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### **Mediators as Leaders**

As the costs of litigation soar, alternative dispute resolution procedures, especially mediation, have become more and more attractive to businesses and individuals. As a result, mediators have an ever increasing presence in the legal community, and with that, our group began wondering if these mediators are also leaders. Dwight Eisenhower once said that “leadership is the art of getting someone else to do something you want done because he wants to.” On the other hand, Webster’s dictionary defines mediation as “an attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party.” Based upon these definitions, and our classroom discussion of Kouzes and Posner’s book, the Leadership Challenge, our group began wondering whether mediators are leaders, working to bring two parties to a joint compromise, or if they are more of a passive neutral third party, that basically acts as a referee between two disputing parties.

The Leadership Challenge analyzes and studies different leadership characteristics and practices in an effort to come up with a leadership model. To assist them in creating a leadership model, Kouzes and Posner created the Leadership Practice Inventory (LPI). The LPI’s originated as a research project by Jim Kouzes and Barry Posner, and sought to determine what people did when they were at their "personal best" in leading others. They assumed that by asking ordinary people to describe extraordinary experiences, they would find patterns of success. Interviews from personal best leadership experiences generated the conceptual framework that comprised the five leadership characteristics.

Beginning with an initial sampling of over three thousand leaders and their constituents, the researchers began using the LPI to assess to what extent leaders were using The Five Practices. Since then, they have conducted hundreds of thousands of inventories. The results of their research have been striking, both in their consistency of the responses. The studies found that measurement of The Five Practices does not vary from industry to industry, profession to profession, community to community, and country to country. Finally, they found that contrary to popular belief, leadership can be learned. Leaders can and do learn to become better leaders by adjusting their behavior to follow The Five Practices.

Before sending out the LPI to our participants, we felt it was important to research the background of this test. In particular, we considered to what extent the test is reliable and valid. Our research revealed that the LPI has been used for over fifteen years, and researchers have consistently confirmed the validity and reliability of the LPI and the Five Practices of Exemplary Leaders. The LPI has been applied in many organizational settings and is highly regarded in both the academic and practitioner worlds.<sup>1</sup>

The LPI is consistently regarded as a valid measure of leadership practices. Facial validity considers whether an instrument appears to measure what it intends to be measuring. Given that the items on the LPI are related to the statements that participants make about their personal-best leadership experiences, respondents have found the LPI to have excellent facial validity. Many studies have examined both the LPI and have concluded that “there is good evidence to support its reliability and validity.” Another

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<sup>1</sup> (Sahkin, M. and Rosenback, W. “A new vision of leadership”, in Taylor, R. (ed) Contemporary Issues of Leadership (Boulder: Westview Press, 1998):79.

explained that “the conceptual scheme on which the LPI is based is elegant and the test items on the LPI have excellent face validity.” More than 120 scientific studies have consistently confirmed the reliability and validity of the LPI and the Kouzes-Posner framework.<sup>2</sup>

Kouzes and Posner took the answers from the LPI and determined that there are five practices prevalent in every leader. **(1) *Modeling the Way***: Exemplary leaders know that if they want to gain commitment and achieve the highest standards, they must be models of the behavior they expect of others. The actions that leaders take to set an example of what they expect, and how they want things done. **(2) *Inspire a Shared Vision***: Leaders inspire a shared vision. They gaze across the horizon of time, imagining the attractive opportunities that are in store when they and their constituents arrive at a distant destination. Leaders have a desire to make something happen, to change the way things are, to create something that no one else has ever created. To enlist people in a vision, leaders must know that their constituents and speak their language. **(3) *Challenge the Process***: Leaders venture out and do not sit back waiting for their fate to happen to them. They are willing to step out into the unknown, while challenging current situations and problems. Leaders know that innovation and change all involve experimentation, risks, and failure; yet, leaders still take that step. **(4) *Enable Others to Act***: Leadership is a team effort. Leaders foster collaboration and build trust. They engage all those who must make a project work, and in some way all that must live with the results. Leaders work to make people feel strong, capable, and committed. Leaders enable others to act

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<sup>2</sup> (Leong, F.T. Reivew of the Leadership Practices Inventory. In J.C. Conoley & J.C. Impara(eds.), The Twelfth Mental Measurements Yearbook.)

not by hoarding the power they have, but by giving it away. Exemplary leaders strengthen everyone's capacity to deliver on the promises they make. (5) *Encourage the Heart*: Leaders encourage the heart of their constituents to carry on. Genuine acts of caring uplift the spirits and draw people forward. It's part of the leader's job to show appreciation for people's contributions and create a culture of celebration.

