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## How to Train Your Supervisor

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# HOW TO TRAIN YOUR SUPERVISOR

**Kris Franklin & Paula J. Manning\***

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## I. INTRODUCTION

Supervisory meetings in the legal academy and legal profession are often terrible. Supervisees, both law students and junior lawyers, do not get the kind of meaningful help or direction they seek. Teachers and bosses leave the conversations unengaged, and frequently unimpressed. Supervisees leave the same meetings without a clear sense of next steps on their projects, hence their follow-through may be poorly implemented or nonexistent. They also have no idea how to improve their initial efforts when they undertake the next assignment, which repeats the cycle. Everyone is frustrated. Why is this?

Part of the problem undoubtedly stems from having overworked, untrained, emotionally unintelligent, or simply bad supervisors.<sup>1</sup>

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\* Thanks to valuable comments from participants in the New York Law School Faculty Scholarship Workshop.

1. Tales of lawyers as bad supervisors abound; they range from the

Law is hardly unique in providing too much daily stress for its professionals to devote much time to thinking about how they work with their subordinates, little to no training on effective teaching of juniors, and a lot of unconsidered oversight.<sup>2</sup> There is a smattering of guidance available for lawyers who want to become better supervisors or mentors to less experienced attorneys<sup>3</sup> or attend to the ethical obligation to ensure, on their clients' behalf, that inexperienced attorneys are properly supervised.<sup>4</sup> Of course, there are far more materials aimed at a general audience of professional managers and supervisors that lawyers and law professors can learn from and draw upon.<sup>5</sup>

Another well-developed body of writing aims to help the law professor give effective feedback on assignments in ways that most effectively foster meaningful growth in the students they

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indifferent manager to the outright abusive. For one essay considering why that might be, see Stephen Furnari, *Are Lawyers Horrible Bosses?*, LAW FIRM SUITES (Sept. 2, 2014), <https://lawfirmsuites.com/2014/09/lawyers-horrible-bosses/> (speculating, *inter alia*, that the legal profession does not value effective management and has correspondingly low expectations for good supervision, and the skills required for excellent lawyering may be counterproductive to excellent supervision).

2. *E.g.*, despite previous research showing that doctors in training prefer collaborative supervisory relationships, a qualitative study into supervision of resident physicians nonetheless found it dominated by what it dubbed two extreme modalities of extant supervisory practices: “micro-managing” by attending physicians in supervisory roles, or “absentee” doctors who distanced themselves from their residents’ patient care decisions. Jeanne M. Farnan, et al., *On-Call Supervision and Resident Autonomy: From Micromanager to Absentee Attending*, 122 AM. J. MED. 784, 786 (2009). See also, Roger W. Bush, *Supervision in Medical Education: Logical Fallacies and Clear Choices*, 2 J. GRADUATE MED. EDUC. 141, 143 (2010) (positing that careful supervision is not necessarily intentional with autonomy of the supervised physician and arguing for stronger supervisory practices because without changes in oversight of junior doctors, “our status as a self-regulating profession is at risk.”).

3. Most of this literature is somewhat journalistic and is aimed primarily at practicing lawyers, rather than at the legal academy. See Bailey E. Felts, ‘S’ is for ‘Summer Students,’ Who Require ‘Supervision’, 105 ILL. B. J. 52 (2017); Laura A. Calloway, *Practicing the Art of Gentle Feedback*, 37 LAW PRAC. 6 (2011); Cordell M. Parvin, *Practical Success: Practical Supervision Skills for Attorneys*, 57 PRAC. LAW 15 (2011).

4. See Arthur Garwin, *Keep an Eye on ‘Em: Associates May Be Getting Big Bucks, but They Still Require Supervision*, 86 A.B.A. J. 64 (2000) (emphasizing lawyers’ ethical obligation under Rule 5.1 of the Model Rules of Professional).

5. For a helpful recent sample, see SYLVIA MELENA, SUPPORTIVE ACCOUNTABILITY: HOW TO INSPIRE PEOPLE AND IMPROVE PERFORMANCE (2018). See also SHANDA K. MILLER, FROM SUPERVISOR TO SUPER LEADER (2019); JOSEPH F. DUFFY, BEING A SUPERVISOR 1.0: A HANDBOOK FOR THE NEW, ASPIRING AND EXPERIENCED SUPERVISOR (2018).

teach.<sup>6</sup> Of course not everyone who gives feedback is a teacher or formal professional supervisor, and not everyone who supervises gives feedback.<sup>7</sup> But because supervision at its best requires careful attention both to the work product produced by juniors and to their development as students or professionals, there is an inextricable link between advice on providing excellent supervision and the literature on feedback. Everyone who teaches, trains, observes or even encounters law students and beginning lawyers can probably benefit from consulting these materials. Really, who among us could not stand to become more proficient at delivering effective feedback to those we teach or lead?

Yet improving the quality of supervision given by supervisors is not the focus of this Article.<sup>8</sup> Instead, we want to consider the supervisory meeting from the side of those over whom we as law professors might have more immediate influence: law students and the beginning lawyers they will soon become.<sup>9</sup> We believe getting the best available supervision, no

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6. See, e.g., Elizabeth M. Bloom, *A Law School Game Changer: (Trans)Formative Feedback*, 41 OHIO N.U. L. REV. 227 (2015) (providing concrete suggestions to law professors seeking to provide effective feedback); Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 325 (2013) (describing deleterious effects of poorly conceived feedback and offering concrete suggestions to be more effective). For descriptions of some specific approaches to law school feedback, see Amanda M. Sholits, *Say What?: A How-to Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1 (2019); Dawn Watkins & Laura Guihen, *Using Narrative and Metaphor in Formative Feedback: Exploring Students' Responses*, 68 J. LEGAL EDUC. 154 (2018).

7. Though an absence of meaningful feedback may itself suggest an unpromising supervisory relationship.

8. Or at least, it is not the direct focus. In fact, we believe it likely that supervisors might improve in their own roles over time just by observing their own more successful interactions with better-prepared juniors. Though we do worry about the potential harm that angry, inarticulate, or thoughtless supervisors may do to those they work with. Beryl Blaustone provided an early model for clinicians seeking to teach the students they supervise how to provide and receive feedback, and she similarly expressed concerns about the possibility of clinicians following her template without their own genuine self-awareness. See Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self Awareness in Performance*, 13 CLINICAL L. REV. 143, 161–62 (2006).

9. Though we note that just as military officers explicitly begin their leadership training by learning first to follow the orders of others, we believe

matter how skilled the supervisor, is something that can be learned and taught.

Practicing lawyers frequently include the ability to work effectively on a team as a vitally-important professional skill for their new lawyers.<sup>10</sup> Increasingly, law schools have responded to these calls from the bar by including effective teamwork as a learning objective for their graduates.<sup>11</sup> However, within a legal profession that is so often hierarchically segmented by position or experience, “teamwork” rarely means working within a group with no supervisory distinctions. More senior lawyers, or those more experienced in the particular work being undertaken, are probably assigning and reviewing the work of the less experienced lawyers within the group. Realistically then, for most junior and mid-level attorneys in most law offices, “working within a team” effectively means responding well to the direction and supervision of the more experienced lawyers in the group.<sup>12</sup>

Although “teamwork,” broadly defined, may at least be on the radar of expected professional skills for law students and new lawyers to develop—though still rarely emphasized in the law school curriculum<sup>13</sup>—learning to receive and utilize

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law students who attend thoughtfully to being good *supervisees* will become superior *supervisors* when their time comes. At the very least, they will have absorbed an ethos that foremost balances the needs of subordinates and project objectives, while placing the personal concerns of the supervisor as a less central concern. See SIMON SINEK, *LEADERS EAT LAST* (2017) (adapting lessons from Marine Corps leadership training to successful management in differing professional settings).

10. See Lee Ann Reno, *The Importance of Teamwork*, 68 TEX. B.J. 861 (2005). For an example of legal educators creating curricula to teach teamwork in the legal setting, see Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013).

