1996

Leadership from the bench: are morals irrelevant?

John Unice

Follow this and additional works at: https://scholarship.richmond.edu/honors-theses

Part of the Leadership Studies Commons

Recommended Citation

Unice, John, "Leadership from the bench: are morals irrelevant?" (1996). Honors Theses. 1167.
https://scholarship.richmond.edu/honors-theses/1167

This Thesis is brought to you for free and open access by the Student Research at UR Scholarship Repository. It has been accepted for inclusion in Honors Theses by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.
Leadership From the Bench:

Are Morals Irrelevant?

By

John Unice

Senior Project

Jepson School of Leadership Studies

University of Richmond

April, 1996
LEADERSHIP FROM THE BENCH:
ARE MORALS IRRELEVANT?

LEADERSHIP STUDIES SENIOR PROJECT
DR. HICKMAN

APRIL 15, 1996
INTRODUCTION

Morality, understood as the underlying beliefs and values that guide our choices, permeates our personal and professional lives. The Jepson School places a great deal of emphasis on moral leadership, for the importance of leading with a core set of values is discussed in nearly every class. Via my Jepson School experience, I have become sensitive to the issues surrounding the ethical decision-making process, and believe that this area is worthy of study. As a student leader, I have been faced with many situations that required moral or ethical decisions. As I hopefully join the legal profession, the need for moral decisions will most likely become even greater.

An interesting aspect of the legal profession is the judiciary, which often relies on a multitude of rules and precedents. Many believe that judges cannot always separate themselves from their moral values, while others feel that this is necessary for the proper administration of justice. In many situations, having the legal right to do or decide something can be quite different from the morally or ethically "right" act. Therefore, the major issue to be addressed in this project is that of morality and its role in the judicial decision-making process. I will examine what experts believe is the proper role for morality in the courtroom, as well as whether or not judges are moral leaders.

American society has become increasingly entrenched in litigation. Subsequently, the perception of increased litigation has placed the legal profession under an immense amount of scrutiny. The ongoing debate about the role of morals in the courtroom, which this project will address, is particularly relevant because so many court decisions affect our daily
lives. A detailed examination of the issues of morality and the role of morals in the courtroom is important, for it will enable us to better comprehend the dilemmas that many judges face as well as clarify what many believe is the proper place for morals. As leaders, judges make decisions that we are required to follow, so examining the impact of moral values on this form of leadership will provide insight into why and how judges act in many situations. Hopefully, this project will uncover many of the complexities that judges face in terms of morality and moral decision-making.

LITERATURE REVIEW

IS MORALITY RELEVANT IN THE JUDICIARY?

Judges have played an increasingly vital role in American society. With the proliferation of litigation, judges on all levels are beginning to affect thousands of Americans' personal lives each day. Events such as the Senate confirmation hearings that focused on abortion during the nominations of Judges Haynsworth, Jr., Carswell, and Bork as well as impeachment proceedings to remove federal judges have piqued interest in judicial conduct. Some experts argue that the Senate inquiries about the intellectual qualifications of Supreme Court nominees David Souter and Clarence Thomas were about little else than abortion. This increased focus on moral issues has raised several challenging questions about the type of role that judges should fulfill.

Perhaps one of the most intriguing, albeit controversial, issues
concerns judges and their role as moral leaders. Many would dispute the notion that judges are, in fact, leaders, and would say that morality has little or nothing to do with a judge's role as arbitrator. To some, the judiciary lacks the moral competence to promote a vision of American moral aspirations. Still, others would contend that morals should and must be incorporated into judicial deliberations, and that judges have, in fact, become moral leaders of our nation. The courtroom, according to some, is the only place in the community where moral law is laid down, for entities such as churches, clubs, and families have failed to instill a strong moral code into the citizenry. Regardless of the view that one supports, it is difficult to dispute that judges must balance the detachment inherent in their offices with the values that permeate their personal lives.

One view of this topic is that judges are not and cannot be moral leaders. Morality, then, under this view, should have very little to do with judicial decision-making. When deliberating a case, some scholars believe that judges should mainly consider facts, laws, and precedents, as well as the influence of the judge's individual character. From this perspective, a judge, unlike a leader, should not be expected to lead by "the pull of inspiring values". Judges are seen as an exception, for the relevant aspects of a judge's character does not include morality. An intuitive sense of fairness, an understanding of the real world, and the capacity to continue learning are seen as the important aspects of a judge's character. The courtroom and judges' chambers are viewed as forums in which neutrality and fairness are superior to values and morals.

