

# THE HONEST GUIDE TO HIRING THE BEST CRIMINAL DEFENSE ATTORNEY



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# HOW TO FIND THE RIGHT CRIMINAL DEFENSE ATTORNEY (The Truth Behind The Marketing)

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## Why I'm A Defense Attorney

Atticus Finch is the fictional patron saint of defense attorneys. In a racist town, he had the courage to stand up for a black man at great risk to himself and his family. The Atticus character is rightly viewed as heroic. But in one sense, Atticus had it easy. He was fighting for a truly innocent man who was getting railroaded. What if Tom Robinson had been guilty? What if he had been the rapist that the town claimed he was? Would Atticus still have been a hero to stand up to defend him?

I'm not Atticus Finch. I would like to think that I'm a nice, normal guy. In the morning, my wife and I wake up the kids and get breakfast ready before walking them to the bus stop. At night, we brush their teeth and read bedtime stories before tucking them in for the night. In between when I'm at work, I represent people charged with crimes. Sometimes I represent people who have done some pretty awful things. "Why do you defend those people?" is a question so familiar to defense attorneys that it's called simply "the question." Different criminal defense attorneys have different answers to "the question." I don't pretend to speak for everyone. This is simply my best effort to explain what drives me.

I never planned on being a criminal defense attorney. I liked criminal law in law school and figured that I wanted to be a

prosecutor. I wanted to be the guy in the white hat putting bad guys away, not helping them get away. When I graduated, I applied to several local prosecutors' offices. I also happened to see an ad in the Virginia Lawyer's Weekly for an opening in the Virginia Beach Public Defender's Office. It's my hometown, and the prosecutors' offices weren't exactly beating down my door so I figured what the hell. I interviewed and was offered the job the next day. I honestly looked at it as a stepping stone to being a prosecutor. Instead, it completely changed the course of my life.

A funny thing happened when I started representing criminal clients. It turned out that I liked most of them. I discovered that the line between us and "them" is often very thin. But for a drug addiction; But for desperation; But for being young and impulsive; But for a night of heavy drinking, a lot of these people would be the same as you or me. When you look "them" in the eyes or when their crying mother begs you to save her son, it's easy to find common humanity. In some cases, it's obviously easier than others. I've been convinced in some cases that my clients are actually innocent. In those cases, it's very easy to summon passion and outrage and to fight like hell for my clients. Mistaken ID cases; cases where witnesses are lying; cases where the government's forensic evidence is actually B.S.. All of these happen. These are the cases that defense attorneys live for.

But the truth is that those types of cases represent a fairly small percentage. Most of the people I represent are guilty of something. Why do I still fight for those people? The answer depends on the case. In some cases, people are charged with crimes greater than the ones they actually committed. In other cases, the government is pursuing a punishment far greater than what's warranted. If defense attorneys decided to walk away, the government would get to do whatever it wanted in every case which is a very scary prospect. Already draconian punishments would get even worse. People who didn't need to be felons would have their lives ruined. A completely unchecked government is a frightening concept, and I'm happy to be part of the opposition.

Some of you might now be thinking, "OK, I can understand defending the innocent, the over-charged, and the over-punished, but what about the really bad ones? Why do you defend murderers, rapists, and pedophiles who are guilty as sin? Why do you choose to stand next to the scum of the earth?" The answer is a simple one: I do it because it's my responsibility. It comes with the territory of being a defense attorney. If I phoned it in because I thought a client was guilty, it would make me the worst kind of coward. Look, it's not always pleasant. Cross-examining a child witness in a molestation case isn't fun. But I do it because I'm a professional. Who am I to say whether a man is guilty or innocent? Who am I to determine what a fair punishment is? What I do know is that every person accused deserves at least one

person standing up for them. We can't hope to have a system with any integrity unless people step up to the plate to take on that calling. And I'll tell you something amazing, my experience has been that even the victims of awful crimes understand this. I've been comforted by rape victims outside the courtroom who could see that I was distraught when my client was convicted. I've been comforted by the families of a murder victim who could see that I was devastated that my client was sentenced to life. They respected that I had a job to do and that I fought with every ounce of my energy for my client.

Defending people has become a way of life for me. I couldn't look at myself in the mirror if I didn't give it my best shot no matter who the client is and what the government says he did.

