

PRINCIPLES FOR IMPROVING ASSOCIATE SELF-ESTEEM AND MORALE

By

Marc S. Friedman, Esq.

Natalie Loeb, M.S., PCC Candidate

Gordon Loeb¹, ACC Candidate

PART ONE: FIVE RULES OF THE ROAD FOR MAKING ASSOCIATE ASSIGNMENTS

Assume that Eric Smith is a partner in the Labor and Employment Group at the prominent law firm of Smith & Jones. Smith's largest client, Apex Technologies, Inc., recently discovered that a competitor has been attempting to solicit and hire all of Apex's key engineers and technical employees. Worse still, Apex has uncovered, through a forensic analysis of certain key employees' computers, that those employees have been sending the competitor Apex's confidential business information and trade secrets.

Eric calls Sarah Simmons, a second year litigation associate, into his office. Eric tells Sarah the following:

"Sarah, this is the first time we have dealt with each other. I would like you to do some research into what causes of action exist for employee pirating and intellectual property misappropriation, and I need it in about a week or so."

Sarah, being somewhat intimidated by Eric, the firm's founding partner, is afraid to ask any questions and, instead, simply replies, "Ok Mr. Smith. Thanks for the assignment which I am sure will be interesting. You won't be disappointed."

As Sarah begins to work on the assignment, she realizes she doesn't even know how to begin or where to go. Many questions arise in her mind - "What is the case about?" "What is the deadline for the research?" "What form should the deliverable take?" "What jurisdiction's law should I look at?" "How much time does Mr. Smith expect me to spend on this?" On top of these questions Sarah thinks, "I am sick to my stomach. I have a major assignment for Mr. Jones and I can't do both! Maybe I'll just go to the bathroom." Sarah knows that trouble lies ahead but is paralyzed with fear as she sees her career path being jeopardized. And, as a result, Mr. Smith's ability to represent Apex may be seriously compromised and, indeed, a very important client relationship may be endangered.

Clearly this difficult situation could easily have been avoided. This article sets forth five very basic rules for the effective setting of expectations that will promote "in the moment" coaching and feedback that law firm associates deserve. Had Mr. Smith followed these rules, he would have likely avoided the perilous situation described above.

¹ Mr. Friedman is a partner in Dentons US LLP. For over 40 years he was the managing partner of a major law firm or department. Ms. And Mr. Loeb are principals in Loeb Consulting Group, LLC , a management and leadership development company dedicated to cultivating high potentials in law firms, businesses and student and community leadership.

1. MAKE THE ASSIGNMENT SUFFICIENTLY IN ADVANCE

While all lawyers encounter unanticipated "emergencies", such as a phone call from an adversary who is moving for a show cause order with temporary restraints, most of a partner's requirements for associate support are amply known in time for both the partner and associate to avoid a "fire drill." When there is a "fire drill", especially if it was avoidable, anxiety increases, tempers may flare, the associate may not deal well with the compressed timetable, and, in many cases, the quality of the associate's work product suffers. A "fire drill" may not only affect the associate's performance of her work assignment. It can also affect the relationship between the partner and the associate, the quality of the partner's client representation and even the loss of the client.

Careful planning is a partner's best friend. Pulling a play from the "strategy" playbook and planning effectively will reduce the risk of a "fire drill" This requires that the assigning partner make the assignment to the associate in as far advance of the "drop dead" due date as possible. Inevitably this will enhance the partner-associate relationship, and provide the associate with ample opportunity to complete the assignment on time and at a high level. Both the anxiety of the partner and the associate will be minimized.

The partner's effective planning will help the associate to use her time management skills to complete the assignment on time. She will better be able to balance all the balls being thrown at her by other law firm partners. In addition, she will have an opportunity, if required, to explain why she cannot meet the partner's required timetable, which may be due to her workload, vacation schedule or family obligations, in which case the assigning partner then knows to look for help elsewhere.

2. EXPLAINING THE ASSIGNMENT AND ITS CONTEXT

Many partners will explain the assignment just like Mr. Smith did in the above hypothetical, where he stated:

"I would like you to do some research into what causes of action exist for employee pirating and intellectual property misappropriation, and I need it in about a week or so."

