

**REMARKS OF  
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## **HOW WE LEAD**

When we hear mention of leadership the context in which the leader operates dictates our perception of the qualities of leadership called for in that setting. We admire, or reject, the leader for what they do.

Reflecting on social leaders, the common paradigms are drawn from political government, the business world, institutions and sport. To give examples, former Prime Ministers Sir Robert Menzies and John Curtin are held up as leaders of political government. Successful Chairs or CEO's of major national corporations such as the mining, retail and banking corporations are prominent. Vice-chancellors are recognised and asked to present important addresses, such as the Boyer lectures, and

reflect on the role of educational institutions in society. An athlete who rises above drug cheats, faces super-human physical and mental tests, maintains extraordinary self-belief, determination and resilience to win a world renowned race is admired.

These types of individuals inspire our society. How do they do this?

The revered political leader will be acknowledged for honesty and integrity. Perhaps for vision in shaping the way our society functions – the establishment of government university scholarships schemes to ensure equality of educational opportunity and investment in the social future; or the creation of employment plans. Sometimes political leadership arises in times of national threat: a world war or an international peace crisis. Other times political leadership encourages aspirational goals by reminding society of its historic traditions and culture.

The admired business leader will achieve profit margins through innovation, rigour and confidence. Importantly, the profit will be achieved through ethical conduct, not profit at any cost. This leader will be committed to corporate social responsibility and apprehend that the corporation is beholden to society not just shareholders.

The respected institutional leader, let me take a university or research institute as an example, will cultivate, promote and inspire a yearning for knowledge, excellence and research. They will facilitate the pursuit of the solutions to the problems of the greater world – who we have been, who we are and where we might go as a society.

The lauded athlete will inspire a society to overcome mental and physical adversity by overcoming physical and mechanical breakdowns, by their level of preparation and sheer determination in racing first to the top of the mountain, the end of the swimming

pool or the umpire's words 'game, set and match'. Thus, we ride, swim or sprint a little faster when next on the road, in the pool or on the tennis court. We strive to perform better in our activity with a picture in our mind's eye of the champion athlete we try for a moment to copy.

These leadership paradigms help us as a society to be a good and honest person, to think about how to do things differently, to be strong in hard times, to strive for strong performance in our work, to be a problem solver and to try to give the best performance of which we are capable.

Past Prime Ministers, mega CEO's, vice-chancellors and champion athletes resonate with most of us in what they say and do. To what extent do they truly impact on the daily lives of a parent raising a family, a secondary student going to school, a young person going out on the weekend to socialise, the people catching trains and trams travelling to work, indeed, everyone engaging in

ordinary life? Social leaders ultimately inspire the pursuit of goodness, our fundamental social value. From goodness will stem love, kindness, humanity, courtesy, courage and compassion.

As a judge I see the consequences of failed, or lack of, or even evil leadership.

Week in week out in the courts the worst and best of humanity are seen and, sometimes, people who have just made mistakes. A range of leadership profiles are on display. The brave, grieving parent seeking justice who watches the murder trial about their lost, oftentimes brutalised family member. The courageous, determined asbestos victim who faces death but wills himself to stay alive long enough to win compensation for himself and for his family's benefit after his imminent death. The aggrieved disinherited adult child who looked after and supported an aging and difficult parent only to learn that parent, once dead, is cruel to the child by favouring others in their will. The angry employee

who seeks compensation for bullying, victimisation, discrimination or unfair dismissal in the workplace. The young person who, in an alcohol fuelled moment, throws a punch that kills another young person. The business person who claims to have been misled into unwisely buying a business, shares or property from a dishonest trader. The evil drug baron who faces life imprisonment for manufacturing and trafficking drugs surrounded in his criminal activities by people who helped him for significant personal financial gain.

