

Cultivating Loyalty

by Joseph Shaub, JD

Why is it that we speak of “cultivating” loyalty rather than “buying” or “imposing” loyalty? What is this notion of cultivation?

If we look to the planting and harvesting sense from which this metaphor springs, our description will include careful preparation of early environment, continued nurturing and careful attention to the needs of our crop. Imagine the farmer placing the seeds in the ground, covering them with the most expensive fertilizer available and only returning to the field months later to harvest his yield. We can guarantee a scant reward for this failure to cultivate. Yet this is precisely how much of the legal community addresses the needs of our young lawyers.

In 1999, the National Association for Law Placement published its report, *Keeping the Keepers-Strategies for Associate Retention*. This research project involved tracking the retention and loss of 10,836 associates in 154 firms from 1988 through 1996. It was found that 1 in 11 associates left their firm by the end of the first year and 43% were gone by the end of three years. Paula A. Patton, one of the co-authors of the report, has noted that, “While smaller firms tend to have somewhat less attrition than larger firms, the pattern of associate departure is similar in firms of all sizes.”ⁱ[i]

Perhaps paradoxically, this comes at a time of explosive growth in associate compensation. Just log onto *greedyassociates.com*, the Web’s answer to *American Lawyer*, where attorneys from over 100 firms nationwide can compare their pay with that of their contemporaries. As of this writing, the standard first year associate salary in big city law firms is \$125,000. Yet, as the NALP report emphasizes, money isn’t the key to retaining talented people.

Again, as Patton notes:

“According to the associates in the study, effective assimilation into a law firm must include demonstrated effort by the firm to enable two-way communication, the presence of competent management/supervision, opportunities for mentoring and an appreciation for a balance between work and life pursuits.”

This theme has begun to crop up with greater frequency and urgency in the legal literature. In the ABA Journal cover article “Cash and Carry Associates,” Debra Baker describes a “growing class of young lawyers who have left their first law firms, and often the legal profession altogether, after just a few years in practice. The overwhelming reason: grueling schedules combined with lack of training and mentoring.”ⁱⁱ[ii]

Why this paucity of effort toward training, personal support and mentoring? Current ABA President, Martha Barnett (herself a beneficiary of an extraordinary mentoring relationship with past-ABA President, Chesterfield Smith), believes that it’s the chase for billable hours by both partners and associates which often causes mentoring programs to fail. Indeed, one of the biggest problems with such programs is getting the partners to follow through with the obligation.ⁱⁱⁱ[iii]

Unquestionably, the inflation of attorney compensation has set up an obvious tension between the associate’s desire to receive top dollar and the firm’s need to economically justify this enormous expense. Yet, as past chair of the ABA Section of Litigation, Lawrence J. Fox has said,

“We must also rebuild the value of our law firms, remembering that while there is nothing wrong (and indeed, everything right) with putting firms on a business-like basis, law is not just a business - not

every decision that improves the bottom line is, therefore, the right one. A big part would come if partners would make associates feel that they are not simply so many billable hour producing machines to be terminated as soon as they fail to meet firm billable hour quotas or goals or when there is a one year downturn in their practice of law.”

We must make sure our associates are not trapped in the library, stripped of their weekends and nights at home, rarely receiving constructive criticism and feedback, denied a sense of belonging that lawyers in an earlier generation received in generous quantities. It takes time, it costs money, it’s hard work, but if we don’t provide the caring mentoring, the understanding, and the leadership, partners will reap as we sow.”iv[iv]

One consequence of this money chase is that lawyers at all levels find their work less fulfilling than they had expected (or hoped) it would be upon entering law school. Professor Bruce Ackerman in his Yale Law School Commencement address, eloquently points out that although practitioners will spend most of their waking hours at work, “they will save their ultimate concerns for something else: family, friends, the bassoon, some little cottage in the Maine woods. Even if successful, this kind of life will have no unity to it. There will be great moments, hopefully; but the whole will be less than the sum of the parts. At the center will be a vast professional hole – what *was* it that I spent most of my waking hours worrying about?”v[v]

As with most suggestions for improving the cohesiveness and quality of the work environment in all sectors of economic life, solutions tend toward short-term economic sacrifice for long-term gain. This is an increasingly difficult nut to crack for practicing lawyers, since, as one observer has noted in the *Georgetown Journal of Legal Ethics*, “the rise in lawyer compensation stemming from the profession’s increase in more lucrative commercial practice has created a sense of materialism among practitioners.”vi[vi] However, the benefits accompanying this financial sacrifice are difficult to dismiss.

David Maister, a former Harvard Business School professor and author of the book *Managing the Professional Service Firm*, after observing that, “Law firms have such a lack of understanding of business that the state of their people management is equivalent to Dickensian factory workers,” and that “(t)he billable hour is the only thing of value in the law firm,” recommends that practice leaders give up 500 billable hours a year and devote that time to training. Maister argues that this would give them enough time to devote to other partners and associates which, in turn would improve the entire law firm’s productivity.vii[vii]

The investment in *non-billable* time which would enrich personal well-being among lawyers, promote our natural role as community leaders and cement interpersonal relationships within the firm would mean an unavoidable diminution of income. Yet there is a growing body of evidence that “quality of life” concerns ultimately trump money in achieving personal satisfaction. Current research supports this position.

Susan Daicoff, has published a number of surveys of research addressing attorneys’ personalities; professional and personal goals and concerns and beliefs about their chosen careers. Daicoff found that, “having more diversified interests outside of work is associated with overall success in lawyers’ occupational, marital and family lives, as well as self-fulfillment. The suggestion to work less and spend the extra time to diversify one’s interest in order to increase lawyer satisfaction and personal and professional success, then, appears to be sound.”viii[viii]

However, thus far, this compelling body of evidence runs into a wall of denial widely shared throughout the professional community. As lawyers, we often pride ourselves on our sense of hard-bitten cynicism. It seems to fit cleanly with the analytic skill we have come to believe is our stock-in-trade. Thus, a natural “lawyerly” response to the above evidence tends to be something along the lines of, “Well, young lawyers are being paid a lot of money, they should quit belly-aching,” or “Nobody is

forcing them to take the money and if they're going to command these astronomical salaries, they have to justify their existence," or the universal paean of denial, "It's not *us*, it's them."

But don't these responses miss the point? Obviously, something's not working. The growing body of research and anecdotal information seems to point, unerringly, toward the *reality* that building and deepening personal relationships within a firm; supporting young attorneys' yearning for professional challenge, social involvement and meaning in their work; and acknowledging the vital importance of each individual's family & non-professional life are the means by which each firm can *cultivate* the loyalty of its *people*.

After all, that *is* what we lawyers are, before and after we have submitted our timesheets.