This type of assignment is fraught with problems. First, the associate will not understand the significance of her work and the reason the partner is requesting it. Second, Mr. Smith has not sufficient defined what he needs which invariably leaves the associate guessing. Third, the associate may not fully understand what is expected and go down the wrong path, afraid to ask the partner such as Mr. Smith for a further explanation.

When a partner clearly communicates his expectations to an associate, the associate is more likely to meet those expectations. Work assignments to a first or second year associate with minimal experience with a particular subject matter require more highly directive behaviors from the partner. A research based coaching model known as Situational Leadership II® developed by Ken Blanchard describes these behaviors as **structure, define, organize, teach** and **monitor**. In practice, this looks like

- Defining what the goal is and what a good job looks like
- Showing and telling how
- Establishing timelines
- Identifying priorities
- Clarifying roles – identifying responsibilities, determining limits of autonomy/authority, and clarifying how decisions will be made.

- Developing action plans
- Monitoring and tracking performance

To avoid a misunderstanding and to encourage a successful assignment, the partner should first explain to the associate what the lawsuit or corporate transaction is about. If the associate understands the context surrounding the assignment, the likelihood of the partner receiving a great work product on schedule will inevitably be enhanced. In the above hypothetical, Mr. Smith should explain who the parties are, what the dispute is about, what is the current stage, what is his strategy for successfully representing the client, and why and how the associate's assignment fits into Mr. Smith's strategy. While it may take a few extra minutes for this broader explanation, the benefit will be substantial. When an associate appreciates the full road map, she will better understand the work assignment and what work product is needed.

In addition, Mr. Smith's assignment is not sufficiently defined. For example, he should state which body of law will govern, whether the associate should consider both state and federal cases, whether she should also consider statutes such as the Uniform Trade Secret Act or the Federal Computer Fraud and Abuse Act, whether she should consider patents or trademarks or other possible form of intellectual property, and so on. He may also suggest possible sources for legal research, such as Milgrim on Trade Secrets or a particular patent or copyright treatise. Providing this level of detail typically results in a higher quality associate work product.

3. DESCRIBE THE DELIVERABLE AND TIMEFRAME

It is critically important that the assigning partner carefully explain the nature of the deliverable he expects and the required timeframe for delivery. In the above hypothetical, the deliverable could be a draft brief, a legal memorandum, copies of cases (perhaps highlighted where important), an email or even just an oral report by the associate. Whatever is required, the assigning partner must specify exactly what deliverable he expects.

In addition to specifying the nature of the deliverable, the assigning partner must identify a deadline and perhaps a few which are designed to provide him and the associate with sufficient time to prepare and evaluate the deliverable for the associate to do some additional work if required.

For example, after better defining the assignment and providing its context, Mr. Smith might say:

"We need to have our brief filed by October 15. Therefore, Sarah, I need your memorandum by October 4 so I have time to review it and get it back to you with any questions I have. Can you meet this timetable?"

In addition, it may be wise for Mr. Smith to suggest an earlier discussion. For example, following the above statement, he might state:

"Also Sarah, let's meet in the afternoon of September 27 so we can see how you are progressing and make sure you are on the right track."

Following these guidelines for an effective associate assignment will facilitate partner-associate communication, enable the associate to produce a high quality work product that meets the assigning partner's requirements and timetable, and that will help him to execute the case or transaction strategy that, hopefully, he has explained, thereby setting up the associate to be successful.

4. THERE ARE NO STUPID QUESTIONS

Associates feel insecure, especially in the presence of influential law firm partners. They don't want to make any missteps and certainly don't want to disappoint the partners. Perhaps most significantly associates do not want to look stupid. As a result, an associate who is confused or who doesn't understand an assignment may refrain from asking the assigning partner questions or for clarifications along the way.

When an associate is afraid to ask questions, the result can be disastrous. For example, the memorandum or other work product may be vastly different from what the assigning partner needs. Or, gripped by insecurity and anxiety, the associate may be paralyzed thus missing the deadline.

But these situations, too, are easily avoided. In the hypothetical, Mr. Smith, after explaining the matter and assignment as above, should conclude by saying:

"Sarah, do you have any questions you want to ask. Please understand there are no stupid questions. I want to be sure you fully understand what is being asked of you. And as you dig into the assignment you are likely to have more questions. Don't brood about them. Come speak to me or send me an email. Neither of us want you to go down the wrong road. OK?"

