

Leadership for Lawyers. Contemporary Leadership Challenges Paper. Leah Mesfin

“Prosecutors are supposed to be ministers of justice – prosecutors should lead the cause for justice.”¹- Keith Ellison, Minnesota Attorney General.

A. A Consequential Moment in American History: The Merciless Murder of Yet Another Unarmed Black Man by Law Enforcement

In the spring and summer months of 2020, the murders of Ahmaud Arbery, Breonna Taylor, and George Floyd shook this country to its core. People were angry, heartbroken, and frightened at the state of our union. So much so that hundreds of thousands of people all across the country took to the streets to reject police brutality, anti-Black, systemic racism, and racialized violence amidst a global pandemic. In this moment, the country was confronted with the chaos of addressing two simultaneous pandemics: health inequities arising from COVID-19 and pervasive manifestations of systemic racism. In thinking about one of the most consequential moments in American history that has called for effective crisis leadership, it isn't difficult for the “twin pandemics” to come to mind. Even more specifically, the consequential decision to charge and successfully prosecute ex Minneapolis police officer Derek Chauvin, who was filmed killing an unarmed Black man in his custody, with the eyes of the world watching.

I remember the first time I watched the cell phone footage showing Derek Chauvin kneeling on George Floyd's neck for almost 10 minutes. It had been posted onto Twitter and already had thousands of retweets and comments – suddenly, the name “George Floyd” was trending. Then numerous other videos from different angles and different Twitter accounts showing the same incident began to emerge. Despite Mr. Chauvin's complete disregard for George Floyd's life, the fact that Mr. Floyd was unarmed and already handcuffed, Mr. Chauvin's indifference towards the

¹ Yodit Tewolde's Exclusive Interview with Minn. AG Keith Ellison. *BNC News*. September 22, 2021. <https://www.youtube.com/watch?v=AcCb4HgDeFw&t=132s> November 23, 2021.

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desperate and audible pleas of bystanders to stop what he was doing, and his refusal to allow EMTs to render Mr. Floyd medical aid, I did not initially believe Mr. Chauvin would face consequences for his actions. This is because, despite the videos that were circulating on the internet, on the day of Mr. Floyd's death, the Minneapolis police department issued a press release that said he had physically resisted arrest, appeared to be under the influence, and ultimately died due to a "medical incident during police interaction."² The report made no mention of Mr. Floyd repeatedly saying, "I can't breathe," that Mr. Chauvin's actions violated the police department's policies and training, or that there were bystanders who witnessed the incident and were horrified. Given the misleading nature of this report, it seemed like the blue wall of silence was as strong as ever.

B. Keith Ellison Setting a New Precedent – There Will No Longer Be Impunity for Taking Black Lives

Throughout most of United States history, American jurisprudence has failed to provide protections of African American lives. During America's colonial and antebellum eras, the killing of Black people by white civilians was countenanced in code and judicial decisions³. Many scholars argue that "the violent suppression of Black resistance was deemed necessary to sustain systems of chattel slavery, white supremacy, and manifest destiny⁴". These scholars also argue that, although lynchings and murders of Black and other non-white people dominated the post-Reconstruction era, these acts resulted in only a few, primarily unsuccessful, attempts to prosecute the perpetrators⁵. Despite some progress in the final quarter of the twentieth century in which white citizens incurred a serious risk of prosecution for these crimes, this progress is stifled when law

² "One Year Ago, Minneapolis Police Published this Misleading Report on the Death of George Floyd," *Insider*. April 20, 2021. <https://www.businessinsider.com/police-initially-said-george-floyd-death-was-a-medical-incident-2021-4%20November%2023> November 23, 2021.

³ Margalynne J. Armstrong, *Are We Nearing the End of Impunity for Taking Black Lives?*, 56 *Santa Clara L. Rev.* 721 (2016).

⁴ Margalynne J. Armstrong, *supra*, at 722 (citing *Lynching in America: Confronting the Legacy of Racial Terror*, EQUAL JUSTICE INITIATIVE 4-5, 10, 18 (2015))

⁵ *Id.*

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enforcement officers seem to face little to no punishment for killing unarmed “suspects.” The disproportionate number of minorities, particularly Black people, counted among those killed sparked a contemporary movement to hold law enforcement officers accountable by criminal prosecution. Despite this disgraceful history, Keith Ellison, the Minnesota attorney general, has joined this contemporary movement by using his power as the top prosecutor within his state to tackle police misconduct.

