Professional Development Quarterly

Professional Development and the New Associate Paradigm

Steve Nelson and Wendy Duffey

Associate layoffs. Delayed start dates. Salary cutbacks. Merit-based compensation programs. Assignment of new lawyers to public interest jobs. Welcome to the new world for associates.

Virtually every day, we see some story in the legal press and blogs about another new development relating to incoming and junior associates. Basically, the whole big firm associate program as we know it is a thing of the past.

And industry observers are saying that the old associate paradigm is not coming back, even when the economy improves. Among the trends that are here to stay are the following:

- Years of client jawboning about the lack of value produced by first-year associates are now producing results. Firms are finding it increasingly difficult to justify using junior associates on billable projects at standard rates.

- The use of contract attorneys and staff attorneys will increase as firms struggle to get important, but mundane, document reviews completed efficiently.

- Apprenticeship programs will begin to take hold in firms. Given the inability to bill out first-year associates at 1800-

plus hours, more firms will take the opportunity to use this period to develop "boot-camp" programs to get their junior attorneys up to speed in a hurry. At the same time, the harsh economic realities will force many firms to resort to a model where the costs of those programs will be at least partially offset by savings in salaries.

- The lateral market for associates will become even more important when the economy comes back. Not only will there be a shortage of experienced mid-level associates because of both decreased and delayed hiring, but the temptation to take advantage of other firms' training programs will become impossible to resist as these associates become a profit center.

- The billable hour, while not ready to be put on the scrapheap, will continue to erode as the unquestioned method for pricing legal services.

Given this new reality, one would expect that training programs will change dramatically as well. There undoubtedly will be an emphasis on getting junior attorneys trained in the basics of lawyering much more quickly. Moreover, this training will have to be combined with efforts to prove to firm clients that these lawyers are ready to do important legal work at a fair billing rate (or to be part of an integral team where work is done on an alternative billing method.)

At this point in time, we're already seeing some major changes in the training of junior lawyers. On the one hand, training professionals almost universally report that cost-cutting measures have been put in place, such as the decisions of many firms to replace on-site orientation of new attorneys from far-flung offices with programs that utilize teleconferencing and webinars.

On the other hand, perhaps because they are having difficulty finding billable work for first-years, some firms are reporting an increase in experiential training. And, of course, a few firms, such as Drinker Biddle, Howrey, Ford & Harrison, Strasburger & Price, and Frost Todd have restructured their entire associate programs to put a premium on training and development and, to some extent, have curtailed billable hour requirements for new attorneys.

The market bellwether for the massive restructuring of the first-year associate program is **Ford & Harrison**, a labor and employment specialty firm based in Atlanta. In 2006, firm chairman Lash Harrison undertook a massive client feedback initiative, and found that firm clients were concerned that they weren't getting value from the use of junior, particularly first-year, associates on billable matters. A year later, the firm announced that it was no longer going to place a billable hour requirement on first-year associates.

At the same time, the firm revamped its training and development program. According to Margaret Holman, the firm's Director of Professional Development, a key ingredient of that program is the assignment of a "resource

partner" to every new associate. That partner is in the associate's assigned practice group (such as traditional labor, immigration, or employee benefits), but may or may not be primarily responsible for assigning and supervising all of the associate's work. That partner, says Holman, is there "to ensure that there is the right mix of training" so that the associate can progress professionally. The partner works with the associate to complete an action plan, and to update it quarterly.

In the first two years of the program, the firm articulated three methods of associate learning. One was the traditional lecture/conference method, where associates were brought up to speed on prevailing law and procedure. The firm also asked associates to engage in a special "self-study" project encompassing between 40-80 hours of work. One example would be an article for publication in a trade journal, but the project could also be more client-specific, such as an analysis of how a particular law or proposed law might impact the business operations of that client. Finally, the associate would engage in the "shadowing" of a partner handling certain activities, so that he or she would accompany that partner, for example, to a deposition, an arbitration hearing, or a debriefing session of an expert witness. At the same time, the associate might handle research projects related to those activities.

This year, Ford & Harrison is adding a new element to the program, a client secondment program. New associates will be assigned to work at client sites for a period of six weeks to three months.

Holman says the firm is already seeing positive results to the program, as law student interest in the firm is up, and attrition is down.

Washington, D.C.'s **Howrey** has always been in the forefront of innovative training activities. About 10 years ago, the firm separated itself from the competition by instituting a "boot camp" for summer

associates, as opposed to the traditional "wine and dine" approach that other firms were using. It was also among the first to replace the traditional lockstep compensation and advance model with a competency-based system.

Earlier this year, the firm unveiled its "First Tier" program, which encompasses not just the first year, but the first two years of a new associate's career at the firm. While the firm has not entirely done away with billable hour requirements, it has largely decided to utilize its new approach in first-year training generally.

Howrey's First Tier program, according to Chief Professional Development Officer Heather Bock, has four main components. First, as in most firms, there is a skills training program, which includes four-to-five day intensive Academies held once a quarter which focus on building competencies and skills around the firm's attorney competency model. But the firm has articulated, in great detail, three other modes of training. First, there are "Investment and Action Learning Projects." That action learning concept is based on training methods developed by General Electric. Each attorney is assigned to a team coached by a member of Howrey's Professional Development team. Each team is responsible for a "deliverable," usually a white paper or presentation. Topics can take the form of thought leadership, such as exploring a business or industry trend, a business or operational improvement for the legal industry, or other topics relevant to the firm or industry. In addition to the content of the project, associates get a chance to build their teamwork and leadership skills through the project teams.

Also included is what Howrey calls "Practicum." This part of the program is designed to develop on-the-job skills through participation in *pro bono* or public interest cases taken on by the firm. These cases are all accompanied by specific learning goals

and are integrated with a program of coaching and other forms of feedback.

Finally, Howrey includes a component called "Client Initiation," which includes "clerkship" assignments to a trial team to learn how to handle client matters and a shadowing program so that new lawyers accompany partners at depositions, mediations, or negotiations. In addition, Howrey also has a secondment program in which associates are placed with a client for a few months.