In the Situational Leadership II® model this type of behavior is an example of "supportive" behaviors. Supportive behaviors are described as **listening** to the associate's concerns, then paraphrasing or reflecting on their thoughts and/or feelings, **facilitating self-reliant problem solving** (asking what and how questions to help define a problem, generate and evaluate alternatives, and choose a solution), **asking for input** by involving the associate in decision making by asking for opinions and suggestions, **providing rationale** by explaining why and providing perspective, **acknowledging and encouraging** the associate by expressing appreciation and reassuring, **sharing information** about the firm and/or client and sharing personal information and insights to build trust and rapport with the associate.

5. QUICK FEEDBACK

To an associate, there is nothing more discouraging than seeing her work product linger on a partner's desk for days or, worse still, weeks without the partner reviewing it and providing meaningful; and valuable feedback. For a number of reasons this delay will kill associate self-esteem and morale. First, the associate may conclude that the work she did, perhaps toiling well into the evenings under intense pressure, is unimportant and maybe even without value. Second, all associates want, need and are entitled to substantive feedback on each work assignment. Such regular and thoughtful feedback is the best way to increase an associate's self-esteem and morale, develop associate loyalty and provide the associate with an opportunity to fulfill her potential as a lawyer. Of course an associate's self-esteem and morale can be destroyed by a partner who does not or cannot provide feedback in a positive way. This will be discussed at length in Part 2 of this article.

CONCLUSION

Many authorities counsel that a law firm's most important assets are their associates. The associates provide much of a law firm's work product that its clients require. Furthermore, today's associates are tomorrow's law firm partners and thus it is incumbent upon all law firm partners to help their associates fulfill their greatest potential as lawyers and, possibly, future law firm partners. The four principles outlines above are just one small but critically important part of this.

To review, it is imperative that in making work assignments to law firm associates such as Sarah, the assigning partner follow these four important rules:

- MAKE THE ASSIGNMENT SUFFICIENTLY ADVANCE OF ITS "DROP DEAD" DATE TO GIVE THE ASSOCIATE AMPLE OPPORTUNITY TO COMPLETE THE ASSIGNMENT AND THE PARTNER SUFFICIENT OPPORTUNITY TO REVIEW IT
- EXPLAIN THE ASSIGNMENT IN DETAIL AND THE LARGER CONTEXT IN WHICH IT ARISES
- DESCRIBE THE REQUIRED DELIVERABLE AND TIME FRAME
- LET THE ASSOCIATE KNOW THERE ARE NO STUPID QUESTIONS
- PROMPTLY REVIEW THE ASSOCIATE'S WORK PRODUCT AND PROVIDE MEANINGFUL FEEDBACK

Certainly there are no guarantees that a law firm associate will perform well. Some do and, unfortunately, some don't. But, by following the above rules of the road in making associate assignments, a law firm partner will increase the likelihood that the associate will deliver what the partner needs within the required time frame. Moreover, it is a partner's obligation to provide each associate with an opportunity to flourish and succeed, and by following these simple rules a partner will be providing the associate with that opportunity.²

² In Part 2 of this article the author's will discuss how a law firm partner such as Mr. Smith should confront an associate such as Sarah if she drops the ball.

PART TWO: HOW TO PROP UP AN ASSOCIATE WHO HAS DROPPED THE BALL!

In Part One of this two-part article, Eric Smith, a partner in the Labor and Employment Group at the prominent law firm of Smith & Jones, recently discovered that a competitor of Mr. Smith's largest client, Apex Technologies, Inc., was attempting to solicit and hire many of Apex's key employees, and to misappropriate Apex's confidential business information and trade secrets. To prepare for possible litigation, Mr. Smith summoned Sarah Simmons, a second year litigation associate, and assigned her the task of preparing a legal memorandum concerning possible causes of action for Apex to assert. In their conference, Mr. Smith informed Sarah that he needed the memorandum "in about a week or so."

One week has passed since Mr. Jones made the assignment to Sarah but, unfortunately, she still has not delivered a memorandum to Mr. Smith. Therefore, assume the following occurs.