## **LESSON # 1: WHAT'S THE DIFFERENCE BETWEEN A PRIVATE ATTORNEY AND A PUBLIC DEFENDER?**

As criminal defense attorneys in private practice, we've come to fully appreciate the powerful social stigma attached to public defenders. A fairly typical consultation for us goes something like this:

Client: I need to hire you. I can't be represented by a public defender.

Us: Who is representing you?

Client: [fill in the name of public defender]

Us: She/He is a great attorney. I would hire them to represent me if I was in trouble.

Client: Yeah, but I can't be represented by a public defender.

Us: You know that both of us were longtime public defenders right?

Client: But you're not anymore, and I need a private lawyer.

This probably doesn't help our business as private attorneys, but we want to set the record straight. The simple fact is that there is no better way to learn how to be a successful defense attorney than being a public defender. It's an occupation that throws you straight into the deep end of the courtroom and forces you to learn how to swim. Public defenders get more cases and more trial experience than anyone else. Let us make our point very clear: **Good public defenders are real lawyers. The realest lawyers. There are PDs who are better lawyers than almost any private attorney out there.**



That being said, some of the rumors about PDs are true: they are underpaid, overworked, underappreciated, and under-resourced. They bust their asses day in and day out and get little to no respect. Their clients have no trouble telling them they're worthless and that a real attorney would "beat this case easy." Even polite and educated society disrespect public defenders. Tell people at a dinner party that you're a public defender, and you're going to hear comments like, "You have to start somewhere," "Maybe after a couple of years you can be a prosecutor," etc. Despite some minimal lip service to the contrary, politicians also don't value public defenders. In short, it's politically unpopular for people in power to advocate for tax dollars to be used towards providing stellar representation for criminal defendants (especially poor ones who can't/don't vote). Securing tax dollars in the pursuit of being "tough on crime" is way more palatable.

As a sad consequence, a lot of high quality public defenders don't stick around for the long term. And who can blame them? It takes an almost inhuman level of dedication to make a career out of something that society doesn't value at a fraction of your market value. In our experience, the result is that most public defenders will fall into one of a few different categories:

One category is the true believers. These are the attorneys who have an undying passion to help the needy. They are highly qualified, believe in indigent defense, work extra hours, and value

the impact they have on society. They respect the Constitution and show up to court ready to fight the good fight even if it means walking into a judicial buzzsaw. They believe that everyone deserves the best defense possible and, of course, they are ABSOLUTELY right.

Another category would be the eager to learn PD attorneys. They realize that there is no better way to become a great attorney than by being in court as much as possible and fighting whenever they can. They LOVE the good fight in the PD's office because it teaches them how to throw a nasty right hook (and how to take one too). They are ambitious, well-prepared, and consider themselves students of the game. Some attorneys in this category will fall in love with indigent defense and stick around. However, simple economics dictate that most leave to make more money in the private world once they've honed their skills.

The most unfortunate category is the comfort-zone lifers. This is the group that gives PDs a bad name. This group sticks around for less than ideal reasons like: the job has good health benefits, they know it's damn near impossible to get fired from a state job... and so on and so on. These are the attorneys that you don't want on your case. They've stopped doing the job (if they ever did it) and have become part of the conviction machine. They feel no shame pleading clients on an assembly line and rationalize why they haven't had a jury trial in 5 years. The awful truth is that they

almost never get fired and bring home the same paycheck as the PDs who actually put in the hard work of trials and appeals.

So where does that leave a criminal defendant? If a family member or friend has the means to pony up for a private attorney, should they ditch the PD? The answer isn't always black and white. Our abbreviated attempt at a pros/cons list of having a private attorney over a public defender would be this:

PROS (of hiring a private attorney over having a PD):

- Good private attorneys will give you more personal attention. When we were PDs, we each typically carried caseloads of between 120-150 felony clients at any given time. A former public defender who we greatly admire compared being a PD to being a triage nurse. You have to make an assessment of which clients are in the direst need of your attention and the rest often get pushed to the back burner. Private attorneys, on the other hand, handle far fewer serious cases and are competing with other attorneys for your money. That means that successful private attorneys don't necessarily adhere to 9 to 5 hours and are more likely to make themselves available to address your concerns -- no matter how critical or trivial (after all, that's what you're paying them for).

