

# ***How To Be A Change Agent in The Legal Profession***

Oklahoma State Bar Association, CLE  
Course by Herb Rubenstein, Esquire  
[www.leadershipforattorneys.org](http://www.leadershipforattorneys.org)

# ***Introducing Herb Rubenstein***

- Author, Leadership for Lawyers – 1<sup>st</sup> ed. NITA, 2005; 2<sup>nd</sup> ed. ABA, 2008
- Litigator DC, MD, VA, Colorado Federal Courts
- Georgetown Law, JD 1982
- CLE and CPE (Accountants) Presenter – Leadership, Ethics. Professionalism, The Future of the Legal Profession
- Founding Board Member Association of Professional Futurists
- Class A, Member PGA, Golf Technology Investor
- Working on new book to improve the legal profession and the courts

# ***Changes in the Legal Profession Brought About by Instructor***

- Started first law firm in DC area, possibly nation for a client which was owned by a non-lawyer (the day after rule change in early 1990's in DC allowing non-lawyer to hold minority interest in firm)
- Got CLE credit for leadership development courses from 1 State om 2001 to over 35 states based on writing book, *Leadership for Lawyers*, first book ever written by a lawyer on leadership
- Owned the first law firm in 1984 in DC area and possibly nation to have a computer on the desk of every person who worked, even clerks and interns, for the firm
- One of the first lawyers in the nation to use email through CompuServe
- One of the first lawyers in the nation to file a document electronically in the early 1990's in federal court

# ***Additional Contributions to the Legal Profession***

- One of the first lawyers to train State judges on how to operate and manage electronic courtrooms
- Member of first group of lawyers allowed to take the Virginia Bar who did not live in VA or promise to have an office in Virginia
- Will write one of the first books challenging the "right" of lawyers to self-regulate, control lawyer discipline, challenge judges' rights to manage our court systems, allow non-lawyers to represent clients in court and draft legal documents, and promote SEC managed non-lawyer investment capital into the legal profession and law firms

# ***Key Topics – Learning Objectives***

- What is the definition of a “change agent” at the sector level and the organizational
- How to operate at the “network” or industry level
- How to build teams
- How to perform rigorous stakeholder analysis
- How to pick your fights, when and how to compromise, how to get others to suggest attractive alternatives to your suggestions, ideas and goals; and how to measure success using a management information system (MIS)
- How to maintain life balance and be a leader promoting change in the traditional legal profession
- How to operate a financially successful law practice or nonprofit while being a “change agent”

## ***Operational Definition of Change Agent***

- Person, group, organization that “promotes or enables” documentable change in an industry, sector, society at large or an organization
- Possessor and successful user of “convening power” necessary to attract attention, resources, people, groups, activity necessary to get others to change in a manner where the change lasts
- Visionary, planner, conceptualizer, strategist, opportunist, leader, motivator, excellent communicator, efficient, effective

# ***Seven Processes to Being a Successful Change Agent (Not Steps and Not In Order)***

- Understand the basis/foundation of the status quo, the resistance to the change you seek
- Know the stakeholder groups, institutions, laws, social, ethnic, political and religious groups supporting the status quo
- Know all of the potential stakeholder groups that both will benefit from the change you seek and will work hard to change the status quo – this works at the organizational and sector or societal level and in between

# *Eleven Processes (Con't)*

- Ability to recruit and organize (leadership and communication), form teams and teams of teams, Delegate
- Desire to work at the “network” level and know your audience and what motivates them
- Willingness to be the “point person,” take the heat and criticism and attacks, and share credit with others
- Be able to focus, have a clear intentionality on the exact change you want to bring about

# *Stakeholder Analysis*

- Know who is on “first” and not willing to give up the privileges, benefits, comforts of the status quo – the “resisters” and their language, values, methods, resources, culture and vulnerabilities
- Know how to respond to “This is always how we have done it around here,” (Never factually true, but shows their *commitment*)
- Know groups, their actions, individuals who are likely to pop up when their “status” quo is challenged
- Know who wins if you win, loses if you lose, loses if you win, and wins if you lose
- Those who lose if you win will be strongest opponents and those who lose if you lose will be the strongest supporters, but may not have the resources you need to succeed
- Know who will support you with resources of time, knowledge, money, people, access, insight, credibility
- **KNOW WHO IS IN THE ROOM FOR EVERY MEETING / EVENT**

