

Core Competencies: Autonomy and Accountability

By Robert A. Creo

Previous columns have addressed the lawyer's reputation, self-awareness, professional growth, the art of persuasion, navigating emotions and the importance of perpetual learning. The current series explores the importance of soft skills and the development of core competencies involved in decision-making and effective client representation, including the science and the nuts and bolts of lawyer wellness, competency and contentment. The previous column spoke to the benefits of affiliation and association. This column looks at the concepts of autonomy and accountability as core competencies and how to find a balance between autonomy and connectedness.

Sink, Swim or ... Tread Water

At my recent college reunion, I had a long discussion with two of my classmates who became lawyers, Dwight Dickerson and Mary Connaughton. Dwight runs a program for paralegals in Oakland, Calif., and Mary is a longtime clinical law professor in Boston. Our discussion focused first on how ill-prepared we were to actually practice when we graduated from our respective law schools and how, despite the proliferation of clinical programs and a recognition of the value of soft skills, most law school graduates are likewise far from practice ready. We shared stories of screwing something up when given what our bosses viewed as a routine task or filing. It had been embarrassing to ask the courthouse clerks, most of whom had no schooling beyond high school, to review our filings and correct our documents. Mary noted that, since law clinics serve real clients with real problems, she constantly struggles with how to maintain oversight while not taking over a project or undermining a student's confidence. This is a fine line to respect. It is often a moving target, with each student making it more difficult to mentor effectively across the spectrum of attitudes and abilities. We discussed how mentoring responsibilities often did not involve any billable hours or have direct economic consequences to the students or the programs.


Our discussion reminded me of a story told about Henry Kissinger when he was a professor at Harvard. A student turned in a paper on a



complex policy matter. Professor Kissinger returned it only with "Is this the best you can do?" written on it. The student handed in another draft a few days later. It was returned with the same handwritten notation. When the paper was returned a third time, the exasperated student met with Professor Kissinger and said that it was the best he could do. Kissinger responded, "OK, I will read it now." That said, I have never been 100% certain how I feel about express or implied criticism without any constructive feedback. Senior lawyers often only focus on the negative or shortcomings of any long project worked on by junior members of a legal team. Editing is often a matter of semantics and style. Striving for perfection in documents or arguments may impact how the client is billed and the delivery of cost-effective legal services. Certainly an overly intrusive and critical mentor lessens the autonomy and confidence of the newer lawyer.

To Bill or Not to Bill?

The amount of time that it takes to research an



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issue, draft transactional clauses or negotiate with adversaries usually has little to do with the economic size of the matter. When even newer associates bill at rates of \$200 per hour, it is often not cost effective for a lawyer to provide comprehensive, i.e., effective, representation for even the simplest matters.

Lawyers quickly learn, or should learn, that a fee retainer agreement is not a license to spend limitless time pursuing justice or victory at the client's expense. The practice of delegating routine work downward to associates and paralegals is the correct model, but it raises a host of other issues. One issue is how much time to bill when both the partner and associate are meeting together on the assignment. The same is true of discussions involving a referral lawyer. Lawyers spend a significant amount of time on administrative tasks, such as scheduling using electronic calendars and typing their own emails. Technol-

ogy has de-professionalized at least two of the three traditionally learned professions of law, medicine and theology. The media is replete with stories of physicians and other health care providers spending excessive amounts of screen time to input data or otherwise maintain the infrastructure. This contributes to less meaningful work and burnout. My own primary care doctor sits on a stool in front of his computer and types in what I say, along with his observations and other notes. I do not doubt the benefits on improving health care nor suggest there is better way for physicians to practice. Portable technology and information are now structural matters integrated into the professions. We have become more autonomous as individual practitioners as technology has become integrated into daily law practice. We offer take-out services on the go.

Autonomy Feels Good

Social science research is unanimous regarding workplace satisfaction being directly correlated and proportional to the level of autonomy vested in each worker. Many people (including magazine contributors) do not like to have bosses. Political theory contends that democracies and capitalist societies empower the individual, which then tends to encourage defiance over compliance. Historians note that migrants to America had a common trait of either defying or avoiding authority. The Protestant work ethic, rugged individualism, "can do" practices and attitudes of exceptionalism historically are American values. Many lawyers eventually leave their employers to venture out on their own in solo or small firm practices. Research supports the conclusion that these lawyers are generally happier, provided that they do not fall into either extreme end of the spectrum: economic insecurity from a lack of work or burnout from too much. Since 1979 when I ventured on my own into private practice, I have met these twin challenges with internal calmness

and external hustle as the circumstances dictated, aided by amassing as many credit lines and high credit card limits as feasible when times were good. One of my first clients, a wealthy real estate investor, taught me to line up borrowing when I was flush, since no bank will lend you money when you actually need it for practice and living expenses.

The American legal system does not operate on a 35-hour workweek with generous vacation, holiday and other paid leave. So lawyers work many hours — most of them alone. Even if more than one counsel is assigned to the same case, they usually perform diverse and complementary, not identical, tasks. Law firms, unlike innovative technology and similar businesses, do not assign competing teams to the same project. Whether by choice, economic limitations or historical evolution, even the newest lawyers work autonomously from other lawyers at most stages of the production and delivery (court filings, appearances, client communications, meetings) of the products of our industry. Law school graduates have increasingly been forced to go it alone as solo practitioners since the legal job market was gutted during the 2008 Great Recession in the frenzy of financial tranches, derivatives and swaps that few of us will ever fully understand.

