Leadership for Lawyers

By Herb Rubenstein

Student Preface

Leadership for Lawyers can help students become better lawyers, possibly more than any single law school course or law professor. As a first-year student who had the privilege of working on the first edition of this book, I found three things very useful about the second edition. First, this book candidly discusses some of the real challenges facing all of us in the legal community. Second, it addresses these issues in a constructive manner, showing how improving the leadership capabilities of legal professionals could make a big difference in our profession's capacity to deal with the challenges we face. Third, the second edition recognizes that all legal organizations are also businesses, influenced by ethics, tradition, and money. Recognizing that these factors affect daily practice makes Leadership for Lawyers a very practical book. It forced me as a reader to consider what values I wish to incorporate into my own legal career and the barriers the legal profession as a whole may place in my way.

Leadership for Lawyers helped me think about the legal profession beyond my first-semester exams. It made me consider the type of lawyer that I want to become and challenged me to develop my leadership abilities. Law school encourages students to take on leadership roles and to lead others in a responsible and successful manner. The years we invest in learning the technical aspects of being a lawyer prepare us to assume leadership roles in successful organizations in addition to making us proficient lawyers. All law students hope that our contributions in the future as lawyers will help our clients, and our causes, achieve even greater success. Being a better leader, I believe, will enable us to provide even better legal services to those we serve. That is why the section on leadership and organizational assessment is so powerful for law students. The questions raised in this chapter, used as part of a broader organizational assessment for legal organizations, will be the key questions that I ask potential employers.

Leadership for Lawyers helped me appreciate the importance of teamwork and mentoring in the legal community. From reading this book, I realized that I wanted to work in an office that values camaraderie and constructive feedback. Importantly, Leadership for Lawyers did not draw these conclusions for me, but rather laid out the legal profession in an organized and thorough manner, which allowed me to make these important conclusions for myself. Leadership for Lawyers, as much as any course I have taken, has provided me with critical tools and insights for a successful law school experience and legal career.

2 Student Preface, pages xvii - xix.
I think this book should be required reading for all law students and new members of the legal profession. It encouraged me to think critically about my future career and to use my time in law school to begin addressing areas of concern in modern legal practice. It has already improved my leadership skills, and I believe that *Leadership for Lawyers* can help create effective leaders by raising awareness of what it take to be an effective leader. This is one book that can impact all levels of the legal profession. The need for effective leadership by lawyers permeates law firms, government offices, corporations, and nonprofit associates. All legal professionals can, and should, improve their leadership skills this will make them better lawyers, will improve their communities, and will benefit the reorganizations that they may serve as board members or advisors. Although improving the leadership skills of everyone in our large profession is an ambitious goal for any one book, *Leadership for Lawyers* aims to accomplish this take one reader at a time.

Finally, I believe this book points the legal profession in the right direction in one other respect. We need to improve the public’s perception of our profession’s values and, specifically, its integrity. We require all law students to take an ethics course, and in many states lawyers must take continuing legal education classes year in and year out. We now require courses in professionalism before one can take a bar exam in some states and before one can be sworn in as a lawyer in others. Ethics and professionalism are two legs of a three-legged stool. Herb Rubenstein shows how leadership development is the third leg of this stool, which will make a huge difference in promoting higher standards of integrity and competence for lawyers. When lawyers become trained and skilled as better leaders, as I have by studying this book, we will have better integrity ourselves and will be better equipped to instill in the general populace the trust in our profession’s integrity that the legal profession needs in order to remain a strong, positive influence on society. Hopefully, many others will find this book as useful and empowering as I have.

George Gilbert
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CHAPTER 1

The Case for Leadership Development for Lawyers

"Without leadership, nothing happens."

Lawyers are called upon to lead every day. Although the lawyer is the “agent” and the client is the “principal,” lawyers have a duty to lead their clients. They provide this leadership by providing accurate technical advice, principled counseling, and a rigorous evaluation of the client’s situation, goals, and resources. This book is designed specifically for lawyers and all persons employed in the legal profession.

