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Avoiding Tough Conversations? Welcome to Being a Lawyer

Rudhir Krishtel

A friend who is managing partner in BigLaw mentioned to me that although the firm has a 360-degree review program, that the program never gets implemented. Why? Because lawyers don't want to receive real feedback or stir up controversy on a small team or group. Rather than dig in, address the issue, and possibly improve the work environment, the firm would rather avoid these conversations altogether. When working with my coaching clients, I've seen more of the same:

- A firm partner facing insubordination by an associate who planned to demand behavior change "because I'm the partner," rather than talk through a more sustainable outcome.
- An in-house attorney wanting a promotion that avoided raising the subject and planned to continue simply "working hard" until a promotion was offered.
- Another partner avoiding reaching out to potential clients because "they'll think I'm begging for business."

Although lawyers are incredible at arguing on behalf of their clients, many don't welcome having tough personal conversations. Rather than avoid, why isn't our instinct to lean in? Since when was avoidance ever a strategy we advised our clients? Naturally, these people are worried about all of the negative consequences of their interactions. But, what if the conversations went swimmingly, or at least better than expected? More importantly, **what's the cost of inaction?** Ongoing tension and stress. Never pursuing the dream of having your own book of business. That feeling of being 'stuck' that only compounds over time.

When you shift your approach and instead make a habit of stepping into these difficult conversations, it can be a game changer. Clients are reporting that they don't have to spend hours or weeks either avoiding conversations or managing the inherent underlying fear about them, and instead having a greater excitement around the possibility of a successful resolution.

Part of the problem — lawyers don't take well to criticism, rejection, or setbacks. *They typically get defensive, and often feel a need to explain and justify their behavior to others. They can be easily wounded by a critical comment or by a client's failure to return a call. Difficult conversations are an unavoidable and recurring instance in the workplace and in business, and they don't have to be feared or dreaded. If you take a moment to pause, and think it through, they can be handled with insight, knowledge, and the proper skills to benefit yourself and those around you.*

Another problem — our legal advocacy training doesn't always apply to one-on-one conversations. Attorneys are great at doing what it takes when representing clients. Unfortunately, winning in court or in disputes is great in a competitive framework, but this isn't always appropriate for handling personal conflict. For example, in advocacy you may have been advised to:

1. The goal is to win.
2. Use your "knowledge" to build trust with the judge.
3. Constantly think about what points to rebut and defend/persuade on each position.
4. Brainstorm backup arguments.
5. Be perfect in this process.

Difficult conversations don't always need advocacy. For example, you don't have to be "right" when handling workplace conversation, it may not even be your goal. Also, you can take the pressure off on being perfectly polished — you're not performing in front of judge or jury, and there's no time for parties to review advance briefings. In fact, with difficult conversations, you have to get OK with a certain level of messiness.

Legal training isn't prepping us for personal conflict. When working with attorneys on handling difficult conversations, we could use coaching to help switch the frame. This includes:
- Understanding the nature of difficult conversations and how to handle them.
- Identifying stages and preferred strategies for handling difficult conversations.
- Using enhanced listening and empathy in a way that minimizes tension and conflict and strengthens relationships.

This is where the real work is. If you have a difficult conversation that you've been avoiding, consider the following:

Pay Attention to How Avoidance Feels — Yes, I said feelings. Are you paying attention to how you feel when you are avoiding that conversation? What's actually happening? Is there anguish? Are you concerned? Try to understand the consequences you're worrying about. For example, is it being disrespected or rejected? Take a moment to understand the underlying stress. Perhaps it's some form of fight (e.g., I need to win this!) or flight (e.g., what can I do to avoid?). Pay attention to where these feelings show up in your body — possibly a mild tightness in the chest, or maybe pangs in your stomach. Do this same investigation or inquiry of yourself, during, and after the difficult conversation — continue to pay attention to how it makes you feel. Don't discount your own experience.

Assume Positive Intent or Mindset. It's not always "we're the good guys," and "they're the bad guys." When having a tough conversation, instead try assuming that the person you're planning to speak with actually means well; that they ultimately want to support you, and believe you're doing your best.