Overlaying this multi-tiered program is a very specific training curriculum that lists more than 30 skill sets that are to be developed and evaluated during the length of the program. (*A summary of this curriculum appears in the accompanying box on page 5.*)

While other firms may not have gone as far as Ford & Harrison or Howrey, many have replicated elements of these programs. Foremost among those elements has been an emphasis on "shadowing." Virtually all of the firms that we spoke to for this article reported having some sort of shadowing program in effect (where for the most part associate time was not billable). As Amy Zinman, Director of Learning for **Nixon Peabody**, says, "the emphasis these days is not so much about training as it is about individual development."

Similarly, Sari Fried-Fiori, Chief Professional Development Officer at **Fulbright & Jaworski**, indicates that the firm is putting increased emphasis on its mentoring program, which includes shadowing as an important element. Besides the normal procedure-based examples, such as depositions and hearings, the shadowing program includes going on client calls as well. While the time spent on these matters is generally not billable to a client, the firm does treat the time spent as "billable hours" for the purposes of such requirements.

At **Sullivan & Worcester**, Director of Professional Development Heather Edes

reports that the economy has forced some changes in the program at the firm, and that in the process, the firm has found some unexpected benefits. For example, the firm has drastically cut back on outside vendors, and has asked partners and other senior lawyers to pick up the slack. "That has worked out very well," she says, "because our own lawyers are finding it easier to make time to train." Overall, she says, the firm has replaced some classroom-type programs with more experiential training, through increased *pro bono* assignments and more formalized attention to the distribution of work assignments. The firm has also significantly increased training on client relations and marketing, an area that is of great interest to the new lawyers.

Fulbright, like many other firms, has shifted its initial orientation program from one where new associates from all offices congregated to a central site to a virtual program. Fried-Fiori indicates that there are some advantages to handling the orientation and various follow-up training by video. "This does allow us to pull faculty from across all of our offices, which we found more difficult to do when all of the associates were in one place."

Still, Fried-Fiori is hoping that the firm can go back to a live event in future years. "We do value the opportunity for new lawyers to form relationships early-on across departmental and office lines. That's much easier to do in a live setting."

In looking at future trends, it's become clear that technology will greatly impact the training and development of associates in the future. **Howrey**'s Bock indicates that the firm has already experimented with some interactive programs, including a film series developed in-house and modeled after the television show "The Office." The firm is making an attempt to raise some of the questions lawyers face in their careers in a way that will stimulate conversation and, hopefully, build a stronger coaching and team-oriented culture.

The following chart lists the skill sets encompassed in **Howrey**'s new training and professional development program, as reprinted from the firm's First Tier brochure.

FIRST TIER TRAINING CURRICULUM

Introduction to the firm and your role
- Executive presence and professionalism
- Knowledge about firm procedures, resources, and the law firm as a business
- Business etiquette
- Ethics
- Exposure to various facets of firm
- Working with partners and internal clients
- Law firm economics

Understanding our practices
- Intellectual Property Fundamentals
- Antitrust Fundamentals
- Global Litigation Fundamentals

Set-up and organization of a case
- Using CaseMap, collaboration room, and other resources
- Case budgeting/forecasting
- Involving Howrey services

Legal research and analysis
- Best practices and techniques
- Analytical and conceptual thinking

Discovery basics
- eDiscovery
- Supervising document productions
- Discovery disputes/mock arguments
- Depositions

Pre-trial process
- Pretrial submissions
- Witness coordination and preparation
- Setting up war room

Effective team behaviors
- Elements of high-performance teams
- Learning from other disciplines/ diversity of thought/lateral thinking
- Building your emotional intelligence on a case team

Communication and presentation skills
- Building communication effectiveness through vocal techniques, storytelling, and body language
- Motions to Dismiss
- Motions to Compel
- Protective Orders
- Preliminary Injunctions

Introduction to mediation and negotiation

Fundamentals of writing
- Summary judgment motions
- Legal memoranda
- Motions to dismiss
- Trial memos and motions
- Appellate briefs

The series follows a fictional case and team as they work together and struggle to meet not just the goals of their client but also their own personal career needs. The actors in the series are real Howrey attorneys and staff. Issues addressed include generational differences, team challenges, professionalism, relationships, and empathy.

But perhaps the biggest development that may affect training in the future is the move that many firms have made to abandon lockstep compensation and advancement and to replace it with a core competency model, under which associates are advanced, not based on years of service, but on what skills they have mastered.

As **Nixon Peabody's** Zinman says, "we are now an industry with much smaller classes and a lot of different categories of lawyers." She adds that "as we move away from lockstep, it probably means more one-on-one attention. In effect, we may be returning to the old model where an associate learned by carrying the partner's trial bag, at least metaphorically."

Steve Nelson is Managing Principal for Law & Government Affairs at The McCormick Group, an executive search firm based in Arlington, VA, that handles searches for both lawyers and administrative personnel in law firms nationwide. Steve can be reached at (703) 841-1700, or at snelson@tmg-dc.com.

Wendy Duffey is a Consultant with the Boston office of The McCormick Group. Wendy can be reached at (781) 239-1233 ext. 205, or at wduffey@tmg-bos.com.

Quotes of the Quarter:

From the 2009 NALP Roundtable on the Future of Lawyer Hiring, Development, and Advancement:

"I actually think this deferral situation gives us a great opportunity to go into doing things like core competencies and setting up tracks…. [W]hen everyone comes back in a year…. [y]ou're going to have people who are cooking in France, and … people who stayed and didn't get a good experience and people who stayed who did…. We're going to have to figure out different ways of dealing with their training and how to adjust their system going forward."

– Carol Sprague, Director of Associate/Alumni Relations and Attorney Recruiting, Skadden, Arps, Slate, Meagher & Flom LLP

"Clients especially are very accepting now of the idea that they'll pay for value and we can say that we advanced this associate based on achieved criteria rather than they got a year older and sat at this desk a year longer. That system was never good…."