11. Neil Hamilton’s recent study found that fifty-eight U.S. law schools in some way incorporated working effectively as a member of a team as a component of their expected learning outcomes for graduates. See Neil Hamilton, *Fostering and Assessing Law Student Teamwork and Team Leadership Skills*, 48 HOFSTRA L. REV. 1 (2019) (forthcoming). For examples of teamwork learning outcomes in law schools see those of Duke University School of Law, [https://law.duke.edu/sites/default/files/news/March%202019%20Approved\\_learning\\_outcomes.pdf](https://law.duke.edu/sites/default/files/news/March%202019%20Approved_learning_outcomes.pdf) and Villanova University Charles Widger School of Law, <https://www1.villanova.edu/university/law/academics/learning-outcomes.html>.

12. Hamilton, *supra* note 11, at 5–6 (acknowledging both formal team leadership in the form of designated supervisory responsibility and informal supervision based on acknowledged expertise).

13. That could easily change if law professors placed greater reliance on

feedback has not been. Legal education therefore fails to identify teamwork as an acquired skill, or perhaps law professors expect law students to develop it implicitly and entirely on their own.

We believe that should change. Teaching law students to prepare well for supervision, understand and utilize criticism, and formulate and articulate questions about their work, would go a long way toward preparing them for a lifetime of being effective self-learners.

Training to receive supervision does not resolve the specific concern of actually facilitating more effective oversight and feedback; that still needs to take place. But such training can produce better outcomes on revised or future assignments, and it has the far broader implications of supporting the kinds of self-directed learning and autonomy that demonstrably improves learning for law students,<sup>14</sup> while promoting exactly the professional skills and values that allow young lawyers to excel on the job.<sup>15</sup>

## II. UNPACKING SUPERVISORY RELATIONSHIPS

We believe failures of supervisory meetings often stem from a lack of thoughtful consideration of their importance,<sup>16</sup> from differing expectations about their purpose,<sup>17</sup> from incomplete or ineffective preparation,<sup>18</sup> or from some combination of any of these.

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materials our colleagues have already generated. See EILEEN SCALLEN ET AL., *WORKING TOGETHER IN LAW: TEAMWORK AND SMALL GROUP SKILLS FOR LEGAL PROFESSIONALS* (2014).

14. Learning to assimilate and use feedback supports self-regulation in learning. See Bloom, *supra* note 6, at 239–40, 243–46; Manning, *supra* note 6.

15. There has been a push to incorporate more direct instruction on professionalism in the law school curriculum since at least the time of the Carnegie Report, and arguably since well before the earlier MacCrate Report. See Paula Schaefer, *Building on the Professionalism Foundation of Best Practices for Legal Education*, 14 U. ST. THOMAS L.J. 320, 320–25 (2018); Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 63–67 (2012).

16. Which we advocate articulating more explicitly as an important goal in legal education.

17. See *infra* notes 19–20 and accompanying text.

18. See *infra* Part II.

Let us think about a typical meeting between a law student and her professor. What might each one anticipate?

**Professor:** *I carefully spelled out in class what people needed to do and what I would be looking for in this assignment. My students therefore know what they are expected to accomplish. I have also already given some feedback on this student's (or more generally, all my students') first attempts at execution. I feel like these multiple instructions actually covered everything my students needed for their work, but I do understand that not everyone fully comprehends or retains everything the first time they hear it. I am happy to provide more detail for my students who need that.*

*The purpose of my meeting with Carla is straightforward. Carla knows what she needs from me, and she will tell me how I can help beyond what I have already done. I will answer any questions she has and I will respond to her thoughts about next steps. We will probably conclude with a discussion of Carla's plans to implement revisions on this project, or how she can apply its lessons to the next one. She will leave having learned something, and she will have a clear sense of how to improve.*

**Student:** *At first I thought I knew what I was supposed to do, and I did not have any questions when we were given the assignment. But then when I sat down to really work on it I realized I was not quite sure what Professor Sherman wanted. I looked back over my notes and talked it over with some classmates, and then I made my best guesses about how to proceed. I must not have gotten it quite right because the professor still wants me to make some changes.*

*I have not thought that much about the meeting with Professor Sherman. I mean, what*

*would there be to think about? I do have a couple of questions about his comments that I was not completely sure about, but otherwise I assume the professor will tell me what he is looking for. We will probably have a minute or two of small talk and then I will ask my questions. I imagine he will answer my specific questions, but really that will be just a prelude to him explaining what I need to do to change. After that I will know what I need to adjust to get everything right the next time around.*

This typical meeting illustrates common problems in professor/law student interactions. The student's and professor's images and expectations are not congruent; neither participant understands what the other one expects. As a result, the meeting is not likely to produce outcomes that will please either party.

If we move forward a few years to a meeting between a young legal associate and a supervising litigator, we see the same problems evident in this relationship:

**Senior lawyer:** *Reuben was a solid hire. He is doing well in his second year with this office and I hope he is becoming ready to take on more responsibility. In our current case I have been focused on the broad litigation strategy and spending many days in depositions, so I am not really on top of the document production requests I asked Reuben to work on. I am certain he will catch me up when we get together.*

*The purpose of our meeting is for Reuben to let me know how his work on the project has been going so far, and of course to ask for any guidance he thinks he needs. I will ultimately need to decide how aggressively to challenge or comply with the other side's pending discovery requests. I assume that will be the primary focus of our conversation. In our meeting, then, I expect Reuben to brief me on whether the evidence he is uncovering tends to support or hurt our case, and to give me his*



*assessment of whether opposing counsel's document requests are reasonable. I also assume Reuben will raise whatever questions he has about the work he has done so far and will surface any uncertainties about the tasks to come.*

**Junior lawyer:** *I have been looking through the client's documents and trying to determine which ones are required to be produced under the discovery request. It turns out to be interesting work, but I am not at all certain that I am doing it right. Am I flagging too many records for production? Too few? I expect my supervisor will provide more guidance when we meet.*

*Angela is smart and experienced. She has a vision for her case, and she will let me know what she needs from me. But I do want to make the best possible impression on my boss, so to prepare for our meeting I will make sure to bring copies of key case documents. I will also be sure to have a notepad to write down anything important that she tells me, because for some reason she does not like it when I type on my laptop. After the meeting I will continue doing whatever she directs. I will also give her occasional updates as I progress.*

In both of these meetings a key disconnect stems from the fact that the parties have very different notions of exactly who the meeting is primarily supposed to benefit. The student and junior lawyer are acutely conscious of their own limited experience. They naturally expect to defer to the greater expertise or authority of their supervisors, so they come into the meeting with an internalized vision of themselves as essentially awaiting instruction.

Meanwhile, the professor and senior attorney implicitly assume, probably correctly, their supervisees are actively engaged in their own learning. They expect their supervisees to be respectful, of course, but they also presume they will have a sense of what they need from the supervisor and will be comfortable articulating that.

In the academic setting, the harm from these different conceptions of the supervisory experience may be profound and primarily affect the student.<sup>19</sup> Students continue to be confused about assignments; they do not really know what they have done well or why it was good, nor do they fully understand how to improve their performance. In the above example, we would expect that the student—like most students in these situations—probably retains her false and unhelpful presumption that if she had just done everything “right” the first time, there would be no need to make any changes to her work product or work methods. That fails to set her up to improve.

Meanwhile, her professor might be convinced the student should now have everything she needs.<sup>20</sup> If the professor had some sense the meeting was unfocused or unhelpful, he may have concluded it was because the student had not been clear, or worse, was not really interested. Alternatively, perhaps the student leaves feeling angry at the professor for not providing the direction she had been hoping for, or frustrated with herself, but entirely unclear about how she could have handled the meeting differently.

In professional settings, all the above possible pitfalls remain, but with the added potential harm to the interests of a client. As in our illustration, junior lawyers may be far more conscious of their status as “junior” than as “lawyer.” Identifying as subordinate can cause them to expect their job is to follow the directions of their seniors rather than developing their own professional judgment about their work. Failure to develop this skill would not simply disappoint supervisors; it could effectively prevent the kind of collaborative consideration of a case that might generate more thoughtful and creative approaches to the client’s problem.

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19. Though of course there is potential harm to the professor as well. First, because faculty are likely quite invested in students’ learning and success. But there is also at least the theoretical possibility that frustrated and unhappy students might negatively affect teaching evaluations or reputation. A professor might have some reason for concern based on research suggesting race, gender, type of course, or other considerations may have more significant effects on law students’ course evaluations than the students’ learning. See Deborah J. Merritt, *Bias, the Brain, and Student Evaluations of Teaching*, 82 ST. JOHN’S L. REV. 235, 237 (2008).

