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COGNITIVE DISSONANCE IN THE CLASSROOM: RATIONALE AND RATIONALIZATION IN THE LAW OF EVIDENCE

JULIE A. SEAMAN*

> *"[The] theory of cognitive dissonance posits that when a person's actions and attitudes are discrepant, physiological arousal results, leading to psychological discomfort, which in turn motivates the person to restore harmony between his or her attitudes and behavior by altering the attitudes to fit the behavior."*[1]

I. INTRODUCTION

In perhaps the single most famous quotation about the law, Oliver Wendell Holmes, Jr. remarked that "the life of the law has not been logic: it has been experience."[2] Though not written especially about the law of evidence, the words have a particular salience when considered in that context. By their very nature, rules of evidence operate at the place where logic and experience meet and sometimes clash; in the messy crucible of the courtroom, where the rules must function to meet a number of sometimes conflicting goals, logic often gives way in the face of experience. In the courtroom this is a necessary and probably a salutary state of affairs. In the classroom, however, it becomes a challenge. Perhaps unlike most other law classes, the Evidence course presents the professor with the odd task of explaining a set of rules for which many of the proffered rationales are not merely questionable but self-consciously so. The cases, the Advisory Committee's Notes, and experts in the field frequently send mixed messages that are likely to create cognitive dissonance in the classroom. For what else can be the effect on students of teaching them a set of rules for which many of the stated rationales are quite obviously—indeed often explicitly—rationalizations?

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1. Matthew D. Lieberman et al., *Do Amnesiacs Exhibit Cognitive Dissonance Reduction? The Role of Explicit Memory and Attention in Attitude Change*, 12 PSYCH. SCI. 135, 135 (2001). *See generally* LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

2. OLIVER W. HOLMES, JR., THE COMMON LAW 5 (Mark D. Howe ed., 1963).

A remark by noted judge, scholar, and sometime Evidence professor Richard Posner, in an opinion discussing one of the many exceptions[3] to the rule against hearsay, starkly illustrates this phenomenon. Examining the basis for the hearsay exception for admissions of co-conspirators[4] in an appeal before the Seventh Circuit, Judge Posner noted that "the *rationalization* for the principle is that conspirators are each others' agents (and therefore principals), and the principal is bound by the agent's words and deeds . . . so that an admission by one is an admission by all . . . ."[5] The opinion goes on to question this analogy to agency principles and to raise serious doubts about the basis, either in reliability or waiver, of this exception. The discussion ends by noting that "[w]hatever the justification for the rule—and there may be none—its dependence on agency principles makes the scope of the conspiracy critical."[6] In sum, the Seventh Circuit Court of Appeals here says that a rule of evidence grounded upon a very questionable logical foundation should nonetheless be applied consistent with that probably faulty logic.[7]

When "rationalization" substitutes for "rationale" in a judicial opinion explaining the reasons for a rule of evidence, it must give one pause. First, one wonders whether a Freudian slip[8] caused the Seventh Circuit to inject in this way its assessment of the basis for the co-conspirator exception. Second, taking the statement on its face, it is rather extraordinary for a federal circuit court of appeals this candidly to acknowledge that the rule it is applying is based on so shaky a foundation.[9] And, finally, one must wonder about the

3. The distinction, in the Federal Rules of Evidence, between the exceptions set out in Rules 803 and 804 and the definitional "non-hearsay" categories contained in Rule 801(d) is another example of the phenomenon to which this Essay is addressed; however, for ease of reference I will use the term "exception" for all 801(d), 803, and 804 categories.

4. *See* FED. R. EVID. 801(d)(2)(E) ("A statement is not hearsay if—. . . (2) Admission by party-opponent. The statement is offered against a party and is . . . (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.").

5. United States v. DiDomenico, 78 F.3d 294, 303 (7th Cir. 1996) (emphasis added).

6. *Id.*

7. I do not mean to suggest that this is necessarily wrong (either doctrinally, normatively, or as a matter of institutional separation of function), but only that it comes across as exceedingly cynical.

