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BODY AND MIND

Reality Testing for Elder Law Attorneys

Practicing elder law effectively requires the ability to recognize, understand, and respect older clients' individual "realities." This article provides some insights into reality testing.

By Steven C. Fox

The tragic and historical events of September 11, 2001 have forever changed the eyewitnesses' lives and minds—and we are all eyewitnesses, whether in real time or a never-ending video replay, thanks to the great technological accomplishments of U.S. society in the 21st century. Despite all attempts to deny, explain, or even understand these events, the reality of our individual and collective lives is forever changed.

One significant lesson we learned was that American reality is not the only reality in this world. Consider that millions of intelligent, well-educated human beings throughout the world see *Americans* as terrorists and consider the perpetrators of September 11, 2001 events not to be terrorists but heroes and martyrs. Of course, we do not have to adopt, agree with, or succumb to others' realities in order to continue our own. However, it is

important to acknowledge that each human being creates, defines, and functions under his or her own sense of reality that is as unique as his or her fingerprints. Unlike fingerprints, these personal realities change with experience and time.

When one considers the existence of billions of realities, it is remarkable that human civilization exists at all. In fact, all of our social institutions—laws, medicine, government, marriage, and religion, for example—are made possible only by the acceptance and incorporation into each individual's reality. The great paradox is that reality exists in the individual but is possible only by the agreement of another individual. Of course, reality is more easily defined and shared when one considers the physical world. It is also easier to define and construct reality on the basis of assumptions, stereotypes, and biases. Significantly, some people in society can define reality for others, for example a parent to a child, a doctor to a patient, and an attorney to an elderly client.

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His practice includes assessing decision-making capacity, care planning, and treatment for cognitively and psychologically impaired individuals. He has participated in more than 400 guardianship cases over the past 15 years. He serves as a testifying expert in civil cases of nursing home malpractice/negligence and in criminal elder abuse and financial exploitation cases.

But how can “reality” truly be defined?

This brings us to the concept of reality testing. What is it? Don't only doctors do it? What constitutes passing or failing a reality test? First, reality testing is not a written or administered test at all; second, it is not a well-defined, taught, or understood concept among physicians and psychiatrists.

It is important to note that reality testing—and even the term “reality”—are not defined in the bible of Mental Health, *Diagnostic and Statistical Manual of Mental Disorders-IV-TR*, (American Psychiatric Association). In fact, a number of significant terms used by physicians, health care, and legal practitioners are not found or referenced in the DSM-IV-TR—for example, such words and concepts as “sane,” “insane,” “competent,” and “incompetent.” Therefore, be cautious in your use of these terms and suspicious of the use of these terms by others, especially physicians and mental health care providers.

Reality testing is and can be done by each and every one of us. It involves a conscious effort to ask ourselves about our understanding and view of the world. One concept of reality testing for attorneys would be to examine their personal views and assumptions about aging. For example, do they believe that aging inevitability results in loss of function and “competence?” One simple way to test this is to consider whether an attorney tells (or laughs at) ageist jokes. Or, is the attorney extremely surprised when encountering a 90-year-old person who is still driving

competently and is sharp as a tack? Does the attorney exaggerate his or her speech and intonation for elderly clients, speaking very loudly and/or slowly? How does the attorney define “competence?”

Elder law attorneys have a unique professional and societal responsibility to view the world through the eyes of their clients. The most significant quality or characteristic of any professionals who serve older adults is not their technical expertise or grasp of case law, but their ability to hear their clients' true voices with genuine empathy and understanding.

It is indeed a difficult task to consider the reality of older adults for several reasons. While we clearly have a common ground and a basis for understanding and communicating with older clients about worldwide events such as terrorist acts, we cannot by definition understand or walk a mile in the shoes of an octogenarian unless we are one ourselves. We have our own reality of childhood and adolescence, which help us approximate and understand the reality of our children. Not so with our parents; we will never become parent to our parents.

Those individuals in their seventh, eighth and ninth decades of life are true pioneers in our society. They have explored new frontiers and made their way in uncharted territory. American society has always prided itself upon the notion of rugged individualism, exploration, and the pioneering spirit. Unfortunately, in America today, far from respecting or utilizing the experience,

knowledge, and direction that older adults can provide, we often dismiss their observations or contributions.

It has never been more important than now for elder law attorneys to listen to and understand elderly clients as unique pioneers who are not only struggling with complex challenges to their bodies, but also struggling to remain relevant and valued in society. Unfortunately, far from assisting or recognizing the efforts of the elderly, we actively, through our media, jokes, and entitlement programs, construct a reality for them that more often than not contributes to a life that few would call “golden years.”

Perhaps the most important type of reality testing that an elder law attorney should perform is to beware of and challenge his or her own ageist fears and misconceptions. Internists are not geriatricians just because they see elderly people in their practices; so it is with attorneys, who know law as physicians know medicine but do not necessarily know their individual clients.

Sir William Osler's turn-of-the-century advice to aspiring doctors applies equally well for lawyers: It is far more important to know what patient has the disease than to know what disease the patient has. Reality testing may be difficult, but it is ultimately the only way to practice with competence and compassion.

Endnotes

1. See American Psychiatric Ass'n., *Diagnostic and Statistical Manual of Mental Disorders*, 4th Ed., Text Revision: DSM-IV-TR (2000).