

THE NINE HABITS OF HIGHLY SUCCESSFUL COMMUNICATORS

Your child comes home after school with a black eye, sobbing and laments that, "The school bully was picking on me all week, and we got into a fight." Some highly testosteroneed parent might run to the attic and unpack the family boxing gloves for some quick instruction and general toughening-up sessions. Imagine what your spouse or children see when you come home after a tough family board meeting, where nothing is mutually agreed upon and where conflict and talking over one another is the norm.

Moral leaders instruct us to "turn the other cheek" while assertiveness training experts

encourage us "to stand up and be strong." Most of us realize it's never black or white, but that a middle ground exists. Although in the "heat of the moment" it is usually easier to fight or flee, the goal is to develop communications skills that allow us to discover a mutual gain resolution.

Communication skills among family members during board meetings range from "begging for a fight: lose-lose" to "mutual satisfaction: win-win." Those families that maintain life-long positive communication develop their communication skills by rigidly adhering to the following "Nine Habits."

ACKNOWLEDGE AND RESPECT DIFFERENCES

Many family members react to a difference of opinion as if it were a challenge, evidence of betrayal, or an effort to impose control. If you find yourself reacting in this manner, you are probably eliminating opportunities to resolve the conflict.

Different opinions and different styles of reacting are natural. Try to experience different opinions from the other person's point of view. Think about your reaction and your partner's difference as an opportunity to be curious and to learn.

ences (getting curious) stops the vicious cycle of escalating attacks and counterattacks.

EXPRESS YOUR FEELINGS WITH CLEAR "I" STATEMENTS

Feelings such as hurt, anger and fright must be expressed and acknowledged before mutual problem solving can begin. However, the use of accusatory "you" statements creates a defensive reaction in others.

The use of an "I" statement is the practical application of "owning one's own feelings" and tends to eliminate harsh criticism or judgmental statements in retaliation.

Avoid the use of the pronoun "you." "You" statements invite defensive reactions. A statement such as "I feel that you are . . ." is judgmental and not as self-revealing as an "I" statement.

AVOID SPEAKING WITH AN ATTITUDE OF ABSOLUTE CERTAINTY

Your perception is your reality and you must respect it as such and insist that others treat your perception with respect. However, you are not entitled to impose your reality onto others.

Speaking dogmatically and blaming others thwarts effective communication. Get curious about your reactions, and help others to understand them.

What is the nature or source of your emotional reaction? Are you assuming and attributing motivation to the other individual? Did the other individual commit a minor *faux pas* about which you are extremely sensitive, or were they intentionally malicious?

If you can adopt an attitude of curiosity rather than one of judgment and accusation, you will encourage others to do the same. Exploring perceptions and experi-

ADOPT A NON-DEFENSIVE LISTENING STYLE

Successful conflict resolution assumes the willingness of all parties to listen with empathy to the other party's vulnerable expressions. Defensive reactions usually destroy the opportunity for resolution. Sensitive listening encourages the speaker to express themselves in a non-accusatory manner.

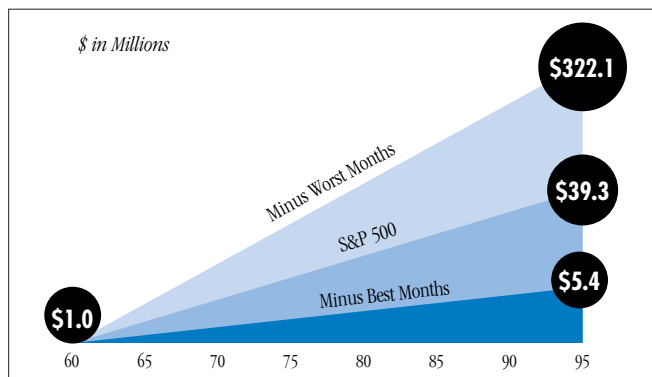
Do not speak until you are sure you have actively listened with the goal of understanding the other person's position and feeling.

Explaining a cause or offering a justification is not the issue. Rather, the other person's emotional (See NINE HABITS on page 4.)

