

Hiring a Lawyer

- How to Employ and Control an Effective Attorney -

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Introduction

Why is a drowning lawyer safe from shark attack? Professional courtesy!

How do you know when a lawyer is lying? His lips are moving!

What is the difference between a lawyer and a sack of dirt? The sack.

Of all the professions in this world, why do we lawyers get the worst rap?

Lawyer jokes proliferate – in the movies, on the job, at the barber shop, everywhere!

Why?

That's the question *you* should be asking if you're facing legal problems and need to hire a lawyer to represent you in court ... because you *need* to know the answer. You need to know that lawyer jokes proliferate because far too many lawyers (and, dare we add judges, as well?) are dishonest, money-grubbing, professional liars.

Not all lawyers deserve the bad press we get, but the fact that there is so much bad press out there ought to alert you to the fact that at least some of the members of my profession are sharks who can't be trusted ... and *you* need to know how to sort out the good ones and how to keep them on the right track while they represent you in court.

This little book will help you do both – how to hire and how to manage lawyers.

I know about dishonest lawyers first-hand. More than half the lawsuits I've handled these past 20 years resulted in my being required to fight lying lawyers or biased judges (who are, after all, nothing more than ordinary lawyers gussied up in fancy black robes) *just to get at the truth!* One shouldn't have to fight so hard to prove the truth, yet that's what the legal profession has become – a guild of men and women divided into two camps: (1) lawyers who try to get at the truth and (2) lawyers who try to hide it.

I want to help you protect yourself from other members of my profession.

This little book, therefore, provides practical pointers on what to look for, things to remember, things you ought to ask, things you absolutely must insist upon.

I want you *never* to forget that some lawyers are:

- corrupt
- stupid
- lazy
- wimps who give in to authority figures without a fight

I also want you to know and remember that not *all* lawyers are corrupt, stupid, lazy wimps. Many are honest, clever, hard-working, and dedicated to proving the truth for the sake of their clients. They are committed to protect your due process rights from the liars and thieves who want only to win *at any cost*. They will sacrifice their own reputations and stand up to the “powers that be” in local politics for the sake of helping those who truly deserve to win. They will fight for justice, no matter whose toes they must step on to get it, upholding the Rule of Law and honoring the principles of American Justice.

Finding such an honest, competent, industrious, legal word-warrior and managing him or her so your goal is clearly understood and the necessary time and resources are expended in pursuit of victory in court is your goal.

To achieve these objectives you need to understand lawyers, and who better to tell you about them than me?

Self-Interest

All lawyers are interested in making money, advancing in their chosen profession, and keeping themselves outside the web of their client’s troubles so they can go home at night and leave the worries of their job behind at the office.

You’ll do much better if you keep these realities in mind, because they are common to all us lawyers ... good and bad ... and we are probably not going to change. No matter how much we want to help *you*, we also want to help ourselves and our families and our loved ones. If you meet a lawyer who tells you he’s only interested in helping you and doesn’t care about himself, *run like the wind!*

Try not to see self-interest as a negative thing and consider it, instead, as a useful key to understanding and managing your lawyer (or your bookkeeper, or your dentist, or your spouse, or your children, or anyone else on this planet, for that matter). We all dream of a world where everyone wants to serve us selflessly, but in reality it simply doesn’t happen. The few times someone offers to do something for nothing are times when we need to see the red flags flying! Everyone operates out of self-interest. If we’re wise we’ll see this is a characteristic of the human race common to all of us. Knowing this truth can give us an advantage when we’re trying to get what *we* want from other people. Getting what you want from others is no more difficult than discovering what *other* people want and doing what you can to see they get it (or, at least, believe they’ll get it) by doing what *you* want.

Lawyers are human (it's true) and therefore predictable to some degree. We are very much like everyone else. We *all* operate out of self-interest (including those who deny it and, therefore, should *never* be trusted).

Use this fact to gain insight into whether the lawyer you're hiring is going to do what he promises. If he says he can win your case for a mere \$500, ask him to put it in writing, and you'll quickly discover he's only trying to shine a light up your skirt. Know that you get what you pay for but that you can easily pay too much for too little, in which case you do *not* get what you pay for. I never met a lawyer who could win a case, however simple, for only a \$500 fee. I've met some who work *pro bono*, i.e., for free, now and then. I've met a few who reduce their rates for people who really can't afford to pay full scale. But, I've never met a lawyer worth his salt who charged as little as \$500 to do anything more than write a few letters and make a few phone calls. It's too easy to make much more, so by remembering the lawyer your consulting with isn't in this business to do charity work for people who can afford to pay, you'll avoid the trap into which so many people fall as the lawyer says, "Oh, we'll take your case for a retainer of ... let's see ... can you make an initial deposit of \$500?"

Of course you can ... but do you know how much it's going to cost down the road?

A third-grader asked her teacher at school, "Teacher? What's two plus two?"

The teacher replied, "Why, Betty, two plus two is four, my dear."

The little girl asked her mom, an accountant, "Mommy? What's two plus two?"

The sharp businesswoman, familiar with ledgers and accounts, dealing daily with numbers much larger than two, juggling figures for her clients so net profits appear or disappear with a magical move of her trained pencil, turned to her inquisitive daughter with a smile and replied, "What would you like it to be, Sweetie?"

Confused and dazed by these conflicting answers, the young lady asked her dad, an established lawyer in town, "Daddy? Can you tell me what two plus two might be."

