

The Marin Lawyer

An Official Publication of the Marin County Bar Association

September 2005

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GENERAL MEMBERSHIP MEETING M. GERALD SCHWARTZBACH THE ROBERT BLAKE CASE AND THE MEDIA – SEPARATING MYTH FROM REALITY

Nationally known and highly regarded Marin criminal defense lawyer M. Gerald Schwartzbach will speak to the Marin County Bar Association general membership meeting to be held on **Wednesday, September 28th** from noon to 1:30 at the Seafood Peddler in San Rafael. Mr. Schwartzbach will share with his fellow MCBA members the role of the media in high profile cases and will dispel many of the popular myths about the case in connection with his recent defense of actor Robert Blake in his Los Angeles murder trial. In addition, the talk will include a demonstration of the sophisticated, state of the art audio visual trial techniques used in the Blake trial.

In addition to his successful defense of Robert Blake, Mr. Schwartzbach's thirty- six years of practice include many other noteworthy accomplishments. In 2003, after a 13 year pro bono effort, he obtained the vacation of the wrongful conviction of Glen Buddy Nickerson, who had been wrongfully convicted of a double murder and imprisoned for 18 1/2 years. In addition, Mr. Schwartzbach was chief trial counsel for attorney Stephen Bingham, who was acquitted of conspiracy and multiple murder charges in a 1986 internationally publicized trial. That case arose out of an alleged attempted escape from San Quentin Prison by Black Panther George Jackson. Mr. Schwartzbach has also won acquittals in murder cases involving Richard Bandler, the controversial co-founder of Neuro-Linguistic Programming, and the assassination of the Police Chief of Union City, California.

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Michael Samuels was guest editor of this issue of *The Marin Lawyer*. Philip R. Diamond is Series Editor for 2005.

MCBA CODE OF CIVILITY

By Michael Samuels, Esq.

We don't talk about it much, and it's a little hard to find, but the Marin County Bar Association has a Code of Civility, approved by the Board of Directors in 1997 and endorsed by the Judges of the Marin County Courts – to be considered, incidentally, when assessing sanctions.

This Code is not a substitute for California statutes and Rules of Court, but all attorneys practicing law in Marin County are encouraged to comply with the letter and spirit of these standards.

A summary of the Code of Civility follows:

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Calendar of Events

September 8th

Diversity Section Meeting

September 13th

Estate Planning Mentor Group

September 14th

ADR Section Meeting

September 15th

Justice Center Open House

Family Law Section Meeting

September 21st

Probate & Estate Planning Section

September 22nd

Real Property Section Meeting, 12 noon

September 28^h

General Membership Meeting

Gerry Schwartzbach

Look for details on page 13 in this issue of the *Marin Lawyer*.



PRESIDENT'S MESSAGE

By Len Rifkind

INTEGRITY

We all strive to have integrity and to be known for it. Of its various definitions, the applicable definition in the context of practicing law is “steadfast adherence to a strict moral or ethical code.”¹ In determining what type of conduct is consistent with a “strict moral or ethical code” we lawyers have no shortage of texts, which include but are not limited to: religious text(s) of choice for persons of faith, California Rules of Professional Conduct, Rules of the Commission on Judicial Performance for the members of the bench, and the Marin County Bar Association Rules of Civility.² The latter Rules of Civility are really a guidepost to the social mores of practicing law in Marin County. And when all else fails, consider the self-applied “smell test” to ascertain whether one’s conduct rises to the level of integrity.

Defining a concept like integrity is obviously not difficult, but applying it in practice both professionally *and* in one’s private life is a different matter. Accordingly, to have integrity, there is no room for deviation, no time-out, from these lofty standards, which are often beyond the vast majority of us mere mortals, who on occasion have weak moments, and human foibles. Certainly such deviations are a matter of degree, fact and circumstance. Ultimately, however, it is a matter of taking responsibility for our own words, and actions, because we really have little control over other people.

Rather belatedly in my professional career, the rose-colored glass with which I have viewed the world have

slipped off on occasion, and I have come to realize that integrity, rather shockingly, is a rare form of human behavior. Examples of less than desirable behavior abound³: clients who provide inaccurate statements concerning their case; clients who refuse to pay their bill; clients who blame their counsel for their self-created problems; opposing counsel who take unreasonable positions; opposing counsel who bring frivolous suits and motions; judges who do not listen to the case and are predisposed in their decision; judges who wield their power over counsel in unreasonable ways⁴; colleagues who act out of self-interest or fail to keep their word; staff who quit without adequate notice or fail to work productively; experts who fail timely to perform their work; opposing experts who prostitute themselves for their client’s position by advocating positions that bear no semblance to reality; people who are jealous of another’s position and success who act in very small ways and gossip maliciously without basis; and the list goes on.

Certainly, I am not the first person, nor will I be the last person, to experience the dark side of human nature. However, when I do come in contact with persons of integrity, I feel inspired to reciprocate the behavior. Interaction with a person of integrity causes me to feel hope, and inspires me to conduct myself with a “steadfast adherence to a strict moral or ethical code.” Acting with integrity can be contagious.

