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## Lessons from Psychology for Law Practice Management

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# Lessons from Psychology for Law Practice Management

Peter G. Glenn\*

Lawyers enjoy their jobs most, clients are best served, and law firms are more profitable when lawyers are highly motivated and engaged in their work. With the publication of *Positive Professionals*,<sup>1</sup> Anne Brafford has given lawyers and law firms dozens of suggestions, drawn from the science of psychology, about how to increase lawyer motivation and engagement, and thus how to practice law more effectively, more happily, and more profitably. Perhaps the central message of *Positive Professionals* is that so-called “soft skills” are directly related to the quality and quantity of work performed in law firms.<sup>2</sup>

Although the intended audience for *Positive Professionals* consists of law firm leaders, a group Brafford explicitly understands to be skeptical about the application of psychological insights to the business of law,<sup>3</sup> I suggest that the book should receive more attention among legal educators. An important—although not exclusive—part of Brafford’s message is that a lawyer’s level of motivation and work engagement is determined in part by the situation in which the lawyer works, including her relationships with supervisors. Another part of Brafford’s message is that lawyers have

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1. ANNE BRAFFORD, *POSITIVE PROFESSIONALS: CREATING HIGH-PERFORMING PROFITABLE FIRMS THROUGH THE SCIENCE OF ENGAGEMENT* (Am. Bar Ass’n 2017).

2. *Id.* at 1–2. “Soft skills” are generally understood to be skills related to the relationships between people, often called “interpersonal skills.” The link between “soft skills” and the financial and reputational success of law firms is not always recognized by law firm leaders. Although, with an increased emphasis on law practice management, resistance to considering interpersonal skills as essential to professional success may be weakening. See Andrew Elowitz, *A Hard Case for Soft Skills*, LAW PRAC. TODAY (Feb. 12, 2021), <https://bit.ly/3ASDM9f> [<https://perma.cc/CM2P-WKHU>]; Angela Tufvesson, *Sharpening Soft Skills*, LAW SOC’Y J. (Apr. 4, 2021, 8:00 AM), <https://bit.ly/3oinrax> [<https://perma.cc/Q7X9-NX7S>].

3. Scattered throughout the book are blocks of text Brafford calls “Skeptic Alarms” in which she recognizes and responds to likely points of skepticism. See, e.g., BRAFFORD, *supra* note 1, at 21.

some control over their own levels of motivation and engagement. Both messages contain important lessons for law students and young lawyers, members of the legal profession who experience a high degree of psychological distress, often manifested by substance abuse.<sup>4</sup> By learning to incorporate Brafford's suggestions into their own experiences, young lawyers can reduce their psychological distress and practice law more happily and effectively.

Law students are taught about the client-lawyer relationship, and about the relationships between lawyers and judges, but the typical law school curriculum does not explicitly provide law students with any systematic education about relationships with colleagues—the types of relationships that pervade law practice. Today's law students are tomorrow's practicing lawyers, for whom the lessons offered by Brafford should become part of their professional arsenals as early as possible in their careers. In little more than a year, this year's 3L students will be supervising the work of law firm staff members; the new lawyers will want those staff members to be highly motivated and engaged in their work. And, at the same time, this year's 3Ls will be working under supervision and will perform that work best if they are highly motivated and engaged. The lessons of *Positive Professionals* will therefore be immediately useful to law students, both while they are still in school and as soon as they begin practice.

*Positive Professionals* is an example of what I call “translation scholarship” in which ideas from one discipline—in this case psychology—are made accessible to experts in another discipline—in this case law. Anne Brafford is well equipped by experience and education to use the lessons of psychology to teach lawyers how to practice more effectively. Brafford practiced employment law litigation for 18 years before giving up her equity partnership in Morgan Lewis to study psychology. She earned a Masters in Applied Positive Psychology from the University of Pennsylvania and later became a Ph.D. student in positive organizational psychology at Claremont Graduate University, where she does research related to leadership, motivation, and meaningful work in the legal profession. Brafford has served as Chair of the ABA Law Practice Division's Attorney Well-Being Committee. As a member of the National Task Force on Lawyer Well-Being, she co-authored the

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4. See, e.g., Lawrence S. Krieger & Kennon M. Shledon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015); Patrick J. Schlitz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

2017 Task Force report, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.”<sup>5</sup>

Brafford chose to organize *Positive Professionals* by beginning with a definition of “engagement” and then describing four foundations for engagement. She then provided six “narratives” that illustrate how the four foundations can be essential parts of strategies for promoting engagement in legal work.

