

Popular Threads on Solosez

Attention Small Business Lawyers

Anybody else read Entrepreneur Magazine? If you do, you've noticed a persistent theme--that there aren't enough resources out there to help small businesses navigate the legal-regulatory jungle. Affordable compliance counseling is non-existent. Entrepreneur Magazine consistently advocates increased funding for Small Business Development Centers to help remedy this state of affairs.

<http://tinyurl.com/73c6w>

But not once have I ever read that small businesses should turn to their local solo attorney or small firm for regular, preventive advice. We just don't seem to be on the radar of the average small business owner. We are discounted out of hand as expensive and dispensable. Professionals to deal with as a last resort, if and only if a crisis should strike.

I think this is our fault. I think that through our unfocused business plans and outmoded marketing we have failed to position ourselves as the type of professional that small businesses ought to work with on an ongoing basis to spot and avoid problems.

My questions to you:

- (1) Is my assessment correct?
- (2) If it is, how can we provide affordable compliance counseling services to the small businesses in our community?
- (3) How do we get those local small businesses to recognize us as professionals with whom an ongoing relationship is essential?

David J. Galalis, Boston, Massachusetts

I agree that there is something to this. Business lawyers need to make more community contacts, especially in the business development community. If Entrepreneur magazine does not have the legal profession on its radar, then we as individuals and our trade organizations need to be awakened to the need to communicate with them so their advice becomes "go to the SBDC and see your lawyer, accountant, insurance agent, and etc."

Educate on risks and network with the business development community.

Frederick Mischler, Dayton, Ohio

Frederick said "our trade organizations need to be awakened to the need to communicate with them..." Interestingly, do we have a trade organization? And I do not mean the ABA. The ABA seems geared



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towards big firms (although we love GP/Solo, Solosez, and COTE). But, is there a trade group for solo's or small firms? Jonathan G. Stein, Elk Grove, California

----- Bob Walker (who is probably out of town now but will chime in from his blueberry) & I specialized in regulatory compliance for trucking companies (& other transportation entities, but truckers fit your query best) for more years each than you are old. The simple truth is regulatory compliance itself and the related legal advice & assistance is NOT cheap.

Herb Dubin, Rockville, Maryland

I don't think it is entirely correct. We've discussed this sort of thing a number of times over the years; my personal take on it is:

Lawyers ain't cheap. But professionals in general, aren't cheap. Problem is, many people's contact with professionals is largely limited to physicians; and under our system, most of those people are clueless as to the real cost of medical treatment because you've got third party payors- insurance/Medicare/Medicaid. Those without third party payors are aghast at what is charged.

Veternarians aren't cheap; if you own a pet; engineers and architects aren't cheap, but most people don't come into contact with them; why should lawyers be particularly cheap?

Now, having said that, it comes down to "What's it worth to you"? Some people will avoid going to the vet with a sick pet, or getting the pet fixed, because they won't pay for it. Some people will spend a ton of money on a pet because they perceive the value in it.

There is also a very strong "do it yourself" attitude in this country; which has been strengthened by the internet and DIY manuals. People think that they are competent to handle it themselves. Sometimes, they are; but sometimes they know just enough to get themselves into trouble. Entrepreneurs, by definition, are probably more into 'handling it themselves' than most people. They've started a business, built it up, and did so themselves. They don't need advice from someone else, particularly someone charging over \$100 an hour.

There is also a tendency to be penny wise and pound foolish. Someone entering into a five or six figure real estate deal would be willing to spend a hundred or two hundred bucks to have a lawyer check it out before they sign, wouldn't you think? Most of the time, they won't. And they're not even willing to ask what it would cost to check it out. I offer free consults in some areas- bankruptcy and PI, because the market requires it; and probate, because I find virtually 100% of the consults will turn into hires, if they need a probate lawyer. I do not offer free consults on real estate matters; I do charge \$50 for up to 30 minutes, or \$75 for up to an hour. I get a call yesterday from some guy asking if I do 'free real estate consults" and I say no. He asks if I know anyone who does and I say no. Instead of asking what I would charge, he says bye. You know, I don't care what sort of real estate matter it is, it is going to involve thousands of dollars;

instead of spending a few hundred bucks, at most, for a consult, he's going to DIY.

