



Management v. Leadership, 558 U.S. 461 (2010)

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Recently, I had the amazing opportunity to be admitted to the Bar of the United States Supreme Court, which simply means that I could conceivably argue cases in front of the Court. After being sworn in by Chief Justice Roberts, our group of newly admitted attorneys was privileged to have front-row seats to hear two landmark cases, the second of which I will share with you in detail.

The first case was 09-751, *Snyder v. Phelps*. I am sure you have heard about the Westboro Baptist Church (WBC) in Topeka, KS, whose members protest at funerals of fallen soldiers (and, recently, Elizabeth Edwards), holding signs saying “Thank God for Dead Soldiers.”

Based upon what I heard during the arguments, their logic is basically, “God is punishing the U.S. by allowing our young soldiers to die in battle because of the United State’s ‘tolerance’ of homosexuality.”

Their incredibly controversial leader, Fred Phelps, and two of his daughters were initially found liable in 2007 for invasion of privacy and intentional infliction of emotional distress for picketing the funeral of Marine Lance Corporal Matthew Snyder, who died in combat in Iraq on March 3, 2006.

In 2007, a federal jury awarded the Snyders a total of \$10.9 million. The WBC said it wouldn’t change its message because of the verdict. This verdict was later reduced, and then overturned in federal appeals court which ruled in favor of Phelps and WBC, stating that their picketing near the funeral of LCpl Snyder is protected speech and did not violate the privacy of the service member’s family. The Supreme Court granted Certiorari, and the arguments were heard on the day I happened to be in court.



John Shufeldt is principal of Shufeldt Consulting and sits on the Editorial Board of *JUCM*. He may be contacted at JohnShufeldt@shufeldtconsulting.com.

Although the thought of this church and their message sickens me, I could not help but be proud to be an American watching this tiny, detestable church get its day in the highest court of the country. The Court has not yet published its decision.

Now, for the second case, which speaks to a challenge endemic to any business in which it’s necessary to get others to carry out tasks for the benefit of the concern. (Please forgive my marginal stenographic abilities; I tried to keep up the best I could, but it’s possible this may not represent the record verbatim.)

CHIEF JUSTICE ROBERTS: We’ll hear arguments in the second case today. 558 U.S. 461, *Management v. Leadership*.

Oral Argument of Anthony Verge

ON BEHALF OF THE PETITIONER, MR. VERGE: Mr. Chief Justice, and may it please the Court, we are talking about professional management in this case. It is really as simple as this: One of the key characteristics of being a manager is the very basic notion that a person derives their status and power by their title and nature of the role. What can be simpler?

JUSTICE SCALIA: Do you mean that a manager is only a manager because of their title?

MR. VERGE: No. Well, basically yes. What else is there? Someone is hired as manager to manage the operation. Usually this person was a high performer as an employee of another company in the same or similar space.

JUSTICE SCALIA: Right. I get that but when someone is called a “professional manager” does that mean they were simply a previously successful employee? Don’t answer that yet. So, let me give you a hypothetical: Suppose someone is good at identifying and integrating acquisitions. By being good at that skill set, does it mean they will be a successful man-

ager? Basically, from your brief it sounds like a manager is promoted up the ladder until they reach their level of incompetence.

MR. VERGE: As the district court explained, and the circuit court followed their logic, the manager focuses on systems and structure, the leader focuses on people. That's...

JUSTICE SCALIA: That's fine, but it...it does not answer the basic question. Why would anyone hire a manager? I thought that a manager simply administers while a leader innovates. The manager maintains, the leader develops, isn't that what the lower court wrote?

MR. VERGE: Well, the...

JUSTICE GINSBURG: I have always believed that management is getting work done through others. Leadership is taking people where they haven't been but need to go.

MR. VERGE: Well, I understand that but making others do the heavy lifting is part of being a manager. I mean, if you can't lead through fear of someone losing their job, what good is the title?

JUSTICE SCALIA: So at the end of the day, the manager demands respect because of their title?

MR. VERGE: I think that sums it up, well...

JUSTICE SCALIA: Yes or no?

MR. VERGE: I would say yes, fear of losing your job is a great motivator.

JUSTICE KAGAN: Do you agree with the statement, "A leader commands respect and a manager demands respect?"

MR. VERGE: That could be correct, Justice Kagan. A leader earns respect by taking more than their share of the blame and less than their share of the credit. A manager takes the credit and dodges the blame.

JUSTICE SCALIA: So it sounds like you agree with Sun Tzu, "A leader..."

MR. VERGE: Sun who?

JUSTICE GINSBURG: Come on counselor, Sun Tzu: "A leader leads by example, not by force."

MR. VERGE: Justice Ginsburg, I do not agree with Some Who; I think a manager should lead by telling others what to do and threatening to fire them when they don't. It's Management 101.

Am I right that, under the current statute, this conduct is not unlawful?

JUSTICE GINSBURG: Incorrect on the name, Sun Tzu, not Some Who; however, correct, it is not unlawful, it's...

CHIEF JUSTICE ROBERTS: Fear and intimidation cer-

tainly work in the short term, but counselor would you agree that at some point good people will leave, retire, or simply become immune to the veiled or explicit threats and intimidation?