8. *See* SIGMOND FREUD, THE PSYCHOPATHOLOGY OF EVERYDAY LIFE 53–105 ("Slips of the Tongue"), 116–33 ("Slips of the Pen") (1965). Based on the context and the tenor of the discussion in the opinion, a good case could be made that this word was carefully chosen rather than accidentally used.

9. Inferior courts have been known not infrequently to decide a case while saying something like: "We are bound by precedent/higher authority to apply this misguided rule though we believe the rule or its rationale is wrong." *See, e.g.*, Lake River Corp. v. Carborundum Co., 769 F.2d 1284 (7th Cir. 1985); *cf.* LEE C. BOLLINGER, THE TOLERANT SOCIETY 28–30 (1986) (discussing rhetoric of judicial opinions in the Skokie Nazi march case in which the judges make clear that they personally abhor the Nazi speech at issue, and "intimate that they would arrive at a very different resolution if they were deciding the case on a clean slate, but that such a resolution

effect that such a forthcoming assessment has upon the students who, by reading this decision and others, learn the law of evidence. And the Posner example is only one of many that occur throughout the Evidence course.[10] What is the effect of teaching students rules whose stated rationales are plainly, and often admittedly, very questionable at best and simply unsupportable at worst?

Social psychology teaches that when logic and experience—belief and behavior—conflict, the result is an uncomfortable psychological state known as cognitive dissonance. According to the classic explication of the theory, such dissonance results in the person's attempting to decrease the dissonance and bring belief and behavior (or any two dissonant cognitions) into consonance.[11] Consonance may be attained through a variety of means.[12] One method—the one that has received the most attention in the psychological literature and on which I focus here—is attitude change. In short, the person alters her attitudes to fit her behavior and thus to attain consonance.[13] The

was foreclosed by standing precedents of a higher court, the Supreme Court"). An interesting aspect of the discussion in *DiDomenico* is that it does *not* take this approach. Though critical of the logic behind the justification for the rule, the court seems to embrace the rule itself (or at least whether it does so is ambiguous).

10. *See infra* Part II.

11. *See generally* FESTINGER, *supra* note 1. Many studies of attitude change use what is known as the "free-choice paradigm." In the original study using this paradigm, women were asked to rate a series of household appliances for desirability. They were then given a choice between two of the appliances that they had rated very similarly to take home as compensation for participating in the study. Following their choice, they were again asked to rate the group of appliances. In the post-choice rating, they rated the chosen appliance as more desirable than they had originally done, and the non-chosen appliance as less desirable. This phenomenon is known as spreading the alternatives. It is consistent with dissonance theory because the person, having made a choice (the behavior), attempts to reduce the dissonance between the behavior and the belief (that the two alternatives were similarly desirable) by altering the beliefs to be more in line with the behavior.

12. These include bolstering (acquiring or focusing upon items of information that are consonant with the chosen behavior), trivialization (reducing the importance of items of information that are dissonant with the behavior), and self-affirmation (reminding oneself of one's positive values and attributes). *See* Patricia Devine et al., *Moving Beyond Attitude Change in the Study of Dissonance-Related Processes*, *in* COGNITIVE DISSONANCE: PROGRESS ON A PIVOTAL THEORY IN SOCIAL PSYCHOLOGY 302 (Eddie Harmon-Jones & Judson Mills eds., 1999) [hereinafter PROGRESS ON A PIVOTAL THEORY]; Joel Cooper, *Unwanted Consequences and the Self: In Search of the Motivation for Dissonance Reduction*, *in* PROGRESS ON A PIVOTAL THEORY, *supra*, at 156–57; DOUGLAS H. LAWRENCE & LEON FESTINGER, DETERRENTS AND REINFORCEMENT: THE PSYCHOLOGY OF INSUFFICIENT REWARD 46–47 (1962).