For example, if someone sends a rude email while cc'ing teammates, we may assume that they want to embarrass us. We could instead assume that they were in a hurry, stressed, and didn't realize the negative tone. If we're meeting with a potential client, we may assume they think we're "begging for business." Instead, imagine they need additional support from outside counsel because they're underwater with deadlines. Not much comes from assuming the worst, so stay away from assumptions and give the alternative a shot.

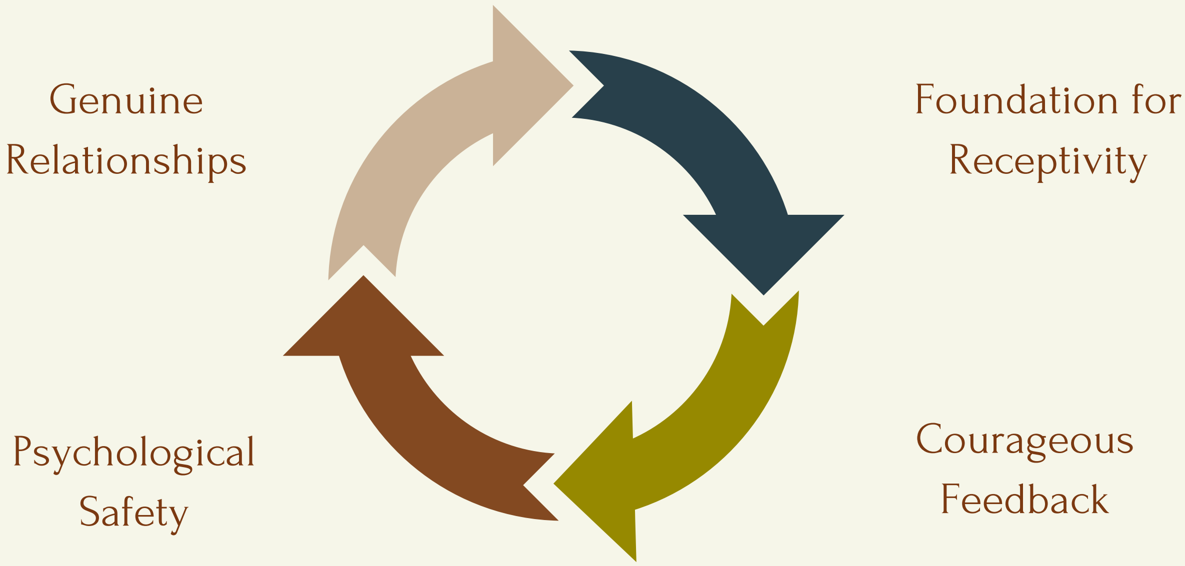
Listen First. Rather than trying to score a win, or beat the other side, think long term about what actually listening in this conversation can do for the relationship you have with this person. For example, in a conflict, you might think listening first means conceding your argument time, letting them score points, or even acquiescing to their position. In a personal conversation, however, you don't actually have to meticulously address every point. To start, imagine the best listener you know, and picture yourself as that person. Simply "hearing out" the other side can do a lot including reducing the tension, making the other person feel "heard," and give you information on what might really be at issue.

Be Clear and Succinct With Your Needs. Know and express specifically what you want, focusing more on the other person's actions, and less on their feelings. If you're dealing with insubordination, stick with the specific behavior you observed, the impact of that behavior, and what needs to change, without judging intent. Avoid putting them on the defensive by blaming or using generalizations ("you always" or "you never") or asking why they went down that path. If there's push-back, go back to the deep listening mentioned above, without interrupting, disagreeing, or necessarily countering, and then briefly restate your needs.

Vision for Positive Outcomes. Rather than doubt yourself, and brainstorm what could go wrong, start to imagine all of the things that may go right by having the conversation. You might land the client. You might start to smooth out issues with your colleague. Imagine the potential benefits even if you don't hit your ultimate goal. Focus on other potential long-term gains .For example, consider the importance of improving your connection with a colleague rather than making sure the colleague understands they did something wrong. With a client pitch, you might not get it this time, but maybe this is just the beginning of a long-term business relationship.