Brafford adopts the definition of “engagement” most often used by academic researchers, in which engagement is a state of mind with three important characteristics: “vigor” which includes energy and resilience; “dedication” which means that work is meaningful and a source of pride; and “absorption” which means that people are focused and engrossed in their work. Brafford then describes what she calls “boosters” which provide energy and overcome—at least in part—the stressors that are inherent in most work settings. She describes two types of boosters: personal and contextual. Personal boosters are individual capacities such as resilience, optimism, self-confidence, and other psychological strengths. Contextual boosters, which psychologists consider more important for promoting engagement, include things such as the characteristics of a job, styles of supervision, levels of collegial support, clarity of feedback, and opportunities for career development.<sup>6</sup>

In Part II of her book, Brafford identifies four foundations for high levels of engagement: meaningfulness, intrinsic motivation, positive emotions, and transformational leadership. Of these four elements, meaningfulness is the major contributor to engagement. Work is meaningful when we believe it is valuable and it contributes to the greater good. Meaningfulness is a strong motivator, and we can create meaningfulness by the ways in which we describe our jobs to ourselves and to our colleagues: Do our jobs have a purpose? Do our jobs matter to others? And do we matter as participants in the accomplishment of the goals of the work? For example, suppose I am asked to perform an unexciting task in a lawsuit in

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5. ANNE BRAFFORD ET AL., NAT’L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE (Am. Bar Ass’n 2017), <https://bit.ly/3upK0Ln> [<https://perma.cc/3FY9-LWS2>].

6. Although Brafford points out the importance of contextual boosters, she notes that many organizations that have employee wellness programs (including law firms) focus primarily on increasing personal boosters rather than recognizing the importance of contextual boosters. BRAFFORD, *supra* note 1, at 9–10. I suggest that the same can be said of law school wellness programs, which is only to say that those programs are incomplete, insofar as they do not equip law students to enter practice ready to increase contextual boosters for themselves and their colleagues.

which our client has a very weak case. I can make this task more meaningful if I describe it to myself not as a dull task in a losing cause but instead as an opportunity for me to help my colleague/supervisor and to make her work easier.<sup>7</sup>

Brafford explains the second foundation, intrinsic motivation, by describing self-determination theory (“SDT”). SDT is based on the idea that we all have three basic needs: autonomy, competence, and connection. High levels of motivation result from the extent to which our work provides us with perceptions that we act autonomously, that we have mastered or can master our work, and that we belong and are connected to others. In Part II of the book, Brafford concentrates on the need for autonomy. She explains that motivation is increased, and work performance is improved, when we are motivated “by our own values and interests.”<sup>8</sup> SDT distinguishes between extrinsic motivations—choosing to act in response to external factors such as billable hour requirements—and intrinsic motivations—choosing to act autonomously in response to our own interests. Brafford tells us that we are more engaged in work that we do in response to intrinsic motivations than in work performed in response to rules or external expectations.

The third foundation for enhanced engagement is what Brafford calls “positive emotions,” which she describes as “fundamental to engagement and . . . part of the foundation for positive law firms.”<sup>9</sup> Positive emotions, she explains, spark feelings of vitality that are important to work engagement.<sup>10</sup> Brafford tells us that “people who feel happy also enjoy what they’re doing, are helpful to others, are more motivated toward their goals, are more open to information, and think more clearly. Positive emotions also trigger feelings of meaningfulness, which is . . . central to engagement.”<sup>11</sup> The point here is not only that we have some control over our emotional responses to situations but also that as colleagues and super-

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7. There is an interesting parallel between Brafford’s message and one of the general conclusions of Mitt Regan and Lisa H. Rohrer in their book, *BIGLAW: MONEY AND MEANING IN THE MODERN LAW FIRM* (Univ. of Chi. Press 2021). Regan and Rohrer conclude that law firms can elicit durable commitment from their partners if, in addition to profit maximization, the firms actively seek to pursue important aspects of professionalism such as collegiality, intrinsic pleasure in the work, and satisfaction from mentoring and training junior lawyers. Firms that balance financial and non-financial values foster a culture that provides intrinsic rewards to partners, who are more likely to stay with the firm and continue to effectively serve clients. *Id.* at 7.

