

excerpt from
Managing to Stay Out of Court
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Introduction

“Common sense is not so common.” –Voltaire

DOES THE STORY THAT FOLLOWS SOUND FAMILIAR? What goes wrong, even when management has the best of intentions? Why do employees sue their employers, long after wreaking havoc in workplace morale and productivity? What can be done?

The Promotion Turns Sour The first-time manager’s new promotion excited her. She had goals. She made plans. Unlike the managers whose failings she had experienced first-hand, she knew how to treat employees. She would make the word “team” a reality in her department.

Six months later, however, her enthusiasm had faded. Frustration had set in. Employees had not responded to her direction as she had envisioned. She had had an angry confrontation with a subordinate and did not get support from senior management and HR for the discipline she wished to impose. Two employees she hired had not lived up to expectations. One of her best employee’s attendance, attitude, and performance had inexplicably declined. She noticed that she had begun to lapse into the behavior of past managers of whom she had been so critical. She avoided problem employees, told white lies, and let problems build to the eruption point. Worst of all, one of her employees accused her of gender and race discrimination in a claim he filed with the Equal Employment Opportunity Commission. Yet despite her lifelong commitment to fair employment principles, company lawyers opined that the claim had “substantial settlement value.” “Management wouldn’t be such a bad job,” she thought ruefully, “if only there weren’t employees to manage!”

The Basic Instinct: Avoidance

This book answers the questions at the start of this chapter in a unique way. It zeros in on a universal culprit: *the instinct to avoid*. Being responsible for the efforts of a disparate group of personalities, temperaments, strengths, and weaknesses is a challenge for any manager. The instinct to avoid is a natural, self-protective outgrowth of the anxiety the challenge produces. It results in under-communicating, putting space between manager and employee, and maintaining distance in workplace relationships. Fear of unpleasant encounters, of being the bearer of bad tidings, of being vulnerable, or of being unable to predict outcomes leads to a lack of both praise and criticism, to less speaking and even less listening. Problems build, mistrust increases, and opportunities for improvement slip by.

The times when the instinct to avoid is strongest are usually the times when doing the opposite would be most beneficial to both employee and manager. When managers are

worried about an employee heading in the wrong direction or when their department faces major challenges are the very times when they most need to communicate openly, honestly, and candidly. Yet the managers' instinct induces them to do the opposite.

The Instinct to Avoid and Brainlock

The world of employment litigation provides a window through which we can learn how workplace relationships break down. Pleadings, discovery, and depositions tell stories of how otherwise resolvable workplace problems degenerate into anger, bitterness, and a desire to take revenge through the U.S. legal system. Regardless of the nature of the claim, employee anger is the catalyst. It takes the form of "brainlock," a condition that occurs when employees become so upset with their employer that their thoughts get "locked up" and they cannot move forward emotionally or psychologically without striking back at the cause of their pain. Brainlock produces a variety of workplace evils, including violence, sabotage, disloyalty, theft, and defamation. However, it most frequently takes the form of a claim or lawsuit filed against the employer.

What produces brainlock? Mean-spirited, ogre-like managers? Or decent, well-meaning men and women who struggle to manage challenging employees? The answer in almost every case is the latter. Ironically, conscientious managers who sincerely desire the success and welfare of their employees most often create brainlock. What leads them astray? It's the natural, self-protective instinct to avoid.

What This Book Sets Out to Do

If one distilled the essence of the Eight Deadly Sins of Mismanagement and corresponding Eight Virtues, it would be the conversion of the instinct to avoid into *a trigger for doing the opposite*—even when the threat of a lawsuit exists. Beginning with Chapter One's opening story of the manager who learns how to ski and thus learns how to manage, the Sins and Virtues pair up to harness this instinct for good ends and, as a whole, to create a foundation for effective people leadership. Unlike most management books, this one addresses strategies for moving directly from theory to practice, for lifting the lessons off the page and transporting them into the workplace. The goal here is not to write a book that makes a satisfying read. It's to produce *results*.

The Sins and Virtues Summarized

Chapter One:

The First Sin, Managing Like a Beginning Skier

The First Virtue, Weight Forward on Skis

Using the analogy of learning how to ski, this chapter shows how managers can convert the instinct to avoid into a trigger to do the opposite.

Subjects addressed include preventing workplace violence, dealing with sexual harassment, using the initial employment period, and how to become a star employee.

Chapter Two:
The Second Sin, Dissin' Your Employees
The Second Virtue, D-I-S'ng Your Employees

At first glance, the Sin and corresponding Virtue look the same. However, the two could not be more different. The former has to do with unintentionally insulting employees and causing brainlock. The second is a method of communication that effectively insulates managers from committing this Sin. By being Direct, Immediate, and Specific with employees, managers create a climate of mutual respect even during the most difficult times in a workplace relationship. Subjects addressed include “gunnysack” management, use of e-mail, workplace violence, praising employees, self-help and anti-harassment training, D-I-S'ng in writing, managing a diverse workforce, and putting a battery in the D-I-S method.

