

BRAINWASHED!

The Lost Art Of Risk Assessment

It is ridiculous this chapter even had to be included in this book ... or any book for that matter. However, thousands of times every day, business people sell out their organizations. Who do they sell out to?

Attorneys!

Why? Their fear of the law dictates 90% of what they do. It influences their business decisions and the advice human resources gives to their “clients.” Good business judgment is often abandoned in order to make an employment-related decision that “saves the company” from a lawsuit, but destroys the organization’s morale and desire to excel.

Far too many business people do not **really** understand the law. So, they believe just about anything their attorneys tell them. This fact, coupled with the fact that most attorney’s do not **really** understand employee relations and honestly believe that the worst thing that can happen to a company is that it gets sued, results in the business person becoming “**brainwashed.**” They are brainwashed into “selling out” their good employee relations practices, which is most likely the biggest part of their budget, as soon as they hear a lawyer say:

“Oh, no! You’d better not do that. You might get sued!”

For instance, consider the following example of how ridiculous “smart” people actually become when they avoid a lawsuit at all costs:

At about 9:00 am, Terry, a city employee working in the city’s Street Department, got into a huge argument with his supervisor. The argument grew more and more heated until Terry stormed out of the building. Terry needed a cigarette to calm down.

Terry stood on the back steps of the city’s garage with a co-worker, Dave. The mood was very tense as the two smoked their cigarettes. The silence was deafening. Dave, trying to lighten the situation, turned to Terry and said, “You know, I just wish it was 3:30 pm and we could all just go home.”

Terry then glared back and said, “And I just wish I had my 9 millimeter with me.”

Dave was stunned and unsure of what to do. He finished his cigarette, and then went back to work.

Later that day, Dave went and told his supervisor what Terry had said. Eventually, Terry’s threat made it back to the mayor. At about 2:30 that afternoon, the mayor called Terry into his office. The mayor asked Terry, “What exactly did you mean by that comment? Did you mean that you were going to hurt someone...or maybe hurt yourself?”

At that point, even though it was over five hours after he had originally made the threatening comment, Terry was **still** fuming with rage. He then got up from his chair, leaned over the desk into the mayor’s face and said, “I meant just what it sounded like.”

Stunned, the mayor suspended Terry with pay (you have to do that in the public sector) pending an investigation.

I then got a call from the city’s safety director asking me to come in and discuss this situation. We eventually had a meeting altogether: the mayor, the city attorney, the city safety director, the director of human resources and me.

Apparently, in the course of the investigation, the human resource director discovered that this incident was only one in a long line of threatening incidents committed by Terry. In fact, as time had gone on over the last few years, Terry’s threats had grown more and more bold.

I read the transcript from the investigation just a few days before this meeting. I thought the decision was a no-brainer. Terry had to go. However, the city attorney held a different opinion.

“If you fire him, you’ll get sued. Boy...we can’t have that. We should just suspend him for a few days,” the city attorney stated.

I could not believe my ears. Here was *another* attorney who actually thought that the worst thing that could happen to an organization or its employees was that it might get sued.

But then...this is *exactly* what the legal profession has done to the corporate world.

Unfortunately, whenever such situations arise, we instantly turn to our attorney's for the final say as to whether or not we can fire an employee. How many times have you heard some attorney tell you, "Oh, you can't do that! You might get sued." "Oh, you can't do that ... you might get sued," "Oh, no! You *really* can't do that! You might get sued."

Why? Their fear of the law dictates 90% of what they do. Good business judgment is often abandoned in order to make an employment-related decision that "saves the organization" from an *immediate lawsuit*. In exchange for this immediate and temporary oasis of legal safety, the organization destroys its employee morale and desire to excel while also increasing its chances of incurring a lawsuit and losing that lawsuit into the future.

Far too many leaders do not *really* understand the law. So, they believe just about anything their attorneys tell them. This fact, coupled with the fact that most attorney's do not *really* understand employee relations and honestly believe that the worst thing that can happen to an organization is that it gets sued, results in far too many of our leaders becoming "**brainwashed**." They are brainwashed into "selling out" their good employee relations practices, which is most likely the biggest part of their budget, as soon as they hear a lawyer say:

"Oh, no! You'd better not do that. You might get sued!"

We have been trained so well that we in the business community now react like one of Pavlov's dogs whenever we are told, "Oh, don't do that!" by an attorney. Whenever any issue with an employee arises, management runs to the corner and reacts to the situation out of fear for the law.

