

Legal Profession, Leadership, and COVID

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I. Introduction

For an aspiring attorney, achieving a leadership position seems like the utmost reward. It signifies that she has made a name for herself, has earned respect, and has worked hard to earn a title that matches her efforts. However, reaching a leadership role should not be the primary objective. Instead, as she navigates her way to the top, an aspiring attorney should be equipping herself with leadership qualities that will help to ensure her success in any new role. A quality which is very indicative of a successful leader is the ability to adapt to difficult times.

“Leadership development efforts must be directed toward complex and adaptive competencies such as greater agility in learning, robust self-awareness, increasing comfort with ambiguity, [and] richer facility with strategic thinking . . .”¹ A lawyer leader should not be afraid of change because change may be necessitated given the challenges the dynamic legal profession is always throwing lawyers’ way. In other words, not only does being a lawyer necessarily involve change but so does being a leader.

Lawyers have faced significant crises to the profession in the past, however, one of the most recent challenges has been in result of the global COVID-19 pandemic. So how did lawyers and the organizations and institutions that support the profession respond to the unprecedented event? What is more interesting to answer is what their conduct revealed about the importance of implementing basic leadership principles, which is what will be at the focus of this paper.

¹ Donald J. Polden and Barry Z. Posner, “Leadership Development for Lawyers,” in “Leading in Law: Leadership Development for Law Students” (unpublished), 9.

II. Crisis Will Come

From the perspective of a lawyer, the question is not whether he will face adversity but rather how he will deal with it when it happens.² An important lesson to be learned in leadership development is that leadership does not boil down to one skill; therefore, as important as it is to build a vision that you and others can get behind, a great leader must always acknowledge that crises test vision.³ A 2019 survey showed that only a handful of managing partners were highly concerned that a broad economic recession would negatively affect their law firm in the next five to ten years, and instead were confident within the next year of having higher billing rates, more billable hours, and improved leverage.⁴ The pandemic was like a wrecking ball to the 2020 vision many had imagined for themselves; it was a VUCA problem (an acronym for volatile, uncertain, complex, and ambiguous).⁵ In the midst of a VUCA environment, it is true that people will look to their leaders to provide “marching orders” through a vision for the future, but more is necessary. Typically, during large-scale crises, there is already an apparent call to action, a sense of urgency to move, so reiterating a vision statement to keep people motivated is not enough to emerge boldly from the crisis. We clearly have seen this during the COVID-19 pandemic, where people had a shared sense of wanting to get through the hard times, yet the struggle was still there.

Psychologist Gianpiero Petriglieri discusses how in order to move more purposely during times of crisis, vision needs to be supplemented with holding—a psychology term that “describes the way another person, often an authority figure, contains and interprets what’s happening in

² Polden and Posner, “Developing Emotional Intelligence and Handling Adversity” in “Leading in Law: Leadership Development for Law Students” (unpublished), 15.

³ Gianpiero Petriglieri, “The Psychology Behind Effective Crisis Leadership,” *Harvard Business Review*, April 22, 2020, 3.

⁴ Thomas S. Clay and Eric A. Seeger, *Law Firms in Transition: An Altman Weil Flash Survey*, Altman Weil, Inc., 2020, iii, http://www.altmanweil.com/dir_docs/resource/474829CC-0945-4A99-B321-2BFD3DAB146D_document.pdf.

⁵ Polden and Posner, “Leadership Development for Lawyers,” 4.

times of uncertainty.”⁶ A study done on two groups dealing with crisis found that those in one group lost faith in the company and in its leaders, while the those in the other doubled their effort and commitment.⁷ The difference between the two groups was that the former was exposed to upper management’s upbeat messages while the latter had bosses who drafted them to help clean up the mess.⁸ Despite the stress, working closely with one’s boss and colleagues on the response was more containing and informative because it provided reassurance about the company’s integrity and long-term viability.⁹ Therefore, it is important to provide holding on an institutional level, and one of the best things to do to accomplish this is by being candid about the situation, provide well-informed interpretations rather than pretending to have sure predictions, and dispel rumors.¹⁰

