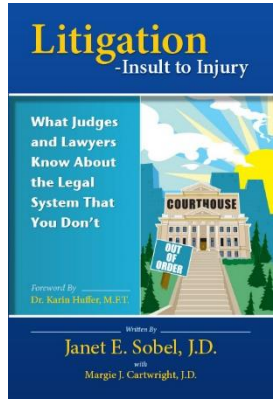
Why the Legal System Brings Unhappiness to Lawyers – And What To Do About It

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Litigation – Insult to Injury:
What Judges and Lawyers Know About the Legal System That You Don't



Available on Amazon

Why the Legal System Brings Unhappiness to Lawyers – And What To Do About It

- What qualifies me to talk about this topic?
- What is the nature and scope of “lawyer unhappiness” and what problems come from it?
- What do the “commentators” say is the cause of lawyer unhappiness – and what do they say lawyers should do about it?
- The GOOD NEWS is that the causes of lawyer unhappiness are not set in stone!
- What can and should be done about lawyer unhappiness?

What qualifies me to talk about this topic?



I kept thinking "the smaller, the better" –

NOT!

- Practicing law for 30 years – graduated in top 10% of my UCLA Law School class
- Law school was my fourth career:
  - an elementary school teacher
  - elected to School Board in Las Vegas
  - licensed real estate agent in Las Vegas
- Then I went to law school at UCLA
- Then joined a large law firm in San Diego, CA, as a litigation associate
- Then a mid-sized firm in San Diego
- Then a two-person law partnership
- Then started "counseling at law" – on my own

Practicing law is not what it's cracked up to be . . .



- Started full of vim and vigor – and a desire to have an exciting career
- I soon realized that many lawyers are very unhappy
- Civil litigation is full of unpleasant surprises, unhappy clients, moral pressure, long hours, constant stress and worry
- No clear exit plan
- "Counseling-at-law" was my escape from rat race

What is the nature and scope of “lawyer unhappiness” and what problems come from it?



Most, if not all, states have a LAP, meaning Lawyers Assistance Program. Some include Judges in the title, like the State Bar of Michigan, which has the Lawyers and Judges Assistance Program. Canada has the Legal Profession Assistance Program.

All of these programs are meant to offer assistance to lawyers suffering from depression, often combined with substance (including alcohol and drugs) abuse.

Suicide is a recognized problem among lawyers.

You are listening to this CLE talk because you know that being a lawyer is not what it's cracked up to be.

And I am giving this talk because I, too, know that lawyers are often very unhappy with their jobs.

There is a lot of data – statistical and anecdotal



A study by Johns Hopkins University found that out of more than 100 occupations, lawyers were three times more likely to suffer from depression than any other profession.

After cancer and heart disease, suicide is the third leading cause of death among lawyers.

The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the U.S. population is alcoholic or chemically dependent. Experts estimate that the numbers are between 18-20% among lawyers.

www.abnormalabuse.com

Besides the above data, the May 2, 2011, issue of Psychology Today reports in an article entitled "The Depressed Lawyer":

- An ABA Young Lawyers Division Survey concluded that at least 40% of female attorneys were unhappy with their jobs
- In 1996, lawyers took the number one spot as the profession with the highest rate of suicide
- The ABA estimates that 15-20% of all U.S. lawyers suffer from alcohol or substance abuse
- Seven in ten lawyers responding to a California Lawyers magazine poll said they would change careers if the opportunity was available

www.pychologytoday.com

QUERY: How much do you suppose those lawyers borrowed to get through law school?

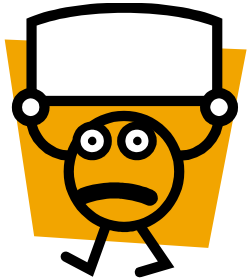
In case you haven't heard enough to convince you, a study published in the International Journal of Law and Psychiatry noted that the rate of problem drinking for attorneys was 18% compared to 10% in the general population.

Moreover, the Butler Center for Research (part of the Hazelden Betty Ford Foundation) reports that individuals in the legal profession experience problems with substance abuse early in their careers – and that those problems worsen over time. Specifically, "According to one study, 8% of prelaw students, 15% of first-year law school students, 24% of third-year law students, and 26% of alumni reported concern with alcohol problems. Furthermore, 18% of attorneys who practiced for 2 to 20 years reported drinking problems and this increased to 25% for attorneys who practiced for over 20 years."

http://www.hazelden.org/web/public/researchupdates

Do you see that you are in good – and crowded – company?

OUCH!