WE HAVE BEEN BRAINWASHED BY ATTORNEY'S

AS A RESULT, TRUE "RISK ASSESSMENT" HAS ALL BUT DISAPPEARED!

In true risk assessment, one must consider all of the various risks associated with a decision. This means the decision maker must assess the risks of a situation against the "**PROBABILITY**" of harm and the "**CONSEQUENCE OF ERROR**" of making a bad decision.

In reality, getting sued is not the worst thing that can happen to an organization ... nor is it even the second worst thing that can happen, or even the third.

What is the worst thing that can happen?

#1 WORST THING THAT CAN HAPPEN: YOU GET SHOT!

In America, according to the Bureau of Labor Statistics (“BLS”), three people go into work everyday and they are murdered. **EVERYDAY.**

It is important to understand that these people will not die falling off of scaffolding ... nor will they get killed in a car accident. Three times a day, someone will enter an American workplace and murder an employee. In fact, according to the BLS, murder has now become the **second leading cause of death** in American workplaces ... and murder is now the **leading** cause of death in American workplaces for women. (Men must be better at “ducking.” Chivalry is clearly dead.)

If you think about it, in 2007 we saw the worst school shooting in American history. Thirty-three people were killed at Virginia Tech. While that was a tragedy, it is also just a drop in the bucket.

We have a Virginia Tech in American Workplaces every eleven days, which is two a month ... and that is what we call “normal.”

Further, over 1,000,000 people are physically assaulted in American workplaces each year. This means 18,000 people went into work this week and they ended up needing either first aid or an emergency room visit because someone snapped and put a stapler or a coffee cup upside their head.

But then ... look on the bright side: **AT LEAST YOU DIDN'T GET SUED!**

Retaining “problem” people in the workplace, or “trolls,” whether they are rank-and-file employees or managers, increases our levels of distress, which increases the massive amounts of cortisol flowing through our brains, eroding our memory systems and creating the basis for long term depression for everyone and decreasing morale ... which makes the workplace more dangerous for everyone. In fact, most people who commit acts of workplace violence have been with the organization for **more than five years.** (Bureau of Labor Statistics)

Why is this important? Because as the distress builds ... and builds ... and builds up over time until people reach their “breaking points” as the cortisol flows and damages our brains. In the end, someone finally snaps and the staplers and coffee cups go flying.

However, if management deals with the poor behavior of its “problem” people early, if it has the “guts” to do that, then these incidents of workplace violence would be *greatly* reduced ... if not eliminated entirely.

Unfortunately, that is *not* the norm. Workplace “bullies” are typically allowed to thrive in an organization. They set up their own little “**Kingdoms of Nod**” and they run things! Why? Because whenever an organization tries to do something about these problems and deal with them directly, some attorney shouts:

“Oh, no! You can’t do that! You might get sued!”

So, let’s tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

**WHAT IS THE PROBABILITY THAT SOMEONE WILL BE ASSAULTED
IF YOU FIRE TERRY?**

MAYBE

**WHAT IS THE CONSEQUENCE OF ERROR IF TERRY ASSAULTS
SOMEONE RELATED TO HIS EMPLOYMENT IF HE IS FIRED?**

CATESTROPHIC!!!

**WHAT IS THE PROBABILITY OF SOMEONE GETTING ASSAULTED
IF YOU DO NOT FIRE TERRY?**

VERY GOOD

**WHAT IS THE CONSEQUENCE OF ERROR OF SOMEONE GETTING ASSAULTED
IF YOU DO NOT FIRE TERRY?**

CATESTROPHIC!!!

Clearly, getting sued is not the worst thing that can happen to you when you go into work everyday. In fact, getting sued is not even the **second** worst thing that can happen to you. Actually, the second worse thing that can happen **HAS ALREADY HAPPENED...**

#2 WORST THING THAT CAN HAPPEN: LOW MORALE ... YOU DON'T RUN THE PLACE ANYMORE!

It is **laughable** to think that management runs things in most American workplaces. In reality, in most American workplaces, the bullies run things. These bullies have staked out their own little “Kingdoms of Nod.” In these Kingdoms, the bullies run things. They **own** these areas. Actually, it is like as if they have “peed” all around their desks and have marked “their” areas.

Why do I say that?