Mr. Smith calls Sarah at her regular office extension and states, "Sarah, it is now Friday at noontime, and I still don't have your memo. What the hell is going on? Please come to my office at exactly 12:15 because we really need to discuss this situation. It is serious."

Sarah, obviously with great trepidation, promptly appears in the doorway of Mr. Smith's office at 12:15. Mr. Smith, who is behind his desk with his feet upon it, sees Sarah and gruffly states, "Sarah, sit down please. I think you've done something really bad." As Mr. Smith says that, he rises from his chair, closes the door to his office, and stands directly in front of Sarah, who is seated. The following dialogue then occurs:

"Mr. Smith: Sarah, I am tremendously disappointed in you. Here it is that I made a very important assignment to you and you totally dropped the ball. This is inexcusable. What the hell happened?"

"Sarah (with her voice quivering): Mr. Smith, I am so so sorry. I really wanted to get you a great memorandum and show you my ability, but when I started to work on it I realized I didn't really understand what you were looking for."

"Mr. Smith: That's no excuse. You knew this was for Apex, the firm's most important client. You also knew that this is very important to me personally. You really let me and the firm down."

"Sarah: But, but Mr. Smith, I really tried hard. I hoped that if I read some cases I might be able to figure out exactly what you needed. I really apologize for disappointing you."

"Mr. Smith (raising his voice and looming over her): Apologies don't fix the situation. This is dreadful. You really put me into a corner. As you can tell, Sarah, I am extremely unhappy. You have let me down! This reflects very poorly on you."

"Sarah: I feel really badly about all this. Mr. Smith, I promise this won't happen again. Please give me another chance to help you."

"Mr. Smith: This morning I spoke to your colleague Jim Peters and told him what happened, that you dropped the ball. I asked him if he could get me a memo by midnight tonight, and he said he would. You know Jim is really smart and fast, and he'll come through for sure. He always does. We call him Mr. Reliability."

"Sarah (on the verge of tears): I don't know what to say. This has never happened before. This is not like me. Mr. Smith, how can I fix the situation?"

"Mr. Smith: Sarah, frankly there is no way you can fix the situation. Maybe you need to fix yourself first. The most important quality in an associate is reliability, like Jim. Partners want to know they can rely on their associates. You clearly are not reliable. You are useless. I don't know about my other partners but you are not going to get any more assignments from me. Do you understand that?"

"Sarah: But, but..."

"Mr. Smith (moving toward the doorway and opening the door): Stop with the "but, but, but." Now please get out of my office. And, have a nice weekend, Sarah."

"Sarah (with tears welling up): I'm so sorry Mr. Smith. Really. You have a nice weekend too."

Sarah leaves Mr. Smith's office and heads directly to the rest room!

We will return to Mr. Smith and Sarah later in this article. First, let's consider some basic principles that should govern the delivery of negative feedback to law firm associates. After we examine some of these principles, we will return to the above set of facts and, applying these principles, assess Mr. Smith's conduct and how he should have handled the situation quite differently.

Confrontation in a law firm, or any workplace, is unavoidable but it must always be done productively - some say with a "velvet touch" - to improve an associate's self-esteem, even in the face of serious criticism. Many experienced law firm partners know that if they can build their associates' self-esteem, those associates will work harder and more enthusiastically, and perform better. And, of course, the converse is frequently true - if a law firm partner diminishes an associate's self-esteem, the associate's self-esteem will suffer and the performance quality will often degrade.

This is not to say that a law firm partner should avoid tough criticism of an associate. Surely such feedback can be well-justified and necessary. However, how that partner delivers the feedback may determine whether an associate learns from the negative criticism and uses it to increase her performance level, and, indeed, whether that associate continues to work for the firm. Associate turnover is often a direct consequence of the associates' morale, even more so than dissatisfaction with compensation. Thus, it is critical that, to the extent possible, negative feedback be delivered productively - that is, in a manner that increases and not destroys an associate's self-esteem and morale. Use a "velvet touch!"