You can argue that some areas of law (Family law, for instance) need discount/low cost/free access to legal advice (though, personally, I don't know why someone's lack of discretion in mating leading to the birth of a child should necessarily be my problem) but when someone's in business, they ought to be willing to pay for legal advice. Or, they can DIY, but don't come complaining to me when it blows up in your face. I'm not unsympathetic, but I think the problem is mostly perception; people perceive lawyers as unnecessarily expensive; but they aren't willing to even check what it would cost.

> (2) If it is, how can we provide affordable compliance > counseling services to the small businesses in our community?

What's "affordable?" As I said, I charge what I consider to be "affordable" consult rates; If they need custom work, I charge them my regular rate. I don't see them discounting their rates for me. When a plumber or electrician or a guy installing parts for my pool charges \$75 an hour, I see the value in it. Why would \$125 or \$150 an hour for me be unreasonable?

> (3) How do we get those local small businesses to recognize > us as professionals with whom an ongoing relationship is > essential?

Some do; but most of them don't think they need legal advice until it hits the fan. It's a cultural thing. And I really don't know how to educate them.

Ronald A. Jones, Florida

Ronald Jones wrote, "when someone's in business, they ought to be willing to pay for legal advice."

And as you recognize, most entrepreneurs are willing to cut legal expenses out of their business plan, because our services are viewed as extraneous. That right there is the crux of my frustration.

And to clarify, when I say "affordable," I mean "something priced for less than the value it adds." So when I ask, "how can small business lawyers be more affordable" I'm asking (1) how can we redesign our services, or the delivery of our services, to add more economic (revenue) and non-economic (peace of mind) value to our small business clients, and (2) how can we get prospective small business clients to recognize the value that our services already do add?

Note that this is a different question than "how can we be cheap." (And note that I never used the word "cheap," because that wasn't what I meant). Cheap is objective--its a low price without regard to the value of the service or product received in return. A high school kid who charges \$10 to mow your law is cheap. A landscape architect who charges \$20,000 for a landscaping project that will add \$30,000 of value to your home isn't cheap, but is affordable. I agree--lawyers aren't cheap and

shouldn't be cheap. But we should be affordable. Two different things.

So, let me reframe my question--to the extent that the average small business lawyer is already affordable (i.e., adds more value to a business than he/she charges in fees) how can we get small businesses to see the big picture--to recognize the value we add over the long term?

David J. Galalis, Boston, Massachusetts

In some respects, I think lawyers are at fault for not educating small business on the benefits of legal service, but many small business owners are also too stubborn to listen or too "penny wise and pound foolish" to change their ways. And, believe it or not, there actually are cases where businesses are so cash strapped, where owners are literally spending money out of their savings or on credit card to keep it running, that they really have to prioritize - and legal services often fall lower on the list than paying a needed staffer.

One solution that I have stumbled upon that may provide a way to address small business owner needs is to create a trade association. I have been working in the ocean renewable industry for a decade now and during that time, I've had but a handful of clients and earned less than 6 figures in revenue from them. It is a nascent industry where most of the \$s are going into R&D or lobbyists, who can get federal appropriations - and not towards regulatory issues or transactional advice. So, no one can afford me individually. But in starting this trade association with another person in a related field has not only gotten me in touch w/all the companies that might eventually need my services, but the companies have also contributed to join the group which means that I will begin to realize revenue from their collected efforts.

If you can figure out a way to put together some kind of trade association where you can get maybe 10-20 small businesses to kick in \$500-\$1000 each annually, maybe you can then offer some small services to them. Agreed, it's not a ton of income, but it keeps you in touch with potential clients, establishes you as an expert and of course, \$10 - 20 K would probably pay your rent.

Well maybe there's some other model. My point is that I am convinced that there is money to be made anywhere if you have a good enough idea and the persistence to carry it out. The trouble is coming up with it and not succumbing to conventional wisdom that says it can't be done.

Carolyn Elefant

I think Carolyn's idea is great for a start up. My late partner Clarence Todd did the same thing Carolyn is doing only 70 years ago. When Congress enacted the Motor Carrier Act of @ 1935, Clarence started a trade association of contract motor carriers, moved to DC from Kansas, and grew the group into the contract carrier conference of the American trucking association, for which we were general counsel and positioned to

greet a stream of new individual trucking companies for our federal & state regulatory boutique.

Herbert Alan Dubin, Rockville, Maryland

Carolyn's idea for a start up trade association is the vehicle for the education of start ups, What we do for entrenched business is the \$64,000 marketing question.

Herbert Alan Dubin, Rockville, Maryland

This is a great thread and Ron's is a great post. It's an education problem.

