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Choosing – and Working with – Lawyers: What Entrepreneurs Should Know and Expect

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If VCs are often seen as a bane of the entrepreneurial existence, lawyers are not far behind. This is a shame, because lawyers – at least good ones – can add a lot of value to start-ups and emerging companies. Of course, bad lawyers – like bad VCs – can subtract a lot of value and potentially derail an otherwise worthwhile venture. So today, I would like to provide my insights on how to select a start-up lawyer, and what each entrepreneur should expect from them.

What to Look for in Start-up Counsel

Good start-up lawyers share several distinguishing traits. They spend most of their time working in the start-up space; they are business and tech savvy; they have access to diverse legal resources; they are good legal managers; and last, but not least, they are good communicators.

Specialization. Every good high-risk/reward start-up lawyer I've encountered in my more than thirty years in the sector as counsel, entrepreneur, and investor spent most of their professional time in the emerging company and investor space. It's an unusual corner of the business world. A corner characterized by higher-risk tolerance than other businesses; hockey-stick growth objectives; severe resource constraints (talent, time, and capital); and rapidly evolving, diverse and often complex business and legal challenges. Being a good start-up lawyer isn't necessarily harder than being a good lawyer in any number of other areas, but it is different, and it pays to work with a lawyer who spends most of their time in it.

Business/Tech Savvy. High-risk/reward emerging companies are unusual in that their legal needs are comparable – in terms of complexity and diversity, if not early on volume – to larger more established businesses (often competitors) and their tolerance for risk is higher. This difference is important in and of itself, but becomes even more so when you factor in that most larger, more established businesses have an in-house lawyer serving in the "General Counsel" (GC) role,

while most start-ups and emerging companies don't have any in-house lawyers, much less a GC.

The GC role is critical for both established and startup businesses. The GC is responsible for making sure that the company's legal work – whether done by lawyers inside or outside the company – reflects a solid understanding of the company's business environment, including the competitive landscape and technology. GCs are strategic thinkers with responsibility for understanding, shaping and delivering legal support that is closely aligned with their client's larger business objectives.

Being a good GC is difficult and, frankly, the really good ones are rare. It's even more difficult where the GC, as with most startups, is not working inside the business but at an outside firm. Not only are they not immersed on-site in the business, but they also have multiple clients, often across diverse industries and stages of development. The bottom line: make sure your primary outside legal counsel is curious about your company's business and technology; curious enough to be part of your business team, not just your legal eagle.

Access to Diverse Legal Resources. Most raw start-ups have common legal needs which, while they cover several subjects (IP, corporate, transactional) are quite familiar to most good start-up lawyers. As start-ups evolve, their legal needs typically become both more diverse and more complex (and just plain more), and eventually, beyond any one lawyer's comfort zone.

It is possible, of course, for emerging companies to engage several legal firms as counsel, depending on particular legal needs. It is even common (though not as common as in the past) for emerging companies to bifurcate their legal work between a general law firm and an IP firm. That said, managing outside legal resources is more complex (and thus usually more expensive and less effective) when multiple law firms are involved: particularly, if more than one of those firms thinks of itself as serving as, in effect, the client's GC. Thus, in general, it makes sense to look for a startup lawyer who can fill the GC role and has access to most, if not all of the legal capabilities that the emerging company is likely to need as it grows and evolves within her firm. It's just easier. And more efficient.

Good Legal Managers. While many lawyers in the GC role (often thought as the "Relationship Lawyer" (RL) when working outside the company) are good technical lawyers, much of their time is spent managing other lawyers. As an emerging company grows, and its legal needs become more diverse and complex, the ratio of managing to lawyering increases for most GCs, whether inside or outside the firm. Good GCs must be adept at recognizing when a situation is ripe for bringing in additional lawyers to handle specific matters and issues; figuring out who those lawyers are; and managing those lawyers to make sure their work is consistent with the GC's understanding of the company's business environment (including resource constraints and risk tolerance).