– Scott Westfahl, Director of Professional Development, Goodwin Procter LLP

Standing at the Intersection of Professional Development and Diversity

Kay Nash

The mandate for diversity is clear – firms should focus not only on diversity recruitment efforts, but also on efforts to retain and support the advancement of women and attorneys of color.[1] While firms invest a significant amount of time and energy in recruitment, an equally focused approach should be taken to address the intersection of professional development and diversity.

Roderick Palmore, General Counsel of General Mills, Inc., was recently quoted in support of that concept:

> "The key to making real progress in minority representation within the legal profession is to create broad, consistent professional-development programs for all young attorneys, not just minorities,"he said. "Attrition will decline when all associates believe that firms are investing in them and believe that they have true mentors -- greater diversity will then follow."[2]

Professional development professionals are uniquely qualified to promote and advance these efforts.

I am fortunate that Wiley Rein's Diversity Committee has long believed that a robust and extensive professional development program that supports the growth and advancement of all attorneys will, in turn, benefit women and attorneys of color. During the past three years, several initiatives in this area of professional development have helped strengthen our commitment to retaining and advancing all associates.

Monitoring Work Allocation and Productivity

Our firm has an Assignment Overview Committee made up of partners who meet on a monthly basis to review associate assignments and productivity. The members review reports for all associates at the firm, not just those in a particular practice area. They are also responsible for checking in with first-year associates and new lateral associates to ensure a smooth integration into practice. The members make sure the new associates are receiving quality assignments that they prefer (when possible) and the proper quantity of assignments.

Conducting this review on a regular basis allows the firm to identify any workload issues among associates and to address these issues quickly. As problems arise, such as an uneven distribution of work or a drop in hours, a committee member works with the professional development department to identify solutions.

Mentoring and Integration

Under the broad umbrella of a mentoring program for all associates, diversity efforts can benefit from two defined approaches.

The first is an integration program that assists with the transition to the firm, which includes understanding the inner workings of the firm, how assignments are handled, tips for specific client protocols, introductions to other attorneys, etc. Typically these mentoring responsibilities are best handled by mid-level or senior associates within the new attorney's practice group. The formal mentor relationships could last for one to two

---

[1] *2009 Diversity Best Practices Guide*, National Association for Law Placement, 2009.

[2] "Progress Proves Elusive for Diversity in the Legal Profession," *National Law Journal*, October 20, 2009.

years depending on the firm. Having an accessible mentor who can help navigate the political workings of the firm is extremely important for any new associate; however, it is even more so for women and attorneys of color who have traditionally not had easy access to this information. To assure appropriate matches are made, a leader on the firm's Diversity Committee can review the proposed mentor pairings before they are finalized.

The second approach to mentoring is a more targeted career development program. At Wiley Rein, our Professional Development Partner (PDP) program allows associates in their third year and above to be matched with a partner. The associates are asked to name three partners with whom they would like to be paired. A small committee made up of the Chair and Co-Chairs of the Associates Committee and the Director of Professional Development determines the ultimate selections. Most partners readily agree to the request to serve in this capacity; however, a training program is conducted each January to instruct both partners and their mentees on the goals, responsibilities, and details of the program to make sure everyone understands their role.

PDP mentors work with their associates to produce an annual career development plan. The plan can address skills the associate would like to learn or improve, plans for business development activities, or even networking goals such as exposure to certain partners or practice niches. The PDP pairs work together for one year, meeting every other month, to discuss goals and the actions necessary to meet them. Having a formal process for career development allows all associates to have equal access to the strategic advice of partners and creates a more level playing field for advancement.

Overseeing Advancement

Our firm has recently taken steps to enhance communication surrounding advancement and promotion. First, after a review of our Associate Evaluation Committee member-ship, we realized the committee was

represented by the Chairs of the Recruiting Committee and the Associates Committee as "ex-officio" members. The Chair of the Diversity Committee was not represented, so we recently added that Chair to provide additional oversight to the evaluation process and ensure that standards are applied fairly and equitably to all associates. As discussed in *Fair Measure: Toward Effective Attorney Evaluations* (American Bar Association, 1997), "[a]n objective, credible evaluation system ensures that development and advancement opportunities for every lawyer are determined by qualifications and merit, regardless of gender, race, ethnic origin, or other personal characteristics."

Second, a member of the firm's leadership and the Chair of the Associate Evaluation Committee meet with each 5th through 8th year associate to discuss the individual associate's promotion prospects and provide specific feedback regarding the associate's professional development. The firm also uses a competency model as the basis for evaluations. The competencies are discussed at orientation and every year in an all-associates meeting prior to the start of the evaluation process.

These steps provide associates a clear path for advancement at the firm and allow women and attorneys of color a measurable picture of their progress at the firm.

Promoting Affinity Groups

One of the overarching elements to a successful diversity program is the opportunity for the firm's newer lawyers to network and socialize with people who have similar backgrounds or other common qualities. These groups can be formal or informal and have the power to provide a source of networking and support that can be invaluable to the firm's women and attorneys of color.

Whether or not your firm has such groups in place, it is important to support such activities. Simply offering to arrange a conference room and sandwiches for lunch allows your firm, and especially your newer

associates, to see the professional development group as a resource for supporting such networks. Affinity groups can also informally help monitor workload management and support exposure to client networking opportunities at the upper levels of the firm.

Encouraging Bar Activities

Another area where professional development departments can help promote diversity is to coordinate membership in the multitude of minority bar associations and informal groups available outside the firm. Associates often are not aware of the procedures and policies surrounding bar memberships and are appreciative when someone goes out of their way to alert them to opportunities or assist them in getting approval from firm management to join. Informal activities such as the DC Minority Networking Series or the New York Minority Networking Series provide an excellent opportunity for networking and building business development skills.

One easy and useful initiative that can aid an associate's public speaking skills is to ask one of your attorneys, after attending a diversity-related event or bar association meeting, to deliver a 15-minute talk to your Diversity Committee at their next meeting. Such presentations can help raise an associate's profile within the firm and help to build their professional identity, as well as keeping your Diversity Committee up to date on recent trends or developments. In addition, professional development programming should be reviewed to ensure that panel presentations, CLE presenters, and training leaders represent a cross-section of the attorneys at your firm and provide opportunities for professional development for women and attorneys of color.

