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## LEADING LAW FIRMS IN THE “NEW NORMAL”: RECOVERING FROM CRISES THROUGH LEADERSHIP DEVELOPMENT

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## LEADING LAW FIRMS IN THE “NEW NORMAL”: RECOVERING FROM CRISES THROUGH LEADERSHIP DEVELOPMENT

Donald J. Polden\*

*Beginning in 2008, the first of three major crises hit the nation and had global implications and effects, including significant ones for the legal profession. Those crises were the financial crisis of 2008, followed by the social justice movements reflecting outrage at several highly-publicized police killings of Black men and women, and, most recently, the 2020-2022 COVID-19 pandemic. The crises created significant challenges for lawyers and legal institutions but they also created opportunities for enhanced access to justice, more efficient law organization practices, and new workplace requirements. The Article considers several difficult questions about where the legal profession is at following these events and whether it has learned to anticipate inevitable, future crises. To do so will require effective, sustained and thoughtful leadership throughout the legal profession including the judiciary, law firms and law schools. The Article envisions a “new normal” where effective leadership in managing crises and leading clients and law organizations through those challenges is practiced across the profession.*

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Beginning in 2008, the first of three major crises hit the nation, its people, and its businesses and professions. The financial crisis of 2008 produced a deep impact on many institutions and organizations as well as untold misery for millions of Americans.<sup>1</sup> That crisis was followed by two subsequent and, in many respects, equally devastating crises. The long-delayed public reckoning about social and institutional racism, prejudice, and abuse of women in the

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1. The crises analyzed in this Article had, and continue to have, significant impacts throughout the world. Because this Article is about the impact of these challenges to lawyers in the United States, the emphasis and focus of discussion is domestic. However, without question these catastrophic crises have had dramatic effects worldwide.

workplace came to inflection points with the police killings of George Floyd in Minneapolis and criminal indictments against sexual predators. The movements for greater accountability had been building over years of similar police shootings of African American men and women, highly publicized scandals of abusive treatment of women, and public violence and bias toward Asian Americans. Finally, the third major crisis began in 2020 with the COVID-19 public health pandemic. These disasters, along with a string of global market crises,<sup>2</sup> imposed damaging consequences to society. Similarly, the economy, the legal profession, and the law business were dramatically affected by these crises as well. This Article addresses the implications of those damaging events for the legal profession and the country as a whole, then considers the lessons that have been learned to provide a framework for confronting future crises.

## I. INTRODUCTION

This Article considers several difficult, lingering questions about where we are as a profession and where our society is at following these significant events, including: What are the likely long-term effects and impacts on lawyers, law firms, and the legal profession of the three great crises in the past two decades? Can we expect future catastrophic crises of their nature and magnitude in the near future? If so, what kind of leadership is needed in firms, law organizations, and the profession to anticipate, plan for, and address those future crises?

These topics have gained added importance and national visibility because of the almost three-year grip of the COVID-19 pandemic which, while today waning, continues to affect a range of work relationships, employment expectations, social opportunities, and personal and professional relationships.<sup>3</sup> Similarly, law firms and organizations, like many other

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2. See Nicholas Bloom, Hites Ahir & Davide Furceri, *Visualizing the Rise of Global Economic Uncertainty*, HARV. BUS. REV. (Sept. 29, 2022), [https://hbr.org/2022/09/visualizing-the-rise-of-global-economic-uncertainty?utm\\_medium=email&utm\\_source=newsletter\\_weekly&utm\\_campaign=insider\\_active\\_subs\\_substatusind&utm\\_content=signinnudge&deliveryName=DM220213](https://hbr.org/2022/09/visualizing-the-rise-of-global-economic-uncertainty?utm_medium=email&utm_source=newsletter_weekly&utm_campaign=insider_active_subs_substatusind&utm_content=signinnudge&deliveryName=DM220213).

3. Marc Fisher & Taylor Telford, *Is the Pandemic Over? Pre-covid activities Americans are (and are not) Resuming*, WASH. POST (Sept. 24, 2022, 6:00 AM), <https://www.washingtonpost.com/business/2022/09/24/is-the-pandemic-over/>.

employers, struggled with the lingering effects of the economic recession of 2008, which exerted breathtakingly difficult problems across society.<sup>4</sup> The impacts of the recession had not been fully addressed and resolved when law employers were seemingly caught unaware by the social movements speaking out against racial discrimination, inequity, and unfair treatment of minority racial and ethnic communities—many of which were provoked by police killings of Black Americans.<sup>5</sup> Further, about the same time, society was riveted by public news and subsequent litigation following incidents of sexual abuse and harassment of women in entertainment and other lines of work.<sup>6</sup> Subsequently, the nation's communities had to address the backlash concerning the treatment of victims of these discriminatory injustices and assemble a national commitment to correct them. Currently, these same legal organizations are addressing the national recovery from COVID and the complexities of employees returning to the workplace following the pandemic.

While chronicling the impact of these crises on the legal profession, this Article also describes some of the normative implications of the ability of lawyers and the legal profession to better anticipate and prepare for almost certain crises in the future. In particular, this Article addresses some difficult questions that these law organizations must address moving forward: Have law employees' expectations of their employers, and, correspondently, employers' expectations of their employees, changed significantly after a decade plus of significant adjustments to workplace practices and norms? Are legal employers, such as law firms, judges' chambers, and corporate counsel offices, likely to continue pushing forward on

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4. Steven Lynch, *Comparing the 2009 and 2020 Recessions' Effects on Legal Careers & Lessons Learned*, LUCASGROUP (Jun. 25, 2020), <https://www.lucasgroup.com/your-career-intel/recessions-effects-legal-careers-lessons-learned/>.

5. Dylan Jackson, *George Floyd's Death Ushered in a New Era of Law Firm Activism and There's No Going Back*, LAW.COM (May 25, 2021, 5:00 AM), <https://www.law.com/americanlawyer/2021/05/25/george-floyds-death-ushered-in-a-new-era-of-law-firm-activism-and-theres-no-going-back-405-84104/#:~:text=Ryland%20West%2F%20ALM-,George%20Floyd's%20Death%20Ushered%20in%20a%20New%20Era%20of%20Law,election%20interference%20and%20voting%20rights.>

6. Anna North, *7 Positive Changes that have come from the #MeToo Movement*, VOX (Oct. 4, 2019, 7:00 AM), <https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019>.

adjustments to workplace requirements, especially those involving the location of work (remote, office, or hybrid), the nature of work (in-court appearances, client counseling), and the use of technology in performing work? Will employers continue to address and experience a “new normal” in employer-employee relations and, if so, will both groups do so eagerly and voluntarily? Will the new employment relationships demand different and better leadership and management by the organization’s leaders, or will pre-COVID patterns and styles of employer leadership continue to control the workplace? What would these new patterns and styles of workplace relationships involve?

