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## **Fear and Lawyering**

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# Practice

## Advocacy

# Fear and Lawyering

Create a work culture of ‘psychological safety’ that encourages taking intellectual and creative risks

By Heidi K. Brown

In August, the ABA published a “Well-Being Toolkit for Lawyers and Legal Employers,” accompanied by a “nutshell” guide summarizing 80 tips to help lawyers thrive. The two-page guide highlights how a healthy legal workplace includes such factors as “psychological safety.”

I know, I know: A law firm is supposed to be all about intellectual, mental, and physical toughness, strength, confidence and assertion—not emotional sensitivity. Before readers bristle at the notion that I am talking about “safe spaces”—a term that has been (unfairly) criticized in the context of millennials on college campuses—let’s analyze what psychological safety actually means in the rough-and-tumble legal arena.

I first learned the term *psychological safety* in reading Randall Kiser’s book *Soft Skills for the Effective Lawyer*. Kiser quotes Harvard Business School professor Amy Edmondson, who defines the term as “a climate in which people are comfortable expressing and being themselves.” In a professional environment that cultivates psychological safety as described by Edmondson, individuals “feel comfortable sharing concerns and mistakes without fear of embarrassment or retribution. They are confident that they can speak up and won’t be humiliated, ignored or blamed.” Can this concept apply to the legal profession, in which many of us believe we are supposed to know all the answers and not make mistakes?

Our jobs as lawyers are complicated and challenging. Whether we are legal novices or seasoned veterans, the



HEIDI BROWN: “Many of us don’t feel psychologically safe to ask for guidance from someone who won’t size us up as unworthy of our jobs or our salaries.”

“right” answer to a legal question is not always apparent. Procedural rules can be convoluted. The “correct” interpretation of a statutory standard or a clear synthesis of rules from multiple cases is not necessarily obvious. Yet in our profession, it is not easy to admit we don’t know exactly what strategic action to take, or that we are having trouble figuring out a substantive answer.

Law school tends to reward students who exude confidence—those who readily engage in Socratic queries, embrace performance-oriented activities like oral argument competitions, excel in networking and job interviews, and thrive in the “I must break you” (*Rocky IV*) approach to legal training. Law practice likewise often reinforces the bravado mindset: Never show weakness, never let them see you

sweat, fake it till you make it. Law firms (and clients) expect their lawyers to figure out the right answers. Mistakes can have high-stakes consequences.

Because of this pervasive ethos of the perceived infallibility of the “successful” lawyer, many of us—perhaps on the less outwardly assertive side or naturally inclined toward heavy self-criticism—experience self-doubt and fear. What if we can’t figure out the answer to the client’s complicated question fast enough? What if we aren’t quick enough to respond to opposing counsel’s barbs? What if we aren’t 100 percent sure how to proceed, though we have researched and ruminated over every angle of the client’s scenario but don’t know whom we can trust or ask for a gut check? What if we take a strategic or tactical risk and end up making a mistake?

Many of us don’t feel psychologically safe to ask for guidance from someone who won’t size us up as unworthy of our jobs or our salaries. In contrast, we constantly feel on edge and at risk of professional harm. We forge ahead anyway, second-guessing our research, our judgment, our decisions. We pretend everything is fine. It takes a toll.

## TESTING THE WATERS

What does psychological safety mean in the realm of the legal profession? To me, it means being able to say to a law office supervisor or mentor, “Hey, I have researched this client situation six different ways, I’ve spent three sleepless nights thinking about this, and I’m still not sure of the right move, and I need tangible advice.” Openly sharing with a supervisor or a mentor that we have

exhausted our research angles and problem-solving processes yet aren't certain about our next legal maneuver doesn't make us weak or unworthy or less than. Quite the opposite. It means we care about the client and are taking the courageous step of asking for a sounding board. Psychological safety in the legal profession means cultivating—and being an ambassador for—a work environment in which asking questions, testing novel ideas and theories, taking intellectual risks and openly discussing prevention and handling of mistake-making is encouraged and welcomed.

For decades, many law firms have been managed by a “survival of the fittest” ethos. In response to the fall 2018 suicide of a law firm partner at the Los Angeles office of Sidley Austin, a senior columnist for the *American Lawyer*, Vivia Chen, reflected on her experience as a law firm associate and wrote, “You live in constant fear that the client or rainmaking partner who’s giving you work might cut you off any moment. ... The cult of perfectionism is indeed pervasive in law firms—the notion that you should feel deep shame about an inconsequential typo or experience terror for not properly reading the unstated wishes of some client or senior partner.”

It does not need to be this way. We will not lose our perceived “edge” as professionals if we take a kinder, more humane approach to training, mentoring and developing legal high-performers. In fact, forward-thinking law offices that foster psychological safety likely will garner a marked advantage over those that don't.

Law office environments lacking a code of psychological safety often breed fear. Fear unequivocally blocks creativity and performance. Analogizing to the sports world—a different niche of our American culture in which peak performance is the holy grail—sports psychologists David Grand and Alan Goldberg indicate that the



“primordial state of fear” can plague an athlete. They explain how fear “dramatically disrupts the athlete’s ability to stay loose, calm and focused, which is a critical prerequisite for expanded performance. What we call choking is actually the fight/flight response acting out of time and place.”

Telling an elite athlete to “face your fears and just do it” is risky—to the athlete’s mental and physical well-being. So why do we think the “just do it” bravado approach will work for lawyers? The best coaches help athletes untangle performance fears, building their athletes’ mental and physical resilience. Good mentors in the legal profession can do the same.

#### FEAR INSPIRES MEDIOCRITY

Great law firm leaders will defuse fear and establish a platform of psychological safety in order to nurture, attract and retain creative problem-solving lawyers. Less-than-great law firm leaders will continue to stoke fear.

Ed Catmull, a co-founder of Pixar Animation Studios and former longtime president of Pixar Animation and Disney Animation, has warned about the relationship between a fear culture (or a punitive culture when it comes to mistakes or failure) and a lack of creativity. He says, “In a fear-based, failure-averse culture, people will consciously or unconsciously avoid risk. They will seek instead

to repeat something safe that’s been good enough in the past. Their work will be derivative, not innovative. But if you can foster a positive understanding of failure, the opposite will happen.” He suggests that the objective “is to uncouple fear and failure—to create an environment in which making mistakes doesn’t strike terror into your employees’ hearts.”

Cultivating psychological safety in a law office environment does not mean we need to coddle employees or lower standards of excellence. On the contrary, a workplace culture will thrive and excel when lawyers readily can ask for help or guidance on a confusing legal quandary and admit to not knowing the answer despite dogged research. Lawyers in such a culture can take risks, suggest creative and out-of-the-box solutions to legal problems, and raise perceived or actual mistakes to the attention of someone who can help remedy them without fear of adverse consequences.

By directly embracing the concept of psychological safety, law offices can foster creativity and innovative problem-solving and better serve clients and the profession. ■

*Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School. She is the author of The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy (ABA 2017) and Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy (ABA 2019).*