13. The other major theory of attitude change is self-perception theory, according to which "people infer their own attitudes the same way they infer the attitudes of others, namely, by observing their own behavior." Lieberman et al., *supra* note 1, at 135; *see* D.J. Bem, *An Experimental Analysis of Self-Persuasion*, 1 J. EXPERIMENTAL SOCIAL PSYCH. 199 (1965). In other words, rather than employing motivated reasoning to reduce the uncomfortable feeling of

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study of attitude change assumes that this process is conscious and reflective—that it is a process of "rationalization."[14] In this Essay, I wish to use the theory of cognitive dissonance on two levels: first, as a metaphor to describe and understand the process that has helped to mold the law of evidence, and second, to explore the psychological effect on students of being taught legal rules that often—and sometimes self-consciously—rest on faulty logic. My conclusion mirrors in some respects the revolution that is now underway in the fields of cognitive and social psychology and brain science: by rediscovering the crucial role of intuition and affect in human decision-making,[15] Evidence students may actually be poised to benefit from the cognitive dissonance induced in them by the uncomfortable rationalizations that exist in the rules.

This Essay first lays out the descriptive case for the proposition that the Evidence course is rife with rules whose stated rationales look more like rationalizations.[16] In particular, I point out those areas in which the Advisory Committee's Notes, cases, and/or academic commentary expressly recognize that the traditional justifications for a particular rule are difficult to support based upon the current state of psychological and sociological knowledge.[17] Next, I identify the predicted effect on students of this peculiar feature of the Evidence course, and in particular discuss the cognitive dissonance that may be induced by the juxtaposition of the rules and their "rationalizations." Finally, I

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dissonance caused by the discrepancy between belief and behavior as posited by Festinger's theory of cognitive dissonance, persons alter their beliefs in response to their behaviors because the belief is secondary to the behavior and results from the person's observation of the behavior. As explained *infra*, recent research casts doubt on some of the premises of both of these theories of attitude change. *See* Lieberman et al., *supra* note 1; Matthew D. Lieberman et al., *Evidence-Based and Intuition-Based Self-Knowledge: An fMRI Study*, 87 J. PERSONALITY & SOC. PSYCH. 421 (2004).

14. *See* Lieberman et al., *supra* note 1, at 138 (noting that "[c]onscious attention to the counterattitudinal behavior and conscious work in the service of attitude revision are both unspecified, but implied, components of cognitive dissonance theory").

15. *See* Lieberman et al., *supra* note 1; Michael S. Gazzaniga & Megan S. Steven, *Free Will in the Twenty-first Century* (summarizing studies which suggest that much decision-making occurs before the individual has any conscious awareness of making the decision), *in* NEUROSCIENCE AND THE LAW 55–59 (Brent Garland ed. 2004). For a popular and engaging account of the new research on the role of intuition in decision-making, see MALCOLM GLADWELL, BLINK (2005).

16. I recognize that this is not a revolutionary or shocking observation. I don't claim any originality in noticing that many of the stated reasons for the evidence rules are of questionable validity. I don't even claim originality in noticing that they are expressly so. My contribution, if any, is in exploring how this feature of the rules affects students and impacts teaching.

17. I refer here not to genuine debates over the wisdom of a particular rule; my concern is rather with those treatments that say, in effect, "Everyone knows that this (stated, historical, conventional) rationale is unsupportable based on current knowledge (if, indeed, it ever was supportable in light of the state of knowledge at the time it developed)."

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offer some tentative conclusions and suggestions for a productive and constructive approach to this challenging aspect of teaching Evidence.

II. RULES, RATIONALES & RATIONALIZATIONS

The Federal Rules of Evidence are the product of a lengthy and ongoing process of common law development, drafting, comment, enactment, and amendment that has drawn on the knowledge, experience, and recommendations of a wide range of experts in the field.[18] I note this in order to make the obvious point that the Federal Rules are decidedly *not* arbitrary. They were deliberately crafted, one would hope and imagine, for good reasons. They continue to be reviewed and amended by a process that includes distinguished judges and other experts in the field.[19] That is not to say that everyone need agree that a certain incarnation of a rule is the best choice; neither is it to deny the compromises and defects inherent in any process that includes drafting by committee. It is only to suggest that the Federal Rules are, presumably, normatively and factually supportable in their current form based upon some reasonable set of assumptions[20] and policy goals.[21] That they are,

18. *See, e.g.*, CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE 3–6 (3d ed. 2003) (noting that the Federal Rules of Evidence "were proposed by a distinguished Advisory Committee comprised of practitioners, judges, and law professors appointed by the United States Supreme Court," which "labored for more than eight years, producing two published drafts that were publicized among bench and bar and a would-be final version that the Supreme Court accepted and transmitted to Congress").