The COVID pandemic is unique given its worldwide impact and severe public health consequences.<sup>7</sup> It presented an international crisis that tested the resilience and responsive capabilities of society, especially many of its most important institutions that are responsible for ensuring economic and societal stability, such as law enforcement, judicial resolutions to community problems, and trustworthy political leaders. It was the third major crisis affecting American society in the past two decades, along with the economic recession of 2008 and the social justice movements, especially the Black Lives Matter movement beginning in 2013.<sup>8</sup> The economic recession had multiple impacts on the United States and international economies, and the social justice movements, which also had international impacts, had pronounced effects on several social and professional groups, including lawyers and judges. The fact that the nation experienced several high-impact crises within a short period of time suggests that greater attention to

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7. Amy McKeever, *Covid-19 Surpasses 1918 Flu as Deadliest Pandemic in U.S. History*, NAT’L GEOGRAPHIC (Sept. 21, 2021), <https://www.nationalgeographic.com/history/article/covid-19-is-now-the-deadliest-pandemic-in-us-history>.

8. Public concern and outrage over disparate treatment of minority communities and the status of women in society did not just start in the past couple of decades; indeed, the treatment of those communities and of the female half of our society have been a source of great consternation, debate, and policy making for many decades. However, the Article proceeds from the notion that the public outcry about police killings of Black citizens, the high-profile cases of abusive and often criminal treatment of women in the workplace leading to the #MeToo movement and the economic hardships created by financial market meltdowns in 2008 reflected the need for action and for better preparation for such crises.

managing and leading organizations through crises is a foundational skill for legal profession leaders.

The first part of the Article examines some of the challenges faced by society, the

economy, and the national workplaces because of the three crises. The second part then considers and provides some context to the impacts of those crises on lawyer workplace relationships in America and the legal profession, including legal education, the practice of law, and law organizations' relationships with their clients and their members. Those crises are examined for their impacts on legal employment relationships, including the lingering concerns that returning workers have about returning to offices, judicial chambers, and courtrooms. As health directives (from the Center for Disease Control and state and local public health officials) continually changed amid new waves and strains of the virus, there was an increase in anxiety and uncertainty among workers who had adjusted to working from their homes and many workers are expressing their desire to continue working remotely.<sup>9</sup> Further, many workplaces were still feeling the effects of the financial crisis on law firms and the practice of law when the pandemic hit. This presents the difficult issue of whether the presence of such significant crises has ceased or if those firms are just experiencing a lull between the next crises. Is the "new normal" just a return to the status quo before COVID-19 or a continuation of recurrent catastrophes and crises?

The third part then examines the effects of these crises on the law profession, including the challenges of "return to work" efforts by firms, efforts to ensure workers' safety and health, and changing worker perspectives on their places of work. It then provides some perspectives on the adjustments that are being carried forward to create what some have called a "new normal" in these law firms and law organizations and the practice of law. The Article contends that the "new normal" is merely a continuation of the ongoing, evolving normal of intermittent crises and challenges. Simply put, we live in complicated times and we should expect that our environments—work, schools, and social activities—will

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9. Dani Blum, *Feeling Anxious About Returning to the Office? Here's What You Can Do*, N.Y. TIMES (Sept. 25, 2021), <https://www.nytimes.com/2021/08/25/well/mind/return-to-office-anxiety.html>.

involve volatile, uncertain, complex, and ambiguous conditions.<sup>10</sup> This part then focuses on the importance of sound organizational leadership in legal organizations addressing the challenges of the “new/old/continuing normal,” and argues that greater emphasis must be given to crisis management and leadership and the need to provide greater leadership in law workplaces. That “normal” energizes lawyers and judges to emphasize the development of necessary skills and attitudes toward success in leading work teams in serving clients and the public.

## II. THE RECENT CRISES PROFOUNDLY AFFECTED SOCIETY AND WORKPLACES

This Article argues that the legal profession, which, admittedly, is a nuanced set of interrelated firms, people, and activities that constitute law work in the United States, has suffered from the recent crises. The law business, like most other businesses and professions, must draw on those experiences to prepare for the anticipated crises ahead; in other words, recurring times of great challenge must be expected in the foreseeable future. The following paragraphs briefly describe those major crises<sup>11</sup> and set the stage for the following part that describes the profession’s sometimes brilliant and sometimes inept responses to the challenges.

### A. *Economic Recession and Its Effects on the U.S. Economy*

Beginning in late 2008, the United States began a painful economic recession caused by poor policy decisions that allowed financial services and banking industries to engage in practices that damaged the national (and to a large extent, international) economy.<sup>12</sup> Another cause of the recession was

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10. DONALD J. POLDEN & BARRY Z. POSNER, LEADING IN LAW: LEADERSHIP DEVELOPMENT FOR LAW STUDENTS 9, 236-37 (2022) [hereinafter Polden & Posner, LEADING IN LAW].

11. The Article covers, in summary fashion, the three crises in the interest of brevity and on the belief that readers are personally and, perhaps intimately, aware of the events that created the challenges discussed in the Article. Instead, the Article focuses on the impacts of those crises on the legal profession and on the leadership needed for recovery from these events and preparation for future crises.

12. Erin Coghlan, Lisa McCorkell & Sara Hinkley, *What Really Caused the Great Recession?*, U.C. BERKELEY INST. FOR RSCH. ON LAB. & EMP. (Sept. 19, 2018), <https://irle.berkeley.edu/what-really-caused-the-great-recession/>.



the greed of those financial institutions. The nation suffered high unemployment and home foreclosures amid the collapse of the market for subprime mortgages that then spread to financial markets and to professional services, education, and others.<sup>13</sup> Major financial markets skated on the edge of collapse. They reduced their demand for legal services and, as a result, many law firms were forced to downsize, laying off lawyers and staff as clients were pulling back business, including litigation and transactional work, from firms.<sup>14</sup> Similar adverse effects were felt in law school enrollment declines and corporate legal departments were doing more work internally rather than going to law firms.<sup>15</sup> The national economy was in shambles which affected the willingness of clients to undertake expensive legal work projects.

An assessment of the longer term effects on the legal profession of the 2008 recession showed that it created a new business model for law firms, one that shifted more work to partners (thereby exerting downward pressure on hiring new associates) and emphasized the use of temporary workers rather than hire recent law graduates, and embraced new technologies to respond to law firm and client needs.<sup>16</sup> The impact of the recession, therefore, caused a permanent adjustment to the law business, with adverse collateral effects on legal education and the economic model for modern law firms. Ironically, however, the recession contributed to growth in the legal services industry after creating operational efficiencies in how those firms operated and who was hired to support the business of law and technology in the delivery of legal services.<sup>17</sup>

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13. *Id.*

14. THOMAS S. CLAY & ERIC A. SEEGER, *ALTMAN WEIL, INC., 2018 LAW FIRMS IN TRANSITION: AN ALTMAN WEIL FLASH SURVEY* ii [hereinafter *2018 LAW FIRMS IN TRANSITION*].

