

If companies can show that they are not exploiting workers and are carefully considering COLI policies before they buy them, it naturally increases the chances that jurors can find in their favor and *feel good about doing so*. If corporations can explain why they bought COLI policies, how they went about the process, and the specific benefits of these policies to the company, they can be more assured of a positive result in a jury trial.

Indeed, once they understand that COLI policies are not illegal, jurors often want to find in favor of the companies that purchase them. Despite initial concerns about corporate motives, jurors can feel good about this decision if the companies asked employees for permission to insure them, used the insurance proceeds in a

responsible fashion, and can provide a logical rationale for covering rank-and-file workers.

More broadly, our ongoing research points to a juror pool with a very positive attitude toward business in general and corporate financial goals in particular. It is a significant contrasting attitude to the negative perceptions engendered post-Enron. The battle between the two goes on and the playing field may be more level than some lawyers and their clients assume. ■

—Dr. Philip K. Anthony

Dr. Philip K. Anthony is CEO of DecisionQuest, one of the leading trial strategy and jury consulting firms in the country. Reach him at panthony@decisionquest.com.

Brain Management ...

Law Firm Leadership on the Neuro Frontier

The practice of law is very cerebral, cognitive, and brain-based. As a lawyer drafts, analyzes, and strategizes, the brain, compared to the rest of the body, is using a disproportionate amount of energy. When working, the brain can use fuel—glucose and oxygen—at 10 times the rate of the whole rest of the body.

This hungry little organ sitting in each lawyer's head holds the key to the mysteries of winning law firm management.

We have learned more about the inner secrets of the brain in the past few years than in all the remaining past of recorded history. Neuroscience is opening up a new frontier, a frontier that most of us cannot see but one that will have as big an impact as the discovery of new lands and continents.

How does this neuro frontier inside our skulls specifically inform law firm management? By peering inside the brain, we can see how its owner takes in information, makes decisions, changes and resists change, remembers and recalls, and responds to people. What we are learning about the brain affects three factors critical to law firms

and to each individual lawyer: control, communication, and competence.

Let's take a tour of some of what's been learned and see how the new information can be useful.

Moment of Choice

Our brains are plastic. The old belief was that an adult brain was hard-wired and changed very little if at all. Now we know that the brain is changing constantly. Each conversation with a client or colleague changes your brain, composing an email changes your brain, reading this article changes your brain. Knowing about the brain's neuroplasticity can help in making changes in you and in facilitating change in others.

As we take in new information, our brain makes new connections between neurons (the cells of the brain). This rewiring (or strengthening of old wiring) either happens to us *or* we can learn to control how our brains are recreated each hour and each minute. The ability to take control, to manage our brain, is extraordinarily potent.

Let's say that you have decided to listen more to your prospective clients, clients, partners, associates, or staff. Perhaps you have heard, as a result of some business development or management or mentoring training program, all about the benefits of being a good listener. But as you begin a conversation, you feel the need to talk, even pontificate.

Now, you confront the moment of choice. That moment of choice holds the gold in self-directed neuroplasticity, in controlling the rewiring of your brain.

You can choose to talk. If you are accustomed to being more of a talker than a listener, your brain will call to you to follow the old neuron connections, the old and well-worn synapses. These old synapses are habitual and the most comfortable for you. The old paths fit like a pair of used, comfortable slippers or jeans. They are seductive and part of the familiar you.

Or you can choose to listen. If you experience the powerful urge to open your mouth and talk, you are going to need to begin to develop some new brain grooves, some new synapses. Not as easy as going with the old ruts and grooves, but it is doable and the good news is that it gets easier and easier. Each time you choose to listen instead of talk, you will be developing and strengthening new neuron connections, new listening synapses.

The more you choose to listen, the stronger those paths will grow. After a while, listening will feel old slipper comfortable, too. Then, when an interaction occurs, you will have the choice of which brain path to follow depending upon which is appropriate to the situation. In any event, you won't simply be governed by an old habit.

