

Should I Stay (Home) or Should I Go (to the Office)?

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“Ninety percent of life is just showing up,” according to Woody Allen.

The saying seems dated now—lawyers are not showing up, at least to the office, 90 percent of the time. Some lawyers believe that there is zero percent need to ever work in an office again. What began as an accommodation during the COVID-19 pandemic now seems to some lawyers an inalienable right—they should not be forced to leave the comfort of their home, face the inconvenience of traffic, or spend money on dry cleaning and lunch, when they can crank out the same product more cheaply (for them) and efficiently at home.

There are some good reasons to work from home—convenience, expense, flexibility, no distractions, and work-life balance. Heck, it is often more quiet and more pleasant to work from home. Four-legged furry paralegals are delightful and calming.

The Benefits of Being in the Office

There are more good reasons to make it back to the office. The late Peter Fay, judge on the Eleventh Circuit Court of Appeals, many years ago said, “Lawyers need to talk to lawyers.” He then spoke of going to court, seeing your friends and foes (not precisely his words), then getting a cup of coffee together after court.

Lawyers need each other because they learn from each other. Lawyers in the early years of their career must learn their craft. No matter how successful someone was in law school, graduating and passing the bar is the beginning of the journey toward being a good lawyer. It’s not just becoming increasingly proficient at the law. It’s figuring out how to act and comport yourself as a lawyer. This is particularly true for litigators. The journey does not have a final destination; there is always something new to learn.

Certain types of practices lend themselves more to remote work. Real estate, corporate, and tax work can be done somewhat successfully remotely. Litigation, not so much.

Watching an alpha dog senior lawyer in court is better in person. Walking or driving to and from a hearing or a trial with other lawyers is a chance to prepare and anticipate, then afterward to do a postmortem—what went right and what went wrong. It's not the same hashing things out on Zoom or by phone. People bond when they are together—they share experience and history.

It is not just the younger crowd who benefits from in-the-office tutelage. More “seasoned” lawyers benefit just as much as younger lawyers from walking down the hall, plopping down in a chair, and asking someone's view on a point of law or strategy. For younger lawyers, however, being at the office provides greater visibility and likely more work. The opposite of “out of sight, out of mind” is true when assignments are being handed out: “in sight, top of mind.”

Senior associates will not be able to expand their relationships to partners with whom they have not worked before. Also, it is dangerous for young lawyers to put all their eggs in one partner basket, just as it is sometimes perilous for partners to put all their eggs in the basket of one or two clients. But that is a topic for another article. Senior associates need to demonstrate leadership in overseeing younger associates and solidify their working relationships with the people they are hoping will support their elevation to shareholder or partner. This is all difficult to achieve remotely.

Myriad studies have shown that kids who participated in remote learning for two years are not as proficient in basics as their peers who attended school in person. In addition to educational deficits, the remote learning kids missed opportunities to socialize and to become socialized. There are issues related to mental health and loss of well-being. These same problems exist for lawyers and just about anyone else who stayed home for two years. In times of need, coworkers can best give—and receive—personal and work-related support in person. Nurturing is hard to do in two dimensions. It made sense in the moment, but it's hard to see how remote work is practical, both professionally and personally, long-term once the threat of COVID has passed.

The internet is full of articles stating with great certainty that providing remote working options is the way to recruit and retain young talent. Indeed, that may be true while the job market is on fire and there are more jobs than there are lawyers to fill them. But what happens if that changes and there is a shortage of work and an abundance of lawyers? A guess, and it's nothing more than that, is that those who show up to the office are less likely to be cut. Yes, productivity will count, but if there are two lawyers—one whom management knows and another whom they don't—it may be easier to cut the person unknown to management. Certainly, opportunities are lost to those who are not known. Already, a certain social Darwinism is in play.

Anecdotally, it seemed that mostly senior lawyers went to the office during the pandemic. Old dogs do not necessarily learn new tricks very quickly, and there is the custom of having gone to the office for decades. It was primarily younger lawyers who opted to work from home; at least this is what we observed and what we heard from partners at other firms. However, there were a certain number of associates who made their way in most days, and it is memorable that they did.

A lawyer in the Midwest told a story about a senior associate living in his Missouri hometown where the cost of living is more reasonable than in large urban areas. The young associate, well trained by his current law firm, was heavily recruited to work remotely by a large Chicago firm, which closed the deal by telling the recruit that he would be paid a Chicago-scale salary that would go far in the city where he lived and would work. Of course, that makes sense, you may say. Who wouldn't want to make big bucks and live like a king in a familiar place where housing is cheap?

But how long will that plan be satisfying for the firm or the lawyer? The immediate itch may be scratched, but how much professional satisfaction will there be for a lawyer, no matter what he is being paid, who does not know his colleagues and may never have met his assistant? Unless this lawyer is a superstar with a big book of business or some incredibly valuable or arcane type of knowledge, this does not sound like a viable long-term deal for the lawyer or the firm.

Firm Culture

That brings us to firm culture. Most law firms boast that it is their unique culture that separates them from their competition and makes their firm a special place to practice. By “culture,” firms are generally referring to an assortment of values: the respect shown to coworkers, whether lawyer or staff; the opportunity for professional growth afforded more junior lawyers by more senior lawyers; civic and charitable involvement in the community; and the commitment to the goal that everyone in the firm succeed. The wise and wonderful Charles Rosenberg, a much-beloved partner at our firm, observed, “When a significant number of lawyers in the firm, particularly younger lawyers, work remotely on a long-term basis, it becomes difficult to experience and pass on to others such values that make the firm unique.”