There are three possible results when the two types of people in the world—those with integrity and those without—interact. First, when two people with integrity interact, the result is certain. Second, when two people without integrity interact, the result is also certain—a den of thieves. Third, when a person with integrity and one without interact, the result is not certain. In this last example, three possible outcomes may occur: (i) the parties may maintain their respective ethical and moral compasses without change; (ii) the person without integrity may be inspired

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RESERVATION FORM

General Membership Meeting

Speaker: M. Gerald Schwartzbach

Please make _____ reservations for me at the Seafood Peddler in San Rafael, on Wednesday, September 28, 2005: 12 - 1:30 p.m.

Name or Firm Name: _____ Phone: _____

Enclosed check for _____ (\$30 MCBA members; \$35 non-members)

Visa Mastercard _____ Exp _____

Please, we must have RSVP's by Sept 20, 2005

Make checks payable to MCBA and mail to: 30 North San Pedro Road, Ste. 140, San Rafael 94903.
Reservations are non-refundable unless the individual provides at least 24 hours cancellation notice to MCBA.

BEWARE OF BUSYNESS FOR ATTORNEYS AND LAW FIRMS: HARNESSING WILLPOWER FOR PURPOSEFUL ACTION

By Maynard Brusman, Ph.D.

“Only a small fraction of managers actually get something done that really matters or moves their organizations forward in a meaningful way.”

—Heike Bruch and Sumantra Ghoshal in *A Bias for Action: How Effective Managers Harness Their Willpower, Achieve Results, and Stop Wasting Time* (Harvard Business School Press, 2004)

Only about 10 percent of managers in companies or law firms work purposefully to complete important tasks, according to a 10-year study of managerial behavior across a variety of industries. The other 90 percent self-sabotage by busily engaging in non-purposeful activities, procrastinating, detaching from their work and needlessly spinning their wheels. “Busy idleness,” seemingly an oxymoron, affects most people, pervading all aspects of personal and professional life. While we have easy access to knowledge and timesaving resources, we continue to spend most of our time making the inevitable happen, instead of committing energy and focus to the few activities that can really make a difference.

Beyond routine, day-to-day tasks, most managers fail to seize opportunities to achieve something significant. Why do so many smart, talented leaders lose such valuable time and energy, rather than behaving in truly productive ways?

This problem is nothing new. Stanford University Management Professors Jeffrey Pfeffer, PhD, and Robert Sutton, Ph.D., studied this dynamic for their book, *The Knowing-Doing Gap: How Smart Companies Turn Knowledge Into Action* (Harvard Business School Press, 2000). They asked: “Why does so much education and training, management consulting, and business research...produce so little change in what managers and organizations actually do?...Why [does] knowledge of what needs to be done frequently fail to result in action or behavior consistent with that knowledge?”

Daily routines, superficial behaviors, and poorly prioritized and unfocused tasks zap managers’ capacities. Operational activities squeeze out problems that are more crucial to achieving results. Managers often ignore or postpone dealing with the most critical issues, in favor of putting out fires and attending to squeaky wheels. Unproductive busyness is perhaps the most serious behavioral problem in large companies and law firms.

Everyday managerial work is hazardous to one’s ability to focus. Managers typically work on multiple tasks simultaneously. They must rely on others’ help to get the job done, often without tangible milestones or clearly defined processes or goals. Days are full of interruptions and unexpected demands. Even so, some managers are able to surmount the urgent interruptions and focus on getting the right things done to achieve results. What, then, makes these 10 percent more successful?

ENERGY AND FOCUS

Managing partners who exhibit purposeful action possess two critical traits: *energy* and *focus*. Energy is characterized by more than effort; it requires involvement in meaningful activities, fueled by both external and internal resources. Purposeful action is self-generated, engaged and self-driven. Purposeful action also demands focused behavior—conscious and intentional, guided by a decision to achieve a goal, disciplined enough to resist distraction and overcome problems, and persistence in the face of setbacks.

If 90 percent of managers fail to act purposefully in their everyday work, what exactly *are* they doing? How are they carrying out their work? Bruch’s and Ghoshal’s study, conducted over a 10-year period (1993 to 2003), identifies four profiles of managerial behavior, as charted in the following grid:

(Continued on page 8.)



BRUCE W. BLAKELY: A MAN OF MANY INTERESTS

The Marin Lawyer interviewed attorney Bruce W. Blakely, who recently captained a bridge team that won

a national championship event at the American Contract Bridge League national tournament in Atlanta, Georgia, where over 5000 players were competing. He is currently President of the Northern California (District 21) Duplicate Bridge League, which has over 6,800 members, and by the way, Bruce is also a licensed commercial pilot who holds a patent on a camera mount that allows a solo pilot to take photographs from the air. Bruce has recently given up bachelorhood and married Lillian Trac, an architect who does not play tournament bridge – yet. Bruce has served on the MCBA Board and also chaired the Ethics Committee for many years.

