You’re probably familiar with the Peter Principle. Named for its progenitor, the educator Lawrence J. Peter, it theorizes that people are chosen for their performance in the jobs they have, not for the jobs they’re being promoted into. It’s a theory that haunts every new leader, inside and outside law offices. Whether you’re a new supervisory attorney or a new junior partner, you’re liable to feel the pressure of performing at your usual level while learning a completely new job. You might even lie awake at night, wondering whether you can do it.

Don’t worry: you can. No, not everyone is a born leader, just like not everyone is born with perfect teeth or the ability to dunk a basketball. But unlike perfect teeth and dunking ability, you can learn to be a leader. And that learning process doesn’t have to take years. Here are a few tips to speed you along your way.

Act like a leader—even when you don’t feel like one. Nobody feels like a leader at first. By definition, new leaders don’t have experience leading people. But even if you don’t feel like a leader—even if doing the things you associate with “leadership” feel awkward—you have to do them. That’s the only way you’ll get comfortable in your new role.

The first thing you have to understand about your new role is that it’s different. Like most people, you probably got promoted because you were good at your old job. You were a good individual contributor: you wrote well, you researched thoroughly, you got along with your colleagues. But that’s not what the organization needs from you now. You won’t be doing much of that stuff yourself anymore; you’ll be making sure other people do it as well as you did. So you’ll have to take a different approach. You’ll need a new mindset. And the sooner you realize that, the better.

The biggest mistake new leaders make is trying to do too much themselves. That’s what they know. They take on all the hard projects, they micromanage their team, and they work way too many hours. But they’re just spinning their wheels. Eventually, they either realize they need to take a different approach or they burn out.

Don’t let that be you. Delegate tasks. Coach your subordinates. Make them feel like key players, not bench jockeys. People can tell when you trust them. When you do, they reward you with more thoughtful, engaged work. And when they do good work (or even when they don’t), you have to tell them.

Get to know your staff. Which brings us to the second biggest mistake new leaders make: not communicating enough. Most new leaders understand that they need to keep their teams informed. They remember how they felt when they were kept in the dark, and they’re usually pretty good about passing on information. What they don’t always understand is that communication is a two-way street. In fact, the most important part of communication is what your team tells you. You need to know what’s going on with your subordinates—whether they’re happy, how their work is going, whether they need any help. And you can only do that by listening.

Listening will do two things for you: it will help you collect useful information, and it will show your subordinates that your care about their input. People work harder for you when you value their opinions. And they won’t know you value their opinions unless you take the time to listen and consider what they have to say. They’ll appreciate the respect you show them, even if you don’t always accept their suggestions.

Develop your network. Just as important as your relationship with your team is your relationship with your peers. When your subordinates need to connect with someone in another part of the organization, or another organization entirely, they’ll look to you. Your value to them will lie in how wide and how diverse your peer network is. The old truism—it’s not what you know, it’s who you know—is a truism for a reason: it’s true. So meet people, make friends, do people favors. In
On January 25, 2017, President Trump signed an Executive Order titled “Enhancing Public Safety in the Interior of the United States,” accompanied by a dramatic expansion of immigration enforcement. On February 20, 2017, Department of Homeland Security (DHS) Secretary John Kelly issued a memorandum outlining an implementation plan for President Trump's Executive Order. Secretary Kelly’s memorandum leads with an immediate rescinding, to the extent of a conflict, of all existing directives, memoranda or field guidance governing apprehension, detention, and removal of undocumented aliens.

The 2017 DHS memorandum effectively nullifies a 2014 DHS memorandum issued by the Obama Administration that provided clear, focused, and logical enforcement priorities. The 2014 DHS memorandum directed the agency to devote its time, resources, and energy to violent criminal aliens who posed a threat to public security. Aliens with minor infractions were considered to be a low priority. In the ever-changing world of immigration law, the 2014 memo made it easy to distinguish whom ICE agents would pursue, as well as when and how they would do so. If you are a habitual offender or have a felony conviction, certain misdemeanors, or even a DUI conviction, you should expect to be pursued, and you have a lot to overcome. In contrast, if you have no criminal convictions and demonstrate positive qualities (also known as favorable “equities”) such as paying taxes, having stable employment, having a continuous physical presence in the community, or being a contributing community member, you should expect your unlawful presence to be “tolerated” until or unless a criminal conviction or a serious immigration violation occurs.

