

Why are Lawyers Considered Bad Businesspeople?

Hello all. Hope all of you are enjoying the long weekend.

A lot of people say that lawyers are bad at business. I wanted to know why people say this. And is this true?

A) Sentences which start, "A lot of people say..." make me nervous.

B) Sentences including a phrase like, "...lawyers are..." are make me nervous. One thing lawyers are /not/ is homogenous.

So, my first response would be to answer the question with a question:

"Who, in particular, said such about which lawyers, and was there perhaps more context to help guide my thoughts?"

Robert Thomas Hayes Link, California

Yes, definitely true.

One example, look at how many retiring or close to retiring attorneys have not made a plan to try to transfer the asset of the goodwill of their practice as an asset to be passed on.

Nicholas Bowers, New York

Robert, you are right. It does not apply to everyone. But I hear it from numerous sources, like blog posts, consultants, and other lawyers.

But I've been hearing it lately from people who want to change the ethics rules to allow non-lawyers to have ownership stakes in law firms. They think that lawyers are not efficiently running their practices and a nonlawyer could change that.

These are the common arguments I have heard.

- 1) Most have no prior business experience. They are not taught this in law school.
- 2) Reluctant to take risks.

3) They don't want to run their own firms

Perhaps they are wrong. But can lawyers run their practices more efficiently? I would like to hear responses from people that are not sponsored by a case management software company.

Steven Chung, California

Agree with Robert's comments---like anything else, plenty of exceptions.

That having been said, the 2019 Clio Report outlines many problems that need fixing with the practice of law:

<https://www.clio.com/resources/legal-trends/>

Dave Rakowski, Pennsylvania

Not sponsored by a case management company---just someone who reads ;)

Dave Rakowski

I think lawyers have the same issues that electricians, doctors, plumbers, accountants, etc. have. That is, a lot of us/them may be very good at our profession but that doesn't translate into being good at running and growing a business (and of course many are, it's not homogeneous). I realized this with contractors after I became a home owner. A lot of them are great at doing whatever they do, but are absolutely terrible at running a business. Doesn't matter though as, in Detroit at least, there is so much demand for so few contractors that they have business just by virtue of having a license and being decent or better. That is a saving grace that our profession probably doesn't have at the moment in most markets.

Noel French, Michigan

As others note, it is a generalization; and not all attorneys are bad at business; in fact some of the best businessmen I know are attorneys (who generally left practice of law and started other business).

Nonetheless, a lot of them are. Here are some reasons some attorneys are bad businesspeople:

1) they don't see themselves as a businessperson; they see themselves as a lawyer and a professional. And there is a tension between being a professional and being a businessperson; the nature of law practice is frequently the lawyer puts the client interests ahead of their own. Which is bad business. For instance, I have discussed PI referral fees in the past; I make occasional but decent money from PI referrals; either existing or former clients or in some cases walk ins or call ins, asking me if I do PI work. Or existing client comes in for something entirely different; and I happen to learn they have a PI case. I won't say this 'happens all the time' but it happens frequently enough; on average one or two times a year.

I immediately take the information and ask if I can refer them to another attorney; they invariably consent; I make the referral to a local PI attorney I know, and am comfortable with; and who PAYS REFERRAL FEES, yes, he pays me a percentage of what he recovers. Sometimes the case doesn't pan out, he doesn't take it; but a lot of times he does, and he does his stuff, usually settling but sometimes taking to trial; and sooner or later he calls me to say he has a check. The referral fees are usually in mid-4 figures to low 5 figure range (you can figure it out, PI work in Florida is typically done at 1/3 of gross recovery and he's paying me 1/4 of his fee; so if it settles for \$100K he gets 33 and I get just over 8 of that). If it's more than that I get more, if less then I get less. I encourage anyone who is not doing PI work to cultivate a relationship with a PI lawyer WHO PAYS REFERRAL FEES (and yes, I know some jurisdictions limit this but if it is allowed then do it). I was doing CLE presentation on probate back in June and mentioned this as an aside, at break one of the attendees came up to me and told me that her probate firm had made over \$200,000 on one wrongful death referral. Yowza.