The Marin Lawyer: Bruce, before you tell us about the bridge world, tell us a little about your legal career.

Bruce Blakely: I received my Bachelor's degree in philosophy from Stanford in 1978, then studied politics and economics at Freiburg, West Germany on a Fulbright scholarship. I graduated from Boalt Hall in 1982, where I was a member of the Law Review. Afterwards, I clerked for a Federal District Court Judge in New Orleans, then worked for a couple of years at the San Francisco law firm of McCutchen, Doyle, Brown & Enersen. I started in private practice in Marin in 1987 and have been here ever since. I currently practice business litigation, real estate, and contract law with Flaxman & Blakely in Mill Valley.

TML: How did you get interested in bridge?

BB: My love of cards came from my family of card players. My mother taught me to play poker when I was five. My dad was a very successful gin rummy player. Although she passed away earlier this year, my grandmother played bridge at duplicate clubs until she was 106. I started playing bridge as a hobby in high school. If I had thought about it in my teens, maybe I would have tried to become a professional bridge player – but then I wouldn't have experienced the joy of being an attorney. I took the game up seriously about 10 years ago.

TML: What characteristics does it take to become a great bridge player?

BB: Well, "great" is relative because one never stops learning and improving. It's a life long endeavor to learn to play well. The ACBL calls bridge "the world's most challenging mental sport." To be competent and competitive, one needs the intellect of a cryptographer, the nerve of a burglar, and the rapacity of a starving shark. I didn't make that up. It's a quote from Alan Truscott, the New York Times bridge editor. There is also an important psychological part of the game. Keeping focus is crucial. It requires an ability to stay calm and shake off the occasional, but inevitable, disaster.

TML: How much time do you devote to bridge, especially given your busy law practice?

BB: I usually play 2 evenings a week at local clubs around the Bay Area. I play in 4 or 5 regionals, and 1 or 2 national tournaments a year. At tournaments, it's not unusual to play all day for 5 days straight. At the national tournament in Atlanta my partner and I played 8 to 12 hours a day for 9 days. The national event we won was 6 days long, playing 8 hours or more a day. In addition to playing, I take lessons and study a lot. I have read over 40 books on bridge, and I'm currently working through three more.

TML: Have you ever won a competition of this magnitude before?

BB: I've won a number of local and regional events, but this was the first time I won a national event.

TML: By the way, what role does luck play in tournament bridge?

BB: Well, I have found that luck helps everywhere in life, even in lawyering. No matter how hard you plan, prepare and strategize, there is luck involved in who is on your jury panel, or whether your client performs well on any given day. We have a phrase in tournament bridge that "It's better to be lucky than good." But seriously, the tournament format takes most of the luck out of the game. In a team event tournament, a team plays each deal twice,

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THE TAX SIGNIFICANCE OF “FAMILY SUPPORT”

By James H. Lee, CPA

In the 2005 Tax Court case of California resident, Michael K. Berry (Berry v. Commissioner, T.C. Memo 2005-91), the United States Tax Court handed down a ruling that causes the California Family Code to bring a different tax result than similar family legislation in other states. In Berry, the Tax Court found that when support is designated as “family support” in California, Internal Revenue Code section 71 is not violated with respect to its requirement that spousal support must end upon the death of the payor spouse or the death (or remarriage) of the payee spouse.¹ This is true even though the California Family Code requires no distinction as between spousal support and child support when family support is called for by a marriage settlement agreement. Prior to the Berry case, federal courts followed the Tax Court decision in Wells v. Commissioner, TC Memo 1998-2. In Wells, the Tax Court ruled that the requirement of IRC 71 would not be satisfied with respect to requiring termination of the payor’s liability at the death of the payee if the marriage settlement agreement contained no such provision – sometimes referred to as *death language*.

But, what of the payor spouse’s obligation to continue to pay support for the children if the payee spouse dies?² Can’t this obligation be viewed as violating IRC 71 to the extent that the payor continues to pay support after the death of the payee spouse? Aren’t such after-death payments more properly attributable to child support than spousal support (when the payee spouse has died)? Doesn’t this circumstance belie the treatment of family support as spousal support to the extent that there may be after-death payments by the payor spouse? The answer is found in the manner in which the California Family Code handles the child custody issue upon the death of the payee spouse. Section 3010(b) of the California Family Code entitles custody to the surviving spouse where the other spouse has died. Some states do not provide this automatic assumption of custody by a surviving spouse. As an example, New Jersey law provides that, “upon the death of the custodial parent, the care and custody of the children ‘shall not revert to the surviving parent without an order or judgment of the Superior Court to that effect.’”³ The result in California is that at the moment of death of the other spouse custody of the children transfers to the survivor, who makes no further support payments.