Here are some simple rules that can make negative feedback (aka criticism) of law firm associates productive:

1. CONSIDER THE TIMING OF THE MEETING.

In the authors' experiences, a partner should not give an associate a negative review or negative criticism on a Monday or a Friday. The reasons for this are clear. If the review or criticism is delivered on a Monday, it will haunt the associate for the rest of the week and may be extremely distracting, thereby affecting that associate's productivity. And if it is done on Friday, the associate will brood about it the entire weekend and, in fact, he will not have the opportunity to address it with improved performance until three days later, which for the associate can feel like three years. Thus, if possible such meetings should occur on Tuesday, Wednesday or Thursday. In the above scenario, Mr. Smith chose to meet with Sarah on a Friday afternoon when most likely a meeting one day earlier on Thursday, or three days later on

Monday may have sufficed. Mr. Smith should have planned the confrontation in a way to improve Sarah's self-esteem and morale.

2. CONSIDER THE PHYSICAL CIRCUMSTANCES.

"Winning through intimidation" may work on the battlefield or football field, but it invariably will not succeed in the delivery of a negative associate review. In the above scenario, Mr. Smith stood towering over Sarah while she was seated. In this, Mr. Smith clearly expressed his dominance and Sarah was resigned to a subservient position. This is hardly an effective way to build an associate's morale and self-esteem during a difficult meeting. Instead, Mr. Smith should have sat in a chair opposite Sarah so that they would be looking directly at each other. Mr. Smith should not be perched behind his desk but rather in the office seating area where Sarah would feel she was on a more level playing field.³

3. THIS IS ABOUT THE WORK, NOT THE PERSON

When delivering negative feedback, a law firm partner should direct the criticism to the work, and not at the person. This is a touchstone for building associate self-esteem. One of the most elementary rules of parenting is that when your child does something wrong, you should always be careful to say, "Johnny, what you did was wrong. You should not have taken the cookie from the cookie jar." A parent should not say to Johnny, "You are wrong. You are bad because you took the cookie!"

This basic parenting principle is equally applicable in a law firm when a partner is delivering negative feedback. In both cases - a parent addressing Johnny and Mr. Smith speaking to Sarah - the goal should be to appropriately criticize the conduct without impugning the character of Johnny or Sarah. When Mr. Smith told Sarah she was "unreliable" and "useless", he was attacking her personally, not remaining focused on the specific tasks Sarah failed to achieve. He may as well have taken a sledgehammer to Sarah's self-esteem and morale. How could she possibly react positively to the criticism that Mr. Smith was leveling against her, even though it may have been justified?

4. WHAT ABOUT ME?

As in most confrontations, neither party is 100% guilty or blameless. This is true both inside and outside the workplace. Where there is a failed project or assignment, a thoughtful partner, before slamming an associate, should ask himself what part he may have played? How did I contribute to the result? What could I have done differently to avoid this outcome? Should I shoulder some of the blame? Indeed, a partner should consider asking the associate how the partner could have handled the assignment better. Even a partner can grow from giving negative feedback. For example, a partner might ask the associate, "How could I have helped you to avoid this problem? What do you think I could have done differently to have helped you to have been more successful right out of the gate?" Most associates will feel empowered by such questions, resulting in increased self-esteem and higher morale as they will then feel like members of a team. The research by Ken Blanchard proves that highly competent employees will respond favorably to these questions and use these experiences as they look for ways to solve problems their own.

In the above scenario, Mr. Smith clearly contributed to the outcome to some degree. He did not adequately explain to Sarah what he needed. He did not describe the facts leading to Apex's potential

³ The authors also suggest that when the interaction is between a partner and associate of different genders, the office door remain open unless it is a glass door and office where the parties can be viewed from the outside. This will reduce the likelihood of allegations of sexual harassment or the like that might be asserted by a disgruntled associate.

claims. Mr. Smith did not state which jurisdictions' bodies of law were to be researched. He did not invite questions along the way if Sarah was stumbling. He did not set an interim date for a check-in conversation. And, he did not give Sarah a specific deadline but told her only that he needed the memorandum "in a week or so." Perhaps the whole debacle would have been avoided had Mr. Smith himself been more specific, careful and deliberate when he made the assignment. The research based model Situational Leadership II calls this an "alignment conversation"; to ensure that the partner and associate are aligned on the goal/expectations, the support the associate needs from the partner and the action steps/plan for getting it done.