Nonetheless, every time I mention this, there is some pushback from some people; the objection is usually to the effect that by accepting a referral fee the lawyer is violating some sort of duty to the client; as near as I can tell the argument is that the lawyer is selecting the PI attorney on the basis of paying a referral fee, not necessarily the best attorney to handle the case. Listen, when I make a PI referral I do so to the best PI attorney I know; I'm not going to make a referral to someone who I think is going to undervalue or quickly settle the case just to settle the case; because I want as much money out of it as I can get. Nonetheless, some lawyers refuse to accept referral fees; that's bad business.

Also, lawyers frequently tend to have bad long-term planning; good short term, OK medium term, but lousy long term. I have known a bunch of lawyers; good lawyers, who have been in practice for decades, who get to the end of their career and they have been paying rent for decades. When I was a young'un and went to my first CLE on probate, I had lunch with a guy who was nearing retirement; who had been doing EP and Probate for decades. I asked him how he liked it; and he said that he enjoyed the practice area; but then he kind of grimaced and said "the one regret I have, I've been paying rent for 30 years, all that money down the drain, I should have bought a building". Likewise, I know very experienced attorney locally, he does very well, and in the spring, he had some problems; long story short was he had moved his office and had internet/phone problems. That's fine, but he then said. Oh, I've been renting a place for 22 years, the landlord tried to double my rent and I had to move. I'm sympathetic but I'm also thinking, man, why you rent for 22 years; you should have bought or built. Or I had lunch with very nice, very lovely young lady lawyer a few months ago, she's doing well; she'd been in practice 5 years; I kind of tried to suggest to her that maybe she needs to think about buying or building her office; she's currently renting from another lawyer. I don't know if she got the hint but my point is a lot of lawyer just kind of "go with the flow", and rent and at the end of their career they have nothing to show for the rent. I understand; not everyone can buy or build; and in some cases, it may make economic sense to rent (if prices to buy are outrageous; or if you are in a declining real estate market) but man, at least you have a building to either sell or possibly rent. Why would you rent for 20+ years? It's bad business in a lot of cases.

And, just, business stuff; you can be the greatest lawyer in the world but if you can't get paying clients you are going out of business; I'm not saying you shouldn't focus on law but you also need to do good, effective marketing, advertising, stuff to get clients in. And get them to pay you actual money. If you don't do that, or do that effectively, that's bad business.

Ronald Jones, Florida

Here's your answer right here, in your question:

"I've been hearing it lately from people who want to change the [ethics] rules."

What does it mean to be "bad businesspeople"? Does it mean they make too much money? (That certainly doesn't apply to me.) I have successfully managed an IT consulting firm, so I DO have business experience.

The biggest difference I see here is that clients - "unsophisticated" individuals in particular - don't understand how business works, and therefore cannot realistically value our services. They will grumble, but will pay, \$75/hr for an auto mechanic or a plumber. But for a professional with at least 3 years of postgraduate education who must take (paid) continuing education every year and carry \$1M+ in professional liability/malpractice insurance, they think we're overpriced. I have potential clients balk at paying a reduced fee of \$100/hr (\$50 min) for certain initial consultations, but I had no problem getting business clients to pay \$300/hour for my technical services.

I have an MBA, and I didn't learn this in law school; when I was in school - not that long ago, as this is my second career - the Law Practice Management classes taught you things like how to maximize your billable hours to get bonuses, how the partnership track worked, how to deal with the management team, etc. It was presumed that anybody who had any role in managing a law firm got to that role by working in a firm for years, even decades. There wasn't even a nod to solos and small firms. I tried, as much as I could, to pick MBA classes that focused on the way small businesses work, albeit in part because I was interested in them as a potential clientele.