15. Donald J Polden, *Lawyers, Leadership, and Innovation*, 58 SANTA CLARA L. REV. 427, 432-34 (2018) [hereinafter Polden, *Innovation*] (surveying effects of the economic recession on law firms and practice of law).

16. Joseph Valentine, *Producer Prices in the Legal Services Industry after the Great Recession*, U.S. BUREAU OF LAB. STAT. (Nov. 2019), <https://doi.org/10.21916/mlr.2019.25>.

17. Steven Lynch, *Comparing the 2009 and 2020 Recessions' Effects on Legal Careers & Lessons Learned*, LUCAS GROUP (June 25, 2020), <https://www.lucasgroup.com/your-career-intel/recessions-effects-legal-careers-lessons-learned/>.

### *B. The Impact of the COVID Pandemic in the Workplace*

Without question, the 2020 COVID pandemic exerted a profound impact on work relationships throughout the world. It resulted in an outsized impact on interpersonal relationships in schools, workplaces, homes, peoples’ mental health, and millions of peoples’ and companies’ sense of economic security. It also had substantial and lingering concerns for the economy, political institutions, and most employers and employees.

According to the World Health Organization’s report concerning the immediate and anticipated long-term effects of the pandemic, there was significant damage to the social and economic environments:

The COVID-19 pandemic has led to a dramatic loss of human life worldwide and presents an unprecedented challenge to public health, food systems and the world of work. The economic and social disruption caused by the pandemic is devastating: tens of millions of people are at risk of falling into extreme poverty, while the number of undernourished people, currently estimated at nearly 690 million, could increase by up to 132 million by the end of the year.<sup>18</sup>

COVID-19 also presented a global health crisis that affected (and continues to affect) much more than health and wellness issues. According to the United Nations Department of Economic and Social Affairs:

We are facing a global health crisis unlike any in the 75-year history of the United Nations—one that is killing people, spreading human suffering, and upending people’s lives. But this is much more than a health crisis. It is a human, economic, and social crisis. The coronavirus disease (COVID-19), which has been characterized as a pandemic by the World Health Organization (WHO), is attacking societies at their core.<sup>19</sup>

The COVID-19 pandemic also significantly impacted the legal profession, especially lawyers from underrepresented

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18. *Impact of COVID-19 on People’s Livelihoods, their Health and our Food Systems: Joint statement by ILO, FAO, IFAD and WHO*, WORLD HEALTH ORG. (Oct. 13, 2020), <https://www.who.int/news/item/13-10-2020-impact-of-covid-19-on-people’s-livelihoods-their-health-and-our-food-systems>.

19. *Everyone Included: Social Impact of COVID-19*, UNITED NATIONS, <https://www.un.org/development/desa/dspd/everyone-included-covid-19.html> (last visited Jan. 3, 2023).

communities.<sup>20</sup> Without a real “playbook” to address the necessary dramatic changes in how and where people work, most employers had to adjust to the pandemic by moving their workforce largely or entirely to remote work, rapidly deploying cybersecurity measures, and creating and implementing new technology options through, for example, remote working technologies.<sup>21</sup>

### *C. Social Justice Movements and Workplace Tensions*

The past few decades have seen heightened public interest in and concern over social justice issues that have been commented on in media sources.<sup>22</sup> Social justice movements, such as Black Lives Matter, #MeToo, and those addressing hate attacks on Asian Americans, were affecting how many employees evaluated their employers’ consideration of these matters.<sup>23</sup> For many employees, cutting across racial, ethnic, and religious lines, it was insufficient and short-sighted for their employers to say, “we don’t talk about politics at the office.”<sup>24</sup> Instead, employees were demanding that their employers take public positions on the conditions underlying those movements (such as discrimination on account of race, ethnicity, gender and sexual orientation, and sexual violence).<sup>25</sup> This demand by employees created real tension in

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20. *Pandemic Nation: Understanding its Impact on Lawyers from Underrepresented Communities*, THOMPSON REUTERS INST. (May 12, 2021), <https://www.thomsonreuters.com/en-us/posts/legal/white-paper-pandemic-nation-2021/>.

21. Carol Schiro Greenwald, *COVID-19 and Its Lasting Impact on the Legal Profession*, N.Y. STATE BAR ASS’N. (Oct. 13, 2021), <https://nysba.org/covid-19-and-its-lasting-impact-on-the-legal-profession/>.

22. See *World Report: United States Events of 2021*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2022/country-chapters/united-states> (last visited Jan. 3, 2023).

23. See, e.g., Christopher Achkar, *The Impact of Black Lives Matter on Employment-related Human Rights Claims*, HHREPORTER (Nov. 3, 2020), <https://www.hrreporter.com/focus-areas/employment-law/the-impact-of-black-lives-matter-on-employment-related-human-rights-claims/334807>; Andrew Deichler, *In the Wake of Anti-Asian Violence, Employers Demand Action*, SOC’Y FOR HUMAN RES. MGMT. (Mar. 23, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/anti-asian-violence-employer-response.aspx>.

24. *Id.*

25. According to one recent survey, forty percent of workers said they would change employers if their employer took a position on a social issue that the employee disagreed with. *Most Workers Say their Salary is Lagging Behind*

relations between employers and employees and placed a premium on employers’ abilities to address those crises without alienating employees and investors.<sup>26</sup>

The problems of sexual and racial bias and the occurrence of sexual violence are particularly important to lawyers and the legal profession. Lawyers have an ethical duty to combat bias and discrimination and, as officers of the court, have a duty to report and prosecute crimes of violence.<sup>27</sup> Some, but not all, major law firms took public positions on the police murder of George Floyd and other incidents of violence toward women and racial and ethnic groups.<sup>28</sup> Firms were facing employee and client questions about their position on systemic racism, institutional bias and discrimination, the effects of implicit bias, and other societal indicia of bigotry and prejudice. Perhaps the fear of taking a public position on these issues during a time of intense political disagreement prevented more lawyers and law firms from joining the national call for a racial reckoning.

Moreover, firms’ timidity in addressing these national controversies may have affected their decisions to initiate efforts toward greater diversity, equity, and inclusion in the law business. However, many other law organizations did advance the profession’s beliefs in diversity and inclusion by supporting social justice movements and taking public

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*Inflation*, CNBC (May 27, 2022, 9:57 AM), <https://www.cnbc.com/2022/05/27/most-workers-say-their-salaries-are-lagging-behind-inflation-cnbcmomentive-workforce-survey.html>.