The Court’s ruling in Berry represents a reversal of the opinion which it issued eight years earlier in the Wells case. The Court is giving weight to the operation of law in spousal support cases rather than relying solely upon the provisions of the marriage settlement agreement.

The Wells and Berry cases exemplify the dilemma in tax

law that came about when the California Family Code was amended to provide for “Family Support” as distinguished from “Spousal” and “Child” support. In 1981 the California Legislature inserted the term “Family” support – unallocated spousal and child support – into the California Family Code. That notwithstanding, whether payee or payor assumes physical or legal custody, upon the death, unwillingness or inability to take custody by the other spouse, it is automatic that the surviving, or non-refusing, spouse assumes custody of the children. There the support payment process ends – for lack of a payee.

The potential mischief that this created was the uncertainty as to how it should be treated under the U.S. Internal Revenue Code section 71. Spousal support is identified in the Internal Revenue Code as “alimony.” So long as certain conditions are met, alimony is deductible by the payor and includible in the income of the recipient. The Internal Revenue Code deems it income shifted from one party to the other, and treats it accordingly.

The Tax Court’s finding in Berry greatly simplifies the tax significance of family support in California. Marriage settlement agreements that do not distinguish between spousal and child support components no longer present uncertainty to taxpayer-spouses. Family law attorneys who draft agreements that are silent as to whether family support includes child support can expect that the payor spouse will have a tax deduction, and the payee spouse will have taxable income as a result. They can control this result by stating amounts or conditions in the marriage settlement agreement that will identify included child support. For example, any portion of family support that terminates upon, or close to, the reaching of the age of majority by dependent children will be deemed to be child support in the tax law. Rules and formulas, the complexity of which exceed the scope of this paper, have been developed to refine this test. Further, whatever portion of family support that may cease upon the death or remarriage of the payee spouse meets the definition of spousal support (alimony). In either case, if a portion of family support is identifiable as either spousal support or child support, then the balance is the other and will receive tax treatment accordingly.

Thus, the attorney representing the payor spouse should consider family support without modification. Conversely, the attorney representing the payee spouse might want to examine the family support issue to see if designating spousal/child support components in the marriage settlement agreement might not benefit his or her client.

¹ IRC 71(b)(1)(D): To qualify as spousal support payments between spouses must be such that, “There is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.”

² CFC 3900: “Subject to this division, the father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child’s circumstances.”

³ Quoted from Berry v. Commissioner, supra.

(General Mem. continued from page 1.)

In 1982, Mr. Schwartzbach persuaded the California Supreme Court to establish the presumptive right of defendants in capital murder cases to have two court-appointed attorneys. In 1981, Mr. Schwartzbach helped to pioneer the Battered Women's Syndrome Defense with his successful defense of a woman charged with attempted murder in a high profile San Francisco trial. In 1978, Mr. Schwartzbach won a California Supreme Court ruling that all California felony defendants have a right to a preliminary hearing, whether prosecuted by indictment or by complaint.

In 1972, Mr. Schwartzbach convinced the Governor of Michigan to deny a request by the Governor of Arkansas for the extradition of black prison escapee Lester Stiggers on the grounds that the Arkansas penal system constituted cruel and unusual punishment. At age 15, Mr. Stiggers had been convicted, in a one day trial, by an all-white jury, of the murder of his physically abusive father.

Mr. Schwartzbach is a highly sought-after, insightful, and engaging speaker. Don't miss this opportunity to hear him speak. Make your reservation today for the September 28th meeting at the Seafood Peddler Restaurant.

**APPELLATE BENCH/BAR LUNCHEON
FOR PROFESSIONALISM**

Please join other appellate practitioners at Noon on
Thursday, September 15, 2005,
for lunch with Justices of the California Court of Appeal,
First Appellate District,
to promote collegiality and professionalism

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Opening remarks by the Honorable Paul R. Haerle,
Associate Justice, Division Two

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Earl Warren Building
350 McAllister Street, San Francisco
San Diego Rooms (auditorium level)

Please bring your own lunch and beverage

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Seating is limited
R.S.V.P. by September 8, 2005,
to ELBien@comcast.net

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**Marin Justice Center
OPEN HOUSE**

**30 North San Pedro Rd.
San Rafael, CA**

**September 15th 2005
4:00 PM – 6:00 PM**



**A program to introduce the community
to the Marin Justice Center**

**Light refreshments will be served
throughout the building**

RSVP: 415-492-9230 or rsvp@30nsp.org

*The Marin Justice Center is a collaboration of
independent nonprofit agencies dedicated to the
delivery of quality legal services for all in a
coordinated and effective way.*

**The Marin Justice Center was established with
support from the Marin Community Foundation**



(MCBA Code continued from page 1.)

1. **Scheduling:** Civility and courtesy in scheduling meetings, hearings and discovery are expected, are not to be equated with weakness, and are not inconsistent with zealous representation of the client.

2. **Continuance and Extensions of Time:** Consistent with existing law and court orders, a lawyer should agree to reasonable request for extensions of time within which to respond to pleadings, discovery and other matters when such an extension would not prejudice the client or unduly delay a proceeding.