FAST FACTS



Market Timers Take Note Are you tired of guessing which way the stock market will move tomorrow? The investment management firm of Sanford C. Bernstein, (with Ibbotson, Chicago) provided us with some very interesting data. During the past 36 years (1960–1995, 432 months), if an individual invested \$1 million in 1960 in the S&P 500, today's value of that investment would be about \$39 million. If, however, you were either very lucky or clairvoyant and had completely pulled out of the markets during the worst 5% of all months (22 out of 432), today your investment would be worth \$322 million. If on the other hand you had pulled out during the best 22 months, your investment would be worth a mere \$5.4 million. See chart below.



Source: Sanford C. Bernstein, New York

A FAMILY BUSINESS "LEGAL" AUDIT

By Tom Hurtekant, J.D.

In all likelihood, you know of family businesses that have suffered through painful internal struggles or have endured embarrassing revelations. The consequences can range from public humiliation to catastrophic sanctions from federal regulators that can cripple or devastate a business.

The possibilities for such painful situations seem to be growing at an alarming rate. Family businesses have special issues that may increase the likelihood for such events. Issues such as association with fraudulent charities, lawsuits related to outside board members, unanticipated exposure to bad investments, or inadvertent violation of SEC insider or reporting requirements are a few areas where peril may strike an unsuspecting family business.

Family businesses may avoid agonizing situations by annually auditing

their internal workings. In our litigious, regulation-bound climate, owners of family businesses that ignore regular scrutiny do so at their own peril.

Many family-owned businesses enjoy a more casual, less bureaucratic environment than most large public organizations. For this reason it is important for family principals and senior management to develop practices that promote good controls.

Just like a financial audit, a legal audit of your family business should fit the organization's businesses and structure. Here is a starting point to alert family businesses to a list of issues other than those relating to wills, trusts, and tax planning that are usually considered critical to the ongoing business enterprise.

OFFICE STAFFING AND ORGANIZATIONAL STRUCTURE

- ▶ A good place to begin a legal audit is to consider the structure of the day to day activities. Consider whether the structure is as effective and efficient as it might be? Does the staff have the optimal mix of generalists and specialists? Is the office staff and administrative structure efficient and designed around your current business? Is the method for allocating overhead and direct costs to family members fair? In your decision making, do you evaluate immediate priorities against competing priorities to achieve a workable balance?
- ▶ If your records contain sensitive information, do you have strict policies of confidentiality and records access that apply to both outsiders and family members? Does confidentiality extend to your disposal of records and everyday office trash? And what about special services for family members? Do the services of the office extend to non-family members? Should you address conflicts that develop over business work versus personal services for family members?
- ▶ Have you reviewed the requirements of the combined involvement of family members in such things as political contributions, investment holdings, reporting rules, welfare or benefit plan compliance tests? Does everyone understand who has

legal control in the business? Have you planned for likely changes or possible future control contests within the business?

- ▶ Do you know your weaknesses? Have you made formal plans for management succession or continuity? Have you carefully considered if your business could benefit from independent directors or an advisory board to broaden your perspective?

BUSINESS CONTROL ENVIRONMENT

- ▶ Have you been specific about lines of authority and clearly documented the boundaries between family advisory councils and legal boards? In legal matters, are you frequently caught off guard? Do you routinely document contracts, and do you know when you must have a written agreement?
- ▶ Do employees feel free to bring up potential or current problems or do they hide bad news? Do they share your values and ethical framework? Does your employee compensation structure align with your interests by balancing conservatism and risk-taking? In oversight issues, do principals in the company adequately monitor the work of non-principals? Is someone designated to maintain general oversight of the business?

DIRECTOR AND BOARD POSITIONS

- ▶ Do you carefully scrutinize the reputation and every day business practices for all businesses and non-profit organizations

before agreeing to serve on their boards? For your own protection, have you reviewed indemnification and director's liability insurance protection? Do you attend board meetings and actively monitor the organizations for which you serve as a board member? Do you know the risks of being a figurehead?

- ▶ Do you have systems in place to avoid leaks of confidential company information to those closest to you? Do you comply with SEC reporting requirements? Are you aware of trading by family members that may violate insider trading rules or restrictions imposed by SEC rule 144? Do you routinely evaluate board positions that you, family members, or key staff hold for possible conflicts or access to sensitive information about your competitors?

