

PRACTICAL GROUND RULES FOR LEADERSHIP

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INTRODUCTION

I know law review articles. I have read a lot of them over the years. I have written one or two. And so far back that memory runneth not to the contrary,¹ I over-edited more than a few as Editor-in-Chief of this publication.

That is not what this is. The goal of this piece is not to blow away the lawyers who are reading it with my trenchant analysis of a semi-obscure² case, thereby driving everyone else to another article. It is to talk about leadership, public service, and some key lessons that have helped me stay somewhat balanced and, I hope, create some good in the world. I call them my ground rules—they are sort of a personal code or an articulation of ethics. I most often talk about these in the context of community or political

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¹ 1 WILLIAM BLACKSTONE, COMMENTARIES *75, *78. The late, great property law professor Dean Angus McSwain would be so proud of this footnote. Or not.

² Generally speaking, our ratings would all be better if we were writing about *Ice Road Truckers*.

leadership, but they have also served me very well in the courtroom, in boardrooms, within law firms, and with clients.

I. BE BIASED TOWARD ACTION

Too often, people seem to fear failure or the possibility that they will be upstaged by the next idea that comes along. Concern or anxiety can shape decisions and behaviors to the point that the avoidance of risk actually creates damage³—people miss out on opportunities that could be personally rewarding or help make the world a better place. That is the thing about opportunities and challenges—they tend to be time-sensitive.

Now, people make mistakes, and they need to be thoughtful. Strategy is good. This is not permission to be stupid or reckless. But it is to say that creativity, innovation, and experimentation all should be sufficiently empowered that someone can jump into a new situation or challenge that could create good in the world without being stymied by uncertainty about how it will work out or whether they will be second-guessed if another, newer, maybe even better idea is articulated later. I would rather make a mistake trying something and taking a risk than make a mistake missing an opportunity.

II. THROW AWAY THE LABELS

There is not much in the world as pernicious as labels. They have become absolute killers in the political and policy worlds. Somehow, things seem to have actually gotten worse over the years. Labels used to just be an excuse to not hear someone's point of view. People would ignore what others thought or wanted because they acted like the label told them everything they needed to know about the person. That is bad enough.

But now, labels seem weaponized. They create contempt,⁴ not just for other perspectives, but for other people. They cut off listening and learning; they strangle collaboration and ideas.

And labels are the death of empathy. If anything good is going to come out of 2020, it will be greater awareness about the importance of truly

³The definition of “ironic” has been under attack since at least the mid-90s, *see* ALANIS MORISSETTE, *Ironic*, on JAGGED LITTLE PILL (Warner Bros. 1996), but I am pretty sure this qualifies.

⁴Quite possibly the most dangerous force in politics, especially for the person who feels it. *See* WILLIAM SHAKESPEARE, KING LEAR act 1, sc. 2, l. 1–22 (Edmund's ambition arose from his label of illegitimate).

listening and trying to understand someone's lived experience. Empathy is not simply something people are born with. It is something they learn and practice.

It is always a warning sign when someone finds themselves looking at someone else through a label—through preconceptions of what that person must be like rather than who is there. There is always more to a person, and what they think, than can be captured in a label. Get through that, and relationships tend to follow.

III. LISTEN CAREFULLY AND SPEAK PLAINLY

This point also speaks to empathy. Conversations—particularly difficult conversations—go better when they start with listening.⁵ That means really understanding what a person thinks, why they think that, and what feelings undergird their perspective. Always be on the lookout for creative ways to help people hear and listen to each other. The responses you will hear tend to be at least as important as what you will say.

As lawyers, we are often pre-disposed to “the adversarial process.”⁶ That can prevent us from looking for different ways to prompt better discussions, illuminate underlying feelings, and open things up to unique solutions. Do not let rote rules and processes get in the way of listening or trying to create new and better ways to communicate.

Also, vague or elusive talk saps the trust and confidence needed to arrive at big decisions. It is important to openly and clearly state a position so others can know what a person really wants to accomplish; clarity may even help accomplish it. Such transparency cuts through platitudes, illuminates opportunities, and avoids pitfalls that come with every idea. Sometimes, people in leadership positions try to avoid clarity for fear that they will make someone mad or not get support. But in my view, real leadership starts with real communication and a willingness to build around that.