One of the things I learned in business school and law school is that business people are all about exploiting risk. Risk is the justification for reward. The business of lawyers, on the other hand, is the mitigation or elimination of risk. These concepts, on some level, put two of our "hats" at odds. It affects the way we do business; sure, people would love for us to do everything on contingency. What they don't realize is that firms that specialize in contingency cases will do so almost exclusively when they know that the other side is insured; they're not taking great risks (there is risk, to be sure), they're shifting the risk. Try getting a big, advertises-on-TV PI firm to take your minor accident with soft tissue damage on contingency. They'll tell you to take whatever the insurance company is offering; it's simply not worth their time. Can these people not see the risk inherent in making legal services all about profit and shopping the lowest bidder? People have houses, jobs, citizenship, retirement funds, etc. at stake! Are we ready to let just anybody practice medicine, 'cause hospitals are expensive?

Can we be more efficient? Perhaps, if we all worked out of our homes. I rent a small services-included office, because it's the most cost-effective solution I can find in my small city, and when you add in things like fax services, e-mail, websites, software, computers, research services, subscriptions, malpractice insurance, CLE, yada yada, the first \$35K or so I bill each year goes to someone other than me. Then, of course, I have to pay SE tax on everything after that. I stopped doing court-appointed, state-paid defense work a few years ago because the state cut the reimbursement rate from \$75/hr (a break-even at best, especially if you consider time waiting in court that can't be billed because it won't be reimbursed, etc.) to \$55/hr.

Part of the solution - which would be much safer for clients, and have far-reaching benefits in other domains, is to spend some frickin' money on education. People don't understand how their local, state, and federal governments work, much less our legal system.

Indirectly, "they weren't taught this in law school" is not at all an argument for giving other people OTC law licenses. It's an argument for updating law school curricula to deal with extant realities.

Another part of the solution is acknowledging that insurance companies and government have created a perilous legal landscape, allowing Big Business to run over the public rough shod. Legal Aid is the answer there: highly-dedicated, very competent people who serve a limited clientele on a limited number of issues. It's a VERY cost-effective use of money.

And you kids get off my lawn!

Richard J. Rutledge, Jr., North Carolina

If you're quick-on-the-click when the page loads, and immediately click the "Download PDF" button before the data collection form loads, you can get it without giving up your contact information to a marketing list...

Richard J. Rutledge, Jr.,

I've tried to download that Clio report several times now. I even tried Rick's quick-draw clicking. It seems to just stall out. Is there another way to get the report?

Ryan Young, Virginia

If true, it's probably because they had no training in business prior to law school. Business is just any other skill, you aren't necessarily born with it, but you can learn it, just like learning how to change a tire. Business ain't rocket science.

Once you learn that law is not only a profession, which is a rather nebulous term, and realize you are basically a salesman, you will get better at running your practice.

Bobby Lott

Back in the day, I mean way, way back, the School of Law at the University of Texas at Austin required 8 hours of undergrad accounting.

I complied. Glad I did.

Hook 'em, horns.

Rob Robertson, Texas

Amen to that Bobby. I've been on this list for 20+ years and have seen repeated discussions of "initial consult". How you handle it, whether you charge for it, how long you spend on it. And I repeatedly make the point that I don't call it an initial consult. I call it what it is, or should be, a "Sales Meeting". The object of the Sales Meeting is for me to determine if I can make money off of the deal, and if so, for me to close the deal. To get the client to give me a check or sign a contract. Everything else is secondary. I'm not there to give legal advice or solve the clients' problems; once they pay me, I'll work on that stuff but initially it is to evaluate whether I can make money off of it. If I can't then the meeting ends. If I can make money off of it then I close the sale, or try to; tell clients what's involved, how long it should take, what it will likely cost, what I will do for them. If at some point they balk, then the meeting ends.

Ronald Jones

You can't say it any better than that!

Bobby Lott

Great point Bobby---the book that helped me get the right mindset around the whole sales thing is "To Sell is Human" by Dan Pink.

Dave Rakowski

Speak for yourself.

As to sales, I cut my teeth on Zig Ziglar and Dale Carnegie and Tom Hopkins back in my twenties, and was a telemarketer for Time/Life books in High School, the L.A. Times in my late twenties. Which is just to say, it's an informed opinion I offer.