This book answers an important question raised by U.S. Judge James Barr. The question is:

I am delving into whether there is support for the hypothesis that leadership skills developed and implemented by individual lawyers (even when not serving in bar organizations) can significantly impact and influence an entire legal community in such areas as (1) improved ethical and civility standards and performance, (2) more effective assimilation of new lawyers into the legal community, and (2) improved relations between bench and bar. In other words, I am at least curious about whether development of leadership skills by individual lawyers can positively impact the quality of lawyering in a legal community – even when working outside the institutional (i.e., bar organization) context.

This book answers Judge Barr’s question in the affirmative. The basic thesis of this book is that when lawyers and all those who work in the legal profession begin to understand the basic theories of leadership and are better trained in the field of leadership development, they will become better leaders, will provide better legal services, and will create better law firms and legal organizations. As a consequence, the reputation of lawyers and the legal profession as a whole will improve.

This book is based on my work as a trial attorney for more than 20 years, handling matters for plaintiffs as well as defendants. I have practiced in three jurisdictions and argued and settled cases in literally hundreds of courtrooms. Most importantly, I have been hired by many clients not just to be a good technical lawyer, but to resolve difficult challenges through the use of well-developed leadership skills.

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3 Chapter 1, pages 3 – 10.
4 Fred Lederer, Chancellor Professor of Law, William and Mary Law School and Director of the Center for Legal and Court Technology, May 2007
Leadership development training and education has evolved to the point where almost all professions can benefit from this new discipline. Are lawyers leaders? The answer is clearly “Yes.” The general public, clients, and even other lawyers expect lawyers to be leaders not just because they know the law, but because so much faith is placed in their abilities to settle disputes, resolve complex legal challenges, establish new rules and regulations for society, and understand the complex and rugged landscape of litigation. However, because they are not well trained in leadership, many lawyers merely try to dominate the conversation in a manner that is neither productive nor satisfying for all concerned.

Lawyers are called upon to serve as members of boards of directors, boards of advisors, and boards of trustees; conduct high-level investigations into wrongdoing; uncover corruption; make high-stakes presentations to opposing counsel, government agencies, trial courts, and arbitration panels; and interact intelligently and cogently with the media. They are called upon to do research and negotiate regarding matters that can make or break the financial, emotional, and institutional lives and reputations of clients both large and small. The level of leadership required in each of these activities is extraordinary, yet the legal profession over the past 10 years has given continuing legal education credit to “creating Power Point presentations,” but not leadership courses.

This book is designed to help those in the legal profession become better leaders. It is structured to help a lawyer objectively evaluate how good a leader he or she is today, and creates a path to assist the lawyer in becoming a better leader in the future. The basic tenets of leadership that lawyers will learn can be applied both in client-oriented settings and in law firms and other organizational contexts where lawyers have responsibilities for leading and managing enterprises. This book is equally applicable for the solo practitioner, the in-house counsel, the plaintiff’s bar, the defense bar (both civil and criminal), litigators, arbitrators, real estate attorneys, environmental attorneys, bankruptcy attorneys, intellectual property attorneys, lawyers who work for government agencies, lawyers who conduct investigations, securities attorneys, and merger and acquisition attorneys, as well as bond counsel, international trade attorneys, food and drug attorneys, and tax attorneys. It was written for partners, associates, chairmen and chairwomen of large and small law firms, solo practitioners, judges, law students, and law professors. It may be unrealistic to think that law schools will ever start offering many classes on leadership, given the amount of information law schools have to teach students in three years (or four years for night students) to give them a fighting chance to pass the bar exam.

