

LITIGATING IN A DIVIDED NATION

**Toning up Our Interpersonal Skills:
Navigating Opinions and Presumptions While
Seeking Justice**

**43rd Annual Page Keeton Civil Litigation
Conference – Austin, Texas**

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1

2 Agenda

- The Biology of Decision-making
- Nature and Sources of Worldview
- Are We More Divided than Ever?
- Understanding Your Legal Environment
- The Influence of Politics on Law Practice
- The Limits of Your Own Tolerance
- Uncontrollable Input (aka “Info Gone Wild”)
- Asking Ourselves the Hard Questions
- Changes You Can Make

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2

3 Unconscious Bias – Our Worldview

Factors which form our unconscious views and preferences:

- How and where we are brought up
- Biological differences
- Our friendships then and now
- Media influences
- Individual experiences

We are hardwired to to prefer those who look, sound, and share similar interests.

Emerging from the Shadows: Unconscious Bias in the Workplace – Katrina Grider, 2018 UT-CLE 25th Annual Labor Law Conference.

3

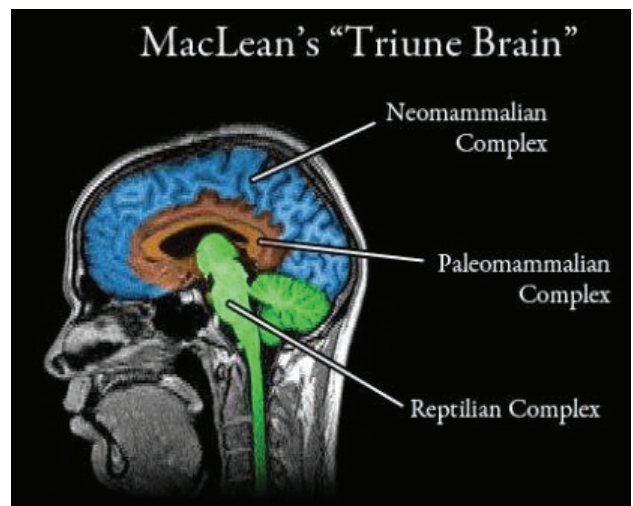
4 The Biology of Decision-making

The brain's **frontal lobe** presides over reasoning, self-control, and decision-making, including:

- Social behavior
- Complex cognitive behavior
- Your personality

By contrast the **limbic cortex** (also nicknamed “lizard brain”) is associated with emotion, addiction, and mood. It is much more primitive in development.

OUR DECISIONS RELY ON BOTH PARTS OF THE BRAIN.



blogs.scientificamerican.com

4

5 The Psychology of Decision-making

The world is complex. To simplify, we rely on a range of cognitive mechanisms to cope with adverse environments where we face the unknown.

Heuristics: Confidence-sustaining “mental shortcuts” that help us make quick decisions. However, relying on heuristics is at the expense of rigorous logic and rational reasoning.

Why do we use heuristics? We don't have time (or perhaps the mental ability) for complex analysis, so we limit the information we will consider.

Example: relying on a brand name over analysis of a product's quality.

5

6 How We Influence... and Are Influenced

The variables:

- Framing the problem (in **our own** mind)

How you see the problem has a significant effect on how you make decisions. If we think we're winning, we become risk-averse. If we think we're losing, we're likely to take more risks to recover losses.

Thus—we go to trial when “we have nothing to lose.”

- Framing the problem (in **others'** minds)

The car crash video: words matter

Groups of students were shown the same video and asked, “How fast were the cars going when they [smashed][collided] [bumped][touched] the other car?”

The verb made a huge difference in their answers. “Smashed” resulted in higher estimated mph.

6

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"Litigating in a Divided Nation: Handling Strong Political Views During Trial"