Your view, however, is increasingly prevalent, much to the shame of the profession and the larger social group.

Robert Thomas Hayes Link

That is certainly one way to look at it.

If that is your only exposure to sales and marketing, I can understand your narrow view.

Bobby Lott

Why are attorneys *considered* bad business people? Because in the inherent conflict of interest between attorneys getting paid and doing the right thing for the client, we are expected to do the right thing for the client. Sometimes that means attorneys work without getting paid (like when a judge won't let an atty out of a case when the cl has stopped paying ...).

For the most part, attorneys often aren't trained to be good bosses, run HR departments, manage offices, do their own advertising, etc. They are trained to solve legal problems. Full stop.

On this list, obviously we have a high degree of lawyer business people, so I think we are going to skew a little higher on the "lawyers as business people" scale. That said, you have people who are more comfortable asking for money than others. If I could get the same work/life balance and client control working for someone else, I'd

probably do it. That said, a boss probably wouldn't like my schedule and all of my volunteering during the workday.

Corrine Bielejeski, California

Funny, how effective the old counterfactual can be, eh? If you need your sales duck to be bigger than mine, that's ok too, but don't send pictures. Do, if you are so inclined, consider helping keep the profession professional rather than something for used car salesmen to look down on.

That's not accurate either. Mum sold used cars one season, and I know my momma don't look down on you.

Take the last pot-shot if you like. I might revisit the topic under a different subject line.

Robert Link

Cute. As for potshots, not intended, as I am sure you didn't mean anything by your original one.

Bobby Lott

Because Legal Zoom and CLIO and others are dumping loads of bread into steering the narrative in that direction in hopes of getting, bad, legislation passed.

Robert Thomas Hayes Link

As usual, I agree with Ronald along with Bobby in this case. The best lawyers are invariably good salesmen. Perhaps some prefer to characterize it as the art of persuasion, but there is no substantive difference. A lawyer's job is to persuade clients, opposing counsel, judges, and juries.

Clients don't think of lawyers as an infallible fountain of wisdom and law. Even the guy slinging hamburgers at McDonalds realizes that SCOTUS rarely has a 9-0 decision; there is always another point of view on most issues. If a client has a choice

between a lawyer who graduated at the top of his class or a lawyer who married the judge's sister; they will usually go with the latter. It isn't likely your client thinks you are the best lawyer; it is more likely he just thinks you are the best he can afford.

Duke Drouillard, Nebraska

Robert, I'm not questioning your sales experience; you may very well be quite experienced; nonetheless, a lot of attorneys are bad to middling at best at sales. Leaving aside the people I've seen on this list for the past 20 years; I have seen this in my own practice. I needed a specialized attorney for a particular matter; I called someone that I know and trust and said who should I go to? I was given a particular name, fine, called him up, gave him a 5 minute explanation of what the problem was (it was with the state highway dept) and asked if he was interested and could handle it. he said "yes, I'll need a \$5,000 retainer" and then I asked him "Ok, so what does that \$5,000 retainer cover". He acted like I slapped him; he took umbrage at my asking what I was getting for my money. I wasn't being nasty but that's a perfectly legitimate question. You know something? That's bad sales.

And, unfortunately some, a lot, maybe, not all, but at least some attorneys seem to take the attitude that the value of their services should be self-apparent to the potential client. In some cases, yeah, maybe it is. But a lot of clients need to be have explained to them what they are getting for their money; what the process is; what the lawyer will do. Maybe not detailed explanation but they need to be sold on it. It's sales and a lot of lawyers are bad at it.

In addition to which, it's not just 'sales'. It's bad business practices. I know an attorney who has been in private practice since 2003 in a partnership. First two partners and now one.

In that time, he has had 2- count them, Two, separate bookkeepers embezzle from him. OK, I can see this happening once, but after the first time you would think he'd have some procedures in place and be a bit more cautious. And one partner, the one who has now left the partnership, was taking "undisclosed distributions" from the partnership; technically it wasn't 'embezzlement' because he was a partner and had the right to take the distributions but you know, he didn't TELL the other partners. Which led to tax consequences. I'm sorry, that's bad businessperson. If you can't keep track of your dang money coming in and going out of the business? That's bad business practice.