The wise father, aware of the uncertain complexities of his law practice and billing procedures employed by lawyers generally, turned to his daughter and said, "Betty, we need to carefully consider the answer before responding. One can never be certain of the truth of a thing until the truth of the thing has been proven completely. Though we may believe today that we have a fairly accurate idea of the answer, experience has shown that

in due course, after an unspecified period of time, once we've had a chance to look at the evidence more closely, the number will probably be more than we anticipate at present."

So it is with lawyers fees.

They usually end up being more than the lawyer tells you at the beginning.

Self-interest is alive and well.

Don't get taken in. I'll tell you how to protect yourself in the following chapters, but for now you must remember and never forget: We lawyers aren't in this business to lose money and, certainly, we have no interest in helping you get more money unless we get a sizeable portion of what we generate or save or recover for you.

Be prepared to pay.

And, don't trust those who promise a bargain, cut-rate, discount price. They're either lying or incompetent ... or both!

Competence

It's always amazed me that some people think that because we lawyers passed our bar exams and were licensed to practice in the courts that we're so competent and capable that any one of us can win their case. It just isn't so! We're people first of all, and just as in all other walks of life, we are none of us exactly the same. There are good lawyers. There are bad lawyers. And there are a few who should be dragged out of town by the hair of their head!

Being permitted to stand before judge and jury to fight with words for the legal rights of people who, because of their limited legal education, cannot fight for themselves is an honor like no other ... and a grave responsibility. Whether we're defending an innocent, falsely accused murderer facing the death penalty or representing a widow about to lose her home to the avarice of a selfish landlord, we lawyers are called to honor the system of law and order that has made America the greatest nation on earth *by being good at what we do*. We should know our stuff! We should understand the ins-and-outs of the rules of procedure, the rules of evidence, and the underlying law and facts that will determine the outcome of our clients' cases.

Above all we should be good with words! All the legal education the world can provide will never replace the need to *communicate effectively*. If the lawyer you seek to hire cannot make himself understood, if he talks in circles, if he seems to go off on

tangents, if he laughs at his own jokes, or if he talks incessantly without listening to what *you* have to say ... *move on!*

Lawyers must be word-warriors first and foremost.

They must be able to communicate effectively ... extremely effectively, clearly, concisely, convincingly. This is the most important aspect of their competence, and you don't need a law degree to sift out the ones who are difficult to understand from the ones who say what they have to say so ordinary people – like jurors – can *clearly* understand.

If the lawyer talks too *much*, however, find someone else. Lawyers must be good listeners. They need to listen to *you* when you're explaining the facts of your case, why you're hiring them, what you want for an outcome. They need to listen to the other side when the arguing gets hot-and-heavy in the courtroom, so they can respond quickly and prevent the other side from making points they should not make against you.

Finally, your lawyer needs to understand people. He needs to know that most folks don't have a new car, don't live in a half-million dollar home, eat steak rarely if ever, and work extremely hard to make what lawyers make in a single hour!

A good lawyer cares ... and this is as much an element of his competence as passing the boards or having an advanced degree. Knowledge is nothing if the lawyer has no heart, because judges and juries sense the pompous pride and insincerity of lawyers who were born with silver spoons and think the rest of the world is in poverty because the rest of the world deserves what it gets. Your lawyer can be *too* well-dressed, for example. He or she can be *too* worldly, *too* cocksure, *too* high above the rest of humanity. If the lawyer you hire cannot feel the needs of others, empathize with the situation, and *care* for you, the members of the jury, and even (yes, even) the other side ... the court will know it and subconsciously pile points against your case.

Hire a lawyer who cares about people ... and justice!

Character

I cannot stress too much the importance of looking for a lawyer with soul, a man or woman who cares, who listens, who communicates effectively, and who exudes a sense of responsibility to do "what's right", demonstrating to all the world in words and actions that there isn't enough money in the world to turn him from the path of honesty and truth.

More than any aspect of what we lawyers do: the legal battle is a fight for Truth.

I've said it before, and I'll say it again: There are two kinds of lawyers – those who seek to put the truth on public record for all to see, and those who seek to hide the truth.

Whatever you do, hire a lawyer who is honest!

We fight with words, instead of swords and guns, yet we lawyers engage in battles that change the world ... *your* world ... either for the better or for the worse. The changes we bring about depend on what sort of people we are, what we know about life, how we feel about the needs of others, and whether we're committed to do "what's right".

We may be hated and distrusted, yet it is *our* words that change and mold the law we all obey ... and that won't change, no matter how hard some people fight to oust us from your legislatures or remove us from the judicial benches of your courts. Our arguments become laws that control and direct human behavior.

Legislation and litigation together form the bedrock of law.

Lawyers shape and determine the laws that rule us all from cradle to grave.

This responsibility should make all lawyers tremble. It should compel us to pray for greater wisdom. It should humble us to work harder for the truth in which real justice and genuine liberty are forged. It should challenge us to be better citizens, honoring our call to champion the various causes of our clients for the sake of "what's right" – rather than what's most profitable for ourselves.

The reason there are so many lawyer jokes is that there are far too many dishonest lawyers. If this were not true, the jokes would disappear. If lawyers truly want to change their public image, they need to clean up their own ranks ... disbarring the liars, cheats, and thieves ... the sharks and charlatans that bring a bad name to my profession.

You absolutely, positively must hire an honest lawyer!

You absolutely, positively must *not* hire a dishonest lawyer! He will cheat you out of your money. He will lie to you. He will lie to the court. He will lie behind your back to the other side. He will not be trusted by judge or jury. And, when you've lost your case at last and face a lifetime of wondering, "What happened? Why did I lose?" he will turn to you with a shrug of disinterested shoulders and tell you there was no way he could have known ... when all along he knew he was leading you to certain destruction and loss.

