

LEADERSHIP IN THE PRACTICE OF LAW

The NYIPLA Annual Dinner
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I am delighted to be here and to have the opportunity to celebrate with you another outstanding year of the New York Intellectual Property Law Association. Because so much of the success of this association is due to the efforts of its outstanding leaders, and because we are celebrating not only the successful completion of another year but also the accomplishments of this year's award winners, who are by definition leaders among members of the bar, I thought I would focus my remarks on the topic of leadership.

The dictionary definition of "leadership" is: "the office or position of a leader; the capacity to lead." The dictionary goes on to define "leader" as: "a person who has commanding authority or influence; a person who leads." Finally, the dictionary definition of "lead" is: "to direct on a course or in a direction; to guide someone along a way."

Considering these definitions, it is apparent that leadership in the context of the legal profession has relevance to many things. For example, leadership in the law, and in particular IP law, can mean leadership in bar association activities, leadership in law firm management, and leadership in teaching, inventing, writing, or promoting diversity. A study of leadership in the legal profession surely would include an examination of the actions and experiences of lawyers engaged in all of those kinds of things. But this evening, what I want to talk about is something more fundamental. Something that goes to the very heart of the legal profession: the attorney-client relationship. Specifically, I want to talk to you about the leadership roles attorneys play in the professional relationships they have with their clients,

and the expectations clients have of lawyers in those relationships.

A leader in the practice of law should, of course, possess the ability to give the client sound legal advice. But a true leader must not only be able to give sound legal advice, but must also have the skill to guide and to lead the client in the right direction. For example, a client may seek advice on how to contend with a typical patent infringement cease-and-desist letter. A competent lawyer responding to such an inquiry might briefly read the patent, arrange a meeting with the client, and inquire into the background facts leading up to the letter. It would not be unusual for the lawyer to recommend that a formal infringement and validity investigation be undertaken. Assuming the client agrees, the lawyer might then diligently undertake the investigation; studying the patent, examining the prosecution history, and doing whatever else might be needed to render a sound legal opinion. In due course, the results of the investigation will be reported to the client, the client's questions will be answered, and the lawyer might be satisfied that he has effectively and efficiently done what the client has asked. At that point, the lawyer may think he or she is done. For sophisticated clients, that may be so. But for some clients, they may still be at a loss as to what to do next.

This reminds me of a story I have told a few times before about a man who is flying in a hot air balloon and realizes he is lost. He spots a man on the ground and shouts down, "Excuse me, can you tell me where I am?" The man below says, "Yes, you are in a large hot air balloon, hovering about 30 feet above my head." "You must be a lawyer," says the balloonist. "I am," replies the man. "How did you know?" "Well," says the balloonist, "everything you have told me is technically correct, but it's of no help to me whatsoever."

Some clients facing the infringement charges I described earlier may have no better sense of the direction they should take after receiving the infringement and

validity opinion than they had before they obtained the advice of counsel. They may not fully understand their options. More importantly, they may not even know what further questions to ask or what further legal advice to seek. Such clients need lawyers who not only have the ability to give sound legal advice but the leadership skills to help them find answers to problems they cannot solve on their own. That requires more than just the ability to do assigned tasks. It requires an investment in learning about the client and the client's interests and in being sensitive to and perceptive of the client's needs. It means asking questions and listening carefully to the client's answers, giving guidance both in the answers provided and in the follow-up questions posed. It means taking the initiative to go above and beyond what is asked, to try to help the client find the right direction and make the right choices. These are the traits of good leadership in the practice of law.

Of course, there is nothing like leadership by example. And despite all the jokes suggesting the contrary, leadership in the practice of law first demands that lawyers understand the meaning of integrity, professionalism, and civility before offering advice to others.

Several years ago, before coming on to the bench, I worked with a jury consultant in connection with a trade secret case. As part of our preparations, our consultant conducted a poll of potential jurors. Among the questions asked in this poll were a series of questions intended to develop a sense of how the potential jurors in that community perceived lawyers. When asked to rank lawyers in comparison with other professions, lawyers were ranked near the bottom along with used car salesmen and insurance brokers. When asked why the lawyers were held in such relative disrespect, the polled individuals answered that "lawyers will say anything and do anything to advance their client's cause."

The consultant then asked the same potential jurors what they would look for in a lawyer if they were in serious trouble and needed to hire an attorney to represent them. Interestingly enough, the answer was exactly the same: they would look for a lawyer who would “say anything and do anything to advance their cause.” I must say that at the time I found that absolutely fascinating. After all, how could it be that the criteria used to hold lawyers in disrespect were the same criteria used to select the lawyer they would most want to represent them? This seemed to me to be self-contradictory and inconsistent.