Real leaders train themselves to listen and to be frank.

⁵“Listening” as opposed to “hearing”—the latter of which I unfortunately associate with “public hearing” (def: events in which people gather in order to actively not hear what anyone else thinks about anything).

⁶Stephen A. Saltzburg, *Lawyers, Clients, and the Adversary System*, 37 *MERCER L. REV.* 647, 647 (1986).

IV. FOLLOW THE “84% RULE”

I hate to crush anyone’s hopes or dreams, but I am sorry to report that you are not going to meet everyone’s concept of perfection. Ever. And that probably includes yours.

Without question, consensus is always an important thing to aspire to and work toward. That work has a way of creating interesting, unexpected alliances, yielding new ideas, and building new support for solutions. But it is a mistake to define consensus as 100% agreement. Demands for unanimity can slow down both processes and progress—and, frankly, yield too much leverage to voices that might not want either. If someone can come up with something that most of their constituents look at and say, “That’s not exactly how I’d do it, but it’s pretty good, and it’s progress,” then it is probably worth taking action and preparing to build on that progress down the road. If you can get 84% of what you and others want, take it and run.⁷

V. CREATE NEW AND DIFFERENT CONSTITUENCIES, AND AVOID CREATING UNNECESSARY ENEMIES

Keep in mind that the 84% Rule is not an easy mark. If that is really someone’s goal, they will need a lot of help. That means finding new, usually counterintuitive constituencies, bringing them into the process, and wrapping their perspectives into a solution. This process starts with simply being agreeable—*not* always agreeing with everybody, but at least disagreeing with them in a pleasant, productive way that does not spoil future opportunities to work together.⁸ “Winning” does not have to mean destroying opponents or making them losers.

Remember that coming up with the right solution does not get you even halfway to solving a problem: solutions also need to be implemented, and they have to stick. By tweaking an idea to bring everybody—or, at least, 84% of everybody—on-board, you can turn it into part of the landscape.⁹

⁷Why 84%? I made it up. And because that is the percentage by which I was reelected Austin mayor. It will not always be 84%. Maybe it never will be. But the point is to get to a result and move.

⁸For an example of how not to do it, see BOB DYLAN, *Positively Fourth Street*, on BOB DYLAN’S GREATEST HITS (Columbia Records 1967).

⁹I have never understood the perspective that compromise is somehow a sign of weakness. What is more confident than being able to hit it off with everybody? See FERRIS BUELLER’S DAY OFF (Paramount Pictures 1986).

VI. PROTECT THE PROCESS

Do it right, and the process improves the final product and makes the goal easier to realize. Do it wrong, and the process becomes the goal itself, impeding the final outcome. Processes should be orderly. They should not jump to conclusions. And they should not block out basic questions about the problem that needs to be solved, the importance of solving it, and what that solution might mean for people.

Processes should encourage creativity and collaboration. People should come together to explore their purpose or passion and the possibilities. Wave magic wands. Then get practical on what is really possible and what can help achieve people's goals. That practicality leads to a plan, the people who will implement it, and the process for adjusting it and following through along the way. Big ideas need to be nurtured and tended; it is all worth it when you can see them—literally see them—take shape in real life.¹⁰

VII. FOCUS ON THE POSITIVE, EVEN WHEN IT IS HARD

I used to bemoan the anger and unhappiness I would see among people in public service.¹¹ Unfortunately, that miasma has only gotten worse, and it has spread far beyond public service to include all sorts of positions. It is really hard to do good in a world that is increasingly calibrated to amplify anger, and it is easy to get cynical seeing that anger get rewarded in votes and corporate profits.

After years of watching the tone deteriorate, I think the only antidote is us. We have to work to be as positive as we can. We lead and serve because we want to, because it fulfills and feeds a dear part of us. So try to enjoy it as much as you can. Find the fun, seek the joy, in leading. Do not give in to cynicism or anger—it really only makes things worse.¹²

¹⁰And it is pretty great when other people see it too and when they kind of freak out about it. If you have never had someone apologize for thinking you were full of it for months or years—until they saw that you were not—well, you are missing out.