26. Anne Marie Schloemer, *Black Lives Matter, Racial Unrest and Corporate Culture—How Do Employers Respond?*, NAT’L L. REV. (July 3, 2020), <https://www.natlawreview.com/article/black-lives-matter-racial-unrest-and-corporate-culture-how-do-employers-respond-us>.

27. ABA Model Rules of Professional Conduct, Rule 8.4 defines attorney “misconduct” to include conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion and other characteristics. MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS’N 2020). Further, the Preamble to the Model Rules encourages lawyers to improve the profession, advance the rule of law, and to ensure equal access to the protections of the law. MODEL RULES OF PRO. CONDUCT PREAMBLE (AM. BAR ASS’N 2020), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/).

28. Dylan Jackson & Christine Simmons, *A National Conversation on Racism: the Legal Profession’s Role in Driving Equality*, THE AM. LAWYER (Jun. 1, 2020, 6:24 PM), <https://www.law.com/americanlawyer/2020/06/01/from-big-law-to-boutiques-floyds-death-prompts-outrage-some-action-from-law-firm-leaders/?slreturn=20230005113216>.

positions on their importance in curbing national problems of bias, discrimination, systematic racism, and sexism.<sup>29</sup> One meaningful way was to promote firm-wide efforts to increase diversity, equity, and inclusion within their organizations.

*D. Impacts and The Beginning of a “New Normal” Concept*

The challenges described in the preceding paragraphs combined to create greater interest beginning of a “new normal” in workplace relationships, including employers’ and employees’ duties and expectations. The notion of a new normal was built around the dramatic changes in the law business that signaled the need for a new framework or transformational evolution around the needs of employees and employers during crisis, when the status quo was no longer possible and dramatic change was demanded. The great challenges and crises of the past fifteen years led to a new set of expectations in the workplace.

It is, however, accurate to conclude that the pandemic and other recent crises have created new, complex challenges for the law profession while also exacerbating some pre-existing ones. The pandemic raised new challenges regarding worker safety and vaccination policies, but issues like employee preferences for remote work, better work-life balance, and employee wellness considerations have been at the forefront of workplace policies and tensions for a while.

In that new normal, employers are experiencing worker demands for greater flexibility in their workday and conditions of employment because most of them work remotely through the pandemic. How important to workers is the opportunity to work remotely? How important is that opportunity compared to other matters of interest to employees? When asked in a survey what employees wanted from a new employer, the top of the list (at 46%) was a positive workplace culture.<sup>30</sup> Close behind were employment benefits (e.g., salary and wages, family leave, health, and disability insurance) and attention to

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29. Lisa Davis & Khasim Lockhart, *A Look At The Legal Profession Since Murder of George Floyd*, FRANKFURT KURNIT KLEIN & SELZ (May 24, 2022), [https://fkks.com/uploads/news/Law360\\_-\\_A\\_Look\\_At\\_The\\_Legal\\_Profession\\_Since\\_Murder\\_of\\_George\\_Floyd.pdf](https://fkks.com/uploads/news/Law360_-_A_Look_At_The_Legal_Profession_Since_Murder_of_George_Floyd.pdf).

30. Jared Spataro, *5 Key Trends Leaders Need to Understand to Get Hybrid Right*, HARV. BUS. REV. (Mar. 16, 2022), <https://hbr.org/2022/03/5-key-trends-leaders-need-to-understand-to-get-hybrid-right>.

employee well-being (42%), flexible hours (38%), and more than two weeks’ vacation time.<sup>31</sup>

Other surveys of employee concerns and workplace preferences arrived at similar conclusions. For example, Gallup conducted a recent survey of over 13,000 employees asking what factors were important to them when deciding whether to accept a new job offered by a new employer.<sup>32</sup> The Gallup results show an energetic workforce that insists on important changes and more opportunities in their jobs; and a willingness to “head out the door” if their employers do not address their needs and desires.<sup>33</sup> The survey results reveal a great deal about the current U.S. workforce; taking a look at what they said:

64% said more income and/or better employee benefits was a critical factor in taking a new job;

61% said a better work-life balance was very important to them, a response rate that coincides with greater emphasis on wellness programs and work accommodations for family and personal needs;

53% said they would consider a new job that would provide greater stability and security than they currently have;

42% of employees surveyed said demanding concrete, substantial change in their employer’s efforts to enhance diversity, equity and inclusion are important to them.<sup>34</sup>

The survey results indicate a complicated set of demands on employers from the workforce coming out of the pandemic and the economic recession and still coming to understand the impact of social injustice in America. These trends reveal important indications of workers’ concerns and preferences following the pandemic and what the new normal would look like to them.

The pandemic substantially interfered with “business as usual” in the places and locations where employees perform their work. Most employers considered and implemented remote work policies for their employees. Virtual work environments became the standard in higher education and

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31. *Id.*

32. Ben Wigert, *The Top 6 Things Employees Want in Their Next Job*, GALLUP (Feb. 21, 2022), <https://www.gallup.com/workplace/389807/top-things-employees-next-job.aspx>.

33. *Id.*

34. *Id.*

legal settings, office meetings, interactions with clients and co-workers, and many other settings.<sup>35</sup> Many employees moved their home offices to more attractive locations where they could work.<sup>36</sup> Further, many parents took over primary childcare duties while also performing their jobs.<sup>37</sup> But with the easing of COVID concerns, the questions of when, how, and if workers return to their offices and how they will re-establish their relationships with colleagues and co-employees are handled as employers attempt to adjust the workplaces to the new normal.

The recent “return to work” drives by employees and the “quiet quitting” concerns of employers are forcing employers to walk the proverbial tightropes between wanting to satisfy employees expressed preferences on work location and conditions of future employment (such as continuing options for remote or hybrid work), on the one hand, and employers’ desires to return to the “old normal” and status quo.<sup>38</sup> These decisions will not be made without employers’ thoughtful leadership and employees’ acceptance after discussion and negotiation.

### III. HOW DID THE CRISES AFFECT LAWYERS, LAW FIRMS AND THE PRACTICE OF LAW

The three recent crises had dramatic effects on many parts of the national (and world) economy and had particular impacts on the legal profession and the business of law. For example, as discussed in more detail below, during this period the job market for lawyers swung up and down, applications to law school declined significantly, and law firm profitability and

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35. Carole Hughes, *Remote Work and Higher Education*, NAT’L ASS’N OF STUDENT PERS. ADM’R (Dec. 21, 2022), <https://www.naspa.org/blog/remote-work-and-higher-education>.

36. Brodie Boland, Aaron De Smet, Rob Palter & Aditya Sanghvi, *Reimagining the office and work life after COVID-19*, MCKINSEY & CO. (Jun. 8, 2020), <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/reimagining-the-office-and-work-life-after-covid-19>.