One other thing I have learned in my thirty-plus years in and around high-risk/reward emerging companies, it's that most lawyers are lousy managers. As you consider your choice of outside counsel, explore their attitudes about working with, and managing outside lawyers, and confirm who, in all events, will be the GC/Relationship Lawyer (GC/RL) for your company.

Good Communicators. Earlier, I talked about the importance, in terms of framing legal advice, of the emerging company GC/RL having a solid understanding of the business and technology of the company. The best legal analysis and advice on any given set of legal facts can vary greatly depending on the client's business situation and objectives.

Good emerging company GCs/RLs have two particular communications traits that entrepreneurs should seek out. First, they can explain alternative legal options in the context of the client's business and technology environment, objectives, and risk tolerance. They should also be able to say – and inspire trust and confidence when they do – not what the “right” answer is, but what, in the context of the particular business situation, they would do if it was (it's not) their decision to make. (And then, whatever the decision, to implement it faithfully – but that is another story).

The second communications trait is a bit more esoteric, but can be particularly valuable in the early life of a start-up, when a sometimes tech-heavy team/pitch is charged with raising risk capital. The best start-up lawyers are adept at “translating” tech-talk for investors and other business folks, and translating investment/business-speak for technologists. These stars are critical entrepreneur allies in the fund-raising and team-building areas, helping entrepreneurs – and investors – get their messages across more effectively. And thus, make deals cheaper, better, and faster.

What to Expect from Start-up Counsel

Your expectations of your start-up lawyer are largely baked into the selection criteria discussed above. There, however, some additional, less obvious points worth noting.

Integration with Start-up Team. Good emerging company lawyering starts with understanding the business including the technology, at least at a basic level. And that can only happen when the lawyer is viewed as a part of the core business team, and not as an outsider. Your start-up lawyer – at least the lawyer in the GC/RL role – must be, and be viewed by the other members of the core team as - a colleague, not a service provider. Team integration facilitates better analysis and counsel, and also empowers early recognition – and thus preparation for – emerging legal issues.

One practical tip: look for lawyers with generous policies for attending board meetings at little or no charge, particularly in the early “lean” years. Also, for lawyers that want to see your investor pitch materials and business plans – and have meaningful comments on the same.

Understand and Comfortable with Start-up Financial Cycles. Most start-ups start with empty pockets, and many endure repeated financial challenges associated with negative cash flow that can go on for years. Good start-up lawyers know that (often all too well), and adjust their own financial expectations accordingly. Most are accustomed to getting ahead of their clients' ability to pay, and are careful to manage client expectations regarding the (usually generous) limits of their flexibility. You can't, as they say, squeeze blood from a turnip.

In light of the above, your start-up lawyer should have good judgment about what issues require immediate attention and what can be put off; and when an issue does require attention, how much attention (which is to say how much legal expense) it warrants. In both cases, of course, with appropriate communication and discussion with the client. These decisions are not for the lawyer to make – but they are very much for the lawyer to advise on.

Finally, a couple of tips for spotting lawyers with this trait. First, look for lawyers who triage potential clients the way venture investors do. Which is to say that understand that their client roster is best thought

of as a portfolio of investments only some of which will ultimately produce meaningful revenue, and those usually not for some period of time. That point of view makes them selective about who they include in their portfolio, focusing on long-term potential rather than near term fees.

Second, look for lawyers who, while flexible about when A/R is made good, are transparent about how A/R stands from month to month (or even week-to-week in some scenarios). Lawyers who, when confronted with a client determined to execute a particular legal strategy, are themselves determined to make sure the client understands the financial ramifications of that strategy – win, lose, or draw.

Creative and Connected. Your lawyer is not – hopefully – the first place you turn for important new business, financial, technology, or team ideas or connections. On the other hand, if they don't regularly have some at least interesting ideas and connections (or useful reactions to yours) you should think about getting new counsel.

Your lawyer, of course, is not responsible for these diverse areas, but they should be a resource. After all, by virtue of specializing in the high-risk/reward entrepreneurship and investing space, they should have extensive networks in all of these areas; networks they should have learned from, and should be both able and willing to share those connections and that learning.

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