

October 2016 Bar Bulletin

Organized Information Is Power

By Adrienne Keith Wills

“Everything depends on billing — how many hours you spend thinking about a client. I don’t care if you’re shaving, stuck in traffic, or sitting on a park bench.”¹ These are the words of Gene Hackman as Avery Tolar, the assigned mentor to Tom Cruise’s Mitch McDeere in the 1993 film, “The Firm.”

Hackman’s advice hints at a pivotal problem for the fictional and highly unethical firm of Bendini, Lambert & Locke. Contrast Tolar’s billing advice to that of an ABA Journal article on “Billing Basics” to “[not] even think—or ask—about billing for that brilliant idea you came up with at the gym.”²

Speaking for myself, I’ve noticed that my brain doesn’t conveniently limit thoughts about work to being in the office nor does it only generate billable ideas during business hours. Much of the information that helps me do my job resides in my brain, as it does for other legal and judicial professionals. Our minds are critical tools for using the information we receive to do our work, and our minds have their own operating guidelines.

Neuroscientist Daniel J. Levitin, Ph.D., penned a New York Times bestseller that offers ideas about how to be more organized and make better decisions in our modern information age. Titled *The Organized Mind: Thinking Straight in the Age of Information Overload*, the book is broad in scope and includes far more concepts than I can cover here. However, the second chapter (“The First Things to Get Straight”) provides some explanation and tips that are powerfully helpful on their own.

Our default state is what Levitin calls a mind-wandering mode. We can experience a “flow of connections among disparate ideas and thoughts, and a relative lack of barriers between senses and concepts. It can lead to great creativity and solution to a problem that seemed unsolvable.”³ These mind states can be very helpful, however they can’t be forced. They are Archimedes’ Eureka moment in the bathtub or a seemingly random insight on how to approach a problematic case.⁴

We also have a work mode, where we focus on a task at hand. In focused mode, we review a mediation submission, write a brief or prepare a court order. This is when we do the hard work enabled by a brilliant insight.

Our minds can be in a wandering mode, or a focused mode, but not both at the same time. One of the challenges of navigating contemporary life is that we have so much information floating around, diverting our attention from the project at hand.

Levitin is clear on how to keep the mind working best. He says “we need systems outside our heads to help us.”⁵ He asserts that individuals “at the top of their professions, in particular those known for their creativity and effectiveness, use systems of attention and memory external to their brain as much as they can.”⁶ Many of those systems are “low-tech ... a pen and notepads or index cards for taking physical notes.”⁷

The power of an externalized note system, be it low- or high-tech, is that it helps us benefit from the mind-wandering mode. You can catch the great idea that occurs just as you’re stepping into the shower. By plucking that idea from your thoughts, you may be spared the irritation of having it come to you at another inopportune time. Or, you may have just created an opening for another insight that arrives while you’re waiting for coffee.

For professionals who want to embrace this system for their own benefit, Levitin’s book includes instructions on getting started. Because this approach works when we use it for ourselves, it logically follows that it could work with others, too. What I’d like to finish with are some ideas about ways to build on the idea of “externalizing” memory to help clients and counsel.

Early in a case: When scheduling an initial consultation with a potential client, it could be extremely helpful to encourage potential clients to take a couple minutes to write down their questions or concerns. This can “catch” existing questions and elicit fresh questions.

Later in a case: In preparation for major case events, be it a hearing, a collaborative session or a dispute resolution session, it seems wise to employ a formal way to help clients externalize their thoughts, questions and concerns. It may help identify missing, necessary information for resolution. It could also pave the way for creative problem solving.

As a mediator: The WSBA Section of Dispute Resolution’s survey of 2013 included findings that mediation has evolved into an ongoing process where the mediator interacts with parties before the mediation conference, engaging in pre-conference dialogue.⁸ For mediators, this can help them gather information and “prime” participants.⁹ Perhaps, as part of an early process, creating systems through which parties can externalize their questions, thoughts and goals could improve case outcome.¹⁰

“Knowledge is power” or so we’ve heard. Levitin’s work emphasizes that, in an age of abundant information, the systems that we create to organize our knowledge help us live and work better.

You might not get to charge for the insight that came at the end of an exercise session, however it might open the door to new possibilities for case work or resolution. □

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1 <https://www.youtube.com/watch?v=JzH1Z17c4yc>

2 http://www.abajournal.com/magazine/article/billing_basics

3 Daniel J. Levitin, Ph.D., *The Organized Mind: Thinking Straight in the Age of Information Overload*, at 37, accessed via Amazon Cloud Reader (2014).

4 Find a fun cartoon explaining this at <http://archimedespalimpsest.org/images/kaltoon/>.

5 Levitin, at 66.

6 *Id.*

7 *Id.*

8 Andre Chevalier, J.D., “Mediation Practices in Law: A Survey of Northwest Mediators” (January 27, 2013), available at http://api.ning.com/files/n9PWw31tPWzWk*Rj2kfvqe61f5*h-CsKDvuUEW9QvZWxeBru0xMaeDI7lbooqKv9c*YPLiGEcQum*pygR4aQxz3XAMctXgRJ/SurveyofNorthwestmediators1.pdf.

9 *Id.* at 5.

10 To some extent, the work of a conciliator within the Washington Dispute Resolution Center model may initially do this. The work of a conciliator often concludes once a case is scheduled for mediation. In private mediation, an attorney may include this as part of case preparation; alternatively, there is the possibility that a party has chosen not to hire an attorney or that an attorney’s preparation may be lacking.

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