

Article

Litigators: The New Business Advisers

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Every commercial dispute is a business problem requiring a business solution. The gun for hire narrative has plagued litigators for decades. Clients have used litigators when trouble arises, and once the trouble has been solved, litigators—for the most part—provide no further value to the client. Clients have expanded their interests in what they expect from their attorneys. A major interest that is sweeping throughout boardrooms across the nation is the need for lawyers to do more than just solve disputes. Instead, there is a need for litigators to become business advisers and effective risk managers. Litigators must use the law as a tool to provide value-based solutions to clients' commercial disputes while also providing risk assessments that provide long-term value to prevent future disputes from arising. In "Winning Legally," Constance Bagley discusses how the law can be used as a tool to create value rather than be a hindrance. She says, "the legal system embodies the rules of the game within which managers work to create value and manage risk." Additionally, commercial clients are becoming more aggressive about overseeing their attorneys' billables. To break from the stereotypical "gun for hire" stigma, litigators must become effective business advisers who provide business solutions—not just settle legal disputes.

The law is viewed as a system that must be complied with rather than a system that encompasses opportunities that clients use to maximize and achieve their business objectives. The private equity industry has seen a great deal of new compliance laws in recent years. Instead of constantly defending their clients against these compliance laws, litigators must collaborate with their clients to embrace the new compliance rules and create a strategy that maximizes their business goals and provide value to their stakeholders, while minimizing legal risk. Litigators with financial entities as clients need to be abreast of ways that cryptocurrency laws are affecting the financial industry, so that they can provide a strategy that allows their clients to capitalize off the digital currency. Understanding the impact that law and government have on the market provide litigators the opportunity to become effective business advisers to their clients and help create a value-based strategy that clients can effectively implement within the industry.

In "Winning Legally," Bagley states, "law helps shape the firm's external relationships with customers, suppliers, competitors and complementors, that is players who cause customers to value another firm's products and services more." To illustrate, lobbying requires companies to understand the laws regulating their business and industry and the policies behind them. Companies like Federal Express, Apple, Google and others have successfully obtained favorable outcomes from lobbying within their respective industry. Arguably the companies' finances play a major part in these changes, which could be true, however, it must be acknowledged that these companies use the law to maximize their business objectives and formed effective external relationships with lawmakers.

Litigators are more than preventive measures. Litigation is so adversarial that attorneys became defensive tools. Yet litigators hold a risk assessment mindset that is essential for the offensive side of the law—where the attorney and the client collaborate to strategize on business goals. During a time when everyone is vying for the largest market share percentage, companies are doing the same things to achieve that goal: cutting prices to offer their service for a lower price, advertising and expanding their target markets or trying to make a cheaper product so they can obtain higher margins. Using the law as a strategy is not expected. Usually, the law is seen has a hindrance not an asset. Litigators partnering with their clients to create a value-based strategy that encompasses the law as an asset is not expected. An effective litigator will use the new laws that affect their

client's industry and partner with their client to create a strategy that will minimize business and legal risks and maximize the client's goals. Clients will become more transparent to stakeholders, less evasive in board meetings, more secure of its digital assets and intellectual property, and their external and internal relationships will flourish. Business astute litigators will see the advantage of advising their clients to form business initiatives that maximize the clients' value prior to any legal disputes arising.

To litigate effectively, a litigator must have some knowledge of their client's industry and a lot of knowledge of their client's business practices to best defend their client's position. An effective business adviser is knowledgeable about their client's industry and business practices like they were a participant in the same industry. When litigators become effective business advisers, more legal disputes will be prevented. Clients will be involved in fewer legal disputes because the litigator partnered with the client and prepared a strategy that reduces the client's legal risk. The same way litigators create a settlement strategy and a litigation strategy when they are hired to defend their client in a litigation dispute, the litigator must develop a business strategy and a risk assessment strategy in the same vein. The legal strategy must be inseparable from the business strategy.

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