Shifting your approach and repeatedly stepping into these conversations, you'll find yourself feeling more excited about the people, relationships, and scenarios that often caused you difficulty, and ultimately feeling much better about your work and life.

Culture of Feedback Loop



Grounded, supportive feedback doesn't happen in a vacuum.
It exists in a system of reciprocity and mutual understanding.

Relationships: Genuine relationships are foundational to Cultures of Feedback. Genuine relationships are those in which we feel seen, heard and connected. There are simple, powerful ways to invest in relationships - you matter cues, leading with vulnerability, listening to understand. How can you foster connection and care with your colleagues?

Foundation: When we feel seen, heard and understood, we can withstand and even welcome being challenged, hearing constructive feedback, and considering our role in difficult situations. When we don't feel seen, our protective armor keeps us from integrating the hard stuff.

Feedback: Courageous Feedback is clear, candid + kind. Being vague, beating around the bush or glossing over important feedback isn't helpful. Holding the intention of building someone up, not tearing them down, is paramount. Feedback delivered in this way can foster greater connection, deeper trust and a feeling of being cared for by our colleague.

Safety: Feeling a sense of trust, support and guidance helps create the conditions for psychological safety. Safety enables us to be creative, try things out, innovate, and take (calculated) risks. We can show up authentically in our relationships, and the cycle of growth continues.

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Influencing Lawyer Well-Being with Collaborative Clarity

Gavin Alexander, Esq.

> "The single biggest problem in communication is the illusion that it has taken place." — *George Bernard Shaw*

The Impact of Lawyers as Supervisors

In January of 2023, an article published by Forbes reported: "[N]ew data suggests that for almost 70% of people, their manager has more impact on their mental health than their therapist or their doctor—and it's equal to the impact of their partner." In the legal profession, the vast majority of those who find themselves in supervisory or managerial roles don't arrive in such positions due to their actual skill or competence as effective people managers. Partners, attorneys-in-charge, senior legal VPs and other supervisors are frequently promoted or appointed based on the "business case" for doing so. Further, while most legal employers are not fully transparent about this evaluative process, based on the outcomes, it seems likely that less weight is placed on candidates' skill as effective managers compared to their capacity to bring in significant revenue, handle high-profile matters, or elevate the prestige of the office.

Before I dig deeper, you should know a bit about me. I graduated *magna cum laude* from Harvard Law School, then completed a clerkship at the Massachusetts Supreme Judicial Court. For seven years after that, I was an associate at a top global law firm. During that time, as I've shared elsewhere, I struggled seriously with my mental health and well-being, fearing that if there was any paper trail of my receiving treatment for my symptoms, the trajectory of my career would be limited or destroyed. I did my work, met my hours expectations, and hoped things would eventually get better. They didn't. They got worse and worse until I almost died by suicide. Then I started making some changes, *then* things got better, and then I pivoted from practicing law to researching and advocating to help the legal profession address the issues that contributed to my reaching that crisis point.

A lot of my work since then has involved listening to lawyers about the issues that affect their well-being in the profession, and the issue I hear about second most often (the first, unsurprisingly, being the billable hour) is hierarchical frustration lawyers experience with other members of their team. For supervising attorneys, that's the frustration they feel with their supervisees. For supervisees, that's the frustration they feel with their supervising attorneys. This frustration can often spiral well beyond normal workplace tension and wind up directly impacting the mental well-being of everyone involved. In my experience as a legal well-being advocate, lawyers tend to tie far more of their ego and sense of self-worth to their work performance than others, so when that performance is called into question, the results can be far more damaging than what may be experienced by employees in other professions. I have seen numerous lawyers fall into spirals of shame, self-doubt, fear, burnout, or even worse, experience worsening or crisis-level symptoms of mental illness, as a result of their supervisory or managerial relationships deteriorating. In those instances, such lawyers repeatedly raise their interactions with other members of their teams as material contributors—if not the defining contributors—to these extremely worrying well-being outcomes.

