Supercharging Lawyer Development Through Feedback

by William D. Henderson
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I am a law professor. My job is to educate future lawyers. Experience has shown me that the best way to accelerate the development of legal skills is to provide more and better feedback to my students.

But feedback is expensive. It takes time to deliver intensive feedback. Moreover, feedback can be difficult emotional labor, as it is unpleasant to deliver bad news. Further, defensiveness is a relatively common reaction, so one has to be prepared to marshal facts and examples to show that the feedback is objective, fair, and accurate.

To compound matters, there are few if any institutional rewards for giving developmentally rich feedback,[1] partially because it is difficult to measure the quality of feedback and its impact on lawyer development, and partially because scholarship remains the primary coin of the realm among university educators.

For all of these reasons, the majority of law school coursework involves very little feedback beyond a letter grade derived from a single end-of-the-term exam. Yet, because high-quality feedback can accelerate lawyer professional development and is likely a winning strategy for any law school or law firm seeking to take market share, we are likely to see more of it in the years to come.

Drawing upon my experience as an educator who works closely with law firms and studies the legal profession, I am willing to wager on two predictions that others might find fanciful or utopian.

Prediction No. 1. In the years to come, great law schools will be judged by two criteria: First, the acquisition of complex and relevant domain knowledge in law and allied fields, and second, the creation of high-quality, reliable feedback loops that accelerate the acquisition and development of valuable professional skills.

Prediction No. 2. Within 20 years, and possibly much sooner, a new class of legal service organizations will emerge whose competitive advantage will be rooted entirely in innovation and value-based offerings. Further, the signature feature of these organizations will be teams working in feedback-rich environments — feedback from supervisors, feedback from peers, feedback from subordinates, and, most importantly, feedback from clients.

Predictions 1 and 2 are closely intertwined, primarily because the best lawyers never stop learning and growing. This is not my original thought — far from it. In the 1930s, 1940s, 1950s, 1960s, and 1970s, one can find many law school deans and bar leaders discussing law as a vocation that requires lifetime learning.[2] Indeed, the modern law firm came into existence through the associate-partner training model, as the best work flowed to law firms with sufficient numbers of specialized business lawyers who could work together as a team. A law firm's training model served to lock in its current and future client base, as the growth enabled the firm to develop deeper levels of specialization. Further, the intergenerational linkage with young lawyers enabled partners to feel they were doing both well and good.

Several decades of unrelenting growth and prosperity among larger law firms obscured the business logic that supported the law firm training model, albeit that model likely did as much to create great lawyers as any ABA-accredited law school.

Unfortunately, as the private practice of law has become more competitive, a growing number of law firm partners are replicating the sins of law professors, economizing on feedback to junior lawyers in order to focus on things that bring more immediate rewards. And in recent years, the number one strategic objective of most law firm managers is to increase overall firm revenue.[3] Thus, in many partner-associate relationships, feedback is often limited to work flow. If you keep getting work from a partner, your work is acceptable or better. If the assignments dry up, you need to worry. This is very much akin to the law student who receives an A, B, or C letter grade at the end of the term.

Because a large outflow of lateral partners is what causes law firms to collapse, it is difficult to argue that focusing on this year's revenues is bad firm management. Yet, the emphasis on short-term financial results invariably dilutes investments of time, money, and emotion in the next generation of lawyers.

This imbalance in short- versus long-term incentives creates what the economics literature refers to as a "collective action problem." In this context, the partner who bears the cost of giving first-rate feedback to associates creates a resource that other partners will want to use. Unless the partner receives an adequate reward for his or her efforts, the supply of developmentally rich feedback is going to decline, thus slowing the growth of junior lawyers.

This is not an individual law firm problem. Rather, this is a dynamic that affects the entire industry,[4] from the 1L year through partnership. As a result, any law school or legal service organization to overcome this problem, through either clever design or brilliant leadership or both, is destined to reap enormous rewards in reputation and market share at the top of the food chain.

How important is feedback to lawyer development? In his recent book, *Thinking, Fast and Slow*, the Nobel Laureate Daniel Kahneman distinguishes between two types of thinking, System 1, which is relatively effortless and reflexive (for example, daily or weekly household chores or surfing the Internet), and System 2, which is slow, deliberate, and effortful (for example, learning to think like a lawyer during the first year of law school). According to Kahneman, our minds naturally gravitate toward System 1-type thinking, primarily because it conserves energy, albeit the rigor of System 2 is necessary for solving difficult problems.

Yet, as Kahneman notes, there is a third type of thinking, called intuitive expertise, that combines the speed and seeming effortlessness of System 1 with the impressive domain knowledge and accuracy of System 2. In the legal world, this person is the practice master — the skilled trial lawyer or tax attorney or environmental specialist. The combination of efficiency and precision justifies the premium rates that these practice masters are able to charge.

Yet, how does one obtain intuitive expertise? According to Kahneman, "Whether professionals have a chance to develop intuitive expertise depends essentially on the quality and speed of feedback, as well as on sufficient opportunity to practice."[5]

Kahneman's assessment comports with my own experience as an educator.