20. Especially because some students may reasonably feel pressure to outwardly behave as if the meeting has been helpful and act in accordance with those pressures.

### A. Supervisors and Supervisees Must Have a Shared Sense of Responsibility

Part of what is going on here is an unspoken passivity stemming quite naturally from the hierarchy between the supervisor and supervisee. The supervisor presumably has more knowledge and power, so the supervisee consciously or unconsciously expects the supervisor to take the lead. Prior experience in non-legal entry-level jobs may seem to confirm these unspoken expectations.

Frequently, even with far greater experience in general, the supervisor does not have more expertise in the specific problem at hand. Junior lawyers probably know their cases or particular tasks far better than the senior lawyers who assigned them. Sometimes, they have done more research and are far better informed about the facts or law affecting the client's problem than the more senior lawyer, whose attention may be elsewhere.

Similarly, law students have more access to their own thought processes than their professors do. They are far better positioned to try to identify what it is they do not know. Law students should already have some idea what they are confused about, what they were thinking when they wrote something being reviewed, how they tend to study and learn, and where the gaps in their comprehension arise. Sometimes they know better than specific law school professionals what other advice they have heard that seems to contradict what they are hearing now. In other words, they should know better than anyone else what they need to hear and learn right now in this discussion.

Of course, law students may not know all of this about themselves, or they may find it hard to describe and externalize even if they have a vague sense of discomfort with their own knowledge or understanding in a given area. Self-awareness in learning is certainly challenging,<sup>21</sup> but developing the ability to recognize and articulate questions and uncertainties is a key professional skill. Growing that skill is vital to promoting a

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21. Perhaps because self-awareness is an underdeveloped learning objective in law school. See Patti Alleva, *Wholeness: Thoughts on Law Teaching, Lawyering, and Living*, 94 N.D. L. REV. 289, 293–99 (2019) (arguing in a farewell address to law school colleagues that legal educators must “intentionally teach to self-awareness”).

lifetime of learning.<sup>22</sup>

The point of good supervision in law school is that law students do not have to do this hard work alone. They simply need to view themselves as primarily responsible for their own learning, in conjunction with the expertise and investment provided by their professors. The entire focus and tenor of a supervisory meeting changes if each participant feels independently responsible for trying to be clear about what they<sup>23</sup> already know, what they do not know, what they need from one another, and what they can offer each other. That kind of thoughtful introspection inevitably makes the supervisees better prepared for the meeting,<sup>24</sup> and well-prepared supervisees probably get the most valuable supervision.

Self-efficacy also impresses teachers and bosses. Supervisors do not expect those they supervise to have all the answers. In fact, they very much do not want their supervisees to overstate their own knowledge or confidence.<sup>25</sup> What they do want is to see less experienced students and lawyers take charge of their own work<sup>26</sup> and learning. They also want their supervisees to be humble and conscious of their limited experience, but nonetheless appropriately confident in their insights.<sup>27</sup>

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22. This is also a key component of learning expertise. *See generally* MICHAEL HUNTER SCHWARTZ & PAULA J. MANNING, *EXPERT LEARNING FOR LAW STUDENTS* (3d ed. 2018) (discussing the importance of learning in a law school environment).

23. We adopt the APA style and grammar guidelines and the gender neutral “they” in place of “he or she.” Though still not universally accepted as grammatically correct, we agree with the APA that use of singular “they” is inclusive of all people and helps writers and readers avoid making assumptions about gender. *See Singular “They”*, APA STYLE (Sept. 2019), <https://apastyle.apa.org/style-grammar-guidelines/grammar/singular-they>.

24. *See* discussion *infra* notes 89–97 and accompanying text.

25. *See* Sammy M. Mansour, *Fostering Receptiveness to Feedback*, 98 MICH. B.J. 48, 48 (2019) (“It is not difficult to understand why a supervisor would prefer to assign work to junior attorneys who are more concerned about strengthening their work product . . . than defensively justifying what they produced.”).

26. *See* Joshua Stein, *A Supervisor’s Top Ten (or So) Requests*, 47 NO. 8 PRAC. LAW. 11, 13 (2001) (“Assume you are the person who must follow through on all comments [on a draft document] . . .”).

27. *See* Karen Erger, *Deconstructing Less-Than-Constructive Criticism*, 105 ILL. B.J. 46, 47 (2017) (“If I could give Younger Me a piece of advice, I’d tell her to go home, dry her tears, and come back the next day to ask the managing Partner what exactly he’d observed . . . and how she could make improvements.”).

## B. Good Supervisory Relationships are Dialectic

Making both parties in a supervisory relationship feel responsible for its success changes supervision in important ways. At their best, supervisory relationships should be dialectical.

The concept of dialectics can be applied to supervisory interactions in the philosophical sense of the Hegelian ideal: seeking truth through reconciliation of differing viewpoints.<sup>28</sup> Even more apt is the notion of supervision as a classic “dialectical relationship.”

The theory of relational dialectics was independently articulated by communications scholars Leslie A. Baxter and Barbara M. Montgomery.<sup>29</sup> To simplify a richly developed field, relational dialectics posits that functional relationships are built—and continually rebuilt—upon extended conversations. These conversations necessarily embrace the different perspectives of the participants as well as their common views.<sup>30</sup> Thus dialectical relations theorists conclude the challenges posed by differing, and even opposite, points of view are not threatening to the relationship; they are a key part of any valuable connection.<sup>31</sup> In other words, tensions arising from

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Even if he'd offered no useful feedback, she'd have shown the boss that she was willing and able to learn from constructive criticism.”)

28. See GEORGE WILHELM FRIEDRICH HEGEL, *ENCYCLOPEDIA OF THE PHILOSOPHICAL SCIENCES IN BASIC OUTLINE* (Klaus Brinkmann & Daniel O. Dahlstrom eds. & trans., Cambridge Univ. Press 2015) (1817).

29. See Leslie A. Baxter, *A Dialectical Perspective of Communication Strategies in Relationship Development*, in *HANDBOOK OF PERSONAL RELATIONSHIPS* 257–73 (Steve Duck et al. eds., John Wiley & Sons 1988); William K. Rawlins, *A Dialectical Analysis of the Tensions, Functions and Strategic Challenges of Communication in Young Adult Friendships*, in *COMMUNICATION YEARBOOK* 12 157–89, (James A. Anderson, ed., 1988); LESLIE A. BAXTER & BARBARA M. MONTGOMERY, *RELATING: DIALOGUES AND DIALECTICS* (1996).

30. Dialectical scholars speak of parties in a relationship navigating certain predefined opposing “poles,” using such practices as Segmentation (agreeing together to emphasize different poles for different times or purposes), Integration (responding to both poles simultaneously) and perhaps most crucially for the supervisory relationship, Recalibration (in which concerns are reframed so that the poles are no longer in opposition). See Barbara B. Brown et al., *Choice Points for Dialecticians: A Dialectical-Transactional Perspective on Close Relationships*, in LESLIE A. BAXTER & BARBARA M. MONTGOMERY, *RELATING: DIALOGUES AND DIALECTICS* (1996).

31. See Barbara M. Montgomery, *Relationship Maintenance Versus*

working through diverging outlooks serve both to hone the ideas being discussed, and simultaneously to strengthen the ties of the parties.

The ideas underlying relational dialectics theory may feel familiar even to those not immersed in the nuances of communications scholarship. The concept of deriving value amid conflicting viewpoints may seem intuitive to lawyers, schooled as we are in an adversarial system of arriving at justice. Moreover, we can certainly hear echoes of Lincoln's famed "team of rivals"<sup>32</sup>: former political opponents with very different approaches working together in Lincoln's cabinet to help shape the President's thinking about the most contentious issues of the day.<sup>33</sup> Dialectical relationships focus not just on the value of robust debate for testing ideas—though it recognizes how important and valuable that may be—but also for joining the participants in that debate in a shared connection. The connected relationship enriches the parties and fosters ongoing dialogue that can deepen over time.<sup>34</sup> In short, it helps the parties better understand one another and reshape the ways they learn from one another.

