8 LESSONS LEARNED BY THE MOST SUCCESSFUL BUSINESS LEADERS

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Introduction

When it comes to watching successes and failures, business lawyers often have the best seat in the house. More than just being in the front row, we have a backstage pass to see the glory and the tragedy as it plays out.

If you pause long enough to study the bigger picture, patterns emerge. As fact-specific as each growth strategy and car wreck may be, there are trends and tell-tale signs. What's more, for each red flag signaling impending doom, there is a corresponding opportunity for someone with the resources and talent to take advantage. Business is the ultimate two-sided coin.

My list of 8 lessons arises out of the full spectrum of the business experience – triumph, opportunity, gain, hope, fear, despair, loss and crushing defeat. Each emerges from a real life a story.

Oh, and one more thing before we get started, I think whoever said "it's not personal, it's just business" was an idiot. If you're emotionally vested in your business, it's always personal. If you're not emotionally vested, get out.

What You Will Learn:

I chose the 8 lessons in this book with an eye toward giving you something to hold on to in your own endeavors. Taken together, the 8 lessons teach:

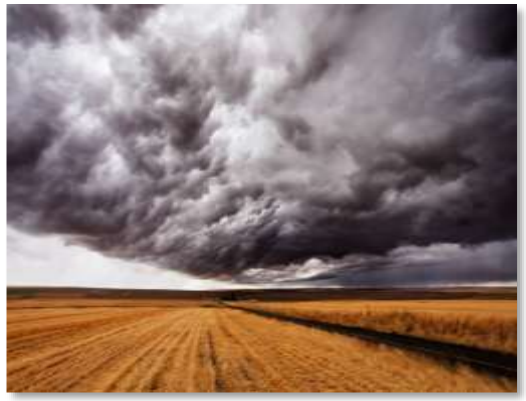
- The psychology of negotiation
- A foolproof path to failure in any enterprise
- The simple rule for boosting collections and slashing your delinquent accounts receivable
- The keys to building a winning company culture

Finally, after you've completed the book and taken some time to consider the contents, give us your feedback and tell us what resonated with you and how you applied it.

Good luck.

The Destructive Power of Surprise

Few Things on Earth Have More Destructive Effect than a Surprise



If you run a business, you know that people are depending on you. Some would say "weighing you down." Employees, vendors, bankers, bonding agents, strategic and contractual partners etcetera and etcetera all have these ties that bind them to you and your company. Gulliver had nothing on your average business person.

Like Gulliver, every shift in position causes fear and consternation among those holding the other ends of the strings. Now, it's not news to report in this context that for every drop, there's a ripple. Everyone knows this. But tempering one's actions to address this situation? Well, that's another story.

Not long ago, I worked with a masonry contractor which, in service to its growing track record of success, began taking on larger and larger contracts. The bonds grew bigger, as did its lines of credit.

Then the storm came, as it often does. Retention was held up. A developer went into bankruptcy. One job just went south, as can happen from time to time. And as for my client, well, he grew afraid. He was afraid that if he spoke candidly to his bank, his bonding agent, his wife, his employees, or his vendors, they would turn on him. Shut him down. Brand him as having failed. And, having so branded him, would create a self-fulfilling prophesy.

So he remained silent and continued his desperate pace on the treadmill hoping to get ahead of what he saw chasing him. It was a good race. And he might have won it, but he didn't. In the end, events overtook him and he had to come clean.

His wife stayed and supported him. His bank, feeling manipulated and lied to, landed on him with both feet. Some vendors worked with him, many did not. He lost his bonding. His company, scaled dramatically down, survived but barely. He, himself, survived but in my estimation, barely.

I had a client once tell me that you should "feed your banker like a small trout." I know some bankers who would disagree with this. Either way, you have to feed him. People need accurate information. You don't have to open the books to everyone on the street, but it is absolutely imperative that you catch no one by complete surprise. The stronger the tie to your business, the more candor is merited.