37. Ruth Igielnik, *A rising share of working parents in the U.S. say it’s been difficult to handle child care during the pandemic*, PEW RSCH. CTR. (Jan. 26, 2021), <https://www.pewresearch.org/fact-tank/2021/01/26/a-rising-share-of-working-parents-in-the-u-s-say-its-been-difficult-to-handle-child-care-during-the-pandemic/>.

38. Laura Vanderkam, *There’s a Better Way to Reclaim Your Time Than “Quiet Quitting”*, N.Y. TIMES (Sept. 18, 2022), <https://www.nytimes.com/2022/09/13/opinion/burnout-quiet-quitting.html>.

viability varied significantly.<sup>39</sup> As a result, there were volatile and uncertain conditions throughout much of the law business and profession. This section of the Article considers these uncertainties and impacts of the crises and some reactions from law organizations and lawyers to those challenges. In some respects, the profession saw effective leadership of the organizations but in other respects, there was little to no meaningful leadership.

#### *A. Challenges Facing the Legal Profession Prior to The Crises*

It is important to understand in context that the law business has withstood three crises in recent years, but also that there were challenges to the legal profession and the practice of law even before these crises. Several trends were presenting “head winds” for the legal profession. For example, for several years prior to the economic crisis, the types and numbers of alternative legal services providers had been growing and presenting a disruptive influence on the business of law.<sup>40</sup> Similarly, law firm clients expressed their reticence to pay high costs of legal services and, of course, could increasingly resort to alternative service providers to get necessary legal services and products.<sup>41</sup> In addition, the input market of new lawyers experienced a glut of law school graduates at a time when client demands for legal services were declining.<sup>42</sup> At this time, the number of smart people electing to go to law school fell by double-digit percentages as they saw a diminishing market for lawyer services.<sup>43</sup>

In addition to declining demand for legal services and a disrupted market for lawyers, other problems facing the legal profession were demanding attention and action by firms. First are the concerns about lawyer competencies and skills

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39. Erin Mihalik, *What Has the Great Resignation Done to the Legal Field?*, MARTINDALE-AVVO (June 1, 2022), <https://www.martindale-avvo.com/blog/what-has-the-great-resignation-done-to-the-legal-field/>; Paul L. Caron, *The Fall 2022 Law School Admissions Season: Applicants Are Down 12%, the Most Among Whites (-14%) and the Highest LSAT Bands (-14%)*, TAXPROF BLOG (Aug. 1, 2022), [https://taxprof.typepad.com/taxprof\\_blog/2022/08/fall-2022-law-school-admissions-season-applicants-are-down-12-percent.html#more](https://taxprof.typepad.com/taxprof_blog/2022/08/fall-2022-law-school-admissions-season-applicants-are-down-12-percent.html#more).

40. Polden, *Innovation*, *supra* note 15 at 442; 2018 LAW FIRMS IN TRANSITION, *supra* note 14.

41. Polden, *Innovation*, *supra* note 15, at 442.

42. *Id.*

43. Caron, *supra* note 39.



expressed by clients and firms and, secondly, the widely-recognized need for greater diversity in the profession. These concerns are discussed in more detail below.

*1. The Issue of Lawyer Competence in Current Times*

A longstanding problem in the profession is that legal education and law firm leaders are not doing enough to address clients' persistent perception that new graduates don't have skills that clients/cases need and firms don't have resources (or commitment) to provide them for young lawyers. Clients of major law firms (mainly the general counsel of corporate clients) began to question billing practices for junior lawyers, essentially balking at funding "on the job training" for new lawyers.<sup>44</sup> Understandably, this puts pressure on law schools and legal employers to attempt to develop these talents and skills in law students and young lawyers.

However, some surveys of lawyers on the effects of the pandemic on their law practices showed that overall lawyer productivity did not decline during that period and that the initial declines in numbers of clients and reported revenues were being reversed by 2021 and that lawyers were reporting no appreciable decline from working remotely.<sup>45</sup> Many law firms indeed began a very creative response to the challenges of the 2008 recession by stressing competency based evaluation and retention processes for young lawyers, hired technology "gurus" to bridge gaps in understanding between the firm and their clients, and created innovative programs to spur great understanding of clients' needs.<sup>46</sup>

The effects of the recession were damaging to the legal industry and profession, like many other occupations and professions. Beginning with the recession, the law business began to experience many adverse impacts: clients were withdrawing significant amounts of legal work (litigation, mergers and other transactions), canceling projects that

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44. Jessie Yount & Hugo Guzman, *Rising Client Expectations Escalate Pressure on Law Firms*, LAW.COM (Oct. 4, 2022), <https://www.law.com/americanlawyer/2022/10/04/rising-client-expectations-escalate-pressure-on-law-firms/>.

45. Greenwald, *supra* note 21.

46. Polden, *Innovation*, *supra* note 15, at 445-49 (citing examples by several national law firms that experimented with methods of managing technology, communications with clients, and taking creative approaches to use of their attorney talent).

required legal expertise and representation and demanding that law providers be more efficient and less costly.<sup>47</sup> Several national law firms failed due to their inability to adapt to the changed conditions created by the recession and poor leadership within the firm.<sup>48</sup> Legal industry research firm Altman Weil, Inc., reported the need for much greater responsive action by law firms to their clients’ concerns:

Clients want greater cost effectiveness and value—and they are in a position to insist. This is not new, but the recession accelerated the demand for greater efficiency and lower overall costs. Clients are clamoring for more cost-effective legal services and technology-driven process improvements.<sup>49</sup>

The recession left many law firms behind the curve of client satisfaction and legal services billings and attempting to play catch-up with more competitive firms. Firms that successfully navigated this time period of economic malaise, job dislocations, and clients’ dissension managed their chief asset—their talent, especially senior associates and junior partners—well by supporting new lawyers and weeding out unproductive partners, incorporated clear-eyed innovation in their major strategic initiatives, and pursued real product and service differentiation in the firms’ market spaces.<sup>50</sup> The gap between the skills and attitudes that the law firms possessed and demonstrated and what was demanded of them during the crises was quite large. Many firms were simply not addressing their weaknesses in a challenging and fast-evolving marketplace.

## 2. Diversity in the Profession

A second major reaction of law organizations to the mounting challenges was to renew and invigorate their efforts to address the profession’s poor record on diversity and inclusion. The advent of widespread and national attention to social justice movements and concerns significantly impacted the legal profession. The legal profession, like other occupations, has been challenged by surging interest in

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47. Polden, *Innovation*, *supra* note 15 at 442; 2018 LAW FIRMS IN TRANSITION, *supra* note 14, at ii.

48. Polden, *Innovation*, *supra* note 15, at 443-44.

49. 2018 LAW FIRMS IN TRANSITION REPORT, *supra* note 14, at iii.