This is exactly what we hope most lawyers, law students, and law professors would get out of any supervisory interaction. An opportunity to surface differences in approach; to question one another; to adjust their own thinking in response to each other's ideas, especially if some of those ideas are better or differently informed; to gain insight from sharing expertise; and to leave even challenging interactions feeling invigorated and positive about the conversation and everyone in it.

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*Relationship Change: A Dialectical Dilemma*, 10 J. SOC. & PERSONAL RELATIONSHIPS 205 (1993) (describing relating as an act and consequence of contradiction).

32. DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* (2005) (recounting President Lincoln's often-successful efforts to reconcile the views of his former competitors toward achieving his eventual goals of abolishing slavery and achieving victory in the Civil War).

33. See Joe Klein, *Obama's Team of Rivals*, TIME, (June 18, 2008) <http://content.time.com/time/subscriber/article/0,33009,1816476,00.html> (Barack Obama reportedly sought to emulate Lincoln's model in the 21st century).

34. This central concept in dialectical communications theory builds upon the earlier work of philosopher Mikhail Bahktin. See MIKHAIL BAKHTIN, *THE DIALOGIC IMAGINATION* (Michael Holquist ed., trans., Caryl Emerson trans., Univ. of Tex. Press 1981).

### C. Supervision Can Get Better Even When Supervisors Do Not

Supervisors themselves need to always aim to be responsive, helpful, and constantly honing their own contributions.<sup>35</sup> But what if they do not?

It is fair to ask how much influence students and junior lawyers can really have on the effectiveness of their supervisors.<sup>36</sup> The answer may well be none, or at least they may not be able to improve effectiveness in the sense of helping the supervisors themselves become more attentive or helpful in their supervisee's learning.<sup>37</sup>

There are all sorts of reasons why law professors and legal supervisors may be ineffective with budding lawyers. We are members of a profoundly demanding and busy profession. A disadvantage of experience in any field is that it can be hard to remember what we have so fully internalized that it has become automatic, but that beginners may not yet know.<sup>38</sup> Some people

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35. Which in turn requires lawyers and law professors to improve our own interpersonal skills. See Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147, 148 (2009); see also SUSAN BRYANT ET AL., *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, 25–26 (2014) (enumerating goals for clinical legal education that include attention to the “human dimension” of lawyering); SUSAN SWAIM DAIKOFF, *LAWYER, KNOW THYSELF* (Am. Psych. Ass'n 2004) (exploring personal characteristics that draw people to the legal profession, and arguing for a more humanistic approach for the benefit of both lawyers and clients).

36. Despite the widespread agreement that we as a profession ought to get better at supervision and should provide more of it. Compare the extensive clinical supervision required in the mental health field, for example, or even to obtain licensure to cut hair in most states. For a more complete analysis of the need for enhanced supervision expectations in the legal profession, see Susan L. Brooks et al., *Now More Than Ever: The Need for Supervision and Support of Law Students' Relational Competencies in Experiential Courses and Programs* (forthcoming) (manuscript) (on file with the authors).

37. Though there is always the possibility that the process of having a more productive than usual supervisory meeting could inspire a professor or boss to be more thoughtful and intentional about future meetings. See Jeffrey C. Connor, *Upward Feedback: Having Associates Evaluate Partners*, 29 LAW PRAC. MGMT. 35, 36 (2003) (suggesting optimistically that at least some law partners would be “quite willing to change to create better relationships with peers, associates and support staff” if they received evaluative commentary from the junior lawyers they supervised).

38. See STEPHEN ELLMANN ET AL., *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 376–78 (2009) (considering the development and advantages/disadvantages of lawyers' expertise).

are impatient, or are not very skilled at listening to and empathizing with those they oversee. A few people are just difficult<sup>39</sup> or not very nice. Finally, being an excellent supervisor and mentor may have its own intrinsic rewards for many, but it is not especially emphasized or rewarded in law practice, and is surprisingly undervalued even in the profession of teaching law.<sup>40</sup>

Yet by preparing themselves well, supervisees may nonetheless be able to receive better supervision, even when they cannot get a better supervisor. Theorists of dialectical relations would probably agree. They posit that relationships are always in the process of being rebuilt, which suggests a change in approach, by even one party, will inevitably alter the functional relationship of both,<sup>41</sup> quite possibly for the better.

Moreover, the business world has an extensive literature on “managing up.”<sup>42</sup> These are designed as guides to provide strategies for flourishing in positions even with average or mediocre management.<sup>43</sup> Although much of this material describes particular kinds of ways bosses may be unhelpful to

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39. Supervisors can be “difficult” in a wide range of ways. Dana Brownlee’s survey of almost 1200 professionals about their own managers identifies at least six categories of “difficult” bosses and finds the descriptions of the two most common types are divergent: the Tornado, who dominates subordinates, and the Chameleon, who is unclear and ineffectual. See DANA BROWNLEE, *THE UNWRITTEN RULES OF MANAGING UP* 7–9 (2019). It should also be noted, with concern, there may also be times when the race and gender of the supervisors and/or their supervisees affects who may be characterized as “difficult.”

40. Perhaps especially for already-marginalized members of the profession. For a classic but still all-too relevant discussion of the lack of mentoring inhibiting the advancement of black women in the legal academy, see Pamela J. Smith, *Failing to Mentor Sapphire: The Actionability of Blocking Black Women from Initiating Mentoring Relationships*, 10 *UCLA WOMEN’S L.J.* 373, 388–448 (2000); for consideration of barriers imposed by lack of mentoring for women in the legal profession more generally, see Carlo A. Pedrioli, *A New Image in the Looking Glass: Faculty Mentoring, Invitational Rhetoric, and the Second-Class Status of Women in the U.S. Academia*, 15 *HASTINGS WOMEN’S L.J.* 185 (2004).

41. See BAXTER & MONTGOMERY, *supra* note 29, at 53–57.

42. See JACQUELINE ROSS, *MANAGE UP!: THE ULTIMATE GUIDE TO MANAGING YOUR MANAGER* (2018); STANLEY BING, *THROWING THE ELEPHANT: ZEN AND THE ART TO MANAGING UP* (2002); ROSANNE BADOWSKI, *MANAGING UP: HOW TO FORGE AN EFFECTIVE RELATIONSHIP WITH THOSE ABOVE YOU* (2003).

43. See MARY ABBAJAY, *MANAGING UP: HOW TO MOVE UP, WIN AT WORK, AND SUCCEED WITH ANY TYPE OF BOSS* (2018); *HBR GUIDE TO MANAGING UP AND ACROSS* (Harvard Bus. Rev. Press 2013).



those they supervise and provides specific strategies for specific situations,<sup>44</sup> they all share a common premise—that good work can be done, and skills can be built, when juniors take responsibility for their own development and find ways to get the very best guidance available in their setting.<sup>45</sup>

It is already true that law faculty who coordinate some clinical and externship programs have put real thought into how to help law students learn most effectively from the supervision they receive in their on-the-job learning. The premier textbook for law school internship courses<sup>46</sup> includes an entire chapter by Liz Cole and Leah Wortham on Learning from Supervision.<sup>47</sup> Cole and Wortham describe the effective externship supervisory relationship as comprising three stool legs: macro planning, which includes setting overall goals for the experience; micro planning, which includes clarification on individual assignments; and feedback, from responses or non-responses between supervisor and supervisee.<sup>48</sup>

Cole and Wortham state from the outset, however, that their focus is set squarely on “learning . . . in legal experience rather than in a classroom.”<sup>49</sup> We understand the emphasis of their particular project, but see no reason to limit the insights of learning from supervision to clinical legal education. We believe it can and should be an important part of law students’ self-direction and preparation for their future professional lives from the outset of their education.

Legal educators want our students to maximize their learning from us. Why not teach them how to do so from the outset then? Treating these skills as defined learning outcomes will cause law schools to find innovative ways to include them in their curriculum. Teaching law students how to prepare for

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44. E.g., BROWNLEE, *supra* note 39, which includes chapters such as *Managing the Wishful Thinker and Managing the Meddlesome Micromanager*.

