

TELL ME WHAT I WANT TO HEAR

But I Also Want To Hear The Truth

Column: David Lefkowitz

I am afraid to fly. I haven't always been that way. I remember the first time I was in an airplane, and we passed through the clouds. Looking down at the clouds was one of the most amazing things I had ever seen. Years later, I was on a very small plane, and one of the propellers burst into flames as we were racing down the runway, preparing to take off. The pilot slowed the plane down, brought it to a stop, and the eight passengers deplaned. I boarded another plane 45 minutes later, and I didn't think twice about it. However, sometime in the past few years, without any particular reason (that I know of), I became one of those passengers whose palms sweat at the slightest bit of turbulence. And those dastardly drops that feel like 500 feet, but are probably only five, make my heart race.

One of my friends is an amateur pilot, and he likes to regale me with stories about close-calls he has experienced when flying a plane. He usually does this while we are on our annual flight to/from Las Vegas. At around the same time that the first bumps have caused my blood pressure to rise, he starts telling me about the time the wind was blowing so hard that he didn't know how the plane actually landed on the runway. He tells me these stories because he sees no fear in flying. Aerodynamics make perfect sense to him. My fear is unreasonable and, to him, probably a bit humorous.

I have another friend who is a former Delta pilot. We were enjoying a cold beverage one evening, when I brought up the topic of flying. I told him that I had been on a recent flight, and the turbulence seemed unusually bad to me. I explained that the pilot had instructed

the flight attendants to take a seat and discontinue their cabin service. "Oh yeah," he said, "that means the turbulence was pretty bad." He didn't try to convince me my fear was unfounded, but I wanted him to, so I kept going. "Those large planes can withstand most any wind, can't they?" "Not necessarily," he said. "Sometimes the wind can really damage the plane." Not the answer I was looking for. I was unwilling to end the conversation without some reassurance that my fear of flying is silly, so I came right out and told him that I am scared to fly. He responded, "I don't blame you." Gee, thanks.

I want to be told that flying is safe. But when I hear it, I am not reassured. I also want to know that my fears are reasonable. Everyone wants their feelings to be validated. I think these contradictory desires are typical of human nature. I want you to tell me the truth. But sometimes, perhaps, I would rather you tell me what I want to hear.

When clients seek legal counsel, they often face the same conundrum. They want to hear the truth. But wait, that's not all they want to hear. They want to hear that they are right because that is reassuring. There are many times that the truth is the correct answer, and it is exactly what the client wants to hear. There are other times, however, when the client's expectations as to the results a lawyer can obtain are far removed from reality. These are some of the most challenging circumstances for both lawyers and clients. In the continuing legal education seminars I teach, I try to help lawyers deal with and manage the expectations of their clients, particularly when the expectations may not be reasonable. Clients (and prospective clients) also can use some guidance concerning the

expectations they bring into the attorney-client relationship.

When you are consulting with a lawyer, you should do your best to allow the lawyer to guide your expectations. Perhaps you have been injured, and you are interviewing an attorney to decide if you want to hire her. It is human nature for you to want to hear that your case is strong and to hear that you will obtain a generous recovery which will compensate you for your injuries. (And it is human nature for the lawyer to be tempted to tell you what you want to hear, so you will hire her, rather than seeking another opinion.) A good lawyer will advise you of the good, the bad and the ugly on any matter. You should resist the temptation to try to convince your lawyer that the merits of your legal position are better than she is indicating. This is not to say that you should agree with everything your lawyer says; you shouldn't. But you should listen carefully, particularly when she tells you something that you don't want to hear. The same is true if you seek representation for a business transaction. The odds are that you have reached some conclusions regarding the merits of the transaction before consulting with a lawyer. Listen very carefully to the advice, and pay particular attention to the information that you really don't want to hear (such as the risks associated with the transaction). A good lawyer is going to tell you what you don't want to hear because that is more important than rubber-stamping the point of view that you had when you began the meeting. If you are meeting with a lawyer who simply nods her head in agreement at everything you say, and she has nothing to say that is new or surprising to you, you likely are not receiving the full benefit of a lawyer's expert

advocacy, which, in my view, requires an important skill: being a devil's advocate.

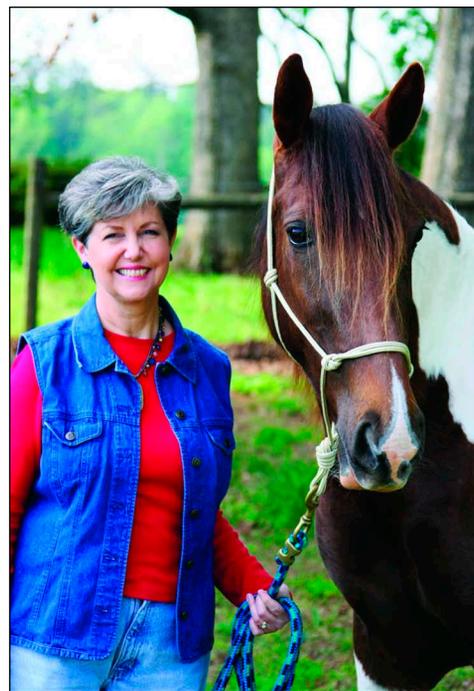
There are times during the attorney-client relationship when the client may feel like he is butting heads with his attorney. These can be frustrating moments because the client naturally wants reassurance that the legal matter is moving along towards a favorable resolution. In litigation, a lawyer often forges forward on behalf of the client, and then, at some point, the lawyer switches into settlement mode. This can be confusing, or shocking, to the client who wants the matter handled with zeal and urgency. However, the fact is that more than 95 percent of all cases settle. (This includes criminal matters, where a settlement is referred to as a plea bargain.) The court system is overwhelmed with cases. The statutory rules of litigation have been crafted to encourage settlement. The parties must disclose the facts that support their case. They must disclose their witnesses. They must turn over relevant documents. The days of Perry Mason, where the secret witness dramatically appears towards the end of a trial, are over. The reason that parties in litigation are required to turn over all important facts and documents during the "discovery" process is that the courts are not equipped to conduct a trial on every single matter. The fair administration of justice requires that parties usually resolve their dispute through a compromise. If parties do not move in that direction prior to trial, the judge is generally going to nudge...or thrust...the parties in that direction, with some not-so-subtle direction to resolve the matter and not use the resources of the judicial system on a matter that can be resolved. As such, there comes a time in every case where settlement must be considered. Sometimes a client feels that his lawyer has made a sudden transition

from warrior to pacifist. In fact, being an advocate for the client and being an advocate for a compromise is entirely consistent for an attorney. Listen closely to your lawyer when this happens, even if it is not what you want to hear.

A change in course and tone, in any legal context, is important. Sometimes your lawyer's tone may change. Other times, the lawyer is consistent, and it the client's expectations must change. The advice you receive may not be what you want to hear, but it probably is the truth. And even though our tendency is to be reassured by hearing what you want to hear, it is, in the end, better to hear the truth. □



David Lefkowitz is the founder of The Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at LefkowitzFirm.com.



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