I've been representing small businesses and startups for close to 20 years, and not making nearly enough money at it--because it's very tough to get clients to do the proper legal work up front where it's needed. The reason? About 1 in 20 of them have a realistic expectation about what it will cost to set something up properly. I agree that education is needed. I always tell clients putting together a new line of business venture with an entity and a partner or two and maybe a domain name and a trademark or two, "your legal costs are going to run 3-10%, depending on how many agreements are needed."

Now, that number may initially shock even some of you. Think about it for a minute. If you were to sit through some MBA classes (which many of my startup clients are brand-spanking-new and just out of), you will routinely hear that "insurance is a fixed cost of X-Y%" and "advertising and promotion in the first 18 months should represent A-B% of your budget." But--you won't hear anything about average legal costs because even the professors don't pay attention to that.

And the reason even the teachers skip over this issue is, that the legal profession has served business very poorly in cost estimation. A lot of lawyers are still answering "Um, I don't know what it will take, the meter is running, and my hourly rate is \$250."

Whereas if I am advising a client on a new licensing venture and he asks "how much is your work going to cost?" I will answer like this: "well, you need a pretty detailed contract--one to two pages isn't going to cut it, because you have potentially \$100,000 of exposure for non-performance or sunk costs, and it's a 5 year deal. You're looking to make \$500,000 to possibly even a million, that's the upside. Well, legal work should pretty much run 3-10% of your exposure, depending on the complexity of your venture and how many legal issues need to be negotiated."

That answer gives the client a context for a quote like \$3,000 to \$10,000 in legal fees, rather than just a number. If I get any attitude back about this percentage, I say "well, a Realtor makes 6% on \$200,000, for what? Taking a digital picture, entering some data into a computer, trooping some people through your house, and filling out some carbonized sales and closing forms...do you think my experience, specialized knowledge,

and professional service to you is worth at least as much as that?"

If every MBA or community college business class provided a sample start-up pro forma with a line item for "legal," our life would be a lot simpler. Unfortunately you have to educate them that "legal" is a regular expense line item in an ongoing business and in many cases they just don't believe that it should cost that much, because they weren't prepared to spend anything at all--it was left out of the preliminary budget, and then Uncle Bob looked it over and said: "you better see a good lawyer before you spend any money" as an afterthought and here they are at your front door. So I give them a reality check, and a quote, and send them on to the next guy (because 19 out of 20 will go on to the lawyer who says "coupla hundred bucks"--or end up cutting and pasting their own contracts out of stuff on Nolo and FindLaw).

Carol Shepherd

I completely agree with you.

I have been entertaining this following idea for a while. it may sound stupid or maybe it had been done before, but please let me know what you think:

What if I go to small businesses in my area and offer them "HMO"-like plan. In other words, they pay a minimum premium every month of lets say for example a \$200 which will them a certain amount of hours for legal services. Whether for the company or its employees. if you have 10 companies in your area that have access (of lets say 2 hours each) to your legal services and advice, wouldn't that be something that you consider? a total of 20 hour a month for \$2000? Just an idea...

Kal Qubain, Long Island, New York

Read Carolyn's post further down this thread regarding "trade associations." You and her are talking about the same thing, and I think its brilliant (indeed, it will be revolutionary if business legal insurance ever takes root in this country--so far, just a few failed experiments and scattered successes). Its an idea I'll be playing with as I start my firm, and I'll be sure to report back to the list.

David J. Galalis, Boston, Massachusetts

Sounds good, but think your pricing thru to develop a max or cap and to account for potentially real conflicts. It seems like a lot of cold calling.

Herbert Alan Dubin, Rockville, Maryland

Solosez is getting big enough to secede...

Mike Phillips, Cary, North Carolina

The trade association idea is brilliant. Essentially, its a way for businesses within the same or related industries to self-insure themselves against common legal problems. Assemble a large enough group, and the group could even insure against catastrophic problems. I think the idea could be particularly appealing for small businesses in the construction trades, where the same types of problems, and legal questions, arise constantly--almost to the point where they can be "commoditized" (e.g., the filing of mechanics liens or mailing of collection letters). I have to play with it and see what I come up with. Thanks for the idea.

P.S. Have you offered to file any amicus briefs, or lobby any congressional committees, on behalf of your trade association? That could be a nice selling point to companies outside the association who are thinking of joining, and a nice way to generate added revenue for your firm.

David J. Galalis, Boston, Massachusetts

Sounds a lot like Pre-Paid legal services

Walter D. James III, Grapevine, Texas

"What we do for entrenched business is the \$64,000 marketing question."