Successful professional development initiatives and programs benefit all attorneys at your firm; however, you can help reinforce support for diversity efforts through the activities of your professional development team and your firm's programs. The development and advancement of women and associates of color at your firm will be the ultimate reward for your efforts.

Kay Nash is the Director of Professional Development and Attorney Recruiting at Wiley Rein LLP in Washington DC. She is responsible for the strategic planning, implementation, and management of the firm's recruitment, professional development, diversity, and legal personnel activities. She can be reached at knash@wileyrein.com.

*(**Editor's Note:** This column highlights best practices and new approaches to common challenges of in-house training managers. We invite your comments and your suggestions for future articles. You can reach us at (703) 719-7030 or maraeg@profdev.com.)*

Matching the Learning Method to the Level of Expertise

Many PD and CLE specialists recognize that practitioners at different levels of expertise in a particular subject need different learning *content*: the beginner needs the basics, while we can safely assume that the expert already knows them. But there hasn't been enough emphasis, I think, on the differing learning *methods* that training research has shown to work best for the beginners, the experts, and those in between.

The three major points on the expertise continuum, and the best methods associated with each, are as follows:

1. **Beginning:** *Other-directed* methods work best for *beginning learners*, who don't yet know even what they need to know and thus need a great deal of structure and guidance from others. Those methods include the one most familiar to law school educators, CLE providers, and PD professionals alike:

    a. formally structured, instructor-led courses.[3]

    In the law office setting, they can also include such things as

    b. supervised work experience with regular coaching and feedback;
    c. mentoring and "shadowing" activities; and
    d. assigned self-study projects (books, CDs, online courses, etc.).

2. **Intermediate:** *Collaborative* strategies are best for *intermediate learners*, who have some knowledge of the subject matter and who need opportunities to explore, apply, and solidify their knowledge and skills. The learning methods that usually work best for them are

    a. facilitated, interactive small group discussions and seminars;
    b. working independently, with advice and feedback on request and "lessons learned" debriefings;
    c. coaching by experts;
    d. teaching and mentoring the beginners in their field; and
    e. active participation in communities of practice, professional associations, and industry and trade groups.

3. **Advanced:** *Self-directed* strategies are most appropriate for *advanced learners*, who have already achieved mastery of the subject matter and whose learning needs are highly selective and individual – typically revolving around trying to keep up with change and the competition and solving especially unique and complex problems. Such strategies include

    a. collaborative problem-solving in consultation with other experts;
    b. selective intentional learning;
    c. private networks of known and trusted contacts; and
    d. selected information resources.

---

[3]See *Teaching for Better Learning: Adult Education in CLE* (ALI-ABA, 1999), for excellent guidance and best practices in designing and conducting these types of courses.

Please note two things in particular about the strategies outlined above:

1. Traditional academic-style, instructor-led courses are appropriate only for *beginning learners* in a subject area. The needs of more advanced learners are too highly differentiated to be met by one-size-fits-all content designed for them by someone else.

2. Years of experience do not correlate to advanced expertise in all areas. The same person can be an *expert* in one subject (litigation strategy, for example) and a *beginner* in another (*e.g.*, social networking) and thus require different learning approaches for each. (It is true, however, that those with more experience in general will often seek to be self-directed about even elementary-level learning in a new subject and thus be difficult to lead.)

Two things you and your firm can do for its most *advanced learners* -- the people who are already expert in their area of competence – are to:

• recognize that they continue to have developmental needs and give them the time and space to pursue those needs, and

• support them in accessing the types of experiences, expert contacts, and information resources that will help them to continue advancing their expertise and keep up with changes in their fields.

– Gaye Mara

Classic Quote:

"Somebody once said that in looking for people to hire, you look for three qualities: integrity, intelligence, and energy. But if they don't have the first, the other two will kill you."

– Attributed to Warren Buffett

What Ever Happened to Frederick Herzberg?
Motivating and Measuring Performance
Gaye Mara

Marc J. Epstein and Jean-Francois Manzoni, Editors, *Performance Measurement and Management Control: Measuring and Rewarding Performance.* 2008: Emerald Group Publishing Limited, Bingley, UK.

Fifty years ago, the psychologist Frederick Herzberg interviewed several hundred accountants and engineers to find out what motivated them to do their best work, and wrote a book about it.[4] In 1968 he published a condensed version of his findings in the *Harvard Business Review*; that article was HBR's most-requested reprint for 20 years.[5]

What Herzberg's interviewees told him was that their best work and greatest job satisfaction were motivated by the work itself – such things as the opportunity to achieve and the level of responsibility and autonomy they were given. Things like compensation and benefits and company policy did not motivate their performance; those things could, however, be a source of job dissatisfaction and de-motivation if they were perceived as unfair or unreasonable. So Herzberg proposed a "two-factor theory" of motivation: *Motivators* like job challenge and responsibility promote top performance, while *hygiene factors* such as compensation don't play a role unless they are out of alignment with expectations, and then only a negative role.

Fast forward 50 years, and it seems Herzberg's ideas have fallen out of favor. In

---

[4]*The Motivation to Work.* 1959: John Wiley and Sons, New York.

[5]"One More Time: How Do You Motivate Employees?" *Harvard Business Review* 46:1, pp. 53–62.

the meantime, we have created a lot of trouble for ourselves. While compensation in both law and business is viewed as the most important *motivator* of all, in fact it has become the focus of expectations that have totally run amok. The current recession may have rocked those expectations a bit, but there are already signs they are regaining their strength both in company C-suites and the halls of law firms.

The Epstein and Manzoni book reviewed here was recommended to me by my friend Dr. Jim Walther, a former denizen of the law firm world who has joined the UK's Emerald Publishing, which produces a huge portfolio of management books and periodicals for a variety of knowledge industries. The book is a collection of research papers from the fourth of a series of international conferences on managing, measuring, and rewarding performance.