According to some legal scholars, law and morality, as separate
entities, must be considered in exclusion to one another, for laws are not always or necessarily moral.9 Since laws do not, by definition or fact, conform to the existing community morality, judges should refrain from imposing their values on the decision-making process. Therefore, judicial interpretation of laws cannot be a moral exercise.

The perspective that the Constitution is the major guiding force of values to our nation would perhaps lead one to believe that judges, as interpreters of this document, are moral leaders. This view, some argue, is a skewed misrepresentation of reality.10 Although the Constitution is the framework of our national government and guarantor of fundamental liberties, it has little to say about the values that should be most important to us as individuals and as a community. Debate about this issue, according to this viewpoint, must be grounded in legal sources and legal analysis. The Constitution was not intended to become a moral guide, so those responsible for interpreting and applying it should not serve as national "guidance counselors".11

Proponents of the view that judges are not moral leaders would argue that judges are not selected or appointed because of their eminence as philosophers or their insights as moralists. On the contrary, they are selected by their potential ability to render decisions that society can recognize as straightforward interpretations of a constitutional or statutory text.12 The role of judges, then, is to determine the principles incorporated into the Constitution and apply them to concrete individual cases, while avoiding an evaluation of the wisdom or value of the policies at issue.13

Who, if not the judiciary, is responsible for instilling a sense of values
in the citizenry? Some may argue that the legislature, elected to create laws to lead society, are the major players. Others contend that the "soul of American life" lies in the law-free spaces, where social life is left to the regulation of norms other than those of state-guaranteed law. Consequently, churches, families, and communities should function as our moral leaders. If the judiciary were responsible for defining social values, this role rightfully reserved for the intermediary institutions listed above would be undermined. In sum, many would contend that judges are not moral leaders because their decision-making process and the laws that they evaluate are not moral in nature, the Constitution which they interpret is not a moral document, judges were not selected to serve as moral leaders, and the role of moral leader should be fulfilled by other non governmental entities.

Although many believe that moral leadership has no place in the judiciary, there is an alternative perspective on this issue. Research based on the alternate perspective reveals several insights: morality and law are not always possible to separate; professional expectations of the judiciary can send mixed messages concerning the relationship between judges and their values; and there is a great deal of controversy among legal experts surrounding the topic. Despite the previously discussed views that morality has no place in the judiciary, I believe that the above reasons are sufficient grounds to construct an argument promoting the view that morality and morals do, indeed, play a significant role in the judiciary.

Morality and law, as some would argue, are not always distinct from one another, for there are myriad circumstances in which individuals may
choose to disobey the law on moral grounds. The law often demands socially-acceptable "moral" behavior, and disobeying such laws brings morality and law into direct contact. Problems arise with the subjectivity of morality, for different spiritual, ethnic, and racial groups could have widely divergent morals. In some cases, scholars argue that when a law violates a moral right, the citizen has a moral right to disobey the law as such. Such occurrences could lead to legal struggles, which could easily necessitate a judicial decision. In cases such as these, it would be nearly impossible to separate a judge's moral views from the decision-making process of the case.

Both the personal and professional expectations placed on judges constitute another dimension of this debate. In order to remain impartial and avoid the appearance of impropriety, judges are expected to maintain a certain distance between themselves and the practicing bar as well as personal contacts. There exists a great expectation for judges to be impartial, to not incorporate their personal values in decision-making, and to practice "blind" justice through merely evaluating the facts and precedents involved in each case. However, potential Supreme Court justices are sometimes asked about their position on the moral/religious/ethical issue of abortion. This type of questioning creates a paradox, for judges are expected to separate their morals from their decisions, yet are asked about their personal moral beliefs on volatile issues.

Some scholars have acknowledged this discrepancy, while others do not believe that such a discrepancy exists. This controversy serves as another issue worthy of analysis. Some experts believe that there appears
to be a widely-shared expectation that judges will sometimes rely on personal moral knowledge.\textsuperscript{20} In fact, some argue that morals, especially religious faith, cannot be "shrugged off like an unattractive article of clothing."\textsuperscript{21} Some would go further in suggesting that "occasional reliance by judges on religious convictions is not improper", and that reliance by judges on their personal religious convictions is as proper as reliance on their personal moral convictions of any other kind.\textsuperscript{22} According to some experts, whether or not we live in a nation in which judges are frequently expected to rely on moral knowledge in reaching their decisions is debatable\textsuperscript{23}. This is a fundamental reason why this topic should be addressed.