According to research conducted by David Yankelovich, in “The 50 Best Companies in America to Work For,” the following is the national average of how much effort employees in the United States give to their employers:

| | |
|------------|--|
| 23% | Do The Best They Can |
| 34% | Could Do More |
| 43% | Do Just Enough So They Don't Get FIRED! |

Further, 20% more Americans have heart attacks on Monday morning than on any other day of the week. (CNN report on Thursday, February 3, 2005 as reported in the British Medical Journal.) In short, these people get a sick feeling in the pit of their stomachs on Sunday evening just over the thought of going back into that “hell-hole” on Monday. They “stew” on this all evening, which places tremendous amounts of stress on their bodies, which also takes a tremendous toll on their family lives. Throughout the night, this tension builds to the point that their blood thickens from the tension and ... Viola!

Monday morning heart attack...

... which gives them a great excuse to call off from work. (Sometimes, you have to look very hard to find the bright side of things.)

Additionally, 77% of all Americans **HATE** their jobs. (2005 Gallup Poll.) Why? According to various surveys, including those conducted by CareerBuilder.com and Scott Hunter, author of “Making Work Work” (Hunter Alliance Press, 2003), the top two primary reasons Americans hate their jobs are:

Bullying and Poor Supervision

This makes sense that these

If management **really** was running its workplaces effectively, the bullies would not control of the work environments, which means production levels would be higher and we would have fewer Americans waking up dead on Monday morning with heart attacks. (We would also have less workplace violence.)

You can always spot a workplace where the trolls are in charge by the things they say, such as...

- “You can’t make me do that” or
- “That’s not my job,” or
- “They only get so much from me” and so on.

Why do we fail to enforce our rules? Why do we let the bullies take over? There are many reasons, but letting the attorneys and the law dictate our business decisions are big ones.

Well...let’s see ... let’s tally the carnage...

- ❖ Only 23% of Americans give their employers their best,
- ❖ 77% of all Americans hate going back into that “hell hole” everyday, and
- ❖ We have 20% higher heart attack rates on Monday morning than any other day of the week...but then...look at the bright side...

You didn’t get sued!

And we STILL actually think the worst thing that can happen is getting sued?

NO! The worst thing that can happen ...

IS HAPPENING RIGHT NOW IN MOST AMERICAN WORKPLACES!!!

Again, let’s tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

WHAT IS THE PROBABILITY OF THE BULLIES TAKING OVER IF TERRY IS FIRED?

VERY LOW

WHAT IS THE PROBABILITY OF THE BULLIES TAKING OVER
IF TERRY IS NOT FIRED?

VERY LIKELY...IF IT HAS NOT ALREADY HAPPENED!
(Which it *has* in most American Workplaces!)

WHAT IS THE CONSEQUENCE OF ERROR IF TERRY IS NOT FIRED AND
IF THE BULLIES TAKE OVER?

CATESTROPHIC!!!!

#3 WORST THING THAT CAN HAPPEN: A BAD HEADLINE!

Getting sued is not even the **third** worst thing that can happen to an organization. What is? **GETTING A BAD HEADLINE IN THE PRESS!**

When an organization gets sued, it is always questionable what the public will believe ... if the public ever hears of the lawsuit in the first place. If an employee files a lawsuit against his/her former (or current) employer, the attorney's fees the organization spends will admittedly be a major expense, one that could kill the company. Additionally, if the organization loses the lawsuit, the subsequent judgment levied against it could also certainly kill it.

However, these are one time expenses. If the organization survives, it can rebuild.

On the other hand, in balancing the risk of a lawsuit against the cost of having a bad headline, the public can be very judgmental and unforgiving. In fact, the general population will usually believe whatever lies they see on TV or whatever half-truths they see on the front page...and it will most likely be bad for the organization. (Remember: In the media "game," **"IF IT BLEEDS...IT LEADS!"** We **love** dirt in the press...and if there is not any dirt to be found...it is important for our "crack" reporters to "dig some up." The truth does not matter. Ratings and ad space matter.)

One bad headline can affect the profitability and the cash flow of an organization for years to come ... unlike the one-time hit of a lawsuit.

Additionally, the cost of most lawsuits is dwarfed by the cost of waging a media battle. Newspaper space and media consultants are expensive. When Wendy's was battling the fraudulent story of a customer finding a finger in her chili, Wendy's spent millions of dollars and did a tremendous job of getting its message out to the public in order to counteract the negative press it was getting. Truck loads of time and millions of dollars later, Wendy's came out on top...kind of.

Two years later, those Wendy's stores that are located in the general vicinity where the hoax took place have still not regained the sales figures they previously enjoyed. In human damage, many of those Wendy's employees who were laid off due to a drop in sales have still not been recalled to work.

But then...look at the bright side...

Wendy's did not get sued! (Hoo-ray!)

