

Making Mistakes: A Normal Part of Learning the Practice of Law

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By Peter Lobl

New York City law firms have a well-earned reputation for superlative legal counsel and work product. Because work expectations at these firms run so high, the distinction between pursuing excellence and expecting perfection (i.e., zero mistakes) can get blurry. Blurring this distinction, however, can erode a firm's morale and increase its exposure to liability. To illustrate, I share the following anecdote involving one of my former patients. For the sake of confidentiality, I refer to her as Emily.

Emily had worked at the same law firm since law school, and we started working together shortly after she made a drafting mistake. During her first couple of years at this firm, Emily had worked principally on due diligence projects but she had always wanted to work on joint venture capital deals—a transactional specialty in one of the firm's practice groups. One day the phone rang; a junior partner from that practice group asked Emily to join him on a project. They went over the deal sheet and the applicable document templates, and the partner let Emily take a crack at conforming the templates

to the deal terms. Emily was excited and put a lot of time and effort into this deal.

By the time of the fourth transaction, Emily and this partner's relationship had assumed a mentor-mentee quality, and Emily was negotiating deal terms directly with her legal counterpart on the transaction. With final documents on this fourth transaction out to all parties, Emily felt the need to reread the deal documents one more time. As she made her way through a section of one document, she stopped. She read the section again—a section with complex stock anti-dilution provisions and formulas. She reread the section a third, then a fourth, then a fifth time; a couple of lines in that section didn't make sense.

Emily agonized about what to do. She felt she had done this partner a terrible wrong. She tried to assess the legal and business significance of her drafting mistake. Should she tell the partner? Would he even want to know about this? If she told him, would she fall out of favor with him? Would she jeopardize the opportunity to do more joint venture capital deals? Jeopardize her reputation at the firm? Jeopardize her job?

In the end, Emily told the partner of her mistake. She called the partner, asked to meet with him, and went to his office. Once there, she closed the door and, mortified, with eyes downcast, she told him of her mistake. The partner listened and said "mmmmmm" and "ok" a lot. The partner then updated the documents, called the client, and sent out a new set of documents to all parties. He then completed the transaction on his own, and he never contacted or worked with Emily again.

These kinds of disappointing and painful professional experiences recur time and again at law firms, big, medium, and small. Time and again, work-related

mistakes at law firms engender hurt feelings, disagreeable interactions, and the abrupt and awkward end to promising mentoring relationships. I say this based on my own past experience as an associate and on what I have learned anecdotally over time from friends, acquaintances and patients who work in law firms of all sizes in New York City.

These kinds of interactions emerge in part when law firms don't distinguish pursuing excellence from expecting perfection (i.e., expecting zero work-related mistakes). But expecting no mistakes in legal practice hurts morale and may increase legal liability. First, this expectation hinders the development of positive professional relationships because it sets partners up for recurrent disappointment and frustration towards associates. This expectation also fuels anxiety amongst associates who fear the unspecified consequences of not meeting this impossible standard. Second, this expectation contributes to a dichotomous assessment of work product as either "Pass" (no mistakes) or "Fail" (a mistake). For example, an otherwise superb appellate brief is perceived as "not cutting it" once a formatting error is identified. Third, this Pass/Fail assessment of work product in turn produces an unstable sense of professional self: To fail as an associate may be only as distant as the next work assignment. Fourth, this expectation may actually increase the firm's liability: Emily might have let her fears dictate her actions and decided instead not to disclose her mistake to the partner. In contrast to expecting zero mistakes, pursuing excellence admits of progress along a developmental continuum and recognizes that progress entails occasional stumbles and learning from those stumbles.

Expecting no mistakes also hampers the development of firm-wide norms for addressing mistakes: If a law firm's culture holds that its lawyers make no mistakes, why develop norms for dealing with mistakes? But people do make

mistakes. In the absence of law firm norms or guidelines for addressing them, the mistake will likely be addressed in the moment, at the discretion of the assigning partner. That assigning partner, like Emily's partner, may be feeling disappointed, angry, or even affronted by the mistake. He or she may understandably worry about the effects of the mistake on the client and then respond in the moment in a manner that feels unfair or arbitrary to the associate. Leaving it up to the assigning partner to deal with the mistake on his or her own also reflects a lack of institutional support for that partner and his or her training and mentoring responsibilities. When these kinds of interactions are replicated across an organization, they affect morale, increase anxiety and uncertainty, and contribute to disconnection and isolation.

I changed careers from the law and work as a Clinical Psychologist as well as faculty in a Family Medicine residency program in New York City. The medical profession has its own unique set of challenges, but its approach to mistakes stands in sharp contrast to that in the legal profession. Like attorneys, doctors abhor mistakes, have little tolerance for incompetence, and are driven by extremely high expectations of self. Like attorneys, they are careful, detail-oriented, reliable, and burdened by the magnitude of their responsibilities. In my experiences, however, doctors generally accept and acknowledge that they occasionally make mistakes. This acceptance helps foster positive professional relationships and improves quality of care. For example, medical residents and young doctors will sometimes make mistakes in dosing medications, in ordering labs, and in conveying the details of a case accurately to colleagues. When these things happen, residents and young doctors are usually embarrassed and self-critical. Senior and supervising doctors tend however to adopt a stance of objective and dispassionate inquiry in response to such mistakes. The inquiry centers not on blaming but on identifying the cause of the mistake and then on problem solving it. As young

doctors become more experienced, senior doctors' tolerance for their mistakes decreases. If there is any variation in law firm's tolerance for mistakes, that tolerance is, in contrast, typically at its lowest point for the starting associate.

Because mistakes are expected in medical settings, they also have in place norms and protocols for dealing with them. When the mistake is grave, the doctor who made the mistake might even present the case and the mistake to colleagues at a "Morbidity and Mortality" conference (M&M). M&Ms are structured fora for doctors to review and learn from cases involving preventable medical errors resulting in adverse outcomes to patients, i.e., a death, a disability, harm or injury. M&Ms are common and recurrent facets of the learning and quality assurance practices at hospitals, clinics and medical residency programs throughout the United States.

Accepting and normalizing the occasional mistake at law firms would benefit morale and may help decrease law firm liability. Norms and guidelines for addressing mistakes would have likely benefited both Emily and her partner. The partner might have felt less individually burdened by Emily's mistake if the occurrence of mistakes were acknowledged as possible and were understood within a larger organizational training paradigm. Instead of getting sidelined, Emily for her part might have met with the partner, and they could have both analyzed and learned what happened with those stock anti-dilution provisions. This might have revealed an error in thinking; a unique drafting issue; a problem with the original template; or a communication issue. With the error(s) identified, Emily and the partner could have worked on developing a solution to prevent the recurrence of the error(s). This approach would have likely benefited the law firm's practice and helped preserve the evolving mentor-

mentee relationship between an eager and smart young associate and an engaged and interested partner.

After this episode, Emily continued to work at the firm, and she eventually worked on joint venture capital deals with other partners. She continued to work hard and was still at the firm when we ended our work together in therapy some months later.

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