Check references! Ask some judges *before* you go to court. Ask at least two or three judges whose reputation is above reproach. They know who's honest and who's not. It's

true they're not supposed to tell you, and some will obstinately refuse, but if you ask in a private setting, explaining that your world is falling apart and you're afraid of hiring the wrong "kind" of lawyer, a good judge will give you a list of names, men and women he's seen before him in the past, professionals who can be trusted at their word.

Why should you be concerned about getting a "good one" when it comes time to hire a lawyer to represent your case?

Why aren't we *all* good?

Why aren't we *all* competent?

Why aren't we *all* honest, hard-working, and effective?

Human nature.

It's that simple.

Lawyers are people, too!

We're as different as snowflakes ... or pig noses.

That we are not all equal in our ability to win your case might seem too obvious to state, yet it goes to the heart of the problem that gives rise to the plethora of lawyer jokes heard on every hand these days.

Some lawyers are saints. Others are snakes.

How can you tell the difference?

That's what this little book is for.

The Test of Legal Competence

How do you select an attorney?

Advice of a friend?

Yellow pages?

Lawyer referral service?

Results?

Let's look at it a different way. How do you select a mechanic to work on your car?

What do you look for?

Smiling face?

Clean coveralls?

Nice business card?

Results?

Of course! It's *results* you want. Bottom line. You want a lawyer who can *deliver*!

A lawyer's reputation at the yacht or country club means nothing if he cannot win in court when the chips are down, if he won't stand up to the judge when the judge makes a bad ruling, if he's going to be more interested in cases he's handling for other clients who can afford to pay for more of his time ... etc., etc., etc.

What do you look for?

What are the characteristics of a "good lawyer"?

Results!

Which, of course, begs the question: How can I know the lawyer will get results for me in court *before* we go to court?

In the pages that follow, we'll explore this question in depth. There is no way to be absolutely certain what *anyone* will do in the future, regardless of promises or guarantees, yet there are quite a large number of things we can do to reduce our risk and improve the odds in our favor when hiring a lawyer to go to bat for us in court. Some are obvious. A few will seem a bit odd at first, yet as you read through the following chapters you'll see there are only a few variables at work. There is a degree of predictability you can use to choose between the lawyer who assures you he can win your case and the lawyer who is able to *show* you how it's done!

That, in a nutshell, is what this book is about – choosing between lawyers who *say* they can win and those who *show* you they know how to win!

Competence is in the proof, not the promises.

Competence is

- Conviction
- Commitment
- Courage
- Capability

Let's examine these four characteristics of competence one-at-a-time.

Conviction

A competent lawyer is convinced of the “right” of his client he’s hired to represent, and if he is not convinced, he’s the “wrong” lawyer.

Nobody puts his heart and soul into a thing unless his heart and soul are in it. People do their best work when they’re convicted and convinced the work is worth doing, that it’s right, that it’s good, that it’s the “thing to do”, something they’re willing to stand for and stand behind.

In my practice I’ve encountered countless lawyers who didn’t believe in their clients’ cases. It was obvious from the way they handled the case. Some were slovenly, lazy, doing only the minimum necessary to get paid ... and getting paid was their only motive for handling the case. I’ve even encountered lawyers who *knew* from the outset that they could not win! They dragged their clients through hell, draining their pockets and their life savings of all they could get, only to announce at the conclusion of the case, when the judge rendered her verdict against their clients, “There was no way we could have known this was going to happen,” when I’d known for months they could not win and knew for that same length of time that the losing lawyers also knew ... but refused to tell their clients because, of course, that would mean the money would stop flowing!

If the lawyer you consult isn’t convinced of the “rightness” of your case, he isn’t the “right lawyer” for you.

Beware of sheep in wolves’ clothing. Lawsuits are a battle. You need a fighter who believes in what he’s fighting for, because if two combatants come head-to-head, one with conviction in his cause and the other lackadaisical about the whole matter, the one convinced of his cause will fight *harder* when the chips are on the table ... and that’s

what you *must* have, if you're going to hire a lawyer. You *need* a wolf to fight the fight for you. If the lawyer you consult only *seems* to be a wolf, hiding a fluffy, fearful, and flimsy will within his seemingly aggressive exterior, move on!

And, there is more to this than you might imagine, since you may not realize that all lawyers (at least in Florida where I practice) take an oath to be *zealous advocates* of their clients' causes. It's a matter of professional responsibility. Lawyers in Florida (and many other states) are required by law to be zealous, to fight for their clients, to stand in the gap for them, and to go the limit! It's not just a matter of being a good lawyer. It's required!

As a wise retired lawyer advised me when I consulted him about a tactic I intended to use against an insurance company, "Lawsuits are axe fights. Don't forget your axe!"

If you must hire a lawyer. If there's no way to get out of hiring a lawyer. If you cannot negotiate with the other side and come to some agreement by which you might avoid going to court. If you *need* a lawyer to represent you. Make sure he has an axe and is willing to use it for *you*!

If a lawyer doesn't believe in your case and the other side comes at him with axes, he's going to fold ... and you may never know what happened "behind the scenes".

Lawyers talk to each other. Most lawyers, especially in small communities, know each other on a social basis. They have lunch. They sit with each other at the local coffee shop for breakfast, read their newspapers, talk about sports and, occasionally, discuss your case. If *your* lawyer isn't certain he can win. If he doesn't *believe* in your cause (no matter what he may tell you to the contrary while you're sitting in his office) he may go to the other lawyer and "make a deal".

It happens.

