


Slide 1

Brain Science 101:

Bringing the Delphic Oracle to Law School

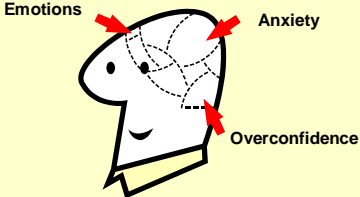


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Slide 2

How Do We Think?

- Self-knowledge is key to the law school experience and necessary before we can even begin to think like a lawyer.




Emotions Anxiety
Overconfidence

Slide 3

What we need to do as teachers:

- Foreshadow
- Normalize
- De-Mystify
- Enable

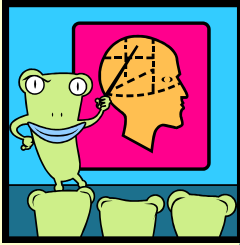


Discovering the man behind the curtain in the Wizard of Oz

Slide 4

Give students information about:

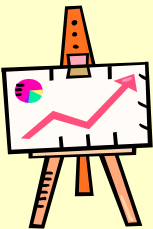
- The Learning Process
- Emotional Intelligence
- Cognitive Bias



Slide 5


Two Purposes:

(1) Make the law school experience more understandable, productive, bearable, and enjoyable.



Slide 6

(2) Success as lawyer depends upon it.



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"Well, that's just your opinion."

Slide 7


The Learning Process

- Expectations Shape Performance.
- Knowing About Learning Creates Optimal Conditions for High Performance

Slide 8

The Learning Process


- Hard work counts more than talent.
- Look carefully or you may miss something.
- Don't always trust your gut – be patient and try to figure it out.



Slide 9

The Learning Process

- Hard work beats talent
- The soccer story – practicing with goals and feedback makes perfect
 - Set goals as a teacher and student
 - The value of coaching (deliberative feedback)



Slide 10

The Learning Process

- How many “f”s are in this sentence?
Two of the most powerful and effective of human fears are the fear of failure and the fear of success.

Slide 11

The Learning Process

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Slide 12

The Learning Process -

The Cognitive Relations Test

- 1) A bat and a ball cost \$1.10 in total. The bat costs \$1 more than the ball. How much does the ball cost?
- 2) If it takes five machines five minutes to make five widgets, how long would it take 100 machines to make 100 widgets?
- 3) In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half the lake?

Slide 13


The Learning Process -

The Cognitive Relations Test

- 1) A bat and a ball cost \$1.10 in total. The bat costs \$1 more than the ball. How much does the ball cost?
(\$.05)
- 2) If it takes five machines five minutes to make five widgets, how long would it take 100 machines to make 100 widgets?
5 minutes
- 3) In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half the lake?
47 minutes

Slide 14

Emotional Intelligence



- EQ is essential- in coping with the stresses of law school
- Interacting with clients, opposing counsel, judges, juries in practice
- Introduce Concept of EQ while students learning doctrine

Slide 15

Conflict Assessment Test

1. A. There are times when I let others take responsibility for solving the problem.
B. Rather than negotiate the things on which we disagree, I try to stress those things upon which we both agree.
2. A. I am usually firm in pursuing my goals.
B. I might try to soothe the other's feelings and preserve our relationship.

Slide 16

Emotional Intelligence


You had hoped to get an A in a course, but you have just found out you got a C- on the midterm. What do you do?

- A. Sketch out a specific plan for ways to improve your grade and resolve to follow through on your plans.
- B. Vow to do better in the future.
- C. Tell yourself it doesn't matter how you do in the course, and concentrate on classes where your grades are higher.
- D. Go see the teacher and try to talk him or her into giving you a better grade.

Slide 17

The Rational Law Student


- As mythical a creature as the rational decision maker.
- We are all subject to cognitive biases that interfere with rational decision making.