19. The Supreme Court's Advisory Committee on Evidence Rules is charged with recommending amendments to the rules. *See* U.S. Courts, Federal Rulemaking, http://host3.uscourts.gov/rules/proceduresum.htm (last visited Feb. 27, 2006).

20. I refer here primarily to assumptions about human behavior and psychology. The rules are, for the most part, grounded upon assumptions about the behavior and psychology of witnesses (whether out-of-court declarants or in-court testifying witnesses) and of jurors. Based upon these empirical assumptions, the rules are then crafted to serve various goals in light of these behavioral constraints. *Cf.* Owen Jones, *Law and Behavioral Biology*, 105 COLUM. L. REV. 405, 415–16 (2005) ("[L]aw is a lever for moving behavior that has a model of human behavior as its fulcrum. That fulcrum consists of what we think we know about how and why people behave as they do, and it therefore incorporates the aggregated insights that underlie our prediction that if law moves this way behavior will move that way, and not some other way. Consequently, law can generally obtain no more leverage on human behaviors it seeks to change than the accuracy of its behavioral model allows.").

21. Indeed, these goals are set out in the rules themselves. Rule 102 provides that the overarching normative goals of the Federal Rules of Evidence are "fairness in administration, elimination of unjustifiable expense and delay," the ascertainment of "truth," and that proceedings may be "justly determined." FED. R. EVID. 102. Based on the language and structure of Rule 102, it seems that the first two (fairness and minimization of cost and delay) are normative goals regarding the application of the Federal Rules, while the latter two (truth and justice) are the normative goals underlying the content of the Federal Rules themselves. For a concise summary of the commonly cited reasons for evidence law in general (as opposed to the reasons for these particular rules), see MUELLER & KIRKPATRICK, *supra* note 18, at 2–3.

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one would hope, supported by rationales[22] rather than rationalizations.[23] And yet . . .

One is hard-pressed to find much evidence of these empirically supportable behavioral and psychological assumptions within the stated rationales for many of the rules. In fact, one often finds instead a candid admission that the assumption is a fiction. These are not "legal fictions"[24] in the usual sense of that term, but fictions of a different sort: few really think, for example, that people are especially likely to be truthful when they believe that they are at death's door, and yet that rationale survives as the basis for the dying declaration exception.[25] This phenomenon is pervasive throughout the

22. The RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 1119 (1996) defines "rationale" as "the fundamental reason or reasons serving to account for something."

23. The primary definition of "rationalization" in the RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 1119 (1996) is "[ascribing] (one's actions) to causes that seem reasonable but do not reflect the true, unconscious, or less creditable causes." In psychology, "rationalization" refers to the "process of justification for the choice after its completion to satisfy oneself rather than of affording logical presentation of reasons to influence the process beforehand." FESTINGER, *supra* note 1, at 73–74 (quoting Martin, A.H., *An Experimental Study of the Factors and Types of Voluntary Choice*, 51 ARCHIVES OF PSYCHOLOGY 40–41 (1922)).

24. A "legal fiction" is an "[a]ssumption of fact made by [a] court as [the] basis for deciding a legal question," or "[a] situation contrived by the law to permit a court to dispose of a matter, though it need not be created improperly." BLACK'S LAW DICTIONARY 804 (5th ed. 1979); *see also* LON L. FULLER, LEGAL FICTIONS 9 (1967) ("A fiction is either (1) a statement propounded with a complete or partial consciousness of its falsity, or (2) a false statement recognized as having utility . . . ."). This should not be confused with "legal fiction." *See, e.g.*, JOHN GRISHAM, THE FIRM (1992).