Harvard University Law School has a course offered by Philip Heymann called Leadership in the Public Sector. Professor Heymann is on record as recommending that every law school teach at least one course in leadership. Another law school, at the University of Santa Clara, offers a leadership course for law students. We hope that this book could be a worthy text for such courses. At present, the teaching of leadership knowledge and skills is left up to those lawyers who take courses outside the legal profession and are self-taught. This book and the courses based on this text to be taught by the U.S. Office of Personnel Management and other schools represent an opening for lawyers into a new world of leadership theories and practical suggestions regarding how to be a better leader, and thereby a better lawyer.
There are significant developments in the teaching of leadership for lawyers. The Cincinnati Bar Association has had a Leadership for Lawyers course for some time. The Alabama Supreme Court has instituted a leadership program for lawyers. The Business Law Institute of the Colorado Bar Association has created a leadership seminar. The American Psychological Association in 2004 published a book, *Lawyer Know Thyself*, which discusses personality strengths and weaknesses with a view toward assisting lawyers to be better leaders. Courses in professionalism and ethics touch on leadership classes designed to help lawyers become better leaders within those organizations. The Oregon Bar Association has a leadership development program for new lawyers. The Renaissance Lawyer Society promotes stronger leadership development among lawyers to help address some of the ills that currently affect the legal profession, and now blogs are starting to address leadership development for lawyers. Although some “leadership” articles and courses are merely marketing and business development courses in disguise, we are finding that leadership development courses are increasingly getting to the core of what makes a lawyer a better leader.

**Problems and Challenges of the Legal Profession**

The problems and challenges that currently beset the legal profession are well-known within the industry, but not deeply understood by most lawyers, their clients, or the law schools whose curriculum has become more technical in nature during the past 20 years. These problems include:

- High rates of dissatisfaction among young attorneys
- Poor reputation of lawyers within society
- High departure rate for lawyers from the legal profession
- Growing economic pressures on law firms of all sizes, especially large ones
- High levels of client dissatisfaction and formal complaints and malpractice actions against lawyers
- Growing levels of associate turnover
- “Burnout,” causing lawyers to leave the profession entirely
- Prevalence of outdated governance practices at law firms
- Continuing evidence of a glass ceiling for women in law firms
- Client challenges to increasingly large legal bills and insistence on alternative billing structures
- Growing numbers of ethical complaints against lawyers
- Increasing competition and growing use of questionable means to obtain clients/business
- Increasing lack of civility among lawyers
- Increasing delays in litigation, arbitrations, and even mediations
- Lack of training in leadership in a profession whose members lead clients and organizations, serve on boards of directors, and hold high political and governmental positions, all without the benefit of the knowledge created in the field of leadership during the past 25 years
- High levels of substance abuse among lawyers, affecting their ability to serve clients’ needs
These challenges dominate discussions at bar association conferences. Leadership development training on the practical aspects of how lawyers and all persons who work in the legal profession can improve their leadership skills will help address some, if not all, of these challenges currently so significant in the legal profession.

The legal industry is one of the most rapidly growing professions in the world. From 1950 to 2005, the legal profession grew faster than almost any other industry in the United States. Record numbers of law graduates, record numbers of practicing attorneys, record numbers of women entering the profession, record salaries for private practitioners, record numbers of large jury awards, and increasingly large average jury verdicts propelled a growing profession to stay busy and self-confident, and not to reflect on the growing challenges in a maturing industry. Today, the legal profession is challenged by competitive pressures from technology that puts the law, statutes, court decisions, and legal procedures at the fingertips of anyone who has access to the Internet. Clients can perform more of their own work and are much better informed than ever before. In-house legal counsel, with capital to spend on computers and databases, have taken back significant amounts of work from major law firms. Lawyers can advertise and attract clients based on the quality of their advertising rather than on the quality of their abilities as a lawyer. The insurance industry has succeeded in securing new legislative caps on medical malpractice awards, on pain and suffering awards of all kinds, and judges are beginning to impose “loser pay” rules in domestic relations and other types of cases. Mergers of law firms, unheard of just 20 years ago, are moving forward at a fever pitch, resulting in law firms with over 1,000 employees. These financial and industry statistics all point to societal and economic pressures that will soon challenge every aspect of the legal profession economically and organizationally.

**Leadership Development for Many Groups in the Legal Profession**

Today, leadership development is essential not only to those who try to lead these mega-firms, but also to solo practitioners and lawyers in small firms who rely on their leadership contributions in their communities as a significant element of their business development and reputation-enhancing activities. And, as in-house counsel are more often expected to sit at the strategy table, leadership development for this subsection of the legal profession has become a critical component of the skill set they need to perform their jobs and be leaders in their organizations.