Once again, let's tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

**WHAT IS THE PROBABILITY OF HAVING A BAD HEADLINE IF
TERRY IS FIRED?**

VERY LOW

(If you are a Public Sector employer, the chances are **VERY** good.)

**WHAT IS THE CONSEQUENCE OF ERROR IF TERRY IS FIRED AND YOU GET
A BAD HEADLINE?**

VERY LOW

(It should not be too difficult to explain the logic of firing an employee who has threatened to kill his supervisor.)

**WHAT IS THE PROBABILITY OF HAVING A BAD HEADLINE IF
TERRY IS NOT FIRED?**

VERY HIGH

(Retaining an employee who threatens to kill his supervisor is a nice "juicy" headline.)

**WHAT IS THE CONSEQUENCE OF ERROR OF GETTING A BAD HEADLINE IF
TERRY IS NOT FIRED?**

CATESTROPHIC!!!
(YOU WILL LOSE PUBLIC TRUST FOR A LONG...LONG...LONG TIME!)

(How do you explain retaining someone who has expressed an interest in killing a supervisor? Good luck with that one.)

**#4 WORST THING THAT CAN HAPPEN:
A LAWSUIT!**

See...the lawyers eventually get it right.

In applying the basic principles of “Risk Assessment” in light of these four potential risks, it was easy to assess the risks of terminating Terry. Either way you go, you will face **ONE** of these risks...so, which do you want?

RISK ASSESSMENT: WHAT COULD HAPPEN IF WE DID FIRE TERRY?

On one hand, if we fired Terry, we would indeed risk having a lawsuit filed against us. That is always a risk. Terry was a long-term public sector employee. In fact, Terry had already retained an attorney, so the potential for a lawsuit was very real...and very likely. The city’s attorney was not over-estimating this probability.

But then, what were the chances we would be able to successfully defend this lawsuit if we were sued? Terry had a long history of making increasingly more threatening comments towards his co-workers. Now, he has made a very real threat of killing his supervisor. Workplace violence and homicide are not uncommon occurrences in America, so such threats are **NEVER** to be taken lightly. What I found most telling was that the “reasonable people in the community,” which in this instance were his co-workers, were afraid of him. They felt the threat from Terry was very real and it should be taken seriously. None of Terry’s co-workers wanted him back out of fear that he would “go off” on one of them. These city employees were looking to us for help...to keep them safe.

Of course, the question always comes up as to whether terminating Terry is just the incident that will send him over the edge? Do we make the situation **MORE** dangerous by firing him?

That is certainly possible...but letting the wolf in through your front door everyday is certainly more dangerous, as safety and protection experts will tell you, than expelling him from your life and keeping him as far away as possible. In short, the safest thing to do is to

put as much distance between us and Terry as possible. (The true answer here is that the mayor should have been informed of this type of behavior *years* before so he could have taken action. Waiting until you reach “critical mass” is not a good strategy in dealing with potential workplace violence situations.)

RISK ASSESSMENT: WHAT COULD HAPPEN IF WE DID NOT FIRE TERRY?

On the other hand, if we did not fire Terry, the chances of him “wiggling” out one day and harming a co-worker were actually very good. He had grown more and more threatening over the years, which shows a very disturbing and frightening pattern. Employees were now half-heartedly making jokes about wearing Kevlar jackets into work in case Terry “goes Postal.”

It was ridiculous.

We were losing control of the workplace. If we kept Terry, we would be sending a very clear message that you can actually make death threats against your supervisor, and probably therefore your co-workers, and get away with it. The bullies would run the place. In this case, the bully was Terry. (If barking out death threats is not bullying, then **nothing** would *ever* be bullying.)

Keeping Terry and letting such behavior “slide” would surely result in even lower morale and poorer levels of production from our employees in this area, which means the city will need to hire more people to do the work of our distressed, demotivated and frightened employees. It is hard to come into work everyday with positive attitude when you work next to someone who prides themselves on being homicidal, at least, I think it would be for me. I don’t think it is fair to ask any employee to work in any environment that I would not be willing to endure.

Also, if we did not fire Terry for making this death threat...how could we *ever* fire anyone for any kind of poor behavior in the future, such as for being insubordinate? **Everything** pales in comparison to a death threat. If we retained Terry, we would indeed avoid a lawsuit now ... but we would *guarantee* that another one would follow at some time in the future ... and we would probably *lose* that one.