And, it's not just 'small firm' There was very prominent Florida PI firm, lots of lawyers, maybe a dozen or 15 partners, years ago, had one partner die. The managing partner found out that the firm did NOT have enough cash on hand to buy out the widow of the deceased partner. We are talking like mid 6 figures, which certainly is not a small amount of money but for a firm with a dozen or 15 partners and another 50 or so associates? They can't come up with a few hundred thousand? I'm not saying they need hundreds of thousands of dollars in cash sitting in a bank account but they should have enough reasonable liquid assets plus maybe a line of credit to take care of this stuff. That's bad business.

Ronald Jones

Duke:

I'm loathe to disagree with you, and will not do so flippantly.

The question is, "best at what?" and "best how?" Every firm needs its rain-maker, and surely the tap-dancing required to sway a jury is salesmanship, too often at its worst. But does this make transactional attorneys less-than? Is there any point to salesmanship if the "i"s aren't dotted, the "t"s are not crossed, the fine print is not read and understood?

I think not.

It's one thing to say "salesmanship" is useful, even invaluable. It's another thing to say that's what lawyering "really" is. And it's another thing entirely to say that the profession should be reduced to a retail service. That's a position aimed to make certain fat cats fatter, not to make the profession better in any reasonable sense of the words "profession" or "better".

Robert Thomas Hayes Link

Ronald:

Thanks for the reply, and the tone, which I would be wise to emulate.

Sorry I jumped salty. I found not one word to disagree with in your note. I might call it "bed-side manner" rather than "salesmanship", or I might call it "customer-service", but more likely I'd call it "professional communication skills", the "it" being what the dude lacked on being asked what five-thousand dollars covered. And while a legal education should, can, and often does educate our colleagues in proper business functions, if only by way of showing us how things go wrong and end up in court (and case books), many of our colleagues fail to take the benefit of that part of our education.

On a slightly tangential note, there's a page or two in Malcolm Gladwell's "Blink" that references studies suggesting "likability"

rather than objective competence as the best predictor of future malpractice claims. I think that would support the "it's all salesmanship" claim, allowing for context and nomenclature. I'd also suggest client selection goes a long way towards one's "likability" rating, but maybe that's taking us too far afield.

Robert Thomas Hayes Link

Hi Robert-

I doubt that we disagree as much on the issue as we do the semantics, but you also set up a straw man argument by expanding my position far beyond anything I said. It appears that you associate a negative connotation with the term salesman. There are certainly numerous examples of people who regard themselves as salesmen that bear a closer resemblance to grifters and conmen. So I suppose it becomes necessary to define "salesman" for the purpose of this discussion. From my point of view, a salesman is a person who possesses a thorough knowledge of the products/services they are selling and enough experience to determine which product/service is the best fit for their customer/client; then using that knowledge, persuades the customer/client to purchase the product/service which will give the client the greatest satisfaction and provide a mutual benefit to both salesman and client. Ideally, if given the opportunity to rescind the sale later, neither party would exercise the option because they both benefited from the transaction. Not sure why you don't think a transactional lawyer needs those skills, but I think they are essential.

Duke Drouillard

I went to a recent Ethics CLE which was an update of malpractice and ethics claims. It was an excellent presentation from a local firm here who defends lawyers in such cases. They really did their homework in presenting the CLE.

The evidence they presented clearly showed that many, many lawyers are horrible at expressing or even discussing fees with clients. The experience detailed above regarding "just give me a \$5,000 retainer" is the root of a large portion of complaints that end up before a disciplinary review. They had some surveys of young lawyers that clearly showed they were uncomfortable even discussing fees with clients. Does the \$5,000 cover everything? Will I be expected to give you more money? What do you anticipate the fees will be? Obviously, that can vary widely in litigation, but, these are all reasonable questions.

Ryan Young

One problem is that the term "sales" has gotten a really bad rap in the U.S., and most likely the world. From Willy Loman to your local "tote the note" car dealer, they tend to be seen by the public as little more than crooks, looking to scr*w people out of their money.