MR. VERGE: Chief Justice Roberts and Justice Ginsburg, it is not a law that employees, or anyone else for that matter, should be treated with respect. What does it matter if some leave or "retire?" At the end of the day, isn't business simply a war of attrition, we can always find someone to gut it out for a paycheck for awhile? I mean who stays at a job for more than a few years nowadays anyway?

JUSTICE THOMAS: I get it; when I had some attorneys working under me, they clearly knew who buttered their bread.

MR. VERGE: Well, Justice Thomas, I don't know how to respond, I am frankly shocked that you actually said something in court!

JUSTICE ALITO: Let me try to help you. Is it fair to say that management is about skills, while leadership is about skills coupled with character?

MR. VERGE: Of course, having character is not necessarily part of attributes of a manager. I suppose it could help...

JUSTICE SCALIA: So you have to have both of these attributes: skill and character, to be successful correct?

MR. VERGE: Yes, Justice Scalia.

MR. VERGE: Could I reserve the remainder?

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Oral Argument of Ina Tegrity on Behalf of the Respondents

MS. TEGRITY: Mr. Chief Justice, and may it please the Court: Much of what is mystifying about leadership becomes clearer if we disconnect leadership from management and link leadership specifically to creating and changing an organization's culture or DNA. The unique and essential function of leadership is the positive manipulation of culture to achieve goals previously believed unreachable.

JUSTICE KAGAN: That sounds like some "MBA speak" learned in grad school. You speak of leadership as if it is some sort of existential process.

MS. TEGRITY: I apologize if that is how it was interpreted. I am simply saying that the qualities of a leader go beyond simply telling others what to do. Leaders create a culture in an organization where individuals feel both empowered and responsible, where they enjoy and take pride in what they do. Basically, they believe they are, and actually are, integral

to the team's success.

JUSTICE KAGAN: So you agree with Mr. Don Roberts when he said, "Management is getting work done through others. Leadership is taking people where they haven't been but need to go."

MS. TEGRITY: My answer, Justice Kagan, is yes; to demonstrate characteristics of a leader a person must be more strategically focused. And rather than directing employees through tasks, they inspire and motivate employees to drive themselves. Leaders are adept in the art of emotional intelligence and apply it in a way that generates the best work out of their people. And...

JUSTICE SCALIA: My goodness, have you ignored the fact that one of the key characteristics of a manager, as opposed to a leader, is very basic in the sense that they are someone who was given their authority by the nature of their role? They ensure work gets done; focus on day-to-day tasks, and manage the activities of others. Manager's focus on tactical activities and often times have a more directive and controlling approach. Being tactical is not altogether a negative approach, as this is a skill set that is greatly needed in business, especially in the fast paced environments most of us work and live in. So what is wrong with that?

MS. TEGRITY: Nothing is wrong with that; while a manager receives their authority based on their role, a leader's authority is inherent in their approach. Leaders are very focused on change, recognizing that constant improvement can be achieved in their people and their activities can be a great step towards continued accomplishment. Being able to lead their teams through change, rather than manage them through it, has infinite rewards.

JUSTICE SCALIA: Rewards?

MS. TEGRITY: I will go with benefits, Justice Scalia. And if I may add this: The benefits inure to the individual, the organization, the shareholders and to the customers.

JUSTICE SCALIA: Is...is that so? Do we know that?

MS. TEGRITY: I beg your pardon?

JUSTICE SCALIA: Do we know that? We do know that demonstrating good leadership skills without the management skills to support it will leave you with an inability to operationalize your visions. Likewise, being a good manager without good leadership skills will cause continual challenges in motivating your team and producing the results you are trying to manage to. Being able to blend these two styles is truly a unique skill set. Keep in mind there is an abundance of managers in the world but very few truly em-

"The manager relies on control; the leader inspires trust."

– Warren Bennis, *Introducing Change*

body the characteristics of a leader.

MS. TEGRITY: I think...

JUSTICE SCALIA: Where...where do you get the notion that a business—that there has to be a leader?

MS. TEGRITY: I get the notion from the fact you cannot manage men into battle. Justice Scalia, you ride horses. I am sure you have led your horse to water but can you manage him to drink?

JUSTICE SCALIA: So now we are talking about horses?

MS. TEGRITY: No, Justice. Let me say it this way. You lead people, you manage objects or tasks.

JUSTICE ALITO: But is it...

JUSTICE GINSBURG: Ms. Tegrity, so there is no uncertainty, is it fair to summarize your case this way: Essentially, the manager administers and the leader innovates. The manager maintains, the leader develops. The manager accepts the status quo; the leader is always questioning and challenging. The manager focuses on systems and structure; the leader focuses on people. The manager relies on control; the leader inspires trust. The manager has a short-range view; the leader has a long range perspective. The manager asks "how" and "when"; the leader asks "what" and "why." The manager imitates; the leader originates. The manager is a copy, the leader is an original.

MS. TEGRITY: I believe that comes from Warren Bennis in *Introducing Change* and you are exactly correct, Justice Ginsburg.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Here are my predictions on the way the court will rule in these two cases:

In *Snyder v. Phelps*, as sick on some levels as I am about the outcome, I cannot see how the Court will find for Snyder inasmuch as I believe Phelps' rhetoric is and should be protected under the First Amendment.

In *Management v. Leadership*, I believe the court will rule in favor of Leadership. As common as Management is in many organizations, it still often fails to achieve long-term results and sustain a culture of collaborative achievement and excellence. ■