

# My Mind's Got a Mind of Its Own: Why Even Good Lawyers Are Lured Into Unethical Behavior by the Way Their Brains Work

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Jimmie Dale Gilmore, *My Mind's Got a Mind of Its Own*, on *After Awhile* (Elektra 1991).



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## Acknowledgements and Gratitude

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Texas Center for Legal Ethics

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Jonathan Smaby

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3

## The Unexpected Phone Call

- Jury verdict for Plaintiffs
- Plaintiffs' proposed judgment overreaches
- Defendant tenders alternative judgment
- Judge *calls defense counsel* to:
  - ask counsel to modify alternative judgment
  - advise he will sign modified judgment
- Defense advises Plaintiff of Judge's call
- Plaintiff's counsel claims *ex parte* contact



4

## Reactions

- “There’s nothing wrong with this, lawyers have these kinds of conversations with judges all the time.”
- “There’s nothing wrong with the judge’s clerk calling counsel and advising them of the judge’s ruling, and this is just a step removed from that.”
- “This isn’t an *ex parte* discussion about the merits, it’s just the judge advising you about his ruling.”



5

## Reactions

- “What were you supposed to do, challenge and accuse of being unethical the very judge who is mostly ruling in your client’s favor?”
- “It’s not your fault, the judge is the one who initiated the conversation.”
- “It didn’t make any difference, the judge was going to rule the way that he ruled anyway.”



6

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