



Best Thinking in Worst Case Scenarios: Improving Decision-Making Under Stress

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Attorneys are more resilient than most of the population, correct? No. Wrong. We are less resilient.

That was the opening question asked by Dr. Diana Uchiyama, JD, PsyD, CAADC, who presented on “Best Thinking in Worst Case Scenarios: Improving Decision-Making Under Stress” at a recent ABA Section of Litigation Leadership meeting. If you answered that question incorrectly, you are in good company. The majority of the audience of 200+ litigation leaders from across the country answered it incorrectly too.

So, with this fragility of attorneys in mind, what are litigators to do to maximize their functioning under stress? Fortunately, “Dr. Diana” answered that question too. I share the highlights here and offer the entirety of her presentation to you at: <http://bit.ly/38TpEhl>

Starting with the concept that “anatomy is destiny,” Dr. Diana explained that it all begins with fundamental brain behavior. She warned of the potential for “amygdala hijacking” under stress, meaning that we are all susceptible to challenges with critical thinking when anger, fear or other high emotions come into play. Under such circumstances, we all have to rise above the tendency to react with basic low-level reflexes of “flight, fight or freeze.” In other words, we all have to train ourselves to do better than simply react to stress with the judgment of our basic function “reptilian brain.”

The good news is that we can drastically improve our ability to deal with decision-making under stress with deliberative steps in the moment. And our ability to better take deliberative steps under stress in the moment improves if, in general, our physical and mental well-being are strong. In other words, we can improve our decision-making under stress with (1) situational mindfulness and (2) better wellness self-care in general.

Dr. Diana’s analysis resonates because good litigators take performance preparation seriously – for example, focusing both on specific facts and law applying to a particular case, and more broadly, knowing the general venue, parties, and subject matter relevant for her or his “performance.” Consistently, it is logical that we benefit from understanding what sharpens our mental “performance” ability both in the short-term, and more broadly, when under stress.

For best short-term functioning under stress, Dr. Diana reminds us that a simple pause – or break to think between stimulus and response - is key. Whether you think of this pause as “mindfulness” or more like a “time out” chair, you get the idea. Stop, look, listen – and pause to think – to overcome amygdala hijacking in the moment.

More broadly, Dr. Diana reminds us that resiliency can be increased by sustained self-care. Apparently, there is no shortcut to what we all know that we should do to keep our instrument in top shape – physical, mental, and social well-being are key.

Much has been written on this broader issue of general well-being since recent studies have shown attorney vulnerability to alcohol and other substance disorders, as well as mental health issues, to be well above the general population and other highly educated professionals. The 2019 landmark study of the ABA Commission on Lawyer Assistance programs in conjunction with the Hazelden Betty Ford Foundation spotlight the challenges. For information on this report as well as well-being resources, see the ABA website <https://Lawyerwellbeing.net>

For involvement in these issues as they pertain to litigations, consider joining the work of the ABA Section of Litigation Mental Health and Wellness Taskforce. This talented and innovative group, led by Richard Gaal and Lara White, brings positive programming and resources to litigators. <https://ambar.org/ltwellness>

As litigators, we have chosen a path of carrying the stress of others in high pressure circumstances. I believe our profession to be an honorable calling, but also one that can take an extraordinary personal toll. I thank Dr. Diana Uchiyama for the good reminders that critical thinking under stress requires both mindfulness in the moment and sustained self-care more generally. May we all build our resiliency by following her good advice.

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