This is a work that any management theory geek will love, and it may be too technical for some law office readers. But it presents an interesting and illuminating view of what's happening out there in Client Country, along with some lessons for the legal profession, both in the areas of managing, measuring, and motivating performance and also, coincidentally, in how business operations are conducted in the wide range of organizations and industries that the researchers studied.

Regarding the latter area, I think lawyers with internet or cell phone companies as clients would find the in-depth explanation here of the customer value chain, and of how to define and value an Internet "customer,"

most educational.[6] Other papers that I found particularly interesting and informative on a business operations level profiled:

- the Las Vegas casino industry and its evolving revenue sources;
- a Swiss management development consultancy (probably the closest organizational parallel to law offices – though some wags might vote for the casinos) and how its professionals work together to develop and maintain their knowledge base and to staff engagements;
- the Sydney airport, including a marvelous section charting the various stakeholders in an airport, what each of those internal and external constituencies wants, and how much power and urgency each has to get what it wants; and
- how the highest-performing companies assess their own organizational and leadership performance, in contrast to comparable but lower-performing companies.

For the rest of us who are mostly concerned with the performance of the people in our own organizations, the research reported here supports four related conclusions:

1. **Relying on pay as a primary motivator is counter-productive.**

As Jean-Francois Manzoni concludes in a thoughtful paper explaining the incentive and reward programs at his management development consultancy, in contrast to those at some of the other companies studied:

> … I have started to wonder to what extent the intense focus on incentive alignment may possess perverse self-fulfilling prophecies….

---

[6]M. Bonacchi et al., "The Lifetime Value Scorecard: From E-Metrics to Internet Customer Value" at 193-226.

Adult human beings have all learned how to be selfish and narrowly (short-term) self-interested. Most of us can produce this kind of behavior if we want to. Most of us have also learned to broaden our focus and to behave collaboratively and less selfishly, especially for a group we care about. An intense focus on individual short-term rewards may actually "activate/reinforce" employees' selfish side….[7]

2. **Even the most sophisticated data-based ("objective") systems are limited in their ability to assess the complexity of human performance, and sole reliance on them skews performance in destructive ways.**

Marc Epstein of Rice University's business school points out that:

> An organization that implements its reward systems based on narrow, specific performance measures that are easy to measure will motivate behavior that is geared toward excelling in those particular measures. As a consequence, the implementation of incentives based upon narrow, easy-to-measure performance metrics often motivates performance that is incomplete or in conflict with the organization's overall strategy….[8]

Using billable hours to measure performance comes to mind.

3. **All data-based ("objective") systems for measuring individual and organizational performance, moreover, can be manipulated to show what the manipulators want them to show.**

---

[7]"On the Folly of Hoping for A, Simply Because You Are Trying to Pay for A" at 36-37.

[8]"Aligning, Measuring, and Rewarding Performance in Complex Organizations" at 14.

At the employee level, Manzoni asks, "are we designing increasingly complex systems to prevent people from cheating the systems ... that are leading them to cheat in the first place?" (p. 36)

At the leadership and organizational level, several papers mention the ways that financial data can be manipulated, whether by "budgetary slack" at the front end (overstating projected costs and/or understating projected revenues to produce budget goals that will be easy to exceed) or "accounting noise" at the back end (using various accounting tricks to make past results look better than they are). The paper on exceptionally high-performing companies (those with sustained financial performance that significantly exceeds that of the S&P 500 as a group) says that a marked contrast between them and lower performers is that, in evaluating executive and organizational performance, the high performers rely to a much greater extent on non-financial measures and on unadjusted financial data that cannot be internally manipulated.

4. **Financial results in particular are an inadequate measure of leadership and organizational performance.**

Besides their susceptibility to manipulation (see the previous point), financial data are:

- "lagging" indicators of past performance that do not predict future performance, and

- oriented to the short term and thus do not reflect investments that may produce significant long-term benefits and ultimate success for the organization.

Several papers reflect companies' use of Kaplan and Norton's Balanced Scorecard[9] -- which adds customer value, internal business processes, and employee development to the scale alongside financial results -- as a more complete and valid measure of organizational performance. Another demonstrates the Scorecard's construct validity (*i.e.*, that it is a valid concept that operates in the real world as the theory predicts it will).

———————

What we have come to since Herzberg is a situation in which compensation expecta- tions have taken center stage in our performance management schemes, in the role of the Great Dissatisfier. Those at the highest compensation levels can always find reason for discontent when, inevitably, someone else at the same level makes more than they do. Those at lower pay grades who work just as hard feel resentful and/or inferior. The consequence has been a vicious cycle of rising compensation demands and declining motivation, satisfaction, and institutional loyalty.

In the continuing spirit of not letting a good crisis go to waste, let us hope we can take advantage of the economic downturn to pause the cycle and find a way to do things differently. This book offers some good ideas.

_____

[9]Robert S. Kaplan and David P. Norton, "The Balanced Scorecard – Measures That Drive Performance." 1992: *Harvard Business Review* (Jan-Feb), 71-79.

Professional Developments

Events

Upcoming PD-related conferences, seminars, and workshops:

Legal Profession:

☺ 11/17/09, New York, NY. **The American Lawyer Thought Leader Series:** *Fixing the Broken Recruitment System.* American Lawyer Media, www.almevents.com.

☺ 12/2/09, Washington, DC. *Pre-PD Institute Meeting of the Professional Development Consortium* (members only). www.pdclegal.org.

☺ 12/3-4/09, Washington, DC. *2009 Professional Development Institute.* National Association for Law Placement, www.nalp.org.

☺ 1/30-2/2/10, Orlando, FL. *46th ACLEA Mid-Year Meeting.* Association for Continuing Legal Education, www.aclea.org.

☺ 2/18-20/10, Fort Worth, TX. *2010 Newer Professionals' Forum.* National Association for Law Placement, www.nalp.org.

☺ 4/28-5/1/10, San Juan, PR. *2010 Annual Education Conference.* National Association for Law Placement, www.nalp.org.

General Audience:

☺ 11/2-5/09, Los Angeles, CA. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org.