8. BRAFFORD, *supra* note 1, at 23.

9. *Id.* at 29.

10. *Id.*

11. *Id.* at 32.

visors, we can create circumstances that trigger positive emotions in others, even by making small positive gestures.

The fourth foundation for enhanced engagement is what psychologists describe as “transformational leadership.” Transformational leaders—who can be anyone in the law firm who is “responsible for motivating others toward goals”<sup>12</sup>—assume that most people are trustworthy, want to work well, and do their best when motivated intrinsically. Transformational leaders do not operate on the basis of “command and control.” Instead, they invite participation in decision-making, they encourage questioning, they listen, they coach, they teach, and they treat their followers with warmth and respect.

Although Part II of her book introduces the four foundations for enhanced engagement, Brafford’s discussion of the foundations at this point in the book is incomplete. For example, in discussing SDT, Part II does not elaborate on our needs for competence and connection; and in discussing positive emotions, Part II does very little to help us understand the importance of “self-talk.” Those ideas are treated in greater detail in Part III, the “narratives” section of the book. I find this organizational decision problematic, in large part because it means that many of Brafford’s important insights are scattered throughout the book and less accessible than they might be to readers who are looking for answers to the question: “What actions should I take to enhance my own engagement in my work and the engagement of my colleagues in their work?” Brafford apparently recognizes the trade-offs inherent in her organizational choices. In her introduction she says:

I think the best approach [to the book] will be as a guidebook that you gradually digest rather than a John Grisham-like novel that you’ll be able to speed through in one sitting! My hope is that you will return to it repeatedly to try new strategies and that, wherever the book falls open, you’ll learn something new.<sup>13</sup>

In Part III of the book Brafford elaborates on the ideas she hopes lawyers will absorb. She uses six “narratives” to discuss strategies to accomplish enhanced engagement in law practice. The first narrative deals with meaningfulness, the second with autonomy and connection, the third with competence, the fourth with positive emotions, the fifth with transformational leadership, and the sixth, once again, with positive emotions. These narratives are rich, full of very useful insights and suggestions. Brafford is correct when she

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12. *Id.* at 35.

13. *Id.* at xxv–xxvi.

suggests that we can learn something new wherever the book falls open.

However, as a reader interested in applying Brafford's insights, I find it slightly frustrating to follow her organization. I hope that in a second edition of the book, Brafford chooses to add a chapter or two in which she explicitly and separately identifies the lessons of the book that are of the most use to law firm managers, to lawyers who directly supervise others, and to lawyers whose work is supervised. In the remainder of this brief review, I try to unpack the most important of those lessons and reorganize them to make it easier for individual lawyers to answer the question: "How should I make the best use of these insights, ideas, and strategies in my various roles in law practice?" I begin with a non-exhaustive discussion of the book's major lessons for law firm managers.

Law firm managing partners, members of finance and executive committees, practice group chairs, and others who have managerial authority have considerable impact on the culture and values of a law firm. Brafford points out that most law firms today tend to emphasize short-term profits and other calculable measures of success:

I do not mean to suggest that law firms are crawling with greedy materialists. But I do suggest that many lawyers—who tend to be achievement oriented—become captured by their competitive cultures, where money is virtually the only symbol of success. Because firms lack good alternatives for evaluating whether we're succeeding, progressing, and appreciated, we use money as a concrete symbol of our worth.<sup>14</sup>

Brafford asserts that when money is the sole or primary measure of a firm's success, lawyers' senses of self-worth and meaningfulness are negatively affected.<sup>15</sup> These negative effects are inconsistent with motivation and engagement. Law firm managers who want to increase the levels of motivation and engagement of their colleagues, can—by communication and example—create a

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14. *Id.* at 62. It should be made clear that Brafford does not argue that law firms can or should abandon profit maximization as a value. It is likely, I think, that Brafford would agree with Regan and Rohrer that "we should abandon the assumption that business and professional concerns are inherently antagonistic." REGAN & ROHRER, *supra* note 7, at 4. In fact, one of Brafford's themes is that the soft skills needed for enhanced work engagement are, in fact, skills that result in more profitable law practices.