What is the role of morality in relationship to the bench? Morality, according to many, goes "hand-in-hand" with the judiciary. Historically, there has been a focus on holding judges accountable for moral behavior. In 1924, the American Bar Association created the original Canons of Judicial Ethics. The Canons were intended to be a guide of behavior rather than an enforceable set of rules, and were criticized for their emphasis on "moral posturing". Therefore, in 1972 the ABA created its Model Code of Judicial Conduct. This Code is designed to be enforceable, and has been adopted by nearly every state and the District of Columbia. Montana, Rhode Island, and Wisconsin remain as non-code states, and have adopted their own rules of conduct that are similar to the Code.\textsuperscript{24}

In general, the Code provides that judges should uphold the integrity and independence of the judiciary, should avoid impropriety and the appearance of impropriety in all of their activities, and should perform the
duties of their office impartially and diligently. However, there is not a single mention of the word "moral" in the Code, and there are not standards that punish judges for "immoral" acts. The Code focuses on concepts such as integrity, expediency, and impartiality. In terms of enforcement, permanent state agencies charged with investigating allegations of judicial misconduct hold hearings to make findings of fact and recommend or order sanctions when violations of the code are found.

For those who argue that morality should not and does not play a role in the judiciary, this system would seem to be an adequate mechanism through which to monitor illegal or improper actions. There is no mention of morality in the regulations, and there are no punishments per se for immoral acts. The Code and the system designed to enforce it, however, can be misleading. Indeed, there have been numerous instances when judges have been punished for conduct found not to be in violation of the Code. In essence, these judges were reprimanded for committing acts that their peers felt were "wrong" for a judge to engage in. Despite the facts that a written rule prohibiting their actions did not exist and that they would be found innocent if evaluated strictly in terms of the Code, these individuals were penalized for performing acts that a judge technically could, but should not, do. Many examples illustrating this type of situation can be found, but only a few are necessary to communicate the notion that judges actually are held accountable for acts that reflect their moral values.

In a California case, intemperate or offensive personal conduct that
did not violate the criminal law or Code nonetheless gave rise to judicial discipline. In *Geiler v. Commission on Judicial Qualifications*, the California Supreme Court removed a judge from office, citing his "crude and offensive conduct in public places". The judge in question repeatedly had used vulgar language in public and had made offensive sexual gestures to numerous individuals. The court concluded that "the ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office." To the court, conduct that was technically legal but morally wrong was unacceptable: "It is immaterial that the conduct concerned was probably lawful, albeit unjudicial, or that the petitioner may have perceived his offensive and harassing conduct as low-humored horseplay." The judge in this case seemed to be held to a higher moral standard than the "ordinary" citizen. Therefore, it seems that this value placed on moral and proper conduct signals a concern for a certain moral level among the judiciary.

This focus on placing judges on a higher plane than the average citizen was also echoed in an Ohio case. The Ohio Supreme Court disciplined a judge who "admitted that he, while still married to, but separated from, his wife, took his "girl friend" (now his second wife) with him, at his expense, on a trip to Majorca and two trips to Mexico, but he testified that they did not occupy the same room on any of the trips." The court held that it was irrelevant whether the judge's conduct was no different from that of an ordinary person, since "improper conduct which may be overlooked when committed by the ordinary person...cannot be overlooked when committed by a judge. By accepting his office, a judge
undertakes to conduct himself in both his official and personal behavior in accordance with the highest standard [emphasis added] that society can expect."31 By holding judges to a higher standard than the rest of society, we expect them to behave in a more ethical, professional, and moral manner. Those who espouse the notion that judges should separate themselves from their morals may be asking for the impossible, for we, as a society, expect them to be positive role models as moral citizens. It is both unfair and improbable to separate judges from morality, for, as is shown in the examples above, their conduct is united to society's views of morality. In addition, this practice is futile because, if we continue to insist on perfection of character, we are unlikely to find many exemplary leaders.32 Although judges do have a call to act responsible because of the professional position that they are in, it is unfair and illogical to hold them to such a high standard and then claim that morals do not play a significant role in a judge's professional life.

The issues that many judges deal with also makes it essential for them to utilize their own sense of morals. Every case that the judiciary deliberates cannot always be decided on the basis of precedent and law. Illustrations of this are also abundant. A juvenile court judge, for example, may have to decide which parent is more fit to raise an abused child. The judge cannot rely solely on laws or precedents. Each case of this nature must be decided on an individual basis, and most likely will involve some moral decisions on behalf of the judge. In another scenario, a judge may have to decide under an immigration statute whether an applicant is of "good moral character",33 Surely, this would entail the application of moral
judgment. Consider the issue of reproductive freedom. Whether the judge claims to be enforcing the community's moral norms or updating the moral vision of the Founding Fathers, it is quite evident that the judge cannot make such decisions without relying, at least in part, on her own moral knowledge. There are simply too many issues that seem to require moral judgment to discount the notion that judges must lead and deliberate in a moral fashion.