45. Often, this consists of advice intended to aid in building a dialectical relationship that makes value from differing perspectives. *See id.* at 147–49. *See* DOUGLAS STONE & SHEILA HEEN, *THANKS FOR THE FEEDBACK* 229–56 (2014) (describing ways to “navigate the conversation” in supervisory feedback sessions in ways that learn from differences in viewpoint).

46. *See* *LEARNING FROM PRACTICE: A TEXTBOOK FOR EXPERIENTIAL LEGAL EDUCATION* (Leah Wortham et al. eds., 3d ed. 2016).

47. *See id.* at 33–58.

48. *See id.* (explaining the components of the “three legged stool”).

49. *Id.* at 33.

supervision they will receive, what to reasonably expect, how to be thoughtful and proactive when meeting with supervisors, and to proactively take charge of implementing the proposals generated in the course of their supervision, first by law teachers and later by their superiors, will inevitably enhance their learning and skills in both contexts. It will also likely result in more mature and professional students and young lawyers. Ironically, in addition to making the best use of the help available, an improved supervision dynamic could lead to self-reinforcing growth. It might generate more egalitarian<sup>50</sup> interactions with professors and professional supervisors, which incentivizes further seeking of support and instruction.

### III. WHAT SHOULD WE TEACH ABOUT HOW TO APPROACH SUPERVISION?

Getting good supervision is active, not passive. It requires motivation and skill. New lawyers must be interested in doing well at the task and believe they are capable, or will be capable with additional effort, of ultimately performing the task well; they must believe that with effort and persistence their hard work will result in success. These beginning attorneys must be self-determined and possess a mindset allowing for the possibility that experiencing difficulty is a necessary part of the learning process. Additionally, the new lawyer must possess the ability to set and evaluate appropriate goals, and to learn through reflection and adaptation.

Faculty interested in teaching students to get good supervision can develop each of these areas.

#### A. Addressing Motivation

As illustrated in the examples in Part I, when new lawyers and law students do not engage in a self-determined course of action, they arrive at supervision meetings waiting to be told what to do.<sup>51</sup> Neither have the confidence to set their own goals,

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50. Not necessarily egalitarian in the sense of being entirely equal, but perhaps egalitarian in the sense of seeking to remove rigid barriers of inequality and having more power to contribute collegially even across varying levels of expertise.

51. The new lawyer's lack of self-determination is evident in the focus on

or to bring their own vision of the project. Neither believe they have autonomy, or decision-making authority, even about how the assigned project should be executed. Given how little decision-making authority law students generally have over their assigned course work, it should not surprise us that they lack confidence in their ability to make decisions when they become new lawyers.

The motivational issues may be compounded by the fact that law school is more likely to foster a fixed mindset, given its focus on grades, outcomes, and “being smart” rather than effort, process, and being hard-working. To remedy these issues, law schools should strive to create autonomy-supportive environments and to foster growth mindsets in law students.

## B. Supporting Self-Determined Learning

Law students are used to being at the bottom of the hierarchy and learning in an educational environment that is disempowering<sup>52</sup> because law school is inherently autonomy-thwarting. This inhibits the type of self-determined motivation that results in interest, excitement, confidence, creativity, and persistence.<sup>53</sup> Unfortunately, this is precisely the type of

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following directions, rather than generating ideas and solutions: “*She has a vision for her case, and she will let me know what she needs from me . . . After the meeting I will continue doing whatever she directs.*” The law student exhibits similar tendencies: “I imagine he’ll answer my specific questions, but really that will be just a prelude to him *explaining what I need to do to change. After that I will know what I need to adjust to get everything right the next time around.*”

52. See Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being*, 22 BEHAV. SCI. LAW 261, 262 (2004); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULLETIN 883 (2007) (when a person feels autonomous they experience their actions as coming from their own interests and values—their true, authentic self) [hereinafter Sheldon & Krieger, *Understanding the Negative Effects*]; Richard M. Ryan & Edward L. Deci, *Overview of Self-Determination Theory: An Organismic-Dialectical Perspective*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 8 (2002); Johnmarshall Reeve, *Self-Determination Theory Applied to Educational Settings*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 196 (2002) [hereinafter Reeve, *SDT Applied to Educational Settings*].

53. See Reeve, *SDT Applied to Educational Settings*, *supra* note 52, at 184; see also Johnmarshall Reeve et al., *Enhancing Students’ Engagement by Increasing Teachers’ Autonomy Support*, 28 MOTIVATION & EMOTION 147

motivation that would lead students to receive good supervision, because it would result in students who will: seek out information when it is not provided, generate creative alternatives and solutions to potential barriers, and persist in the face of difficulty, including unclear expectations and lack of feedback. Therefore, if we want students to have the drive and desire to engage in the types of actions which enable them to receive good supervision, it is critical we support student autonomy in law school.

Providing autonomy support means providing students with as much choice as possible and with meaningful rationales, which is especially important when no choice can be provided; it also means caring about and showing awareness of the student's

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(2004); Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55 AM. PSYCH. 68 (2000); Ann K. Boggiano et al., *Use of Techniques Promoting Students' Self-Determination: Effects on Students' Analytic Problem-Solving Skills*, 17 MOTIVATION & EMOTION 319 (1993); Aaron E. Black & Edward L. Deci, *The Effects of Instructors' Autonomy Support and Students' Autonomous Motivation on Learning Organic Chemistry: A Self-Determination Theory Perspective*, 84 SCI. EDUC. 740 (2000); Edward L. Deci & Richard M. Ryan, *The Support of Autonomy and the Control of Behavior*, 53 J. PERSONALITY & SOC. PSYCH. 1024, 1030 (1987); Richard Koestner, et al., *Setting Limits on Children's Behavior: The Differential Effects of Controlling Vs. Informational Styles on Intrinsic Motivation and Creativity*, 52 J. PERSONALITY 283 (1984); Geoffrey C. Williams, et al., *Medical Students Motivation for Internal Medicine*, 9 J. GEN. INTERNAL MED. 327 (1994); Carl A. Benware & Edward L. Deci, *Quality of Learning With an Active Versus Passive Motivational Set*, 21 AM. EDUC. RSCH. J. 755 (1984); Sheldon & Krieger, *Understanding the Negative Effects*, *supra* note 52; Ryan & Deci, *supra* note 52, at 69, 73; DANIEL H. PINK, DRIVE, THE SURPRISING TRUTH ABOUT WHAT MOTIVES US 71, 145 (2009) ("Human beings have an innate inner drive to be autonomous, self-determined, and connected to one another. And when that drive is liberated, people achieve more and live richer lives."). Controlling extrinsic motivation, which is not autonomous, is associated with decreased effort and engagement, reduced creativity and persistence, as well as avoiding challenging tasks in the future. This is especially true when the learning involves conceptual, creative processing (the type of learning frequently required of law students); Johnmarshall Reeve, *Teachers as Facilitators: What Autonomy-Supportive Teachers Do and Why Their Students Benefit*, 106 ELEMENTARY SCH. J. 225, 232 (2006) [hereinafter Reeve, *Teachers as Facilitators*]; Johnmarshall Reeve et al., *Providing a Rationale in an Autonomy Supportive Way as a Strategy to Motivate Others During an Uninteresting Activity*, 26 MOTIVATION & EMOTION 183, 184 (2002) [hereinafter Reeve et al., *Providing a Rationale*]; Wendy S. Grolnick & Richard M. Ryan, *Autonomy in Children's Learning: An Experimental and Individual Difference Investigation*, 52 J. PERSONALITY & SOC. Psych. 890 (1987).

point of view.<sup>54</sup> Importantly, learning can be highly structured and still autonomy supportive.<sup>55</sup> Communicating clear expectations, including goals, standards, and other direction and guidance to help students make progress toward academic goals, can be autonomy supportive when students are provided choice, freedom to decide, and a rationale behind the expectations, rather than being pressured and controlled.<sup>56</sup> When a student has a sense of choice and the freedom to decide whether to embrace or reject an externally provided reason, they are free to think about how the external reasons fit within their existing set of values and beliefs, and thus make a self-determined choice.<sup>57</sup>