Accountability

Ever since Benjamin Franklin popularized the phrase "industry" to equate to hard work and ethical commerce, the consensus among researchers, workplace commentators and self-improvement gurus is that accountability is a characteristic inherent in commercial and professional success. People chose a vocation, a "life's calling," that had meaning to them and, in Franklin's view, that promoted both individual and common good. The classical view of the learned professions is that they serve the public good and hence are accountable to the public. Our ethical



codes are based upon the ideal of a virtuous lawyer who balances client needs with fair play within a confining set of rules and procedures. The legal profession promulgates codes of conduct. So lawyers are “officers of the court” and as such are guardians of the public trust in the legal system.

This structural accountability is good for the profession and the public. We are obviously accountable to our clients. I regularly hear the lawyer narrative about helping clients solve problems. When I had my general practice in my storefront office across from my elementary school, often representing schoolmates or their parents, this was true. The two years as a corporate lawyer were ultimately about the company’s bottom line. The former was inherently more meaningful. My work as an ADR neutral is a mixture of cases — some involve profound issues for traumatized or victimized human beings, others are commercial disputes involving the passing of money and sometimes the restoration of face or pride. Often my purpose comes from the process of solving a complex or intractable issue or the joy of working with extremely capable counsel on difficult substantive legal issues. I have a great gig.

Although I am accountable to perform my work to the best of my ability (think Professor Kissinger), this requires that

most of my motivation be intrinsic rather than extrinsic. Workplace research has shown that after certain economic thresholds, including for lawyers, additional compensation does not provide sufficient incentive to work with peak performance and contentment. The same is true with career advancement. Moving up the ladder does spur achievement, but it will plateau at some point, perhaps when the Peter Principle kicks in and an employee gets promoted above his or her own level of competence.

What Can I Do?

Fortunately, autonomy and accountability are teachable and learnable core competencies. They also involve significant introspection and a supportive employer or work environment.

Lawyers working in public interest, academic settings and governmental, regulatory and compliance roles are a long way on the road to responsible accountability as they pursue well-defined missions. Studies show that these lawyers are happier since their work involves concepts of justice and the public good and usually impact human beings in significant ways. Lawyers intrinsically motivated by mission are more reliable than those working for the next paycheck.

In law firms, corporate legal departments and other similar groups, a supportive

environment for professional development and wellness is the best foundation to promote accountability while maintaining autonomy. However, current billing systems and the expectations or culture regarding client communications will need to be revised in order to sustain them. Mentoring also contributes — I believe the more formal and structured, the better — although there is significant evidence that informal teaching moments and discussions can be effective. Randy Kiser notes in his book, *How Leading Lawyers Think*, that judgment and decision-making benefit when lawyer “interactions with colleagues take a variety of forms, ranging from informal hallway chats to regular roundtable meetings with partners, associates, and claims representatives.” He notes that the value of these interactions has been statistically proven in studies of lawyers. These interactions are all part of a connectedness fostered by the culture of the legal community.

I think of accountability as the offspring of knowledge and a commitment to reliability. If it takes root, habits change. Your attitudes and habits can be a balance of many things: authentic, autonomous, accountable, connected, reliable and ethical. They will provide excellent results for your clients. You can be content, if not happy. Information is usually absorbed incrementally. Immersion programs, boot camps and courses, including online ones, work better than one-day CLEs and workshops. Attending programs over time and tracking the incremental shift in behavior with written records is an excellent path to professional development and its resulting boost in contentment. Don’t whine or wallow in self-pity. Try it! ☞



Pittsburgh attorney Robert A. Creo has practiced as an in-house corporate lawyer and a solo and small firm general practitioner before becoming a full-time neutral. He has mediated and arbitrated thousands of cases, including as a salary arbitrator for Major League Baseball, a grievance arbitrator for the National Football League and a hearing offi-

cer for the U.S. Senate Select Committee on Ethics. He has been on the mediator roster of the Court of Arbitration for Sports in Lausanne, Switzerland, which provides ADR services for international sports, including the Olympics. He has served as adjunct professor at Duquesne University School of Law and the University of Pittsburgh School of Law. He is the 2018 recipient of the PBA ADR Committee Sir Francis Bacon Alternative Dispute Resolution Award. He is annually included in *Best Lawyers in America* and named as a Superlawyer. He has a passion for storytelling and is a frequent presenter at The Moth. He is the principal of Happy! Effective Lawyer LLC (www.happy.lawyer) and author of The Effective Lawyer blog (happyeffectivelawyer.org/). His website is www.robertcreo.com.

If you have a story to share on this subject or other practice topics, please email racreo@gmail.com.

TAKEAWAYS

- Lawyers love autonomy.
- Autonomy exists in many practice areas and positions.
- Accountability is derivative of intrinsic and extrinsic motivators.
- Core competencies derive from soft skills that are teachable and learnable.
- Authentic reliability is a virtue that will serve you well as a lawyer.

Sources and Additional Reading

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