☺ 11/4-6/09, New York, NY. *Train the Trainer.* American Management Association, www.amaseminars.org. (Repeated in NYC 12/7-9, 2/10-12, 4/19-21, 5/12-14, 6/21-23, 8/16-18)

☺ 11/6-20/09, online. *Game Design.* American Society for Training & Development, www.astd.org/onlineprograms.

☺ 11/7-9/09, Galway, Ireland. *ISPI Europe 2009 Conference.* www.ispi.org.

☺ 11/8-11/09, Orlando, FL. *Learning 2009 Conference.* The Masie Center, http://www.learning2009.com.

☺ 11/9-12/09, Arlington, VA. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org. (Repeated in Arlington 1/11-14, 3/15-18, 5/10-13)

☺ 11/10-11/09, New York, NY. *The 2009 Diversity and Inclusion Leadership and Management Seminars.* The Conference Board, www.conference-board.org/diversityseminars.

☺ 11/11-13/09, Atlanta, GA. *Train the Trainer.* American Management Association, www.amaseminars.org. (Repeated in Atlanta 2/10-12, 4/12-14, 6/16-18, 8/9-11)

☺ 11/12/09, Baltimore, MD. *ASTD Maryland Fall Conference 2009: Navigating the Changing Seas of Training and Development.* MD Chapter, American Society for Training and Development, www.astdmd.org.

☺ 11/16-18/09, New York, NY. *Instructional Design for Trainers.* American Management Association, www.amaseminars.org. (Repeated in NYC 3/24-26, 6/7-9)

☺ 11/16-19/09, New York, NY. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org. (Repeated in NYC 12/14-17, 1/25-28, 2/22-25, 3,22-25, 4/26-29, 5/17-20)

☺ 11/16-20/09, online. *Building Expertise: How to Apply Learning Psychology to Instructional Design.* Clark Training, www.clarktraining.com.

☺ 11/18/09, online. **SkillCast Webinar:** *Explaining Performance Issues to Executives.* International Society for Performance Improvement, www.ispi.org.

☺ 11/18-21/09, Arlington, VA. *Forging New Pathways for Diversity and Inclusion: Building Skills for Collaboration and Dialogue.* National Multicultural Institute, www.nmci.org.

☺ 11/30 - 12/2/09, San Francisco, CA. *Instructional Design for Trainers.* American Management Association, www.amaseminars.org.

☺ 11/30 - 12/4/09, online. *e-Learning and the Science of Instruction.* Clark Training, www.clarktraining.com.

☺ 12/1-4/09, Chicago, IL. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org. (Repeated in Chicago 3/8-11, 5/24-27)

☺ 12/1-4/09, New York, NY. *ASTD Celebrity Series: Titans of the Training Industry:*
  • 12/1-2, Lou Russell, *Project Management for Trainers Certificate Program*
  • 12/2-4, Elaine Biech, *Training Certificate Program*
  • 12/2-4, John Coné, *Managing the Learning Function Certificate Program*
  • 12/3-4, Jennifer Hofmann, *Blended Learning Certificate Program*
  • 12/3-4, Jack and Patti Phillips, *ROI Skill-Building Certificate Program*
  (Enrollment for each program is limited to 25.) American Society for Training & Development, celebrityseries.astd.org.

☺ 12/2-4/09, San Francisco, CA. *Train the Trainer.* American Management Association, www.amaseminars.org.

☺ 12/3-4/9, San Francisco, CA. *Kirkpatrick's Four Levels: Increasing Training Effectiveness Through Evaluation.* American Management Association, www.amaseminars.org.

☺ 12/7-10/09, San Francisco, CA. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org. (Repeated in San Francisco 2/16-19, 4/12-15, 6/7-10)

☺ 12/9-10/09, Alexandria, VA. *CPLP Prep Workshop.* American Society for Training & Development, www.astd.org.

☺ 12/10/09, online. *Virtual Training World: An Online Learning Industry Conference and Trade Show.* Training magazine, http://www.trainingmag.com/msg/publications/vtw/index.html

☺ 12/14/09, online. *Adobe Captivate 3: Production Tips and Tricks.* American Society for Training & Development, www.astd.org/onlineprograms.

☺ 12/14-16/09, Chicago, IL. *Train the Trainer.* American Management Association, www.amaseminars.org. (Repeated in Chicago 3/15-17, 7/12-14)

☺ 12/16/09, online. **SkillCast Webinar:** *Training on Trial: The Urgent Need to Become a Strategic Business Partner.* International Society for Performance Improvement, www.ispi.org.

☺ 1/20/10, online. **SkillCast Webinar:** *Selling Yourself: Six Essential Steps Required to Sell the Most Important Product, YOU!* International Society for Performance Improvement, www.ispi.org.

☺ 1/27-29/10, Las Vegas, NV. *ASTD TechKnowledge 2010 Conference & Exposition.* American Society for Training & Development, www.astd.org.

☺ 1/29 - 2/3/10, San Diego, CA. *Training magazine 2010 Conference & Expo.* Conference 2/1-3, Expo 2/1-2, Pre-Conference Certificate Programs 1/29-31. Training magazine, www.TrainingConference.com.

☺ 2/1-4/10, Dallas, TX. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org.

☺ 2/17/10, online. **SkillCast Webinar:** *Developing Rating Scales for Performance Tests.* International Society for Performance Improvement, www.ispi.org.

☺ 2/24-26/10, Arlington, VA. *Instructional Design for Trainers.* American Management Association, www.amaseminars.org. (Repeated in Arlington 7/19-21)

☺ 3/1-2/10, New York, NY. *Kirkpatrick's Four Levels: Increasing Training Effectiveness Through Evaluation.* American Management Association, www.amaseminars.org. (Repeated in NYC 8/23-24)

☺ 3/3-5/10, Arlington, VA. *Train the Trainer.* American Management Association, www.amaseminars.org.

☺ 3/17/10, online. **SkillCast Webinar:** *Performance Architecture: Build It and You Will Succeed.* International Society for Performance Improvement, www.ispi.org.