The human part of any business owner fights against this. It doesn't serve one's ego well to confess weakness or perhaps lapses in judgment. You have to tell people, perhaps (or even especially) your spouse, that you're not the world-beater described in press clippings and in your own mind. You have to put a sword in your banker's hand and trust that he or she will use it to fight for you rather than inflict a mortal wound.

Anyone who tells you they can guarantee how it will turn out is lying. The exercise is not a math problem; it is a study in psychology. Have you created allies or people who feel tricked and used? What would you feel if you were standing in their shoes hearing and reading what was being communicated by your company?

When you surprise people in business, with an unexpected bill or with unexpected news, the repercussions can be fatal.

I can't tell you how many people I've watched over the years learn that lesson.

The Truth about Negotiation

I am not sure I agree with the person who said that "business is war," but I do believe that it often can seem like a series of border skirmishes. Even in the friendliest of relationships, disputes arise over a host of issues from billing to inventory counts.

It pains me to say it, but the person who decides to lay down his weapons first, in an attempt to be "the adult in the room" usually loses.

Even if business is not war, it is negotiation. And negotiation, more than anything else, is a process.

Over the course of my career, I have been involved in thousands of negotiations, over issues both large and small. I have seen many occasions when one side or another would announce that it is too much of a waste of time to "dance towards the middle." Instead, that person will place his or her final offer on the table right at the outset. I place the chances that that particular negotiation ends successfully at less than 20%. The odds that the so called "final offer" winds up as the settlement? Less than 10%.

Recently, I sat with a retired circuit court judge who has made a second career out of a company he founded which runs mediations throughout Maryland. On any given day, he presides personally over three mediations and has a supervisory role in a number approaching 100.

He told me that where monetary negotiations are concerned, the front page of his notes always reflects two columns, representing the offers and counteroffers of each side. In his experience, he told me that the longer those columns of numbers were, the greater the chance that a settlement would be reached.

Upon reflection, I have found his observation to be true and I have taken them to heart. Negotiation may be a means to an end, but the means has to be respected -- otherwise the end will never be reached. If they work at it hard enough, people become invested in the achievement of a final result. People simply do not want to spend their time on an endeavor only to walk away empty handed.

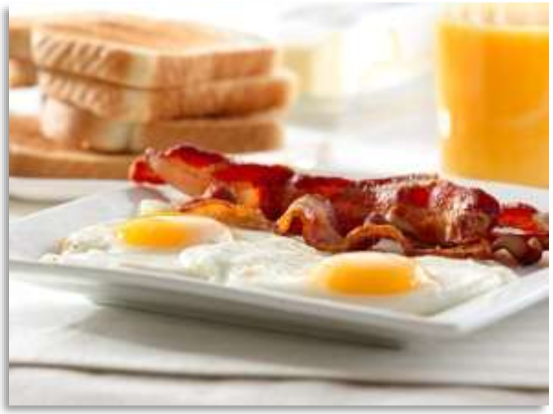
Hence the long columns of numbers. The longer the columns, the longer the process. The longer the process, the more people become invested in achievement. It becomes, therefore, a self-fulfilling prophecy.

"But I don't have time for this,' people will say. 'I am going to throw out what will be, in anyone's eyes, a reasonable solution and we'll just cut to the chase." I hear this time and time again. The problem with this philosophy is not the reasonableness of the offer; it is the fact that in order for it to result in closure, the other side must buy what you are selling. The offering side will be seen as dictating the terms. In an already adversarial situation, it is rare that this would be the path to an acceptable solution.

Instead, it is when the process becomes one of collaboration that both sides feel their voices were heard and that the settlement reflects their own input.

As a student of business, I have read countless books and engaged in numerous negotiation exercises. Many focus on tactics, body language, preparation, and mindset. In my experience, however, too few focus on building a respect for the process. In the end, after all of the huffing and posturing have long since faded into memory, what gets it done is patience and a recognition that time spend transforming an argument into a collaborative process are the things that will likely get the job done.