Example of the New Executive Order at Work

It was a cool March morning, after the morning docket ended in Chesterfield Juvenile and Domestic Court, which is located in a county hugging the south of Richmond in Central Virginia. Mr. Guerrero, an undocumented immigrant, exits the court with a deep sigh of relief and gratitude as his charge of assault and battery against a household member was nolle prosequi (i.e. abandonment by a plaintiff or prosecutor of all or part of a suit or action).

While attempting to leave the courtroom to return home to his wife and U.S. citizen children, Mr. Guerrero was confronted by two large, heavily armed men donning military fatigue t-shirts and bulky black bullet proof vests with ICE logos. ICE stands for U.S. Immigration and Customs Enforcement.

The exchange between these ICE agents and Mr. Guerrero was overwhelming, unexpected, and confusing. The Judge, from inside the courtroom, noticed an unusual commotion and asked the Bailiff to handle the disruption. Mr. Guerrero was served with a “warrant for alien arrest” and a “notice to appear,” which is a charging document placing him into removal proceedings in the Arlington Immigration Court.

Broadening Removal Authority and Resurrecting Flawed and Questionable Initiatives

The Trump Administration’s 2017 executive order uses exceptionally broad language, which includes prioritizing and detaining those who have been charged or convicted, or both, with minor infractions like jaywalking or driving without a license, anyone who was once charged with a criminal offense but has since been acquitted of all charges, and all undocumented individuals under the presumption that they committed the chargeable offense of “improper entry,” a civil offense.

The Administration also expanded the authority of the U.S. Customs and Border Protection (CBP) under section 287(g) of the Immigration and Nationality Act, allowing CBP to enter agreements with local police authorizing them to arrest “potentially removable noncitizens” while in the field. This was a policy the Obama Administration discontinued because of diminished due-process rights and the encouragement of racial profiling by law enforcement. Further, the once discontinued Secure Communities initiative was resurrected. Service Communities is a program...
requiring local law enforcement to share information about individuals in its custody with DHS and authorizes DHS to issue detainers to local jails and correctional facilities for holding an individual beyond the scheduled release date so ICE can take custody.

This program was terminated in 2014 because of the controversy and litigation surrounding constitutional violations where noncitizens have been subjected to indefinite detention, and saw the rise of police-community fear and distrust, as well as racial profiling. The executive order gives rise to many other stark changes, including establishing a Victims of Immigration Crime Engagement (VOICE) Office, the hiring of additional ICE officers and agents, new “expedited removal” processes that avoid due-process considerations, and the collecting and reporting of data about alien apprehensions and releases.

Ethical Considerations

If you thought immigration law was as vast and nuanced as tax law before, you are now in for a surprise. In 2017, the threat of apprehension, detention, bond, defensive and affirmative relief, and removal proceedings are common place. Counseling clients gives rise to a myriad of ethical considerations. Further, these considerations extend beyond the mere practice of immigration law. For example, if you practice family law or criminal defense, you must consider the numerous factors that can irreparably harm an individual, his or her family, his or her business, or his or her community. In the 2010 Supreme Court case, Padilla v. Kentucky, 559 U.S. 356 (2010), the Court held that criminal-defense attorneys are required under the Sixth and Fourteenth amendments to advise noncitizen clients of the immigration consequences of a plea deal. In 2015, the Supreme Court of Virginia issued a decision in Zemene v. Clarke, 289 Va. 303 (2015), that articulated a broad view of defense attorneys’ obligations under Padilla to their immigrant clients in Virginia.