In difficult cases such as these, it remains the judge's duty to discover what the rights of the parties are, but not to invent new rights. When no settled rule dictates a decision, a judge should base the decision on both on "the morality that is embedded in the traditions of the common law" and his or her personal political morality. In essence, there exists a "pervasive interaction" between the two types of morality. Although the judge is responsible for making a decision that is consistent in the application of the principle relied upon, morality does permeate the process.

The inter-relatedness between law and morality is another reason why we cannot separate judges from their morals. Morality, understood as the beliefs and values that guide our choices, must play a part in the creation, interpretation, and enforcement of laws. Contrary to the views discussed earlier, law can be seen as an expression of public morality because a variety of those involved in its creation, interpretation, and enforcement are somewhat influenced by their perceptions of what is just, fair, and true. Judges, as part of this process, cannot completely disown their own sense of values and morals, for it is this sense of "right and
"wrong" that played a major role in the formation of the issues that the court must deliberate. In a sense, not utilizing one's sense of values would run contrary to the process that had carried the issue at hand to the judiciary. Especially when involved with controversial political decisions, judges do and must rest their judgments on arguments of principle, not strictly policy or precedent.38

In addition to incorporating their values into decisions, one could argue that the judiciary, especially the federal branch, is in a unique position to serve as moral leaders. Due to its political insularity, the federal judiciary has the institutional advantage that affords it the capacity to engage in the pursuit of political-moral knowledge in a relatively disinterested manner.39 Political-moral knowledge can be seen as a search for answers to the various questions as to how we should live.40 Although somewhat less true for other levels of the judiciary; this concept could still be applied because of the separation from many segments of society that is expected from all judges. This is not to suggest that judges can or should be moral "prophets" or that other branches of government aren't capable of effective moral leadership. However, the judiciary, due to its isolation and political insularity (on the federal level), is institutionally advantaged in dealing with controversial moral issues, for they are not concerned with re-election, political agendas, or answering to voters.41

Another institutional advantage that allows the courts to engage in moral discourse is the fact that the courts, unlike the legislative and executive branches, are concerned with the specific issues of an actual case. This tends to lengthen everyone's view, which is conducive to
"thinking things, not words, and thus to the evolution of principle." Due to these advantages, a judge is better able to rely (at least somewhat) on her own beliefs when deciding cases:

An advantage that the courts have is that questions of principle never carry the same aspect for them as they did for the legislature or the executive. Statutes, after all, deal typically with abstract or dimly foreseen problems. The courts are concerned with the flesh and blood of an actual case. This tends to modify, perhaps lengthen, everyone's view...it is conducive...to thinking things, not words, and thus to the evolution of principle...".42

The nature of the Constitution is another factor that justifies the position that judges must use personal judgment and values when adjudicating a case. The major question in settling this issue is whether we have a Constitution of detail or of principle. The answer is relatively straightforward: "ordinary legal interpretation supports the principled rather than the detailed understanding of the Constitution."43 Those who favor a detailed interpretation, and who advocate the stance that the Constitution is anything but a moral document, argue that a detailed view leaves state legislatures free to act in many ways unrestricted by the federal government (as intended by the framers when they wrote the Bill of Rights). Consequently, a judge must merely pay attention to the legal arguments while ignoring the political ones. These scholars would also say that a utilization of the principled view ignores legal arguments and relies only on personal or political ones (such as Justice Blackmun's decision in Roe v. Wade).44 However, this argument is flawed, for a constitution of principle is "a precondition [emphasis in original] of legitimate democracy"
for a government required to treat individual citizens as equals, and to respect their fundamental liberties and dignity. Unless these conditions are met, there can be no genuine democracy, for without them the majority would have no legitimate moral title to govern. A judge, then, must utilize his or her morals when interpreting the Constitution. Of course, there must be limits on a judge's power to interpret the Constitution according to his or her own convictions: judges must justify their decisions through arguments of principle and integrity, which the legal profession can criticize, and which the public, (who elect judges or whose influence should be felt by those who nominate judges) can sensibly assess.