15. One of the interesting neuroscience lessons Brafford describes is that we are hard-wired so that when our calculative mindset is triggered, the neural pathway to empathy, cooperation, and caring is turned off. BRAFFORD, *supra* note 1, at 19–20.

culture in which the necessary desire for profits co-exists with other important values, such as a commitment to care for clients, and to care for the people of the law firm.<sup>16</sup>

So, an important lesson for law firm managers is that they should act on an understanding that many—perhaps most—lawyers will be motivated and energized by work that is meaningful in terms other than or in addition to financial success.<sup>17</sup> By broadening the stated purposes of the firm and thus establishing the firm’s culture, law firm managers can have an important positive effect on the lawyers’ levels of engagement.

Lawyers who supervise are urged by the lessons of *Positive Professionals* to understand their own and their colleagues’ needs for meaningfulness, autonomy, competence, and connection. Supervisors can enhance their followers’ sense of meaningfulness by communicating to the people to whom work is delegated the context of the delegated work. By indicating to subordinates the importance of the delegated tasks to clients,<sup>18</sup> supervisors can increase the extent to which the subordinates appreciate the significance of their work. To provide autonomy, supervisors should give their subordinates as much discretion as possible in view of the subordinates’ knowledge and experience; this discretion should extend to scheduling, the means of accomplishing the delegated tasks, and the time and place where work is performed.<sup>19</sup> To provide a sense of competence, supervisors should assign tasks that are challenging but not overwhelming, and should provide opportunities for measurement of progress in developing professional knowledge and skill.<sup>20</sup>

16. One of the ways in which a firm’s culture can be manifested is by developing a thoughtful vision statement. Brafford discusses the idea of making client care a priority and notes the connection between this value and risk-management strategies. *Id.* at 67–69.

17. Law firm managers also have a duty under Model Rule of Professional Conduct 5.1(a) to establish measures to assure that the law practice of their firm is conducted consistently with the Rules of Professional Conduct, including, of course, the rules related to competent and diligent service to clients. Consequently, law firm managers are well-advised to establish policies designed to encourage all lawyers in the firm to use the strategies suggested by Brafford to maximize engagement, and thus the quality of the firm’s work.

18. The assigned tasks need not be contextualized to indicate their importance to the firm’s fee-paying clients. Alternatively, a delegating partner might indicate to the subordinate that completion of the task will be very helpful to and important for the partner, who is, in effect, the “client” of the subordinate. In this way the subordinate has reason to understand that the task to be performed has personal significance to another person, in addition to its fee-generating value to the law firm. This adds to a sense that the work is meaningful.

19. BRAFFORD, *supra* note 1, at 76–80.

20. *Id.* at 109–10.

Moreover, to assure that their followers feel valued, supervisors should adopt the techniques of transformational leadership described by Brafford and make the relationships between themselves and their subordinates participatory, inspirational, and respectful. Supervisors should understand that “their communication practices are among the most powerful behaviors for influencing followers’ work experiences”<sup>21</sup> and should work to build mutual trust, should be attentive listeners, and should communicate support and encouragement to those working for them. In addition, supervisors should set achievable goals for improvement, by stating high expectations coupled with statements of confidence in their followers’ ability to meet those expectations.

Supervising lawyers should also learn from Brafford that well-communicated feedback is essential to meeting the needs of their followers for a sense of competence, including the sense that they can improve and grow as lawyers. As Brafford describes it, “[t]o optimize followers’ level of confidence and spur continued growth, leaders should provide regular and accurate feedback on progress and customize competence-boosting strategies to followers’ situations.”<sup>22</sup> Supervisors need to understand that negative feedback, which should be specific and detailed, should be overbalanced by accurate positive comments to be sure that subordinates do not become defensive and psychologically block constructive criticism. Supervisors should consider using techniques of providing feedback that concentrate on success rather than failure, and the conditions for that success, thus triggering positive emotions and enhancing the followers’ confidence.<sup>23</sup> Finally, supervisors should understand that many junior lawyers are at least mildly distressed by possible conflicts between their work and home obligations and opportunities. Supervisors should be sensitive to these issues and should communicate their understanding of the work-home conflicts faced by their subordinates.<sup>24</sup>

The lessons of *Positive Professionals* for junior lawyers whose work is supervised are among Brafford’s most interesting points. Brafford accurately tells us that one’s relationship with an immediate supervisor is a “key driver of job attitudes, effectiveness, and retention.”<sup>25</sup> But she also makes clear that junior lawyers have some control over their levels of motivation, engagement, and pro-

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21. *Id.* at 85.

