

The Sport of Headhunting

By Philip Boesch

Litigation is a nasty business, an expensive process by which ordinarily civilized people resolve conflict, so as to come to a settlement no one is happy with. The first rule you learn about settlement is that a good one is equally disliked by all sides.

No one comes to litigation with much affection for the one who sues him, and it is easy to understand revenge when your loved ones are injured or your business is attacked. In a legal system where people pay for their mistakes through court process, parties hire headhunters to battle for private notions of justice distorted by pain.

Headhunting begins with the selection of the litigator. "Nice and thoughtful" works for estate planners. Litigators should flash menace, inspire fear. James Woods in "Shark" is the hungry, vicious animal you'd love to set loose on your enemies. On "Boston Legal," the relentless brilliance of James Spader has, as its foundation, a do-anything/ say-anything strength that has no consequence but success. Yes, it is important to be smart, but not enough. The meanest bully, the one who eats nails for breakfast and your enemies for lunch (a headhunter) is the litigator most people think they want.

Anthropologists who study headhunting know that the practice was not confined to the jungles of New Guinea or the Amazon. David took Goliath's head, and the Celts practiced headhunting too, because it reflected dominance and power and control. Wearing a man's head on your belt completed the victory. Fill it with hot pebbles and sand, drop it in a simmering pot of water, wait twenty hours and then you had him. Shrinking it took his soul.

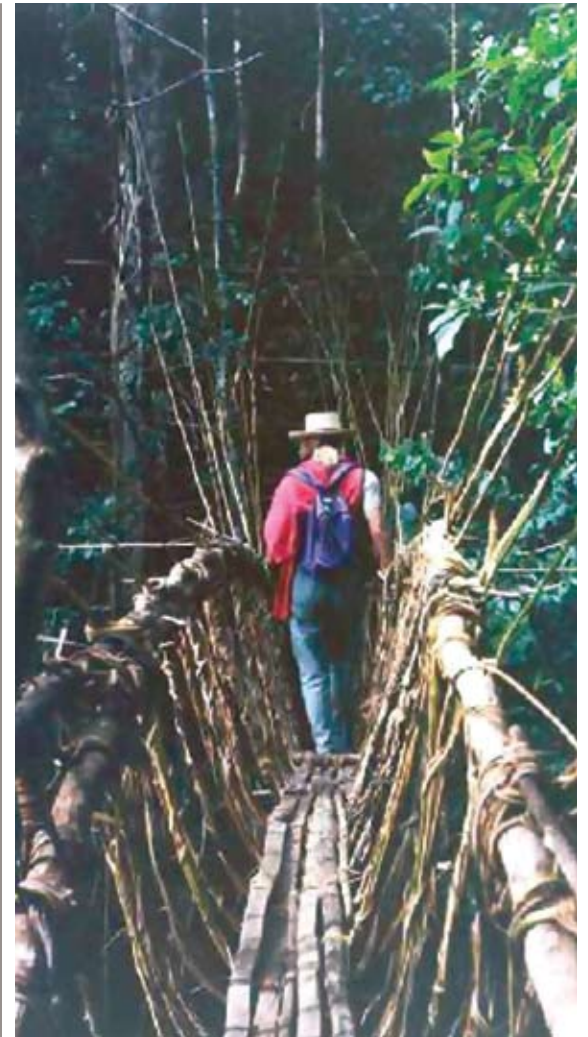
Divorce is fertile territory for headhunting. Punishing the guilty, sharing agony, slicing and dicing and shrinking heads, can be stated goals or merely wishes left unsaid. Depositions can be ritualistic practices not so much to gather evidence but to give the witness a painful dose of what misery awaits in the glare of the courtroom. Litigators refer knowingly to "scorched earth" tactics designed to inflict discomfort and waste. The phenomenon of spending a dollar to ask a question that will cost ten dollars to answer is called "interrogatories." Serving subpoenas on secretaries, lovers, bosses and confidants follows the terrorist tactic of instilling fear by lining up the loved ones of the enemy.

There are 54,000 lawyers in Los Angeles County; many of them litigators who have to promote themselves as the toughest headhunters money can buy. But as the headhunter ages and survives, the lessons sink in. It's not the fear that there always will be a younger, faster gun around the corner. It's not a waning of desire either, because strong survivors in any field take satisfaction in being the best at what they do. The real lessons of war are in knowing how and when to reach for those small openings towards peace, in knowing how to build the bridge, piece by piece, to those you are working so hard to destroy. Bridge-building is the real art, lost in the beginning of a lawsuit, but reappearing always as exhaustion sets in. And exhaustion does inevitably follow because litigants cause each other so much unnecessary expense before the final round of a trial.

Henry Kissinger wrote that "we do not have the privilege

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of pretending a limitless capacity to impose our will." As the wise headhunter knows, as the Iraq war debate tells us, the preparation for the peace should precede the preparation for the war. Everyone knows that bridges are not built in a day. It takes skill, design, negotiation and, most of all, it takes communication and trust.



Bridge to the Headhunters of Papua, New Guinea

Headhunting leaves the warrior's head, soul and spirit on his opponent's belt—emotionally unavailable. With no one building bridges, endless expense remains as the reminder that there are headhunters out there who still practice their art without the slightest regard for client interest. You should carefully hire the headhunter at your peril, or you may reap what you sow.

Philip W. Boesch is the principal and founder of the Boesch Law Group and an experienced litigator. He has obtained a state record wrongful death verdict in one case, and in another case what U.S. Lawyer's Weekly profiled as the Number One Judgment in the United States. The Boesch Law Group practices business litigation and personal litigation in all state and federal courts.



Above: Caravaggio's "David" [1600], depicting David taking Goliath's head.



Left: The Losers