

## **Legal Strategy, Mental Health Conditions & Rising Social Media Illnesses – Episode 39 [PODCAST]**

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Hello and welcome to the IMS Insights Podcast. I'm your host, Adam Bloomberg.

Today, we're speaking with American Psychiatric Association member, Dr. Neil Kaye, about developing legal strategy, common clinical and forensic mental health conditions, and the rise in social media-related cases.

Dr. Kaye is a clinical and forensic psychiatrist, with more than 35 years of experience treating patients. He is an IMS Elite Expert, neuropsychiatrist, and pharmacologist—board-certified in general adult psychiatry, geriatric psychiatry, and forensic psychiatry.

**Adam Bloomberg:**

So I take it that your cases and your trials take you all across the United States. And we've seen in some venues, state or federal, depending on the rules or the judge that jurors are allowed to ask questions. Have you been in those trials where you've done the direct, you've done the cross and the redirect, and now jurors have submitted questions to the judge to potentially be asked, what do you think of that process?

**Neil Kaye:**

I love that process. I think it's fine. I have had very few cases, maybe just a couple where that has actually occurred. Where the jurors basically submit questions to the judge and the judge reformulates the question, if you would, and then has asked me about it. I think it's important because I think it shows what the jury really is thinking about what they want to know.

**Neil Kaye:**

I think it's a real signal to both sides as to what's going on in the case and what they need to focus on. There are often so many facets of a case that might be interesting but are not really the key point for the trial. And I'm a great believer in trying to sift through that rapidly. Litigation is expensive. If we can expedite the process by presenting the jury or the judge with really the only limiting questions that are left, it's a much better process.

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**Neil Kaye:**

So what you talked about, jurors submitting questions is one way to do it. I've actually had a number of cases, both criminal and civil where, and this is unique, the parties have agreed that the experts could talk together prior to litigation, prior to the case and decide where they agreed and where they disagreed, advise the lawyers, and then create stipulations for everything that was already not a question, not on the table. And that the only thing that would then be presented in court would be where the experts disagreed specifically. Very effective way to shorten a trial and to get to really the root of the issue, the pithiness of it. A lot of lawyers don't want to do that. It's not necessarily conducive to their work or billing or anything else, but if your goal is really to get to truth, it can be very helpful.

**Adam Bloomberg:**

So in a previous conversation that we had, you mentioned that forensic psychiatrists may know a lot about legal strategy. Why don't you expand on that a little more?

**Neil Kaye:**

In our training, we learn about legal strategy. As experts in behavior, we understand about strategy and how people are going to behave, lawyers, jurors, judges, et cetera, but for certain matters or topics, we may actually have more experience or see more of those cases or be in court more often on those issues than a lawyer. So even in something in the criminal world, most criminal lawyers might do one insanity defense case, criminal responsibility case, in their career. They're rare, whereas a forensic psychiatrist might have done dozens of them. So we may have a lot more experience about what really happens or how it goes down.

**Neil Kaye:**

One of my areas of expertise, I have a national reputation in infanticide and neonatal side, death of newborn and young children. It's a gruesome area, but again, most criminal lawyers might see one or two of those cases in their career. I've seen a lot of them, so I know what we need to present, how it needs to come across. What are the words and the language that are important for that topic? So again, as part of that prep with lawyers, there's really an opportunity for a lawyer to learn a lot from an expert.

**Neil Kaye:**

In fact, just before this call, I was helping prep a lawyer for a case to do with a discharge from a hospital. And I said, "Well, have you looked at the accreditation, the joint commission on accreditation of hospital organizations, have you looked at their discharge standards?" The lawyers said, "Well, no." They hadn't. They didn't know about those. And I said, "Well, there are standards that are out there that physicians need to know."

**Neil Kaye:**

And in this case, one expert on the other side has said the discharge was inappropriate or premature. I said, "But I can tell you that discharge met the published hospital standards. And so if we can go in there with the standards, you print them out, you blow them up on the poster board size, all the ways that kind of material is presented in a courtroom, we have a much stronger case because we can

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show that the doctor, the hospital, followed the standards and that's going to carry this case." But in this case, the lawyer wasn't aware of the standard. I was. Because in my work, I've seen standards for lots of things lots of times and I'm able to bring that into the picture.

**Adam Bloomberg:**

Why don't we dive a little deeper into your expertise? These days, we hear a lot about depression, anxiety, ADHD. We typically hear about that with kids and also the same sorts of conditions with adults. Maybe burnout. Are these some of the most common disorders in your field that you're seeing and then also in the courtroom?

**Neil Kaye:**

So clinically, those are certainly some of the most common things that we treat. And the bulk of my work is actually clinical, which I think is important for a variety of reasons. One is some states mandate that an expert, in order to be admitted, has to do a certain percentage of their work clinically. So they can't be simply an expert witness. They look too much like a hired gun.