If the industry is one subject to constant regulatory change, I think the offering of lobbying, amicus, and test-case services is the selling point--the reason why the entrenched businesses need to form a trade association and pay you to be their general counsel. This idea has existed in my brain for all of a minute, so there are obviously details to be worked out--but I think the basic principal is sound.

David J. Galalis, Boston, Massachusetts

I think it's a great idea, in theory; unfortunately there are plans like "prepaid legal" which try to do this for consumers and small businesses; they tend to have problems attracting long term paying clients. Big companies have legal departments/on staff lawyers. Small business don't. Maybe they should; the idea of a 'trade association' where each member pays you a fixed amount per year for a certain amount of service would generate revenue.

Part of the problem is perception; people don't see the value in seeing a lawyer before hand. Part of the problem IS the legal professions own

greediness; I'm not talking about legal fees, per se, but nickel and diming clients to death; Neal pointed out when he was at Big Law, they expected him to charge for turning on the air conditioner at the office when he came in on a weekend; I've seen lawyers try to recoup for regular postage; like, \$.37 stamps; I had a friend who tried to bill clients for what he spent on long distance, tracking which phone calls went to which clients and billing them for the long distance, a few pennies or dollars per phone call. My advice to all of these people is: this drives clients BONKERS: either consider it part of overhead or just raise your rates by \$5 or \$10 or \$25 an hour as appropriate. Someone who will not think twice about paying a thousand dollar invoice when they see the value in what you did is at least going to do slow burn when you add :

5 letters to client , postage @ \$.37 each, \$1.85 postage: 20 minutes long distance @ \$.09/ min, \$1.80 Copying 100 pages @ \$.20 page \$20

Total invoice:

4 hours @ \$250/hr= \$1000 Costs @ \$23.65 Total amount due= \$1023.65

If you raise your fricking rates by \$5 an hour, you've just about covered them; if you raise them by \$6 you've got a net profit.

Ronald A. Jones, Florida

----- I completely agree. I have personally left businesses that itemize every cost (in a different area, but the same theory). I decided that I was not going to itemize every cost with my practice. Rather, I would just raise my fee. I am sure that clients would appreciate being billed for work rather than stamps and stationary.

Denise Randolph

"Sounds a lot like Pre-Paid legal services . . ."

Yes, but for businesses instead of individuals. The economics are radically different, for one primary reason: small businesses encounter legal problems/questions as a routine matter of their day-to-day operation. Most individuals encounter legal problems/questions sporadically and unpredictably.

If a legal insurance plan/trade association can be designed that will give a small business a fixed line item on their balance sheet that will account for x% of reasonably anticipated legal-service needs, that's a very compelling selling point. Much of the small business fear of lawyers stems from the billable hour--small businesses, especially start-ups, want to deal with fixed costs as much as they can.

David J. Galalis, Boston, Massachusetts

Herb's correct except that I am chiming in from my laptop. Regulatory

compliance assistance is not cheap, but it less costly than getting caught not in compliance. We made more money and had more fun defending a carrier after they'd been caught than in getting them set up correctly to start with.

Robert B. Walker, Herndon, Virginia

Interesting comment and it matches my experience for sophisticate clients as well as those termed "blue collar" by David who started this thread.

Herbert Alan Dubin, Rockville, Maryland

Several years ago I served on an ABA committee that dealt with the fringe of this issue. Jay Foonberg was also a participant. Jay, as you may know, started as a CPA and then went to law. Jay made it abundantly clear that the legal profession kept trying to protect its turf while the accountants kept expanding the scope of their business and service to clients. Now, look at the larger accounting firms. They all have lawyers on staff, handle complex business deals and perform services from incorporations to dissolutions to mergers. We screwed ourselves by not understanding the changes in the marketplace.

Bruce Dorner, Londonderry, New Hampshire

This thread especially interests me, as I am a former small business owner myself, and interested in going into small business law. (Currently, I'm a 3L.)

Small business owners do have a perception that hiring an attorney is an unpredictable proposition; once the flow of cash starts, they assume that they are helpless to stop it until the attorney decides it is enough. (I'm not saying that's the way it is; I'm saying that's the perception.) Solo practitioners choose to go solo because they like to be in control of their practice, no matter how small. Small business owners in any other field are not any different.