Those dealing with substance abuse among lawyers in Canada –
with a legal system much like our own – state the following:

- Roughly 1 in 5 lawyers is addicted to alcohol
- There is a clear correlation between alcoholism (and drug addiction) and malpractice and discipline

www.lpac.ca

The rate of suicide among the general population in Canada and in the United States is in the range of 10-14 deaths per 100,000. According to data from insurance records, that number for lawyers is 69 per 100,000 – six times the general population.

North Carolina Lawyer Assistance Program

Signs of depression and substance abuse are being seen in law students.

"Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence," by Prof. Lawrence S. Krieger, Florida State University, College of Law, Journal of Legal Education, March/June 2002

What problems come from lawyer depression and substance abuse?



Besides suicide (failed attempts and completed efforts), doesn't everyone know how alcohol and drug addictions destroy the lives of those addicted and the families that connect with them?

What other problems are special to the legal profession?

- 60% of Oregon's LAP attorneys had malpractice suits filed against them (Butler Center for Research, id.)
- The American Bar Association reported that 27% of disciplinary cases involved alcohol misuse by attorneys
- Mishandling of client's cases and bringing heartache to clients and their loved ones, regardless of whether a malpractice action is filed
- Loss of jobs and reputation – and the impact on the cases that were being handled by that lawyer
- Seeing capable lawyers leave the law due to attrition.

What do the “commentators” say is the cause of lawyer unhappiness – and what do they say lawyers should do about it?

Most written materials on lawyer unhappiness is focused on the depression, suicide, and substance abuse that results.

Causes of unhappiness:

- Workload and performance expectations
- Stress from deadlines, caseload, clients, and other lawyers
- Time pressures and long hours, lack of sleep
- Burnout and discouragement
- Lack of control over tasks and outcomes
- Life out of balance
- No time for relaxation, exercise, fun, healthy diet
- Financial problems

One commentator, writing an article called "Dealing With Impaired Attorneys," found on the American Bar Association website, wrote about the "stressful career" that lawyers have difficulty navigating, and why and how it causes depression and addiction – plus "ways to help." That writer's approach is to identify the three "personality" types that have the most trouble:

Idealists - Perfectionists – Controlling Personalities

The writer offers no ways "to help" except for alcohol and drug abuse treatment protocols.

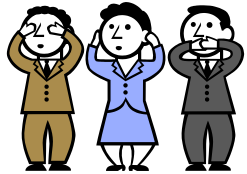
www.apps.americanbar.org/lpm/lpt/articles

QUERY: Do we really want to "cure" lawyers of their idealistic, perfectionist, and controlling ways? Are those traits without benefits? Is there no way to channel those aspects towards happier lives? Let's not hope to "lobotomize" those personality styles away.

Two writers have taken a different approach worth considering – namely reviewing the ways in which these problems initially become manifest in law school and asking what, if anything, our law schools are doing about it:

- Larry Dubin, Professor of law at the University of Detroit Mercy School of Law, authored "The Legal Profession's Hidden Secret: Substance Abuse" in 2004.

- Lawrence S. Krieger, Professor of law at Florida State University College of Law, authored "Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence" in 2002.



In “The Legal Profession’s Hidden Secret: Substance Abuse,” by Prof. Dubin, he writes: “Law students need to be exposed to and better understand not only the professional pressures they will face after graduation, but also how these pressures can impact their personal lives”

He states: “The lack of interest by legal educators and among members of the Bar may be a factor as to why it has been estimated that a high percentage of disciplined lawyers suffer from addiction issues.”

www.michbar.org/journal



In “Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence,” Prof. Krieger states: “In the day-to-day business of legal education, there is remarkably little evidence that we are aware of the unhealthy-unhappy-law-student (lawyer) problem.”

Prof. Krieger reviews empirical and anecdotal evidence of “the dark side of law school, the process of denial among faculty, and failing paradigms at the heart of legal education.”

After analyzing the undeniably sad statistics reflecting depression and substance abuse among lawyers, Prof. Krieger concludes that “[s]omething distinctly bad is happening to the students in our law schools” and chastises the leaders of law schools for not taking an “open look” at what is going wrong.

He then looks at “human needs, values, and motivation, and the relationships between them” and suggests that law schools and the legal profession coax people to seek “extrinsic” goals (such as money, power, and image) notwithstanding they are not the source of happiness.



In contrast, Prof. Krieger posits that "persons whose primary goal content [is] "intrinsic" – namely personal growth, intimacy, and community integration – experienced significantly greater well-being.

Prof. Krieger's article is over 14 pages, and I will not summarize it here, except to say that lawyers may well be unhappy because they are seeking things that do not lead to happiness.

Prof. Krieger offers the results of his own study with Ken Sheldon and suggests that "doing work one believes is truly important (an intrinsic motivation) will provide experiences of self-esteem and authenticity; working to help others or improve society (an intrinsic value) is likely to support experiences of self-esteem and relatedness to others."

