



ATTORNEY SEARCH

By Jamie Barnes

Surviving a bad performance review

Many lawyers, doctors, and other professionals prefer to think of themselves as in business for themselves, merely using a group to provide office space, support services, and occasional camaraderie. This assumed sense of personal independence undergoes a rude awakening when a senior partner calls you into his/her office to detail for you, without your asking, how you are perceived. Some of the thoughts that may go through your head at a time like this are: "Just who the hell is he/she to be judging me?" "All that negative stuff has been coming from X, who has been talking behind my back. I knew I couldn't trust him/her." "He/She acted as if he/she thought I was pretty cool. Now the truth comes out!" "I feel dirty. I am neither as good nor as bad as they say." "Why is all this ancient stuff being drudged up and thrown in my face?" Recognize yourself in any of this? Had similar feelings? It is normal. By understanding anyone's normal self-centered and defensive reaction to being judged and realizing that your feelings are automatically programmed to respond self-protectively in such situations, you have won half the battle, because with understanding can come a modicum of control.

You can't avoid professional criticism. You may have strong opinions as to the innate fairness of the appraisal process. You may be unfairly damaged and have documents to prove it. You may be thinking that you're being criticized for stuff that happened months ago and is no longer relevant. Regardless, the criticism hurts and remains potentially lethal as long as it sits in some partner's drawer, already signed off on by other partners. Well, if you've ever felt abused by the performance-review process, you're not alone. Such heart-to-heart talks trouble everybody. What you need is a survival strategy to deal with performance appraisals. Otherwise, they can drive you nuts.

Then there is this alarming news: As law firms continue to be operated more like businesses (as opposed to being run like private men's clubs), the performance appraisal becomes an important tool for weeding people out as well as identifying top performers. According to Ellen Wayne of the New York Law Journal, "Evaluations have taken on an importance they never had before. Associates are not only judged on the basis of their work skills and performance targets, but now have the added anxiety that termination could be the result of a less-than-glowing review."

Most of us would agree that some sort of evaluation system is needed for everyone. The problem is how to construct a system certifiably free of bias. This may be impossible. Evaluation systems are constructed by humans, and humans are fallible. Furthermore, it is difficult, if not impossible, to categorize and quantify the qualities that identify perfection in professions such as the law, meaning billable hours alone do not tell the tale. There is something called "partner potential," which remains both on the appraiser's mind and on yours. How does one evaluate that?

Let's deal first with the emotions that surface any time you receive a performance appraisal. Unless these emotions are well understood and contained by you at the start, a rational discussion of the performance appraisal as an institutional tool-and how you can successfully deal with it-cannot take place.

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Reason Versus the Emotional Self

Nothing is more threatening to one's inviolable sense of self and its importance than to have a relative stranger sit down and dissect you both professionally and personally. First of all, the mere fact of delivering the appraisal solidifies that person's superior rank. This relative stranger also is acting summarily as judge and jury, dispassionately (hopefully) enumerating your strengths, faults, successes, and failures and summarizing all this with either a thumbs up or thumbs down that leaves you euphoric, confused, or devastated. Even when an appraisal is flattering, there remains an uncomfortable edge to the process. You may wonder why you feel so uneasy and perhaps even embarrassed. Such a reaction is driven by your knowledge that no one can know you as you do; nor can anyone else understand what you were going through when you wrote X, did Y, or said Z.

To further muddy the waters, performance reviews can often be subjective. They can reflect group consensus or be driven by personal spite and used to settle personal scores. At times, it can all seem so unfair. A heroic performance against all odds during recessionary times can be considered inadequate; an average performance during spectacular economic times can be considered superior. All of this can make performance appraisals uncomfortable to contemplate, difficult to suffer, and almost impossible to trust. Now that this has been said, let's examine the other side of the equation, the appraisal rationale. We'll briefly discuss this and end with adaptive strategies you can employ to weather the stress and get on with the job. Now that this has been said, let's examine the other side of the equation -the appraisal rationale. We'll briefly discuss this and end with adaptive strategies you can employ to weather the stress and get on with the job.