50. *Id.* at v-vii.

providing more job and career opportunities for people of color, people of different religious backgrounds, women seeking to advance in their careers, and most importantly, eliminating persistent patterns of discrimination and abuse in the workplace and society.<sup>51</sup> Efforts to elevate the nation's conscience on anti-racist policies and places as well as treating communities of color and women were widely embraced. And, those policies were being demanded by most sectors in society. Millennial lawyers have grown up, professionally and personally, in times that focus has been on awareness of unfairness and unequal treatment of those communities, generating crucial social justice movements.<sup>52</sup>

The legal profession was not exempt from public criticism by social justice activists but, more significantly, by members of the profession, legal services clients, and prospective lawyers.

As law schools became more accessible to minority students, graduates entered the profession and asked where were the Black, Latinx, and Asian American lawyers? According to the ABA's 2022 report on the legal profession, this group of lawyers constitutes about 19% of lawyers (up from 12% in 2012); even though law school admission of students of color approaches 32% of law school enrollment in 2021.<sup>53</sup> Morale at the young lawyer and associate levels has called into question the leadership of the profession and legal employers.

One response of the legal profession was to build firm training programs and support for diversity, equity, and inclusion (DEI) goals.<sup>54</sup> Another response is taking anti-racist positions on issues of public concern, such as police treatment of minority communities, promoting the rule of law in matters affecting those communities (such as housing and job opportunities), and supporting legal organizations seeking those goals by pro bono service of lawyers.

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51. Donald J. Polden & Leah Jackson Teague, *More Diversity Requires More Inclusive Leaders Leading by Example in Law Organizations*, 48 HOFSTRA L. REV. 681, 688-91 (2020) [hereinafter Polden & Teague, *More Diversity*].

52. *Id.*

53. AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 2022 26, 44 (2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/pro-file-report-2022.pdf>. The legal profession's lack of diversity shows in other demographics. In the ABA demographic survey only 3.7% of lawyers report they are LGBTQ and a little over 1% are lawyers report disabilities.

54. Polden & Teague, *More Diversity*, *supra* note 51, at 682-91.

*B. Pandemic Related Problems in the Profession*

Lawyers and law organizations suffered many of the same pandemic-related problems encountered by other professions and organizations. These challenges included employees altering their expectations of their jobs and shifting the way and place that work is done to more or mostly remote work settings.<sup>55</sup> Similarly, the so-called “great resignation” occurred when tens of millions of employees nationwide, including a significant number of lawyers, left their positions to deal with COVID impacts on their families and job choices.<sup>56</sup> Similarly, many American workers engaged in personal evaluations and determinations about the conditions under which they would “return to work” and what was acceptable to them in returning to the workplace. Worker hesitancy to return to the workplace requirements and conditions that existed before COVID has led to publicized concerns about “a new normal” in workplace, the need to return to prior workplace environment, and about a “great resignation” of workers who simply decided to quit working at all.<sup>57</sup> The reality is that many of those claims are inaccurate, or possibly overblown. Still, it is accurate that COVID exerted a dramatic impact on American’s feelings about work and the workplace.<sup>58</sup>

Law workplaces and the work of lawyers and their staff were not immune from the impacts of COVID and other challenges and disruptions in recent years. Recent surveys of how COVID-19 affected lawyers show that the pandemic fundamentally changed how lawyers worked, wished to work, and viewed their work, and that the changes in perspectives and attitudes very well could be ongoing and permanent.<sup>59</sup>

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55. Aaron De Smet, Bonnie Dowling, Bryan Hancock & Bill Schaninger, *The Great Attrition is making hiring harder. Are you searching the right talent pools?*, MCKINSEY & CO. (July 13, 2022) (reporting that forty percent of business workers were thinking about leaving their employer in the next three to six months).

56. Mihalik, *supra* note 39.

57. *Id.*

58. *Id.* (noting the effects of the pandemic, as well as pre-existing and continuing views of work and the workplace, have resulted in a dramatic increase in employees leaving jobs and significant shortages of available workers in many industries).

59. *Id.* (noting that law firms had lost nearly a quarter of their 2021 associates at the end of 2020 raising several possible causes for the significant downturn in lawyer worker to causes in addition to the pandemic); *see also*, AM. BAR ASS’N, PRACTICING LAW IN THE PANDEMIC AND MOVING FORWARD: RESULTS AND BEST PRACTICES FROM A NATIONWIDE SURVEY OF THE LEGAL PROFESSION

Two major challenges for law firms and organizations are the challenges of leading decisions on returning to workplaces following the pandemic and workforce losses through resignations.

*1. Return to Work Following the Pandemic*

The “return to work” challenges for employers during the pandemic also highlighted the infirmities and limitations of traditional worker expectations and desires about their work. The prospect of being required to work in an unsafe office added to other expressed concerns by employees, and in January 2022, the professional and business services industry, including the law business, faced a sixty-five percent labor shortage.<sup>60</sup> In addition, surveys for employees show their decisions to return to work or resign continue to be influenced by: how much they grew to like working from home (as opposed to returning to the expensive office spaces provided by employers), the challenges of long commutes to get to work and return home, toxic work environments (such as sexual or racial harassment, job discrimination, etc.); managing childcare, and others.<sup>61</sup> Following the outbreak of a contagious virus in communities, there was a public health challenge to employees returning to the office as the pandemic subsided.

In considering and assessing the public reactions to the “return to workplace” effort, it is necessary to gain perspective about trends and movements in workers’ attitudes toward work and the workplace in the past few decades. It is necessary to realize that even before the COVID pandemic entered the scene, there were significant changes occurring in the workplace and workers’ attitudes about their work, their employers, and their workplaces.<sup>62</sup> Those trends were exacerbated after COVID showed the world that much could be done working in home settings.<sup>63</sup> Some of the significant influences and trends occurring before the impact of the pandemic were employee concerns about job-related stress,

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(2021), <https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf> [hereinafter, PRACTICING LAW IN PANDEMIC].

60. Mihalik, *supra* note 39.

61. *Id.*

62. See 2018 LAW FIRMS IN TRANSITION, *supra* note 14.

63. Mihalik, *supra* note 39.

their overall wellness, and the “standard” workday.<sup>64</sup> Reactions to employer efforts to move their employees back to the workplace and standard work week, including seeking other jobs, advancing retirement plans, or just resigning. retirement plans, or just resigning.

## 2. Workforce Losses Amid the “Great Resignation”

Keeping productive employees during the COVID pandemic was a major concern to employers whose businesses and law practices suffered from a lack of sufficient workers and a high turnover of employees. This has presented a great challenge for law firms. One report found that in 2021, law firms lost about twenty-five percent of their associates through resignation and movement.<sup>65</sup> The COVID pandemic and many employers’ intelligent and resourceful response to its challenges resulted in unintended consequences. For example, the growth of technology that would permit employers to interact productively with their colleagues, clients, and others in their work got people to think about cost-saving and comfort-enhancing efficiencies.<sup>66</sup> Those technologies assisted employers and employees during the pandemic, but they also provided an alternative path to getting work done following the height of the pandemic.<sup>67</sup> Home-to-work commutes got longer and more dreary and possibly more dangerous,<sup>68</sup> so employees reasoned that they didn’t need to commute to the office. The pandemic, however, required (and not merely permitted) employers to move to remote work, this gave many employees a glimpse of “what could be” in terms of their workplace demands, especially the increased demand for the ability to

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64. *Id.* (noting associate lawyers’ concerns over stagnant wages, concern about personal wellness, burnout and feeling underappreciated).