Unlike other commentators, Prof. Krieger states that problems arising in law students and in lawyers are <u>not</u> the "inevitable result of self-selection and personal attributes."

This is an important dialogue and these are important foundational questions – because the wrong assumptions about why lawyers are unhappy (and depressed and suicidal and turning to drugs and alcohol) will only serve to keep us from finding solutions to this crucial inquiry!

Let's open our eyes and look at our systems – of law school and of the practice of law.



As they say, he who has head in the sand gets kicked in the behind!

And what do "they" say we should do about the "unhappiness" that is now endemic to the legal profession?

Things – all good – that lawyers are told to do about their depression, suicidal thoughts, alcohol and substance abuse:

- Therapy and substance abuse treatment programs
- Meditation
- Exercise
- Healthy diet
- Engage in enjoyable recreation activities
- Own a pet
- Live modestly (i.e., beneath your means)
- Set realistic goals
- Prioritize your time
- Keep your life in balance
- Learn to say "no" to clients
- Refuse to act unethically
- Practice good time-management

Here are some "D's":



Practicing law is . . .

- Demanding – taxing
- Difficult – nothing easy about it
- Dicey – unpredictable and fraught with risk
- Distressing – causes mental suffering
- Disreputable – to many, we are disgraceful, dishonest, and unprincipled

The legal system is . . .

- Delusive – its promise of justice is misleading and deceptive
- Disagreeable– despite lots of rules, it works poorly
- Demanding – requiring more than should be due
- Demoralizing – it corrupts the idealistic goals of lawyers
- Discouraging – it is disheartening and dispiriting
- Disconcerting – it is upsetting, confusing, and perplexing

It's no wonder lawyers are . . .

Depressed – and driven to drink and do drugs

The GOOD NEWS is that some of the causes of lawyer unhappiness can be changed!



Certainly the "causes" noted by the commentators – like workload, stress from deadlines, caseloads, clients, other lawyers, time pressures, lack of sleep, burn-out and discouragement, unbalanced life activities, lack of relaxation, exercise, fun, healthy diet, and financial problems – all contribute to depression, drinking, and drugs.

QUERY: Can we perhaps change the way we practice law – maybe not all of us, but at least some of us – so that we can improve our connection with the intrinsic goals that bring personal satisfaction and greater hope of happiness?

The practice of law is Demanding

www.dictionary.com has two definitions for "demanding":

de·mand·ing
adjective 1. requiring or claiming more than is generally felt by others to be due; 2. calling for intensive effort or attention; taxing

Both definitions apply to the legal profession.

- The lawyer's job is demanding; it requires intensive effort and attention. Matters suddenly require time, yet other matters do not disappear. Lawyers often have to burn the midnight oil to meet their obligations. Careful, caring lawyers have no choice but to do what is required for the clients.
- The legal system itself is demanding. Rules have to be followed, including harsh time limits. Motions and discovery must be attended to – and not ignored. Despite best hopes, judges cannot be compelled to pay the kind of attention the law presumes they will.

The demands of the job can make a person sick.



The litigation system is Delusive

de lu sive
/dɪˈlusɪv/ adjective 1. misleading; deceptive; 2. false; unreal.

Lawyers learn in law school – and in the law itself – to spend their time following the law, doing discovery, bringing motions, writing meet and confer letters, preparing for trial, reporting to clients, and staying abreast of changes in the law, to name a few.



But . . . there is no correlation between doing those things and any expected outcome. The truth is:

- The law is constantly changing and its application is often mystifying
- Our adversaries use unexpected ploys (ethical and otherwise) that can make a case impossible to win
- "Rules of law" are often hard to find, and then are often illusory
- Judges, experts, witnesses, juries, and clients are unpredictable
- Sometimes it seems the only true law is Murphy's Law: "If anything can go wrong, it will."

The legal system is Disagreeable

The American legal system is full of rules, but rules of the universe render the system impossible to navigate with any certainty:

- The ethical rules are often complicated and only realized in the breach
- Consumers of legal services are full of confusion and misunderstanding and often blame their attorneys – even when it's not their fault
- The "law" satisfies the ones who make it, but it is unreliable and unpredictable to the lawyers who must utilize it
- The nature of a party's "damages" is likewise subject to unreliable interpretation, yet everything depends on an accurate assessment from the get-go
- The costs of litigation can reel out of control and bring a halt to everything – and discord between attorney and client
- Experts and witnesses can turn on the lawyer or change their testimony
- Getting something into evidence can be challenging, and it can wind up being excluded – even when everything rides on it
- Insurance is a double-edged sword, and both edges can cut your case
- Judges can do what they want to do – only a court of appeal can reverse some wrong result, and courts of appeal can do what they want to do

- Discovery abuses are almost impossible to redress – made worse by court budget cuts and crowded court and motion calendars
- Clients sometimes have a change of heart when they feel the difficulty of the case, or they expect the impossible from their lawyers
- A breakdown in the attorney-client relationship can undermine all the work the lawyer did on the case
- Litigants are known to be traumatized by the system, a form of PTSD called Legal Abuse Syndrome, that can create hardship for the lawyers who are connected to their cases.