# ***Recruit, Organize, Manage, Deploy (ROMD)***

- From my first book, *Breakthrough, INC.: High Growth Strategies for Entrepreneurial Organizations* (Financial Times/Prentice Hall, 1998, download at [www.herbrubenstein.com](http://www.herbrubenstein.com))
- Get the order right. Immediately after vision, start recruiting. This tests your message or in business we call it, “Proof of concept.”
- How to recruit individuals and groups/networks – Seek enthusiastic passionate supporters, diversity, specific, yet broad competencies, skills, specific areas of expertise, already formed groups

# ***ROMD (Con't)***

- Once you start recruiting, start organizing meaning identify more clearly the skills, resources you need and ask people to provide them and work their resources for the maximum benefit of the cause
- Organize the “culture” and work ethic, the ethics, the decision-making structure of your group
- Keep organizing, getting people to work together, and become a leader of leaders and not just a leader of followers (see the series of three articles on this topic included with this course)

# ***ROMD (Con't)***

- As you organize, delegate major areas of activity to key leaders, do not micromanage – See article on *Delegation* in your materials for this course.
- Begin to set tangible interim goals with dates, begin to commit and allocate resources and then move on to manage, which is still a step before deploy....
- “Manage” means making detailed plans to ensure at the outset, as best as you can, that the interim goals will be achieved (even if this means moving people around), setting an efficient operational structure and preparing your “Brand” (reputation) in the area

# ***ROMD (Con't)***

- Deploy – Do not deploy (launch your change campaign or major efforts) until recruiting, organizing and managing are all well underway. You may want to be in “stealth” mode to some extent in ROM, but in D, you have to be ready to launch
- Have a management information system to give you feedback every day/week about what is happening as you seek to achieve your quantitative and qualitative goals to gain popularity, improve recruiting of people, groups and resources, attack and minimize opposition stakeholder groups and empower and embolden supportive stakeholder groups

# ***Working At The Network Level***

- Ask yourself - “How much minimum wage level work do you do?” In order to work at the network level, the answer better be “Very little,” or you will never have enough time to work at the network level
- Be a leader of leaders
- Work with other leaders – often approach organizations at the top rather than “work your way up”
- Form strategic alliances, in writing, quarterly goals
- Find, collect, create and allocate resources
- Direct behavior, delegate, motivate and train others
- Beware of working 100 hours a week – Life Balance

# ***Navigating Networks***

- Know the gatekeepers at every organization
- Know the decision makers at organization
- Make requests that either the decision maker can agree to or help you find others who can agree to the request
- Look for openings – Hubert Humphrey on “How to Make Friends” Speech 1977
- Be able to commit your network to help other networks – Rex Tillerson raises money for Boy Scouts by going to fundraising “asks”

# *Create and Manage Your Brand*

- Every brand (how you/idea is viewed) starts with “credibility”
- You must convince others the change you seek is possible and you are the most likely person to make it happen, with their assistance
- Credibility of:
  - Self and your team promoting the change
  - The idea/vision for the change
  - The right time, place for the change
  - The specific methods to be deployed to achieve the change
  - The specific benefits of the change (for your supporters)
  - The convincing some that the costs of the change are not to be feared by them so they will not strongly oppose you an your idea for change
  - The timetable for the change
  - A better next status quo after the change (stability)
  - The inevitability of the change as you see it (there is no alternative – TINA)

# ***Brand (Con't)***

- Brand is composed of:
  - Content including logos, music, colors, typeface
  - Education
  - Public Relations
  - Access to people, media (social and print)
  - Understandable language
  - Consistency with dreams, ideas of progress, values
  - Shows people something is in this for them
  - Risk avoidance – message discipline
  - Building on the past, creating the future

