

What Every Good Client Should Get From Every Good Lawyer ...or In Search of Unicorns



By William J. Flannery, Jr.

The cops are at the door. They may have arrived in regulatory garb, enforcing policy mandates of the EPA. They may be SEC or IRS minions. They may be labor department officials implementing the current labor and employment relations agenda. Or, a law suit was just filed which, more than a nuisance, threatens the lifeblood of the company. Sometimes, the cops really are cops: Department of Justice officials pursuing corporate officers for alleged contracts fraud, say, or antitrust violations. The first thing all business people usually hurry to do when the cops show up is, of course, to call their lawyers. Yet, the last thing they want is to then hear their lawyer talk like one. It's a significant paradox, and one that ought to qualify, if not soften, the public's widespread suspicions of the legal profession. At key moments in the lawyer/client relationship, the real job of lawyers has less to do with the substantive

expertise that makes them lawyers, and more to do with the subtler, less tangible skills that make them human.

One assumes, after all, that lawyers already know what they need to know as far as the legalities of the case go. That knowledge is just the bare bones of what's required.

Clients also have a right to expect attorneys to be their counselors, to soberly assess a situation and make decisions in the client's best interest. The essence of their work is thus an exercise in business judgment, not just a viable legal strategy but a practical, often money-saving plan of action (or inaction). There's an implied contract here that requires something akin to genuine friendship between the buyer and seller of legal services.

It's a professional paradigm that might strike some business people as ingenuous, particularly in a society where the disparagement of lawyers has become well-nigh instinctive. Not that the vilification is necessarily unhealthy. There's been enough arrogance and avarice over the years to fuel distrust at every level, from the blue-collar

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clients gouged by ambulance chasers, to the corporate executives who've seen their bottom lines eroded by skyrocketing litigation costs.

But here's the good news. As a marketing consultant to law firms, I have seen a palpable change—not because a different species of human being is graduating from the law schools—but because the marketplace in which attorneys now operate has evolved to a point where it is in their interests, as well as their clients', to forge consensual and mutually trusting relationships. Major law firms now understand that it makes competitive sense, indeed, it's a competitive necessity, to strengthen long-standing ties to clients. The only way to do that is by seeing the world through their eyes.

If any time can be spoken of as a good time to shop for legal services, this is it. It's a buyer's market, to be sure, as competitive as a cockfight, but companies that seize this opportunity merely as a way to bargain cheaper rates are being short-sighted. In fact, they're missing the point altogether. What really makes the current market alluring is the real chance we now have to both define the kind of service we want from our lawyers, and to shop around until we get it.

Legal events follow certain patterns. The job of the lawyer isn't simply to render legal opinions on those events, but to both understand and communicate the evolving patterns. The first service we expect from the lawyer is essential from a business standpoint because it speaks to predictability. The attorney ought to be able to articulate his or her thoughts about the outcome of a case or transaction. If the prognosis is bad, the viable option may be to settle fast. In any event, there ought to be a fully outlined game plan. If it's a law suit, that means an elaborate case schedule; if it's an investigation or transaction, an estimated timetable. The lawyer's job at this stage is to make sure the client will not be distracted by anxiety or mounting uncertainties. In other words, the lawyer's job is to let the client get back to work and back to making money. Second, lawyers must implement these plans by articulating options for the client. Companies can sue or not sue. They can litigate or settle—or they can mediate or arbitrate. They can roll over for the regulators, or they can contest the rulings. Listen to how the lawyer explains these options. Expect to hear the sweet sound of plain English being spoken, or get another lawyer. Remember, the more clearly these