As previously discussed, judges may be held to higher professional and personal standards than the average citizen. However, a factor that one cannot discount is the influence of a judge's subconscious on his or her decision-making. Some experts claim that the influence of the subconscious necessitates that a judge will, perhaps unknowingly, utilize personal values. Indeed, "deep below the conscious are other forces, the likes and the dislikes, the predilections and prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge." Perhaps judges cannot be fairly expected to separate themselves from the rest of society, for "the great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by." The ideal of completely separating oneself from the case at hand "is beyond the reach of human facilities to attain". One of the nation's great leaders would agree with the belief that
such objectivity is impossible, for, as President Roosevelt told Congress in 1908: "The decisions of the courts on economic and social questions depend upon their [judges'] economic and social philosophy."\textsuperscript{50} Indeed, it would be futile to try to "overthrow utterly and at all times the empire of these subconscious loyalties...for never will these loyalties be utterly distinguished while human nature is what it is".\textsuperscript{51} The inability to completely subdue these forces of individualism will not hinder the judicial process, for "the eccentricities of judges balance one another;...out of the attrition of diverse minds there is beaten something which has a constancy and uniformity and average value greater than its component elements."\textsuperscript{52} Put rather simply, one should not even consider whether or not a judge should incorporate personal morals into decision-making. Judges cannot neglect their values, for human nature makes this impossible.

**ARE JUDGES MORAL LEADERS?**

Through this discourse about how judges are involved in moral decision-making, one can extend this notion to state that judges are moral leaders. The definition of a leader is quite elusive, but there are several characteristics that a judge exemplifies that many would equate to leadership. A leader guides his or her followers, and utilizes knowledge and expertise to make decisions for the benefit of her constituents. Judges, through their decisions, share this trait of a leader. However, the comparison goes a step further. A moral leader also serves as a role model to the followers, and should always act according to a core set of values.
As previously discussed, judges are placed on a higher moral level than the rest of society; thus, they can be seen as moral role models.

Like leaders, judges will not be able to lead without credibility. They are in possession of two sources of credibility: the status of their office and the way in which they adjudicate justice. Concerning the latter category, a judge must function with honesty and integrity. Honesty was the most highly selected leadership characteristic chosen in a study conducted from 1987-1995 that utilized surveys to identify desirable leadership traits. "Moral-neutral" characteristics such as being fair-minded, intelligent, straightforward, and mature were not ranked anywhere near honesty. The researchers found that people want ethical, principled, honest leaders who maintain a high sense of integrity. Although judges were not specifically targeted in the study, the fact that "nearly 90% of constituents want their leaders to be honest above all else is a message that all leaders must take to heart.".

Another finding was that "we simply don't trust people who won't tell us their values, ethics, and standards." This seems to communicate the idea that judges are actually expected to be moral leaders by most of society. Additionally, because judges are held strictly accountable for their actions, they must consistently operate from their own core set of values if they are to initiate and structure a national discussion on fundamental values and morality. Indeed, for most involved in legal education, law is seen as intertwined with moral philosophy, and court adjudication is the preferred vehicle for molding American character. Judges obviously play a pivotal role in this process.
As moral leaders, judges must balance the needs of their followers with the fair administration of justice. The combination of these two concerns, when applied to the judiciary, create an image that the courts are a leader in areas such as social reform and civil liberties. The decisions of the courts, especially at the federal level, help shape the way that we live and teach us what is socially acceptable behavior. Cases such as *Roe v. Wade* and *Brown v. Board of Education* are specific examples of when the Court led the nation in new and different directions. Although these cases lacked moral declarations, they nonetheless told the nation that it was time to make a significant change.

Morality and its relationship to the judiciary has been a topic of intense discussion in and out of the legal profession. While many believe that judges are merely arbitrators of justice, others argue that judges are integral moral leaders of our society. This author agrees with the concept that judges are moral leaders, for they are held to a higher moral standard compared to the rest of society, constantly deliberate moral issues, are a part of the inter-relatedness of law and morality, and are in an institutionally advantaged position to contend with moral dilemmas. In addition, the principled nature of our Constitution as well as characteristics associated with human nature would qualify judges as moral leaders.

One cannot expect judges to completely divorce their morals from their cognitive processes. Judges should not abuse their power to enforce their morals on society. However, they have an obligation as moral leaders to incorporate their sense of values (along with knowledge of facts, precedents, and law) when making decisions. Judges must consider legal
creating a track of legal courses centered around ethics and morality. Most law schools do not extensively involve their students with these topics, and some claim that this may be a part of the reason why many lawyers are subject to scrutiny for immoral or unethical practices. In addition, I plan to submit an article based on this project to *The Journal of Leadership Studies*. This article will be unique due to the facts that it addresses such a controversial topic and that it will be written by those involved in the field of leadership studies. Presently, most of the literature in the *Journal* is submitted by fields other than leadership, and this article will exhibit the fact that the Jepson School is committed to confronting difficult leadership issues.