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54. An autonomy supportive style is one that adopts and internalizes a core set of beliefs about the nature of student motivation. Although it is not a prescribed set of specific techniques and strategies, there are certain approaches that characterize autonomy supportive instruction. See Reeve, *Teachers as Facilitators*, *supra* note 53 at 228–30. Autonomy supportive teachers communicate the value and importance of activities, providing rationales for suggested changes, to justify the investment of the students' effort. They acknowledge and accept students' feelings, including complaints and resistance, which conveys appreciation for the student perspective, decreasing the feeling that the student is being controlled. Autonomy supportive teachers find ways to nurture student needs, interests and preferences, by incorporating them into their instructional activities and allowing students flexibility in the way they work. See *id.* at 230; Maarten Vansteenkiste, et al., *Intrinsic Versus Extrinsic Goal Contents in Self-Determination Theory: Another Look at the Quality of Academic Motivation*, 41 *EDUC. PSYCH.* 28 (2006); Johnmarshall Reeve & Hyungshim Jang, *What Teachers Say and Do to Support Students' Autonomy During a Learning Activity*, 210–11 (2006); Johnmarshall Reeve et al., *Autonomy-Supportive Teachers: How They Teach and Motivate Students*, 91 *J. EDUC. PSYCH.* 537, 546 (1999); Reeve, *SDT Applied to Educational Settings*, *supra* note 6, at 186; Deci & Ryan, *supra* note 53, at 1029. See also Edward L. Deci, et. al., *Facilitating Internalization: The Self-Determination Theory Perspective*, 62 *J. PERSONALITY* 119, 124 (1994); ROY STUCKEY AND OTHERS, *BEST PRACTICES IN LEGAL EDUCATION* 83 (2007). For specific suggestions about using feedback to support student autonomy, see Manning, *supra* note 6.

55. See Reeve, *Teachers as Facilitators*, *supra* note 53, at 232.

56. Autonomy supportive teachers avoid giving directives because they deprive students of the opportunity to make self-determined choices. See Vansteenkiste et al., *supra* note 54, at 22. See also Ryan & Deci, *supra* note 52, at 73–74; Deci & Ryan, *supra* note 53, at 1034; Reeve et al., *Providing a Rationale*, *supra* note 53, at 201–03.

57. While it might seem that only intrinsic motivation can be self-determined, even extrinsic motivation can be autonomous when the extrinsic motivation has both personal endorsement and a feeling of choice. This autonomous extrinsic motivation is associated with the same increased engagement, higher quality learning and better performance as intrinsic motivation. See Ryan & Deci, *supra* note 52, at 71; Deci & Ryan, *supra* note 53, at 1034; Sheldon & Krieger, *Understanding the Negative Effects*, *supra* note

If, on the other hand, they are told to do something without being given a reason, or without having the chance to consider whether they subscribe to the externally provided reason, they never have a chance to act in a way that is self-determined.

A self-determined lawyer or law student would approach a problem understanding the purpose of what they have been asked to do, and believing it is up to them to execute the task. If we want students to be able to do this as new lawyers, we can help them learn those skills during law school. For example, if a professor communicates, prior to or during a meeting, their expectations that students will have their own thoughts about next steps, and about plans to implement revisions and/or apply the lessons they learned to the next problem, and explains to students that the reason is they want students to learn to make important decisions, so they possess good decision-making skills before becoming a lawyer, the professor can support the student's self-determined learning skills.

### C. Teaching Attribution to Correctable Causes

Receiving beneficial supervision also requires the supervisee to persist in the face of difficulty, including persisting at tasks where there is little to no useful guidance or feedback, and to continue to persist until they successfully complete the task. Whether a person will do this is dependent upon mindset and attribution style—the way a person thinks about and perceives tasks and their own abilities.<sup>58</sup> People are motivated to engage in tasks when they believe they have the ability to be effective at the task and can see pathways to success and the

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52, at 885 (“when social contexts support autonomy, and therefore promote psychological need satisfaction, individuals gain the inner resources to develop and follow intrinsic motivations and are also able to identify with and internalize appropriate extrinsic motivations within those contexts.” (citation omitted)).

58. Mindset and attribution style affect motivation to engage in tasks because motivation is derived in part from a person's perceived likelihood of being able to obtain a goal. Because mindset and attributions impact motivation, they have consequences independent of actual causes. See Timothy D. Wilson et al., *Improving the Academic Performance of College Students with Brief Attributional Interventions*, in *IMPROVING ACADEMIC ACHIEVEMENT* 90 (Joshua Aronson, ed., 2002). See also Jennifer Crocker & Brenda Major, *Social Stigma and Self-Esteem: The Self-Protective Properties of Stigma*, 96 *PSYCH. REV.* 608, 622 (1989).

opportunity to maintain and enhance their skills. On the other hand, if a person believes they have no control over negative outcomes, and no amount of effort would improve results, self-efficacy, effort, and motivation decrease.<sup>59</sup>

Attributions—the explanations or reasons a person gives for their own and others' behavior—impacts how a person will respond to negative events, including whether they will persist in the face of difficulty.<sup>60</sup> Those who attribute difficulties to specific, changeable causes are more likely to improve performance, because attributing setbacks to correctable causes results in a belief that the difficulty is fixable with further effort, resulting in motivation to continue exerting effort and persisting in the face of that difficulty.<sup>61</sup> People who exhibit a pessimistic attribution style characterize negative events, difficulties, and failures as unchangeable and global; they attribute difficulty and failure to causes which are permanent, pervasive, and unfixable personal flaws.<sup>62</sup> Conversely, those who exhibit an optimistic attribution style attribute difficulties and failures to causes which are external, changeable, and specific to the context, perceiving the cause of the difficulty or failure as changeable and fixable with further effort.<sup>63</sup>

Attributions are impacted by a person's theory of whether their own intelligence is fixed or malleable.<sup>64</sup> People who adopt

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59. See Crocker & Major, *supra* note 58, at 622. See also Charles S. Carver & Michael F. Scheier, *Optimism, Pessimism and Self-Regulation*, in *OPTIMISM & PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH AND PRACTICE* 41–42 (Edward C. Chang ed., 2001) (“If expectations are for a successful outcome, the person returns to effort toward the goal. If doubts are strong enough, the result is an impetus to disengage from effort, and potentially from the goal itself.”); Carol S. Dweck & Daniel C. Molden, *Self-Theories: Their Impact on Competence Motivation and Acquisition*, in *HANDBOOK OF COMPETENCE & MOTIVATION* 122–23 (Andrew J. Elliott & Carol S. Dweck eds., 2005); Geoffrey L. Cohen & Claude M. Steele, *A Barrier of Mistrust: How Negative Stereotypes Affect Cross-Race Mentoring*, in *IMPROVING ACADEMIC ACHIEVEMENT* 303 (Joshua Aronson, ed., 2002) (describing impact of attributions to bias for stereotype threatened students).

60. See MARTIN E. P. SELIGMAN, *LEARNED OPTIMISM: HOW TO CHANGE YOUR MIND AND YOUR LIFE* (3d ed. 2006); see also Wilson et al., *supra* note 58, at 89.

61. See Wilson et al., *supra* note 58, at 93; see also Corie Rosen, *Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects*, 42 *MCGEORGE L. REV.* 319, 327 (2011).

62. See Rosen, *supra* note 61, at 327–30.

63. See *id.*

64. See CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 6–7 (2008); see also Wilson, *supra* note 58, at 94.

an entity-theory of intelligence, colloquially referred to as a fixed mindset, believe ability, including intellectual ability, is fixed and unchangeable.<sup>65</sup> People who adopt an incremental-theory of intelligence, colloquially referred to as a growth mindset, perceive ability, including intellectual ability, as malleable, and thus believe intellect can be developed and increased.<sup>66</sup> A person with a fixed mindset attributes poor performance to an unchangeable and uncorrectable cause—a fixed amount of intelligence—and therefore responds by giving up, because they assume they are not capable of performing the task, even with further effort.<sup>67</sup> A person with a growth- mindset attributes poor performance to a correctable cause—an ability needing further development—and therefore responds by working harder to develop the necessary ability.<sup>68</sup>

Attributions and mindset also impact self-efficacy—an individual's belief they can perform a desired task.<sup>69</sup> Attributing failure to changeable, correctable causes increases self-efficacy.<sup>70</sup> High self-efficacy results in selecting challenging tasks, putting forth more effort to accomplish such tasks, and persisting in the face of difficulty with those tasks.<sup>71</sup> This leads to a “virtuous” cycle, where high self-efficacy leads to increased effort, which then has beneficial effects on future performance, resulting in even higher self-efficacy.<sup>72</sup> On the other hand,

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65. See DWECK, *supra* note 64, at 42–44; Dweck & Molden, *supra* note 59, at 126–28.

