Joseph Story Award Remarks

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I am deeply honored to receive the Joseph Story Award, especially from the Federalist Society as its mission has shaped so much of my first decade as a law professor.

As a teacher and scholar, my overarching goal has been to identify and magnify voices and ideas such that every perspective is heard and examined. It has been a thrill to do that in the field of administrative law over the last decade—to help new or less-heard voices share their research and perspectives on the national stage, and to provide public platforms where arguments outside of just the conventional account are discussed and debated.

I teach my students that grappling with ideas is not always easy. But as lawyers, it's critical that we do everything we can to understand ideas, especially those that we find unpersuasive at first blush.

Unfortunately, our brains do not always process information perfectly. Because I have a captive audience of the nation's future leaders of the legal profession, I want to focus on one such mental pitfall—something I first learned about in a law school negotiations class years ago.

That concept is the fundamental attribution error. The idea here is that we tend to overemphasize the internal characteristics of an individual—their integrity, motives, or aptitude—when trying to understand that individual's behavior in a given situation. And we tend to underemphasize, if not completely ignore, external factors that may better explain the behavior.

Consider one recent personal example. Last month, we had a level-three snow emergency in Columbus, which meant only emergency vehicles should be on the road. As my kids and I were shoveling the driveway that morning, we watched as a car slipped and slid down our hilly road. My immediate reaction was to think how careless and reckless a neighbor was to be on the roads in such dangerous conditions. But as she turned into her driveway, I realized she was just coming home from working the graveyard shift as an emergency room doctor at our local hospital. She had known the storm was coming, but nevertheless took the risk of working that shift to be there to save lives.

In other words, when someone's behavior offends us, our fundamental attribution error is that we are quick to attribute moral culpability or incompetence to that

individual. And we are slow to look to outside factors that may more accurately explain the behavior.

In the negotiations context, this processing error leads us to act in ways that may frustrate our ultimate objective, by attacking the person instead of the problem. Because we have misidentified—or at least under-identified—the causes of the problem, we often fail to see the full range of solutions.

In the context of understanding ideas, this processing error leads us to attack the person or the strawman of the argument, instead of seeking to understand the best version of the argument being made. It severely limits our ability to objectively examine and explore ideas with which we may not be as familiar. It inhibits the search for truth and understanding.

Over the last decade, I have seen this processing error do serious damage in the classroom, in the legal academy, and of course in the real world. Although this error may well affect even our most familiar relationships, it should come as no surprise that it is more at play the less we know the person with whom we are interacting. And with the rise of social media, it turns out we interact with a lot of people we have never met in person—some of whom we may only know 280 characters about.

Fortunately, one of the noblest virtues of the legal profession is that lawyers can develop a unique ability to understand the world and the people in it. After all, we represent people from all walks of life, often during their most difficult times. We are forced to put ourselves in their shoes, to understand their deepest challenges, and to advocate for their interests. We develop the analytic skills to present the best version of any argument or idea.

Let me pause here and emphasize a related lesson that your analytic skills have probably already identified: When we are making an argument that goes against the grain, we must keep the fundamental attribution error in mind. If we give reason for others to take offense, they likely will not be able to process our argument. As my mother taught me growing up, it is difficult to open the mind of someone whose heart remains closed.

Because lawyers are among those best equipped to combat the fundamental attribution error, let me suggest that we also have a responsibility to help others overcome it—to encourage others to grapple with ideas they don't understand and to resist the urge to assume the worst in people. That often involves replacing knee-jerk judgments with an open mind. It involves giving others the benefit of the doubt, even when they have greatly offended us.

To me, this is the essence of the Federalist Society's mission at its finest: It encourages us to focus on understanding and examining arguments in their best

light—even when they are unartfully expressed or when they are advanced by those who may offend us. As we leave this amazing national student symposium tonight, I hope we will each commit to model that mission in our own lives and careers.