Not to oversimplify, but typically crises fall into two types: those that are foreseeable, and sometimes self-made, and those that are abrupt and unforeseeable. If firms and organizations find themselves in the middle of several self-made foreseeable crises, they should not be too quick to celebrate over their rebounds.¹¹ Too often, these organizations do not acknowledge that their crises are usually self-created, and they allow the situation to settle without tackling the root of the problems.¹² This type of conduct is much more in line with crisis management and is also evidence of an unhealthy work culture.¹³ This culture prizes heroism, leaving the brunt of the unexpected challenges for individuals to bear, rather than creating organizational processes that will effectively withstand them.¹⁴ The more that processes leave

⁶ Petriglieri, 3.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Polden and Posner, “Developing Emotional Intelligence and Handling Adversity,” 16; Petriglieri, 5.

¹¹ Ron Carucci, “Does Your Company Lurch from Crisis to Crisis?” Harvard Business Review, March 2, 2021, 2.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid, 3.

gaps in resource allocation, the more it reinforces that it is okay to stretch resources beyond their limits.¹⁵ This is not good for individual mental wellness and creates an untrusting atmosphere.

However, for unforeseeable crises, lawyers should make themselves aware of how they and their employers are reacting and adapting to the changes brought on by the crisis and learn from those experiences. “‘Crisis’ can be a danger and opportunity.”¹⁶ When there is a large-scale crisis brought on by external forces, such as the COVID-19 pandemic, dangers of such a crisis are tangible and certain, however, the opportunity to adapt, learn, plan, and create is likewise possible.¹⁷

Change management and change leadership are two separate things. Change management “refers to a set of basic tools or structures intended to keep any change effort under control.”¹⁸ The goal of change management is often to minimize the distractions and impacts of the change, while the focus of change leadership is on the driving forces, visions, and processes that fuel large-scale transformation.¹⁹ Therefore, change leadership, is not a “one-and-done” technique,²⁰ but rather involves seeing beyond the immediate to anticipate the next three, four, or five obstacles.²¹ The human brain is programmed to narrow its focus in the face of a threat, but this trap restricts vision to the immediate foreground.²² Leaders need to intentionally pull back, open their mind to take in the mid-ground and background, practice that is coined “meta-leadership,” to take a broad, holistic view of both challenges and opportunities.²³

¹⁵ Ibid.

¹⁶ Maureen A. Weston, “Lawyering and Representing Organizational Clients in A Public Health Crisis,” *Gonzaga Law Review*, no. 56 (2021): 283.

¹⁷ Ibid.

¹⁸ Tim Coley, “Change Leadership Models and Methods,” Ellucian, <https://www.ellucian.com/blog/change-leadership-models-theories>.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Eric J. McNulty and Leonard Marcus, “Are You Leading Through the Crisis ... or Managing the Response?” *Harvard Business Review*, March 25, 2020, <https://hbr.org/2020/03/are-you-leading-through-the-crisis-or-managing-the-response>.

²² Ibid.

²³ Ibid.

Further, a great leader during crisis is one who has resiliency because, as mentioned above, adversity will come. This is a skill that is learned by first developing a growth mindset. A great deal of research on mental and emotional hardiness has shown that each person has a distinct, predictable pattern of thinking about the highs and lows of life, and that most people are unaware of their particular pattern.²⁴ A remarkable book that discusses resiliency is *The Upside of Stress* by Kelly McGonigal. McGonigal discusses resiliency in the context of harnessing stress to your advantage. Rather than succumbing to the fight-or-flight response to stress, those who are resilient utilize a challenge response. A fight-or-flight instinct is associated with the body releasing adrenaline, a racing heartbeat, quickened breath, tightened muscles, and non-emergency physical functions slowing or stopping.²⁵ During a challenge response, the heart rate rises and adrenaline spikes, but the muscles and brain get more fuel and the ratio of stress hormones released includes higher levels of DHEA.²⁶ Rather than feeling fearful, like during a flight-or-flight response, people experience increased confidence, enhanced focus, and peak performance.²⁷ Experiments on early life stress have even found that exposure to stress early on will lead to resilience and greater courage, mental agility, and self-control.²⁸ In the legal profession, stress is a common component of day-to-day life: clients make unreasonable demands, workloads are unending, deadlines never stop approaching, there are late evening and weekend sessions, and then there is the law school debt. Despite this seeming like a hostile environment, lawyers can take this as an opportunity to practice for the hard-hitting storms that will come. The challenges experienced early on are building blocks, checkpoints to test how they mentally frame their experiences.