65. *Id.*

66. Andra Ghent, Jesse Gregory & Morris Davis, *The work-from-home technology boon*, VOXEU (Apr. 18, 2021), <https://cepr.org/voxeu/columns/work-home-technology-boon>.

67. *Id.*

68. Jacquelyn Smith, *3 Ways Your Commute to Work May be Slowly Killing You*, Bus. INSIDER (Feb. 29, 2016, 11:02 AM), <https://www.businessinsider.com/ways-your-commute-is-slowly-killing-you-2016-2> (noting the concerns of many workers faced with commuting to and from work); Renee Onque, *Remote workers reclaimed 60 million hours of commuting time and are prioritizing their wellbeing—not work*, MAKE IT CNBC (Nov. 29, 2022, 8:15 AM), available at <https://www.cnbc.com/2022/11/29/remote-workers-reclaimed-60-million-hours-of-commuting-time.html>.

work remotely. Further, employers also realized that having all or much of their workforce work remotely would generate cost savings (office space rental, commuting assistance, etc.) and possibly a happier workforce.

#### IV. THE “NEW NORMAL”— LESSONS IN LEADERSHIP FROM MANAGING CRISES

The crises described above have challenged lawyers and the legal profession with profound impacts. However, they also left the profession with lessons that will be useful in addressing future crises affecting the work of lawyers. If the leaders in the profession heed them. What lessons should lawyers and their firms and organizations take from the effects and impacts of the three crises the country has experienced in the last two decades? Is the “new normal” really new or simply a reminder that we can continue to expect a major disruption every decade or half-decade? Should our legal institutions—from law schools to judicial offices to law firms and corporate counsel offices—develop more thoughtful planning and adapt nimbleness to handle the next consequential crises or, worse yet, another string of crises? The answer to these future-looking questions is that law firms and organizations must frame a “new normal leadership” approach that is created from the lessons of the multiple recent crises and that attempts to inspire lawyers and their professional teams to respond to the inevitable future challenges. Leadership within law firms and organizations is necessary to move them toward greater vitality and resilience to the next inevitable crisis or serious challenges and to keep their talent focused on and committed to their firm’s vision for success. Leadership consists of a set of practices that can be developed and that serve to move the organization’s members—leaders and their constituents—toward shared goals.<sup>69</sup> Consistent with the idea that law firms need effective leadership to envision the next great challenge and to mobilize the members toward addressing those challenges, the following are some “lessons” for forward-looking lawyers and their organizations.

The first lesson is that law organizations need to develop the capacity for leadership through the organization’s ranks—from new associates to senior partners in charge of the firm.

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69. Polden & Posner, *LEADING IN LAW*, *supra* note 10, at 35-37.

The leading literature on leadership development is that leadership “skills, behaviors, and attitudes...can be learned, honed, and developed.”<sup>70</sup> Those skills need to be focused on the needs of the firm or organization and its members. The ABA’s report on practicing law in (and after) the pandemic emphasizes the importance of leadership that is “engaged, transparent and accountable”.<sup>71</sup>

The second lesson argues that law schools should teach pertinent skills, including leadership, emotional intelligence, professional judgment, and crisis management and leadership as a part of their regular curriculum. The same is true for law firms. Law organizations must take the need to manage crises and provide crisis leadership more directly. Certainly, the legal profession has experienced an economic crisis before. For example, the “dot-com” collapse of the late 1990s and early 2000s exerted adverse financial and investor confidence problems nationally, which, in turn, affected other national law firms affected by the market collapse.<sup>72</sup> It has also suffered high-profile embarrassments such as the involvement of national law firm lawyers in the Enron scandal of 2002, which undercut trust in the profession more than all the snaky lawyer television shows.<sup>73</sup> The need to anticipate and manage the next looming crisis, irrespective of the source and nature, should be the ordinary and necessary strategic planning going forward for law firms.

Crisis management is a body of organizational and leadership policies and practices, including, for example, anticipating and preparing to manage crisis by strategic foresight, scenario and contingency planning, war games and

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70. *Id.* at 4.

71. AM. BAR ASS’N, *supra* note 53.

72. Dan Roe, *Stealth Layoffs Obscure Big Law Exposure to Silicon Valley Losses*, AM. LAWYER (Nov. 14, 2022), available at <https://www.law.com/americanlawyer/2022/11/14/stealth-layoffs-obs-cure-big-laws-exposure-to-silicon-valley-losses/?slreturn=20230031115326>; *See also*, *Here’s Why The Dot Com Bubble Began and Why it Popped*, BUS. INSIDER (Dec. 16, 2010, 2:00 AM), <https://web.archive.org/web/20200406151705/https://www.businessinsider.com/heres-why-the-dot-com-bubble-began-and-why-it-popped-2010-12>.

73. Julie Hilden, *Why Enron’s sleazy lawyers walked while their accountants fried*, SLATE (June 21, 2002, 10:45 AM), <https://slate.com/news-and-politics/2002/06/how-enron-s-lawyers-wriggled-off-the-hook.html>.



the like.<sup>74</sup> Law organization leaders and leaders of the Bar must develop the leadership skills and attitudes needed to address the dangers of great financial harm.<sup>75</sup> Obviously, the critical attributes of law firms that are attuned to the future is to “anticipate, plan for, and prepare for” the next economic recession or pandemic; this is a central message of crisis management and preparation.

Third, legal employers must commit to and invest in “next stage” skills for their lawyer talent. One persistent theme during the crises of the last fifteen years is that clients are disappointed that their lawyers do not have the skills to understand the clients’ needs and address them.<sup>76</sup> Legal employers must realize that many of their lawyer talent is not prepared for the demands of the “new normal” with the skills and knowledge that will provide the firm with credibility with its clients. Recognition of new skills and attitudes needed to survive (or even thrive) in the emerging law practice requires greater training emphasis on the ability to make transitions and adapt to new challenges, to develop resilience and grit, and to possess and demonstrate the interpersonal skills required when facing a crisis. These are the new “must have or develop” skills for lawyers as is the ability to leave one employer for another.