Legal fictions, as defined by *Black's Law Dictionary* and as explored by Fuller in his excellent book, are not distinguishable from rationalizations on the basis that they are admittedly false. Indeed, as can be seen in his definition above, this is the very characteristic that makes a legal rule a "fiction" in Fuller's view. Rather, the distinction turns on the *role* of the fiction in the legal framework. A legal fiction is a known falsity within the legal rule—for example, the fiction that a husband and wife are "one person," or that recording a deed provides "constructive notice"—such that the legal consequences that accompany personhood, or notice, are deemed to apply. The legal fiction, then, is part and parcel of the rule.

The fiction that turns a rationale into a rationalization, in contrast, is not a part of the rule per se. Rather, it is the legal or factual justification for the rule. In the case of the hearsay exceptions, for example, the legal justification for allowing exceptions as a general matter is that there is something about the circumstances under which particular classes of statements are made that tends to make them sufficiently reliable so as to justify dispensing with the usual requirements of oath, cross-examination, and demeanor. Each exception, then, turns upon a story about why *this* class of statements is reliable. And because reliability is essentially a statement about the human tendency to be truthful and accurate, the justification for each exception generally rests upon factual statements or assumptions about human nature, psychology, motivation, and capacity.

25. *See* Richard Friedman, The Confrontation Blog, *available at* http://confrontationright.blogspot.com/2004/12/forfeiture-and-dying-declarations.html (last visited Feb. 21, 2006).

rules of evidence.[26] There are rules and there are rationales, but in a significant number of instances those rationales look a lot like rationalizations.

Many of the most obvious instances of reasons that seem to come with a wink and a nod are contained in Article VIII, the rules governing admissibility of hearsay. Under Rule 802, hearsay is generally not admissible unless it falls under one of the exceptions provided in Rules 803 and 804, or under the definitional exclusions contained in Rule 801(d).[27] Unless all hearsay is to be admitted (or all excluded),[28] there must be some basis for separating admissible hearsay from inadmissible hearsay. Because the Federal Rules, as well as the evidence rules of all of the states, retain the basic rule against hearsay, the categorical exceptions must rest on some rational (or seemingly rational) basis. In general, that reasoned basis consists in the assumption that certain classes of statements are inherently more reliable than others. Their reliability flows from the circumstances under which the statements are made. It necessarily rests upon certain ideas and assumptions about the conditions under which human beings—the people making the statements—are likely to be truthful and accurate.[29] When those assumptions are demonstrably—or even probably—wrong, then the rule rests on a rationalization rather than a rationale.[30]

26. This Essay, like most Evidence casebooks, focuses on the Federal Rules of Evidence.

27. *See* FED. R. EVID. 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress."); FED. R. EVID. 803 (exceptions for which availability of the declarant is immaterial); FED. R. EVID. 804 (exceptions requiring that declarant be unavailable); FED. R. EVID. 801(d) (definitional non-hearsay).

28. The first alternative has often been proposed, most notably by Jeremy Bentham. *See* JEREMY BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 1 (1827); *see also* Roger Park, *A Subject Matter Approach to Hearsay Reform*, 86 MICH. L. REV. 51, 52 (1987) (noting that twentieth century legal scholars "have tended to be supporters of simplification or abolition" of the rule against hearsay); MICHAEL H. GRAHAM, 2 HANDBOOK OF FEDERAL EVIDENCE § 801.0, at 188 (1996); Paul S. Milich, *Hearsay Antinomies: The Case for Abolishing the Rule and Starting Over*, 71 OR. L. REV. 723 (1992); Franklin Strier, *Making Jury Trials More Truthful*, 30 U.C. DAVIS L. REV. 95, 111 (1996).

29. It would also be rational for hearsay exceptions to rest on an alternative basis: a claim that fact-finders could more reliably evaluate out-of-court statements made under certain circumstances as opposed to others. However, to my knowledge there are no hearsay exceptions that rest on such arguments.

