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## Newsletter Article Reprint

### Street Smarts: Presumed Guilty

by Norm Brodsky

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Most businesspeople I know have a schizophrenic attitude toward lawyers. We might like them (and need them) as individuals, but we loathe them as a class. Whenever a good deal falls through or a promising negotiation goes awry, it's usually the lawyers we blame, and often they deserve it. But there's almost always another culprit in the shadows, namely, the client. Nine times out of 10, problems arise because clients allow their lawyers to make business decisions for them -- something the vast majority of lawyers are not qualified to do. Smart lawyers understand that and limit themselves to providing legal advice. Not-so-smart lawyers charge ahead and screw things up.

Friends of mine -- we'll call them Richard and Alice -- ran into such a problem when they went to sell the inn they'd owned for 20 years. It was an attractive property, renowned for its extraordinary customer service, and it had a solid history of profitability. Shortly after it went on the market, a serious buyer appeared. The usual courtship followed. The buyer spent time at the inn as a guest. He examined the books and did research. He had many talks with Richard and Alice, and everyone got along just fine. Eventually they settled on a price. Richard and Alice had their attorney draw up a contract and send it off to the buyer's attorney, hoping that the deal could be completed in a few weeks.

But when they got the contract back, they realized that things were not going to go as smoothly as they'd expected. Price, it seemed, was the only matter they'd agreed on. So they began the process of negotiating the terms of the sale, and it was a struggle from the start -- mainly because every business issue had to be negotiated twice. Richard and Alice would discuss an issue with the buyer, reach an agreement, and turn it over to the lawyers, whereupon the buyer's attorney would come back and insist on negotiating the point all over again.

There was, for example, the issue of the training period -- how much time Richard would spend training the new owner. They talked it over and settled on four weeks -- two before the sale and two after. When the contract came back, however, the buyer's attorney had inserted an altogether different training period that he considered more appropriate. After another battle, he backed down.

By the fifth month, the contract was covered with so many insertions, deletions, and notations that it was difficult to read. Richard and Alice had their lawyer draw up a clean version, which was then sent to the buyer's attorney. They were shocked when he responded by indicating the need for additional changes to provisions they'd already agreed on. "I thought he marked them okay," Richard said. Their attorney sent off an e-mail. The buyer's attorney wrote back. The notation "okay," he said, did not mean the issue was resolved.

For Richard and Alice, that was the last straw. They were frustrated, exhausted, and fed up. They went away for a week and seriously considered taking the inn off the market. Instead they decided to give the buyer one last shot. When they returned, they told their attorney that they were unwilling to continue negotiating with a lawyer who thought okay did not mean okay. They believed the contract as it stood was fair all around. The buyer could take it or leave it, but there would be no further negotiations. He took it.

Clearly the buyer's lawyer went too far, but I don't think he deserves all the blame for the problems that came up during the negotiations. He was doing what lawyers get paid to do: protect their clients. In this case, he was trying to remove every conceivable bit of risk for the buyer -- an impossible task. Most business decisions involve risk. That's why the businessperson has to make them. Who else can say how much risk he or she is willing to live with? Unfortunately, some lawyers don't understand that, as this one apparently didn't. It was his client's responsibility to set him straight and draw a clear line between giving legal advice and making business decisions. By not doing so, the buyer ran the greatest risk of all -- losing the opportunity to own the inn.

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That's a common mistake made by people just starting out in business. Lacking confidence, they turn to a lawyer for business advice and wind up letting him or her make business decisions for them. But lawyers are not businesspeople, although many of them would have you believe otherwise. In fact, the practice of law leads people to develop mental habits that are the opposite of those you need to be successful in business.

Understand, I do not mean to disparage lawyers here. I went to law school after college, and I consider it one of the best decisions that I ever made. Law school taught me a variety of skills that have served me well in business. It showed me how to take problems apart, analyze them, and figure out solutions. It taught me how to do research, and it forced me to develop a mental discipline that would have helped me no matter what I'd decided to do afterward.

Because of my legal background, moreover, I have an edge now in business dealings. I can read legal documents, and I know what's going on when legal issues arise. I also get a certain respect when I walk into a meeting. Most important, I understand how lawyers think -- and how that limits their ability to make good business decisions.

Indeed, during the brief time I practiced law, I developed some of the mental habits I'm referring to. I learned the importance of focusing on the details, of crossing every t and dotting every i. I learned to look for any and every potential problem that might come back to haunt my clients and to make sure they were protected.

When I went into business, I had to develop a whole different mindset. I couldn't afford to be too detail-oriented or to focus too narrowly. I had to bear in mind all the changing factors that would ultimately determine my success or failure, and I had to be willing to make tradeoffs in the interest of reaching my goal. I still tried to anticipate problems, but with an eye toward dealing with them, not protecting myself from them. As a businessperson, I learned that problems can be great teachers. They didn't stop me; they inspired me. I got a huge kick out of solving one and moving on to the next.

Luckily, I hadn't practiced law for such a long time that I couldn't handle that transition. After 10 or 15 years in practice, I suspect that it would be extremely difficult to start thinking like a businessperson. By the same token, I doubt that I'd make a very good lawyer at this point. I've been in business for too many years. My mental habits are too deeply ingrained.

That's why I always get the best legal advice I can before I make a big decision. I need to be reminded of things that I might otherwise overlook. But I have a clear understanding with any attorney I hire. I say, "Here's the deal, and it's very simple. What I want from you is good legal advice, period. You can protect me by explaining the potential legal consequences of any decision I might make. I don't want you to tell me what to do from a business standpoint. I have other people I rely on for business advice.

"You would be surprised how difficult it is for some lawyers to follow those rules. I had one lawyer who said I was crazy to spend \$20,000 in legal fees on a case that I knew in advance I would lose. He insisted that it was a bad business decision. I believed that, in this instance, it was worth \$20,000 to make a certain statement -- and to avoid having to face similar problems in the future. The lawyer couldn't accept that. I let him go.

But most good lawyers have no trouble with my conditions. My current lawyer is one of the best. He does exactly what a lawyer should do for a business client. He explains what various legal provisions mean. He clarifies what my legal obligations are and what they would be if I took a particular action. He makes me aware of any risks I'm taking, and he points out the conflicts I might have with other commitments I've made -- my bank covenants, for example.

That's the kind of input I believe all businesspeople should get from their lawyers. Of course, you may need business advice as well. If so, do yourself a favor. Don't ask your lawyer, and don't go to your accountant, either. Find an experienced businessperson instead, preferably someone who has built at least one business from scratch and made a lot of mistakes along the way. Not only will you get better advice, but you probably won't be charged for it by the hour.

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