The Sarbanes-Oxley legislation has placed those lawyers who counsel corporations on governance, audit, and financial disclosure/reporting issues in the position of being “leaders of leaders,” a term that will be extensively discussed in this book. As the Sarbanes-Oxley principles are extended to the nonprofit world, academic institutions, and eventually to governments at all levels, lawyers’ leadership skills will be severely tested, as they will be expected to be not only the messengers of change, but also the guide leading organizations into the brave new world of significant governance oversight.
The legal profession is already struggling mightily with new and subtle changes to the attorney-client privilege caused by lawyers knowing about fraudulent financial activities of their clients. The new role of independent directors who demand that the company’s lawyers tell them what previously would have been attorney-client privileged and never told to “outsiders” is making lawyers gain a deeper understanding of what it means to be a leader in a disclosure-rich world.

All of these developments in the legal profession argue mightily that lawyers should seek, and the legal profession should offer, the best leadership development education and training possible. This book is a start. Many lawyers will use it to begin or expand their quest to become better leaders. And law firms, professional legal organizations, law students, and those who are considering law school will use it to achieve a competitive advantage over other law firms, law students, and fellow lawyers who do not seek to improve their leadership skills.

Finally, after reading this book, one might consider taking either an individual leadership assessment questionnaire or an organizational leadership assessment survey. These will be discussed in our chapter on leadership assessment. Many leadership assessment tools have existed for years, and now such tools are being developed specifically for lawyers and those who work in the legal profession.

This book will serve as a guide to learning about the leadership development literature, successful leadership behaviors, and how lawyers and those who work in the legal profession can use their newly enhanced leadership skills to improve themselves and the profession. By reading this book, practitioners should expect to improve both their lawyering skills and their ability to lead and manage clients and organizations.

**Conclusion**

A review of the major theories of leadership and of those leadership behaviors that have withstood the test of time is a solid place from which to begin. Two stories from our profession help to guide us through the reasons why leadership is so important for lawyers and those in the legal profession.

There was a time not many years ago when a person in California could not hold both a license to practice law and a license to be a certified public accountant. A lawyer named Jay Foonberg successfully challenged this law. In America, he could not see how and why such a law could stand. Through his work, the prohibition of holding both professional licenses – in law and as a CPA – was dismantled. Similarly, in the early 1980s, on the books of the Virginia Supreme Court, there was a rule that no one would be allowed to take the Virginia Bar or waive into the Virginia Bar unless he or she lived in Virginia or promised to earn 100% of his or her income from a Virginia office. A legal challenge by a female law student proved successful in removing this unjust rule. I was among the first beneficiaries of her leadership when I became a member of the Virginia Bar in 1983 while living in Washington, D.C.. His story is full of rights that have been won by lawyers who are leaders. Women are now starting to make real progress in obtaining the leadership positions that have deserved in our profession for decades.
Law firms from the past have stories of their founding partners winning that precedent-setting case or obtaining that marquee client through which the firm was able to grow to greatness. Today, leadership is different. As we move from old leadership theories that posited greatness on one person, we now focus on theories that emphasize how groups of people are able to work together to produce greatness. Information technology enables everyone to become a participant in key decisions that affect legal organizations, but only if the current leaders allow this important use of technology. The basic underpinnings of the new emphasis on inclusive leadership in the legal profession could not have been possible without electronic communication and storage of information; without our ability to communicate, reason, and negotiate across large distances in nanoseconds; and without the fast pace of technological improvements.

Underpinning all aspects of leadership are values and ethics. Our Ethics section includes a lengthy discussion of the basic tenets of natural law, which are as relevant to lawyers and the entire legal profession as they were when written hundreds of years ago. Finally, upon reading this book, you are invited to make a commitment to become a student of leadership as well as a practitioner by taking leadership development courses, whether they are for CLE credit or not. As Edward Poll stated in his recent article, “Making Law Firm Leadership More Effective,” in Law Practice Today (April 2007), the magazine of ABA’s Law Practice Management Section, “The most important function of all law firm leadership is to facilitate continuous communication …. Today, the larger law firm … must have clearly defined roles of leadership.”