- You can choose your attorney. If you're appointed a PD, you might get top-of-the-line representation but you also might get a schmuck. I doubt many in the PD world would dispute this point. Many are rock stars and some are duds. Of course, there are many in between. But the reality is, the court appoints you to the PD's office, the PD's office assigns an attorney, and you're stuck with who you've got. If you come to us or any other private defense attorney, you show up for a consultation, chat with us, and if you don't like us, you just hire someone else (or go with the PD's office if you qualify). Having the option of choosing an attorney you're comfortable with is an amazing luxury to have when your liberty is on the line.
- Public defenders are overworked and overextended. Well at least the good ones are because they're always trying to fight for their clients -- all 120-150 of them. But no matter how great you are as an attorney, if you have more cases than you can handle, you're bound to slip up from time to time. In the PD world, cases and clients will, by necessity, become prioritized based on the PD's very finite resources of time and attention. The pay provided by the Commonwealth of Virginia (about \$51,000 for an assistant PD with minimal opportunity for advancement) is a joke and leads to frequent turnover. Honestly, it's a pathetic shame that Virginia does not better prioritize the rights of indigent defendants.

## CONS (of hiring a private attorney over a PD):

- There are many great public defenders. If you get one of these studs, your case will likely be handled thoroughly and competently. These attorneys make time to ensure they're prepared when they appear in front of a judge. Doesn't necessarily mean they'll give you peace of mind by returning all of your calls but they WILL be ready to go on your court date.
- Public defenders know their judges. Public defenders usually only practice in one city or county so that means they get to know all the idiosyncrasies and tendencies of the judges better than anyone else. Knowledge of these tendencies can be critical in a case. Some judges will take an argument like, "Hey judge, it was just some marijuana," with a smile and an approving nod while other judges will BURY YOU AND YOUR SUPPORT OF ILLEGAL ACTIVITIES (along with your reputation) UNDER THE COURTHOUSE. Being "in the know" about the judge can make all the difference. Truth is, we often ask the PDs for intel when we find ourselves in an unfamiliar jurisdiction.
- Public defenders don't cost as much. If you win, you don't pay anything. If you lose, your court costs are still probably

way less than what you'd pay a private attorney. There might be some truth to the old saying, "you get what you pay for," but for all the reasons in this post, you might luck out by being able to have your cake and eat it too if you go with the PD's office.

We have the utmost respect for the competent, well-prepared public defender. Anyone who says otherwise either hates poor people or hates the United States Constitution. The posting for the PD's job description is pretty much listed in the Sixth Amendment of the Bill of Rights. With that very full disclosure, we also know from decades of experience in the trenches that not all public defenders are created equal and that some clients are better served by private representation.

If you have decided that you're in the market for a private defense attorney, the first thing you should do is:

## **IGNORE ATTORNEY MARKETING**

If you google "[fill in the name of the city] criminal defense attorneys" you're going to see a lot of results.

Some of the attorneys appearing on your screen will be excellent. Some will be far less than excellent. The lawyer fresh out of a bottom tier law school and the seasoned courtroom veteran with decades of trial experience look the same in a google result.

How can you tell the difference between the real deals from the poseurs?

First of all, here are some things you should ignore:

### **1. Avvo Rating**

Avvo is a web company based in Seattle that has received well over \$100 million dollars in venture capital money with the aspiration to be the “Yelp” of the legal services world. We live in an age where everybody looks at star ratings and reviews before purchasing anything, so Avvo’s appeal is understandable.

However, the reality is that their rating system is a meaningless gimmick. The rating is based on an algorithm that can be easily gamed so that many less than excellent lawyers gain a 5-star rating. Let me be clear: there are great attorneys with high Avvo ratings (including us), and there are lousy attorneys with high Avvo ratings.

The point is that one has nothing to do with the other.

### **2. Awards**

There are some criminal defense attorneys who claim to be "award winning." Their websites are festooned with little gold stars and ribbons. It certainly sounds impressive. Sorry to ruin the lovely image, but lawyer awards are a joke. We don't hand out trophies in this business.

Almost all of these "awards" are marketing scams. The attorney sends a check every year to a P.O. Box, and in exchange gets a certificate proclaiming that he or she is a "Superstar Rising Premier Attorney Deluxe!"