I've personally experienced this as well. When I was in practice, I had some supervisors who were exceptional at building my skills and supporting my development. These were attorneys who communicated with me clearly, helped me understand how and why they preferred or recommended different approaches when providing feedback on my work, and gave me concrete suggestions of how I could make changes to improve. Ultimately, they made me genuinely believe they had my best interests at heart, that they wanted me to become an excellent attorney and believed I could do it. Through pursuing clarity in our relationships, we built trust with each other.

I also had less effective supervisors who regularly left me feeling frustrated, sad, scared, worthless, or stupid. When working for these attorneys, both my well-being and my work product suffered. When I was too scared to ask questions, I made mistakes. When I didn't receive meaningful feedback or didn't understand feedback I received, I repeated errors because I didn't internalize the lessons I was allegedly supposed to have learned. When my work or ability was criticized using judgmental language, I felt like a failure as a lawyer and believed I'd never be able to succeed at the level to which I aspired. As a junior lawyer with over $200,000 in law school debt, a trained and ingrained desire to succeed at all costs, and a history of untreated depression, these experiences absolutely contributed to my winding up in a crisis that nearly cost me my life.

If our profession seeks to more effectively combat the materially worse mental health outcomes experienced by lawyers as compared to the general population, one core competency we need to focus on is effective internal communication, particularly in hierarchical legal teams.

The Kindness and Efficiency of Collaborative Clarity

In most cases I've witnessed or experienced, when tensions and frustrations begin to build up between lawyer supervisors and supervisees due to performance-related concerns, one of the roots seems to be a gap in understanding between expectations and outcomes. After all, it is rare that a supervising attorney genuinely *wants* to make a supervisee feel awful about themselves. Similarly, it's just as unlikely that someone who worked hard enough to get through undergrad, the LSAT, three years of law school, and the bar exam is lazy or unwilling to work hard. Instead, in almost all such circumstances I've witnessed, the gap between expectation and outcome could have been bridged by providing or seeking additional clarity when communicating—clarity about substance, clarity about style, and clarity about process.

That brings me to the core concept I want to talk about today. Clarity. I'll start with four aspects of clarity that are essential to remember in the legal workplace.

First, clarity is subjective. Just because you think you explained something clearly does not mean that your team member clearly understood it. Therefore…

Second, clarity is collaborative. It is only reached when both parties have confirmed that their understanding is shared.

Third, clarity is efficient. When parties spend just a bit more time up front ensuring that they've reached the type of collaborative clarity I just described, they are *far* more likely to avoid hours of revision, frustration, and repetition of feedback on the back end.

Finally, clarity is kind. Brené Brown aptly summarized this concept in her book *Dare to Lead* as follows: "Not getting clear with a colleague about your expectations because it feels too hard, yet holding them accountable or blaming them for not delivering is unkind." If collaborative clarity is not achieved, which can occur when expectations, feedback, or other internal communications are not clearly conveyed *and* clearly understood, and the supervisee is then provided with criticism or negative feedback on their performance, they have been effectively set up to fail. This does not engender trust, and as Google learned after spending years studying successful teams, "if you trust someone is looking after your best interests, you will do anything that person asks."

Making It Real: Examples of Ambiguity

In the legal workplace, I tend to believe there are three primary opportunities for communications to be either clear or ambiguous in ways that could wind up affecting the trust between a supervisor and supervisee and, in turn, the well-being of both. These are:

- The Introduction
- The Assignment
- The Feedback

I'll discuss each of these, but the key question I recommend asking at each of these stages is **whether collaborative clarity has been achieved with respect to *each* of substance, process, and style.**

1. *The Introduction*

One of the most effective supervisors I had as an attorney sat me down on literally my first day working with her, and she explained several things I should know about how she works.

- First, she acknowledged that she spoke very quickly and that I should always interrupt her if I had questions or didn't understand something she was saying.
- Second, she told me that she often tried to transition home from the office as close to 5pm as possible, so if I was looking for her after then, I should call her on her mobile phone.
- Third, she informed me that she sent emails at odd hours and over the weekend, but she told me that she would flag something as Urgent in the subject line if she needed me to read it right away. Otherwise, she instructed me to ignore such emails until working hours.