Therefore, IMO, many business owners are going to be much more responsive to an approach that enables them to see the rough outlines of what to expect, to know at what points they can change directions, and to feel that they have retained some control. ("It's going to cost you between A and B. If C or D happen, you are also looking at E. If you get to F and you want out, that's a good place to stop, but once we file G, I would strongly advise you to stick with it until H is decided.") Maybe you're all already doing this and wondering what I'm nattering on about. However, in my "previous life", my experiences with attorneys, from the other side of the table, was that most of them wanted me to leave the matter with them and then not speak until spoken to. I do not want to address the question of whether or not that is the best way to handle things. I do want to point out that most small business owners are simply not going to go for

it. So they avoid getting legal help as long as they think they can.

Anyway, just my view, recently arrived from "the other side".

Susan Beecher

I think these ideas are wonderful. It is time to think outside the box on some of these issues. However, I think we are talking to the wrong group of people. You definitely do not have to convince us that our services are valuable and needed. We have to convince business owners.

The first step is to send a letter to Entrepreneur Magazine and the author of this article, and let them know they did not get the story right. They have misinformed their readership by failing to include lawyers as resources. True, lawyers are expensive, but an ounce of prevention is worth a pound of uncertainty. We could do a Op Ed piece or write an article ourselves.

We need to get in front of business associations, such as the Business Chamber. We need to partner with the Small Business Administration and SCORE. We need to teach some classes to the MBA students; let's lead some community educational seminars. We need to write articles in our local newspapers. We have to include business owners in these conversations about problem-solving.

Bottom line is ...if they don't know that they need us, we have to tell them.

Keep the ideas flowing.

Sharmil McKee, Philadelphia, Pennsylvania

Nah, you're right. That's another problem with attorneys; not making clear what the costs are likely to be and what you're going to get for your money.

We've talked about this in the past but, in a nutshell:

This is why you bill clients monthly, even if you've got money in your trust account to cover the whole cost; clients like to see where the money is going. And if you are trusting the client to pay the bills as they come in (remember , Kumbaya, Kumbaya, Get the Money Up Front) you'd rather find out quickly that the client isn't paying than at the end. And smaller bites are easier for the client to digest. And, paying on going legal bills may help to settle the matter (Freud said that paying psychiatric bills was therapeutic for the patient, which is why he charged; I believe paying legal bills helps encourage the client to settle it).

Even as an attorney; I called another attorney to ask about what it would cost to handle a very specialized matter, and he said "\$5,000". And I wasn't trying to chisel him down, but I asked "and, exactly, what are you going to do for that \$5,000?" I could hear his jaw drop over the phone. He wasn't used to people asking that. He started to splutter and stammer

and sounded like I had slapped him. He eventually explained what he would do. But that's lousy client relations.

Additionally, another attorney on this list mentioned a time he had hired a lawyer to handle a real estate closing; it went on for a bit longer than he expected, at the end he was handed a \$3,500 bill, and he questioned it. If the lawyer had billed him monthly, he wouldn't have been as surprised.

You need to talk about costs and fees with the client at the time of intake. You can't guarantee the cost, but you can give a ballpark; and by monthly billing, the client may be able to bail when it gets too expensive, or settle. Too many lawyers think talking about money is dirty; many of them work for the government now.

Ronald A. Jones, Florida

Susan: “, my experiences with attorneys, from the other side of the table, was that most of them wanted me to leave the matter with them and then not speak until spoken to” You must have hired the wrong firm. Too bad you did not hire my firm. We always presented a budget with options, backoffs, and what ifs for regulatory work. It was welcomed by the established carriers. The new ones always and understandably wants the cheapest cap even if they understood that the Certificate of Public Convenience and Necessity they were seeking from a regulatory agency was a license to steal (so the speak) once that was awarded to them,

Herb Dubin, Rockville, Maryland

Too many things to reply to... But I gotta comment on this one- I have a strict "no nickel and diming policy" and I share it with every potential client. External costs (Fed Ex, huge Kinko's copy job etc.) are charged to client without a markup. Internal costs (postage, normal copies, domestic long distance calls etc.) are overhead and not charged to the client. I try not to do anything to my clients that I wouldn't want done to me.

I had a potential client come in (who I think ultimately chose to go with someone else, c'est la vie) who told me that an estate planning attorney for his mother actually had a line item on the bill - .1 hours for preparing the bill. That one takes the cake (IMHO- no offense to any sezzers that charge for billing).