These scams endure because clients don't know any better, and because some attorneys are so pathetic that they actually think these things are worth something.

### **3. Don't Believe Promises That Are Too Good to be True**

"What's going to happen in my case?"

That's usually one of the first questions that we're asked by clients. And duh, We get it. Of course, that's why they called us.

However, there is usually no reliable answer in the first client interview. There are many, many variables in every case. The strength of the evidence, your prior record, the particular prosecutor, the particular judge, whether there are suppression issues, etc, etc. etc.

**Anybody who talks to you and tells you that they're going to get your case dismissed or promises a specific outcome during the first interview is lying to you.** If an attorney tells you that your case is "easy" or promises you a specific result the first time you speak to them, move on.

We can't count how many cases we've had where a client was duped into hiring someone else based on false promises, only to



come back to us later (a couple thousand dollars lighter) on to clean up the mess.

#### **4. Don't Base Your Decision on Low-ball Fees**

Everybody would prefer if an experienced and competent attorney fell into their lap for free.

Sorry, it's not going to happen.

When you hire a good defense attorney, you're paying for wisdom, perspective, and seasoning developed over thousands of cases and decades of work. Good representation costs money. If an attorney is quoting you the lowest price in town, they're probably either desperate, or not very good.

You should absolutely call around to compare fees, but if your only criteria is hiring the cheapest lawyer you can find, you're doing it wrong.

#### **5. Don't Believe That Former Prosecutors Have An "In"**

You are going to find a number of attorneys who market themselves as former prosecutors. Some are legitimately experienced former prosecutors, who have become outstanding defense attorneys. Others were in the prosecutor's office just long enough to get a cup of coffee.

We're not saying that you shouldn't hire a former prosecutor (some of whom are among the best defense lawyers out there), but rather that you should be cautious of this sales tactic. If the

attorney's sales pitch is that they have extra influence in the prosecutor's office, they're probably full of it.

The truth is that all defense attorneys know the prosecutors. Most of us have friendly working relationships with the prosecutors, and consider many of them to be friends. But the reality is that prosecutors don't dismiss cases because they like or used to work with the defense attorney.

**6. Don't hire a lawyer who says that it's urgent that you hire them immediately.**

We've encountered some attorneys who will pressure clients to hire them by suggesting that time is of the essence in getting some sort of amazing result. This is almost never true. If you've already been charged, another few days isn't going to make or break your case. If an attorney is putting the pressure on you to hire them right away, they're not the right attorney for you. The best attorneys will encourage you to shop around because they're confident that you'll come back to them in the end.

*So attorney marketing is mostly B.S. Then how do I find a real deal criminal defense attorney?*

# HOW TO FIND THE RIGHT PRIVATE DEFENSE ATTORNEY FOR YOUR CASE

If you're in the market for a private criminal defense attorney, it goes without saying that you want to hire the best. But how does one find the best? The answer is not as simple or straightforward as some might think. The truth is that there is no such thing as the best lawyer for every case. The seasoned and brilliant trial attorney with decades of experience in front of juries might be your best bet for a murder case. That same brilliant attorney might not know the first thing about DUIs. Every lawyer, no matter how celebrated or successful, has strengths and weaknesses.

Our purpose is to help you find the right attorney for your specific circumstances. If you've started looking for attorneys with a google search, it's important to realize that being on the first page of google tells you nothing about the quality of an attorney. Anybody can post a website with his scowling photo in front of the courthouse and claim to be "aggressive" and "experienced." The stakes for someone charged with a criminal offense are extremely high. Your choice of attorney can potentially determine whether you are convicted, whether you are convicted of a felony, whether you go to prison, and for how long you go to prison. This is a big life decision. If you're doing it right, you need to put serious time and effort into finding the right attorney for your specific case.

When you find a lawyer you're considering, schedule a face to face meeting with him or her before hiring them. When you do meet with a prospective defense attorney, we suggest asking some of the following questions:

**1. What percentage of your practice is criminal defense?**

Unless the answer is close to 100%, you should look elsewhere. The lawyers who handle nothing but criminal cases are going to be the ones who know the judges, the prosecutors, and the relevant law. They're going to know which defenses fly and which ones don't. They're going to know if there are alternative punishments that can keep you out of jail. You can't afford to be represented by someone who is "moonlighting" as a criminal defense attorney.