Don't be hoodwinked into believing everything your lawyer says is true. If his lips are moving you're on dangerous ground. Self-interest is not unknown to members of my profession. If they can settle a case they don't believe in, they spare themselves the public embarrassment of losing in front of judge and jury ... and they will come to you one day in the midst of all your struggles to keep their invoices paid to tell you, "I think we can settle."

That is *not* the kind of lawyer you need.

Now, this is not to say an otherwise competent lawyer cannot win your case but, rather, that the likelihood of winning is directly proportional to his zeal, i.e., to the degree with which he *believes* in your cause. Convicted lawyers don't quit or compromise.

Keep in mind that a lawyer who has a reputation for winning may have his reputation for winning because he *believed* in the cases he won. Legal skill and technical ability may not be all your lawyer needs to win your case, if he doesn't believe in it, i.e., if he's not convicted of the "rightness" of your case and the moral need to win it for you.

Human nature applies to lawyers, too!

Ask the lawyer questions during your interview. He's not interviewing you. You're interviewing him. Ask about his family, his hobbies, his work in the community, and the things he holds most dear. See what convictions he holds about other things. You'll be surprised how different lawyers feel about different issues.

For example, if you need a lawyer to represent you in a lawsuit where you've been sued by a neighbor whose cat drowned in your swimming pool, you wouldn't want a lawyer who's a cat lover and belongs to the SPCA¹. If you don't ask, you won't know.

And, of course, you need to ask *before* you tell the lawyer what your case is about.

Finally, though this is too obvious to mention, you need to make certain there is no conflict of interest. Does the lawyer know the party on the other side? Does the lawyer have a business similar to the party on the other side? Has the lawyer been involved in business of any kind with the other side at any time? Explore these possibilities.

Anyone can say, "I believe in your case."

What you need is someone who's *convicted* about the need to win for you.

Accept no substitutes.

Commitment

Being convicted is just the start.

A person can be convicted of the "rightness" of your cause without being committed to the fight, without being committed to stick it out to the bitter end, come what may.

Commitment not the same as conviction.

Commitment says, "I believe in your case, and I will fight for you until we win!"

¹ Society for Prevention of Cruelty to Animals

Commitment, like conviction, however, is easy to say ... harder to prove. A lawyer may tell you he'll fight to the end because he believes in your case, while at the same time he has dozens of other cases he's committed to and believes in ... and there's only so many hours in a day!

Commitment means, among other things, the lawyer will dedicate the time needed to properly represent you, the time and resources to prepare for trial, to discover evidence, and to make a winning record -style.

It's perfectly acceptable to ask the lawyer who offers to represent you, "Do you have many other cases?"

The lawyer may, in an attempt to impress you, say, "Oh, my yes! We represent 78 clients at present." This will tell you he may not have time to "commit" to your case. He may believe in your case and be wholly and completely convicted in his heart that you should win your cause, but if he cannot *commit* his time and resources to doing what should be done to win your case, move on.

Don't make the mistake of thinking lawyers in large, expensive firm are necessarily smarter or more competent than solo practitioners or the lawyers who prefer to work with a small team of friends in a hometown office. Some of the best lawyers are on their own or have only two or three partners. In fact, I've found that small-firm lawyers are more likely to be honest and committed to their clients' needs, than large firms that tend to put more emphasis, i.e., "commitment", on their large corporate clients or those individuals who have the mega-bucks it takes to keep a large firm afloat. That's not to say large-firm lawyers are dishonest or that small-firm lawyers are more trustworthy but, rather, that on the average large-firms have large overheads that compel them to give more attention to the needs of wealthy individuals and corporations who can foot the bill.

Commitment is the tendency to stay in the fight ... even when the money runs thin.

Courage

Courage is the tendency to stay in the fight ... even when the bar, the judges, and leading members of the community go against what your lawyer is trying to do.

Many lawyers talk a good game, but when it comes time to stand up to the judge, to tell the gorilla in the black robe, "Excuse me, your Honor, but the rules require you to rule in my client's favor!" many lawyers fold their tents and leave their clients in the

litigation lurch. Any reasonably competent lawyer can prepare for trial, gather evidence, and appear on time for the docket call. Only a courageous lawyer will stand up to the powers that be and demand justice in the face of certain censure and possible fines or imprisonment!

Yes!

A lawyer who believes in his client's case (conviction) and is committed to his client's case (commitment) must also have the fortitude to carry his conviction and commitment into action against opposition that threatens to do him harm (courage).

Hometown lawyers face a serious problem when they're called to second-guess the judge, because they must appear before that same judge again in other cases, sometimes even on the same day! In the small town where I practice, there are only four judges who hear civil cases. Since I must appear before those judges week-after-week, it's not in *my* best interest to rub them the wrong way ... yet, from time-to-time those judges make mistakes. When this happens it's my job to correct them. My clients don't hire me to cave in before the edicts of an unjust judge or one who refuses to follow the rules or require the other side to follow the rules. Sometimes I've found it necessary to raise my voice a bit, to challenge the man or woman on the bench, to argue with the judge or to demand that the judge do what the law requires.

Bad judges don't like this "insolence". They think they own the courtroom, and they most emphatically do not. They think they "are" the law, and they most emphatically are not. They think they can rule any way they wish to rule because they are the judge sitting on that bench with a bailiff standing by to enforce his every decree, and they most emphatically do *not* have so much power as that!

Of course, for some judges, the law is beneath them. They badger attorneys. They insult attorneys in open court. They ignore the Rule of Law and rap their gavels with uncontrolled emotion like children determined to have their own way. Some favor their friends and get away with it. Some take bribes (it happens).