Chapter Two will provide the reader with a strong grounding in leadership theory, in understanding basic areas of leadership competence, and in becoming familiar with how to be successful in the key area of motivation. Lawyers are leaders, and training is required in every profession to enhance critical skills. Leadership is now a critical skill of lawyers and those who work in the legal profession.
CHAPTER 2

Leadership Theory and Practice for the Legal Profession

“Clients and prospective clients want to do business with leaders, and anything you can do to further develop and enhance your leadership skills and your leadership profile will benefit you in your business development efforts.”

What is leadership? Leadership is the creation and fulfillment of worthwhile opportunities by honorable means.

There are more than 300 published definitions of leadership. There are thousands of books on leadership, 10 generally accepted theories of leadership, and several theories regarding motivation, an important subset of leadership. This chapter is a concise review of the leadership literature for lawyers, law students, and those who work in the legal profession.

One basic notion of leadership particularly applicable to the legal profession is problem solving. Leaders are people who solve problems, and often see problems and understand them before others recognize they are problems. One important skill set for a lawyer is to analyze a client’s course of action and be able to predict, and find ways around, expected legal problems and challenges that may thwart a client from achieving his or her goals.…

Leadership Actions

Are lawyers leaders? The answer is clearly yes. To be a better leader, one needs to become familiar with examples of leadership behaviors that have proven successful over time.…

A great example of leadership in the legal profession occurred over the past several years in the area of tax law. A major law firm was approached by a very large accounting firm and asked to draft legal opinions of various tax shelters proposed by the accounting firm. The law firm was eminently qualified to do the work. The potential fees were huge. The matter was very attractive to the law firm.

After careful deliberation, the firm’s management decided not to undertake the work. Numerous lawyers within the firm were not happy with the decision, but the way the law firm went about making the decision and the basis for its position showed that it was a true leader in the field of tax law in the United States. The reason the law firm chose not to accept the work was that the tax shelter structures and operations, in the firm’s opinion, violated several important principles of tax law in the United States. Ultimately, it came to a conclusion: No law firm in the United States should undertake this work.

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5 Excerpts from Chapter 2, pages 13-14, 17-19.
6 Jeffrey L. Nischwitz, Think Again! Innovative Approaches to the Business of Law, ABA, Law Practice Management Section (Chicago, 2007)
Only a law firm that believes it is a leader in the field of tax law could ever reach the conclusion that no law firm in the United States should undertake this lucrative work from a reputable accounting firm. But being a leader in the field of tax law made it perfectly clear that this major law firm could not undertake the work regardless of the size of the fees and the reputation of the potential client.

Another firm did take on this work. That accounting firm and a lawyer working on these matters have been indicted. The law firm that turned down the work now enjoys the benefits of a clear decision generated, in significant part, because it knew and acted as a leader in the field of tax law, rather than as a law firm that would do whatever a client asked it to do. Here, true leadership, with its huge short-term costs in lost revenue, paid enormous dividends.

Benjamin Heineman, Jr., in his November 2006 lecture, “Lawyers as Leaders,” at Yale Law School, made it clear that lawyers must find congruence between their values and the work they perform. Citing statistics that showed that lawyers were 3.5 times more depressed than the average of the other 105 professions studied, Heineman suggested that lawyers were able, and well trained intellectually, to become leaders and take positions in society where they made decisions, in addition to merely advising decision makers. In every lawyer’s career, advising others is critical, but so is making significant decisions and managing the process where those decisions are carried out. In his lecture, Heineman stated:

We are seeking lawyers who are not just strong team members but who can lead and build organizations: create the vision, the values, the priorities, the strategies, the people, the systems, the processes, the checks and balances, the resources and the motivation. Working on teams and leading them are interconnected: much of leadership today is not command and control of the troops but persuasion and motivation and empowerment of teams around a shared vision. . . .

The concept of being a lawyer should encompass the broadest kind of leadership because our core skills, properly conceived, of understanding how values, rules and institutions interrelate with social, economic and political conditions is as central to the demands of leadership as any other professional or disciplinary background.

The call is clear. The opportunity for a lawyer to be a leader is present every day. The duty is also obvious. Clients look to us to be leaders. Although more than half of all lawyers are solo practitioners, they serve on boards for their clients and in community organizations, and all lawyers, including solo practitioners, have leadership challenges…. 