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options are explained, the more easily non-lawyers can then make purely business decisions. The lawyer's role includes helping clients do veritable cost-benefit analyses of all these options, but cost-benefit analyses of the broadest kind. More than the prospect of success or failure, or the amount of damages awarded, fundamental business issues are involved if, for example, beating another company in court jeopardizes lucrative joint ventures in the future. That brings us to the subject of money, which lawyers are rumored to appreciate at least as much as other poor mortals. Actually, the third service we demand of lawyers belies the proverbial nightmare of endless dollars swirling down the drain as the billable time clock ticks inexorably away. This service is called budgeting and, in the current market, lawyers are getting better and better at it. The old way of thinking—that somehow legal services are too sacrosanct to warrant the same serious number scrubbing that other services and products get treated to—is disappearing rapidly. Each of the options articulated for clients by counsel, along with positive or negative outcomes for each, can be budgeted. Estimated costs can be compared using

spreadsheets for "what-if" scenarios. Lawyers cannot control events or the actions of the adversary but they have enough past experience to predict cost, while the discipline of budgeting itself sends a salutary message that there are restraints in place which are to be observed. In some cases, overall cost may not be an issue if, say, the future of the corporation is jeopardized by a class action suit, or there are jail terms facing company executives. Yet even here lawyers should at least be able to deliver useful estimates broken down by category, for depositions, discovery, research, etc. By this point, the lawyer has thus explained the legal matter, articulated every option in plain English, and made reasonable efforts to budget costs. Anything less in the current legal market is unacceptable for handling important legal problems. The final obligation, related to everything the lawyer has done and will do, pertains to accountability. In the bad old days, some lawyers wouldn't bother keeping clients abreast of developments, or even let them know if there were developments to keep abreast of. All they'd get was the monthly bill. Shockingly, corporate America abounded with horror stories about lawyers

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who wouldn't even return phone calls to the chief legal officers of major companies they were representing.

Today, more lawyers not only accept, they welcome the responsibility of working closely with the people who are paying them. Periodic reports on the progress of a case and advance notice of probable cost overruns are de rigueur. In the late 1980s, one major law firm successfully solicited the legal work of a large company—competing against two formidable competitors—simply by making, without being asked to do so, an ironclad commitment to undergo regular management reviews by the client. It was a new model in lawyer/client relations that has happily come to dominate in the 1990s.

Among many services professionals, such obligations might not seem extraordinary; predictability, options, costs, accountability are all pretty implicit in their client relationships. Yet the complexity and dire seriousness of esoteric legal threats mean that, in order to fulfill their responsibilities, lawyers have to go beyond the norm in their empathy, their pragmatism, their loyalty. There's nothing cut-and-dried about the duties of a lawyer to a client.

Certainly, there are levels of empathy required here exceeded only in the medical

or counseling professions. Part of the attorney's job is to reassure clients undergoing horrific anxiety that, at least, everything that can be done is being done. Unfortunately, lawyers tend to be analytic types; their training naturally reinforces that tendency. Again, though, the current marketplace has exerted salutary pressure. The very dynamics by which lawyers now compete with each other for business foster a deeper and broader range of personal response.

The pragmatism required of lawyers today goes beyond taking the most expeditious approach to a law suit or transaction.

Pragmatism as a function of the lawyer/client relationship can now mean a willingness on the part of the lawyer to sacrifice work. It means saying, "Yes, you've got a problem here, but it's not serious enough for you to invest in someone as expensive as me. In fact, you may not even need a lawyer. You can probably take care of it yourself, but if you run into a hitch, call me."

Loyalty likewise means a commitment to the client's welfare that goes beyond the retention letter and the billable hour. The chief legal officer of one major corporation once told me that his favorite lawyer was the

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managing partner of a firm he hadn't used in three years. Yet there were still periodic phone calls, the occasional breakfast, an abiding interest on the part of the lawyer in the welfare of the company.

To some readers, the lawyer we're describing is a unicorn. He probably doesn't exist and, if he did, a lifetime's pilgrimage might never disclose the fabled lair. In fact, there's been a recent development in the legal business that law firms and corporate buyers of legal services call "partnering." It means that companies are now purchasing legal services from significantly fewer firms, but they're expecting unprecedented levels of commitment from the attorneys they do use. It's a world that's radically changed, is still changing, and changing for the better. Remember that the next time you go shopping and look for those unicorns.

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