Cindy Jones

An idea I plan to implement next July (or maybe this January, the slower months for business representation- at least in my practice) is to offer a "legal check-up" program:

For a dramatically reduced rate, I will meet with the client- probably at the place of business, and give them 1-2 hours to discuss what's been going on

in their world. Gives me a chance to identify problems before they start and to point out where legal services can be value-added, and just to give them an outside person perspective on any plans they have. Even if no further work comes out of it, it should keep the relationship stronger.

Cindy Jones

It's really hard to convince someone that they have a problem when they feel no pain. A problem you don't know about isn't such a bad problem to have - at least not at the moment, not when you have other problems that **are** causing pain.

Now, I know, there can be really bad problems that can be fixed pretty easily if you find them early - and nobody wants to spend time and money finding them early. When was the last time you had your house inspected for termites? Most get inspected only when they're for sale. When was the last time you had a prostate exam? A mammogram? A colonoscopy? Most people only get serious about those issues after they've had a big health problem, or someone close to them has.

How many people on this list pay malpractice defense and bar discipline defense specialists to do "checkups" of their law practices, marketing materials, and retainer letters every year?

I think part of the problem here is that entrepreneurs and small business people are, generally, optimistic (not necessarily cheerful, but optimistic) - if they really believe that the future is doom & gloom and that they are destined for failure, they wouldn't be doing what they're doing. Statistically, starting a small business is about like buying a lottery ticket - a sucker's game.

But we all (and I am including small law practices, which are just small businesses in fancy clothes) think that somehow, we are different - sure, 4 out of 5 or 9 out of 10 small businesses fail within 5 years, but **we're** different, because we're special or we're smart or we're gonna work really hard or we're nice to our clients or we've got a great location or we know the judge or whatever.

I know that I've got a strong DIY streak, too - I don't mind paying an expert to solve problems for me, but (a) I've got to believe that there really is a problem, and (b) I've got to believe that there's a good chance that the expert really will fix the problem.

I'm not wild about paying an expert to poke around looking for trouble - seems like that only ends up in one of two ways - I pay them a moderate amount of money to tell me that everything was already OK, or I pay them even more money to screw around with a problem that I don't understand, didn't know it existed before they discovered it for me, and might or might not be fixable.

I think it's really tough to do a double play, where first you convince someone they've got a problem, and then you convince them they ought to pay you to make the problem go away. Really good salespeople can do it,

sometimes, but it's a hard road to travel.

I think it's a lot easier to solve problems for people who recognize that they have problems, and where they don't perceive you as the source of the problems.

Prevention is a tough sell, especially when the downside (cash going away) is easy to visualize, and the danger to be protected against is perceived as remote, and especially if the buyer has never personally observed or experienced the problem.

Greg Broiles, San Jose, California

Dave, aspiring blue collar lawyer:

Jeez. I do not want to discourage you or anyone here. If you can make something of this, it would surely fill a valuable, commendable need.

On the other hand, let me be blunt, since beginners need that. Let's be frank. I am sorry, I'm going to be mean.

Repeat this aloud several times: Are you Fred Smith of Federal Express? No. He had a great idea. Thoreau? No. You are a beginning lawyer with (currently) totally fungible service skills. In advancing this concept, you are not even reinventing the wheel, but more like the rock. And you are trying to push it uphill.

Many have tried this. Yours IS a good concept. It's useful. Unfortunately, SBOs do not buy into the concept at all. IMHO, they never will. It runs against basic elements of human nature.

I say that because, hard as it may be to believe, at least one million other lawyers -- i.e., about all living lawyers on the planet, every Solosez member and many dead lawyers before us, probably going back to the Hittites -- had the same idea, and it hasn't taken hold.

And you're going to try it in Brooklyn, the historic stronghold of the cynic? Let's get real.

In your position, and I know this runs against your values, I would quickly look for clients who are willing and able to pay. It may take a bit of work to find them, but why waste your time working on ones who won't? Many, many aspiring young lawyers crater and end up in other professions.

Somebody has to say this and it might as well be one who has been through the wars. I'd rather not work at all, than for clients who won't pay. I've tried it both ways. The latter gets tiresome very quickly.

Otherwise, keep us posted on how you do and how long your savings hold out. <g>

Norman R. Solberg, Japan

Norman, I appreciate your bluntness. Two things: (1) my marketing plan is multifaceted, and the "education of indifferent clients" is only one aspect of it, (2) yes, the whole new solo thing is tough. No kidding. Do I really come of as that naive? I guess those are the limitations of email. I'm really a lot more cynical than my written rhetoric would leave you to believe. That's my fault.