Several years ago, I created a new project management course at Indiana Law. Students were placed into teams and given a project from an actual real-world client, which they were required to organize, manage, and complete. The concepts and principles of project management are no more difficult than a typical undergraduate course. Thus, rather than lecture on the material in class, I assigned each team specific chapters from our course book, requiring them to teach the rest of the class through a well-choreographed presentation. My goal was to cover the basic materials while also practicing teamwork and communication skills.

Although the chapter presentations were ungraded, at the end of each class we conducted a "hot wash," which consisted of a simple grid drawn on the whiteboard. (See Figure 1.) On the left side of the grid we listed (as a class) "what went well," and on the right side of the grid we identified "things to look at." (My fellow instructors and I are indebted to Jeff Carr, General Counsel of FMC Technologies, for providing us with this very simple "hot wash" format.)

Figure 1

WHAT WENT WELL	THINGS TO LOOK AT
1. …	1. …
2. …	2. …
3. …	3. …

The presentations surprised us on several levels. First, we were astonished at the level of creativity that an ungraded team-based assignment was capable of producing. Second, we realized that after the first group set the baseline, no group that followed was willing to settle for a work product that did not meet or exceed that standard — the transparency of performance, along with peer pressure within teams, was a tremendously powerful motivator. Third, the hot washes at the end of each class provided an easy-to-follow roadmap for ways to make the presentation better. So, class after class, the student work product just kept getting better and better.

The last team was given the assignment of summarizing the book and creating a simple practice guide for the novice project manager. Much to my chagrin, the team came to my office and said, "Professor Henderson, there is absolutely no way we can top what the other teams have done. We are going to look foolish trying to summarize their work." Having never encountered this situation before, I reminded them, "This is all ungraded. Do the best you can. Just try to create a resource that your team would value as we move on to the actual client project."

A week later, they made their class presentation, and much to everyone's astonishment, they exceeded the performance of all the prior groups. Indeed, one of my students obtained a job at a major law firm not through his grades — which were average — but by my showing them the outstanding project management summary guide produced by his team and the peer reviews from his fellow team members.

As an educator, I was dumbstruck. We all know that feedback is useful. But I had no idea that well-structured feedback, if given to a highly motivated and receptive audience, could supercharge lawyer development. I realized that the cost of feedback — in time, effort, and emotion — was obscuring a proper accounting of its benefits, including those that would redound to the organization and serve as a source of competitive advantage.

Since that time, my colleagues and I at Indiana Law have experimented with more ways to funnel feedback to students, wherever possible lowering the costs and increasing the quality. This led us to implement 360° feedback (technically known as multisource feedback, or MSF) to all students in Indiana Law's Legal Professions course, which is a team-based class taken by all 1Ls. Students are evaluated by their peers on 18 scales that feed into six primary competencies: (1) conscientiousness toward the group, (2) interpersonal self-awareness, (3) active listening, (4) eliciting information through effective questions, (5) communication and presentation skills, and (6) resilience/growth mindset.

Not surprisingly, students tend to get the highest marks on dimensions that most closely mirror college academic performance, since most of the students were admitted to law school based on these criteria. The lower scores on the so-called "soft skills" are eye-opening for students, as they have never received feedback on these dimensions before. This assessment method has gained traction among our students because they are seeing the connection between the 360° criteria and the type of competencies that behavioral interviews often attempt to uncover. The feedback they receive from their peers creates an awareness that enables them to grow and communicate that progress to prospective employers.

Law professors and law firm partners fully understand the costs of giving feedback. However, because we don't fully appreciate its benefits, we tend to under-invest in it. This is an opportunity that is sure to be tapped into in the years to come. ■

Endnotes

1   Though one can hold out hope that he or she who delivers valuable feedback to the next generation of lawyers will be rewarded by karma, heaven, or the intrinsic joy of creating more and better problem solvers.

2   See, e.g., Theodore Voorhees, *The Practical Lawyer's Manual of Law Office Training for Associates* (ALI-ABA, 1960) (outlining a roadmap for lawyer professional development and stressing the importance of lifetime learning). Voorhees served as president of the Philadelphia Bar Association before starting the Washington, DC office of Dechert, Price & Rhoads.

3   For example, according to a large national survey of partners in corporate law firms, the overwhelming proportion reported that working receipts and client origination were the primary factors in determining their compensation. See Major, Lindsey & Africa *2012 Partner Compensation Survey*, Appendix XI (2012).

4   Indeed, as a native of Cleveland, Ohio, I witnessed a similar dynamic in the automotive industry. The Big Three put enormous financial pressure on their suppliers, who responded by placing downward pressure on worker wages, often by trying to suppress the unions. Over time, neither the suppliers nor the unions were willing to bear the cost of training highly skilled tool and die makers. As a result, the entire region began to lose its competitive advantage.

5   See Daniel Kahneman, *Thinking, Fast and Slow,* chapter 22 (Farrar, Straus and Giroux, 2012).

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