You absolutely must have a lawyer with courage to stand up to such tyranny and, with confidence in the rules of civil procedure and the Rule of Law, refuse to give in to judges who demand in-justice ... lawyers who aren't afraid to talk back, lawyers who

aren't afraid to cite the law to the judge and demand the judge take judicial notice of the law, lawyers who aren't afraid to appeal.

Conviction and commitment without courage is nothing.

Fortunately, most judges are honest men and women who will listen to arguments from both sides and read the controlling statutes and case law before they rule. When a courageous lawyer stands up to such judges, the judges *respect* the lawyer for upholding his sworn duty to be a zealous advocate for his clients' causes.

Unfortunately, too few lawyers will take the heat!

Make sure yours is willing to do so.

Capability

Believe it or not, this is probably the *least* important of the four characteristics of competence. Conviction, commitment, and courage come first, because without these a lawyer's capability to achieve results has no power. Knowing *how* to win (capability) is no assurance of winning ... unless the lawyer has conviction that your cause is just, is committed to see it through to final judgment, and has the courage needed to stand up for you when he's under fire from the judge or his bar association.

On the other hand, without capability – i.e., knowledge of the applicable law and rules of procedure, skill in presenting evidence, experience examining witnesses, and the ability to convince others of the truth – all the conviction, commitment, and courage in the world will accomplish nothing. The other lawyer will win.

Your lawyer must know the law that controls the outcome of your case, statutes, cases, ordinances, regulations – whatever says you win if certain facts are proved.

Your lawyer has to know the rules of procedure and rules of evidence – inside and out, backward and forward, waking or sleeping – the mechanisms by which the lawyer will either make a winning record of the facts or fail to do so.

Your lawyer must be able to present the facts in evidence so that ordinary people in the jury box understand what he's talking about – he has to make things simple, easy to understand, clear, concise, memorable.

Your lawyer must have a knack for getting witnesses to talk, to open up, to spill the beans, to say what needs saying from the witness box – so the court can judge truth.

Your lawyer must be able to convince the court to see things from his point of view, to consider the evidence in the light he casts upon it, and to rule on the issues according to the law that lets you win – being himself an honest, believable person people can trust to convince them of his way of thinking.

Capability must not be lacking.

How many cases of this type has the lawyer handled? How many has he won?

Does he have an professional specialization, board certification, advanced degrees or unique business or personal experiences that particularly suits him to be able to present your case – the facts *and* the law – effectively in a courtroom where it counts?

Capability is essential, however ... because believing in your case, committing to do the hard work it requires, and being willing to oppose those who oppose you, no matter what the consequence, cannot replace *knowing what to do and having the skill to do it!*

The lawyer you choose must be capable, i.e., he must know what's needed and be fully and completely able to do what's needed.

Knowing is not enough, of course ... i.e., knowing alone is nothing if the conviction, commitment, and courage are absent ... yet, knowing is essential.

Check out the documents on his wall. Call the state bar. Ask about his credentials.

Thoughts

One of the smartest lawyers I ever knew was a failure in the courtroom. He knew the law in great detail. He knew the rules of procedure. He knew the rules of evidence. But, when it came to presenting his clients' cases so judge and jury could understand, he was as effective as an umbrella in a hailstorm. He couldn't effect what he knew was needed. He repeated himself. He let the other side get away with tricks and high-jinks that should never be allowed. When it came to arguing motions over objections and interruptions by the other side or the judge, he couldn't make himself understood and actually seemed to be afraid to upset or alienate the court in any way. When he should have insisted for the sake of his clients' interests, he'd get confused, wander off on a separate tangent, or start apologizing to the court or even to the other side! He knew the law inside and out, but he couldn't carry it off when the chips were down.

His clients hired him to *fight* for them, and he knew what *should* be done.

He just didn't have what it takes to get the job done effectively.

This kind of lawyer is hard to discern before you hire him, because you have no way of knowing how he'll perform in court. So, I recommend that you get his schedule and go to a few hearings to watch him in action before you sign that contract. If he's an honest fellow, he'll have no objection to telling you when and where he plans to appear in court for his other clients and what he'll be arguing for. Almost all court hearings and trials are open to the public, so you can go watch and see for yourself how he carries himself, how he stands up to attacks from opposing counsel, whether he's willing to argue with a judge when the judge rules against him ... or whether he is withered by challenges and allows the pressure of courtroom battles to drive him into retreat.

Knowing what to do is not equivalent to having what it takes to do it.

All four C's are essential.

Level of Education

Board-certified trial lawyers are, in general, better equipped to handle complex trials. If your case is going to trial (and you can afford a board-certified trial lawyer) then by all means hire one ... but remember that a lawyer's formal education and the papers hanging on his wall are not the only indicators of his "education".

More important are the following three, discussed in detail below:

- The practice of law
- The school of hard knocks
- The willingness to do what's right

When you stop to think about it, in many cases the lawyer you choose is nearly as critical to your future as the surgeon you choose to do open-heart surgery. Many people never survive their losses in court. Giant, complex cases can destroy businesses and families for generations to come. Even a seemingly insignificant small-claims case can suddenly explode into a many-tentacled nightmare that drags on for years and ends up involving tens of thousands of dollars or even more as new facts are brought before the court, new damages, new causes of action, and what started as a tiny acorn becomes a monster oak tree interfering with your everyday life and blocking the way to your future.

How long has the lawyer been "practicing"?

What has life's experiences outside the courtroom been teaching him?

Does he have the qualities of character necessary to carry-through and win?

The Practice

An excellent, professional musician told me recently as we discussed setting up a new corporation for a theatre troupe, "Persistent Practice Prevents Poor Performances".

