

## **The Practice of Law and Special Ops©**

### **Why Legal Matters are No Place for a Lay Person Alone**

**By Donald W. Hudspeth**

#### **Mistakes of the Best and Brightest**

Most of us have heard the statement by Abraham Lincoln: “A man who would be his own lawyer has a fool for a client.” But we may not realize *why* this statement is true. One reason is that the person’s reach exceeds his grasp; that is, he acts beyond his knowledge level and skill set. Somewhat ironically it is often the “best and brightest” who make this mistake (and make the worst mistakes) because they are used to being knowledgeable, competent and self-reliant.<sup>1</sup>

#### **The Practice of Law as a Variant of War.**

There are a number of other reasons why clients attempt to handle legal matters themselves. Here is a partial list of these reasons:

One, not realizing the practice of law is almost always adversarial, both in litigation and transactions.

Two, not realizing, or forgetting, that legal matters have winners and losers. Generally, what one party gains, the other party loses and vice versa.

Three, not realizing or forgetting the strategic and tactical considerations that apply in every business transaction or lawsuit.

Four, wrongly believing that a lawyer just drafts documents, not realizing that the lawyer is an agent and advocate.

Five, wrongly believing that a legal document or contract is a form, not understanding that often it is a negotiated, tactical weapon tailored to the client’s particular business and for its particular clientele.

Six, assuming that because the contract is in English (or language of choice) one understands its meaning and know what one is doing.

Seven, assuming that a contract that works for one party in one transaction, say the seller, can work for the other party, say the buyer, in the next transaction.

Eight, assuming that contract for one business industry or customer is good for another.

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<sup>1</sup> A common example of this is the stereotype of the physician as a bad investor.

Nine, assuming that a contract which is good in one state is a good contract in another state. And,

Ten, not realizing that language important to the client and transaction may not even be in the document or agreement. This is what I call “The Document Looks OK to Me Fallacy.” It takes a lawyer who practices in the area to know what should be there but isn’t.

### **The Common Thread: Like War Legal Matters Can Get You Hurt**

In general, these reasons have a common thread; that is, the failure to realize that in many ways the practice of law is war. War is a fight for territory, property or control using organized troops and weapons. Likewise, in legal matters, whether one is engaged in a lawsuit or doing a deal, the parties are adversarial and (should be) represented by their advocates. In legal matters the troops are the lawyers and their assistants. Their weapons are the law, legal argument and, in litigation, the Rules of Civil Procedure.<sup>2</sup> In legal matters, as in war, something is gained or lost, and someone wins and someone loses. Because the law is like war in these significant respects a “lay person” has no business being in the arena or on the “battlefield” without the guidance and protection provided by a lawyer.<sup>3</sup>

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<sup>2</sup> The Rules of Civil Procedure are the federal or state rules of litigation. It is under these Rules that one may subpoena persons and evidence, require persons to attend deposition, turn over document, and testify.

<sup>3</sup> To pick a number roughly 7 out of 10 partnership disputes and many, if not most, contract disputes are due to “ignorance,” by which I mean, not dumbness, but just not knowing what they are doing or the legal consequences of their actions. The person simply does not have the background, knowledge and experience to be acting in this adversarial environment. And by doing so, just like in war, they are likely to get hurt.