Based upon these leadership practice areas, we developed and administered a leadership questionnaire to six mediators. We wanted to determine whether mediators consider themselves as leaders? What characteristic traits did they find the most important in a leader? Whether law school helped in a mediator's training? Finally, we also administered the Leadership Practices Inventory (LPI) in an effort to have the mediators analyze themselves, and which of the aforementioned leadership categories they typically used when mediating.

### **Leadership Generally**

Our survey found competence to be the number one trait for a good leader. This was closely followed by intelligence. All but one respondent choose competent and all for the same reasons. Each believed that it would be difficult to lead any enterprise without competence in the area. One must be "perceived as competent or the chances are minimal that people will follow." Clearly, our respondents thought it impossible to lead without a solid knowledge and ability in the leader's field of choice.

This seems quite logical. Take pick-up sports after school. The best players are always the captains and always pick the teams. It is natural for the best player to lead for

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the simple reason that he is competent and, therefore, everyone respects him. One respondent characterized a leader's effectiveness in performing the leader's role as depending on the authority the group grants to him or her. Competence is the surest way to gain that authority from the group.

Competence is also strongly tied to *Modeling the Way*. Most great leaders are highly qualified at the field in question. This competence sets a standard for others. If a partner does sub-par work, then the associates below him will likely produce work at a similar level. On the other hand, high quality work-product and clear mastery of the particular legal subject will "force" others to meet that standard.

Fair-minded was also noted several times in our survey. Leaders must be able to make decisions and judgements that affect others. Doing this in a fair way results in those judgements being accepted, even when those affected do not get everything they want. Leaders will have to make decisions that are unpopular, but if everyone believes that the decision was made in a fair manner, people are more likely to accept it.

This trait is also identified by the Leadership Challenge through both honesty and once again *Modeling the Way*. Posner states that honesty is the number one trait identified in surveys over the last twenty years. Honesty is the foundation of leadership as there is little chance that anyone will follow a leader that fails to treat people in a fair and honest manner. This is also a great example of *Modeling the Way* because an honest and fair leader will demonstrate a standard that everyone he leads must act in the same fair-minded fashion. This creates a positive atmosphere that pays numerous dividends such as increased worker moral and efficiency. If people feel that they are being treated fairly, they will be more loyal and want to work for their leader. This translates into

better work-product. In a mediation setting, a fair-minded mediator will create an atmosphere where the participants will feel more inclined to deal with the opposing side in a fair manner, which should lead to quicker and better settlements.

The last trait picked by multiple respondents was forward-looking. Our surveys showed that leaders should be forward-looking, as we live in a rapidly changing world where one must anticipate, as best possible, where a given field is going. Competence was considered the foundation of leadership, but forward looking was considered the direction. Without a path, one is leading no-where or at least in circles. This also can be debilitating to the ones you wish to lead. There must be a higher calling to which workers can aspire.

Posner seconds this idea when he discusses *Inspiring a Shared Vision* in the Leadership Challenge. A leader must create a goal in the future so that workers feel that they are apart of something meaningful. Carving out stones day after day is incredibly boring, but being apart of building a cathedral can be exciting and inspiring. This results in happier and more motivated workers. Similarly, mediators by definition have a future goal of settlement. The trick is figuring out what that settlement will have to look like and then inspiring the parties to believe in that vision.

The surveys also identified related traits to those just mentioned. Inspiring was chosen and the reasons were closely tied to forward looking. One respondent believed that forward looking was the direction to lead, but then inspirational was the ability “to enlist others to bring the future home.” Curiously, honesty was not specifically chosen, but was alluded to numerous times. The Leadership Challenge identifies honesty as the top trait for good leadership. Our survey did not directly support this assertion, but the

responses hinted that honesty, as the backbone of being fair-minded, is a forgone conclusion. Without honesty, the other categories are meaningless.

