

## Rethinking “Thinking Like a Lawyer:” Towards a New Paradigm

ILTL Conference: *Engaging  
& Assessing Our Students*  
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### *Defining the Problem*

- ◆ Despite our best efforts to teach students to “think like a lawyer,” they too often:
  - ❖ Leap to premature (often flawed) conclusions
  - ❖ Cling to their convictions (despite our efforts to “reason” with them)
  - ❖ Make illogical arguments (and fail to grasp why their arguments aren’t persuasive)
  - ❖ Fail to grasp the “bigger picture”
  - ❖ Are disengaged and apathetic

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### *The Inadequacy of the Traditional Solution*

- ◆ Efforts to appeal to “reason” and to “logic” don’t capture the heart of the problem
  - ❖ These efforts ignore how the human brain really “thinks”
  - ❖ These efforts don’t capture what is most meaningful to students

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## A Mock Class Educating Students About the “Emotional” Brain

### ◆ Video clip from the wrongful prosecution of 3 Duke Lacrosse players

- Q: How do you *feel* about what you just heard?
- Q: Why would Mike Nifong withhold the DNA evidence of 4 men, and tell the court that he was “not aware of any additional information that would be exculpatory?”

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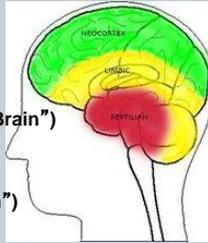
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## Emotional Biases & the Triune Brain

- ◆ Cortex (the “Thinking” Brain)
- ◆ Limbic region (the “Emotional Brain”)
- ◆ Brain stem (the “Reptilian Brain”)



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## How We “Think” & Problem-Solve

- ◆ Emotional & Thinking Brains work in tandem
  - ◆ We literally cannot “think” without input from the Emotional Brain
- ◆ Emotional Brain receives some data 1st
  - ◆ Offers justifications & rationalizations to appease the Thinking Brain’s need for logic

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## Nature of the Emotional Brain

- ◆ **Makes associations (and snap judgments) based on surface similarities between past & present**
  - ◇ Therefore, it is often wrong
- ◆ **Simplistic & childlike - “thinks” in polarities**
  - ◇ i.e., black/white; right/wrong; good/bad
- ◆ **Self-confirming - it wants to be “right”**

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## Emotional Brain as Self-Confirming

- ◆ **Emotional brain accepts at face value “evidence” that proves we’re right**
- ◆ **Emotional brain discounts or ignores evidence that would suggest we’re wrong**
- ◆ **How? Hidden layers of neural processing predigest data & upload only a fraction of it**
  - ◇ Result: Most of “reality” is outside our conscious awareness

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## Phenomenon of Belief Perseverance

- ◆ **Belief Perseverance: Tendency to cling to our beliefs even when we are presented with clear evidence that contradicts the belief**
  - ◇ *Classic Study:* Subjects were randomly assigned false feedback about their ability to conduct a “dummy” task. Subjects clung to their initial beliefs about their abilities to complete the task successfully even after they were told the test “results” were intentionally falsified

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## Phenomenon of Cognitive Dissonance

- **Cognitive Dissonance:**
  - ❖ We each have beliefs that are important aspects of our self-image
    - “good” person; “smart”; “compassionate”; “street-smart”; “skeptical”; “ethical”; “moral”; “conscientious”
  - ❖ When confronted with evidence that our conduct is inconsistent with our self-image: produces cognitive dissonance
  - ❖ The Emotional Brain resolves the cognitive dissonance by discrediting the evidence

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## In a Nutshell: What You Need to Know About Your Thinking

- ◆ Emotional Brain leaps to a premature conclusion
- ◆ Emotional Brain offers a narrative based on simplistic (black-and-white) judgments
- ◆ Emotional Brain strives to prove it’s “right” through selective perception
- ◆ Belief Perseverance strengthens your beliefs
- ◆ Cognitive Dissonance can contribute to a stubborn insistence that you are “right”
- ◆ RESULT: You unwittingly rely on the Emotional Brain’s biases when forming conclusions & testing hypotheses

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## A Way Out: Prosecute Your Thinking

1. Look for red-flags
  - ❖ Consider your reactions
    - Emotional “charge”
    - Absolute certainty of position
    - Unwillingness/reluctance to listen
    - Investment in proving “I’m right”
  - ❖ Identify your judgments
    - Distinction between judgment & observation

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A Way Out: *Prosecute Your Thinking*

2. Challenge the Emotional Brain by “complexifying” your understanding

- ❖ Of your *own* reactions & biases
  - What might really be going on here?
- ❖ Of the person or conduct you are judging
  - *Have you ever behaved in a similar manner?*
  - *What may have provoked you to behave in that manner?*
    - Counters phenomenon known as “Fundamental Attribution Error”

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A Way Out: *Prosecute Your Thinking*

3. Assume your initial presumption is inaccurate

- ❖ Pretend for present purposes that the *opposite* of what you actually believe is true

4. Search for evidence that supports the opposite conclusion

- ❖ Find at least 3 pieces of evidence that support the opposite conclusion

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