

Leading in Law

Leading in Law

Leadership Development
for Law Students

Donald J. Polden

Barry Z. Posner



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2022
Donald J. Polden and Barry Z. Posner
All Rights Reserved

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Polden, Donald J., author. | Posner, Barry Z., author.
Title: Leading in law : leadership development for law students /
by Donald J. Polden, Barry Z. Posner.
Description: Durham, North Carolina : Carolina Academic Press, LLC, [2022] |
Includes index.
Identifiers: LCCN 2022002555 (print) | LCCN 2022002556 (ebook) |
ISBN 9781531021009 (paperback) | ISBN 9781531021016 (ebook)
Subjects: LCSH: Law--Study and teaching--United States. | Practice of law--
Study and teaching--United States. | Leadership--Study and teaching--United States.
Classification: LCC KF273 .P65 2022 (print) | LCC KF273 (ebook) |
DDC 340.071/173--dc23/eng/20220208
LC record available at <https://lcn.loc.gov/2022002555>
LC ebook record available at <https://lcn.loc.gov/2022002556>

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

We dedicate this book first to our spouses, Susie and Jackie, who have been our partners, advisors, and loving critics for decades, with more to look forward to.

Second, we're quite appreciative of the many students over the years who have shared their experiences and through their challenges have sharpened our thinking—we hope that we have made them proud.

Third, we are grateful for the support and encouragement of our colleagues in believing that leadership matters in the education of law students and who have graced us with their feedback and insights on drafts of this book.

Finally, we dedicate this book to the next generation of lawyers, with the anticipation that behaving like a leader will enhance their contributions as lawyers and move us forward to a more just and humane world.

Contents

INTRODUCTION

Leadership Development for Law Students	xv
Contents and Organization	xvi
The Five Practices of Exemplary Leadership® and Lawyer Leadership Education	xvii
Law Student Insights	xviii
Parts and Chapters	xviii
Go Forth and Learn to Lead	xix

Part I

ONE Educating Lawyers for Leadership	3
Leadership: A Learned Skill	4
Lawyers in Leadership Positions	5
Conventional Law School Education	5
Learning to “Think Like a Lawyer”	6
State Bar Exams and Optional Leadership Courses	6
Insufficiency of Law School Education	7
Lack of Leadership Development in the Legal Profession	7
Ethics and the Need for Leadership Development	8
Foundational Reports	9
Recent National Discussion	9
Critical Leadership Skills, Behaviors, and Attitudes	10
No. 1: Credibility	11
No. 2: Ability to Lead Change in a Complex Environment	12
No. 3: Good Judgment	13
No. 4: Persuasiveness	14
No. 5: Creativity, Entrepreneurship, and Innovation	15
No. 6: Ability to Build and Sustain Relationships	16
No. 7: Inclusiveness	16

No. 8: Resiliency	17
No. 9: Personal Responsibility for Development	18
Linking with Individual Leadership Development	19

Part II

TWO Leadership: What It Means to Law Students 25

Definitions of Leadership	26
Intricate Definitions	26
Leaders and Followers: Relationship	28
Law School Basics and Lawyer Leadership	29
The Ethics of Lawyer Leadership	29
Thinking Like a Lawyer versus Thinking Like a Leader	31
The Foundation of Leadership: Credibility	34
The Five Practices of Exemplary Leadership®	35

THREE Model the Way 41

Clarifying Your Values and Finding Your Voice	42
Clarify Your Values	43
Find Your Voice	44
Lead by Example	45
Lead by How You Allocate Time	46
Lead by Teachable Moments	47
Lead by Storytelling	48
Lead by the Words You Choose	50
Lead by Focused Questioning	51
Lead by Soliciting Feedback	52
From Model the Way to Inspire a Shared Vision	53

FOUR Inspire a Shared Vision 57

Envisioning the Future	58
Look Ahead	59
Look Behind	60
Incorporate the Present	61
Getting Others on Board	62
Craft a Compelling Mental Image	63

Listen Deeply	64
Show How Followers Can Make a Difference	65
Tout the Unique Aspects of the Vision	66
Exhibit Energy and Positivity	67
From Inspire a Shared Vision to Challenge the Process	68
FIVE Challenge the Process	71
Seizing the Opportunity to Improve	72
Be Proactive	73
Pinpoint Motivations	74
Use Outsight to Achieve Innovation	75
Experimenting and Taking Risks	76
Achieve Small Wins	76
Ensure Psychological Safety	78
Learn from Mistakes	80
Embrace a Growth Mindset	81
Exhibit Psychological Hardiness	82
From Challenge the Process to Enable Others to Act	83
SIX Enable Others to Act	87
Building Trust and Fostering Collaboration	88
Collaboration Requires Trust	89
Demonstrate Trustworthiness	90
Collaborate for the Greater Good	92
Leverage Reciprocity	93
Enhance Connections	94
Strengthening Others	95
Grant Choice and Discretion	96
Promote Accountability	97
Bolster Self-Confidence	98
Provide Skills and Knowledge, Training, and Mentoring	99
From Enable Others to Act to Encourage the Heart	101
SEVEN Encourage the Heart	103
Expecting the Best and Getting Close to People	104
Treat People as Winners	105