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The Appraisal Rationale

Talk to law firm partners, and they will tell you that many positive outcomes can be derived from performance appraisals, among them (1) meaningful feedback, (2) improved inter-firm communication, (3) maintenance of standards, and (4) facilitation of career planning. Not all of these claims can be fulfilled all of the time. Some are code for firm agendas the individual lawyer may or may not pick up on. Let's examine each of these suggested outcomes more fully so that you can understand why they exist and what traps they may conceal.

1. **Meaningful feedback** The idea here is that if you know what more experienced others think of your work product and conclude about you personally, you'll want to mold yourself into what is expected; and parenthetically, if you don't want to mold yourself into this image, you'll leave. Either way, the firm benefits. In this instance, the performance appraisal is meaningful as a tool for generating conformity and weeding out misfits. Before you raise a cry of outrage, think about this a moment. The goal is not to turn you into a Stepford Wife. You can be a cross-dresser outside work and secretly pull the wings off of live flies for all anybody cares. The purpose is to encourage you to become part of a team while at work and not a planet circling around some distant star. On your own, you can be as countercultural as you wish, unless, of course, you bring unfavorable public attention to yourself and your firm. Do that, and you're likely to hear about it on your next performance appraisal, if not before.
2. **Improved communication** This is a dubious claim. It can happen, but frequently, the opposite occurs. Bad vibes are generated. Yet, if lawyers can be convinced that the system is unbiased and the appraisal process conducted dispassionately, the occasional bad feeling will not become part a rising chorus of smoldering discontent. The component missing here, and it ought to be mentioned, is discretion. Rather than create improved communication, which smacks of corpspeak, the goal of the appraisal process should be to remain confidential-a private summing up between appraiser and appraised that hopefully clears the air, establishes baselines for future on-the-job conduct, and sets the agenda for a less fractious future.
3. **Maintenance of Standards** Hard to argue with this one. A firm has a right to set standards, and it has a right to expect you to adhere to them. The problem comes when these standards are not clear at the start. In an article on the performance appraisal in the March 17, 2003, edition of the Los Angeles Daily Journal, which specializes in local legal news-the writer, consultant Ida Abbott, advises any law firm to first assess the competencies desired and then:

"...identify 5 to 10 specific components to be evaluated for each key performance standard. If one of your standards is professionalism, it must be dissected into specific, observable tasks, skills, attitudes, behaviors, and attributes that characterize what a lawyer must do to demonstrate that

quality. For example, one component might be 'attention to detail': is thorough and tenacious in completing complex and multifaceted tasks; work product is neat and free of errors."

What Abbot does not address is this: A subjective judgment is still required because everyone screws up, and not all screw-ups are equal. What needs to be judged is the importance of the screw-up. Did it cause the loss of millions of dollars in client revenue, or, say, was the mistake made on a will and trust that had no substantive effect on the efficacy of the document? The firm culture and its guardians must decide. They may disagree among themselves, but eventually must reach a consensus. That is how the appraisal process works. Thus, note that even the consensus judgment handed down to you on your appraisal may be a matter of dispute among the partners. The fact that there was internal disagreement will most likely not appear on your appraisal, although it may be hinted at during your person-to-person interview

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4. **Facilitates Career Planning** This is corpspeak for "Am I partner material?" The whole purpose for most associates' slaving away at their jobs and conforming to firm production and decorum standards is to eventually grab the metaphorical brass ring, a partnership. If you achieve that, you think, you truly can be considered your own business, your own profit center, with control over your own destiny. Again, there is some deception involved in any process that purports to outline the personal qualities and performance level needed to make partner. Let's say that you are nice to your mother; don't smoke, drink, or frequent hookers; don't beat your kids; are still happily married to your original spouse; and are punctilious in your weekly attendance of religious services. You have worked your way onto the boards of some small corporations. You are one of your suburb's council members. You have brought in new business, and you bill an ungodly number of hours. Sadly, you can meet all these qualifications and still have your partnership delayed if, say, existing partners do not retire when they say they will, your firm has financial problems, or a new partner arrives from somewhere else, accompanied by several big-time, high-margin clients.