66. See DWECK, *supra* note 64, at 15–18, 21–25; Dweck & Molden, *supra* note 59, at 126–28.

67. See DWECK, *supra* note 64, at 42–44; Dweck & Molden, *supra* note 59, at 126–28.

68. See DWECK, *supra* note 64, at 15–18, 21–25; Dweck & Molden, *supra* note 59 at 126–28.

69. See Pamela J. Gaskill & Anita Woolfolk Hoy, *Self-Efficacy and Self-Regulated Learning: The Dynamic Duo in School Performance*, in *IMPROVING ACADEMIC ACHIEVEMENT* 185, 186 (Joshua Aronson ed., 2002). Self-efficacy differs from self-esteem in that it is specific to a particular task or goal, and involves judgments about personal capabilities, as opposed to self-worth.

70. See Wilson et al., *supra* note 58, at 94. When attributions are to correctable causes a person can anticipate the satisfaction of reaching the goal once they correct the reasons for the failure. The belief that they can correct the deficiency, and the anticipation of reaching the goal, produce high self-efficacy. See Marilyn E. Gist & Terence R. Mitchell, *Self Efficacy: A Theoretical Analysis of Its Determinants and Malleability*, 17 *ACAD. MGMT. REV.* 183, 192–93 (1992).

71. See Gist & Mitchell, *supra* note 70, at 188.

72. See Wilson et al., *supra* note 58, at 94. Additionally, self-efficacy is



attributing failure to unfixable, unchangeable causes results in low or no self-efficacy, leading to a “vicious” cycle where low self-efficacy leads to low effort, having negative consequences on performance, leading to lower self-efficacy, and to lower effort, or possibly no effort at all—sometimes resulting in disengaging not just from the task but from the entire domain.<sup>73</sup>

Teaching students to adopt a growth mindset, and to attribute to correctable causes increases the likelihood students will learn to persist in the face of difficulty, a crucial lesson that will serve them well not just during law school, but when they enter the legal profession. Importantly, not only does this positively impact motivation, it plays a critical role in two of the necessary skills for getting good supervision—goal setting and reflection.<sup>74</sup> It also sets the stage for receiving, learning from, and being able to implement feedback.<sup>75</sup>

Growth mindsets and optimistic attribution styles are learnable and teachable.<sup>76</sup> Faculty can provide clear goals, constructive competency feedback, and challenges matched to ability;<sup>77</sup> focus on learning goals rather than performance goals,

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required for self-regulated learning because it is what ensures students continue to reflect on and alter learning strategies when something they are doing is not producing the desired results. See Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 477–79 (2003).

73. See Anthony R. Artino Jr., *Academic Self-Efficacy: From Educational Theory to Instructional Practice*, 1 PERSPECTIVES ON MED. EDUC. 76, 78 (2012).

74. See Gary P. Latham & Edwin A. Locke, *New Developments in and Directions for Goal-Setting Research*, 12(4) EUR. PSYCH. 290, 291 (2007) (noting the goals a person chooses are significantly impacted by a person's self-efficacy, and belief the goal for a specific task is attainable). The reflection phase of the self-regulated learning cycle includes making attributions (assigning reasons); as described in this section, only students who attribute difficulty or failure to correctable causes will persist. Additionally, the self-regulated learning cycle is fueled by self-efficacy. Students engage in the cycle because they believe it will ultimately allow them to reach their learning goals.

75. See STONE & HEEN, *supra* note 45, at 191–96.

76. See Rosen, *supra* note 61, at 334–36; see also DWECK, *supra* note 64; Terry Doyle & Todd Zakrajsek, *THE NEW SCIENCE OF LEARNING* 125–40 (2d ed. 2019) (explaining to a student audience how to adopt a growth mindset in educational settings).

77. Setting challenges matched to ability does not mean setting lower standards; however, developing a growth framework requires not just setting high standards but also guiding students through each of the steps it takes to reach the standard, including providing sufficient information and feedback for students to develop competency. Setting high standards without providing a way to reach those standards discourages persistence and growth. See

such as grades;<sup>78</sup> and make clear to students how and why any difficulties or failures are specific to the context and fixable with further effort.<sup>79</sup>

#### D. Developing Necessary Skills

Receiving quality supervision requires a number of key skills that can be developed during law school. New lawyers must be able to identify and set effective goals, to evaluate the extent to which they have achieved their goals, and to adapt their strategies to improve future performance. Due to these same skills improving academic performance, law schools should strive to provide regular opportunities to practice and demonstrate these skills.

#### E. Identifying and Setting Effective Goals

Setting appropriate goals, and using those goals to monitor achievement, significantly increases performance in any area.<sup>80</sup> While most students set long-term goals, such as becoming a lawyer and getting a good grade in a course, these types of goals are not particularly effective. A goal must describe observable,

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DWECK, *supra* note 64, at 193–200; *see also* David Scott Yeager et al., *Breaking the Cycle of Mistrust: Wise Interventions to Provide Critical Feedback Across the Racial Divide*, 143 J. EXPERIMENTAL PSYCH. 804 (2014) (using competency feedback to mitigate effects of attributional ambiguity created by stereotype threat).

78. *See* DWECK, *supra* note 64, at 4–11, 127. The fixed mindset focus is on performance goals, whereas learning goals focus students on growth—and mastery. Setting performance goals has the added benefit of focusing students on goals that are within their control (mastering subject matter) rather than goals that are out of their control (grades). Students can influence but not control the grade they are given, especially if they are graded on a curve and their performance is dependent on how well they do relative to others. This helps to explain why the grading curve diminishes intrinsic motivation. *See* Barbara Glesner Fines, *Competition and the Curve*, 65 U.M.K.C. L. REV. 879, 882 (1997).

79. *See* Rosen, *supra* note 61, at 338–40.

80. *See* Latham & Locke, *supra* note 74, at 291 (“Suffice it to state here that goal setting affects performance in laboratory, simulated, and organizational settings regardless of whether the individual, group, or (small) organization (or an organizational unit) is the level of analysis. Holding goal difficulty constant, a goal increases performance regardless of whether it is assigned, self-set, or set participatively. Moreover, goals affect performance in time spans ranging from one minute to 25 years. These findings have been obtained in Asia, Australia, Europe, and North America.” (citations omitted)).

measurable behaviors that can be accomplished in a short period of time, and are challenging, yet achievable.<sup>81</sup> In other words, effective goal setting requires goals to be concrete, short-term, appropriately challenging, and realistic.<sup>82</sup>

Effective goal-setting practices help students focus on specific outcomes, encourage them to seek academic challenges, and make clear the connection between immediate tasks and future accomplishments.<sup>83</sup> Goal setting should focus on cultivating a mastery orientation, rather than hitting specific performance targets or avoiding failure.<sup>84</sup> Faculty can teach students to set goals conforming to the required criteria by having students identify a goal and set a firm end date for achieving it, describe actionable steps to get to their goal, and describe evidence indicating they have reached their goal. Faculty might break larger goals down or suggest necessary steps to reach a goal, or indicate where goals are abstract or unmeasurable, but ultimately they should leave selection of the goal in the students' domain.<sup>85</sup> Checking on progress and helping students revise goals can also serve as an opportunity to celebrate accomplishments, promote persistence, and develop the students' confidence in their ability to identify and execute the necessary steps to successfully complete difficult tasks. All of this will help students achieve greater success in law school in the short term, and more adequately prepare them for the challenges of the practice of law in the long term.

The scenarios described in Part I illustrate the impact of failing to set appropriate goals before meetings. Carla, the hypothetical student, has not thought much about the meeting, and at most seems to have a general goal of getting the professor

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81. See Tracy Epton et al., *Unique Effects of Setting Goals on Behavior Change: Systematic Review and Meta-Analysis*, 85 J. CONSULTING & CLINICAL PSYCH. 1182 (2017).