☺ 4/6-8/10, St. Petersburg, FL. *Impact 2010: The Business of Talent.* Bersin & Associates, www.bersin.com.

☺ 4/14/10, online. **SkillCast Webinar:** *Measuring Mentoring Results.* International Society for Performance Improvement, www.ispi.org.

☺ 4/19-22/10, Atlanta, GA. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org. (Repeated in Atlanta 6/7-10)

☺ 4/21-24/10, Washington, DC. *Diversity Conference.* National Multicultural Institute, www.nmci.org.

☺ 5/9-11/10, Phoenix, AZ. *Training Leadership Summit 2010.* Training magazine, www.trainingmagevents.com

☺ 5/17-18/10, Arlington, VA. *Kirkpatrick's Four Levels: Increasing Training Effectiveness Through Evaluation.* American Management Association, www.amaseminars.org.

☺ 5/17-19/10, Chicago, IL. *Instructional Design for Trainers.* American Management Association, www.amaseminars.org.

☺ 5/17-20/10, Houston, TX. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org.

☺ 5/19/10, online. **SkillCast Webinar:** *Evaluation: The Link Between Learning and Performance.* International Society for Performance Improvement, www.ispi.org.

☺ 6/14-17/10, Boston, MA. *AMA's Myers-Briggs Type Indicator® (MBTI®) Certification Program.* American Management Association, www.amaseminars.org.

☺ 6/16/10, online. **SkillCast Webinar:** *Evidence-Based Training: Moving Beyond Fads and Fiction in Workforce Learning.* International Society for Performance Improvement, www.ispi.org.

☺ 7/21/10, online. **SkillCast Webinar:** *Creating Engaging Web-Based Training.* International Society for Performance Improvement, www.ispi.org.

☺ 8/18/10, online. **SkillCast Webinar:** *Comparing Four E-Learning Applications: Lectora, Articulate, Captivate, and Camtasia.* International Society for Performance Improvement, www.ispi.org.

☺ 8/18-20/10, Atlanta, GA. *Instructional Design for Trainers.* American Management Association, www.amaseminars.org.

☺ 9/15/10, online. **SkillCast Webinar:** *Working Together When You Are Apart: Web-Based Collaboration Tools.* International Society for Performance Improvement, www.ispi.org.

Certificate and Degree Programs

American Society for Training & Development, Certificate Programs, www.astd.org (see the website for online and/or on-site dates and locations for each topic.):

- Action Learning Certificate (2 days)
- Advanced Designing Learning Certificate (2 days)
- Advanced E-Learning Instructional Design Certificate (2-days)
- Analyzing Human Performance Certificate (3 days)
- Blended Learning Certificate (2 days)
- Business Essentials Certificate: Strategy, Finance, Marketing (3 days)
- Career Planning and Talent Management Certificate (2 days)
- Coaching Certificate (2 days)
- Consulting Skills for Trainers Certificate (2 days)
- Creating Leadership Development Programs Certificate (2 days)
- Creating New Supervisor Training Programs Certificate (2 days)
- Designing Learning Certificate (3 days)
- Developing Great Managers Certificate (2 days)
- E-learning Instructional Design Certificate (2 days)
- Essentials of Adobe Captivate 3: Production Tips and Tricks (1 day, online only)
- Essentials of Adult Learning (2 week online program)
- Essentials of Coaching SMEs to Facilitate Learning (2 week online program)
- Essentials of Copyright Law for Workplace Learning Professionals (2 week online program)
- Essentials of Developing Program Objectives (2 week online program)
- Essentials of E-learning Authoring Tools (2 week online program)
- Essentials of E-learning Strategy Development (2 week online program)
- Essentials of Efficiency in Learning (5 day online program)
- Essentials of Game Design (2 week online program)
- Essentials of Personality and Leadership Assessment Tools (2 week online program)
- Essentials of Podcasts, Video, and Writing for the Web (2 week online program)
- Essentials of Scenario-Based E-learning: Guided Discovery E-learning (5 day online program)
- Facilitating for Excellence Certificate (1 day)
- Facilitating Organizational Change Certificate (2 days)
- Facilitating Synchronous Learning Certificate (4 week online program)
- HPI (Human Performance Improvement) Basics Certificate (4 week online program)
- HPI in the Workplace Certificate (3 days)
- Learning for Multiple Generations Certificate (2 days)
- Managing External Vendors Workshop (3 week online program)
- Managing Organizational Knowledge Certificate (2 days)

- Managing the Learning Function Certificate (3 days)
- Measuring and Evaluating Learning Certificate (3 days)
- Presentation Skills Certificate (2 days)
- Project Management for Trainers Certificate (2 days)
- Rapid Learning Techniques Certificate (2 days)
- ROI Basics Certificate (3 week online program)
- ROI Skill Building Certificate (2 days)
- Selecting HPI Solutions Certificate (3 days)
- Test Design and Delivery Certificate (2 days)
- Training Certificate (3 days)
- Training Certificate Plus! (4 days)

Clark Certification Programs, www.clarktraining.com:

1. e-Learning Certificate:

- Needs Assessment for Performance Technologists: Tools and Techniques (on demand in 2010)
- How to Plan, Design, and Evaluate e-Learning (on demand in 2010)
- e-Learning and the Science of Instruction (virtual class, 3 hours/day, 11/30 - 12/4)

2. Instructional Systems Design Certificate:

- Needs Assessment for Performance Technologists: Tools and Techniques (on demand in 2010)
- How to Plan, Develop, and Evaluate Training (on demand in 2010)
- Building Expertise: How to Apply Learning Psychology to Instructional Design (virtual class, 3 hours/day, 11/16-20)

Note: Clark T&C has announced that beginning in 2010 all of its courses will be offered online only.