Okay, So the Appraisal Process is Not Perfect! How Do I Proceed? *Your first battle is to win a fight with yourself.*

As we have said, you are emotionally predisposed and programmed to protect yourself from bad news, especially if through your actions, you caused the bad news to happen. Your mind will deliberately rationalize your mistakes. It will attribute them to events beyond your control. It may even shift blame to others. In short, your brain will do almost anything to avoid confronting the truth of your own error. So your first job is to confront this aspect of yourself and attempt to override it. Easier said than done, right? Well, awareness is half the battle. When you make a mistake, go ahead and rationalize it all you want, but allow part of your brain to recognize it for what it was, a blunder. *Start with prevention. Where attorneys get themselves in needless difficulty is in not owning up to mistakes.* Most mistakes can be fixed quickly. If you find yourself making the same type of mistake over and over, you need to be on the outlook for this predilection. Then your brain can start building fail-safe mechanisms to guard against similar future mistakes. Learn the system. Every firm has its idiosyncrasies. For instance, in your firm, what is considered a respectable amount of billable hours? Are partners down in the trenches with associates, or do they have a tendency to remain aloof? How is work assigned? How is it evaluated? If you get in the flow sufficiently to operate automatically, then the aspects of the system that seem petty or unnecessary will eventually be forgotten. *Get feedback.* But don't do so too often. Don't go running into a supervising partner or senior associate every three or four hours to ask "How am I doing?" Your insecurity will soon cause irritation, and you will look like a whiner and not a take-charge individual. Instead, choose quiet times, outside the office if necessary, to ask the assessment of someone senior whom you trust. There are good and bad ways to do this. A bad way might go like this:

You: Well, how am I doing? Partner: What do you mean? You: You know, my work performance. Is it okay? In your opinion, am I partner material? What does the bonus situation look like this year? How much do you think I will get?

Here's what you did wrong in this conversation. First, you put the partner on the spot. You did not give him/her enough time to reflectively respond to your first question before you asked the second question. As for the second question, if you have only been with the firm a few years, there may be no way of telling if you are or are not partner material. True, impressions about you have begun to form. But those impressions can and will change over time. So the first piece of advice is to avoid asking about partnerships.

Instead, keep your questions specific to a particular assignment or series of assignments. This is only reasonable. The long-term decision regarding your competency and partnership potential is the result of many private discussions by others that eventually result in a consensus after a period of years. A better way to inquire about your performance might go like this:

You: Do you think I did okay on the Laughingbod case? I'm only asking because I respect your opinion, and your feedback can only be helpful. (Pause)

Partner: I thought you did okay. (Pause) You might edit your stuff a little more carefully before turning it in. You write persuasively, and I've complimented you on your citations, and you're great at meeting deadlines, but as you know, I've also pointed out some problems from time to time, not serious, you understand, but an indication that your language can use some tightening. I'll work with you on this. It was a problem I also had when I first started working here. I had to learn how the law firm did things. I might add that others have noted how well you handle the client. You're very relaxed and professional, and I've heard a lot of favorable comments.

You: Thanks. Now, about the Laughingbod Case. I next plan to.....etc.