There is No Substitute for Being There



If you work with acquisition-minded companies often enough, you begin to see certain similarities. One common complaint is that many of the companies for sale are in such desperate shape that no reasonable purchase price could possibly cover the owner's debt. "We just haven't found anyone worth buying," is a complaint I hear time and time again.

What acquiring companies are looking for is an upside. Sometimes that upside comes in the form of expansion into new markets which would be made possible by the infusion of capital the buyer brings to the table. Often, however, the difference between the upside for the business perceived by the buyer and that actually experienced by the seller (what I have taken to call the "Delta") has to do with management.

There will always be a Delta arising out of the difference between good management and bad management. In two of our most recent acquisitions, the selling companies both featured strong products and good markets. They had one other trait in common -- absentee management. The owner of each company looked upon the business as an investment more than a commitment.

There is a saying that all you need to know about management you can get from observing a bacon and egg breakfast. In a bacon and egg breakfast, the chicken is involved, but the pig is committed. When it comes to management in company value, there is a huge Delta between companies run by pigs and companies run by chickens.

In each of the selling companies to which I alluded, the owner checked in on occasion. Second tier managers ran the show. The problem is that no matter how dedicated and competent the second tier management team may be, it's not their money. Even the best incentive program leaves a gap between true ownership and stewardship.

My clients in each instance were able to capitalize on the Delta because they knew that, following the acquisition, ownership was going to be a constant presence in each acquired company. In other words, the pigs were taking over.

Now I know, and I have seen, how tempting it is for an owner and founder to step away from the business as part of his or her "just rewards." No doubt, that owner worked hard to build the business to a point where other employees could take the reins in certain respects. I also know that after years or perhaps decades at the helm, family pressures make themselves known.

- "You deserve to take some time."
- "You're the boss, let other people do the day-to-day work."

The reasoning is seductive, in part because it has the ring of truth. But what it does not do is take into account the ultimate goal. If the goal is maximizing value, the "just reward" will have to wait until after the owner walks away from the closing table. Until then, when it comes to running a business well, there is just no substitute for being there.

Nothing Ever Happened Before...Until it Does

My client was a successful site development and excavation company with a long history. It had survived into its second decade, having ridden good times and struggled through lean ones, drawing lessons from each.

When they came to see me, they had a front-burner issue. They were owed well over $100,000 (a large amount to them) on a project they had completed 10 months before. Their problem (other than a lack of funds) was an almost complete absence of paperwork. There was no contract, no purchase order, no terms and conditions, not even a cocktail napkin with a partial agreement.

The project arose from an emergency call placed by a long term customer. When customers call, my client answers. That's just the way they do business. So, with few questions asked, my client appeared on site fully mobilized within 24 hours.

The handshake deal was for time and materials. Because the problem was underground, neither side knew how much work was involved. When asked, one of my client's foremen speculated that it could be "as much as $20,000."

Over the next three weeks, my client devoted almost its entire workforce to the project at hand. Each day, my client submitted time tickets which the owner's superintendent dutifully signed. The time tickets did not feature dollars – only hours.

At the end of the project, successfully completed in record time, my client submitted one invoice, and one invoice only – for $150,000. I am sure, in the privacy of his office, the owner recoiled in horror. It's not that the time wasn't spent, it was.

Furthermore, no one was contesting that the work was done correctly and timely. The amount, however, was a shock to both the system and the budget. The owner simply did not have the present ability to pay.

Sitting across the conference table from me, my client explained that it never asked its customers to sign a full contract because "that's just not the way we do business." My client went on to say the words that I have heard innumerable times before: "Something like this has never happened to us before."

The cold, hard fact is that nothing ever happens…until it does. Companies that base strategy solely on past experience are consciously turning away from the most important aspect of strategic and tactical planning. They are losing sight of the necessity of scanning the horizon for obstacles in favor of staring into the rearview mirror. People buy life insurance not because they have died before, but because it is the prudent thing to do for their family. Nevertheless, the same business people who spend money on insurance refuse to protect themselves from the far more common business risk presented by defaulting clients and unwarranted lawsuits.