Let’s do a refresher: Padilla requires defense counsel to advise a noncitizen defendant of immigration consequences of a guilty plea, and, absent such advice, a noncitizen may raise an ineffective-assistance-of-counsel (IAC) claim to vacate a noncitizen’s criminal conviction that has triggered negative immigration consequences. Therefore, defense counsel has a duty to inquire into immigration status and to investigate and advise a noncitizen client regarding the immigration consequences of a criminal conviction. Which, not to mention, a “conviction” under the Immigration and Nationality Act (INA), is much broader than it is defined in a criminal setting. Further, Padilla requires affirmative, competent advice rather than mere affirmative misadvice. A defense lawyer’s silence regarding immigration consequences of a guilty plea consists of IAC, even when deportation consequences of a plea are unclear or uncertain. The Padilla court also stated that informed consideration of immigration consequences at stake in the plea negotiation process is important “to reach agreements that better satisfy the interests of both parties . . . in order to craft a conviction and sentence that reduce the likelihood of deportation” to help ensure the finality of convictions and mitigate or avoid draconian immigration penalties.

Immigration Practitioner on Speed Dial

 Practitioners, even those who do no specialize in immigration law, confront immigration issues, whether in a divorce case representing an abused spouse or in an employment case representing an employer who hired a student lacking work authorization. As such, it is important to have a basic understanding of key issues and their ethical implications. If you want to learn more, join your local chapter of American Immigration Lawyers Associations (AILA) and, at the very least, meet and network with immigration practitioners who you can count on for guidance or to take over when you cannot competently move forward.

Soulmaz Taghavi is 2014 graduate of North Carolina Central University School of Law and Co-Founder of the Novo Taghavi law firm located in Richmond, Virginia where she practices immigration law.
On August 22, 2016, the Virginia State Bar debuted a new tool to assist low-income Virginia residents with legal services called Free Legal Answers. This new service is part of a multi-state initiative in collaboration with the American Bar Association aimed at addressing important civil legal questions for financially constrained Virginians.

Free Legal Answers is accessible online at Virginia.freelegalanswers.org. The site is user friendly, featuring simple prompts. Individuals in need of legal assistance are screened in order to determine if they meet the threshold income requirement. If they do, the user may post a question about a civil legal issue that will be disseminated to volunteer attorneys. The user will then receive a response from an attorney via e-mail.

To qualify for Free Legal Answers, a user’s income must be no more than 200% of the poverty level. This would translate to a maximum household income of approximately $24,120 for a single individual, according to 2017 Federal Poverty Guidelines. If you support a family of four, the maximum household income would be $48,600.

Each user may post up to three questions in a 12-month period. A user can also post relevant facts and attach documents and photos with a submission. The questions and all other information provided by the user are placed in a queue, which is then reviewed by a Virginia attorney experienced in the practice area.

Making Pro Bono Convenient for All Schedules

Unlike traditional legal-service programs that typically require an in-person meeting, Free Legal Answers allows a user to gain valuable legal advice in a digital format. This translates into convenience for both the user and the volunteer attorney. Free Legal Answers enables a busy attorney to provide pro bono legal services with the ease and efficiency of responding to an e-mail.

Volunteer attorneys working within the queue are covered by malpractice insurance provided by the National Legal Aid & Defender Association (NLADA) Insurance Program.

Attorneys who are in good standing may sign up for the website to provide assistance with previewing questions and responding to legal inquiries. During this process, the attorney knows the name of the user. However, the attorney’s identity remains anonymous and is known only as “the Volunteer Attorney.” You will also receive information about the identity of the opposing party, the legal deadline (court date or when the client is requesting a response), and how long the question was pending in the queue. The interaction is limited to responding to the legal inquiry. When an attorney closes the question, the client receives a notification that an answer has been provided and is then prompted to take a survey requesting feedback about their experience with the system.

A Step in the Right Direction

Tennessee was the first state to devise such a program and its high success rate is a testament to the importance of providing pro bono legal services to Virginia residents. Virginia is among 35 states to recognize the need for pro bono legal services that are accessible online. Let’s hope this pro bono program continues to flourish.