¹¹Please believe me when I say that running for office is hard, hard work—why anyone would work so hard just to feel like a sleep-deprived warrior on a hellscape battlefield is beyond me. It makes no sense to do it because you are mad.

¹²Part-and-parcel to this is avoiding the nitpickers, naysayers, and know-it-alls—the folks who pick every idea to death, always find a way to say “no,” or cannot stop reminding you how smart or holy they are. It is called negative energy for a reason. Hear them out, but at some point, it is just time to move on, work at being happy, and help others to feel that way.

VIII. HAVE A SHORT-TERM FOCUS WITH A LONG-TERM VISION

I hate to get serious, but, well, these are serious times.

I am supposed to be dead. I was diagnosed with cancer in my early thirties. The disease was rough, and so were the surgeries and chemo, and everything else. I thought I had beaten it. Then, a couple of years later, the doctors found a new tumor on what was supposed to be a routine CT scan, and that led to another major surgery.¹³

The good news is, I am cancer-free—have been for 25 years. The better news is that I came out of that experience with a different view of the world—a gift of cancer that more than replaced what I lost physically.

If you had asked me the week before my first diagnosis how the next twenty years were going to go, you would have heard a whole lot of plans and a whole lot of certainty. If you had asked me the same question a week after my second diagnosis, there would have been more introspection: focus on the moment, awareness that opportunities are fleeting, and urgency to capitalize on them.

Over the years, that has translated into a perspective that tries to balance short-term focus and long-term vision. Both of those—the moment and the future—are essential, but too often, people lose track of one or the other. We are at our best when we work hard to create positive change in the moment and lay a foundation for the people and opportunities coming behind us.¹⁴

Focus on right now without letting the future hold you back. The best-laid plans may not materialize. Work in ways that help shape the future, even if you will not see it yourself. One way or another, your focus will have actualized a vision that achieves good.

IX. KNOW YOURSELF, AND SEEK POSITIVE CHANGE IN YOURSELF

We should all take more time to reflect on our core assets and values, our purpose and passion. And we ought to assess our weaknesses. I think we ought to do this on a routine basis. Some say that values do not or should not change, but of course, they do because life changes. People fall in love, lose love, have children or grandchildren, suffer the death of

¹³In Texas, we call it being “field-dressed.”

¹⁴I call this the “Effie Effect”: what are we doing right now, today, to create a better world tomorrow? It is named after my granddaughter—a joyful imperative to make her life and her future as good as they can be.

someone they love, and who knows what else. Any number of life events change who we are and how we see things. If we fail to slow down from time to time and think it through, we will not be our true selves, and it will hamper our ability to lead.

Let me break some more bad news to you—you have weaknesses. The good news is, that is OK. It is better to admit weaknesses, learn to live with them, work to improve yourself, and have others around you who make you stronger.

It is also good to look for other people's assets and to respect their values. You will benefit when you can better understand their motivations and identify areas you might have in common.

X. HOPE MATTERS, EVEN—OR ESPECIALLY—AFTER 2020

The idea of hope is interwoven into all of this. Hope makes things better. It motivates people. It prompts them to create something new and protect what is valuable.

With every leadership opportunity, we should ask, what are people hoping for—what motivates them? Then, with every decision, we should also ask, are we creating hope? Are we doing all we can to bring about the most positive version of ourselves as people, a community, or a society?

Hope brings people and ideas into the world. It is the aspiration for a more perfect union and found in the belief that all people are created equal.¹⁵ And it is the foundation of our legal system—the hope for justice and fairness in a world that, without all of us, does not necessarily offer much of either.

We just finished a year that has been hard on virtually every human being on this planet. We are all starting to figure out the way forward. Some paths will be marked by hope, and others by things like anger and fear. Try to choose the former. The world will be better for it.

¹⁵U.S. CONST. amend. XIV, § 1.