Observing the parade of humankind in the courts and determining the outcome on behalf of society, how do judges fit into the common paradigms of leadership? I do not expect judges would see themselves as leaders in that sense. Rather, they would see themselves as leading the administration of justice but would not hold themselves out as public figures to be admired and emulated. For the most part judges seek no public notoriety. They hear and decide the cases. It is for others to critique the result and the

judicial performance. Even then, judges will not speak out to defend themselves, preferring to rely on the things they say and write in court to stand as their only words. This might seem acquiescent and supine, even the abrogation of social responsibility. Yet there is a fundamental reason why it happens that way. A judge must be independent and not have expressed opinions, otherwise that judge will not be impartial. They will be vulnerable to corruption or doing the political will of a corrupt government. We need only think of past events in Pakistan, Fiji and Zimbabwe where judges were imprisoned or sacked or compelled by the government of the day to decide cases how the government directed.

Thus, I find great awkwardness in being asked to speak on leadership. Whilst I am the most senior judge of the State I truly hesitate to speak on the topic beyond my home institution.

Yet, having taken the task on I thought I had better say something on the topic that might be relevant to the judiciary.

My first step was to write down the names of people who I regard as leaders and who have influenced my life at some time. I broke the list into two groups, men and women, in case there was a gender difference. Next, I wrote beside each name the qualities displayed by those individuals that impressed me. Top of the female list was my mother. Top of the male list was my father. There followed a mix of personal, historical, national and international figures and, as you might expect, a strong presence of judicial names. There were 12 qualities. Before explaining them I have to admit they are possibly judge-centric but I will apply and explain them as they relate to judges.

First, *humanity*. It arises in the panorama of life viewed by judges through the eyes of victims of harm and suffering rendered by one human being towards another. It necessarily involves



understanding pain and suffering but with the capacity to be objective and unemotional. It means a judge recognises difference in people and cares for them as individuals.

Secondly, *loyalty*. Judges are vigilant in protecting the independence of the court. They will not be swayed or influenced by pressure from politicians, public servants, the media or disappointed litigants. Judges decide cases in accordance with the law not how some people would like them to be decided. Judges do not decide cases to be popular. To use the vernacular a judge is prepared to 'lie down in front of a Bourke Street tram' to protect the institution of the court and its independence.

Thirdly, *resilience*. Judges have to cope with criticism from politicians. We need only think of the attack on the High Court of Australia after the *Mabo* decision. Judges also cope with criticism from the public. This week a survey has been released suggesting community confidence in the judiciary is not high. As judges we

carefully scrutinise the survey, identify its flaws, note its findings but do not change the way we hear and decide our cases. Yet resilience is much more than toughing it out. Judges must hear the worst of cases: the Bega schoolgirl killings, cases of mothers or fathers killing small children, long terrorist cases with months of surveillance tapes in a foreign language subjected to tedious translation, the killing of police in the line of their duty protecting society such as the *Silk and Miller* deaths, dramatic bushfire cases and complex commercial cases about shareholding, contracts and general business activities. In the face of these cases the judge must be resilient. From that flows poise, dignity and objectivity when confronted by the harrowing, the confronting and the mundane.

The average Supreme Court judge works on the bench for about 15 years. Many stay for over 20 years. Their resilience is powerful. It means judges focus on the objective of justice and are not deterred, distracted or disheartened about achieving it.

Fourthly, *determination*. A judge must have a deep commitment to their goal – the pursuit of justice.

Fifthly, *a high personal ethic both in work and privately*. Judicial work is constant. Court cases are like waves on the shore – they keep coming. An occupational health and safety survey of Supreme Court judges found we work much too long hours and at an unsustainable level. We do not complain. We see it as our duty to do the ever-pending court work. We also regard being a judge as an honour and a privilege. Hence, in our personal lives we are acutely conscious of our public behaviour. We must be law-abiding citizens too. For most judges this means becoming quietly removed from public notoriety and not developing a public profile as a 'personality' judge. A judge works hard to achieve a vision of justice, sets an example to others in the workplace and shares the work burden.