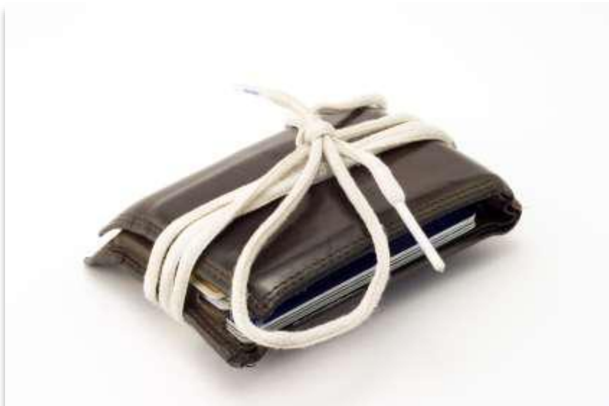
It is the rare conversation with one of these clients that does not feature the wistful refrain of "doing business on a handshake." The handshake, however, is not all it is cracked up to be. There is no substitute for a well drafted, even though brief, contract which clearly spells out the material terms of each side's promises and obligations.

Moreover, insistence upon a written contract does not signal an absence of trust; rather, it displays a bias toward communication. A contract can be well drafted while dispensing with the legalese in favor of a clear and succinct expression of the material terms. Not only will both sides be better off for it, but the odds are that no one will rebel against it in the first place.

There is an old saying, which I once heard credited to Mikhail Gorbachev, "Trust in God, but lock your car." Whether or not the attribution is correct, the sentiment certainly is. In business, there is no room for assumption or the predictive power of the past.

If You Try to Get By on a Shoestring, You're Firm Will Be Hanging by One

Years ago, I decided I wanted to write a book and a software package to instruct and automate the process of small claim debt collection. The effort would encompass software engineering, graphic design, project management, PR, and advertising. In addition, the book would have to be edited, formatted, and printed. In short, I had the knowledge and the skills to put together the *content* of the products, but I needed a team to bring the project to completion.



My primary obstacle, familiar to most entrepreneurs, was that I didn't have the money to hire all of these people. I knew them; to be sure, I just couldn't afford to pay them.

In light of this problem, I ceased upon an idea familiar to generations of entrepreneurs. I decided that I would assemble the team and promise them a cut of the profits. My reasoning was that I would rather own part of something than all of nothing.

As I recall, we assembled for two meetings and spoke often in between. We all embraced the project with great excitement, divided up tasks, and agreed to a schedule. When one faltered, the others would hold him or her accountable.

It was a nice plan, only it never happened. The project ran out of steam as every team member became absorbed in addressing the needs of his or her paying customers. My project took on all of the urgency of a hobby – even for me. I had assembled the right talent, but in trying to conserve costs, I had failed to tap into it.

Over the years, I have seen many clients, particularly growing companies, fall into, recognize, and then emerge from the trap of shoestring budgets. Recently, a client came to me after having spent almost five years working with a law firm which took him on out of obligation. My client's mother was related to the Managing Partner and called in a favor. The law firm was extremely well qualified to do the work requested; it's just that its priorities clearly lay elsewhere.

For five years, my client was shuttled from one associate to another, down the chain of command to whoever seemed like they had a little extra time they could spare to attend to my client's business. Their work languished, they received substandard advice, and they had no consistency in their representation.

Eventually, it dawned on them that this was no favor. The old adage “you get what you pay for” had come home to roost. They needed, in short, someone they could yell at.

It was then that my client made the decision to grow up as a business, pay the going rate for good advice, and assume the right of every paying client to demand attention and results. Bad advice is much more costly than no advice at all. Unfortunately, firms trying to get by on a shoestring economize in places where they are least likely to understand the ramifications. They receive bad advice and poor service, fail to recognize it for what it is, and toil on ill-considered paths. Sometimes, they survive this strategy and live to repair the damage by engaging someone they pay fairly and well to deliver results. Sometimes…not.