RISK MANAGEMENT

- ▶ Do you actively identify and try to insulate your business against risks? Have you reviewed your indemnification policies or agreements to know when they might negate efforts to establish corporate liability veils? Do you carefully review the details of even "small" investments to be sure your risk is limited to your investment, and do you know the uninsured exposures of your company as well as the coverage limits of your insurance policies? Do you know your "worst case scenario"?

INVESTMENT ISSUES

- ▶ Do you have an organized process for making investment decisions? Is your style to carefully identify investment opportunities on your own, or do you respond to advice from others? Do you honestly know how to analyze investment opportunities?
- ▶ If you are an early investor, are you aware of the risks of others viewing you as a sponsor or relying on your decision as an endorsement? If you use multiple investment managers, are their efforts coordinated so that they do not exceed risk levels, cancel strategies, or unwittingly exceed legal limits on particular holdings? Do you place limits and actively monitor discretionary investment managers?
- ▶ Are you aware of and understand potential environmental liability risks to your business? Do you have an investment vehicle for small family trusts and entities to pool resources or to meet qualified investment requirements? When you invest in private placements, do you carefully evaluate your cash call possibilities and your representations and indemnification obligations in subscription documents? Do you carefully monitor ongoing transfer or other restrictions?

RAISING OR MANAGING FUNDS

- ▶ Do you consider securities law compliance issues if you put others in your investments? If you or someone in your office manages funds from a very

broad extended family or from third parties, have you checked to be sure your business does not need to be licensed as an investment advisor, securities broker, or real estate agent?

PROFESSIONAL RELATIONSHIPS

- ▶ Keeping professional services coordinated is vital. Lawyers, accountants, insurance agents, and investment advisors/consultants should coordinate with each other to avoid duplication. Have your professional advisors gotten to know you well enough to give you correct advice? Does the expertise of your advisors and their firms match your needs? Do your advisors give you the balance you need between the broad overview and areas that require specialization?
- ▶ When seeking advice from your advisors on legal, tax, or financial questions, do you understand the degree of certainty behind the answer? Are you willing for them to give you objective advice or does your manner and attitude discourage it?
- ▶ Are the fees you pay commensurate with the quality of professional services you receive or need? Do you choose advisors for their abilities and cost or because they are friends or relatives?

Tom Hurtekant, J.D. is an attorney with Brown McCarroll & Oaks Hartline. His practice includes family-owned and closely held businesses.

BOOK ReVIEW

TERRY

My Daughter's Life and Death Struggle with Alcoholism
by George McGovern (Villard Press, 1996)

On the snowy winter morning of December 13, 1994, in Madison, Wisconsin, the body of Terry McGovern was discovered in a small parking area, near a tavern, partially buried under several inches of snow. The coroners report of her death stated her body stopped functioning due to long exposure to the extreme winter conditions. Her father, the ex-senator from South Dakota and 1972 presidential candidate for the Democratic party, knew the truth. His beloved daughter was an alcoholic and unlike numerous other close calls, this time he could not rush to her aid and save his daughter from a blackout.

Every day in America 300 people die from alcoholism. In nearly every situation it is a sordid event. Drunken, foolish people slay one another in bars, homes, and on highways. Death from hopelessness is the most difficult to understand. It is this hopeless emptiness that moved George McGovern to write of his daughters life. ". . . it is virtually impossible to be silent about it, because I wanted her life and death to be understood and appreciated—and I wanted others to gain from the lessons her life can teach. I have written every word long hand on pads of yellow legal size paper. These sheets show many small smudges. That is what happens when tears fall onto the page."

Alcoholism is a family disease. "It is a family disease in that it tends to run in some family trees more than others. It is a family disease also in that the alcoholic's disease will over time affect mental,

emotional, financial, and lifestyle factors relating to the rest of the family. In a sense, the alcoholic's disease erupts in ways that threaten the entire family's health and well-being."

Countless families have suffered the ravages of alcoholism and those with family businesses know all too well the difficulties of tending a business while wrestling with an alcoholic. In a family business the problem of alcoholism is often compounded because of close personal relationships and a perceived social stigma of admitting problems.