5. BE SPECIFIC AND ALWAYS REMEMBER THE POSITIVE

All associates are likely to be discouraged by negative feedback or criticism and, as discussed above, it can greatly damage an associate's self-esteem and morale, and ability to profit from the criticism and grow. All negatives and no positives will be counterproductive. Moreover, this type of criticism or feedback could drive associates with great potential to seek employment elsewhere. In addition, and very importantly, the associate may be much more accepting of the negative criticism, and respond more positively, when it is accompanied by sincerely held words of encouragement.

If an associate's work product is deficient, a partner should describe the deficiency with specificity. Rather than simply state that a memorandum is unacceptable, a partner should identify in what respects the memorandum is deficient. As examples, is the memorandum poorly written or organized? Does it fail to answer the specific questions that were asked? Are the arguments unpersuasive or is there a flaw in the reasoning? Is the correct body of law presented? Does it refer to the most recent relevant cases or ones from dozens of years ago? Does the memorandum appear to correctly present the facts and holdings of the cases? And so on.

It is abundantly clear that for an associate to learn from negative feedback, she must understand where the work product is deficient so that she can also appreciate where she must improve. Simply stating in general terms that a work product is unacceptable will not create the learning experience every associate needs and deserves.

It is extremely important that the negative criticism, though entirely justifiable, must be accompanied by positive reinforcement. Without the latter, the associate will be demoralized and, possibly, her self-esteem may suffer. Neither of these benefit the associate, the partner or the law firm. Certainly in almost every instance a thoughtful partner, while delivering negative feedback, can find positive things to say. As examples, a partner may state:

"Although your writing style is very good, the organization and structure of the memo could be improved, and here's how..."

"You stated the facts well and your analysis of the issues raised by the facts needs work. For example....."

"It is clear to all of us that you have a great deal of potential and the ability to be a fine lawyer. To do that you need to sharpen the focus of your research and dig down further to find case law or statutes that will support our client's position. For example..."

"You did a very good job in identifying the issues. I think you could have tightened up your arguments and made them more persuasive. Let me give you an example..."

In each of the above examples, the partner is making clear, with specificity, where the associate's work product is deficient but in a manner that will tend to build the associate's self-esteem and morale, and not tear her down. Of course in the above scenario Sarah's failure was greater - Sarah appeared to totally drop the ball by failing to produce any work product "within a week or so" as Mr. Smith had requested at their first meeting.

The above principles for giving negative feedback or criticism are not the only ones. However, they are perhaps the most important ones, and all partners providing negative criticism or feedback to associates should be guided by them. To review, when a partner is providing such feedback, he should following these basic principles:

- CONSIDER THE TIMING
- CONSIDER THE PHYSICAL CIRCUMSTANCES
- THIS IS ABOUT THE WORK, NOT THE PERSON
- WHAT ABOUT ME?
- MAKE FEEDBACK SPECIFIC AND ALWAYS REMEMBER THE POSITIVE

With the above principles in mind, let's consider how Mr. Smith should have interacted with Sarah when she failed to produce the memorandum "within a week or so" as he had requested. The dialogue might have proceeded as follows.

Late Tuesday morning, Mr. Smith calls Sarah at her regular office extension and states, "Sarah, if you are available at 12:00 noon or 12:30 I'd like to speak with you for a few minutes about the memorandum I asked you to prepare last week. Are you available to meet me in my office at either of those times?" Sarah replies, "Sure Mr. Smith, I'll be there at noontime."

Sarah, of course, promptly appears in the doorway of Mr. Smith's office at 12:00 noon. Mr. Smith stands up and, in a cordial tone, greets her and asks Sarah to sit in an office chair as he sits directly adjacent to her. The office door remains open. The following dialogue occurs:

"Mr. Smith: Sarah, as you know, I wanted the Apex memo by today and you didn't give it to me. Obviously something went awry. Let's discuss it and see if we can figure out what happened."

"Sarah: Mr. Smith, I am so sorry. I really wanted to get you a great memorandum and to show you my ability, but when I started to work on it I didn't fully understand exactly what you were looking for."

"Mr. Smith: What is it, Sarah, that you didn't understand?"