It is better to Broker an Acceptable Peace than to Wage an Unwinnable War

There is a difference between rage and anger. Anger is rooted in the present. It is a reaction to what is happening now. Rage, on the other hand, is rooted in the past. To be enraged, a person need not be explosive or violent. Rather, rage is fueled by the piling on of past experience.

No matter how much we may wish to deny it, even reasonable, rational people experience rage. Whenever someone reflects back in an argument, the emotion they are experiencing is rage. "You *always* do that!" is an expression of rage. "People always take advantage of me, but not this time!" is an expression of rage.

More than half of my life has now been devoted to the resolution and pursuit of business disputes. In over 25 years of guiding clients through their decision making processes, I have seen more than my fair share of decisions based on rage.

Not long ago, a client asked me to pursue a claim against a former employee who found subsequent employment in violation of her restrictive covenant. These cases are tricky, because damages are often difficult to prove and a perfectly acceptable motivation for the wrong employer might be to "send a message" to everyone else who may have signed this same Non-Solicitation Agreement.

Nevertheless, there was something more underlying my client's dogged pursuit of the case. While it was true that the former employee was working to solicit business away from my client, she was almost comically ineffective. She had established a poor reputation in the industry and her departure had been a blessing. Yet still, my client devoted time and a considerable amount of money in pursuit of this case.

Why?

The answer lay in the relationship that the former employee had forged among my client's management team. She lied to them, took advantage of their good will, and, in their view, made them look ridiculous.

In writing this, I harken back to a conversation in *The Godfather* immediately preceding the famous horses head scene. The director and soon-to-be victim of Don Corleone's wrath was yelling at Don Corleone's attorney about a starlet taken away from him by the singer, Johnny Fontaine. "She made me look ridiculous. And a man in my position cannot afford to look ridiculous."

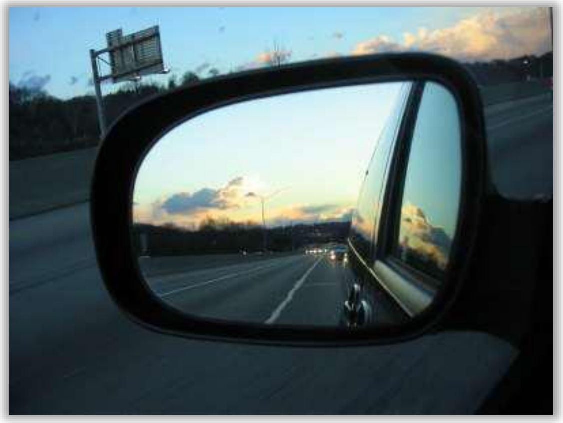
That was rage. So was this. The pursuit of this case was not about the merits of this particular claim. It was not about damages or stolen clients. It was about what had happened *before*.

To resolve a case like this takes ego strength. It requires the ability of a business person to put rage aside and focus on what makes business sense. In effect, it requires a business person to figure out the advice that he or she would give to a friend in similar circumstances, and then follow it.

Lawyers profit and court dockets become crowded when claims are pursued for reasons of ego, rage, or emotion. Alternatively, it is in the best interests of bottom lines and mental health to find a way to broker an acceptable, even if distasteful, peace, rather than wage an unwinnable war.

Get Paid While They Still Need You

When it comes to problems, objects in the rearview mirror are (or at least were) larger than they appear. A problem is never as large as when it sits directly in front of the person responsible for solving it. Once it recedes in the past, it begins to diminish in importance as the person who once called it an emergency moves on to the next challenge.



The rule (get paid while they still need you) is far easier said than done. During the course of a project, the parties are all on the same team, dedicating their efforts toward the fulfillment of the plan or accomplishment of whatever goals had been set. It is very difficult, in the midst of battle, to look at the person fighting beside you and say "I'd love to keep going, but…you know…I have to insist on getting paid first."

This is a lesson learned the hard way by companies across a wide variety of industries. Accountants, event planners, graphic designers, advertisers, PR firms, doctors, lawyers, florists, and repairmen. We have represented companies in each of these industries and each have placed themselves in the unfortunate position of chasing payment after the front-burner problem which lead to their hiring had already been solved.