22. *Id.* at 106.

23. *Id.* at 158–59.

24. *Id.* at 139–47.

25. *Id.* at 43.

fessional satisfaction; if junior lawyers experience distress or disengagement, they are not entirely the defenseless “victims” of poor leadership or ineffective supervision.

When describing “boosters” as energy enhancers, Brafford notes that personal boosters can be found in a junior lawyer’s physical, psychological, and emotional strengths, such as confidence, optimism, resilience, and a growth mindset. These strengths can be enhanced; according to Brafford, an individual can take steps to increase her levels of confidence, optimism, and resilience and can develop a growth mindset.<sup>26</sup>

Junior lawyers can use self-talk in reaction to the stress of new challenges to increase their level of confidence. By substituting the internal statement “I’m excited” for the internal statement “I’m anxious” before undertaking a challenging assignment, a lawyer can trigger positive emotions including “confidence and sense of power.” This will both enhance her performance and help her navigate similar stressful challenges more effectively in the future.<sup>27</sup>

Junior lawyers also can choose to cultivate an optimistic and resilient mindset. By engaging in self-talk that disputes negative thoughts, and teaching themselves to respond constructively to setbacks, individual lawyers can adopt a flexible, optimistic approach to their work lives that will help increase their level of engagement in their professional work.<sup>28</sup>

Brafford also teaches that all of us, including junior lawyers, have some control over the extent to which we experience positive emotions. We can plan our activities to incorporate opportunities that will lead to naturally occurring positive emotions. We can intentionally express gratitude, do acts of kindness and tailor our activities to generate positive emotions and to help us meet the self-determination theory needs of autonomy, competence, and connection.<sup>29</sup>

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26. People with “growth mindsets” “believe that intelligence and ability can be developed through effort and learning.” People with “fixed mindsets” believe that intelligence and ability are fixed, arguably by genetics, and cannot be changed. *Id.* at 122. Brafford suggests that individuals can help themselves develop a growth mindset by learning about how the brain is capable of growing, and by thinking about situations in which their early performances were weak but have since improved. *Id.* at 127.

27. *Id.* at 113.

28. BRAFFORD, *supra* note 1, at 166–70. For another thoughtful discussion of “learned optimism” in law practice, see Catherine Cage O’Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate*, 30 *LAW & PSYCH. REV.* 23 (2006).

29. BRAFFORD, *supra* note 1, at 133–34.

As noted previously, Brafford tells us that to increase their sense of the meaningfulness of their work, junior lawyers can choose how to describe that work as a means of enhancing the perceived significance of a job.<sup>30</sup> This technique is referred to as “job-crafting.” “Job-crafting” is not the only way in which Brafford suggests that individual “self-talk” is a useful strategy for enhancing motivation and engagement. In discussing the value of coaching to increase competence, Brafford points out that coaching is most valuable when a junior lawyer listens to someone she trusts; that “someone” need not be a third party. “Self-persuasion is another effective technique for building self-efficacy. It can be effective because it comes from someone we find credible and trustworthy—ourselves. When our self-talk convinces us that obstacles are surmountable, we redouble our efforts.”<sup>31</sup>

Brafford’s recognition, based on psychological research, that junior lawyers can improve their own levels of engagement and motivation through techniques of “self-talk” leads to a conclusion that junior lawyers—including law students—bear at least some of the responsibility for their well-being in a challenging, and often stressful profession. This is a lesson that law students and recent law graduates need to hear.

*Positive Professionals* is an important contribution to the literature of law practice management. Without attempting to argue for wholesale changes in the nature of law firms, Anne Brafford has shown us ways in which the science of psychology can be applied in law practice to improve lawyer job satisfaction and to improve the quality of client services. Her insights should become part of the education of every lawyer.

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30. *Id.* at 57.

31. BRAFFORD, *supra* note 1, at 111.