This holds true in every walk of life but clearly applies to lawyers.

That's why they call a lawyer's business a "practice" and, although there's no such thing as, "Practice makes perfect," in the legal profession, it is certainly safe to say "Lack of practice makes *stupid*."

There's simply no substitute for experience.

Persistence

Many lawyers specialize and, in most instances, that can be a good thing. Some areas of law are best served by specialists. Examples include real estate, medical malpractice, bankruptcy, etc.

However, some “specialized” lawyers crawl into in a rut and stay there. They do the same things day-after-day, week-after-week, month-after-month, year-after-year. Their practice becomes *boringly routine*. This may seem like a good thing at first blush, but the reality is in many cases routine lawyers serve routine clients in routine ways and forget the essential premise that *every client's case is unique*. Some “routine lawyers” put their mind in neutral, coasting along with little thought for what they’re doing. They’ve done the same kind of case so often they think they can handle your case blindfolded, one-half their brain behind their back, operating on auto-pilot.

Not good!

They can walk away from their losses. You can’t *afford* to lose!

DUI lawyers, for example, have a reputation for doing this (as do too many other “specialists”). If a lawyer handles more than a half-dozen DUI cases (driving under the influence) he may think he’s the cat’s meow, that complexities of arguing such cases are no longer a challenge. After a few years of handling DUI cases predominantly (or child custody or common criminal cases) some lawyers are so plugged into their routine they forget you’re a human being with special needs, special facts, special circumstances. You become “another case” and, to them, all cases are the same. They’ll go home at the end of the day, while you lose your driving privileges and possibly your job, your home, your wife and children (or worse). They’ll be in the office on Monday, doing it all over again.

In a few days you’ll be forgotten, another closed file.

After all, they have hundreds more to work on. Those billboards and yellow-page ads keep bringing in the clients. No shortage of clients. All cases the same. Win a few. Lose a few. That’s the way it goes.

Be careful with specialists. Don’t become a statistic in your lawyer’s routine.

Practice doesn’t mean doing the same thing over-and-over again. It means pushing the envelope! Learning new things! Growing professionally!

Ask my friend the musician. What does persistent practice mean? Anyone can do the scales on a piano again-and-again, two hours every day, at the same pace, the same way, using the same fingers. Persistent practice means doing them *differently*. Venturing into minor scales or strange modal intervals. Crossing-over. Changing tempo. Syncopation. Emoting with alternations from *pianissimo* to *fortissimo* until keyboard, hammers, and strings are part of your very soul!

Find a lawyer who persists in his practice. Who attends seminars in his field. Who reads all the latest cases that come out of the appellate courts. Who subscribes to legal journals *and actually reads them* ... instead of Field & Stream or Sports Illustrated.

A lawyer who cares about his competence will care about your case, and he will persist in his practice, pushing for the best in himself, never satisfied with where he is along the lawyer's personal path to extreme excellence.

A tall order?

Yes!

But, after all, it's *your* case, *your* future, *your* victory ... or loss.

This isn't to say your lawyer shouldn't be well-rounded, participate in local civic activities, take his kids to soccer practice, and help out at church. You don't want an egghead lawyer any more than you want a jock who hasn't cracked a book since law school.

When he's on the job, however, you want him *on the job!*

You can't afford a lawyer who's just gliding along with his brain in neutral, doing the "same old same old", living a repetitive routine just to make a living.

You want a lawyer who persists in his practice, pushing for perfection.

If you have two to choose from, look around their offices. What do you see? Take a close look about you when you visit lawyers for your interviews.

Some offices are cluttered with open files, books held open to a particular page by a pair of reading glasses, scribbled notes on odd-sized papers here-and-there around the room, bookcases with glass fronts open instead of shut so you can see that the books are actually being used rather than being on display to impress visiting clients, highlighter pens scattered across the desk ... evidences of the working lawyer!

Other offices are neat as a pin. Pictures of family or sports awards adorn the desk, instead of pleadings and motions and notepads with references and memos to staff. The shelved books, if there are any, have that never-opened look. When the lawyer interviews you, he may even be too lazy to take notes, letting his secretary sit in to write down your name, address, and how you intend to pay him!

Good lawyers *work* ... persistently.

Working lawyers leave *evidence* of their work. Evidence you can spot by looking around their office. Something as noticeable as whether the lawyer, himself, takes notes during interviews ... instead of leaving that important task to someone who hasn't the training or experience to know what's truly important to be written down.

Some lawyers do quite well in neutral. Many aspects of the legal practice invite such routine. After all, as I've said many times, this isn't rocket science. Once a lawyer learns the ropes in a particular field of law, he can (if he's lazy) kick back, rest on his laurels, and ride the tide – while his clients get routine service, routine attention, routine results.

Demand excellence.

Pick a lawyer who persists.

The School of Hard Knocks

Experience is the best teacher.

However, the experiences that make for a great lawyer may not be confined to the courtroom or the office practice of law. Other experiences count, also.

For example, in general, men and women with military backgrounds (especially if they spent more than the minimum number of years in service) are more organized, more disciplined, harder-working than those who avoided serving or “did their time” and got out as soon as they could. This isn't a hard-and-fast rule, yet it should be noted that a successful military background tends to produce qualities of organization that may have value in the necessity of presenting your case in an orderly fashion. On the other hand, some retired military personnel carry organization too far and may be unable to relate to members of the rank-and-file public (like jurors and witnesses). Being personable has no substitute, but if you must choose between two equally friendly, well-balanced lawyers of whom one is retired military and the other a flag-burning hippy, opt for the military man or woman.