Another tip: The brain does not distinguish between the actual doing of something and the vivid imagining of doing it. Both can create new synapses. Many of you have heard of the study in which a group of basketball players that spent time imagining successful free throws improved as much as the group that actually practiced shooting. Tiger Woods and other golf greats imagine the shot before they take it. Spend some time imagining yourself as a good listener (or participating in whatever new behavior you want to add to your repertoire).

Breaking Barriers

The preference for the old brain connections and paths is a major part of why it is so difficult to create changes in a law firm. New policies, procedures, directions, styles, missions, visions all require new brain grooves and will automatically create resistance to the new, as well as allegiance to and preference for, the old paths. It is asking a lot of the brain to change.

What can be done to make brain change easier? Brain changing is another way of saying "learning." When we change, we learn a new way. When we change, when we learn, we develop new connections between neurons and develop new synapses. Fortunately, neuroscience has gems for us in how people learn, too.

Our brains like patterns. To conserve energy, and protect itself, the brain will look at new information and see how it fits with what it already knows. If the new information is too unlike what it already knows and feels comfortable with, it will simply discard the new information. That reaction, of simply disregarding what is presented, is all too familiar to those in law firm management.

Brains are always paying attention. As a species, we survived by constantly monitoring and surveying the environment. Most of this vigilance is happening out of our awareness, but only a small fraction of what is sensed is allowed into our awareness. One of a few primary drivers of attention and awareness is emotion.

Emotion in a law firm, a place of the rational, reasonable, and reasoned?

Consider this observation from a piece called "Who do you think you are?" in the December 23, 2006-January 5, 2007, edition of *The Economist*: "Rationality has its place. In the end, though, as fans of *Star Trek* will remember, it is Captain Kirk, the emotion-ridden human, not Mr. Spock, the emotionless Vulcan, who ... run[s] the spaceship."

Critical Engagement

We are not suggesting that management conduct pep rallies or take lessons from motivational

speakers. We are suggesting that it is important, when presenting the new, to give brains an opportunity to say, “I like this.”

Memos, directives, and management lectures do not give that opportunity. The brain (especially the brain of a lawyer who by nature or personality has a strong need for autonomy) does not like to be told what to do. Engagement is thus the key. When learning, when changing, the brain needs to arrive at ownership of the new, and it does so through activity.

For example, discussion of the pros and cons of a new procedure can allow engagement. While such discussion may seem to expend the law firm’s coin of the realm, that is, time, it is better than the resistance that will eventually expend even more time. It also prevents another strong emotion from arising: “I don’t like this.”

Another of several ways to promote engagement is to create a clear and pleasing picture of what the results of the new will be for the firm and for the individual lawyer. This picture should be delivered by someone who truly believes in the benefits. In fact, it should be someone who has some degree of passion about it.

The brain has great phoniness-detection ability (about which we will say more in a moment). Dry, obvious, written, or spoken benefit statements rife with stock phrases will not move a brain to say, “I like this.” They will not generate the energy needed to create new synapses and get on board with what is being proposed. (Dry, obvious, and cliché-ridden phrase discourse is not a well-chosen method for dog-and-pony presentations to prospective clients, either.)

The picture should be one that is vivid enough for the brain to see itself participating. Remember Tiger Woods.

Brain to Brain

How does the brain detect phoniness? A recent discovery explains it and much more that’s related to the practice of law and its management.

We have in our brains mirror neurons. Their function is exactly what the name says. They mirror what is going on in another’s brain. They allow

us to actually feel what is happening with another. They are a major component of empathy and the ability to put ourselves into another person’s shoes. When you feel sad, my mirror neurons know sadness. When you feel passion about something you are saying, my mirror neurons detect that passion and can resonate along with it.

When you don’t believe what you are saying, I perceive that lack of integrity, at least at some unconscious level. (Mirror neurons are believed to be what people with autism lack; they cannot look at a face and know the feeling being shown.)

Mirror neurons are in every brain in your firm and are one key component in creating engagement and the desire to begin the energy investments and effort-taking tasks of creating new brain grooves. If management can say with sincerity and honesty that it believes that the new is for the good of the firm and that the individuals, those being asked to change, will have a greater likelihood of at least letting what is being said into their awareness.