Companies address this challenge several different ways. Some insist on a retainer or, in the case of construction, hold retainage until the end of the project to ensure completion of a punchlist. Some look to "evergreen deposits" which are credited to the final bill, rather than to the first. Some companies even insist upon receiving uncharged credit card authorizations much in the way that hotels or video rental places used to do.

While each of these methods has its benefit, in my mind, there is no substitute for a candid, ongoing conversation. Throughout my career, I have found, most often, that payment defaults arise not only from a failure to make clear payment arrangements at the outset of the engagement, but also from an inability to raise the sometimes ugly (or boorish) subject of payment while you're fighting side by side. One of my friends, and a longtime business coach, calls this "wimping out."

Once the emergency is over, you will not hold nearly the leverage that you do while the project is ongoing. There is no downside to refusing your call at that point. Accordingly, even though you may have every reason to believe in the integrity and good faith of the person on the other side, there is absolutely no substitute to getting paid while you're still needed.

You Teach What You Tolerate

Not long ago, we helped a client sell his business for approximately $11,000,000. It should have been $13,000,000. I found myself discussing this with my client over a beer almost two months after closing. I knew, of course, that the purchase price had come down almost $2,000,000 from the figure the buyer placed in the Letter of Intent, and I even knew why. I just didn't have the background.

The issue was inventory. More precisely, inventory control. My client's business did not have its inventory levels locked down and the buyer had lost faith in the numbers.

So over a beer, my client tells me that the problem really started over 10 years ago. "I used to walk through the warehouse and see how things were being done. I knew that we weren't being as…precise…as we should have been and it always bugged me. I just shook my head and moved on. I didn't want to step on the warehouse manager's toes and I thought maybe I was nitpicking. I just let it go."

"Well," my client continued, "that's just the way things became. What I saw as a minor problem here or inattention to detail there became the way we did things. At the end of the day, they were right, we didn't have control."

My client's story puts a seven figure price tag on one of the immutable laws of business and life – you teach what you tolerate. It doesn't matter whether the issue is a child's failure to hang up his coat, an employee's habitual lateness, a lack of telephone etiquette, or a cavalier approach to customer service. Each of these things requires less effort than its opposite, more positive number. It is always easier to…. Diligence requires effort.

And if sloppy is easier, it will usually be the place where people gravitate if they sense that there is no compelling reason to do otherwise. To be sure, the compelling reason may come from an internal drive – pride or a work ethic, but often even those virtues can be worn down by an organization consistently demonstrating that it does not care. Years ago, the version of this rule that I heard was not "You teach what you tolerate," but rather "You ***stand for*** what you tolerate." While I am not sure I would go this far, the possibility that one *stands for* the things that he or she nearly tolerates can be a sobering and wearying thought. Either way, whether you teach or stand for the things you see happening around you, they had better be the things you for which you would like to be known.

About Eliot Wagonheim

Eliot Wagonheim is the founder and managing attorney of Wagonheim Law, a commercial and construction law firm based in Hunt Valley.

Eliot has been named as a Maryland's Super Lawyer, has received Martindale Hubbell's highest rating (AV: excellent to pre-eminent) for legal ability and ethical values, and has been named to *SmartCEO*'s Legal Elite as one of Baltimore's "Go-To" Business Attorneys.

He is a frequent lecturer on business and construction topics and is the author of T*he Art of Getting Paid*, *Get Your Money: How to Protect Your Business Without Losing Your Customers*, *The Contractor's Pocket Guide, The Business Owner's Pocket Guide* and co-author of the *Commercial Real Estate Pocket Guide*. Eliot's *Good Counsel* column appears monthly in SmartCEO Magazine and the Daily Record reprints his blog with permission.

Eliot's weekly blog and weekly e-newsletter, featured on www.wagonheim.com, provide original, strategic insights into running and growing a business and are read by thousands of business owners.

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