And I must laugh when people ask questions along the lines of "are you Fred Smith of Federal Express." Let me ask you, what if Fred Smith had told himself, "damn, I'm no Paul Revere--what the hell makes me think I can do this?" What if Henry Ford had said "I'm no Thomas Edison"? The question is an unanswerable debater's question, and you know it. Maybe I am Fred Smith. Maybe I'm not. But I'm willing to put myself out there and take a shot at being an innovator where others have failed, and I'm willing to let the world prove me wrong. So in that sense, yes, I am Fred Smith.

David J. Galalis, Boston, Massachusetts

I for one enjoy the "tilt at windmills" questions. Because when you challenge the way things were done in the past, you find a new way.

I know there are many examples, but Tom Goldstein is the one I usually pick. Didn't go to a top law school, didn't clerk for the US Supreme Court and over 50 percent of his cases are pro bono. But he and his wife are generating over 750 k in revenues running a Supreme Court Boutique (www.goldsteinhowe.com) handling only Supreme Court cases, once the province of former solicitors.

A classmate of mine from law school, Cyrus Mehri has his own firm, www.findjustice.com - primarily class action employment law, which a decade ago, the law was adverse to plaintiffs. He's made huge strides and gotten major judgments against Coke, has suits against other companies because he wasn't afraid to question how things had been done before and take a new path.

If you keep doing the sure thing, you'll do fine. That's what biglaw partners do - the sure thing, stable job, etc...But if you question and rail and then hunker down to find a new way of doing things, you can soar, especially in the legal profession where we're trained to follow precedent, not set it.

Carolyn Elefant

My website advocates preventative law. I began with a concept of helping a business form organization through the first year. A flat fee of \$2400 for incorporation and 1 hour per month to review document, etc. I had two takers in over three years of trying. I was a business owner before being a lawyer, and despised them when I was a business man. I thought my idea

would appeal to business owners. It didn't.

The problem is the perception that business owners have of lawyers: greedy, self-serving assholes with a high value of themselves and their services. Until that attitude is defeated, we will not win over the small business owner.

Robert W. "Robby" Hughes, Jr., Stone Mountain, Georgia

Why not test the idea. Run a free seminar. Offer another or a follow-up at a charge of \$50. don't book a large hall for any of them.

John P. Page, Tampa, Florida

It has been awhile since I've chimed in, sorry for the MIA status, but I had to put my 2 cents in on this one.

First and foremost I am a little confused with most of the post referring to small business owners in the third person. We are all small business owner as solos and small firms.

Next I agree with bucking the trend. I have "bucked" the trend in a couple of ways in dealing with small business owners. First and foremost I try to give them a choice, flat rate or hourly charge. I also tell them up front that the flat charge is based upon me having to do X hours at Y rate and the hourly rate is Z. Essentially I give them a reduced hourly rate if they take the flat rate. Now they see that they are getting a reasonable deal and that I am willing to work with them. The other thing I will do is offer my advice, to a group of potential customers for free, telling them at nausea that each circumstance is unique so this is legal opinion does not apply to you personally. One aspect of my practice is art law, so I do a seminar for a local arts council. This seminar not only puts me directly in front of potential clients it also allows me to meet some of my pro bono hours.

Finally, the most difficult thing to do as a newbie is walk away if they try to haggle or price shop with you. As a newbie or young solo we are usually more in the need for work then we would like to let the clients know. However, if the client isn't willing to pay your price and/or wants to nickel and dime you; you don't want them as a client.

Well that is my two cents...I am always open for comments or constructive criticism.

Christopher Ross

Fred Smith started Fed Ex based on an idea that he wrote about in a Yale undergraduate paper (and got a C).

<http://www.fortune.com/fortune/fsb/specials/innovators/smith.html> I'm assuming that David got better grades than that!