McGovern relives his guilt as a father through examining if his political ambitions were a major factor in his daughter's depression and despair. "This combination of duties involved constant travel that took me away from the family much of the time. It was an early introduction to the conflict between politics (work) and a normal family life. I was not sufficiently aware of this problem at the time." On numerous occasions during Terry's life as an alcoholic, George and Eleanor McGovern questioned whether they could save her without destroying the rest of the family. "Nor can I escape regret over the ways in which my political career and personal ego demands deprived Terry and my other children of time, attention, direction—and fun with their father."

This tragic and emotional tale, revealed candidly through the private thoughts of an American political icon, attempting to regain control, will undoubtedly emerge as a life-changing read. However, for all the sad moments in this book, poignant and powerful truths emerge which make *TERRY* a potent book. Read it not for business but for yourself. Buy two copies and give one to a friend.

Habits of Highly Successful Communicators. Also joining us for the first time is Tom Hurtekant, an attorney. Tom drafted the article, *A Family Business "Legal" Audit*.

Lastly, authors, colleagues, and publishers frequently send us books and manuscripts to read for our comments, to review in our newsletter, and occasionally, as a gesture of kindness. In truth, we do not get through all of these books. Some we can only scour; others we peruse cover to cover. From these 15 or so books each quarter, one is selected that we feel is especially important for our readers.

TERRY is our selection this quarter. Nearly every business, small and large, has an employee assistance program to assist with personal issues, including alcoholism. Showing up late, not returning phone calls, failing to ask important questions and not seeing opportunities can all be symptoms of this workplace disease. George McGovern's exposé of his daughter's struggles may provide some special insight when coping with family members and employees afflicted with this addiction.



Being the one in the family who could read the road maps on vacations does not always prepare you to lead the family business.

The twists and turns of the business marketplace takes the ability to visualize both short and long term outcomes of your planning. Without it you'll never know when you are off the map.

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EDITOR'S COMMENTS

By James Olan Hutcheson



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An owner of a significant NYSE family business stated during a recent interview, "We really don't have a communication problem around here. My brother knows I'm in charge and that I make all the decisions." These remarks

came from a very successful, bright, charismatic individual. His sincere and earnest remarks caused me to once again reflect on how important a positive communication system is to a family in business. This individual mistook orating and commanding for communication.

We sought out Mark Voeller, a family systems expert and consulting associate, to provide another perspective on communication. Mark signed on as a guest editor of this issue by contributing, *The Nine*

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NINE HABITS (Continued from cover.)

reaction is your immediate focus. This is especially true in a family-held business where emotional concerns frequently color what should be an objective business consideration.

STAY FOCUSED ON THE CURRENT ISSUE

Dredging up past evidence of mistreatment or misconduct interferes with finding a solution for the present problem.

Old feelings are important to resolve, but are best addressed if preceded by a disclaimer. The individual with an old, unresolved issue may need to say, "I am probably reacting strongly to this _____, because I am still upset about an old issue we need to resolve."

USE COOLING OFF PERIODS CONSTRUCTIVELY

Many people spend too much time justifying their own position and generating an attitude of righteousness when they are alone.

Use time alone to move toward a solution instead of digging in deeper with your own views. Look for the "win-win" solution. Try to understand what pushes your hot button and put any false beliefs or assumptions into perspective.

Avoid destructively planning how to get even, how to win, or how to perpetuate conflict. If you understand your own reactivity, try to put yourself in the other person's shoes, and rethink the issue from their perspective.

ATTEMPT TO IDENTIFY SHARED INTERESTS OR COMMON GROUND

Put differences in perspective by focusing on issues that all parties agree upon. The fact that both parties have hurt feelings or that both want to protect their children, want to save their business, etc. will create a

positive starting point for building constructive relationships.

ENGAGE IN MUTUAL PROBLEM SOLVING

Processing feelings without searching for a solution is ultimately not successful. Always begin by acknowledging your own emotional reactions and the feelings of the other person involved. Then, try using a problem solving model such as: When (*situation-no judgment*), I feel _____. It would help me to (*change in feeling*), if you could _____. (I.E., When decisions are made without my involvement, I feel discounted. It would help me to feel more involved if you could use e-mail to advise me that decisions are about to be made.)

SIGNAL RESOLUTION OF THE CONFLICT

In order to learn that conflict is not dangerous, but can actually lead to greater closeness, it is essential to signal that conflict will not remain a permanent barrier in the relationship. This signal might be a hug, a hand shake, or words such as "I am glad we worked this out."