Chapter Three:
The Third Sin, Rationalizing Away Truth
The Third Virtue, Making Honesty the Only Policy

Why do managers who prize honesty and integrity lie to employees? This chapter explores why well-meaning managers commit this Sin, the common rationalizations in which they engage, why such dishonesty is harmful even when motives are pure, and what to substitute for rationalization. Subjects addressed include discharge, performance evaluations, family businesses, surreptitious recordings of conversations, when to get legal advice, and the dismiss-and-redirect technique.

Chapter Four:
The Fourth Sin, Misguided Benevolence;
The Fourth Virtue, E-R-A—Expectations, Responsibility, and Accountability

Empathy is an important strength in a manager. Yet when compassion for an employee with significant health or personal needs induces the manager to abandon expectations and accountability, the manager helps no one, *including the employee*. Rather, the manager's E-R-A must be maintained at all times, for everyone's sake.

Subjects addressed include a surprise ADA claim, severance agreements, reasonable accommodation and performance standards, worker's compensation, and the game of “management baseball.”

Chapter Five:
The Fifth Sin, Falling into the Inconsistency Trap
The Fifth Virtue, Ducks in a Row

Four types of inconsistency cause brainlock and lead to legal trouble: (1) person to person, or treating an employee inconsistently with another employee; (2) person to document, or treating an employee inconsistently with a written document such as a

performance evaluation or employee handbook provision; (3) document to document, or having workplace or personnel documents inconsistent with each other; and (4) person over time, or treating an employee inconsistently with how the person has been treated in the past.

Subjects addressed include conducting an employment litigation post-mortem; subjective and objective inconsistency; key questions to get ducks in a row; preventing discrimination and retaliation claims; dealing with workplace change; the “that was then, this is now” message; and offering employees amnesty.

Chapter Six:

The Sixth Sin, Letting Employees Speculate

The Sixth Virtue, Open Information Channels

The Sixth Sin triggers the Law of Employee Speculation, meaning that what employees don't know, they will speculate about, and their speculation will invariably assume the worst. Chapter Six provides several examples of the Law of Employee Speculation in action. It also describes the benefits employers enjoy when they shift their paradigm from guardian of information to disseminator of information. Subjects addressed include conducting terminations, avoiding wrongful discharge claims, layoff planning, and changing to an information-rich company culture.

Chapter Seven:

The Seventh Sin, Listening Through Your “I”

The Seventh Virtue, Listening Through Your Ears

Managers who listen through their “I”s keep their egos foremost as they adopt one of three methods of listening to their employees: (1) the Toe-Tappers—for whom listening means waiting to talk; (2) the Autobiographers—who translate everything they hear into their own experiences or beliefs; and (3) the Cross-Examiners—who listen until they find the employee weakness on which to pounce. By contrast, managers who learn to listen through their ears instead of their egos experience great benefits, including gaining understanding that would otherwise have seemed impossible, correcting dangerously false assumptions, and learning of opportunities that can be beneficially exploited. Subjects addressed include mediation; internal investigations; administering discipline based on a learning principle; the two-for-one or God's hint, E-A-R, funnel, directive listening, Monk, and Triple Two techniques; and applying the Seventh Virtue in the home.

Chapter Eight:

The Eighth Sin, Front-of-the-Nose Perspective

The Eighth Virtue, the Big Picture

This Sin/Virtue pair involves a basic way of thinking about one's role as a manager. When managers develop a Big Picture focus—taking into account who we are, what we are, and where we are going—and use it as the framework for all significant

communications with employees, they move from managers to leaders. A Big Picture perspective inexorably leads managers away from the Sins and toward the Virtues.

Subjects addressed include managing a diverse workforce; extricating oneself from potential discrimination claims; dealing with the EEOC; creating a Big Picture outline and Star Profile; HR as strategic partner and management coach; questions to identify mission, vision, values, and goals; and the Campfire Technique.

*Chapter Nine:
Moving from Sin to Virtue*

A book about management Sins and Virtues may make for good reading. However, it won't accomplish much if managerial behavior and habits do not change. This chapter addresses specific strategies for achieving transfer of training. To produce meaningful, sustained change, the reader must make a commitment to an ongoing process, including improving existing habits and replacing Sins with Virtues. For those willing to make such a change, this chapter provides strategies, steps, and techniques designed to transfer theory into practice.

Subjects addressed include individual change strategies, companywide change strategies, soliciting employee feedback, planning and executing a training program, and aligning systems with change.

Appendix: Tools to Help You Move from Sin to Virtue

To assist the motivated reader with the change process, the Appendix contains several forms and checklists, including samples culled from actual workplace situations.