²⁴ Polden and Posner, "Developing Emotional Intelligence and Handling Adversity," 15.

²⁵ Kelly McGonigal, *The Upside of Stress: Why Stress Is Good for You and How to Get Good at It*, 2nd ed. (New York, NY: Avery, 2015), 50.

²⁶ *Ibid.*, 51.

²⁷ *Ibid.*

²⁸ *Ibid.*, 44-45.

Resilient people have a very realistic view of the world, and therefore, act in ways that allow them to face problems, challenges, and opportunities that come their way much more directly.²⁹ Though the feeling of disappointment is inevitable, such individuals have prepared themselves for adversity and are better equipped to find success.³⁰

III. The Legal Community's Response to COVID-19 Pandemic

The return after COVID lockdowns has been coined “the new normal.” I remember hearing this repeatedly in law school after returning to campus from a fully remote Spring Semester as well as during my 2021 summer internship that began in a hybrid model. As with many other arenas, the legal field has been significantly shaped by the pandemic. So, what do we see now?

“Lawyers and judges are conducting trials and other court proceedings via Zoom and other teleconferencing apps. Law firm staffs have swiftly adjusted to working remotely. Rules and guidelines for doing business in the legal arena are constantly changing. And an onslaught of lawsuits is on the horizon, stemming from everything from evictions and unemployment claims to contract issues and family law matters.”³¹

So, during a time where the fabric of law practice is being shaken, how have we seen big actors responding?

One of the big actors I am referring to is the American Bar Association (ABA). In response to the growing legal needs arising from the coronavirus pandemic, the ABA launched

²⁹ Polden and Posner, “Developing Emotional Intelligence and Handling Adversity,” 19.

³⁰ Ibid.

³¹ “Annual 2020: Life After COVID-19 for Legal Profession Explored by Task Force,” ABA, July 8, 2020, <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/annual-2020--life-after-covid-19-for-legal-profession-explored-b/>.

in March 2020 a nationwide task force of volunteer lawyers and judges.³² The group has been making recommendations to address the growing needs and have helped to mobilize volunteer lawyers and legal professionals for people who want assistance.³³ In May the association also established the Coordinating Group on Practice Forward to coordinate pandemic-responsive resources throughout the ABA for innovations and new ways for legal professionals to provide their services and deliver justice.³⁴ Practice Forward has resources such as articles titled “Reestablishing Post-COVID Communication Norms,” “Strength from Adversity: Emerging from a Pandemic,” and “Up Close and Personal: The Challenges and Opportunities of Remote Litigation.” The ABA acted quickly, recognizing that lawyers make up a community, and that community needed community resources to feel a sense of belonging and acknowledge there was an opportunity to not only weather through the storm but also grow. Even before the pandemic, the market for lawyers was changing a posing a challenge to firms and organizations, so the pandemic has been sort of a drastic jolt to get things moving to a place they were most likely heading. We saw something similar after the 2008 recession, when “many firms found motivation to address inefficiencies and waste, deal with performance issues, fix partner compensation and benefits, address weak practice areas and offices, and be more disciplined managing their finances.”³⁵ So it has been great to see how the legal community has approached this time as a revelation of the high demand for innovation in the legal field.