Sometime down the road, the city will want to fire another person for some serious insubordinate act. However, sure enough, that next person will have some characteristic different from Terry. That person will be at least five to seven years older than Terry, or that person will be African American, or that person will be a woman or that person will be a Wicca or will belong to some protected class that is different from Terry ... and we will fire that person. As soon as it comes out that we did not fire Terry for this threatening behavior, we will have to bargain our way out of that situation by asking, “How many zeros would you like?”

In short, we would never be able to immediately terminate anyone for any type of behavior-related serious offense in the future, at least not without fighting a long battle in court.

Further, if Terry ever did harm another employee or a member of the public, we would definitely get sued by the victim for “Negligent Retention” ... and we would have a great chance of losing that lawsuit as well. We were on notice that Terry has a propensity towards violence ... and the “reasonable person” in the department, which was actually 100% of the employees, were afraid of him. If Terry ever did assault someone on the job, we would be “toast.”

Also, what if Terry’s threats made the newspaper...and it got out that we gave him a slap on the wrist? (In the public sector ... assume it will get out!) What if we ended up on the evening news that we had an employee who had made death threats and he was still working for the city? What would the public think? Would these citizens be afraid to be around city employees? Would we be seen as incompetent managers if we did not terminate him? Any way you cut it...if this incident made the front page, it would be disastrous.

RISK ASSESSMENT: FINAL BALANCING OF RISKS

Either way you go, there could be a bad result. That is life...and it is full of risk. Decision making involves choosing the best result you hope you can achieve, as well as the devil you are willing to live with from your decision. There is rarely one clearly correct answer...only *better* ones.

You will *never* eliminate risk. You balance and manage risk. There is always a pro and a con to every decision. The best you can hope for is to effectively manage risk. The trick here is to choose the path that has the lesser degree of risk with the greatest potential for a positive outcome.

In this case... yes... the city attorney was right. If we fire Terry, we will most likely get sued. But then, that is not necessarily the worst thing that can happen. When you assess the risk of this lawsuit against the other risks the city could and certainly would encounter if it did not terminate him, it was an easy call. Terry needed to go. I felt assuming the risk of a lawsuit by a public sector employee who had threatened to kill his supervisor, an employee who had a long history of threatening and “squirrely” behavior, was a good calculated risk. I would take that risk over the others mentioned.

Still, I never got the city attorney to agree with me. The years he had spent practicing law and looking at risk primarily, if not exclusively, from a standpoint of avoiding the immediate lawsuit at any and all cost had given him “tunnel vision.” Typically, he was trading a short-term win for a long-term disaster. (But then he was retiring soon. What did he care?)

But then, that is the core of the problem...isn't it? You can **never** avoid risk. By avoiding risk, you in essence "brush it away." Eventually, these issues only come back to bite you later.

Instead, a good business person "assesses" and balances risk. There is always going to be risk. You have risk driving into work each day, getting up in the middle of the night and going to the bathroom, etc. You can never eliminate it. You must assess it and manage it. If you try to avoid it, you will leave so many "landmines" behind you that you that one day you will be boxed in by your previous failure to act. It will become a self-fulfilling prophesy.

One last time, let's tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

WHAT IS THE PROBABILITY OF GETTING SUED IF YOU DO FIRE TERRY?

MAYBE

WHAT IS THE CONSEQUENCE OF ERROR IF YOU DO FIRE TERRY AND HE SUES YOU?

NOT BAD

(I would rather defend this lawsuit than defend a lawsuit wherein Terry actually assaults someone. We will LOSE that lawsuit.)

WHAT IS THE PROBABILITY OF GETTING SUED IF YOU DO NOT FIRE TERRY?

VERY GOOD!

(If Terry assaults someone, you will get sued and LOSE under a "Negligent Retention" theory.)

WHAT IS THE CONSEQUENCE OF ERROR IF YOU DO NOT FIRE TERRY, HE ASSAULTS SOMEONE AND YOU GET SUED?

CATESTROPHIC!!!!

(We would just ask the plaintiff, "How many zeros would you like?")

Fortunately, the mayor was not J.D. impaired and he saw the logic of assessing all of the potential risks of this situation. Terry was terminated ... and there has never been another problem from him.

Also, since it dealt directly with Terry's behavior, the city demonstrated to its other employees that it took their concerns seriously. The workplace was safer with Terry gone ... and no acts of violence occurred. Morale went up. No lawsuit occurred ... probably because Terry did not want all of these facts to come out in the press.

I often wondered about how Terry would have pled his case. How do you make the argument that it is OK to threaten to kill a guy in today's world...even jokingly?

I will take that lawsuit any day.