3. **Service of Papers:** The time and manner of service of papers should not be calculated to disadvantage or embarrass the party receiving the papers.

4. **Punctuality:** A lawyer should be punctual in communications with others and in honoring scheduled appearances.

5. **Communications:** Memoranda, declarations and other written materials submitted to the court should always be factual and concise and should accurately state the current law and fairly represent the parties' position without unfairly attacking the opposing party or opposing counsel. A lawyer should, at all times, be civil, courteous and as accurate as possible in communication with adversaries and the court, whether in writing or orally.

6. **Discovery:** A lawyer should not use any form of discovery, the scheduling of discovery, or any other part of the discovery process as a means of harassing opposing counsel, or the opposing party or as a means of delaying the timely, efficient and cost effective resolution of the dispute, or to obtain unfair advantage. Specifically

7. **Motion Practice:** Motions should be filed sparingly, only in good faith and when the issue cannot be otherwise resolved.

8. **Dealing with Non-party Witnesses:** Dealings with non-party witnesses should be courteous and designed to leave the witness with an appropriately good impression of the legal system.

9. **Ex Parte Communications With the Court:** Lawyers should avoid ex parte communications on the substance or merits of a pending case with the Judge before whom such case is pending.

10. **Candor to the Court and Opposing Counsel:** Lawyers should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel, and shall not mislead by inaction or silence....

11. **Settlement and Alternate Dispute Resolution:** In every case, a lawyer should consider and explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated, and if appropriate, mediation should be encouraged.

12. **Trials and Hearings:** A lawyer should conduct himself or herself in trial and hearings in a matter which promotes the positive image of the profession, assists the court in properly reviewing the case, and displays appropriate respect for the justice system.

13. **Privacy:** All matters should be handled with due respect for the rights of privacy of parties and non-parties. A lawyer who manifests professional courtesy and civility cooperates in arranging for reasonable protective measures where privacy matters are an issue....

A perfect chance to practice the Golden Rule.

To review the entire Code of Civility, go to the MCBA web site, www.marinbar.org, hit Resources, and then Local.

(President's Mes. continued from page 2.)

to raise his or her level of conduct; or (iii) the person with integrity may fall to the level of his or her counterpart. One hopes in the first example that the person without integrity will eventually change his or her conduct after enough interactions with persons of integrity. The second example is a great result (and is essentially the message of this article), and the third example should rarely occur. Accordingly, each time a person with integrity interacts with a person without integrity there is at least a one-third chance of the desired result. Over time that percentage should increase as the number of people with integrity increase. In sum, people with integrity raise the level of discourse and human interaction among all of us, which, while an obvious conclusion, is something that needs to be oft repeated and put into practice. Each of us must strive to be that person with integrity because our families, our community, our profession and our world depend upon it.

¹ *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*

² *Marin County Bar Association Rules of Civility can be found on the Bar's website at www.marinbar.org.*

³ *These are fictional examples which do occur in fact but are not directed at any person in particular connected with my practice.*

⁴ *Apparently judicial officers, who are human too, are not beyond assaulting and battering litigants as well. (Regan v. Price (Aug. 17, 2005) 05 C.D.O.S 7415.*

(Beware of Busyness continued from page 3.)

FOCUS:

	The Detached	The Purposeful
	The Procrastinator	The Frenzied
	Low	High

ENERGY

The Frenzied: Forty percent of managers are distracted by the overwhelming tasks that face them each day. They are highly energetic, but unfocused; they are enthusiastic about their work and identify strongly with their jobs. But “the need for speed” prompts them to be unreflective. Instead, they toil ceaselessly and act without hesitation. To others, they appear frenzied, desperate and extremely hurried. They could achieve more if they consciously concentrate their efforts on what really matters.

The Procrastinators: Thirty percent of managers procrastinate on doing their organizations’ most important work. They lack both energy and focus, spending their time handling minor details in lieu of what could make a real difference to their organizations. These managers often feel insecure and fear failure.

The Detached: Twenty percent of managers are disengaged or detached from their work. They can be focused, but have no energy. They seem aloof, tense and apathetic.

The Purposeful: Only ten percent get the job done. They are highly focused, energetic, and come across as reflective and calm amid chaos.

The costs of unproductive busyness take a toll on both managers and their companies or law firms. Managers who identify strongly with their jobs tend to become frustrated or hurt when confronted with setbacks, criticism or mediocre performance. Continual unreflective activity has a direct effect on an organization’s profits and managerial morale, as it’s ineffective and ultimately unsatisfying.

For example, frenzied managers often act in extremely shortsighted ways. Under extreme time constraints and the need to do more with fewer resources, they become adept at finding short-term solutions. As a consequence, they seldom take time to reflect, and neglect long-term issues. Frenzied managers demonstrate a well-intentioned, but

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(Beware of Busyness continued from page 8.)

desperate, need to do something—*anything*—which makes them potentially destructive.