# ***Be Supportive of Others Now***

- Create real benefits for many along the way
- Listen to others and make sure they know they have been “heard”
- Create meaning for people as well as hope
- Show people a path and then let them discover that path and help them create their own path beyond the path you give them
- Create ***Community along the way by helping other connect***
- Create language, ways of speaking, culture, connection
- Large tent, diversity, but people focused on the change you seek when they are in the tent
- Promote involvement, participation, empowerment, listen, promote appreciation, having people being heard
- Transformational – helping people become better, more effective, more engaged, active, enlivened, feeling good about themselves and their identity

# ***Be Clear About Your Opponents and Those Not Taking Sides***

- Ideally, do not treat opponents as your enemy, but if they treat you as their enemy, you will have to let your supporters know they are “going low,” and must be defeated or stopped from defeating the change you seek
- Defeating an opponent might mean getting them to agree with you or stopping them from opposing you – ***not harming them***
- Seek coalitions with people with whom you and your cause might not agree on everything
- Seek to find common ground with opponents and groups on the sidelines, not taking one side or another in the fight
- Your biggest *opponent* to change is “apathy” or people or groups doing nothing to support your cause or desired change

# ***View Your Efforts As A Campaign and a Way of Life***

- You view of the change you want must be supported by a GAP analysis and people must agree with your explanation of the present situation – pure description of the present and your desired change are essential
- Steadfast commitment must last a long time
- Large investment before you see any results
- Story of “Lois” in Leadership on the Line by Ron Heifetz, Professor, Harvard University, See: Empty Chairs at first  
<http://www.dmmserver.com/DialABook/978/157/851/9781578514373.html>

# ***Understand the Difference Between an Adaptive Problem and A Technical Problem***

- Per Ron Heifetz, See handout/article summarizing his speech by Herb Rubenstein
- Technical problem – we know how to diagnose and solve
- Adaptive problem – we do not yet know how to diagnose and solve – need input from many sources to figure this out
- Most change is needed, in the long run, to deal with adaptive problems, not technical ones
- But change is important when it comes to technical problems
- Using AI, a technology, or virtual court sessions is **NOT A TECHNICAL PROBLEM**, it is an adaptive problem caused by the culture of the legal profession – Herb Rubenstein not allowed into federal court in the Eastern District of Alexandria Virginia with his laptop computer circa 1993, after he had already filed court documents electrically in federal court in Philadelphia, Eastern District of Pennsylvania and had already been in a court room with computers on counsel table and Judge’s desk, witness chair area and jury seating area.

# *Point Person*

- Target on your back and your front
- Must anticipate all attacks and all sources of attacks and be prepared for them
- Opposition will be relentless, unethical, not play by any rules, will lie, but you must set and keep your own ethical standards
- Transparency is your friend, so hide little
- Must be aggressive, but gracious
- Must be determined, but flexible
- Must be goal oriented, but willing to compromise
- Must put the cause before self, but not before family
- Must never let anyone else take a fall or take the blame for your actions nor ever let anyone else pin any blame on you that you did not earn

# ***Focus***

- Pick your battle(s), but never say or suggest “my way or the highway” because people start looking for the highway
- Do not spread yourself or your team too thin
- Can have a series of goals that work together synergistically
- Must know the order of which goals to go after and which activities to do in their proper order to achieve your goal.
- Sequence is an essential element of success – just ask dancers, musicians, athletes, public speakers, engineers, just about everyone – The order of your actions - what you do – will be a key factor in determining success or failure, achieving your goals or not. Understand the proper sequence for everything

# Select Your Battle/Goal/What You Want to Change

- Pick big battles even if it is in a small area – Airline story, cutting costs by 99.97% in area
- The following is a listing of areas where change is needed in the legal profession –
- You will think of many additional areas
- ***Access to justice*** – There will never be enough lawyers to meet the legal needs of our people so what do we do to make the changes necessary to where people have all of their legal needs met by trained personnel?