A major challenge has been addressing how the shift to a virtual world and limited contact has affected clients, especially those who are in especially vulnerable states. For many legal professionals, the shift to remote work went pretty smoothly and many managing partners

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Thomas S. Clay and Eric A. Seeger, *Law Firms in Transition: An Altman Weil Flash Survey*, Altman Weil, Inc., 2020, iv, http://www.altmanweil.com/dir_docs/resource/474829CC-0945-4A99-B321-2BFD3DAB146D_document.pdf.

were pleasantly surprised to see the positive feedback from employees, eventually reevaluating office space needs. However, for other practices of law, the response has been different. Around 78 percent of the defense attorneys surveyed agreed that virtual proceedings have compromised access to justice, with a majority saying the attorney-client relationship, including client communications, was negatively affected.³⁶ The attorneys consistently reported that the proceedings dehumanize clients and diminish clients trust in the criminal justice system, and many also said the proceedings eliminated productive hallway conversations between defense attorneys, prosecutors, and other court actors.³⁷ One major change has been that there is a lack of physical cues and emotional richness that are present during in-person communication, which makes something as important as a trial or witness examination much more frustrating to handle successfully.³⁸ However, work is being done by proactive leading lawyers to combat the issues—there has been no shortage of information sharing among defender offices as they utilize calls with colleagues in other judicial districts and national electronic mailing lists to share recent court orders, recovery plans, and trial strategies in an effort to better protect clients’ rights and safety.³⁹ The Defender Services Office at the Administrative Office of the U.S. Courts is aiding defenders on the ground, releasing a series of web-based workshops and resources regarding COVID-19 and its effects on communities, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and video and audio conferencing assistance.⁴⁰

Additionally, there have always been populations that have struggled to retain an attorney because of lack of monetary resources, and the pandemic did not make finances any easier.

³⁶ Rick Schmitt, “And Justice for All: Improving Access Through Digital Tools, Innovative Design,” June 28, 2021, <https://law.stanford.edu/stanford-lawyer/articles/pandemics-virtual-courts/>.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ “Defenders Work to Ensure Due Process Amid Pandemic,” US Courts, August 19, 2020, <https://www.uscourts.gov/news/2020/08/19/defenders-work-ensure-due-process-amid-pandemic>.

⁴⁰ *Ibid.*

Before the pandemic, some 30 million Americans each year faced civil legal matters without a lawyer.⁴¹ The justice gap has worsened in recent decades as the sector of the legal profession that serves individuals rather than corporations has steadily shrunk, while legal aid groups and lawyers' volunteerism have not come close to filling the void.⁴² In light of expiring eviction moratoria and other pandemic-related consumer protections, there is more bad news for tenants and debtors on the horizon.⁴³ These groups have historically been some of the most frequently sued people in state court and, in the vast majority of cases, represent themselves without the help of a lawyer, according to the National Center for State Courts.⁴⁴ For some states, the situation has been a catalyst for new developments. Utah and Arizona have begun developments toward closing the gap by implementing new legal programs and changing rules governing licensure and law practice, changes that could not have been undergone without leadership from the state bars and court officials.⁴⁵

A leading development in heightened EQ application has been in the area of legal presence in the issue of growing domestic violence concerns amidst the pandemic. The United States Attorneys for the Southern District of California, Eastern District of California, Northern District of California and Central District of California and the District Attorneys of San Diego, Sacramento, Alameda and Ventura counties, joined by Childhelp, a national nonprofit organization aiding victims of child abuse, launched an online outreach campaign to help victims of domestic violence during the COVID-19 pandemic.⁴⁶ "The outreach campaign was created to combat an unintended consequence of COVID-19 public health measures—an alarming rise in

⁴¹ Schmitt.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ "U.S. Attorneys across California Join District Attorneys to Help Victims of Domestic Violence During the COVID-19 Pandemic," United States Department of Justice, October 29, 2020, <https://www.justice.gov/usao-sdca/pr/us-attorneys-across-california-join-district-attorneys-help-victims-domestic-violence>.

domestic violence with victims trapped at home with their abusers under increasing stress.”⁴⁷