Chronic procrastinators are generally recovering frenzied managers. Once they have learned that frantic, desperate actions are unsatisfying, many lapse into procrastination, losing energy and focus. It becomes all too easy for them to put off action altogether.

THE PURPOSEFUL MANAGER

What distinguishes managers who take purposeful action from those who do not? Why are some managers highly energetic and focused, while others procrastinate, disengage or invest energy in unfocused busyness?

Managers' tasks are complex, requiring creativity and innovation. They often strive to meet multiple and conflicting goals, many times on long-term projects that require a sustained effort. Ambitious goals, high uncertainty and extreme opposition can seriously limit many managers' ability to maintain focus. When managers can make things happen under these conditions—and when they consistently exhibit purposeful action—they have learned to harness the power of their will.

Willpower is the force behind energy and focus, enabling managers to execute disciplined action. Even when uninspired by the work and tempted by other opportunities, purposeful managers maintain energy and focus through willpower. They are committed to achieving results and, no matter what, will not give up.

DEVELOPING WILLPOWER

Purposeful managers exhibit an insatiable need to produce results—a key finding among successful executives interviewed by former Stanford University Business School Lecturer Jim Collins, MBA, for his book, *Good to Great: Why Some Companies Make the Leap... And Others Don't* (HarperBusiness, 2001). Managers with willpower overcome barriers, deal with setbacks and persevere to the end.

For willpower to flourish, managers must commit to three action steps:

1. Develop a clear mental picture of their intention.
2. Make a conscious choice to commit to—and pursue—this intention.
3. Develop strategies for protecting this intention against distractions, boredom or frustration.

Without willpower, top leaders simply cannot direct or encourage others, nor provide meaning to their employees' work. Unfortunately, most leaders actually wind up destroying their managers' willpower by encouraging superficial acquiescence to tasks, but not real commitment to specific goals.

Leaders who activate their own willpower can effectively engage others' willpower. They may need to commit to more difficult routes of persuasion, rather than getting

quick buy-ins. They must encourage their employees to consider conflicts, doubts and ambivalence, while openly discussing difficulties and costs—not just painting a rosy picture of necessary tasks.

Willful leadership is neither easy nor intuitive. Ultimately, however, it is less risky than merely motivating managers and assuming their compliance.

LAW FIRMS THAT SUPPORT PURPOSEFUL ACTION

Leaders who make a serious attempt to foster managerial willpower must establish three critical working conditions:

1. Create space for autonomous action.
2. Build processes for providing professional, social and emotional support.
3. Develop a culture that celebrates the exercise of responsible willpower.

Managers must first have sufficient freedom to act, with leaders allowing enough autonomy to grant managers a sense of personal ownership. Ideally, managers will have informal relationships with peers and mentors who can provide professional support, including the information and resources needed to accomplish their work. They also require emotional support to cope with stress and leverage powerful emotions. An executive coach can often provide support.

To unleash managers' willpower, leaders must embed purposeful behaviors as a central element of the company or law firm's core values and shared understanding of how it does business. Developing autonomy, support and a culture that encourages willpower is not intuitive. Personal freedom and shared support are difficult to combine. Highly autonomous managers focus only on their own tasks, often neglecting to share knowledge with others or invest energy in helping them succeed.

Yet, leadership that is courageous, persistent and patient can reconcile these tensions. No quick organizational fixes will create a culture of sustainable, willful action. It results from a long journey, through which leaders continuously demand purposeful action and personal responsibility.

TO JUMP-START YOUR ENERGY:

1. Define your goal by asking yourself:
 - a. Do I need a mentor who can help me see the big picture? Do I need to research data or strategies that will allow me to make a thoughtful, informed choice about my goals and objectives?
 - b. Is my goal well defined and concrete? Do I understand all of the components, including the potential obstacles?
 - c. Can I personally identify with my goal? Is it worth-

(Continued on page 10.)

(Beware of Busyness continued from page 9.)

while, given my values and those of the organization?

2. Strengthen your confidence in your ability to achieve your goals by asking yourself:

- a. What experience do I have in achieving comparable goals? Can I do it again?
- b. Which of my role models can help me understand what it takes to achieve my goal?
- c. Who can give me feedback to evaluate my capacities to achieve my goal? What must I learn to ensure success?
- d. Can I experiment and rehearse critical tasks while pursuing my goals?

3. Overcome negativity and develop positive thoughts and feelings by asking yourself:

- a. Which emotions do I harbor—and what triggers them? Should I change my tasks or goals so that work is less stressful? Do I have healthy outlets—hobbies, sports, friends—for these feelings?
- b. What about my work creates enthusiasm, fun and excitement for me? What do I love doing? Apart from my work, from what personal well can I regularly draw balance or strength?

TO SHARPEN YOUR FOCUS:

In addition to energy, the second critical element of purposeful action is focus: energy channeled toward a specific outcome. Focused managers can concentrate in spite of the many distractions that interrupt their days.