I think it is fair to say that over the years, we have seen high and low watermarks in the reputation and conduct of lawyers. There is now, and I suppose always will be, a suspicion and a certain contempt for lawyers if for no other reason than the natural discomfort that arises from having to trust another human being in matters both important and not fully understood. But I am encouraged by the extent to which the time honored ideals of the legal profession are being embraced of late in such widely popular activities as the American Inns of Court.

It seems to me that the seemingly perplexing conclusion that lawyers will “say anything and do anything” is nothing more than a reflection of the apparent contradiction--or at least tension--between the ethical rule instructing lawyers to zealously pursue the interests of their clients and the separate ethical rule obligating lawyers to conduct themselves as officers of the court--presumably a more balanced position. In the book “Law in America,” the authors comment on the popular perceptions of lawyers in terms reminiscent of the famed glass of water that the optimist sees as half full and the pessimist sees as half empty. They note that lawyers are seen by some as “a reflection of people’s hopes” and by others as “a reflection of people’s worst fears.” Again,

diametrically opposed perceptions and seemingly contradictory conclusions.

On reflection, I have come to understand that the ethical constraints under which lawyers function are not contradictions and are not in tension at all. For one cannot serve as an officer of the court without zealously pursuing the interests of his or her client. Nor can one zealously serve the interests of a client without acting as an officer of the court. The two go hand in hand.

Being a zealous advocate means being creative, being diligent, and being dogged in the pursuit of the relevant facts. But it does not mean misrepresenting, obscuring or concealing material information. It means being scholarly in the quest to find an understanding of the law applicable to your client's case and being candid with your client and the court. It means telling your client when he has a case and when he doesn't. It means cooperating with your adversary at all times, not to compromise strategic advantage, but to advance the case to resolution--promptly, fairly and in the interests of justice.

The point here is that the jury poll participants were right. Lawyers will do anything and say anything to advance the cause of their clients, and that is not a reason to hold lawyers in disrespect but is entirely proper when done with the honesty, intelligence, and fairness expected from an officer of the court and a member of a learned profession. And how well these interests are maintained in balance is a true sign of leadership in the practice of law.

In my view, leadership in the context of the attorney-client relationship has at its core six essential values, and I will comment briefly on each: integrity, judgment, confidence, diligence, vision and trust.

Integrity--you cannot be a leader and expect clients to follow and benefit from your advice if your integrity is compromised. A true leader must command authority and garner support for the actions he or she determines are in order. Clients have neither the time nor the inclination to

risk further complicating the already complicated legal problems they face by associating themselves with lawyers whose integrity is subject to question and whose authority, for that reason, is open to challenge. It is as simple as that. And in practice, you will be continually challenged to cut corners and compromise your integrity. Don't let it happen.

Judgment--a true leader in the practice of law knows how to listen to a client, knows enough to be skeptical and to hesitate in reaching conclusions until all of the relevant facts are learned, and knows enough about the client's business to be able to formulate and determine a course of conduct and a legal strategy that will best serve the client's interests. In this sense, judgment includes results, which are what most clients are after. In today's complex world, clients look to lawyers to solve problems--efficiently and effectively. To be a leader in the practice of law thus requires the judgment it takes to achieve results and to do it in a way that will invite future retention by the client the next time the client is confronted with a legal problem.

Confidence--you must instill confidence in your clients. A true leader must have the confidence to carry out decisions made, without doubt or hesitation. The facts are not always going to be entirely favorable. Indeed, in most cases, there will be facts that are troubling. Likewise, the law may not always be fully supportive of your client's case. But once you have examined your client's options and have developed a strategic plan to achieve the result your client is after, you must instill confidence, not only in your client but in all those around you, that you are on the right path to success.

Diligence--there is no substitute for hard work, thoroughness, and attention to detail. Lawyers who are leaders in the practice of law know this and they do it well. They read, they study, they examine, they reflect and they challenge their own conclusions until they are satisfied they have worked out the best approach possible.

Every successful lawyer I know works incredibly hard and tries to confront every challenge with diligence.

Vision--leaders have vision. They come to think in terms of goals, results, and objectives. They know where they are going and how to get there. They think out of the box and anticipate not only what needs to be done today, but will need to be done tomorrow.

And finally, trust--a leader in the practice of law must conduct himself or herself in a way that commands respect and engenders trust. Clients are not interested in learning the law and may have neither the ability nor the time to understand the legal niceties of the problem before them. They have to trust that the lawyers who represent them will do the right things and will look after their interests. A leader knows the importance of trust and will take great pains never to compromise or abuse that trust.

As members of the intellectual property bar, and more specifically as members of the New York intellectual property bar, you should be very proud of the fact that you have within your ranks some of the finest leaders in the legal profession, exemplified by the officers of the NYIPLA who are here with us and by the distinguished lawyers you honor tonight. I am privileged to be in your company and I thank you for the chance to address you.