# *Other Needed Change Areas*

- Fairness and Diversity/Inclusion – always seek to serve a diverse clientele and to build teams with people who “think differently,” have different experiences
- Proper discipline of lawyers who violate the ethics rules – insufficient regulation of the legal sector
- Not enough capital or sufficient returns to promote proper investment in providing the volume of legal services to meet needs
- Over training of legal personnel who only seek to provide a narrow range of legal services

## ***Other Needed Change Areas (Con't)***

- Insufficient resources for victims and too few rights for victims of crime and discrimination
- Courts are too inefficient and too slow
- Lawyers are too expensive
- Unauthorized Practice of Law Rules are too restrictive and are created by lawyers who have a conflict of interest in creating them
- Lack of civility and professionalism among lawyers

## ***Other Needed Change Areas (Con't)***

- Many lawyers are terrible leaders
- Many lawyers are dishonest and lie often
- Not enough lawyers do enough *pro bono* work
- Legal system is too complicated for people to understand
- Legal system refuses to deploy modern information technology to the maximum potential level and for the maximum potential benefit

## ***Other Needed Change Areas (Con't)***

- Legal education is too expensive, takes too long, doesn't prepare lawyers well
- Bar exams are not good predictors of success in the legal profession and may be discriminatory – need social science research
- Substance abuse in legal profession
- Too few women in powerful positions in the legal profession
- Selection process of judges is now too political

## ***Other Needed Change Areas (Con't)***

- Too many innocent people plead guilty
- White collar criminals not sufficiently punished or even charged
- Wealthy and politically connected have huge advantages in legal system and in the courts
- Law and punishment applied in a discriminatory manner in many places in US
- Bail system prevents innocent people without money from avoiding jail time for a crime they did not commit

## ***Other Needed Change Areas (Con't)***

- Penal system is poorly managed
- Recidivism is too high
- There are too many barriers to exercising a person's right to vote
- The legal system is not proactive in dealing with climate change
- Human trafficking, domestic violence and sexual exploitation is not well policed or dealt with in our legal system

## ***Other Needed Change Areas (Con't)***

- Social media is not sufficiently regulated to guarantee privacy rights or eliminate demonstrably false and defamatory statements
- Minority and women's rights are not sufficiently protected by our legal system
- Environmental justice is not sufficiently protected by our legal system

## ***Other Needed Change Areas (Con't)***

- There is no system to consistently hold corporations criminally liable for their actions other than payment of fines
- There is no effective system to consistently prevent employment discrimination, unequal pay for equal work or whistleblower protections
- There is no effective system to consistently guarantee legal rights to undocumented persons and asylum seekers

## ***Other Needed Change Areas (Con't)***

- There is no system to consistently protect people from guardians who do not act in the interest of those for whom they are appointed
- Estate proceedings take too long and are inefficiently handled causing a loss of value to the estate
- The legal system has little power against domestic terrorism
- The legal system has little power against cyber-criminals

## ***Other Needed Change Areas (Con't)***

- The legal system has little power against prosecutorial misconduct
- The legal system has little power against police misconduct
- Complaints against public officials, such as police, are generally not made public (lack of transparency)
- Complaints against lawyers that get into the disciplinary system are not made public until a “resolution” of the matter with discipline or no discipline (lack of transparency)

## ***Other Needed Change Areas (Con't)***

- Courts are not open 24x7 (unlike hospitals) thus causing undue hardship for hard working low income people to have to take time off work to come to court
- Courts are ill equipped to deal with emergency legal problems especially those that occur to people without a lawyer
- Three strikes legislations unduly burdens both defendants and our penal system with undue harshness

## ***Other Needed Change Areas (Con't)***

- All states other than Illinois allow police and investigators to lie to youth during interrogation
- The legal system has little power against lawyers and *pro se* litigants who file false and meritless claims
- The legal system has little power against lawyers and *pro se* litigants who delay trials and run up expenses in litigation

## ***Other Needed Change Areas (Con't)***

- The legal system has little power to help low income workers defend their workplace rights
- The legal system has little power against lawyers and *pro se* litigants who delay trials and run up expenses in litigation
- The legal system has little power against judges who do not issue prompt rulings
- The legal system has little power to speed up the court system