Establish Clear Standards	106
Seek Feedback	107
Get Out and About	108
Personalize Recognition	109
Creating a Spirit of Community	110
Provide Opportunities for Social Support	110
Make Achievements Public	112
Establish a Fun Environment	113
Prioritize Personal Involvement	114
Encourage the Heart: A Comprehensive Finale to The Five Practices of Exemplary Leadership®	115

Part III

EIGHT Professional Identity: Becoming a Lawyer, Becoming a Leader 121

Professional Competence as Lawyers (and Leaders)	122
Lawyer Effectiveness Skills	123
Timetable for Acquiring Lawyer Effectiveness Characteristics	124
Professional Identity and Values	125
Legal Education and Professional Identity	125
Identification of Personal Values	126
Challenges of Integrating Personal and Professional Values	126
Values, Inherent Aspects of Law Practice, and Psychological Issues	127
Moral Ambiguity	128
Complexity of Roles	128
Legal Ambiguity	129
Mentoring/Support Issues	129
Ethical Challenges in Real Life and Pop Culture	130
Professional Identity as a Leader	131
Leadership: A Deliberate Choice	131
Self-Evaluation and Personal-Best Leadership Experiences	132
Leadership Role Models	133

NINE Becoming an Ethical Lawyer and Leader 137

Values, Ethics, and Morals in Law and Leadership	139
Ethical, Service-Oriented Lawyer Leadership	140

Service	140
Ethics	140
Ethical Service across Roles	141
Ethical Leadership and Clients	141
Trust, Reputation, and Confidence	142
Informal Leadership Role	143
The Lawyer as Counselor	144
Formal versus Informal Leadership	145
Leadership and Lack of Formal Authority to Lead	145
Law School Student Organizations	146
Leadership Established by Position of Authority	147
Leadership Education in the Legal Profession	148
Law Practice Pressures and Tensions	149
Broader Obligations of Lawyering	150
TEN Making Decisions, Leading Innovation	153
Scope of Decision Making	154
Decision Making: Judgment and Experience	156
Judgment Honed by Experience	157
Judgment, Experience, and Values	157
Process of Making Good Judgment Calls	158
Judgment: A Learned Skill	158
Mechanics of Making Sound Decisions	159
Classifying the Decision	160
Delineating the Problem	161
Getting It Right	161
Planning for Action	162
Gauging Effectiveness	162
Stepping Outside of the Process	162
Challenge of Indecision	163
Causes of Indecision	163
Solutions to Indecision	163
Effective Change and Leadership	164
Components of Change	164
Need for Change	164
Incremental versus Disruptive Change	166
Change and Innovation	166

Innovative Decision Making versus Traditional Problem Solving	166
Components of Innovation	167
Roadblocks to Innovation	169
Innovation and the Need for Leadership	169
ELEVEN Becoming a Team Leader	173
Collaboration: What It Is, What It Isn't	174
Collaboration: The Foundation of the Legal Profession	175
Areas of Collaboration	176
Collaboration: A Reflection of Societal Trends	177
Collaboration: A Learned Skill	177
Persuasion in the Process of Collaboration	178
Persuasion and Communication Skills	178
Persuasion and Listening Skills	179
Persuasion in Group Situations	179
Persuasion: A Learned Skill	180
Lawyer Leaders: Building Teams	180
Building Consensus	180
Clearly Defining Plans	181
Getting the Right People on the Team	182
Choosing and Developing Team Players	183
Lawyer Leaders: Leading Teams	185
Incorporating The Five Practices of Exemplary Leadership®	185
Addressing Problems that Plague Teams	187
Manage Team Dynamics	188
Address Irresponsibility	188
Provide Sufficient Direction	189
TWELVE Developing Emotional Intelligence and Handling Adversity	193
Beyond Intelligence (IQ)	194
Emotional Intelligence (EQ) and the Legal Profession	195
EQ and Leadership	197
Expert Views	197
EQ and Organizational Success	197
EQ: Leading Self and Others	199
EQ: An Entrepreneurial Mindset	201