War stories – we all have them:

- Judge faxes a dismissal of the case – with no motion pending
- Getting a stay the day before Thanksgiving – thanks to help from lawyers and staff in the firm

We have to be prepared to work very hard to win, because the system is like an impenetrable wall



So what can and should be done about the unhappiness that our disagreeable legal system brings to its lawyers?

The GOOD NEWS is that there are positive steps all lawyers can take to improve the "happiness quotient" in the practice of law.

Certainly, sensible and mature lawyers should adjust their life activities so as to promote balance in their lives and improve their ability to stay calm and positive in the face of a job that is demanding, difficult, distressing, and the rest of the D's. Exercise, meditation, making time for family and relaxation, managing time, and eating healthy foods are examples of ways to avoid depression and substance abuse.

Beyond those valuable and proven strategies, however, there are things lawyers can – and should – do for the sake of improving their own practice and, by setting an example for others, helping to make the system less disagreeable overall.

Here are some things that can make the practice of law less distressing . . .

1. Lawyers need to educate their clients on what the system reasonably can and cannot do for them. Informed clients that understand what is happening and can ask good questions will make smarter decisions and are less likely to demand the impossible or to blame their lawyers. Clients are benefited by knowing what is wrong with the system.
2. **Lawyers with experience in a specific area of the law should consider shifting to Counseling-at-law, a kind of "limited scope" practice, which is a good alternative to the frustration of a "full-scope" practice. Many clients are wanting this kind of legal help – and a much happier living can be made.**
3. Lawyers should handle their cases with an eye towards positioning them for pre-trial mediations, getting the case ripe and ready – with awareness that being prepared for trial is the biggest hammer of all for avoiding the unpredictability of trial
4. Lawyers should promote pre-litigation, or at least pre-trial, resolution of cases, using the "collaborative law" model, narrowing the real issues in dispute, finding and eliminating from the case those issues that are amenable to compromise for the sake of resolution.

Counseling-at-law can be an interesting and challenging way to make a less stressful living practicing law.

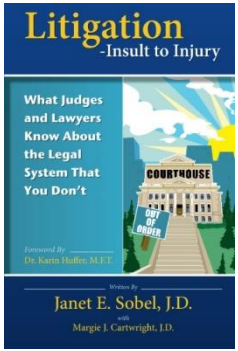
Counseling-at-law:

- Provides affordable "limited scope" legal services to people whose problems do not justify hiring a traditional lawyer (I charge $100/hr)
- Emphasizes creative problem-solving with an eye toward pre-litigation solutions, preferably through mediation
- Involves explaining to clients their legal rights and obligations, presenting options, and finding solutions (if there are any)
- Can involve preparing the client's case for finding a litigator (where a pre-litigation solution is not possible) and getting a referral fee, i.e., presenting a "turn-key" case to a capable litigator
- Serves a large group of unserved consumers of legal services
- Is easy to market to lawyers and mediation services, who often need to make referrals to lawyers, but don't know who to refer them to
- Has low overhead, grateful clients, high percentage of collectable fees, flexible hours, and allows for a happier life!
- Is more fully explained in another CLE.

Here's my Postcard – my main marketing tool:



Litigation – Insult to Injury: What Judges and Lawyers Know About the Legal System That You Don't

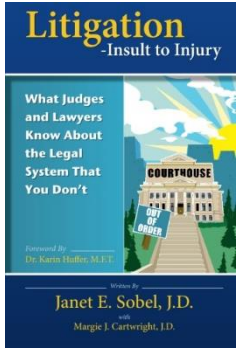


Available on Amazon -

Read it yourself and then give a copy to your clients and (1) instruct them to read it, and (2) remind them to re-read certain chapters when they relate to what is happening in their case.

Clients left in the dark can become problematic. Having informed clients will protect you from the misunderstandings and confusion that come from our disagreeable legal system. Client trauma, dissatisfaction, and finger-pointing can be avoided by improving their knowing.

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Go to Amazon, and look inside the book, read the reviews, and give it to someone who needs to know what it has to say! For the sake of all consumers, lawyers, and society.