### **Leadership as a Mediator**

When specifically asked to consider a mediator's most important traits, fair-minded jumped to the top. Mediators mentioned again and again the importance of the participants' belief that they were being treated fairly. One mediator stated that "bias, prejudice, and indifference turn away those who are subject to mediation and/or leadership. Fair-mindedness opens the door for discussion and participation." This was also thought of as leading by example or what the Leadership Challenge calls modeling the way. If the participants feel they are being treated fairly, then they are in a better frame of mind to treat the opposing side fairly and more reasonably.

Interestingly, respondents disagreed somewhat as to a mediator's purpose. Some believed that a mediator's job is to provide a forum in which parties work towards a solution of their own. While others saw a leader's responsibility as defining the goal and motivating others to see the vision, buy into it, and achieve it. These can seem similar, but a minority of respondents saw a mediator's job as a peacemaker in the middle as opposed to a leader who in effect tells people what to do. The key difference cited was that mediators have to bring everyone together, while leaders do not. By definition, leaders can and must make decisions that will make some unhappy.

This basic definitional difference led to different answers. The majority believed both mediating and leadership to be essentially the same. Consequently, both required the same traits, albeit in a different order. Fair-minded became more important, while

competence and intelligence fell close to the bottom. Our mediators still considered competence to be of great importance, but if you are fair-minded, knowing the law is of less importance. One mediator noted that both sides are going to give you the law and the facts, in essence teaching you the material. Understanding the material is usually not a problem. Of course, mediators are usually quite intelligent and competent, which can lead them to take competence for granted.

The minority who thought mediators were less dominant in the process saw forward-looking as nearly the most important trait. They believe that fair-minded will make people receptive and then forward-looking will give the parties somewhere to go. This is similar to the responses for a leader. However, in the mediation setting, finding a goal to which all can aspire is essential to any settlement. In other settings, having a goal is important, but many do not. As a mediator, it is difficult to get anything to happen without one.

Interestingly, one mediator believed that the best trait in a mediation setting was the ability to recognize which trait would be most useful for the particular setting. This mediator stated that one may have to be more dominant in some settings while passive in others. If the mediation will be long, then gaining trust up front will pay huge dividends down the line. Conversely, a one-day mediation will hardly have time to build trust. He also noted that one must recognize an emotionally charged situation and be more supportive. This entails showing more empathy for each side's position. In a way, this ties into the idea of being fair-minded. If the party believes that the mediator understands her situation, then she will be more inclined to compromise.

We also asked our mediators to consider the five categories of great leadership outlined in the Leadership Challenge. The far and away winner was *Enabling Others to Act*. This makes perfect sense as a mediator's job is to bring opposing parties together to reach a settlement. It is almost the mediator's job description. To that end, our respondents found that *Inspiring a Shared Vision* and *Modeling the Way* were key to achieving a resolution to a dispute. Also, one mediator thought that *Encouraging the Heart* was very effective in emotionally charged settings and in situations where both sides feel that a satisfactory resolution is impossible. Giving people hope at crucial times can turn negotiations around to a favorable end.

This is strongly correlated to the traits selected for a good leader and mediator. A good mediator must model the way through competence, honesty and fair-minded decisions. This will create the proper standards and atmosphere for the participants. Then, the mediator must inspire a shared vision by looking forward towards a mutually satisfactory goal. Of course, in order to be able to look forward, the mediator must know the parties involved and determine which goals will inspire them both. Each of these, in essence, are the tools making it possible for mediators to enable the parties to come to an agreement, which is the end measure of a great mediator and why our surveys show that *Enabling Others to Act* as the most important category.

### **Law School as Training for Leadership**

Considering the traits discussed above, we asked our mediators to reflect on their law school experience and whether it helped them develop any of the valued traits of a

good leader or mediator. Most began their response with the caveat that they didn't remember much about law school in general because they had probably blocked it out. One mediator stated that law school helped him "appreciate the diversity of viewpoints and perceptions that one finds in any mediation and, in this way, helped me learn to listen." Another stated that law school was a help in challenging the process because law students are taught to challenge the law with case law and innovative policy concerns.