Prior to his career in public service, almost 20 years ago, Keith Ellison began his legal career as a civil rights lawyer. Ellison took on a client, Stephen Porter, who accused two Minneapolis police officers of sodomizing him with a toilet plunger⁶. More than a decade before he took on Mr. Porter’s case, he represented the mother of Tycel Nelson, who was fatally shot by a Minneapolis police officer, winning a civil settlement for his client. Mr. Ellison was also at the forefront of criminal justice and racial justice issues through his work at the Legal Rights Center, a non-profit organization that offers defense counsel to indigent defendants, and his support of mediation efforts between street gangs and finding community-based solutions for public safety beyond traditional policing⁷. Then, in 2006, Ellison became the first Muslim elected to Congress and a rising star of the progressive wing of the Democratic party. In 2018, after serving in Washington for 12 years, Ellison ran for attorney general in Minnesota, becoming the first Black person elected to the statewide office. Given his background in civil rights and public service, Ellison understood what the decision to charge and prosecute Derek Chauvin would mean to the country and to the national movement for Black lives. In the context of the Principles of Effective Crisis Leadership discussed in Professors Donald Polden and Barry Posner’s book titled *Leading*

⁶ Arango, Tim. “‘Gentle Steering of the Ship’: How Keith Ellison Led the Prosecution of Chauvin” *New York Times*. April 21, 2021. <https://www.nytimes.com/2021/04/21/us/keith-ellison-chauvin-trial.html> November 23, 2021.

⁷ *Id.*

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in Law: Leadership Development for Law Students, Ellison’s public service is the epitome of effective crisis leadership.

C. How Ellison Acted Quickly, Boldly, and Thoughtfully in Overseeing the Most Significant Trial of 2020

In Chapter 12, titled “Developing Emotional Intelligence and Handling Adversity,” Professors Polden and Posner argue that emotional intelligence is essential to effective crisis leadership. More specifically, they argue that mental *and* emotional hardiness is vital to a leader’s ability to deal with adversity and crisis in an efficient manner⁸. The chapter dives into the extensive research that has been conducted on mental and emotional hardiness and how every person has a distinct way of processing and responding to adversity. The research indicates that for some people, adversity is viewed as an opportunity to strive for change and growth as opposed to an opportunity to play it safe and maintain the status quo⁹. The trajectory of Keith Ellison’s career in both civil rights advocacy and public service exemplifies a leadership style that employs key emotional intelligence strategies to reframe crisis as opportunity for change.

As noted in the chapter, effective crisis leadership requires prompt, bold, and thoughtful action through intentional decision-making. Given the overwhelmingly powerful response our country (and the rest of the world) had to Mr. Floyd’s murder, there was an immense amount of pressure to deliver justice and accountability where it concerned this critical, high-profile case. In the days after the video went viral and Mr. Chauvin was arrested and charged with third-degree murder by the Hennepin County District Attorney’s Office, groups such as the ACLU and the Legal Rights Center almost immediately called for Ellison’s office to get involved with the case. They expressed concerns with the legal sufficiency of the initial criminal complaint, the delay by

⁸ Polden, Donald and Barry Posner. *Leading in Law: Leadership Development for Law Students*, 2021. Page 282.

⁹ *Id.*

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the Hennepin County Attorney's Office in charging Mr. Chauvin in the first place, and the integrity of the investigation given the close relationship between the Minneapolis Police Department and the Hennepin County Attorney's Office¹⁰. At this point, it became clear that the entire world was watching and listening to every single decision being made in this case with the expectation that justice would be served. It became apparent that the case not only called for a special prosecutor, but one with the emotional intelligence to balance the implications this case had for future cases of police use of excessive force against the larger conversation of race relations in the U.S. With a large degree of humility and a great seriousness for the gravity of the situation, on May 31, 2020, Ellison answered the call to do exactly that.

During the June and July months of 2020, Ellison made quick and bold decisions in putting together his team of hand selected attorneys with experience and expertise across many disciplines to explain a nine minute and 29 second altercation that shook the world. As the state's top prosecutor, Ellison knew that it would never be enough for his team to just play the video and sit down – they needed to put on a full case as if they didn't have the video as their most compelling piece of evidence in order to secure the most important conviction of 2020. So, what did Ellison decide to do? He exhausted every resource in his office and put together a team of 14 attorneys, some of which were serving on a pro bono basis, that included a former acting U.S. Solicitor General, an attorney at Medtronic, a former prosecutor with the U.S. Attorney's Office for Minnesota, and a former federal prosecutor in addition to attorneys from the Hennepin County Attorney's Office and the Minnesota Attorney General's Office¹¹. With the help of his team,

¹⁰ Belcamino, Kristi. "Keith Ellison Will Take Lead in Case Against ex-Minneapolis Cop After ACLU Request" *Pioneer Press*. May 31, 2020. <https://www.twincities.com/2020/05/31/george-floyd-aclu-minneapolis-police-chauvin-freeman-prosecutor/> November 23, 2021.