**PROJECT RESULTS**

**RESULTS FROM THE FORUM, INTERVIEWS, AND COURT OBSERVATIONS**

Through active engagement with nine experts in the fields of law and ethics, certain attitudes and beliefs were discovered that validate many of the findings discussed in the literature review. Personal and phone interviews were conducted with six of the experts, two sessions of one expert's court were completed, and the forum, titled "Leadership from the Bench: Are Morals Irrelevant?" exhibited the views of five experts. The primary (but not only) issues addressed during these activities were: 1) whether or not judges are, indeed, leaders; 2) the role of morals in the judicial decision-making process; 3) whether or not judges are moral leaders; and 4) whether or not personal conduct has an impact on a judge's
professional responsibilities. It should be noted that each interviewee and panelist did not necessarily answer all of the same questions. Therefore, some questions have more responses than others. Again, the purpose of this phase of the project was to confirm or refute the arguments put forth in the literature review.

Each expert agreed that judges were leaders, but felt that they lead in different ways. One interviewee did not classify judges as leaders in general, but conceded that they do lead in the procedural aspects and administration of justice. Another noted that judges are not leaders in the traditional sense, in that they do not have a followership who follow them on a purely voluntary basis. For this individual, the important role that judges play in terms of leadership is when one must make decisions where there are gaps in the law. Two days of observation of the Richmond Juvenile and Domestic Relations Court (presided over by one of the judges studied) provided many examples that validate this claim. On numerous occasions, the judge was required to decide what sanctions were "fair" sanctions in terms of spousal abuse, what would be "proper" visitation rights, and what would be "in the best interest" of many children. Void of precedent or clearly defined statutes, the judge had to "fill in the gaps" and make a decision for the best interests of those involved. Although it was only possible to view two sessions of this court, the examples nonetheless support the claim made earlier that judges cannot always neglect their morals. In fact, during instances such as those just mentioned, moral values can be a pivotal guiding influence on a judge's discretionary power, and can work in conjunction legal guidelines.
The remaining seven respondents agreed that judges are leaders, but in varying degrees. One respondent viewed the leadership of a judge as mainly that of a role model, for judges lead by example and consultation of other judges, while six contended that the precedents that judges set and the importance of their decision-making definitely qualify them as leaders. One made the observation that the perception of a judge's capacity for power and influence was vital, and places him or her on a different level than the rest of society. This supports the research claim that, because of a judge's potential for power and status, a judge is held to a higher standard than the rest of society. In sum, all agreed that judges functioned as leaders in some capacity, but did not agree with the specific type of leadership that judges exhibit.

Perhaps the most intriguing issue addressed was the role of morals in the courtroom, as well as the judge's duty of separating his or her morals from those of society. According to one respondent, judges share central moral values (such as the belief that murder is morally wrong) with the rest of society. This expert did not see that the morals of the two entities would usually conflict, but contended that it is the judge's responsibility to resist public pressure if the citizenry presses for a hasty decision based solely on emotions. In rare cases where the judge is not guided by the morals of society, he must structure the decision so that morals will be analytically separated from the legal question. An important finding was that every expert agreed that judges cannot completely separate their morals from the decision-making process. Five went beyond the view that morals cannot be separated from a judge's role as leader in contending that morals should not be separated.
A judge's responsibility, according to three interviewees, is to interpret laws as consistently as possible in relation to one's personal value system. If a situation arises where a judge is in danger of being unfairly biased because of certain moral values, then it is his or her responsibility to recuse him or herself from the case. It seems that these experts would agree with Justice Cardozo's view that human nature and other subconscious forces would make complete objectivity an impossibility. One interviewee argued that judges cannot ignore their role as moral leaders, and that a judge must 1) educate herself about different moral viewpoints, 2) consult with others, and 3) lead by example in order to lead effectively. In essence, a judge should acknowledge, not ignore, moral views, for morality is not merely a subject of leadership. Rather, it is the underpinnings of every subject of leadership. Six of the respondents agreed with this view that a judge must be aware of his or her subjectivity. A judge must acknowledge, rather than ignore, personal views so that he or she can effectively manage them. Ethics and morals are fundamental to justice, so a judge simply cannot neglect the importance of these concepts. Again, this finding supports the claim that judges should not be expected to divorce themselves from their morals, for doing so is both impractical and impossible.