Training Live+Online Certificate Programs, Training magazine, www.trainingliveandonline.com:

- Producing Great Audio and Video Podcasts, starts 11/3
- Creating E-Learning with Flash, starts 11/3
- E-Learning Design, starts 11/3
- Managing the Training Function for Bottom Line Results, starts 11/6
- Designing and Managing Leadership Development, starts 11/12
- Designing and Managing Leadership Development, starts 11/12
- Designing E-Learning with Captivate, starts 12/2

American Society for Training & Development CPLP Certification: Certified Professional in Learning and Performance. This is a comprehensive program consisting of approximately 10 weeks of coursework, a knowledge-based examination, and submission of a qualifying work product, and addressing the nine areas of expertise identified in the ASTD Competency Model for workplace learning & performance professionals:

1. Designing learning
2. Delivering training
3. Improving human performance
4. Measuring and evaluating learning
5. Facilitating organizational change
6. Coaching
7. Career planning and talent management
8. Managing the learning function
9. Managing organizational knowledge

The coursework may be taken online or in a campus setting at any of 5 partnering universities. www.astd.org/CPLP.

University of Pennsylvania Executive Education for Chief Learning Officers. Penn's Wharton School and Graduate School of Education have teamed to create the "Executive Program in Work-Based Learning Leadership." The program offers "blended learning approaches that include onsite classes, virtual sessions, individual and team project work, and application work" in five curriculum blocks:

1. Organizational/strategic leadership
2. Workplace learning and performance leadership
3. Business analysis
4. Evidence-based decision making and analysis
5. Use of technology in workplace learning

Students in the program may obtain a certificate from Wharton for any single course block, or may use the curriculum to pursue a master's or doctoral degree from

the Graduate School of Education. www.executiveeducation.wharton.upenn.edu/clo.htm.

George Washington University/Hilde-brandt Institute Master of Professional Studies and Graduate Certificate in Law Firm Management. The Master's curriculum is a two-year, 30-credit, blended learning program consisting of two 12-credit segments (Law Firm Management and Law Firm Leadership), and a 6-credit Independent Research Project. Each 12-credit segment begins and ends with an on-campus residency period in Alexandria, VA, with 4 months of online distance learning in between. The 12-credit segment in Law Firm Management may stand alone as a Graduate Certificate. nearyou.gwu.edu/sfm/index1.html.

Resources:

The Virtual Water Cooler. An October 26 article in the online *Wall Street Journal* explains how online collaboration and networking tools – blogs and wikis, social networks and tagging – can work better than internal databases to identify, rate, and access the expertise of in-house colleagues. On top of that, the users themselves keep the data current. Dorit Nevo, Izak Benbasat and Yair Wand, "Who Knows What?" at http://online.wsj.com/article/SB200014240 52970203946904574302032097910314.html

Using LinkedIn. In a related vein, an October 29 article in *Legal Technology* provides tips for lawyers using LinkedIn to raise their visibility and also to protect their contacts from depredations by competitors. Nancy Roberts Linder, "The Finer Points of Using LinkedIn," http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202435001888&src=EMC-Email&et=editorial&bu=LTN&pt=Law%20Technology%20News&cn=20091029&kw=The%

20Finer%20Points%20of%20Using%20LinkedIn

Professional Development for Telecommuters. If you have people working virtually, the MIT Sloan Management Review has suggestions for mentoring, training, and improving integration and communications. Jay Mulki, Fleura Bardhi, and Felicia Lasska, "Set Up Remote Workers to Thrive." Online at http://sloanreview.mit.edu/the-magazine/articles/2009/fall/51116/set-up-remote-workers-to-thrive/

Training Wheels for the Roller Coaster. Experts from the Wharton School and Boston Consulting Group have put together a 4-part video educational series, "Winning in a Downturn, Accelerating in the Upturn," of best practices for dealing successfully with a business downturn:

- Part 1 addresses "Generating Cash," outlining seven strategies for cutting costs and raising funds.
- Part 2, "Finding Strategic Opportunities," describes five moves to consider to gain market share, by leveraging the firm's capabilities to take advantage of the opportunities every downturn presents.
- Part 3, "Managing in Turbulent Times," explains five actions to maintain employees' morale, productivity, and confidence in the company and its leaders.
- Part 4, "Finding Strategic Opportunities," discusses competitive strategies to pursue once the global economy begins to recover.

Available free on the Web at http://knowledge.wharton.upenn.edu/special_section.cfm?specialID=92

MCLE Watch

Two more states have joined the mandatory CLE ranks, effective January 1, 2010:

Hawai'i now requires 3 credits of Mandatory Continuing Professional Education annually, and encourages an additional 9 voluntary credits. Subjects that qualify for mandatory credit include

> ... the Hawai'i Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

The full rule can be found at http://www.state.hi.us/jud/ctrules/rsch17am&22adopt.pdf.

Nebraska's requirement is for 10 credit hours per calendar year, including 2 hours in professional responsibility. Professional responsibility:

> ... includes instruction in the following areas: legal ethics; professionalism; diversity in the legal profession; malpractice prevention; recognizing and addressing substance abuse and mental health issues in the legal profession; Nebraska Supreme Court Rules Relating to Discipline of Attorneys; ethical standards as they relate directly to law firm management; and duties of attorneys to the judicial system, public, clients, and other attorneys.

Access the complete rule at http://www.supremecourt.ne.gov/rules/html/Ch3/art4/

Subscribe to PROFESSIONAL DEVELOPMENT QUARTERLY

TO: Professional Development Services, P.O. Box 150306, Alexandria, VA 22315
Phone: 703-719-7030   Fax: 703-814-8590   E-mail: maraeg@profdev.com

☐ **Please send us one year (4 issues) of PDQ for:**

Number of attorneys in organization	*Subscription fee*	
☐ Under 100*	$125 annually	
☐ 100 or more	$195 annually	$_____

* The lower rate applies to government and not-for-profit organizations regardless of size.

Name _____   Title _____

Organization _____

Mailing Address _____

City _____   State/Province _____   Zip/Postal Code _____

Country _____   Email Address _____

☐ **My check payable to Professional Development Services is enclosed.**

☐ **Charge my** ☐ Visa ☐ MasterCard ☐ American Express:

Card # ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐   Expiration Date ☐☐-☐☐
                                                     Month   Year

Name of Card Holder (please print): _____

Signature _____