**2. How much of your practice is in the city where I'm charged?**

Practicing in different cities can be radically different. We practice primarily in Virginia Beach where there are over forty prosecutors and eight different circuit court judges. We've been to several other jurisdictions where there are literally one or two prosecutors and a single judge hears every case. Even within the same city, different judges can have very different perspectives on what constitutes reasonable doubt, and reasonable punishment.

That's why it's important for you to have an attorney who practices frequently in the city where you've been charged. Those attorneys know how the local judges and prosecutors think better than anyone.

**3. Do you have experience as either a public defender or a prosecutor? Did you work in the city where I'm charged?**

For a young attorney, being a public defender or prosecutor are easily the two best ways to becoming a real deal criminal attorney. These are the people who work in the criminal court trenches every day and try more cases than anyone. In my experience, the best criminal defense attorneys overwhelmingly practiced as one or the other early in their career.

**4. What kind of trial experience do you have? When is the last time you tried a felony case? (This is relevant for all cases but is particularly important for felony cases.)**

There are a shocking number of lawyers who market themselves as experienced criminal defense attorneys who have almost no serious trial experience whatsoever. You may find that hard to believe but it is absolutely true. There are so-called defense attorneys who would be completely out of their depth if actually forced to take a case to trial.

Believe me when I tell you that you want an attorney with significant trial experience. If an attorney lacks trial experience, he/she is operating at a tremendous disadvantage. The obvious problem is that the attorney can't competently represent you if your case goes to trial. But the problem is just as large when your case isn't heading toward a trial. What motivation does the prosecution have to give one inch in plea negotiations when faced with an opponent who never takes cases to trial? None. If the evidence against you is overwhelming, your only leverage is often a defense attorney who is willing and competent to take the case to trial.

#### **5. Do you have jury trial experience?**

Not all trial experience is created equal. An attorney might make bold claims that he/she has tried hundreds of cases. That sounds impressive but can be highly deceptive. I could make the claim of having tried over a hundred cases within a handful of months in the public defender's office. Of course, almost all of those trials were for district court misdemeanors. Was it an invaluable tool for gaining experience and sharpening trial skills? Absolutely. Would it have qualified me to handle a serious felony case after a few months of being an attorney? No.

You need an attorney with the right skill set for your situation. If you're charged with reckless driving, your case probably isn't heading toward a jury trial. If you're charged with a serious felony,

you don't want an attorney whose primary practice is traffic cases. The best attorneys out there have jury trial experience. Ask your prospective attorney how many felony cases they've taken to trial? How many of those were jury trials? Can you see sample transcripts of their work?

**6. What motions experience do you have? Do you see the possibility of filing any motions in my case?**

Many cases are determined at the "motions" phase of a case. For instance, a successful motion to suppress evidence can sabotage a prosecution's entire case. Even "losing" motions can be highly effective. A motions hearing can provide the opportunity to hear the testimony of witnesses prior to trial. A motion can set the stage for a successful appeal. A motion can make the prosecutor more likely to make a favorable offer. If an attorney ever tells you something like "motions always get denied" or that "motions never work," you should run, not walk, out of his or her office. I would also recommend asking prospective attorneys for samples of their written motions and legal memorandums.

**7. Can the attorney have an educated conversation about state sentencing guidelines?**

If you're convicted of a felony in Virginia, the state sentencing guidelines recommend what your punishment should be. The general idea is that the guidelines promote consistency in statewide sentencing so that people charged with similar crimes who have

similar records receive similar punishments whether they live in Roanoke, Richmond, or Virginia Beach. While judges have the authority to ignore the guidelines, they rarely do. Judges are required to give written explanations anytime they depart from the guidelines. The result is that state sentencing guidelines likely will be the most important factor in how much time someone convicted of a felony ends up serving. That's why it's extremely important to have an attorney experienced with the nuances of guidelines. If you're charged with a felony, you should absolutely talk to any prospective attorney about sentencing guidelines. If he/she can't have a highly educated conversation about state sentencing guidelines, you should run out of the office.