When a supervisor and supervisee engage in their first work project together, neither knows how the other works best. If these factors remain unspoken, ambiguity is present, and the supervisee may inadvertently fail to meet the supervisor's expectations. Therefore, at the start of any new supervisory working relationship, I strongly recommend having a conversation about communication itself. For example, if you are the supervisor:

- When explaining something, do you prefer that your team members interrupt you with questions, or write questions down and then ask when you've finished explaining?

- When your team members have questions, do you prefer that they email, call, or swing by your office?
- When you send emails late at night or over the weekend, how will you clarify which emails genuinely need to be read and responded to quickly?
- Do you expect to sign off on all external communications before they're sent, only those to clients, only those to opposing counsel, only those to courts, etc.?

If you are the supervisee and your supervisor doesn't affirmatively share these tips with you at the start of your relationship, consider asking. If you can't get a hold of the supervisor themselves, consider finding another team member who has worked with that supervisor previously and ask them for tips about how this supervisor likes to work.

When both the supervisor and supervisee clearly understand the way the supervisor needs or prefers things to be done *before* starting to actually execute projects, it's far more likely that the gap between expectations and outcomes will be bridged. This can mitigate the risk of the relationship creating unnecessary antagonism, stress, or worse.

2. *The Assignment*

It should go without saying, but it is absolutely essential that a supervisee fully understands a project when it is assigned to them. That means understanding the *substance* of the assignment, *how* they should go about executing the assignment, and whether the assignor has any *stylistic preferences* for the assignment.

Among lawyers, my experience is that we're typically pretty effective at conveying the legal substance of an assignment, but the *form*, the *process* and the *style* are often left ambiguous. For example, when a supervising attorney asks a supervisee to conduct a research project, in my experience, both lawyers are fairly likely to reach collaborative clarity on the legal substance of the question. However, what about the following?

- *Form*: Should the results be delivered in a formal memo, an informal email, a bullet list of cases, or some other form? Should the supervisee attach PDFs of the cited cases with key sections highlighted, or is the summary itself sufficient?
- *Process*:
    - Does the supervisee's understanding of the *deadline* match the supervisor's? "Early next week" could mean "by sometime on Monday" to one person, and "by Wednesday night" to another. "End of day" is also ambiguous, since some interpret that as 5pm their time, while others interpret it as "before the start of the next workday."

    - How long should the supervisee spend on each of (a) researching and (b) drafting the response?
    - At what point should the supervisee check in with the supervising attorney and provide an update on their progress?
- *Style*: Could the supervising attorney help the supervisee more clearly understand the supervisor's stylistic preferences by providing an example or two of other research project responses that they've found to be excellent?

As attorneys in supervisory relationships get more used to working together, the answers to some of these questions are more likely to be mutually understood, but toward the beginning of any working relationship, regardless of the relative seniority of the two individuals (e.g., even if the supervisee has been in practice for five to ten years), spending a few extra minutes minimizing ambiguity at the assignment stage can save both supervising attorneys and their team members from misalignment and frustration with the outcome or the evaluation.

3. *The Feedback*

Two quotes from Kim Scott's excellent book *Radical Candor* sum up a lot of my experiences with feedback in the legal profession:

First: "[F]or every piece of subpar work you accept, for every missed deadline you let slip, you begin to feel resentment and then anger. You no longer just think the work is bad: you think the person is bad. This makes it harder to have an even-keeled conversation. You start to avoid talking to the person at all."

Second: "Saying 'your work is shit' is way better than saying 'you are shit,' but it's still totally obnoxious."

I take the following critical lessons from these two quotes:

- It is essential to provide feedback, especially constructive feedback. Failing to do so is unclear, unkind, and absolutely will not help develop trust between supervisor and supervisee.
- Using judgmental language when providing feedback may get your point across, but it won't help the recipient grow, learn, and succeed next time. It will just make them feel bad about themselves, you, or both. Further, perfectionism has been reported as a contributing factor in the cases of multiple lawyers who have died or tried to die by suicide, so understanding the potentially disproportionate impact of judgmental feedback on lawyers in particular is essential.