EQ Skills and Managing Adversity	202
Adversity and the Legal Profession	202
Methods of Coping	203
EQ Skills and Crisis Leadership	204
Resilience and Grit	206
Resilience	206
Grit	206
Building Resilience and Grit	207
EQ: A Learned Skill	207
THIRTEEN Leading the Charge for Diversity, Equity, and Inclusion	211
A Diversity Problem in the Legal Profession	212
Foundational Concepts	214
Diversity, Equity, and Inclusion (DEI)	214
Implicit Bias	215
Advantages of Greater DEI	217
Performance Benefits	218
Cultural Draw	219
Leading DEI Change	220
Self-Analysis of Implicit Bias	221
Current Level of Inclusiveness	222
Ubiquitous Diversity Training	223
Vision for Change	224
DEI Change: A Win–Win Situation	224
Part IV	
FOURTEEN Leadership Development for Lawyers	229
Leadership Development in Challenging Times and Circumstances	230
Professional Challenges	231
VUCA Problem	231
Addressing the VUCA Problem	232
Personal Challenges	233
Wellness Problem	233
Addressing the Wellness Problem	234
Lawyer Leadership Development of the Future	235

Appreciating Leadership Styles	237
Authoritative Style	239
Affiliative Style	239
Democratic Style	239
Pacesetting Style	240
Coaching Style	240
Mix and Match	241
Self-Development: Basis of Leadership Development	241
Inner Quest	241
Too Much of a Good Thing	242
From Selfish to Selfless	243
Endnotes	247
Acknowledgments	275
About the Authors	277
Index	281

INTRODUCTION

Leadership Development for Law Students

Developing leadership in lawyers should be as important a part of the law school curriculum as property or torts, and those leadership skills are what young lawyers need to distinguish themselves in today's complex legal profession.

—Donald J. Polden

Developing leadership in lawyers is more important than ketchup on French fries.

—Barry Z. Posner

Regardless of whether you want to think about the issue from an academic or a gastronomic perspective, suffice it to say that developing leadership in lawyers is critically important. This book is about leadership—but, in particular, it is targeted at students who will be lawyers who will lead others. We also believe that a more comprehensive treatment of leadership in the legal world will inspire lawyers who are asked to lead or would like to lead to become more capable and skilled at leadership.

Of course, lawyers as leaders are important to social, economic, and political systems; after all, leadership matters in nearly all areas of life, and there is no shortage of opportunities for leadership to be exercised. However, the specific focus of this book is about learning to be leaders within the legal profession and the roles and responsibilities of lawyers as leaders in the ways that they serve others in their profession.

In addition to preparing students to be leaders—regardless of their eventual titles, roles, or positions—through the exercise of the behaviors associated with leading (leadership), this book also addresses the need for students to develop their professional identity and to exercise the same by providing lead-

ership in a number of dimensions, circumstances, and settings. Furthermore, lawyer leadership is considered across a variety of aspects of the legal profession including the practice of law.

Law schools have been expected to develop their students for the demands of a profession that is ethically based and complex, and often volatile, and one in which a broad array of skills, behaviors, and attitudes are necessary to be successful. Increasingly, law schools are turning to leadership development courses and programs to strengthen the formation of attitudes and abilities that are needed for success in today's legal profession. Law schools play an important "gatekeeper" function for the legal profession and strengthening, through leadership education and development programs and curricula, the capability of their graduates to provide leadership for their firms and society.

Granted, there are lots of books on leadership, but few of them focus on lawyers and even fewer still focus on preparing students to lead versus teaching students about leaders. In other words, there is a dearth of books that provide a method and approach for developing leadership skills, attitudes, and behaviors in law students and budding lawyers. Providing a method and approach to developing leadership skills, attitudes, and behaviors is the "secret sauce" that this book brings to leadership education for law students. Our philosophy in writing such a book is that doing is more important than knowing: knowing has little value without action. To put it another way, consistent with the Jesuit philosophy of Santa Clara University, to know and not to do is not to know.

Contents and Organization

Our answer to the public need for lawyer leaders (and law-educated experts who are called on to lead) is through sound instruction in leadership. This book provides a framework for and approach to educating lawyers, in particular law students, to lead in today's rapidly changing environment. Producing lawyers who are prepared to be effective leaders in the legal profession will yield more competent representation in law firms, public defender and legal aid offices, and other legal service delivery organizations if those organizations are effectively run by people well versed and skilled in leadership. Effective leadership in these organizations produces better outcomes, including, but not limited to, significantly improved case management, greater justice, and harder and healthier lawyers.

We do more, though, than mount the case for more leadership education in law schools and an increase in professional development programs for lawyers.