Slide 18

Cognitive Biases in Learning, and Decision-making

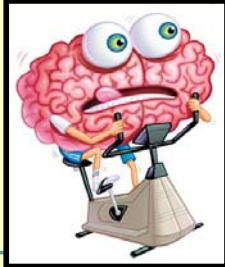
- Distinction between
 - Conscious
 - Unconscious and automatic
 - Understand the reflexive nature of many of our biases



Slide 19

Knowledge of Biases

- Leads to some power to re-train our brains?
- Understand the decision making process that we have to cope with in our jobs as lawyers.




Slide 20

Explaining Cognitive Biases – Reflexive and Easy to Miss

Just a Sampling


- Egocentric bias
- Framing
- Representative Heuristic



Slide 21

Egocentric Bias

- Overestimating one's own abilities
- People routinely estimate, for example, that they are above average on a variety of desirable characteristics.



Slide 22


Egocentric Bias

- Princeton Students – Said the game was “rough and dirty”; Saw Dartmouth team make over twice as many infractions as their own team made (and twice as many as was identified by Dartmouth students)
- Dartmouth Students – 1/3 said game was “rough and fair”-Saw both teams make the same number of infractions. Saw own team make ½ the number of infractions that Princeton students saw them make

Slide 23

Even When We are Given Excellent Information

- Our egocentric and optimistic biases – may override our understanding of the information we receive




A cartoon illustration of a man in a striped shirt and shorts sunbathing on a beach. He is lying on his back with his arms raised, looking relaxed. In the background, there is a bright sun, palm trees, and a beach. A thought bubble next to him says, "Who me? I'll never get skin cancer."

Slide 24

Framing Influences How We Think About a Problem


- People are more likely to undergo a risky medical procedure if they are told, “Of those who this procedure, ninety percent are alive after five years,” than if they are told “of those who have this procedure, ten percent are dead after five years.”
- Same choice perceived differently.



A cartoon illustration of a man in a suit looking thoughtful, with a question mark above his head.

Slide 25

Framing – emphasize the bright side



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"Your honor, I'd like to point out that my client isn't wanted in 26 states."

Slide 26


Framing Influences

- How we perceive law school
 - Deal with change and the experience as a positive
 - Anxiety is part of the process of gaining expertise
 - Anxiety can motivate if kept in check
 - Translate experiences into opportunity
 - Note their responsibility to the client

Slide 27

Representative Heuristic


- As a part of creating meaning from what we experience, we need to classify things. If something does not fit exactly into a known category, we will approximate with the nearest class available.
- Overall, the primary fallacy is in assuming that similarity in one aspect leads to similarity in other aspects.



Slide 28

Representative Heuristic and Stereotype Threat



- “Women Can’t Do Math”



An illustration of a female teacher with dark hair, wearing a yellow top and purple skirt, pointing at a chalkboard. The chalkboard displays the equation $22-11=?$. A young girl with red hair, wearing a pink shirt, is sitting at a desk in front of the chalkboard, looking up at the teacher.

Slide 29

Connection to Practice - Joseph Lochner’s Bakery



A black and white photograph of a bakery interior. Several workers are visible in the background, and a long table in the foreground is covered with dough and rolling pins. To the right is a cartoon illustration of a chef in a white uniform and hat, holding a pie in one hand and a rolling pin in the other, standing over a table with dough.

Slide 30

Examples - Glucksberg (1997)

- How should right be framed?
 - Right to defines one’s existence
 - Right to die
 - Right of terminally ill person in great pain to end her own life
 - Right of terminally ill person to refuse medical treatment



A photograph of a woman lying in a hospital bed, looking upwards. She appears to be in a medical setting, possibly a hospital room.

Slide 31

Conclusion: Whither the Delphic Oracle

- Paradoxically- some self-knowledge can be taught (or at least students can be provided the tools for inquiry)

Slide 32

Reference materials

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- Anders Ericsson, Neil Charness, Paul J. Feltovich, and Robert R. Hoffman, *Cambridge Handbook of Expertise and Expert Performance* (2006)
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- Shane Frederick: MIT Sloan professor develops new intelligence test, <http://mitsloan.mit.edu/newsroom/newsbriefs-0605-frederick.php> and <http://mit.edu/people/shanefre/CRT.pdf>