when there are judges who are leaders. On balance, it is more critical for judges to be leaders than administrators, because of the nature of government, how stakeholders view courts, and the need for judicial support of a new idea. We cannot create our leaders, either judicial or administrative. They must emerge. For the branch to move forward in the twenty-first century, it would be better served to identify and then develop candidates for administrator positions who can be and will be strong managers and, in larger courts, executives. From this pool of skilled people, leaders will emerge.

These are not new ideas. They have been discussed by administrators and written about by administrators and authors such as Friesen, Gallas, and Gallas for decades. Robert Tobin in *Creating the Judicial Branch* astutely points out, however, that judges do not write about court administration and how to improve it.⁶ Judges are not writing about how to build strong chief judge-administrator teams. Judges are not writing about why their administrators should be regarded as peers with different skill sets rather than assistants who deal with organizational details with which they do not want to deal. Judges are not writing about the need for effective administrators. Therefore, the second part of the need is *judicial* education.

Judges' training, that is training for all judges, has to address the false perception among many judges that the institution's (and their reelection) needs are best served when they reserve a veto over or the right to contravene their administrators when adjudicatory independence is not involved. I have never heard of a judge's retention or reelection being derailed by an administrator reassigning a courtroom clerk over a judge's objection. Or by an administrator's decision to hire two file clerks rather than give a raise to judicial assistants that is not equally available to other staff. Judges can and should offer advice, alternative perspectives, and counsel, just as staff managers and supervisors do prior to a decision being made. If they have no prior input and disagree with a decision, they can and should express concern about being left out and talk to the administrator to explain why they disagree. They should not default to threatening firing or contempt of court, or to vetoing the administrator's decision. Too many judges seem to believe that their view of what is right and wrong is controlling without regard for their colleagues' views or countervailing management-based justifications. Too often, a judge who wants something, be it a new chair or paint, an extra staff position, or a raise for courtroom clerks, acts as if his or her individual desires trump any further considerations. Judicial training has to address why this is not good for them or for the institution of which they ostensibly are a part. Since every trial judge is constitutionally equal to every other judge, some judges confuse this status as granting them independence and equality in all administrative matters, as well. The administrative decisions that do not adversely affect a judge's adjudicatory independence — which must be sacrosanct — should be the administrator's, in consultation and coordination with the chief judge, as appropriate. If and when too many decisions are made by the administrator that hurt the institution, particularly if the judges on several occasions have provided counsel that would have produced a better institutional result and provided an opportunity for the administrator to learn from a mistake, the administrator can be fired. Otherwise, they should adjudicate and leave management to their managers.

Again, this is not a new idea for administrators, but it seems to be foreign to many judges. Dealing with this issue requires training, preferably during initial orientation to the bench (when a state provides such training). Judges need to be trained how to handle a potential contempt of court issue or how to respond to new legislative requirements in their assigned case type. Just as important, they need to consider and understand their unique status as both bosses and employees, a dual status that is unique to courts.⁷ They need to discuss and consider their personal responsibility to the court as an institution rather than to equate their personal desires with an institutional imperative. The training should embrace what administrators do, why,

and why it is different from what judges do and should do. It should give judges techniques for guiding and improving their administrators' performance without controlling it. If judges will allow administrators to do the management job they were hired to do, and if judges can learn to be comfortable having a strong manager make decisions without their input or control (unless they are part of the court's management team or personally impacted), the judicial branch will continue to grow and prosper.⁸ If not, it does not matter how many administrator-leaders are identified and trained. The administrator-leaders will become frustrated and leave, and the branch will stagnate.

** This article is derived from a chapter on being a court administrator in the author's recently-published book, The Art and Practice of Court Administration. This article is published with permission of the book's publisher, Auerbach Publications, Inc., which retains copyright rights. This article omits most footnotes. Readers interested in footnote references should consult chapter 7 of the book.*

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NOTES

1. The judge who is the administrative leader of a court, be it for one year, two years, or longer, is assigned various titles around the country,

including presiding judge, chief judge, and chief administrative judge. For simplicity, this article will use the term "chief judge."

2. NACM's Leadership discussion does not use the term, for example, but does discuss some of its elements. National Association for Court Management, *Core Competency Guidelines*, pp. 17-21.

3. John Wooden, the legendary basketball coach, is reported to have said, "Failure is not the crime. Low aim is."

4. A clear and important role in setting policy remains a critical function for judges.

5. To advance the prospect of effective teams, some states provide training for chief judge-administrator teams. This is highly desirable but not implemented broadly enough. The training should expand to adopt techniques used in the private sector to build teams and show the importance of teams and should embrace more than just the chief judge and court administrator.

6. There are a few limited exceptions, but so few that they serve only to emphasize the dearth of judges who see administration as central enough to what courts do to warrant thinking and writing about it.

7. Courts are not like hospitals because doctors are not independently elected (or appointed) to be affiliated with a hospital and not like a local governing board because elected members of a local legislative body are not employees the way judges should be.

8. The National Judicial College offered for several years a course on court administration jointly taught by judges and administrators. I have not seen the syllabus for that course, but suspect that this topic was at least part of what was discussed. There is no evidence of which I am aware, however, that suggests the course made much difference overall in how judges view administrators and their role. Even if the college followed up and there is evidence that the judges who participated in that course acted differently than judges who did not, the understanding conveyed in this course does not seem to have extended beyond the workshop participants.