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Here's What You did right in this conversation. (1) You asked for advice, which flatters the potential advice giver. (2) You didn't bombard him/her with additional questions. You asked an open-ended question that gave the other person wide latitude in how to respond. (3) You got the advice giver to point out problems; but more important strategically, you got him/her to partner with you in working on the problem. You moved the advice giver into your corner as a helper/facilitator. (4) Finally, you didn't become a pain in the ass by dwelling on the subject. You moved on, allowing the supervising attorney to do the same. The above hypothetical conversation may or may not be difficult to replicate. It suggests an already comfortable relationship between supervising lawyer and associate; but a loose approximation of such a discussion can be conducted with anyone as long as you remember to keep your question simple, open-ended, and focused on a specific task or tasks. Your primary goal: Get a supervisory attorney to take some responsibility for your development. This does not mean mentoring in the classic sense of the word. You're merely asking for an occasional on-the-job critique from someone who may even busier than you; so you cannot ask for this directly, but only hope that it is offered. If it is, this person could eventually evolve into your mentor.

Constantly evaluate yourself. The first and most important question you must ask is "Would I want to work with me or for me?" You can decide this by asking such questions as "Do partners, other associates, or people in the support staff avoid me? If so, why? Am I brusque in my professional dealings? Do I complain a lot? Do I pick arguments? Do I fail to say thank you when somebody goes out of his/her way or does something nice for me? Am I absent more than I should be? Do I fail to return calls promptly?"

Being aware of others is often difficult when we have spent all of our lives focusing on ourselves, with our noses in books and with one test hurdle after another always staring us in the face. But the truth is, in a work environment, it is all about interpersonal relationships. You don't have to turn yourself into a back-slapping life of the party, but you need to be moderately skillful socially when at the office. You may arbitrarily dismiss such social niceties as office politics. But the fact of the matter is that all work life involves human interaction, and all of human interaction is political in the sense that to work and live together, we must make accommodations and compromises in order to get along.

Periodically, force yourself to evaluate your social interactions. What aspect of these interactions can you manage better? Which relationships seem to be working best? Why might that be? Do these relationships work solely because you genuinely like these particular individuals? Because you share some interest, no matter how banal? Or is it because you take the time to recognize them as unique individuals?

Proactively, always find something about somebody else to compliment, but do so judiciously. Don't just make up something. The compliment has to be sincerely felt or noticed, or the other person will likely intuit your deception and react unfavorably to you. Monitor yourself to see if you are walking around looking distracted or unpleasant. If you are, a smile can fix the problem, even if you are boiling inside. In an article in JD Jungle, the author (anonymous) comments as follows:

“Success at a law firm is about human relationships,” says Peter Sloan, a career development partner at Kansas City’s Blackwell Sanders. Every time you meet someone new—a partner, another first-year, your secretary—smile. Introduce yourself. Take the time to ask the person a bit about him/herself. Be the kind of person people like to work with, says Sloan. “You’ll lay the groundwork for the relationships you’ll need to get ahead.”

Sloan makes smiling sound like a cynical career move, but it is more than that. It may not help you get ahead, as he assumes; but smiling can reshape your approach to work, to your fellow lawyers, and to life in general. Like physical exercise, it is necessary for a healthy existence. So look upon smiling as producing multiple benefits, some of which may be that people will like you better and be more disposed to giving you a break.

Conclusion

You cannot avoid performance appraisals. Even partners get appraisals. You will be evaluated in one form or another all of your working life. Since you cannot avoid the process, it is better that you manage it as best you can. You must first manage your emotions. This is the toughest part. Secondly, you must identify and establish a comfortable feedback relationship with those responsible for judging you. This means getting constant feedback without having to ask for it; which in turn means establishing the kind of open and eager-to-improve attitude that permits criticism, which also has much to do with managing your emotions. Finally, your task is to get supervising attorneys ready to help you improve, which starts with your being open to all suggestions. If you can do most, if not all, of this, you likely won’t be “blindsided” at appraisal time. So good luck to you. Take a while to think about what you’ve just read. Try to dispassionately analyze your current work attitude towards your fellow associates, the partners, the support staff, and your attitude towards yourself. Some of the changes in this article may feel ill-fitting the first few weeks you try them; but none of them—smiling more, saying thank you when appropriate, controlling your negative emotions—will seriously compromise your individuality. Instead, you’ll find your work easier and the dreaded performance appraisal easier to digest.

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