Being in business for oneself before entering the practice of law may also discipline a lawyer to realities a “kindergarten to law school” student who spends his entire life in succeeding stages of formal education before passing the bar and hanging out a shingle may miss. This is particularly true when you need a lawyer to represent you in a lawsuit arising from a business dispute, a lawyer who understands what it’s like to make payroll, to deal with vendors who deliver non-conforming product and customers who are never satisfied, and a bottom-line struggle for profit people without business experience don’t appreciate or understand. If your lawsuit involves such issues, all things being equal, you’ll fare far better with a lawyer who understands what it’s like to be in business with its successes, failures, and disciplines.

One of the great bugaboos we lawyers face when appearing before judges is the man or woman on the bench who has not “real life” experiences ... someone who hasn’t the slightest idea what it’s like to be penniless, looking for a job to feed the family, trying to make a business prosper, or any of the other struggles faced by people who don’t have law degrees and friends in high places. Of course, not all judges are ignorant of life’s challenges, but those who are can be difficult to convince when we try to explain what it’s like to have an employer entice you into loaning him money, for example, or what it’s like to be unable to keep on paying lawyer fees to get past the smoke-and-mirrors games of an opponent’s legal team. Judges who have work experience *in the real world* before taking the bench prove, in general, to be the best judges.

So it is with lawyers. Those who have *real world* experiences before going to law school and passing the bar tend to be easier to work with, more sympathetic to their client’s problems, and more willing to fight – the essential ingredient!

Not everything your lawyer needs to know is written in lawbook. If you must choose between a lawyer who went from high school to college to law school to practicing law – and a lawyer who spent some time in the military and ran a business before going to law school – pick the lawyer who knows what it’s like *not* to be a lawyer!

Hard knocks makes good teachings.

Willingness to Do What's Right

This section may seem inconsistent to some people who want their lawyer to turn every stone and pull every dirty trick in the book to win, but the reality remains (one of the central teachings is that that our legal system is designed to prevent such tactics from winning!

The system has built into it certain mechanisms that work *against* deceitful tricksters with smoke-and-mirrors theatrics and sneaky ways of tilting the tables. The more you understand what teaches, the more you see that cheaters seldom win and, in fact, the system has an uncanny way of discovering falsehood and innuendo.

Going to court with a bad claim is *bad business*! Not only do you risk paying your own lawyer an exorbitant sum to gain absolutely nothing, but you also run the risk of being required to pay the other side's lawyers and costs and possible punitive damages that many states award to those who've been wrongfully sued.

It just isn't worth it.

Honest *is* the best policy ... not just in legal proceedings but in all walks of life.

But, how can you be sure your lawyer will proceed honestly in court?

Ask!

Talk about the lawyer's willingness, his conviction, his commitment, his courage.

Then, make it an addendum to his contract with you. Make him put it in writing. Make him state *with ink on paper* that he is going to the mat for you, that he will use his resources to discover all the evidence necessary to win and will make a winning record of your case for you ... that he will appeal the judge if the judge goes beyond any boundary set by law, that he's not afraid to appeal.

Make no mistake. It is the threat of appeal that gives suitors in the lower trial courts power to get fair treatment.

Ask your lawyer how many adverse rulings he's appealed ... then ask to see the opinions rendered by the appellate court. How many appeals has he won?

If a lawyer has been in practice more than 8 years or so and hasn't filed a single appeal, ask him why! It cannot be that all the judge's rulings were lawful, because if one thing is true about the legal practice it is that judges make mistakes, exceed authority, and act outside the power of their jurisdiction ... and are thus appealable. If an experienced

lawyer has never appealed, it is either because he's afraid of the judges or hasn't tried many cases or both! Move on.

Your Knowledge

Ultimately, the reason most people suffer from lawyers' failures is because they haven't a clue what *should* be done. Most people think the process is too complicated to learn, so they never try ... and, when they lose, they never know what the lawyer *could* have done to win for them. The lawyer goes home to his wife and kids. The losing litigant reaches for his dwindling checkbook, picks up his pen, and signs away his happiness ... all because he didn't know what *should* be done to make winning record of the truth.

Start with the Lawsuit Flowchart. Study this simplified chart until you've memorized every aspect, every word – until you can recite it in your sleep.

Then read the Easy Guide. Read it over and over. Read it to your children. Share it with your friends. Expand what you learn from the flowchart and see how being a person who *should* win maximizes your chances by taking advantage of the mechanism of due process invented by men and women who *want the good guys to win!*

After fully digesting these two primary tutorials, look over How to be Heard, where you will see the steps examined in more detail.

How to Win goes into greater depth and will give you a solid basis for knowing what your lawyer *should* be doing. After studying this tutorial you'll have the confidence to ask your lawyer, "Are you going to send out requests for admissions," for example, and if the lawyer says no, you'll have the confidence to demand, "Why not?"

Causes of Action is absolutely *essential* reading, because here is where you learn what it takes to win your case, the elements that must be proven.

Evidence Made Easy is another tutorial indispensable to your elementary legal education, because without evidence that is "admissible" being put before the court you cannot possibly win.

Though the other tutorials, like this one, are not absolutely essential to winning your case and keeping tabs on your lawyer, they'll give you a solid background of legal philosophy to help you understand "the reasonable man", "fairness", "jurisdiction", and grasp a bit more clearly what is at the very soul of American Justice.

Be informed.

Make sure you know what *could* be done to win your case, what *should* be done to win your case, and how to tell your lawyer what *must* be done as a condition of his being paid!