## ***Other Needed Change Areas (Con't)***

- The legal system has little power to assist people in the re-entry into society after incarceration
- The legal system has little power against to protect the legal rights of the LGBTQ community, especially LGBTQ youth
- The legal system has little power to help people improperly denied government benefits
- The legal system has little power against improper school based arrests and expulsion

## ***Other Needed Change Areas (Con't)***

- The legal system has little power to assist students treated illegally by US military academies
- The legal system has little power to assist people in protecting themselves against housing, financial (loans, access to capital) and other forms of discrimination
- Work in the area of eliminating court filing fees for people of limited means

# *Once You Choose Your Area*

- Must set short term and long-term measurable goals (MIS and reporting)
- Look for people to support in addition to people who can be supportive
- Hone your “planning” skills
- Next set of slides shows you how to create a strategic plan and a management information system
- Need not be a long plan, but should have key “milestones” and “performance indicators”

# ***You Need A Strategic Plan***

- Strategic plans must be flexible to deal with unforeseen circumstances
- Strategic imperative – elements of the plan that must occur for success
- Strategic initiative – know who is already doing what (initiating) in the field as you begin and seek to form alliances
- Strategic impact – understand how the change you want impacts (benefits) the legal profession and those who use it or are employed by it

# ***Root Cause Analysis in Strategic Planning***

- GAP Analysis – Clear statement of where you are now, why the situation is as it is and where you want to go and how it will work going forward
- Root Cause Analysis – Why has this goal not been achieved in the past – Internal factors and External factors need to be examined
- Identify the current measures of the goal(s) and adequacy of the current measurement of the goal; maybe create new measures of success

# ***Be Prepared to Make Decisions***

- List key decisions in advance that will need to be made to help make progress toward the change you want to see occur
- Prepare in advance to help you and your team make the best decision in each instance:
  - Decision areas include:
    - Money
    - People/Staff Time
    - Volunteer Time
    - Other Resources
  - How do you ask for, handle, and account for the money spent?

# *Scenario Planning*

- Create external scenarios showing what will occur in the external environment in response to making and implementing a decision
- Create at least three potential scenarios
- Create “responses/plans” to respond in an optimal manner if one of the three scenarios occurs – alternative strategies
- Scenarios can be low probability but high impact series of events or high probability

# *Organizational Chart*

- Eventually you will need an organizational chart (even if informal) to describe the roles, who is filling the roles and to whom someone reports, who evaluates whom, who decides on a replacement in that role
- Decision Rights – To avoid debilitating internal fights, allocate decision rights intelligently and some decisions have to be made by a group and be willing to have votes and majority or super-majority (2/3) to decide
- Never rely on “consensus” as this is just not feasible in a fast moving world

# ***Schedule and Sequence***

- You will need a timeline for proposed actions in their correct sequence
- This is a guide, but must be in writing and generally agreed to by the team
- Resilience – how to stay enthusiastic, on purpose, when things do not go as well as planned or hoped
- Spend time figuring out synergistic sequence how one action flows into and supports the next action and helps build momentum for the effort

# *Communication Plan*

- Integrated communication – saying the same thing internal to the group as external to all of the audiences
- Must have excellent cyber-security protection
- Everyone must be very information technology literate
- Must know how and how often to reach every audience in the optimal manner
- Must create inflow of communication (feedback) from audiences that reaches the right people in the organization who can take appropriate action
- Meetings – keep them short, virtual most often, and always have a written agenda and write up

# ***Management Information System***

- Essential to know/understand what is happening both within the organization and externally
- Data analysis – must have some capabilities here so hire or recruit a person to be the resident “data scientist”
- Regular internal reports must be kept on a computer system where the “right” people have access to these reports and can comment on them
- Measures both the performance/execution of the plan and its impact at each stage (like a dashboard or a scorecard)