Whether or not judges are moral leaders was another major area of discussion. Six respondents believed that judges do serve in this capacity, while one viewed judges as moral role models or moral examples, and not moral leaders. In this expert's view, judges must not outwardly express their moral views, and the role of moral leadership belongs primarily to religious and political leaders. The other six respondents held a decidedly
opposite view, for they believe that judges act as moral leaders via their opinions, behavior, precedents set, and the manner in which they conduct court proceedings. Two interviewees held a similar position in stating that judges are often responsible for making decisions that are not congruent with popular opinion. In cases such as these, a strong sense of moral convictions will inevitably lie behind legal interpretation. However, if a judge fails to acknowledge a law that supports something that he or she does not believe in (i.e., the death penalty), he or she must work within the bounds of the law and the will of the majority. While morals play a significant role, they are not the only influence a judge must consider.

Even in the observed court proceedings in which the judge possessed a great deal of discretion, six respondents agreed that a judge still faces several limitations: legal and statutory guidelines, the facts of the particular case, the integrity of the judge limiting him or herself to those facts, respect for the legislature (and the will of the majority it expresses), interpretations made by higher courts, and the utilitarian nature of court decisions. If a judge cannot abide by the laws of the land strictly due to a certain belief, noted two interviewees, he or she should refuse to hear that particular case (or find another line of work!). These sentiments support the claim made earlier that a judge cannot ignore his or her morals, but may not be solely guided by personal values.

A judge's personal conduct outside of his or her professional role was the only area in which any of the respondents completely disagreed. Seven experts believed that judges have a duty to carry themselves in a moral and professional fashion at all times, for there exists a certain decorum that judges are constantly expected to maintain. Another
important aspect of leading a responsible private life is the perception of neutrality and professionalism required of judges. This view, shared by a majority of the respondents, supports the notion that judges, unlike "normal" citizens, have to live by a higher standard. On the other side of the spectrum, one expert held that a judge does not necessarily have to be a good person to be a good judge, for a judge that is considered to be a "rotten" person can possibly fulfill the role of judge as long as he or she possesses a keen sense of fairness and justice. One expert's view lies in the middle of the other interviewees', for he said that it takes a moral person to be a good judge, but the fair and efficient administration of justice is more important than the type of person adjudicating a given case.

The responses discussed above concur with many of the positions argued in this paper. The interviewees agreed that judges are leaders, and six of them believed that judges are moral leaders. In addition, all stated the notion that judges simply cannot completely ignore their own moral convictions. Lastly, all agreed that morals do, indeed, find their way into the courtroom. Although a judge may deal with morals in different ways, it is difficult to dispute the contention that morals do play a significant role in the adjudication of justice.

CONCLUSION AND RECOMMENDATIONS

The intent of this project was to explore the issues concerning the controversy surrounding judges, leadership, and morality. Through extensive research as well as enlightening exchanges of dialogue, it has hopefully been shown that judges are wedded to their moral values, and
that to deny otherwise would be to say that judges can do the impossible: separate "who they are" from what they do. The significance of objectivity is obviously of utmost importance, but it has hopefully been proven that judges confront constitutional and legal questions with at least some manifestation of their values. In addition, a strong case for the position that judges are moral leaders of our society has been made. Extensive research, along with the support of the views of various experts in the fields of law and ethics, has advocated this stance.

It is hoped that forums like the one created during this project will continue in the future, and that various organizations will continue to work with one another in order to educate as many people as possible about such important issues facing the legal community and, ultimately, the community-at-large. The study of leadership, particularly in conjunction with relevant issues in the legal field, can only increase our understanding of how our nation functions.

Leadership from the Bench: Are Morals Irrelevant?---Absolutely Not


8: Kaufman. 6.


10: Sisk, 34.

11: Sisk. 35.

12: Sisk. 35.

13: Sisk, 36.

14: Sisk. 38.
15: Sisk, 38.


17: Greenawalt, 220.

18: Morgenstern, 60.

19: From notes of several meetings with Chief Judge Kimberly O'Donnell from the Juvenile and Domestic Relations District Court (Richmond, VA), Associate Dean W. Clark Williams from T.C. Williams School of Law, and Dr. Marc Swatez, Professor of Leadership Studies at the University of Richmond. February 6, 1996.


21: Carter.

22: Carter.

23: Carter.