From a leadership point of view, the fact that crises occur, often generated by unpredictable reasons outside of the control of the firm’s leadership as well as outside the business of the firm at all, raises the need for greater preparation and law firm flexibility. These sudden and unpredictable crises can significantly damage the firm’s reputation, including its relationship with clients and the financial integrity of the firm and its lawyers. Those alone are reasons enough to engage in preparations for managing crises. In addition, the inevitability

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74. J. Peter Scoblic, *Learning from the Future*, HARV. BUS. REV. (Jul.-Aug., 2020), <https://hbr.org/2020/07/learning-from-the-future>.

75. Robert S. Kaplan & Anette Mikes, *Managing Risks: A New Framework*, HARV. BUS. REV. (June 2012) (describing the impacts of risks, including especially external ones such as natural and political disasters, and major macroeconomic shifts (in other words, the three crises discussed in this article) and the need to be able to manage those risks and, more significantly, to lead others through such difficult times).

76. Polden, *Innovation*, *supra* note 15, at 441-44 (noting survey of large law firms reporting challenges from clients demanding less costly legal services and understanding client needs).

of the next major crisis to damage the law business (or indeed, law firms within that business) requires leadership to make transitions to new, dramatically different cultural and economic conditions—transitions that demand institutional attention to the ability to innovate through (or around) a significant challenge.

In addition to the periodic external crisis, law firms continue to face a range of ongoing and often substantial challenges to their business plans and to the legal profession. As the commodification of law practices continues, American law firms are facing increasing competition from other providers of legal services, the internationalization of law practice, and from foreign law firms that can provide that commodity (such as document inspections, litigation management, management of technology).<sup>77</sup> These challenges are ongoing and require a different level of continuous improvement and innovative changes, often not addressed by law firm leadership.<sup>78</sup>

Fourth, law firm leaders must make clear their positions on improving employee well-being, for example, on return-to-work issues for their lawyers and staff. The COVID pandemic presented great opportunities for all employers, including professional services organizations like law, with information about the importance of employee wellness. Law organizations are not democracies, but need to seem like ones to attract and retain talent. That requires that all law organizations (including courts and corporate counsel offices) engage in a thoughtful analysis of the future of work at their organizations. Young lawyers, like many other professionals, do not need to be physically connected to others in the workplace to do their work. They hate commuting like everyone else! They perceive, with some justification, that their work product from an at-home office is as sufficient as work done in a high-rise office building surrounded by other lawyers and staff.<sup>79</sup> They also feel that their safety and health should be important to their employers. However, legal employers are pressing a return to the office because there is

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77. *Id.* at 432.

78. *Id.* at 441-50; 2018 LAW FIRMS IN TRANSITION, *supra* note 14, at iv-vi.

79. *Does Working Remotely Really Work for Lawyers?*, CONN. L. TRIBUNE (Aug. 28, 2020, 11:33 AM), <https://www.law.com/ctlawtribune/2020/08/28/does-working-remotely-really-work-for-lawyers/>.

substantial evidence that lawyers are more productive in a team or unit where interaction is the norm and their lawyers are supported in their work by other lawyers.<sup>80</sup>

Attracting talent will continue to challenge law firms. Since 2010, there has been a substantial decrease in the number of smart people deciding to go to law school.<sup>81</sup> Since the recession, total law school enrollment has declined almost twenty-five percent, applications to law school are down by roughly 30,000 applicants, and LSAT scores are down about fourteen percent in the highest tiers of the test scores.<sup>82</sup> This fact resulted in a hiring bonanza among top firms for the dwindling pool of strong graduates and dramatically increased salaries and bonuses.<sup>83</sup> It also placed additional demands on law firms' efforts to retain their best legal talent by paying attention to the needs of their lawyers and staff.

Fifth, law firms and organizations must expand their capacity to innovate and improve in delivering legal services to clients. That requires the most effective use of technology to reduce the cost of many forms of service to clients and their ability to attract and retain talent. Another recurrent theme through the recession and pandemic is that many firms were "caught unaware and were either indifferent to the need for significant, responsive change or did not give it sufficient attention."<sup>84</sup> Moreover, many firms chose to ignore the social movements swirling in the wake of police killings of Black citizens even though their younger lawyers felt that these events were tremendously important to what they cared about on a personal and a professional level. Moving forward, law

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80. *Motivating lawyers to participate in law firms return to work policies*, THOMPSON REUTERS (Apr. 27, 2022), <https://legal.thomsonreuters.com/blog/motivating-lawyers-to-participate-in-law-firms-return-to-office-policies/#:~:text=The%20legal%20profession%20is%20such.professionals%20return%20to%20the%20office.>

81. Miranda Li, Phillip Yao & Goodwin Liu, *Who's Going to Law School? Trends in Law School Enrollment Since the Great Recession*, 54 U.C. DAVIS L. REV. 613, 614 (2020); AM. BAR ASS'N, *supra* note 59 at 39-40.

82. Li, Yao & Liu, *supra* note 81, at 617; AM. BAR ASS'N, *supra* note 59, at 39-40; Caron, *supra* note 39.

83. For historical data on law school enrollment and associate salaries, see *Law School Enrollment*, L. SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/trends/enrollment/all> (last visited Feb. 1, 2023); see also *Private Sector Salaries*, NAT'L ASS'N FOR L. PLACEMENT, <https://www.nalp.org/privatesectorsalaries> (last visited Feb. 1, 2023).

84. 2018 LAW FIRMS IN TRANSITION, *supra* note 14, at ii-iii.

organizations must develop and retain the leadership to address these shortcomings, attract the best talent through a responsive measure to diversity their ranks of lawyers and staff, and take care of their talent.

Institutional innovation in the practice of law and delivery of legal services in the face of great challenges was often a decisive factor in the law firm’s success, including finding and retaining talent, managing technology, and adapting to the need for constant innovation in pricing and delivery of legal services.

The crises considered in this Article underscored the need for greater attention by firms to client needs and demands. Law firm clients expect law firms to make strategic and long-term investments in operational excellence, which has led to greater law firm interest in business operations professionals at the firm. Further, clients expect law firms to understand their own business operations inside and out and continuously improve upon them. These needs will not happen by chance, but rather can be achieved only by effective leadership.

#### V. CONCLUSION

The Article intends to shape a dialogue and start a discussion about the future—whatever that future is—“old normal,” “new normal,” next iteration—because it is only reasonable to believe that the business of law and the legal profession will continue to experience major disruptions, just as our economy and society can expect. Climate change, political upheavals, and social movements will provide the next set of great challenges for law organizations and groups. The profession seems to have weathered the three most recent crises—the settings for this Article—with mixed results and outcomes, some of which have not been fully resolved at the time of this Article. Will effective leadership step forward in American law firms and organizations to anticipate, plan for and address the next crisis? The Article argues that unless we train lawyers for leadership roles of the future and unless we pay serious attention to crisis management, the poor crisis management performance of the past two decades will again occur, but perhaps with more severe repercussions to our institutions, to the rule of law and to the people sworn to uphold those institutions.