**Neil Kaye:**

So I live in Delaware. I do some testimony in Maryland, our adjoining state. They have a 20% rule. So I've got to keep my clinical practice 80% of my work, otherwise I'm not allowed to testify in Maryland as an example. But also, good clinical work is the basis of being a good forensic psychiatrist. It keeps you abreast of the literature, the clinical world. When you talk about things like the standard of care, you're much more understanding and appreciative of it because you're living it and doing it every day. I don't have to look up or try to figure out what the standard of care is on most things because I'm out clinically working and interacting with colleagues on these topics every day, so I know about that.

**Neil Kaye:**

Depression doesn't come up in cases all that frequently, other than as a damage. So someone may be alleging depression or anxiety or a stress syndrome, post-traumatic stress disorder, an adjustment disorder, an acute stress reaction as the result of something that they have experienced. It could be a traumatic motor vehicle accident, an injury at work. A psychic damage like harassment would all fall into that arena, so I see those clinically. We certainly see them on the forensic side as well.

**Neil Kaye:**

ADD comes up mostly in cases where someone is seeking a disability or some kind of special accommodation. So through the disability law side, we may be trying to help someone get an accommodation. It could be a student who needs help with testing. It could be a law student who wants untimed testing for the LSATs. We do those cases. So ADD comes up mostly through that channel.

**Neil Kaye:**

In the med mal cases, generally, it's the damage that someone has experienced. We have two kinds of medical malpractice cases that I would be involved in. One is where someone is alleging that a medical error, not a psychiatric error, but essentially a physical medical error caused them harm and

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they now have depression, anxiety, a psychic injury secondary to the physical injury. So, a classic case would be they had surgery, a sponge or an instrument was left inside their body. They had to get re-operated on and now they have a fear of doctors and a lack of trust and pain related to the surgical mistake. That would be one form.

**Neil Kaye:**

The other one would be a medical malpractice error directly in psychiatry where someone is claiming that the negligence of the psychiatrist caused harm. Most common are those of suicide that essentially either an act of omission or commission by the psychiatrist resulted in the person committing suicide or possibly injuring someone else, homicide or an injury to another person, or a boundary violation issue as we call it, meaning that a treater was inappropriately intimate with a patient violating the ethics codes and essentially the standards for boundaries between doctors and patients.

**Adam Bloomberg:**

Okay. I'm going to give you a softball question. It's about social media, and I'm a parent of two girls. It's around us. There's no way you can get away from social media, so let's compare. I love the fact that I get to talk to a qualified person about this. I'm very interested in this topic. Let's say compared to a decade ago, or maybe even 15 years ago, have you seen an uptick in mental illnesses or disorders brought on by or triggered by the use of social media? And I know some kids, I won't name names, use social media sometimes for hours on end. So I guess the question is that, and then maybe, what sort of disputes have you seen arise in cases related to social media?

**Neil Kaye:**

So social media is a disaster area, to put it simply. The pressure on teenagers today, especially girls, but both sexes is just immense and social media only magnifies it and worsens it. The bullying online, the sharing and inappropriate sharing, and lack of privacy online is really troubling.

**Neil Kaye:**

We saw this coming actually. Justice Brandeis back in the mid-1800s saw this coming when he was talking about problems with newspapers and telecommunications developing in the late 1800s. Clearly, he was prescient. The problems that it produces are myriad. We have had some very interesting cases around social media, probably the most notorious one is the homicide charges against an individual for encouraging another person to take their own life. So bullying to the point of someone committing suicide, that's a huge problem. Obviously, the school shooting, and we just had the Buffalo shooting being live-streamed for shock effect.

**Neil Kaye:**

And this is just stuff that's just, just awful. And the pressure to conform, to look a certain way, to be a certain thing has increased rates of anorexia, depression, and self-esteem problems that are really just out of control. So I think there's a lot of problems. I understand it can improve communications and that there can be benefits to it like any other technology, but it is fraught with problems.

**Neil Kaye:**

The place I see and use social media the most, so I'm not a social media user per se, but it comes up in many legal cases. The two that are the most common for me would be disability cases where people are alleging to their doctors and treaters that an injury has caused a disability and they can't do these various things that they used to do. Where on social media, you see them doing all the things they said that they can't do and basically destroying their own case.

**Neil Kaye:**

The other one would be in divorce, custody battles, same sorts of things. People say and do all sorts of things on social media that become admissible in the court in divorce and custody litigation. Most of the lawyers I know who do civil work in the plaintiff arena instruct their clients, and some of them now in writing, that they must promise to cease all social media use so that it cannot be found. Of course, once it's been on the internet once, it's there forever. You cannot take things off the internet. There is no erasure out there. So true, false, or otherwise it's out there. So it's a big issue.

**Adam Bloomberg:**

Yeah. It's interesting. One to two decades ago in these sorts of cases, a firm would have to hire a private investigator. Now you just look up the person on Facebook or wherever, and you find this information that they're freely posting about themselves. It's a very interesting time we're living in.

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