

The Law Can Be Hazardous to Your Clients' Health – And Yours Too

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Thanks for Inviting Me

- I have been working with Professor Keet and Associate Dean Heavin on a book for more than a year
- The book is *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions*
- Today's talk is based on that book and research of mine

Today's Agenda

- Discuss benefits and risks of conflict and litigation
- Identify risks to litigants
- Identify risks to lawyers
- Identify risks of law school to students
- Suggest ways to manage these risks
- Really important – hear your experiences

Caveat

- **Some of my presentation is based on work in the US.**
- **The situation may be different in Canada.**
- **We can discuss similarities and differences between the two countries.**

Stone Soup Process Today

- We will use Stone Soup process to elicit and disseminate knowledge from this program
- Notetaker take notes without names
- I will post summary on Indisputably blog – including this powerpoint
- If you don't want your statements to be included, let notetaker know
- Questions?

About Me

- **Graduated from law school in 1980**
- **Practiced law and mediation in SF Bay Area**
- **Got PhD in sociology of law in 1995**
- **Taught at University of Missouri since 2000**
- **Retired, but still active**
- **Regularly blog on Indisputably.org**

About You

By show of hands:

- **Are you a first-year law student?**
- **Are you an upper-class law student?**
- **Are you a law school instructor?**
- **Do you represent clients?**
- **Do you mediate cases?**
- **Any one not mentioned above?**

Conflict and Litigation

By show of hands:

- **Have you been in any kind of conflict?**
- **What was good about it?**
- **What was troublesome about it?**
- **Have you or someone you know been a party in litigation?**
- **What was good about it?**
- **What was troublesome about it?**

Litigation Has Benefits

Litigation is extremely important. It can:

- **Resolve disputes directly, and**
 - **Provide structure promoting settlement**
 - **Create BATNAs**
- **Promote justice**
 - **Deter potential lawbreakers**
 - **Hold individuals and entities accountable**
 - **Provide legal remedies**
- **Help develop legal doctrine**

. . . And Risks

- **May lose in court – great uncertainty**
- **Incur tangible costs – legal fees and expenses**
- **Incur intangible costs, e.g., stress, delay, harm to reputation, opportunity costs**

I will focus on parties' intangible costs – often ignored or given short shrift, especially in appellate opinions.

Litigation Stress

Litigation can:

- **Interfere with parties' mental, emotional, and physical lives**
- **Produce flashbacks, nightmares, and physical symptoms**
- **Degrade cognitive functioning and increase cognitive biases**
- **Focus parties on past, prevent moving forward**
- **Disrupt physical and emotional treatment**

Damaged Relationships

Litigation stress can:

- **Make parties obsess**
- **Make parties “shut down” and disengage**
- **Interfere with lawyer-client relationships**
 - **Increase clients’ sensitivity to lawyers communication**
 - **Create suspicion if lawyers are on their side**
 - **Cause “decision fatigue”**

Organizational Dysfunction

Litigation can create organizational problems:

- **Cause board members, executives, employees to fear for their future**
- **Damage employee morale**
- **Harm health, productivity, and decision-making**
- **Lead employees to focus on personal interests not organization's interests**
- **Cause internal conflict about handling of case**
- **Create groupthink bunker mentality**

Opportunity Costs and Reputational Damage

Litigation can:

- **Divert time and energy away from organization's goals**
- **Impose opportunity costs**
- **Impede innovation**
- **Damage brand and reputation**
- **Require repair of brand and reputation**

Risks for Lawyers

- **Research has shown that lawyers have more mental health and substance abuse problems than people in the general population**
- **One researcher found that 70% of lawyers in a study were likely to develop alcohol problems over their lifetime**

Causes of Lawyers' Problems

Some problems may be related to:

- Frequent deadline pressures**
- Heavy workload**
- Financial pressures**
- Interpersonal and political conflicts**
- Competitive nature of adversary practice**
- Ambivalence about obligation of loyalty to clients regardless of effect on others**

Risks for Law Students

- **Research suggests that many lawyers' problems start during law school**
- **Symptoms may include:**
 - **Obsessive-compulsive behavior**
 - **Over-sensitivity**
 - **Depression, fear, and anxiety**
 - **Hostility**
 - **Social alienation**
- **Do you recognize anyone with these symptoms (including yourself)?**

Causes of Law Students' Problems

Possible causes include:

- **Schools' over-emphasis on scholarship and under-emphasis on teaching**
- **Schools' over-emphasis on abstract theory and under-emphasis on practical training**
- **Poor teaching and testing methods**
- **Training students to ignore their values and make arguments they don't believe**

Causes - Continued

Possible causes include:

- **Novelty of subject matter**
- **Ambiguity of the law**
- **Heavy work load**
- **Competition**
- **No feedback in many courses until end of semester**
- **De-emphasis on personal relationships**
- **Ignoring emotional reactions**
- **Reluctance to get help**



What Can Lawyers and Law Students Do to Avoid or Manage These Problems?

Things You Can Do – Self-Care

- Pay attention to your reactions – don't “stuff” them
- Don't use alcohol or drugs to “solve” your problems
- Eat a healthy diet, exercise, get enough sleep
- Maintain good relationships
- If you are having problems, ask for help
- Pay attention to colleagues who may have problems and ask if they need help

Take Advantage of US Resources

- **I understand that you have an incredible wellness program at your school.**
- **If you need help, take advantage of the resources here.**
- **People really want to help.**

Things You Can Do for Clients

Help clients identify interests and risks as soon as appropriate, asking questions such as:

- What are your most important goals?
- What are some of your fears or concerns?
- How do you think litigation would affect your relationships and reputation?
- Litigation can be stressful. How do you generally respond to stress?
- [Describe trial, negotiation, mediation, arbitration.] Which might be best for you? Which would you want to avoid? Why?

Bottom Line Qs for Individuals

- How much less would you accept [or more would you pay] to:
 - Resolve case in, say, 3 months instead of a year
 - Avoid risk of losing at trial
- Would you prefer to:
 - Have trial to present case publicly and get court decision, or
 - Settle to avoid publicity and risk of losing

For Organizations

- **How much time will case require of officers, executives, and other employees?**
- **How would case affect goals & opportunities?**
- **How would case affect growth & innovation?**
- **How would case affect internal dynamics, eg, morale, absenteeism, conflict?**
- **How would case affect brand and reputation?**

Bottom Line Qs for Orgs

- **How much would it cost to counteract problems you identified?**
- **[For plaintiffs:] How much would it be worth to avoid these problems?**
- **[For defendants:] In addition to payments for liability, how much more would it be worth to avoid these problems?**

For More Information

- Blog post “[Legal Stress](#)”
- [Escaping from Lawyers' Prison of Fear](#)
- [My Last Lecture: More Unsolicited Advice for Future and Current Lawyers](#)
- *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions (2020)* by Michaela Keet, Heather Heavin & John Lande
- [My webpage](#)



Thank you very much!