# ***Promoting Engagement***

- Must have a consistent acknowledgement strategy
- Must have proper training for everyone in their roles
- Must report good and bad news quickly
- Must keep vision in front of all audiences
- Must have early wins and be able to show progress
- Must have ever increasing roles in terms of action and responsibility for everyone, including volunteers
- Must never waste anyone's time or allow anyone in the organization to waste someone's time

# *Revise the Plan*

- Do this on an ongoing basis, but you cannot be viewed as a “flip flopper”
- Entertain and hear good alternatives from others
- Since every part of the plan affects every other part of the plan, figure out how one change impacts other areas
- When plan is revised many roles will be redefined, org chart changes, people must be prepared for their new roles
- Communicate the revised plan with clarity
- Create new success metrics for revised plan

# ***Summary of Strategic Planning Section***

- Proper strategic planning is essential in a complicated world
- Strategic Planning is creating priorities
- Must have a theme
- Robustness – if X fails, it does not bring down the ship
- Resilience – Similar Concept to Robustness
- Concept of small bets
- Learning organization must be embedded in the plan

# *Early Adopters*

- Sequence of getting supporters – look for and approach early adopters
- Rely on volunteers to undertake action that they think will help the cause
- Early adopters are often willing to mentor and train supporters as they come on board
- Many people have already worked in just about every area before you seek to change the profession
- Find and identify leaders, people who will take action, people who will contribute financially

# *Accounting*

- Need to have excellent accounting support to document all money coming in and going out
- No short cuts here even from the beginning
- May want people to keep track of their time and report it monthly since you might want to advertise this
- Account for in-kind contributions properly
- May need separate 501 (c) (3) organization and therefore, a separate Board of Directors
- Seek pro bono accounting support for early stages

# *The UPSIDE*

- People want to be led successfully
- People want to contribute
- People want “pragmatic visionaries”
- People want to see the world as a better place someday and want to see how you will help achieve it
- Don’t expect many congrats along the way as achieving one goal just leads to a larger goal
- Think and act big, but you must pay attention to the details and understand the “large” picture

# *The Upside (Con't)*

- You will meet and cause other to meet many great people
- Make sure no discrimination, sexual harassment, environmental degradation, ethics violations, governance lapses, scandals occur within your organization
- An overdone ***strength*** often shows up as a ***weakness*** at the individual and organization level
- Examples: Be confident but not arrogant; cautious but not indecisive; steadfast, but not inflexible.

# *The Upside (Con't)*

- Promise and deliver
- Commit and secure the commitment of others
- No one is out of reach, not Bill Gates, not any CEO, not anyone
- Have a plan on how to spend the next X dollar donation (even if it is a large number) – this is the only way to consistently raise money
- Be aggressive, yet gracious along the way

# *The Upside (Con't)*

- This effort must be consistent with your life plan and your life goals
- Help others with their change efforts
- Work and participate at the network or ecosystem level
- Create networks and ecosystems
- Speak, write and get your message to the world

# *Conclusion*

- Thousands of lawyers work every day to help change the legal profession
- Many work from the inside, some work from the outside – best if you do both
- Vision means seeing a future you want and having a good idea how to move the world towards that vision for the overall betterment of the world
- Pay attention to geography as the legal profession is 51 geographic sectors
- There is great joy knowing you are on the right path

# *Conclusion (Con't)*

- As Mother Theresa told a donor who could see that she could not cure all illness and poverty in India, “I never promised God I would be successful, just faithful.”
- Faithful just means believing in your ***Duty to:***
  - Keep working when times get tough
  - Work hard and get others to work hard
  - Work smart and get others to work smart
  - Include others’ vision and hopes in the work

# ***Thank You and Contact Information***

- Feel free to share these slides with anyone
- Keep me posted on any questions you might have and on your change efforts by reaching out to me at:
- Herb Rubenstein
- 303.910.7961
- [herb@sbizgroup.com](mailto:herb@sbizgroup.com)
- [www.herbrubenstein.com](http://www.herbrubenstein.com) (under construction)
- Thanks to the Oklahoma State Bar Association for sponsoring this CLE course. I hope you have found it useful today and for a long time in the future.