29: Alfini, et al., 281.
APPENDIX B

The following experts on law and ethics have been either interviewed, observed in court or during the forum, or both:

** Loren A. Smith, Chief Judge
   United States Court of Federal Claims

** Dr. Joanne B. Ciulla
   Coston Family Chair of Leadership and Ethics

** Dr. Azizah al-Hibri
   Associate Professor, T.C. Williams School of Law

** Hon. Kimberly O'Donnell, Chief Judge
   Juvenile and Domestic Relations Court, City of Richmond

** Hon. James Spencer
   United States District Court, Eastern District of Virginia

** Hon. Philip Trompeter
   Juvenile and Domestic Relations Court, City of Roanoke

** Hon. Rosemarie Annunziata
   Court of Appeals, Commonwealth of Virginia

** Hon. Don Lemmons
   Circuit Court, City of Richmond

** Mary Sue Terry, Adjunct Professor in Political Science and Leadership Studies (University of Richmond)
**APPENDIX C**

**Analysis of interview content was made with permission of all interviewees.**

**Court observations were made on Monday, March 25, 1996 and Thursday, March 28, 1996 at the Richmond Juvenile and Domestic Relations Court. Chief Judge Kimberly O'Donnell presided over the hearings.**

**The forum, titled "Leadership from the Bench: Are Morals Irrelevant?" took place on Tuesday, April 9, 1996 in Jepson Hall room 118 at the University of Richmond. The panelists included Hon. Philip Trompeter, Hon. Don Lemmons, Hon. Rosemarie Annunziata, and Hon. James Spencer. The discussion was moderated by Mary Sue Terry. It has been videotaped and is available for viewing.**

The program was a collaborative effort between the Cadmus Leader-in-Residence Program, the Jepson School of Leadership Studies, and the T.C. Williams School of Law. Members of the coordinating committee included Judge Kimberly O'Donnell, Dr. Marc Swatez (Jepson School of Leadership Studies), Associate Dean W. Clark Williams (T.C. Williams School of Law), and the author of this paper.
Appendix D

The following is a copy of an article in the April 10, 1996 edition of the Richmond Times-Dispatch concerning the forum that was a major component of this project.
Judges say morality matters
They cite restraints as being necessary

BY ALAN COOPER
TIMEs-DISPATCH STAFF WRITER

U.S. District Judge James R. Spencer recalled the courtesy visits he paid members of the Senate Judiciary Committee in 1986 when he was nominated for a federal judgeship.

Every senator noticed the master of divinity degree on his résumé and asked in some form or another how he could be deeply religious and still be fair and objective as a judge.

Spencer said he was offended at the question at the time but has come to realize that it was appropriate.

The senators were properly concerned about whether his religion would take the form of starry-eyed mysticism or narrow-minded zealotry that would override the will of the majority as expressed in the laws the senators wrote, Spencer said.

Spencer was one of four judges on a panel that discussed "Leadership from the Bench: Is Morality Relevant?" last night at the Jepson School at the University of Richmond.

The other panelists were Virginia Court of Appeals Judge Rosemarie Annunziata, Richmond Circuit Judge Donald W. Lemons and Judge Philip J. Trompeter of the Roanoke Juvenile and Domestic Relations District Court. Former Virginia Attorney General Mary Sue Terry moderated.

Lemons said the imposition of morality is inevitable in judging because there is no purely objective judge.

The better question is where are the restraints on imposing that morality.

He listed several: the facts of a particular case and the integrity of the judge in limiting himself to those facts, respect for the legislature and will of the majority it expresses, the binding interpretations of the law by higher courts, and the utilitarian nature of court decisions.

Annunziata said those constraints make it difficult for a judge to fulfill "our common notion of a leader."

Judges are most effective as leaders when they fill in gaps in the law, but they also are important symbols of how the third branch of government should operate, she said.

Spencer noted that judges often must consider "competing values, both coming from the community."

He cited as an example the display of a homoerotic painting outside an art gallery in Shockoe Bottom several years ago. Many members of the community were outraged by the painting, which he found "totally disgusting" but still concluded was protected by the First Amendment.

"It's times like these that I thank God for life tenure ... which makes these kinds of judgments easier," Spencer said.

County gets funds to pay for daycare

Prince William set for welfare program

By Deborah Kelly
TIMEs-DISPATCH STAFF WRITER

In a matter-of-fact voice that belied the terror of the event, a 15-year-old boy described the night last fall when three newfound friends attacked and sentenced on convictions of robbery, using a firearm in a felony and accessory after the fact to malicious woundings.

Wilkerson was sentenced to eight years on convictions of robbery and

The victim, whose name is withheld because of his age, was three defendants on the night Sept. 29 shooting at a football game in Chesterfield County. They mouth to get them marijuana...