

Litigation Issues When the Case REALLY Matters

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THE LITIGATION TRAIN

- ▶ How to Approach Litigation That Threatens Strategic Objectives
 - ▶ Major Projects
 - ▶ New Initiatives
 - ▶ Labor Issues
 - ▶ Safety Improvements
 - ▶ Expansion



Litigation Happens: Learn to Love It

Litigation is a Process to:

- Vindicate Rights
- Legitimize Controversial Decisions
- Shift Blame to Courts
- Get Leverage

**EMBRACE THE PROCESS
MAKE IT WORK FOR YOU**



DISCUSS AMONGST YOURSELVES ...

From the Client:

- What Are Strategic Objectives
- What trying to GAIN
- What trying to AVOID

From Counsel:

- What are Legal Parameters
- What is Possible/Probable
- What are Risks/Outcomes
- What are Costs
- What is Timeline



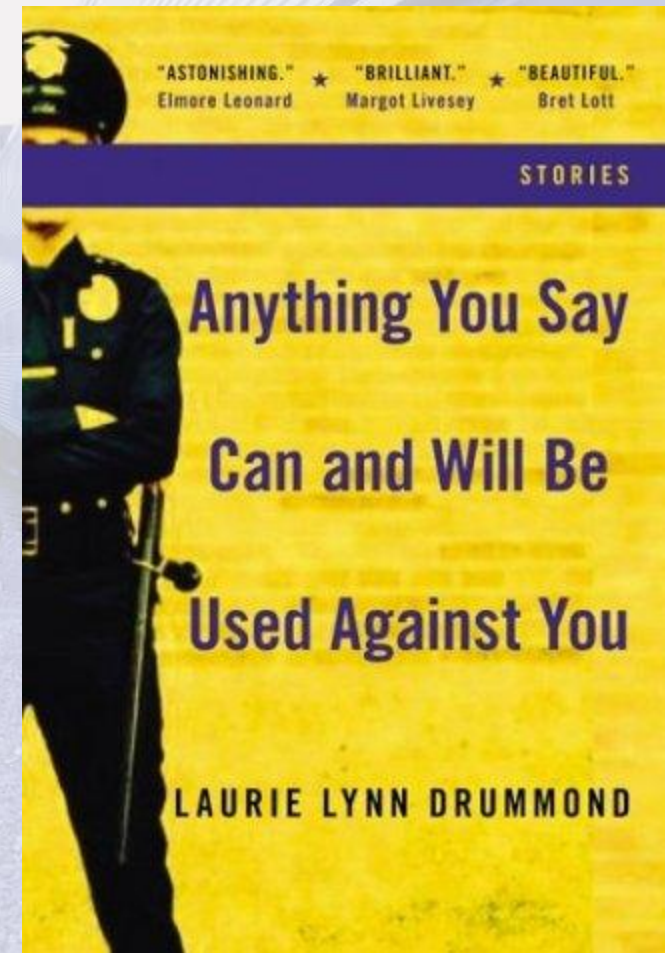
... BUT NOT TOO LOUDLY

- ▶ Sunshine Laws May Limit Confidentiality
 - ▶ Establish Procedures
 - ▶ Executive Sessions
 - ▶ One-on-Ones
 - ▶ Limit Sensitive Documents



ASSUME THE WORST

- ▶ Act Like You Are Going to Court
 - ▶ Develop a Strategy That Will Put You In Best Position IN COURT Given Practical Constraints
 - ▶ Build a Record that Will Support Your Case



CAN YOU ESCAPE?

- ▀ Identify Risks
- ▀ Best Case/Worst Case/Likely Outcomes
- ▀ Identify Plan B if You Lose
- ▀ Is Settlement an Option?
- ▀ Can Litigation be Avoided?



Key Decision Points

- ▶ Forum
- ▶ Complaint
- ▶ TRO/Preliminary Injunction
- ▶ Motion to Dismiss
- ▶ Discovery/Depositions
- ▶ Summary Judgment
- ▶ Trial
- ▶ Appeal



DURING LITIGATION

- ▶ **HAVE A PLAN**
 - ▶ Documents
 - ▶ Budgets
 - ▶ Schedules
 - ▶ Witnesses
 - ▶ Confidentiality
- ▶ **Point(s) of Contact**
 - ▶ Day to Day Issues
 - ▶ High Level Issues



EXPECT THE UNEXPECTED

- ▶ Unexpected Decisions
- ▶ Schedule
- ▶ Depositions
- ▶ Costs
- ▶ Delays
- ▶ Update Expectations and Likely Outcomes/Risks