Sixthly, *being just*. Judges deliver and administer justice. We aspire to be a just judge. Sometimes that will involve choosing who is telling the truth, with harsh consequences. A judge ensures the people in the court feel they are treated justly.

To pause for a moment, I have identified six qualities I suggest judges demonstrate in their work. To recapitulate, they are humanity, loyalty, resilience, determination, a high personal ethic and being just.

Now to continue with the list of the twelve qualities.

Seventh, *courage*. Judges must apply the law impartially. This combines with their necessary resilience. It also means a judge speaks up, when and where appropriate, or remains silent in the face of negative commentary so as to protect the institution of the court and the people served by it.

Eighth, *fervour*. Judges work for a very long time on the same job. Yet even when they retire they have a strong sense of duty towards and commitment for the greater good of society. So we see inquiries and investigations requested by government of retired judges on areas from bushfires to child protection, from forensic science error to public sector impropriety, from corruption to law reform. Ultimately, the judge conveys commitment, interest and enthusiasm for people's work and ideas. In other words passion for the delivery of justice.

Ninth, *creativity*. Whilst it varies from court to court, generally all members of the judiciary aim to do things as well and efficiently as they might. Thus they necessarily create new ways to do things. I give the specialist Commercial Court within the Supreme Court as an example. It offers the Victorian business community a fast, flexible and expert way to determine commercial disputes. Despite the old fashioned images some might visualise, judges are flexible and modern in their outlook. Hence, judges undergo 360

degree peer reviews and court craft coaching. Overall, to decide a case, a judge thinks laterally to solve the problems before them.

Tenth, *dignity*. There is much pomp and circumstance with courts. Our practices are very ritualistic. Generally this contributes to the gravity of the circumstance before the court and, importantly, the majesty of the law. The key is the dignity of the central judicial figure. Contrary to what some may believe, we do not and cannot conduct ourselves as sometimes portrayed on television. A judge exudes poise and presence and reflects the culture of the institution. The judge behaves appropriately for the occasion.

Eleventh, *intellectual confidence*. A judge needs self confidence in their own individual intellectual capacity to embrace the work and the demands of the role. They assume a heavy, high-pressured and constant workload. It usually demands not just the hard grind but the application of intellectual rigour.

Lastly, *toughness*. A judge needs to have a strong edge. If an individual needs to or tries to challenge a judge, they should perceive quickly that a judge will test them, not tolerate time-wasting and require directness. A judge represents the gravitas of the judicial office. They have the power to sentence a person to prison for life and to injunct a government or the largest corporations in the land. In applying the law, judges exercise the last application of the power of the State. No individual, government, corporation or group is exempt from the finality of that application of power. It is the key to our democracy – the application of the rule of law.

That is the list. It is by no means exclusive. They are the qualities that struck me.

In modern writing on leadership there is emphasis on leadership and organisational culture. I have read about awareness of 'perceived situation', 'vision and mission', 'follower attribution',

'charisma', 'leader-follower relationship' and other business and analytical concepts.

I do not approach my role that way. I do not expect my colleagues would either. The normal human value of goodness and the qualities flowing from that fundamental value inform what we do as judges. The twelve qualities I listed are demonstrative of the pursuit of the fundamental value of goodness. Whilst judge-centric I suspect those twelve characteristics - humanity, loyalty, resilience, determination, ethical pursuit, justice, courage, fervour, creativeness, dignity, intellectual confidence and toughness - are universal qualities that resonate in professional life.

But I also suspect that these qualities are fundamental to the exercise of leadership in all aspects of life.

Leadership is not just a human behaviour that occurs in government, business, academia or the sporting arena. It is called



for in almost every human situation and aspiration. We are all, alternatively looking for or providing leadership in the myriad of human interactions that make up the totality of our lives.

As a judge, I have attempted to identify leadership qualities that seem critical to the work of the judge. Yet, I expect they are defining qualities across our social spectrum.