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Character and fitness—three words that resonate with every lawyer. In Virginia, character and fitness entails an in-depth investigation of prospective lawyers, complete with a lengthy application, criminal background check, driving records, credit reports, medical records, and fingerprinting. Virginia’s rigorous vetting process of prospective attorneys is undoubtedly guided by the fundamental principles that (1) the public be served by persons “of honest demeanor and good moral character”\(^1\) and (2) the practice of law is a privilege, not a right.

Once prospective lawyers become actual, fully licensed lawyers, they are subject to the Virginia Rules of Professional Conduct (“the Rules”). The Rules define the standard of conduct expected from lawyers on topics ranging from fee agreements to behavior, legal or illegal, that may reflect adversely on a lawyer’s fitness to practice law. Failure to abide by the Rules could invoke the State Bar’s disciplinary process.

However, the Rules do not specifically address bias, prejudice, harassment or discrimination in the actual practice of law such interacting with clients, witnesses, coworkers, court personnel, and opposing counsel. In fact, Virginia is one of 14 states that does not address anti-discrimination or anti-harassment in its Rules of Professional Conduct.\(^2\)

This raises an important issue—whether a self-governing profession like the practice of law, with such a thorough vetting for admission, needs specific rules condemning bias, prejudice, harassment, and discrimination. The American Bar Association (ABA) thought so and, as a result, adopted Model Rule of Professional Conduct 8.4(g) to address bias, prejudice, harassment and discrimination in the summer of 2016.

Surprisingly, adopting a new model rule to address what some perceived to be a failure to reflect “the monumental achievements that have been accomplished to protect clients and the public against harassment and intimidation”\(^3\) proved no small task. Even though 25 jurisdictions already had some form of anti-discrimination or anti-harassment provision in their rules of professional conduct,\(^4\) and 13 others addressed anti-discrimination or anti-harassment in the form of a Comment to the Rules,\(^5\) the ABA still received a significant amount of criticism about Model Rule 8.4(g).

Critics argued that Rule 8.4(g) was an attempt to embed political correctness into the profession’s ethics. They argued that rules of professional conduct are not designed to address social evils. Instead, they are intended to be standards by which we measure the fitness of lawyers to practice. Some critics even cited concerns that Rule 8.4(g) would infringe upon a lawyer’s right to free speech.

Proponents of Rule 8.4(g) argued that it filled a gap in the Rules that addressed bias and prejudice only within the scope of legal representation and only when it was prejudicial to the administration of justice—a gap that even the Model Code of Judicial Conduct addressed. Proponents further argued that the Rules failed to cover bias or prejudice in other professional legal capacities, such as lobbying or attorneys acting as advisors in law schools and corporate law settings, and did not address harassment at all.

After nearly two years of drafting and revisions, the ABA adopted Rule 8.4(g) by voice vote on August 8, 2016 at its annual meeting in San Francisco. There was no verbal opposition. The final version of the Rule read:

\[\text{It is professional misconduct for a lawyer to engage in conduct that he or she knowingly or reasonably should know is harassment or discrimination on the basis of race, sex, religion, nationality, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.}\]

There is no indication that the Virginia State Bar is currently considering adopting Rule 8.4(g), and it has not solicited any public comment on the matter.

Understandably, Virginia’s Rules of Professional Conduct need not and cannot exhaust all moral and ethical considerations that should inform a lawyer of appropriate conduct. Nonetheless, at a time when skin color, gender, age, sexual orientation, religion, and citizenship continue to play a substantial role in our society, government, and how people treat one another, having a rule or comment against discrimination in all its forms could make an important statement to the profession, and the public, about the integrity of Virginia lawyers and their intolerance of prejudice, bias, discrimination, and harassment.

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Q&A with Family Law Service Award Winner
Cheshire I’Anson Eveleigh
Patrick J. Austin

Each year, the Family Law Section of the Virginia State Bar recognizes individuals that have improved family, domestic relations, or juvenile law in the Commonwealth through the Family Law Service Award. Cheshire I’Anson Eveleigh was named the 2017 recipient of this prestigious accolade. I had a chance to speak with Cheshire about the award and her career in family law.