To be successful at pretty much any career, one must be a good salesperson, if nothing else, than in selling yourself.

In the legal profession, the most basic form that takes is "why should I hire you over the lawyer down the street?"

Chances are, the client doesn't care where you finished in your class, or even know what law review is...he does care how you handle his problem.

My .02

Bobby Lott

I'm bundling several points in this reply.

First, as far as the \$5000 goes, I certainly would have reviewed any contract before I made a commitment; but that should have come after he did a bit of sales; telling client what they are paying for is pretty basic sales.

Second, I do agree that "Sales" has a bad reputation, and lawyers don't like to hear that they are in the 'sales' game. I frequently make this analogy:

We, as lawyers, talk about "tire kickers", people who contact you, get info, waste your time and fail to hire you. You know what I'm talking about.

The phrase Tire Kicker is right out of used car business. It, literally, means the guy who comes on the lot, asks a bunch of questions, maybe looks at cars, maybe even takes a test drive but has no intention of buying. That's the origin of the phrase.

And, I know, Lawyers HATE this analogy; but to some extent your job as a lawyer is to close the deal. On every car lot you've got several salespeople. And they keep a "board" a whiteboard with each sales person's name on it and the number of deals they have closed each month. And on nearly every lot, one person, usually a man, but not always, has considerably more sales than anyone else; you have a dozen sales people, most of them may have 3, 4, sales a month, maybe one guy has 6 but Frank over there has 12. or 15, or 20.

He outsells every other salesman on the lot and he may outsell all of them put together, particularly if it's a small lot. He closes the deal. Or he ends the sales pitch when he sees someone is a tirekicker. Someone comes on the lot, the 'next' salesman gets them. They work in rotation. When it's Franks turn, he quickly determines whether he can sell the person. If he decides he's a tire kicker, he gets rid of them. And he moves back into rotation, he doesn't spend a lot of time on a sale he can't make. If, however, he thinks he can make a sale, he pushes it. And he's good at it. Maybe it's high pressure, maybe it's flattery, maybe it's appealing to what the person wants or needs; oh, you've got three small kids, tell you what I got a minivan here. Middle aged guy without a wedding ring, Oh, let me show you this convertible, nice Miata, fun to drive and you'd look good in it. Blue collar guy, I got a deal on a nice used Pickup. Whatever. And he sells. Technique varies but he sells and he outsells the other salesfolk. He sizes up the potential customers; he doesn't always make a sale but he makes more sales than anyone.

I get that lawyers don't like to think of themselves as used car salesmen and I don't blame them. But there are ALL SORTS of techniques of sales, depending on the product and the customer. High End Stuff, Veblen Goods sales techniques for them are very different than for laundry detergent. Veblen goods are types of luxury goods[https://en.wikipedia.org/wiki/Luxury_goods] for which the quantity demanded increases as the price increases, an apparent contradiction of the law of demand[https://en.wikipedia.org/wiki/Law_of_demand], resulting in an upward-sloping demand curve https://en.wikipedia.org/wiki/Veblen_good[https://en.wikipedia.org/wiki/Veblen_good]

Think, Rolex Watches. Or Louis Vuitton. Rolex is a nice watch; but nobody buys it to tell time. Likewise, Vuitton luggage, that's nice luggage but it doesn't do any better than American Tourister.

And sales in law; there's all sorts of approaches. The big PI mills, you know the type; "Insurance Companies Fear Us because we take stuff to trial. We Fight for You" "I got Client X \$YYYYYYY at trial". But business law, different approach, family law, a third approach.

There's nothing inherently wrong with sales in law; it's a fact of life; you might not like calling it sales but that's what it comes down to.

And my overreaching point is, not all lawyers are good at this; it can be developed and it can be done without screaming or being unethical; it's showing the client what you can do for them for what they are paying you. That's all sales is; why should you, client, pay me your money; but if you can't answer that question, you are going to have trouble staying in business.

Ronald Jones