¹¹ Pross, Katrina. "Four Pro Bono Attorneys Join Keith Ellison's Prosecution Team in George Floyd Case." *Pioneer Press*. July 13, 2020. <https://www.twincities.com/2020/07/13/four-pro-bono-attorneys-join-ag-ellisons-prosecution-team-in-george-floyd-case/> November 23, 2021.

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Ellison created a trial strategy in which they called 45 witnesses to testify to different aspects of the case over the course of three weeks. By doing so, Ellison's team ensured that the strength of this highly anticipated case did NOT depend upon the admissibility of the video evidence. Instead, Ellison guided his team, in an all-hands-on deck fashion, not only to establishing each element of the three charges but also through the necessary task of humanizing George Floyd for the jury. Ellison thoughtfully guided the team's presentation of the case in an emotionally intelligent manner because he understood (1) that whenever an officer is charged with an offense, particularly when the victim is a person of color, there's rare there's any accountability, (2) that this country is still trying to shake off its relationship with racial bias in which Blackness is often seen as a pretense for criminality, and (3) that getting 12 people to agree unanimously on any given subject can be an extraordinarily difficult endeavor even without all of the social, racial, and political implications of this case. Ellison recognized the need for his team to be both strategic and empathetic in their delivery of justice and accountability in this case as they were setting precedent in real time and in front of the entire world.

D. Ellison's Strategy for Preparing Himself to Lead with Emotional Intelligence During a Time of Crisis

In Chapter 12, Professor's Polden and Posner argue that leaders need strong emotional intelligence skills and attitudes that will permit them to function confidently in uncertain times. They state that it is immensely helpful if a leader has already identified how they will communicate and how roles and responsibilities will be allocated in the event that a crisis occurs. With respect to preparedness to take on the most consequential trial of 2020, Keith Ellison certainly led his team with principles of effective communication, collaboration for the greater good, and maintaining integrity and empathy throughout the process.

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a. How Ellison Fostered Resilience, Grit, and Emotional Intelligence within Himself and His Team

In Chapter 12, Professor's Polden and Posner also discuss the concepts of resilience and grit. They state that, "[W]hile resilience involves the ability to get back up when you've been knocked down or to come back fighting stronger after a loss, grit is your passion for and perseverance in reaching a long-term goal.¹²" Furthermore, the chapter makes the argument that leaders can, and should, use their EQ skills to turn adverse situations into opportunities to promote change and growth by fostering resiliency and grit within both themselves *and* their teams. Ellison's life path, both personally and professionally, exemplifies resilience and grit.

As mentioned above, Ellison's current role as attorney general is not divorced from his past professional experience advocating for the civil rights of his clients as well as his personal experiences as a Black man in this country. Ellison reflects on the many times he was disappointed by the criminal legal system as it acquitted officer after officer for excessive use of force that often involved victims of color. More specifically, Ellison reflects on how he thought about the officers that assaulted Rodney King being acquitted in considering how to lead his team to secure a conviction against Mr. Chauvin. In an interview with 60 Minutes, Ellison states, "I was never convinced we were going to win this case until we heard the verdict of guilty. I remember what happened in the Rodney King case when I was a pretty young man, young lawyer. I remember how devastated I felt when I heard that the jury acquitted those officers...And so, there was every moment of this case, I thought, "What are we missing? What haven't we done?"¹³ Ellison understood on both a personal and professional level the tragedies that Black people and other

¹² Polden & Posner, *supra*, at 285.

¹³ Pelley, Scott. 60 Minutes Interviews the Prosecutors of Derek Chauvin. *CBS News*. June 20, 2021. <https://www.cbsnews.com/news/derek-chauvin-prosecutors-george-floyd-death-60-minutes-2021-06-20/> November. 23, 2021.