If however, resolution is not fully achieved, the parties might agree to disagree or might say, "Let's put this aside for now and come back to it later."

We are all emotional beings and therefore, at times, following these guidelines is almost impossible. Just like the child coming home with a black eye, when under stress or pressure, we may lose our wisdom and revert to counter-productive communication by vilifying one or more of *The Nine Habits of Highly Successful Communicators*.

Mark Woeller, Ph.D. is President of Dialogue 2000 which specializes in management consulting, conflict resolution, and team-building. He partners with Jim Hutcheson and the consultants from ReGENERATION Partners using his background in organizational and family systems.

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"A BIRDSEYE VIEW"

A restless curiosity, a love of outdoors, a propensity for risk taking, and the experience from his adventures in Canada led Clarence Birdseye, the son of a New York Supreme Court judge and grandson of a Connecticut inventor, to discover the process of quick-freezing, upon which he built his fortune. *"I am best described as just a guy with a very large bump of curiosity and a gambling instinct,"* he wrote.

While ice fishing in Labrador, where temperatures often exceed 40 degrees below zero Fahrenheit, Birdseye noted that the fish he caught, when pulled through the ice and

exposed to the cold air froze fast and hard.

He also noticed something more subtle: when thawed then cooked, the fish were tender, flaky and moist . . . nearly as good as when caught fresh from the lake and cooked immediately. He found the same was true for other types of game and for

heads of cabbage which he stored outside his cabin during the long Canadian winters.

Educated at Amherst College, Birdseye went to work in the Massachusetts fish business. His first efforts at marketing quick-frozen food did not meet with success. Shoppers were skeptical of "cold storage" food because they were accustomed to a process which left cooked food dry and tasteless. Birdseye was unable to convince grocers and shoppers that his process for "quick-frozen" fish was different.

Clarence Birdseye did not give up. He convinced several wealthy backers of the merits of his idea. With Birdseye's view of the future, they formed the General Foods Company which launched a campaign to win acceptance for the Birdseye line of "frosted foods."

Together with other colonial family food names such as Baker (Baker's Coconut), Post (Postum and cereal), and Maxwell (coffee) the General Foods Company went on to become one of the world's largest processors and marketers of packaged grocery and meat products.

After the success of this venture, Birdseye devoted much of his time to other new inventions. He designed reflecting light bulbs, an electric fishing reel, and developed a process for dehydrating foods. When asked what characteristics contributed most significantly to his success, Birdseye replied, *"I go around asking a lot of damn fool questions and taking chances."*



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RELIEF FROM DEATH AND TAXES

By Michael Martin, CPA with Belew, Averitt LLP

“The money you save may be the lifeline for your family business.”

Death and taxes, as the old saying goes, are the only things in life you cannot avoid. For some family business owners, the burden of taxes is as close to a death experience as they want in their lifetime.

Often, the family-owned business represents a disproportionate amount of an owner's estate. In these circumstances paying estate taxes is bad enough, but the real pain for the beneficiaries comes from an IRS requirement that mandates tax payment in full within 9 months after date of death. This time crunch is reason enough for some families to sell off, at liquidation values, their interest in the family business.

Realizing this potential hardship for closely held businesses, the IRS revised the tax codes to allow for some estate tax obligations to occur beyond the normal nine month requirement. For estates that request special consideration and that consist largely of interests in a closely held business(es), there may be some relief in the form of Internal Revenue Codes 6161 and 6166.

	SECTION 6161	SECTION 6166
Maximum Period to defer payments	10 years	14 years
Requirements	Reasonable cause	Business value greater than 35% of adjusted gross estate.
Interest Rate	Same as deficiencies	4% on tax attributable to the first \$1 million of business, less unified credits. Remainder same as deficiencies.
Tax Affected	Federal Estate	Tax attributable to qualifying business, less unified credits.

The IRS also occasionally allows for deferral of estate taxes when a chapter 11 is involved. These potentially helpful codes are only available to those estates that meet established criteria. And of course, the IRS is not doing this just to be nice for there are some tradeoffs associated with this election. However, if you think this may be an option for you; talk with your accounting professional. The money you save may be the lifeline for your family business.

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