Our mediators saw law school as a hindrance to both leadership and, specifically, encouraging the heart. Law school is set-up to challenge the individual in a competitive environment. It does not encourage students to look to others for ideas. Instead, students come out "hardened" through questioning, endless hours of work, and usually significant debt. This does not lend itself to encouraging others, but rather the adversarial atmosphere encourages individuality and negativity.

Also, in general, law school was considered an intellectual place where emotional arguments of the heart were not considered valid. One mediator said it best: "I thought of law school and my law school experience as being a trade school. I learned enough of the basics to get my ticket and to allow me to begin the process of becoming a lawyer."

### **Leadership Practice Inventory**

The mediators' responses to the LPI were interesting, reaffirming some of our previously held beliefs, while completely refuting others. Before we sent out the questionnaire, we assumed that there would be consistencies among the responses. To a certain degree, our hypothesis proved correct. All of our respondents had the same low

scoring leadership practice: *Inspiring a Shared Vision*. However, we found it interesting that our respondents' highest scoring leadership practice varied tremendously.

### **Lowest Score:**

*Inspiring a Shared Vision* was the lowest score by all five mediators. This was extremely surprising, as we thought that *Inspiring a Shared Vision* would be a practice that is important in the dispute resolution process. Perhaps it is because most mediators do not know their clients. Many times, a client will have a working relationship with their attorney when a new dispute arises. This can be beneficial for both the client and the attorney. When the attorney is familiar with their client, it is easier to create and inspire a vision that is tailored to the particular client's needs. On the other hand, mediators do not have that same level of relationship with the parties in the dispute, therefore making the practice of inspiring a vision quite difficult. In addition, mediators are supposed to act as a neutral third-party, allowing the parties themselves to resolve their own disputes. The practice of inspiring a shared vision may lead the mediator to act more than they should. Perhaps this is why the practice of inspiring a shared vision scored lowest among the participating mediators.

### **Highest Score:**

There was no one leadership practice that ranked supreme amongst our five mediators. Prior to issuing the study, we assumed that the highest scoring response would be *Enabling Others to Act*. This practice would be consistent with mediation in that it encourages collaboration and resolution. It is the job of the mediator to encourage

and “enable” the parties to act together to come to a resolution. Because mediators “foster collaboration and build trust”, we assumed that the *Enabling Others to Act* would naturally be the highest scoring leadership practice among mediators. Again, we were wrong. Only two of our respondents scored highest in the practice of *Enabling Others to Act*.

The other respondents’ scored highest in the practices of: *Challenging the Process, Encouraging the Heart and Modeling the Way*. This diversity in leadership practices may reflect the diversity that exists among clients and their disputes. Parties entering mediation may shop around for a mediator who is an expert in a particular field, or for someone who has certain qualities or characteristics. In fact, one mediator said to us, “Clients choose me as a mediator because they know my reputation.” Some clients may require a more aggressive mediator who will “*Challenge the Process*”, whereas others may require a mediator who will really listen, care and “*Encourage the Heart*”. This diversity allows clients to tailor their mediation process and chose the mediator that will best fit their needs. When clients feel in control with the process and comfortable with their mediator, there is a greater chance of reaching a resolution.

### **Conclusion:**

As future law school graduates, it is important to reflect on our law school experiences and whether or not they have adequately prepared us for roles within society. I think that we, as current students, feel the same way as our mediators in regards to the role their law school played in developing leaders. There has not been enough time in law school to bring out the ideas considered in the Leadership Challenge. Instead, we

have been busy trying to get grades and jobs. In fact, it would be difficult outside an elective course to teach these concepts to students who are being taught sometimes opposite values. Unfortunately, laws school does not develop leaders. Instead, we are trained as advocates, always arguing our position, even until the death. This conclusion is echoed from the mediators that we interviewed who insist that their skills as mediators are not a reflection of their law school experience, but more of their personal traits. Moreover, the LPI shows that the number one trait identified by our respondents, namely *Enabling Others to Act*, was not a strength of our respondents. Law school clearly does produce leaders, but rather advocates. Administrators should consider these findings and attempt to introduce leadership ideas in order to temper the overwhelming teachings to the contrary. For, in the end, lawyers are more likely to end up in leadership positions than simply in court arguing for one side or another.