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people of color have suffered due to racial bias in the criminal legal system and policing in America that has allowed for lack of accountability to largely be the precedent. Ellison used his emotional intelligence on the complexities of America's long history with racism to be resilient in his endeavor to achieve justice for Mr. Floyd and his family, and to begin to foster trust in America's criminal legal system. Ellison understood that this wasn't just a "period of social unrest" that was going to pass as some suggested. Rather, Ellison understood that he and his team had a duty to answer the public's demand that things needed to get better and the first step to doing that was through public accountability for those that perpetrate violence against communities of color.

A. How Keith Ellison Demonstrated Exemplary Lawyer Leadership by Challenging the Process

In chapter 5, titled "Challenge the Process," Professors Polden and Posner discuss the idea that leadership is not about maintaining the existing conditions or doing what everyone else is doing¹⁴. Rather, "leadership happens when leaders actively look outside of job descriptions and venture beyond current limits, standards, and norms to find innovative ways to improve."¹⁵ Essentially, that leaders are supposed to be willing to do things differently and to take risks in order to challenge the status quo for the sake of something better. Ellison's use of his position as the top prosecutor in Minnesota to join the fight to reform our criminal legal system by helping create a statewide conviction unit that will review convictions of people believed to be innocent is an excellent demonstration of this practice of exemplary leadership.

a. How Ellison is Seizing the Opportunity to Improve

As noted in the chapter, something always needs fixing. The book argues that nothing stifles innovation more than accepting the mentality that "If it ain't broke, don't fix it." A leader

¹⁴ Polden & Posner, *supra*, at 102.

¹⁵ *Id.*

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must understand that an opportunity for improvement exists at every turn. Keith Ellison certainly possesses this mentality. Mr. Ellison firmly states that “[T]he U.S. incarcerates more people than any other part of the world and there are some people in prison who shouldn’t be there.¹⁶” Ellison’s latest endeavor, in partnership with the [Great North Innocence Project](#), demonstrates his willingness to *challenge the process* by employing his office in statewide efforts to proactively investigate and overturn wrongful convictions.

In September 2021, Ellison announced his office’s establishment of Minnesota’s first ever conviction review unit. The unit is the product of a unique partnership in that it is one of only four statewide conviction review units in the United States. In an interview with BNC’s Yodit Tewolde, Ellison explains that the onus shouldn’t be on defendants and defense attorneys exclusively to bring motions to court that challenge wrongful convictions. Rather, Ellison believes that when prosecutors have credible evidence that an incarcerated person is innocent, they shouldn’t wait around for an appeal to make its way through the courts – prosecutors should step up and do the work to rid our system of this injustice themselves¹⁷.

b. How Ellison is Experimenting and Taking Risks

The chapter also notes that the most effective way for leaders to approach challenging the process is with an experimentation mindset – leaders must be comfortable with risk-taking. Professors Polden and Posner argue that leaders must become familiar with aspects of the experimentation mindset such as *achieving small wins, learning from mistakes, and embracing a growth mindset*¹⁸. With respect to Ellison’s engagement in the fight to address racial injustice in

¹⁶ Yodit Tewolde’s Exclusive Interview with Minn. AG Keith Ellison. *BNC News*. September 22, 2021. <https://www.youtube.com/watch?v=AcCb4HgDeFw&t=132s> November 23, 2021.

¹⁷ Yodit Tewolde’s Exclusive Interview with Minn. AG Keith Ellison. *BNC News*. September 22, 2021. <https://www.youtube.com/watch?v=AcCb4HgDeFw&t=132s> November 23, 2021.

¹⁸ Polden & Posner, *supra*, at 108-115.

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the criminal legal system and engage in police reform efforts, he has certainly incorporated each of these aspects of an experimentation mindset into his leadership style. Ellison's pilot program, which addresses the need to review cases suspected to be innocence outside of the traditional method of housing such units within District Attorney's offices, demonstrates his commitment to build and restoring faith in the integrity of the criminal legal system in a way is beginning to catch momentum.

B. Concluding Remarks

Today, Keith Ellison continues to be a force in the fight to reform policing and the way in which the criminal legal system functions within the state of Minnesota. He recently announced his intention to seek reelection as Minnesota Attorney General, vowing to continue fighting to restore the public's trust in law enforcement, for a fair economy, and reproductive rights, among other issues. He continues to lend his voice and his office to the fight against racial injustice and a social transformation that says that nobody is beneath the law, and no one is above it. Although Ellison faces Republican candidates stressing law and order campaign themes, I am cautiously optimistic that his demonstration of exemplary lawyer leadership and effective crisis leadership during America's racial reckoning will lead him to prevail in his endeavor to serve a second term as Minnesota Attorney General.