Again, mirror neurons are not triggered by memos or emails. The brain needs to see and hear the person with the message. Mirror neurons are what create respect, from the root meaning of respect: *re-spect*: that is, look twice, look again. Allow what is being said into awareness for consideration and reconsideration.

Mirror neurons are also a critical part of learning a new task. Babies see people walk, and their mirror neurons light up as if they are walking. They empathize with walking, and that paves the way for the task ahead. When we watch a person do something, such as take a deposition, our brains actually mirror the actions being seen. It is as if we did it ourselves, and as a result, the deposition-taking grooves begin to form. The associate who has watched depositions will thus find the first one easier to do because the budding synapses are already present.

Good mentoring thus includes mirroring, not only of actions but also of thought processes themselves. Good mentors will give voice to their reasoning process to foster new reasoning synapses in the mentees.

Some if not much of what we are learning from neuroscience (what is described above and a great

deal more) probably has been known, at least intuitively, to those naturally skilled at client relations, business development, communication, firm management, and mentoring.

But what has in the past been taken on faith, or done intuitively, is now being proven, and those who are not naturally gifted have a greater opportunity for excellence. The information and guidance is available to all who want to improve by learning what the neuro frontier is showing us. ■

—Stephanie West Allen and
Dr. Jeffrey M. Schwartz

Stephanie West Allen, a former practicing lawyer, spent several years as manager of professional development at a large Denver firm. Stephanie writes often for legal publications as well as for her legal blog at idealawg.com. Based in Denver, she consults with law firms and individual lawyers around the country. Reach her at Stephanie@westallen.com.

Dr. Jeffrey M. Schwartz is a research psychiatrist at the School of Medicine at the University of California at Los Angeles and one of the world's leading experts in neuroplasticity. Jeff's books include The Mind and the Brain and the bestseller Brain Lock. Based in Santa Monica, CA, he can be contacted at jmschwar@ucla.edu.

Seller's Market

Continued from page 2

Cohen. It also finds successful candidates at American, Boston College, Cornell, Duke, Fordham, the University of Texas, Bolt Hall at the University of California, and its under-the-radar school, Ohio State.

“To leave out these other schools would be a mistake for us,” Cohen says. “This is an expensive task; you have to spend so much time. We can’t interview at every school, but we try to go to a much broader range of schools than we did before. We make sure that the placement office tells us who the outstanding people are.”

In Chicago, many firms also look regionally at such schools as DePaul, Northwestern, Chicago-Kent College of Law, and the Universities of Chicago, Illinois, Michigan, and Indiana. Some partnerships are particularly attracted to graduates of DePaul and Chicago-Kent for the comprehensive and practical training that students get in legal writing.

Chicago-area-based consultant Ross Fishman counsels his law-firm clients to consider students at these colleges. “I advise law firms to look at some of these practical schools,” he says. “I tell them that the top students at any school are just as smart as each other. Instead of trying to compete

with every other big firm at the top schools, you can turn out terrific lawyers by getting a higher percentage of the best students at these schools. Let’s not compete on the same terrain as the biggest firms that have more law-school recruiting resources.”

In the past, many of the bigger firms that Fishman serves tended to resist this advice because of their focus on high-profile schools. “Part of the pedigree that they sell at big firms is the fact that they have many attorneys from brand-name law schools,” he says, adding that small to midsize firms listen and follow that advice and that these days more of the bigger firms do too.

In Philadelphia, one of the fastest-growing firms in the city in recent years is Duane Morris, due in large part to the efforts of Sheldon Bonovitz. When Bonovitz became the firm Chair in January 1998, Duane Morris had a little more than 200 attorneys who yielded some \$73 million in revenue. Last year, the firm had more than 600 lawyers and \$340 million in revenue.

Bonovitz and other firm leaders have broadened the firm’s list of recruiting markets. While they seek applicants at Harvard, Penn, Georgetown, and Columbia, they also look at Philadelphia schools. “If you take the top 10 or 15 students at Villanova or Temple, you usually end up with very fine attorneys,” Bonovitz says.

Sometimes someone from a lower-tiered school who was ranked in the bottom half of the class

Copyright of *Of Counsel* is the property of Aspen Publishers Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.