You can sharpen your focus by taking the following steps:

1. Visualize your intention by asking yourself:
 - a. What does my intention look like? What simple image can I keep in my mind when I need to remember my intention?
 - b. How can I accomplish my intention? What specific steps will I need to take to reach it?
2. Make a personal commitment by asking yourself:
 - a. Does this particular intention feel right? Do I really want it?
 - b. Does my intention excite me? Is it something for which I can maintain my passion and commitment, even when obstacles arise?
 - c. Does my intention jibe with my personal values and beliefs? Can I stand behind it with head and heart?

Hopefully, by following the steps outlined above,

lawyer/managers can not only improve the functioning of their law firms, but they can also improve the quality of their lives and lives of those around them.

Resources

Bruch, H., Ghoshal, S. (2004). *A Bias for Action: How Effective Managers Harness Their Willpower, Achieve Results, and Stop Wasting Time*. Harvard Business School Press.

Collins, J. (2001). *Good to Great: Why Some Companies Make the Leap...And Others Don't*. HarperBusiness.

Pfeffer, J., Sutton, R.I. (2000). *The Knowing-Doing Gap: How Smart Companies Turn Knowledge into Action*. Harvard Business School Press.

Dr. Brusman lives in Marin County, California and is a consulting psychologist and executive coach with a practice in the San Francisco Financial District. He specializes in working with attorneys and law firms. He consults with law firms on selecting, retaining, and coaching top talent and business development. He facilitates law firm retreats. He presents workshops on "Magically Change Your Marketing Mindset." As an Executive/Career Coach he has helped numerous attorneys revitalize their careers, change their mindset about marketing, and develop thriving legal practices. Dr. Brusman may be contacted at (415) 546-1252, or by email at mbrusman@workingresources.com or <http://www.workingresources.com>

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(Blakely continued from page 4.)

once in each direction. In one room, my partner and I will play the North-South hands against our opponents who play East-West. In the other room, our teammates will play the East-West hands of the same deal against our opponents' teammates. After each session, we meet up with our teammates to compare scores and determine which team played more skillfully. There are other rules that extract luck from the game. Each player must have a written Convention Card which discloses all of the partnership's bidding agreements, obstruction tactics, defenses, counter-defenses, leads, and card signaling agreements to the opponents. Team competition in championship events takes place in two rooms, so teammates can't exchange information. There are also screens going diagonally across the bridge tables which prevent players from seeing the facial expressions of their partners. These screens go above head level and all the way down to the floor, to prevent secret, illegal hand or foot signals. In tournament bridge, it does not matter whether you are dealt good cards or bad, since your opponents in the other room will have exactly the same problems and opportunities that you have in yours. Every hand is important. Success depends on how well you capitalize on whatever assets you have in a given hand.

TML: Bruce, do you see any connection or similarities between practicing law and playing bridge?

BB: Absolutely. They both require a competitive spirit, an analytical mind, nerve, and a desire to strategize and work out puzzles. Bridge is a constant series of logic puzzles which you have about seven minutes to try and solve optimally. Bridge appeals to the lawyer mentality because it has rules, ethical considerations, protocol, and rulings. There is even a set of published opinions of championship appeals. Oh, and there's also the importance of self-confidence and bluffing, two skills a litigator cannot live without. In fact, some of the most famous bridge players were lawyers. Edmund Hoyle (of "According to Holye") was a barrister in London in the 1700's who wrote the premier book on whist, the precursor to bridge, and Charles Goren, the most famous bridge player of the Twentieth Century, was a lawyer.

TML: Where do you see yourself in the hierarchy of the bridge world?

BB: Bridge players are ranked on a master point system. A person gains master points by winning tournaments. To be a "life master," you have to earn 300 points. I have slightly over 1500 points. That puts me in the top 10% of tournament players, but I'm still learning. There are hundreds of players in the country far better than I am.

TML: Do you ever get bored with bridge?

BB: Not at all. That is a question people ask me all the time. The more you play, the more exciting it gets. I read the newspaper bridge column every day and I am constantly learning new things about theory, strategy, execution, psychology and more. Bridge is unbelievably complex. There are over 635 billion possible hands, and my wife will tell you that I have played only the first million of them. Bridge is a never-ending challenge. There are dozens of named plays, such as finesses, ruffs, reversals, uppercuts, strips, avoidance plays, safety plays, false cards, jettison plays, coups and squeezes, and hundreds of bidding systems and conventions. Experts have written hundreds of books on strategy and theoreticians are continually developing new plans of attack. There is always something new, some situation you have not seen before, or some sequence you did not anticipate, that you try to resolve with your partner on the fly at the table. I don't think bridge can ever be mastered. I learn something new every time I play.

TML: Besides the competition and the never-ending learning process, what else do you enjoy about bridge?