### **8. Do you have experience using expert witnesses?**

The majority of criminal cases are not going to involve expert witnesses, but a credible defense expert can be the make or break factor in certain cases. I've worked with computer forensics experts, video enhancement experts, SANE nurse experts, firearms experts, DNA experts, fingerprint experts, forensic pathology experts, alcohol blackout experts, eyewitness identification experts, and marijuana cultivation experts among others. While certainly not relevant to every case, a good expert witness can be the difference between guilt and innocence. Has your prospective attorney worked with expert witnesses? Can they give you examples? Is an expert witness possibly relevant in your case?



## **9. Do you have any appellate experience?**

How many times have you argued before the Court of Appeals and/or Supreme Court of Virginia? Nobody wants to lose their case. However, the reality is that if you take your case to trial, it might result in a conviction. A good defense attorney is already thinking about the appeal before the trial and throughout the trial. Appellate work is incredibly complicated and there are landmines everywhere. If an attorney doesn't have experience with appeals, he/she is not thinking about the record that needs to be established to give you the best chance to win on appeal. I would suggest asking your prospective attorney for samples of their appeals work and asking what sorts of appeal issues might be relevant if you lose your case.

## **9. Is your fee a “flat fee” or are there other potential costs?**

Some criminal defense attorneys charge a transparent one time flat fee that covers the cost of your entire representation from start to finish. It doesn't matter if your case ends up being complicated, gets continued four times, or requires extra work out of the courtroom.

Other criminal defense attorneys quote different fees for the separate portions of the representation. For example, you might be quoted separate fees for representation at the preliminary hearing, motion to suppress, and trial.

Other criminal defense attorneys might quote based on an hourly rate.

**We strongly encourage you to look for attorneys who quote flat fees. The reason is that you never want financial pressure to be a consideration in your decision-making process. Ever.**

Ask yourself. Do you really want to be put in a position where you can't take your case to trial because you can't afford the additional fee?

**10. Ask the attorney for an opportunity to see them in action.**

Think about it like this. Would an NFL general manager draft their future quarterback based on a website promising that "he's aggressive" and is "highly experienced?" Of course not. Should you make that decision when your freedom and future are on the line? Only if you're a moron. Ask the attorney when he/she has a big case on the docket. There is no better way to see if your prospective attorney is the real deal or just an empty suit.

*So I've found an attorney who I like? How do I get them to take my case? How can I get the best fee?*

# HOW TO GET A GOOD CRIMINAL DEFENSE ATTORNEY TO TAKE YOUR CASE AT A REASONABLE FEE

When you talk to attorneys, there are some things you'll want to avoid saying.

- Don't tell the attorney that you're broke. The attorney won't listen to anything else you have to say. This is how we feed our families.
- Don't start the conversation by saying the police were rude or violated your rights.
- Don't say you're going to sue the police.
- Don't say that it's going to be an easy case.

These are hallmarks of difficult and unrealistic clients that every criminal defense attorney can identify a mile away. Most attorneys won't touch your case with a twenty-foot pole or they will double the fee quote, because you come across as "high maintenance."

Instead, this is how you should handle yourself:

- Show up to your appointment on time and dress nicely. It immediately sets you apart from 90% of the people consulting with the attorney and sends a strong positive signal that you are someone worth taking on as a client.

- Talk about the facts of your case. Don't talk about the fee. Defense attorneys like interesting cases. We've ended up quoting ridiculously low fees just because we're interested in the issues presented by a case.
- Be painfully honest with the attorney about the facts of the case. We've heard it all. Defense attorneys don't make judgments. It's refreshing to hear a client tell us the full story, warts and all. We'll probably give you a better fee quote.
- Let the attorney know that you're realistic about your expectations. Obviously different cases have different achievable outcomes. If you were caught red handed with five kilos of coke and three AK-47s, don't come to the meeting talking about how you won't settle for anything less than a misdemeanor with no jail time. Realistic clients get better fee quotes.

## Final Thoughts

We hope that this information was useful to you. Being charged with a crime is incredibly stressful, but arming yourself with the knowledge here is one of the best things you can do.

No matter how much research you do, it is never going to be easy to choose a criminal defense attorney. If you take away one message from all of the information we've provided, it is that you

should take your time. The extra few days of talking to more than one attorney will be worth it in the end.

If you're charged in Virginia Beach or anywhere else in the Hampton Roads area, feel free to give us a call. We give free consultations, and we're always 100% honest, even when it means that we end up turning away business.



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