82. See *id.* In other words, effective goals are actually measurable, and state attainable objectives.

83. See generally JAMES H. STRONGE & LESLIE W. GRANT, *STUDENT ACHIEVEMENT GOAL SETTING, USING DATE TO IMPROVE TEACHING AND LEARNING* (2014) (discussing the positive impact of goal setting practices).

84. See Christopher A. Wolters, *Advancing Achievement Goal Theory: Using Goal Structures and Goal Orientations to Predict Students' Motivation, Cognition, and Achievement*, 96 J. EDUC. PSYCH. 236–50 (2004).

85. See ALEXANDRA USHER & NANCY KOBER, *STUDENT MOTIVATION—AN OVERLOOKED PIECE OF SCHOOL REFORM* 6 (2012). Importantly, this approach would further support student autonomy.

to tell her what she needs to change. Similarly, Rueben, the hypothetical junior lawyer, is looking for guidance, wants to make a good impression on his boss, and expects to be told what to do. A key weakness exhibited by the supervisees in both scenarios is that neither has identified anything concrete and measurable to get feedback or advice upon. These supervisees' expectations also may not be entirely realistic, given the professor's and supervisor's likely expectations that the student and new lawyer will come prepared with their own understanding of the problems, and with an articulated vision for how to complete the assigned tasks.

Law students can be taught to set appropriate goals by being asked to articulate goals for meetings and other interactions, and providing feedback about whether the stated goals meet the criteria for efficacy. Regularly requiring law students to engage in goal setting reinforces the importance of this skill, helps build goal setting habits, and provides an opportunity for faculty and students to clarify the purpose of their interactions and assess whether their goals align and are met.<sup>86</sup>

#### F. Reflecting on Performance

Reflection plays a large role in determining the success or failure of future learning.<sup>87</sup> It is during the reflection phase that learners evaluate their learning outcomes, determine the causes of those outcomes, and make attributions for successes and failures.<sup>88</sup> Thus, the reflection phase reinforces a learner's sense that learning is a matter of planning, strategic choice, and persistence, rather than a matter of innate ability. The reflection phase guides the student as to future learning, helping the learner plan and improve.<sup>89</sup> Without reflection, there is little hope for improvement on future tasks. For this reason, it is important to provide opportunities for reflection and feedback on

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86. It also provides an opportunity to focus students on mastery goals rather than grade-based goals, which fosters a growth mindset.

87. See Schwartz, *supra* note 72, at 460–62.

88. See *id.*

89. See *id.* This is one reason reflection plays a critical role in experiential learning. See, e.g., Rebecca B. Rosenfeld, *The Examined Externship is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLINICAL L. REV. 127, 137 (2014).

reflective learning skills.

“[Reflection] includes four facets: self-evaluation, attribution, reaction, and adaptation.”<sup>90</sup> The first facet, self-evaluation, involves reflecting on the accuracy of internal self-assessment as well as comparing internal evaluation with objective criteria.<sup>91</sup> At this stage the learner asks: “How well did I learn, perform, etc.? What went well? What went Poorly?” This is likely the step most students associate with reflection, and may be the only task the learner completes. However, the benefits associated with reflection require more than just an assessment of what went right or wrong; each step is essential for improving future performance.

The next facet, attribution, is the explanation for why performance was successful or unsuccessful.<sup>92</sup> At this stage the learner asks: “Why did I succeed or fail?” Importantly, it is only if these attributions are to correctable causes that the learner will persist.<sup>93</sup> It is also at this stage that we can help the learner attribute to effort-related causes, to promote a growth mindset, and to attribute to temporary, specific and fixable causes, to promote an optimistic attribution style.<sup>94</sup>

The third facet, having reactions, requires identifying the emotional feelings responsive to the learner’s results and

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90. Schwartz, *supra* note 72, at 461. See Ernesto Panadero & Jesús Alonso-Tapia, *How Do Students Self-Regulate? Review of Zimmerman’s Cyclical Model of Self-Regulated Learning*, 30 ANALES DE PSICOLOGÍA 450, 456–58 (2014).

91. See Schwartz, *supra* note 72, at 461; Panadero, *supra* note 90, at 461.

92. See Schwartz, *supra* note 72, at 461; Panadero, *supra* note 90, at 461.

93. See Panadero, *supra* note 90, at 456; *supra* notes 57–72 and accompanying text. For an understanding of how the stereotype threat specifically impacts attributions of stereotype threatened students, see Paula J. Manning, *Word to the Wise: Feedback Intervention to Moderate the Effects of Stereotype Threat and Attributional Ambiguity on Law Students*, 18 U. MD. L.J. RACE RELIG. GENDER & CLASS 99 (2018).

94. See Panadero, *supra* note 90, at 456. See also STONE & HEEN, *supra* note 45, at 189 (providing guidance for utilizing a growth mindset in response to difficult conversations and feedback which is useful here; we might advise students to accept three things about themselves: (1) you will make mistakes; (2) you have complex intentions, some noble, some selfish, etc.; (3) you have contributed to the problem. This mental framework can make difficult feedback (even from a self-evaluation) easier to handle). Faculty can also teach students to hear feedback as coaching, rather than evaluation. *Id.* at 197–205. See also Doyle & Zakrajsek, *supra* note 76, at 125–40 (explaining to a student audience how to adopt a growth mindset in educational settings).

attributions, and acknowledging the impact of those feelings.<sup>95</sup> At this stage the learner asks: “How do my results make me feel?” It is important to acknowledge feelings because they influence thoughts and actions.<sup>96</sup> Ignoring feelings does not make them disappear; in fact, unacknowledged feelings can inhibit thinking and processing.<sup>97</sup> Unfortunately, because legal education may be intentionally or inadvertently causing students to ignore their feelings,<sup>98</sup> students may be less likely to engage in this critical step—which is why the step should be made explicit.

The final facet, adaptation, involves identifying solutions and making adjustments for future learning. At this stage the learner asks: “How will I improve in the future?” This does not mean the learner will solve the problem, but that they will generate options for moving forward, with the understanding that they will reflect on how the new strategies worked— using the same reflection process.<sup>99</sup> Improvement will come through trial and error—keeping what works and discarding what does not, and then trying again, with a modified plan.

Law students and new lawyers can use these processes to learn from instruction and supervisory experiences. Faculty might begin developing these skills by asking students to reflect after assignments or individual meetings, and by providing specific questions to guide students through these four steps. For example, the law student and new lawyer in our earlier example would benefit from the following guided reflection questions:

1. What part of your preparation for this meeting worked especially well? (Evaluate)
2. Why? (Attribute)
3. What could have made it even more valuable? (Evaluate)

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95. See, e.g., Panadero, *supra* note 90, at 456.

96. See *id.* Positive feelings lead to reengagement, negative to avoidance.

97. See RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* (2d ed. 2014) (explaining that disregarding emotional reactions slows down thinking).

98. See e.g., Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 *GEO. WASH. L. REV.* 554, 565–69 (2015).

99. See, e.g., Panadero, *supra* note 90, at 457–58.

4. Why? (Attribute)
5. How does your performance on this task make you feel? (React)
6. How did the supervisor/professor's feedback about this task make you feel? (React)
7. What are some things you might do differently next time you prepare for a meeting? (Adapt)
8. How might you use what you have learned when you prepare for a meeting with a different supervisor/professor? (Adapt)

#### IV. CONCLUSION

By treating learning from supervision as an important and learnable professional skill, we move it into the realm of things legal education can and should teach.

By supporting student autonomy and developing a focus on effort and process, law schools can develop the type of learners who will be motivated to grow as professionals. This change in mindset and motivation helps shift students' understanding of their role, moving them from passive participants to active, engaged, co-leaders.

If we also teach students to regularly set and measure progress toward their concrete, measurable goals, and to reflect on and adapt to what they learn, we will prepare law students and new lawyers for supervision, ensure they can understand and utilize critique, and ensure they take responsibility to formulate and articulate their own questions about their work.

Ultimately, this kind of instruction will develop better learners, better law students, and better lawyers. And possibly, someday, better supervisors to support the next generation of law students and lawyers.