"Sarah: I don't think I understood the precise issues you wanted me to research. I also was very unsure as to what state's law should be applied to these facts."

"Mr. Smith: Why didn't you ask me those questions as you started on the assignment?"

"Sarah: To be honest Mr. Smith I was afraid to ask these questions because you might think I was stupid or something."

"Mr. Smith: Sarah, when you work for me there are no stupid questions. Our goal is to get the best work product we can in a timely fashion. You are only two years out of law school and are still learning. So, never be afraid to ask."

"Sarah: Thanks Mr. Smith. Now I know better and will not hesitate to come see you if I feel stuck."

"Mr. Smith: Good. That will be the rule we follow. Is there some way I could have been of more help to you when making the assignment?"

"Sarah: Well, I really wasn't sure of the due date. You said 'a week or so' and I didn't exactly know what that meant. I know I should have asked you to be more definite."

"Mr. Smith: That's a good observation Sarah. I'll try to be more definite next time. Also do you think it would have helped to have a definite check-in date ahead of the due date so we could both see how you are progressing?"

"Sarah: Yes, that would have helped me a great deal."

"Mr. Smith: Anyhow, I didn't get the memo and that left me in a difficult position with the client. Since I didn't know how much progress you had made, I had to arrange for someone else to drop what he was doing and to give me a memo by early morning. You really left me no choice because Apex was waiting for an answer."

"Sarah: I really am sorry, Mr. Smith, for dropping the ball. That should not have happened, and I fully understand and appreciate what you had to do. But I assure you that this has been a good learning experience for me, especially on how I need to communicate with partners. Rest assured that this won't happen again."

"Mr. Smith: I hope you have learned from this experience. Even I learned something about how to make my associate assignments clearer."

"Sarah: Thanks Mr. Smith. I am eager to have another opportunity to work with you."

"Mr. Smith: Sarah, Smith & Jones hired you because we believed you have great potential as a lawyer. You went to fine schools and have an excellent track record of success. Let's hope that this experience is just an aberration. If this type of problem recurs we will have to reevaluate our relationship with you but I expect this won't happen. I don't want to understate the seriousness of what occurred."

"Sarah: I understand that I failed you in this instance but I appreciate your advice, instruction and words of encouragement. I hope we have a chance to work on something together real soon."

"Mr. Smith (moving toward the doorway and opening the door): Now go about your business and have a good afternoon, Sarah."

"Sarah (feeling encouraged even with the negative criticism): Thanks Mr. Smith. I look forward to your next call."

Compare the two scenarios with Mr. Smith and Sarah. In each one Mr. Smith is deeply critical of her failure to deliver the Apex memorandum on time. However, the contrasts between them are, indeed, stark and compelling. In the first scenario, Mr. Smith has left Sarah extremely demoralized and fearful, and without doubt her self-esteem suffered. She can no longer have a positive relationship with Mr. Smith and, despite her great potential as a lawyer, Sarah may very well begin to look for a position with another law firm.

In the last scenario, Mr. Smith also criticizes Sarah for dropping the ball but he has the character to understand that the confrontation can be immensely productive if handled with the right combination of directive and supportive statements and behaviors. Sarah surely understands the gravity of her failure to deliver a memorandum but, as she stated, she concludes that it has been a great learning experience for her, especially concerning how she should communicate with partners who are making assignments to her. As a result of this more enlightened confrontation, Sarah's self-esteem and morale is likely to improve, and her next performance will probably be improved as well. And for sure she is not going to want to leave Smith & Jones for another law firm as a result.

In conclusion, there are many do's and don'ts for associate reviews. And, of course, each situation is unique because of the nature of the associate's failure or deficiency, and the characters and personalities of the assigning partner and associate. Nevertheless, the principles outlined in Part One of this article relating to the making of associate assignments, and Part Two relating to negative criticism or feedback, are likely to apply in most of these situations. The paramount challenge for the partner is to figure out how to deliver the bad news in a manner that will build the self-esteem and morale of an associate who has failed at a specific task while continuing to maintain a positive and constructive relationship. While there is no guarantee that the associate will improve her performance as a result, it is almost certain that the likelihood of greater associate performance and growth is significantly higher when these five principles are followed.