Q: Congratulations on receiving the Family Law Service Award. How did you find out that you were the recipient? Did it come as a surprise?
A: I found out when Mary Commander, the most recent recipient, called to congratulate me. Yes, it came as a surprise. I knew that I had been nominated, but I am sure that there were other equally deserving candidates.

Q: Did you intend to specialize in family law when you first entered the profession or did it happen by circumstance?
A: When I was at William and Mary Law School I took a course in family law because it was taught by a local judge from the Williamsburg Juvenile and Domestic Relations Court. I knew I wanted to litigate, and having a judge teaching a course was important to me. I did not think I would be practicing exclusively family law. When I started with Wolcott Rivers Gates after graduating from law school, they needed a litigator who would do 70% civil litigation and 30% family law. I agreed, and before I knew it, by the time I had practiced for 6 years, I was exclusively practicing family law.

Q: What do you love most about practicing family law?
A: I enjoy the fact that each day I encounter a different aspect of family law. If I am working on a divorce case, for example, I might be looking at business valuations, real-estate appraisals, financial statements of assets, custody evaluations, etc. I also enjoy trying to help people when they need it most.

Q: What do you find most frustrating or difficult about practicing family law?
A: It is difficult when a client has an unrealistic expectation of what the attorney can accomplish in a case.

Q: If you could make a change to the practice of family law, what would it be?
A: Trying to encourage family law attorneys not to take on the emotions of their clients during highly contentious cases.

Q: You’re the chair of the Virginia Family Law Coalition, secretary of the Virginia Chapter of the American Academy of Matrimonial Lawyers, and a diplomat in the American College of Family Trial Lawyers. How do you effectively balance a demanding legal practice, personal life, and volunteer?
A: I have a very supportive firm and a very supportive husband! Wolcott Rivers Gates has always encouraged its attorneys to give back to the community, whether through bar association work or community service. My husband never objects when I tell him that I have to go to Richmond for a meeting or to the General Assembly. He understands that what we do can make an impact on family law cases for many years and appreciates the time that it takes to accomplish that. Thankfully, his job is fairly flexible so that he can help out with the children they need to go somewhere after school. Also, I have always been organized, so that has helped me juggle all those balls. Over the years, I have had to learn to politely say “no” to some things in order not to become overwhelmed.

Q: What was your favorite course in law school?
A: My favorite course (and worst grade!) was Virginia Procedure.

Q: Did you always know that you wanted to be a lawyer?
A: Since my grandfather was a judge, I always had practicing law in the back of my mind. At one point, I thought I might go into the Foreign Service since we had traveled a lot while my father was in the Navy. When I went to Oral Roberts University, the sign above the law school said “Lawyers can be healers.” That phrase spoke to me. I took some time off between undergraduate school and law school. During that time, I realized that practicing law was what I wanted to do.

Q: Has volunteering for Bar activities, committees, and
other organizations benefitted you in your career?

A: I think that volunteering for bar activities, etc., has helped greatly in developing my family law practice. I found that going to bar luncheons put me in touch with attorneys that I would not see in court because they were not litigators. Many times, I would get a call from a non-litigator attorney within a week saying that they had a referral for me since their firm did not have a family law practice. Also, being involved in a statewide bar association, such as the VBA or the VTLA, puts you in touch with attorneys from other parts of the Commonwealth who may need to refer clients to a Hampton Roads-area attorney.

Q: What advice would you give to a recent law school graduate who is looking to find his or her footing in the practice of law?

A: Get involved with the Young Lawyers Section of a state or local bar association. If you are going to practice family law, become certified as a Guardian ad litem for children and do a good job. If you can, join a local Inn of Court. The Inn has attorneys that cover all years of experience and judges participate as well. All of these activities will give you access to attorneys that you might not otherwise have access to and who knows, they might be looking for a young associate to hire.

Patrick Austin is a 2013 graduate of the George Mason University School of Law and currently works as an Attorney-Advisor for the United States Department of Justice in the Office of Information Policy. He is also Editor-in-Chief of Docket Call.