Contract Details

No lawyer can guarantee success, however he *can* promise diligence and dedication. He can promise to provide you with copies of his pleadings and motions, his letters to the other side, his legal research findings and plan of attack. He can promise to use effective discovery methods to get essential evidence into the record *before* trial. He can promise to answer your phone calls the same or next business day. He can promise to let you do all the things you *can* do to help advance your case and thereby reduce his fees and costs.

And, he can do all this *in writing* ... as a condition of his being paid ... by contract!

If the lawyer you choose won't agree to these things in writing, move on!

The sad fact is that most clients visit their lawyer for an initial interview. They talk to "their lawyer" for an hour or so. They leave a few papers with the lawyer and may return a few days later with more papers and, perhaps, talk to the lawyer once again. Then they leave the matter entirely in the lawyer's hands, learning very little more except for seeing the amount they owe each month when the lawyer's invoice comes in the mail or being told they must prepare for trial ... while knowing next to nothing about what the lawyer is doing, what he plans to do, or what he *should* be doing.

This is not good!

Don't go there!

You wouldn't let your doctor cut your chest open without telling you why. You'd want to know what's wrong, first! You'd want to know what he intended to do while he was hacking away at your innards with that scalpel of his. You'd want to know how his invasion of your body cavity was going to affect the rest of your life. And, you'd want to know these things *before* he cut you open!

Why, then, do people take problems to their lawyer, give the lawyer a few facts and a file folder filled with papers and expect the lawyer to work miracles, while they remain in the dark without a clue what the lawyer is doing ... or why?

It makes no sense at all ... yet it is commonplace for clients to entrust their finances and their families' futures to people they hardly know, going on about their lives in what can only be described as a vacuum of legal understanding.

Meanwhile, the lawyer juggles dozens of cases he's been handed by his clients and, in accordance with his own human nature, devotes the greater part of his time and the

better part of his legal skills to the clients who are best able to pay his fees ... and those whose causes slide to the bottom of the pile remain none the wiser (until they lose and are told, “There was no way we could have known this was going to happen,” or similar words to the same effect).

Don’t let it happen to you!

You have a right to know what your lawyer is going to do. Insist on a written plan.

You have a right to know what your lawyer is doing. Require timely reports.

You have a right to know what your lawyer *should* be doing. Demand to know what *could* be done to win your case and that it *will* be done.

Get it in writing ... or find another lawyer.

If you make these demands and the lawyer gets angry, move on!

An honest lawyer won’t be afraid to tell you these things.

A competent lawyer will be proud to tell you.

A committed lawyer will happily promise to do all he can do to win ... though, of course, it may cost more to do a complete and proper job, and you should be prepared to pay for the extra time and expense it takes to win your case.

After all, you wouldn’t ask the surgeon cutting into your chest for a triple-bypass on your heart to take a few shortcuts to save you money ... so why allow your lawyer to do less than all that *can* be done, when losing will cost you far more than the price of doing what it takes to win?

In reality, most clients haven’t any idea what *could* have been done to win their case and, when they lose, they’re usually none the wiser. They may never recover financially and may suffer long-term family reverses as a consequence of their loss, yet most never know they lost because “their lawyer” failed and refused to do all that *should* have been done ... and they don’t know the difference, because they didn’t insist on knowing *before* they hired the lawyer.

Don’t expect the lawyer to draw up this agreement. Make a list of what you expect *before* you go to see the lawyer, and *before* you sign an attorney-client agreement with him, make sure your list is appended to the written contract.

Most attorney-client agreements merely state in a general way what the lawyer is going to do in terms of “your problem”, e.g., filing a lawsuit, defending lawsuit, or

representing you at mediation ... while the rest of the written agreement deals with how you're going to pay.

It is entirely reasonable of you to ask the lawyer to put in writing what he is going to do to win for you, his willingness to appeal if he loses, and even something about his background and experience so you'll know for certain (or have a right to sue him and have him disbarred) he is telling you the truth when he says, "I can win your case!"

Get it in writing.

The lawyer won't like it.

A crooked lawyer will refuse.

A good lawyer will take the time to make it clear that he intends to do a responsible, professional, ethical job of representing you in court.

See to it.

Conclusion

My first advice to people who ask, “Where can I find a good lawyer,” is to urge them not to go to court at all!

If their purpose is to get a will made or for help buying or selling a house, I’ll send them to someone I’ve had a good acquaintance with, someone I’d use myself (if I didn’t know how to do it myself), but if they’re on their way to court – either as plaintiff or defendant – I urge them to reconsider.

Read Charles Dickens’ Bleak House and Hard Times to learn what lawyers hide about the business they’re about and how litigation can destroy entire families and even threaten the stability of entire cultures.

We need better lawyers. That’s a certainty.

Yet, until people like yourself are better informed about the horrid realities of law and its practice in our courts, not much will change. There will still be bad lawyers and good, crooked lawyers and straight.

If you want us *all* to win in this trial we call life, work for justice.

Understand our legal systems and how they work to dispense justice ... or deny it.

Check-List

- Office ... a workspace or showplace?
- Fees ... reasonable, up-front, in writing?
- Education ... Juris Doctor, Masters Degree, Full Doctorate?
- Certification ... board certified in area of practice?
- Experience ... years since law school, continuity in an area of practice, successful appeals?
- Success Rate ... number of cases won, lost, settled?
- Civic Involvement ... reasonable, political, charitable?
- Family ... long-term marriage or recently divorced, children, ages?
- Clients ... established clientele, prominent people or companies?
- Professional Reputation ... other lawyers/judges who will vouch for him?
- Criminal History ... it doesn't hurt to ask!

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