

## The Value of Practical Experience

### Your Attorney May Have handled Your Type of Case Many Times Before©

By Donald W. Hudspeth

“You can read the books on business law and child raising. But if you want to know what it is like to run your own business or raise a child, you need the experience of running the business or raising the child.” DWH<sup>1</sup>

Just as there is nothing like the experience of actually running a business to know and advise others how to do so, there is nothing like actual experience in business law to advise clients on business law matters. It is not just that the experience gives credibility to the advice (which it does), but also because the wealth of experience can be almost priceless. Just as there is no substitute for “having been there,” there is no equal to having been there *many times*.

I have written a number of articles on the topic of why it is a good idea to use an attorney in your business start-up, business purchase, contract drafting and other matters.<sup>2</sup> Reasons include not knowing what you don’t know, the need to tailor documents to the law of the state (which varies), client and customer, and to avoid working beyond one’s skill set. Any of these common mistakes can be “fatal” to the matter at hand.

But there is another, perhaps supreme and overriding, reason to use lawyers in your transaction or dispute, and that is practical experience. One could be the most brilliant and well-educated attorney of all time, but nothing takes the place of having “been there.” The voice of, i.e. advice based on, experience is powerful and can be incredibly beneficial.

I have written articles and have a One Minute Lecture, both as an article and video, on “The Documents Look OK to Me Fallacy.” An example is the extremely bright and self-made millionaire client who asked me to look at a contract at the last minute after having negotiated five or six drafts. The mistake I immediately recognized was that the client was revising what he saw. He did not know what the contract did not contain but should have. Not being an attorney, he did not know what was missing. He did not know what he did not know or even that he did not know something. These are the “unknown unknowns” as Donald Rumsfeld would say.

From education and experience I knew what was missing and fixed it. Take this scenario times 100 and you will get my point. The attorney may have handled literally hundreds of such cases in the past. The saying is that it takes 10,000 hours to be a “genius” at something. The attorney may have four or five times that number of hours over the course of his or her career. This

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<sup>1</sup> To quote George Bernard Shaw, “I often quote myself. It adds spice to the conversation.”

<sup>2</sup> “That’s the Way You do It. Hire the attorney and Get Your Chips for Free,” and the “Falsity of Forms,” to name two. These are available at [azbuslaw.com. /Publications/Articles](http://azbuslaw.com/Publications/Articles). Also check out our Blog.

firm has more than 12000 clients and I have over 40,000 hours spent with business clients on business matters. Business law for business owners is the only kind of law the firm practices. With this number of clients and hours billed in one practice area over time it is highly likely that the firm has handled the client's type of legal matter before. This practical business experience provides added value to the representation. In fact, it can be critically important, if not essential.

I believe it was Tony Robbins who said "Find someone who has achieved the results you want and copy what they do and you'll achieve the same results." Similarly, an attorney with experience and success in the practice area can guide the client through the shoals. Most of all, the attorney can prevent you from "sticking your foot in it;" that is, to avoid the really bad mistakes which persons new to the subject matter often make. The physician's Hippocratic Oath is *Primum non nocere*, i.e. first do no harm. The first principle espoused here is "first do no harm to yourself before you even get started." A lawyer with experience in an area can provide not only legal, but also practical, knowledge and advice. From past experience the lawyer "knows how these things go." This combination provides great and largely irreplaceable value to the client.

Somewhat counter-intuitively, it can be beneficial if opposing counsel has knowledge and experience in the area. As I wrote in my article "Let Us Now Praise Opposing Counsel,"<sup>3</sup> attorneys who know the subject area can get things done more efficiently and effectively. They do not waste time on bad arguments based on a lack of knowledge or misunderstanding of the law. Much time and money in litigation springs from the lack of knowledge and experience. Lack of knowledge and experience can also lead to some tragic outcomes – cases lost that could have been won, where the clients lose not only the case, but also lose the business, their livelihood and perhaps their home as well.

A corollary of this point is that the \$500/hour attorney may be a "better buy" than a \$250/hour attorney because the attorney knows not only the law but how such cases go and turn out.

The moral of the story is to use a business lawyer for all business legal matters. The lawyer should be familiar with the business law and practices of your state (which vary from state to state) and should have substantial knowledge and experience in the practice area of business law.

A good business lawyer is not hard to find, particularly in the city. The trick is to avoid the lawyer who practices other areas of law as well, e.g. immigration. A business lawyer probably should not practice immigration law, and the immigration attorney probably should not practice business law. The reason is not lack of intelligence but the quantity of knowledge required for any professional practice and the exponential increase of same.<sup>4</sup> It is tough enough to stay current and informed in one's main practice area without attempting to practice in other areas as well.

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<sup>3</sup> Azbuslaw.com, /Publications/Articles

<sup>4</sup> See The Checklist Manifesto by Atul Gawande. He writes about neuro surgeons making mistakes because there are so many things to remember and apply.