Carolyn Elefant

Not that Dave needs it, but let me come to his defense. And, for those of you who missed my earlier diatribe, read the "Why Ideas are Killed" thread. First, for those of you who love books, I highly recommend "General Johnson Said." I am figuring its worked for 100 years for one of the top 20 companies in the world, it probably has some tidbits in there for all of us. Great book and one of the things that everyone should read - especially those of you who think you have all of the answers. Second, Dave is trying to understand human nature and then change it. I believe, if my memory is correct, that Henry Ford was not told that the assembly line wouldn't work, but rather that the cars were not needed. People wouldn't drive them. I own two and am looking for a third. Bill Gates was told people wouldn't use computers. People would never give up their tapes for CDs. Heck, they would never give up their 8 tracks for tapes. Just because I am in one of those moods today, how do you think these brilliant people come up with ideas? Does it just hit them when they are sleeping? They do RESEARCH. Dave is using us to research some ideas. Maybe they will not all work out, but I think he is on to something with small businesses. Why? Because I have small business clients who come to me for everything. Why? Because I have educated them. The same guy who still picks out every product placement in his small retail store, calls me anytime he has a legal question. The chocolate store that makes EVERYTHING by itself? They call me with any question. The pet groomer who bakes her own goods for the bakery next door that she owns? SHE CALLS ME WITH EVERY QUESTION. I am not saying I have the answer. But, I have been around long enough and enough successful people that I have an idea as to what works. There are a lot of smart people on this list, but if you think you have the idea, or the process, or the knowledge about how things work, you are just plain wrong. Look, Dean Kamen was told the Segway couldn't be made to work. People dont want it. He then developed the iBOT. Look at all of his inventions. They are things that other people have thought of, but that he made work. You have to have a little creativity. You have to be willing to try old ideas again, try new ideas, make crap up. It works. If you don't think Dave's ideas add anything, don't respond. Just ignore him. I am sure Dave is a big boy and you won't hurt his feelings. There are times when I have read his post and just ignored it. We are all adults and if you don't have anything nice to say, don't say anything at all. Heck, some of you just delete my posts and I am fine with that. (Some of you have deleted this without reading it.) We all do it. But do not berate the guy for trying things that you may have tried and failed at. Now I am done - for now.

Jonathan G. Stein, Elk Grove, California

Getting back to the original proposition:

David said: >>I think that through our unfocused business plans and outmoded marketing we have failed to position ourselves as the type of professional that small businesses ought to work with on an ongoing basis

to spot and avoid problems.>>>

Where lawyers fail to get a client who otherwise needs the lawyer's advice and otherwise understands his own business well enough to know that he needs the assistance of experts, then I would say the proposition has some legs to it.

Although, echoing a theme coming lately in the thread, there are components of human nature that are immutable. People are stubborn, and they are idiots, occasionally (including us). They will sue someone to make a point, "on principal" and they will refuse to seek a lawyer's advice even knowing the serious risks they face.

That said, I think it is always worth asking the question whether the status quo will be quo tomorrow. Only those with their eyes open see the opportunities that are presented today to be taken advantage of tomorrow.

Regardless of one's views on law as a profession or a business, the mind of the legal service buyer works the same in our industry as it does for P&G selling soap. The buyer needs to see the benefits of buying before committing to the purchase and it behooves us to make that clear to the potential client.

The analysis of legal service is really one of risk assessment. An investment advisor can easily quantify his advice. This investment will return 8%, that one 10%. If the risk is the same, it's a no-brainer.

How can I quantify for my estate-planning client: well, an estate plan will avoid \$X of probate costs 5-50 years in the future, maybe some taxes if high net worth, and the family might avoid horrible and fractious arguments about the estate. That all makes sense to me, but it is too often too vague for the client to be motivated to take action.

When I was a tax consultant in Poland, there was a compensation structure that might save a multinational between 10% to 40% of their total executive compensation costs. If the structure could be implemented, we could save them many thousands of dollars, so our fee of \$10,000 was easy to afford. If the structure could not be, or for what ever reason the savings was not available, all we could tell them was by paying us \$10,000 (or usually much less) we could implement the documents that would memorialize the proper structure and possibly keep them out of trouble with the tax authorities.

Needless to say, that second conversation was a much harder deal to close. they might see the risk, but not be able to confidently say that the cost was worth the benefit.

As for marketing strategy, educating the world is probably too much of a scatter shot to be effective, but educating those who are pre-qualified to need my service are much more likely to see the risks inherent in not acting.

Frederick Mischler, Dayton, Ohio

Seems to me that you can do the exact same thing with a different pitch to take hold. Offer yourself as an affordable "general counsel." Most companies understand the concept of a general counsel, and I think would be more likely to latch onto it than the concept of prepaid services, even though the end result is the same. You don't have to work for a company 9-5 Monday through Friday to be their general counsel. You just have to be "available" to them. Pitch the concept first, then work out the fee. Start off with a monthly bill that is estimated to include estimated usage (even if a guess). Include a provision that if the company uses you more than an average of x hours over a period of y (say, three months), you will renegotiate the fee. They are keeping you on retainer, but I think they understand this concept better.

David Tarvin, Omaha, Nebraska

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