Reports have shown that physicians are not only treating more domestic violence injuries, but also injuries that are more severe.⁴⁸ “According to Childhelp Founder & CEO, Sara O’Meara, ‘The partnership of California’s safety leaders with Childhelp to secure children during COVID-19 is a model for child welfare across the country. All these huge hearts coming together to find children trapped in the shadows of abuse will not only save lives, but create a culture of compassion that will exist long after this virus is behind us.’”⁴⁹

Another area that was in desperate need was that of wellness. Even before COVID-19, “several studies indicated that lawyers suffer from depression and substance abuse disorders to a significantly greater extent than the general public.”⁵⁰ After COVID-19 entered the scene, the irregular rhythms and disconnected nature of remote work alongside the uncertainties surrounding meeting clients’ needs have almost certainly increased the incidence of destructive personal behaviors among lawyers⁵¹ In fact, professionals on the front lines of the legal industry’s mental health crisis say they’re seeing even more people struggling now, though there has also been an emerging sense of understanding within the industry that could help propel progress toward improved mental health beyond the duration of the pandemic.⁵² The inherently disconnected nature of remote work makes it difficult for law firm managers to gauge how lawyers are faring while working at home,⁵³ and this will be especially so for managers who are not proactive leaders with a sense of social awareness. Even during regular face-to-face

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ “COVID-19 Burnout? Bar Groups Can Help,” JDSupra, September 21, 2020, <https://www.jdsupra.com/legalnews/covid-19-burnout-bar-groups-can-help-19363/>.

⁵¹ Ibid.

⁵² Lizzy McLellan, “Lawyer Mental Health Is Facing Its Greatest Challenge, But Increased Empathy May Be the Byproduct,” American Lawyer, October 2, 2020, <https://www.law.com/americanlawyer/2020/10/02/lawyer-mental-health-is-facing-its-greatest-challenge-but-increased-empathy-may-be-the-byproduct/>.

⁵³ “COVID-19 Burnout? Bar Groups Can Help.”

interactions at the office, depression and alcohol problems are tricky to identify, so once meetings moved online, it was feared that they would be almost impossible to detect until disaster struck.⁵⁴ Given this reality, bar leadership groups rose to the challenge presented by the problems that substance abuse, depression, and burnout are causing within the ranks of the profession.⁵⁵

The ABA, state bar associations, and mental health organizations, have been hard at work to reach out to at-risk lawyers to get them the help they need to address their mental health.⁵⁶ The ABA Commission on Lawyers Assistance Programs provides an extensive list of resources on mental health issues, most of which are targeted toward COVID-19 specifically, as well as a directory of lawyer assistance programs offered by state bar associations across the country.⁵⁷ Aside from tackling issues that impact on an individual level, the ABA also commissioned a document that offers guidance for a wellbeing culture within law firms call the Well-Being Toolkit for Lawyers and Legal Employers.⁵⁸ This is a good start in the right direction of leadership, considering what has been term the “shadow pandemic” phenomenon, the long term effect of the coronavirus pandemic, which encompasses feelings of mortality, neurological disorders, and other mental health consequences of the COVID-19 pandemic that are expected to last for years.⁵⁹

Moving forward, lawyers must take this time as an opportunity for valuable lessons, lessons about our own personal limitations, our weak points on an organizational/institutional level, and areas in need of growth in the profession. The pandemic should be a time to bring

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Rachel Popa, “How Law Firms Can Invest in Employee Wellbeing Through E-Relationship Building,” *National Law Review*, June 25, 2021, <https://www.natlawreview.com/article/how-law-firms-can-invest-employee-wellbeing-through-e-relationship-building>.

about a sense of community, but not only on an insular lawyer-only basis, but also on a very human basis because the time for heightened emotional intelligence (necessarily greater compassion) is now. At the same time, we cannot be too quick to try and superimpose our own experiences with those of our clients in an attempt to empathize. Leading lawyers must be aware of social pitfalls and that we do not all find ourselves in the same state despite experiencing a global pandemic together.

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