Back in the day, law firms had distinct cultures. Years ago in Miami, there was what was considered to be the “white shoe” law firm. There was another firm that paid somewhat more but had a reputation as a “sweatshop.” Some firms were thought to be family friendly, others cut-throat shops. Firms were brick-and-mortar affairs, and their digs looked different, which somewhat reflected the firm culture (either that or management committee members who fancied themselves as decorators). Some were sleek and modern, while others had old-school wood paneling and hushed tones in the hallways.

Firms have personalities. Our firm is known for great lawyers and nice people—seriously, both of those things are true. However, for there to be a culture, there must be people to create the culture. Whatever the culture is, it will diminish over time if there are not people around.

In some jobs, the benefits of being in the office simply do not exist. For example, a bright and all-around great lawyer just took a job as in-house counsel for a very large company. Her new employer uses a “hoteling” arrangement at the office, where no one has a permanent assigned space to work. Frankly, it sounds like a hot sheet hotel, with no turndown service and no fragrant soap. This is a no-frills deal. In the workplace, such as it is, there are long tables with computer outlets. When she goes in, she finds a place where she wants to sit or that is unoccupied, and in that spartan environment, she does her work alongside everyone else. No photos of her kids; no diplomas, art, or plants. Just a bare table with a plug. Ugh—who wouldn’t choose to work from home? A situation like that would make us feel depersonalized.

Some efficiency expert, whom no doubt her employer hired and paid a small fortune, decided that no one should get too comfortable. When she is preparing for something big, like a deposition, she has to lug all of her stuff back and forth with her every day. Of course, it is easier to work from home, but then you have all of those boxes and junk in your house!

Boxes of papers, binders, large charts, discovery—this is what litigators deal with. A lot of paper goes with being a litigator. That brings us to support staff. Someone has to organize all the papers that are part of a litigator’s life. That is a legal assistant, a paralegal, or an office services person.

When a lawyer is pretty much working from home, a great deal is delegated to support staff. At times, it seems that too much is delegated and too much is expected of staff when the lawyer is not in the office to explain, in person, what needs to be done and to check that it’s done properly. In the same way that nurses were the hospital heroes during the pandemic, support staff were the “frontline workers” and heroes of the legal profession.

In many firms, support staff have been back in the office since early in the pandemic. It makes sense because the work that they do is not easily done from home. But there is a certain “ick” factor when the staff comes in but the lawyers do not. Having part of a team stay at home while another part goes to the office doesn’t create a strong team.

Younger lawyers are generally comfortable with technology, and they contend that they can replace in-person brainstorming sessions with videoconferencing, text messaging, emails, and phone calls. But just because they are comfortable with technology doesn’t mean that support staff or the more “senior” members of the team are or that they agree that “technology” is a substitute for being in the same room. It is often way too much hassle to pull together a quick Zoom meeting on an issue. Also, there doesn’t seem to be the same breadth and depth of discourse over Zoom; it’s much more cut-

and-dried. A law student, who was an in-person summer associate, commented, “Nothing beats getting a pen and paper and going to sit in a partner’s office after you’ve been assigned something.”

Some lawyers think that when people work from home, work takes second place to domestic matters. The dog needs a walk, laundry needs folding, and there is a recipe waiting to be tried. When kids were doing remote schooling, it was understandable that all consideration be given to parents who were helping their kids with the challenges. But that situation is largely gone. It is also at times more difficult to reach people who aren’t in the office. It seems as though work is one more thing that needs to be juggled with domestic duties. Work is not the same priority as it is when people are in the office together to do it.

Partners Push Back on Work from Home

Partners from many different firms are starting to push back on the insistence from younger lawyers that they are just as efficient working from home and that they aren’t coming in. Their perceived efficiency is not the only issue. One friend who was a big honcho in the American Bar Association has flatly stated that he won’t work with people who won’t come to the office. He doesn’t want to receive memos and emails at 2:00 in the morning. He wants the lawyers he works with to work on his and the client’s schedule. Many others agree. While it was understandable during the pandemic, there is no longer an emergency that makes staying home all the time practical, sensible, or desirable.

Other partners who themselves prefer working from home may not care whether an associate works remotely. If you are an associate in that position, that is ducky, but ask yourself what happens if that partner leaves for another firm or decides to retire.

Even if a lawyer is the greatest and smartest, being at home all the time allows torpor to set in. Clients can sense this.

Firms have been generally flexible about remote work, and many allow a hybrid model—some days in the office, some at home. This began before COVID because technology was available for lawyers to do work someplace other than the office. This is likely to continue, at least in the near future. Lawyers have always had the luxury of working from home if they were involved in a big project, but the expectation was that people would come to the office more often than not.

A zillion years ago, associates and young partners were expected to be in the office from 9 a.m. to 7 p.m. If someone snuck out early, the lights were left on and a jacket was strategically positioned on a chair, as if waiting for the lawyer who had just stepped down the hall to return. That was not ideal, and it is better that lawyers have sensible flexibility—life happens. However, flexibility is a different matter than never showing up at the office. A lifetime ago, when one of us was a second-year

associate, she received one of the best birthday gifts ever—a two-afternoon cooking course taught by Martha Stewart, who was just becoming famous. Touched and excited but also worried, she wondered, Would it be possible to miss two afternoons of work? It was certain that the absence would be noticed and that playing hooky on a Thursday and Friday afternoon would have catastrophic career consequences. The class was marvelous, and the career seems to have survived the absence. Not to say that there wasn't a full weekend of catch-up work.

Some final words on this subject: Litigation is stressful, joyful, and intense. While you may feel comfortable and serene working at home, joy and intensity are not likely emotions you will experience while wearing sweatpants and slippers.

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