- Failing to reach collaborative clarity about where the recipient's substance, process, or style could be improved is likely to result in repetition of problems, growing distrust, and ultimately, a relationship where the feedback recipient feels like they are incapable of success.

Here are a few concrete comparisons of feedback or feedback-related communications that contain ambiguity, versus those that include a bit more clarity, and the impact of using each on both the outcome and the well-being of the team.

- **Allow for Preparation.** Compare "could you put some time on my calendar for us to meet later this week" with "could you put some time on my calendar later this week for us to discuss the *Gavin* brief now that it's finalized?" In the first scenario, the supervisee could experience real tension, or even triggered symptoms of anxiety or depression because they have no idea what the meeting is about. They could become trapped in a thought spiral fearing that they are going to be scolded or disciplined for some unknown failure, or even that they are going to be fired. In the second, the supervisee knows what the meeting is about and can go over their notes about the project, and the meeting itself is therefore likely to be more efficient and productive while minimizing unnecessary anxiety.

- **Start with Curiosity.** Compare "it looks like you really rushed this," with "how long did you spend on each step here: researching, drafting, and proofreading?" The first makes an assumption that could be completely incorrect (for all the supervisor knows, the supervisee could have stayed up all night for days working on the project) and could therefore lead the recipient to respond with defensiveness or anger. The second seeks to identify and accurately assess where process improvements could be recommended for the future.

- **Provide the Why.** Compare the following two comment bubbles: "Have you considered [Case Name]?" vs. "Is there a reason you didn't cite to [Case Name]? I would have cited it because…." The first is a comment that doesn't actually explain anything. If the recipient did consider that case, then they won't understand what they should have done differently or why, leaving room for confusion or frustration. The second helps both parties understand the gap between expectation and outcome, and how to bridge it.

- **Suggest New Processes.** Compare the following: "Please remove all typos and grammar errors before sending me your drafts," vs. "What was your proofreading process? Did you use Word's Spelling and Grammar Check function? What about other automated tools like Grammarly? Sometimes, when I'm doing a final review of a draft, I'll print it out in hard copy or read it out loud to make sure I catch all the small errors." The first demands an outcome, leaving the recipient unsure of what they should change in their process to reach it and therefore fearful of making mistakes in the future. The second suggests *how* to reach that outcome with non-judgmental, process-oriented solutions.

- **Avoid Your Opinion.** "This isn't a great first draft. I believe you can do better." There are a few issues here.
    - The first is that this is judgmental language. It's not clear because it doesn't actually explain the gap between expectation and outcome or provide a suggestion about how to bridge that gap. All it does is make the recipient feel bad about the work they've done, which is not usually the most effective way to help them improve.
    - The second is that it suggests that your opinion is objectively true. For all you know, the same supervisee turned in very similar pieces of work product to other supervising attorneys who gave them rave reviews. Based on my work listening to attorneys at numerous legal employers, this happens *far* more often than you may expect, and it leads to supervisees feeling extremely confused about what constitutes excellent work.

Our goal as lawyers on teams is always to deliver exceptional work for our clients. To achieve this goal, we need to focus more heavily on clarifying each other's understanding of the work itself and how to perform it. By focusing on reaching collaborative clarity, I believe our teams' legal work will more likely meet or exceed our expectations, *and* just as importantly, we could materially mitigate the impact of one of the most common factors adversely affecting many lawyers' well-being: the relationships between supervising lawyers and their supervisees.

Gavin Alexander (he/him) is a licensed attorney, Certified Corporate Wellness Specialist, and nationally recognized thought leader on well-being in law. He currently serves as the Wellness Director of Jackson Lewis P.C., a law firm with over 1,000 attorneys and 60 offices across the United States. Before joining the firm, Gavin served as the first-ever Fellow of the Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being. Gavin graduated from Harvard Law School *magna cum laude* in 2012, completed a clerkship at the Massachusetts Supreme Judicial Court, and practiced as a corporate associate in a global law firm from 2013-2020.

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