President’s Message

Do Not Defund the Legal Services Corporation

The number of cases handled by legal-aid organizations funded by the Legal Services Corporation (LSC) involving domestic violence reached 116,074 in 2016. If LSC is defunded, as proposed by the current administration, that is at least the number of domestic violence victims who would stand alone in a courtroom next year, if they could even make it that far, to seek justice in a system that claims to be blind to means and circumstances.

The problem would not be limited to domestic violence victims. LSC is the single largest funder of civil legal aid in the country, which means that defunding LSC would leave at least one million people vulnerable to the injustice and hardship of an America with a widening wealth gap. Life, liberty, and the pursuit of happiness are each supposed to be inherent and inalienable rights, but liberty is the only one anyone pays attention to, and even that is just lip service until the United States abdicates its crown as the most incarcerating country on Earth.

But at least you have a recognized constitutional right to a criminal attorney if your liberty is at stake. You have no such guarantee in civil court, no matter how jeopardized your life or happiness—those are inalienable only to the extent you can afford them. They can be prohibitively expensive and out of reach for millions of people in our country. There is something perverse about guaranteeing criminal representation but not even being willing to pony up a fraction of one percent of the national budget to help someone keep their home, support their family, get healthcare without going bankrupt, or to help the elderly, disabled, or poor fight to hold on to what little they have. The attorneys supported by LSC have been fighting for those fundamental aspects of life and happiness for over 40 years, and they need your help to continue the fight.

The Virginia State Bar, along with voluntary bars throughout the Commonwealth, recently decided to take a stand on this issue by publicly denouncing the defunding of LSC, and I am proud of our colleagues for that stance. I hope you will add your voice to ours to promote accessible justice in all its forms, including civil justice, and to support the work of our colleagues who are reinforcing those other inalienable rights—life and the pursuit of happiness—and whose work shows every day that justice can be decoupled from means.

This is my last message as President of the YLC, so I want to convey hope. Hope that our generation of young lawyers has a broad and egalitarian view of justice. As Brian Stevenson said in Just Mercy, paraphrasing Václav Havel: people need hope, “not that pie in the sky stuff, not a preference for optimism over pessimism, but rather an orientation of the spirit. The kind of hope that creates a willingness to position oneself in a hopeless place and be a witness, that allows one to believe in a better future even in the face of abusive power. That kind of hope makes one strong.”

Be strong, fellow young lawyers, and have hope. It has been my pleasure serving as your President this year.

Dean E. Lhospital
President, VSB
YLC President 2016-2017
It is not every day a client comes into your office wanting to disinherit a spouse, but it can happen. It is important to know the law, and other implications of estate planning, when feuding spouses and divorce are involved.

Earlier this year, legislation was passed adjusting a spouse’s elective-share rights in Virginia under Virginia Code § 64.2-308.4. The law is designed to protect a surviving spouse from being disinherited. A surviving spouse can now claim up to 50% of the marital portion of the decedent’s augmented estate, even if there are children and other descendants involved. Prior to this change, the amount available to a surviving spouse was limited to one third of the augmented estate when children were involved. There is also now a provision creating a sliding scale factoring in the length of the marriage. If you were married for less than 15 years, you may not be able to claim 50% of the decedent’s augmented estate.

This recent change brings about questions of aligning family law with estate planning. Clients need to be educated on these laws and consider a prenuptial or marital agreement if the situation warrants. You can waive the elective share in these agreements. It is also essential that when people divorce, their estate plans are updated. Not only the estate-planning documents themselves, but all beneficiary designations. This includes assets like life-insurance policies, retirement plans, annuities, etc. Whatever is designated with these specific companies will trump whatever the estate-planning documents say, and clients need to understand that. Additionally, divorce decrees often contain provisions for these beneficiary designated assets, and clients need to know the divorce decree alone does not change beneficiary designations. This is something the client needs to do with the institution involved.

Finally, it is important to check any property that may have been titled jointly or assets that have a payable on death designation. A good tip is to ask clients to identify every asset they own, then ask if they know what would happen to that asset if they died. It is also good practice to include provisions for divorce in your estate planning documents removing the spouse from any named position should a divorce occur.