We identify and describe the key aspects of effective leadership by lawyers—not only for lawyers with a firm or legal office, but also for lawyers as public servants, in nonprofit organizations, and in many other “callings” where lawyers function. We also articulate an approach and operating system for developing exceptional leadership abilities in students who are intent on becoming lawyers and practicing law: *The Five Practices of Exemplary Leadership*®. In doing so, we continue the recent important progression of lawyer education and training that was invigorated by the MacCrate Report and subsequently advanced in the Carnegie Foundation report, *Educating Lawyers*. Furthermore, we build on a foundation of research and information gathered from surveys, interviews, and empirical information to provide an opportunity to both reflect on the challenges that law students face in law school (and that lawyers face in the practice of law) and to practice approaches for taking a leadership role.

The Five Practices of Exemplary Leadership® and Lawyer Leadership Education

Barry Posner, one of the authors of this book, and his coauthor Jim Kouzes, created *The Five Practices of Exemplary Leadership* framework, which is described in detail in Part II of this book. The framework emanated from qualitative and quantitative research conducted over nearly four decades, and it eventually led to the book *The Leadership Challenge*, which has won numerous awards (including being named as one of the ten best books on leadership of all-time), has been translated into twenty-two different languages, and has sold over three million copies.

Donald Polden, the other author of this book, when he arrived at Santa Clara University to serve as dean of the School of Law in 2003 met Barry (who was then dean of the Leavey School of Business). After a discussion about the prevalence of leadership education in business schools and why law schools were not teaching leadership, Barry gave Don a copy of *The Leadership Challenge*, and Don immediately saw the relevance of teaching leadership to lawyers.

In the mid-2000s, Santa Clara University’s School of Law offered what Don believes is the first leadership course taught in a JD program at an American law school. Shortly thereafter, he began regularly teaching the leadership course himself. Due to his duties as dean, he didn’t have a lot of time to spend in the classroom, but he taught the course because of the importance he placed on the subject matter. One of the greatest challenges was finding materials on leadership in the field of law, so he began developing his own materials using

the central lessons of *The Leadership Challenge*, as well as materials from business, politics, government, and medicine.

Law Student Insights

This book contains numerous anecdotes and quotes from law school students, mostly in leadership classes, and from numerous guest speakers, interviews, and conversations with both young and veteran lawyers over the years. Some of the student input is derived from responses to a survey that we conducted with law school students from several universities to glean knowledge about their perspectives on leadership and leaders.

The survey responses are supplemented by classroom conversations, student presentations and papers from the many years of Barry's experience teaching a leadership seminar to law students in the JD/MBA program, along with Don's many years of experience teaching a leadership elective in the law school, and considerable service in this area to the American Bar Association. All of the quotations from students in this book are real, even though we've kept their names and specific circumstances confidential.

Parts and Chapters

This book is divided into four parts.

The first part, consisting of one chapter, addresses why leadership development and training are important in preparing law students for the roles and responsibilities they will have in their careers. The chapter identifies nine skills, behaviors, and attitudes required by lawyers to do their work competently and ethically.

The second part, in six chapters, describes The Five Practices of Exemplary Leadership, an operational system for leadership and five practices that, research has shown, matter to personal as well as organizational productivity and stature. This framework and these practices form an accessible and practical basis for learning to lead and becoming the best leader that you can be.

The six chapters in the third part address the context for lawyers to exercise leadership—for example, thinking about leading in client relationships, in internal relationships (such as within the law firm or corporate legal office), and in public roles. Examined are key issues regarding professional identity, ethics, decision making, emotional intelligence, diversity, and handling conflict and adversity.

The final part, consisting of one chapter, serves as a bookend to the first part. It focuses on achieving a mindset for leadership development, leading in challenging times, and being a lawyer leader who impacts the legal profession and the world in a positive way.

The individual chapters present current research findings, case studies provided by law school students, and practical guidelines for thinking and behaving as a lawyer leader. Each begins with a roadmap of key ideas in the chapter (“The Lead-In”) and concludes with a summary section (“Following Through”) that highlights the main points in the chapter. At the end of each chapter are a set of questions (“Reflections”), meant to stimulate you to think more deeply, and often personally, about the materials presented in the chapter. Reflection questions can be discussed in a group setting with your colleagues and put into written form as exercises to advance your appreciation and understanding of what it takes to be a lawyer who provides leadership and makes a difference.

Go Forth and Learn to Lead

Nonlawyers often jokingly ask, “Lawyers say they ‘practice law’; why don’t they ‘do’ law?” In fact, lawyers both practice to become better lawyers and also do the work of lawyers. Similarly, lawyer leaders both practice to become better lawyers *and* leaders *and* also do the work of lawyers *and* leaders—and this book endeavors to assist them in this undertaking.

Donald J. Polden
Barry Z. Posner