BB: I really enjoy the bridge community. As President of the league, I spend a lot of time promoting the game, and trying to improve the quality of our tournaments. And I've made dozens of friends. I have played with partners from many parts of the world – China, India, Austria, Poland, Belarus, Canada, and Australia, to name a few. Bridge competition has given me the opportunity and impetus to travel to such places as Mexico, Canada, Honolulu, New Orleans, New York City, North Carolina, and of all places, Gatlinburg, Tennessee, surprisingly a mecca for tournament bridge. I am sure that there are many new travel destinations and adventures in my bridge future.

In addition, I have been selected to be the Chairman of the national tournament when it comes to San Francisco in November 2007. In addition to the competition itself, there will be lectures, tours, and daily entertainment. The national tournament presents a great opportunity for us both to showcase San Francisco to over 5,000 players from around the world, and to promote bridge in the Bay Area.

TML: Thanks, Bruce; keep on dealing.

The Marin Lawyer will periodically publish interviews with MCBA members about their lives outside the practice of law. We welcome information about members whose "non-lawyer" lives would be of interest to our readers. Please contact TML Series Editor, Phil Diamond, at (415) 492-4500, or philipdiamond@comcast.net.

SECTION NEWS

SEPTEMBER 14 ADR SECTION MEETING TO FEATURE JUDGE LYNN DURYEE

By Stephen H. Sultmeyer, J.D., Ph.D.

The next meeting of the ADR Section will feature one of the fiercest supporters of ADR on the Marin County bench, Judge Lynn Duryee. Judge Duryee will share her unique perspective on ADR, including experiences and thoughts drawn from her most recent assignment in family law. Come and hear what a highly respected jurist has to say about effective mediation and other forms of alternative dispute resolution, and the future of ADR in the Marin County courts.

The meeting will take place on Wednesday, September 14, at 12:00 noon at Noonan's Bar & Grill in Larkspur Landing. The cost is \$21 per person. Please RSVP to co-secretaries Mike Malone at mgmalone@comcast.net or Janis Rader at radermail@yahoo.com.

MARIN COUNTY LEGAL

PROFESSIONALS ASSOCIATION

A professional organization for legal assistants

NEXT MEETING:

September 8, 2005, 6 pm, Café Arrivederci
11 G Street, San Rafael

GUEST SPEAKER:

Rob Tassano, Associated Reproduction Services, Inc.

RSVP/INFO:

Kate Athias, (415) 459-2000x11
ktathias@sbcglobal.net

TIP OF THE MONTH:

Members are attending a quarterly conference with CLE workshops in Long Beach aboard the Queen Mary in August. Don't you wish you could be there, too? Join us and find out all about it!

SECTION DETAILS

September 8th

Diversity Section Meeting
MCBA Conference Room,
30 N. San Pedro Rd., San Rafael
12 noon

September 13th

Estate Planning Mentor Group
1108 Fifth Avenue, Ste 202, San Rafael
(The West America Bank Building)
12 noon

September 14th

ADR Section Meeting
Noonan's Restaurant in Larkspur Landing,
Larkspur
12 noon

September 15th

Family Law Section Meeting
Department L,
Civic Center, San Rafael
12 noon

September 21st

Probate & Estate Planning Section Meeting
Whistlestop, 930 Tamalpais Ave., San Rafael,
12 noon

September 22nd

Real Property Section Meeting,
Seafood Peddler, San Rafael
12 noon

September 28^h

General Membership Meeting
Gerry Schwartzbach to speak
Seafood Peddler, San Rafael
12 noon

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THE MARKETPLACE

Anyone wishing to advertise in the Marketplace should send their text ad to MCBA, 30 N. San Pedro Rd, Ste. 140, San Rafael, CA 94903 with payment of \$25 per month, or you may email to: rgaspar@30nsp.org. The ad should be no longer than 25 words and paid in advance.

CONTRACT ATTORNEY – Research, writing and appearances in civil, criminal, family law. Experienced. Reasonable. Admitted to the bar 1988. References. Call Carol, 238-1673.

OFFICE WANTED: Civil litigator looking for an office downtown SR within a firm or group of solos, with other practice areas. MartyLove@sbcglobal.net

DOWNTOWN SAN RAFAEL Office w/parking Available immed. Large office in San Rafael suite with 5 estate planning attorneys. Includes copy & conference room, reception area, lunchroom outside suite. Reception services, shared DSL, telephone/ voicemail system, fax, copier, postage meter, printer & suite management. Operating expenses fluctuate. Additional space possible. Call Barbara Brown 256-5400.



MISSION STATEMENT OF THE MARIN COUNTY BAR ASSOCIATION

To involve, encourage, and support bar association members,
to serve as a liaison to the Marin County courts,
and to educate the community and enhance access to legal services.

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MCBA encourages submission of articles that may interest the legal community. Letters to the Editor are also welcome and may be published if space permits. Submissions will not be returned. The Editor reserves the right to publish, decline to publish, edit or otherwise modify any submission. Editorial material should be sent to the Marin County Bar Association at the above address.

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