Estate planners need to align with family law attorneys to ensure these issues are addressed and taken care of before something unexpected and tragic happens, possibly leaving someone’s hard-earned estate to unintended beneficiaries.

Jesci Norrington is a 2013 graduate of George Mason University School of Law and currently works as an associate at Melone Law, P.C. in Reston, Virginia.
The Cyber Attorney, Brain Hacking, Cognitive Dissonance, and Negotiating by Scott A. Nerlino

As a practicing attorney, you may from time to time receive one-sided information about your client’s problem. Only receiving one side of an argument makes it easy to sympathize with your client rather than taking an objective view on the merits of their claim. It can create cognitive dissonance where the proverbial film playing in his mind about what transpired may not be fully based in reality. It may also be in stark contrast to the film playing in the opposing party’s mind. By figuring out how to meld the two you can achieve compromise and settlement.

Cognitive Dissonance

The human brain is a wonderfully intricate device constructed for one purpose: survival. You can believe anything you want, so long as those beliefs don’t kill you. That includes perception of reality. This is the aforementioned proverbial film that plays in a person’s mind.

As Scott Adams, creator of “Dilbert” and major inspiration for this article, put it, “[Cognitive dissonance] refers to a situation in which a person is presented with facts that contradict that person’s self-image, causing said person to say things that sound 100% reasonable to the speaker while sounding like nonsense to others.” To be clear, no one is immune to this.

An Amusing Anecdote

Let me offer you a short story about a non-Virginian attorney (let’s call him Mike) who has been practicing for 30 years. He is wealthy, well-educated, and quite successful. A huge point of pride for him is that in those 30 years he has only had to litigate three times. He has always been able to resolve his client’s conflicts before trial. He is in the process of working on a patent and several months back filed the provisional patent. The process that he is trying to patent is a manufacturing process which will ultimately take 12-to-24 months to bring the product to market. This product is one that he is passionate about and that he believes will help a lot of people. That is the film playing in his head.

During a discussion between an associate of the attorney (let’s call him Dave) and a potential partner, the partner revealed that he was working with a group developing largely the same product as Mike and discussed this directly with Mike. The partner’s product was nearly completed, in a beta level of testing, and was expected to hit the market in about six months. Clearly the partner had been working on the product for a long time.

What was Mike’s response when Dave told him? Maybe he would look to join with the potential partner as both a bit of a necessity and huge boon. Mike could bring the product to market faster and cheaper. But that is not even close to Mike’s response. Instead, he began shouting that he would sue the partner for patent infringement. For the first time, Mike heard what the partner had been telling him for months. This time, it unspooled the film that was playing in Mike’s mind, that he was the first to create this amazing product.

The point is that even seasoned attorneys are affected and are completely unaware of the cognitive dissonance when it happens to them. This is not a criticism of him; it just shows that he’s human like the rest of it.

Brain Hacking – Use Cognitive Dissonance to your Advantage

Since we know that everyone is susceptible to cognitive dissonance, including in hostile environments like a lawsuit, we can use that to help our clients. For example, when trying to reach a settlement, understanding the other side’s motivation is critical. Going further than their motivation, you should consider making your negotiations fit into the film in the other party’s head. There are few ways to approach this; consider pleadings, documents, phone calls, and logs written by the opposing party. In a large enough litigation, you can walk directly through the opposing party’s film through a deposition.

Take the time to understand that film, then frame your settlement offer within the story. If you can make an offer that does not ruin the film in the opposing party’s head, he or she is far more likely to accept it. Likewise, when an offer comes in that you think your client should take, get into your client’s story and explain the offer in a way that does not shatter it. You’ll likely find your client to be more receptive.

Conclusion

You could spend your entire life studying cognitive dissonance and how to spot it. It’s a skill that takes time to develop; but when you master it, you’ll find that reaching amicable settlements are much easier. Learn to spot the film in the minds of your clients and opposing parties, then use it to help your clients.

If this type of subject interests you, then you need to go Scott Adam’s blog and read from one of the masters; his writing will help in your practice: http://blog.dilbert.com

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