30. A rationalization need not necessarily be logically unsupportable; it is possible that a stated reason could be logically unassailable and yet that it still be a post hoc basis for an action taken for other reasons or for no good reason. However, when the reason *is* logically unsupportable, that is good evidence that it is a rationalization rather than a rationale. It would be much more difficult—and therefore beyond the scope of this Essay—to uncover rationalizations where those reasons actually provide logical support for the rule.

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The excited utterance exception is a prime example of a rule that rests upon a questionable rationale.[31] Under the evidence rules, a hearsay statement is admissible where the declarant makes the statement while under the stress of an exciting event, and where the statement relates to the exciting event.[32] According to the classic and oft-cited rationale articulated by Wigmore, such statements tend to be truthful because the exciting event "stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock."[33]

As long ago as the 1920s, experimental psychology called into question the stated bases for this exception.[34] A law review article discussing then-current advances in the field noted that, of Wigmore's two requirements of speed and high emotion, neither had empirical support as a likely guide to truthfulness and accuracy in the courtroom.[35] As for speed, the authors conceded that deception generally does require more time than truthfulness; however, though that time difference was statistically significant in the laboratory, it was so small as to be meaningless to a judge ruling on a hearsay objection.[36] And with respect to the influence of emotional disturbance, the authors noted that "[o]ne need not be a psychologist to distrust an observation made under emotional stress; everybody accepts such statements with mental reservation."[37]

31. *See* FED. R. EVID. 803(2) ("A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.").

32. *See id.*

33. JOHN HENRY WIGMORE, 6 EVIDENCE § 1747 (3d ed. 1940). Wigmore's conception of the psychology underlying speakers' statements reflects a sharp divide between rational (reflective) and emotional or sensory (reflexive) processes. Elaborating on the reliability of spontaneous declarations, he says that because they are "made under the immediate and uncontrolled domination of the senses, and during the brief period when considerations of self-interest could not have been brought fully to bear by reasoned reflection, the utterance may be taken as particularly trustworthy (or, at least, as lacking the usual grounds of untrustworthiness), and thus as expressing the real tenor of the speaker's belief as to the facts just observed by him . . . ." *Id.*

34. *See* Robert M. Hutchins & Donald Slesinger, *Some Observations on the Law of Evidence*, 28 COLUM. L. REV. 432 (1928).

35. *Id.*

36. *See id.* at 436–37 ("[T]he difference in time between the ordinary reaction and the deception reaction . . . is so slight, from .83 seconds to 3 ½ minutes, that it cannot be measured without the aid of instruments. The sound discretion of the trial judge, with the best of intention in these cases, is likely to be fallible."); I. Daniel Stewart, Jr., *Perception, Memory, and Hearsay: A Criticism of Present Law and the Proposed Federal Rules of Evidence*, 1970 UTAH L. REV. 1, 28 n.126.

37. Hutchins & Slesinger, *supra* note 34, at 437 (discussing psychological experiments as well as "stories from real life" demonstrating the tendency of emotion to distort accurate reporting of events); *see also* I. Daniel Stewart, Jr., *supra* note 36.

More recently, the Seventh Circuit, denying a petition for habeas corpus based upon a Confrontation Clause challenge to the admission of an excited utterance hearsay statement,[38] questioned the traditional justification for the exception on two grounds. After noting that the "thinking behind [the exception] is that lying is deliberate, and a person who is under stress induced by a startling occurrence cannot deliberate; so the fact that the statement he blurted out in these circumstances was not made under oath does not detract substantially from its truthfulness," the court questioned whether this rationale might "give too much weight to the oath, whose terrors have diminished in this secular age."[39] In addition, the court stated that the rationale "ignores the possibility that stress may induce inaccurate, even if sincere, utterances."[40]

Despite these reservations, most commentators agree that the exception should be retained. The Advisory Committee's Note to Rule 803(2) states that "while the theory of Exception (2) has been criticized on the ground that excitement impairs accuracy of observation as well as eliminating conscious fabrication . . . it finds support in cases without number."[41] Hutchins and Slesinger suggest that their review of the psychological literature might argue for a rule that states: "Hearsay is inadmissible, especially (not except) if it be a spontaneous exclamation."[42] They go on, however, to say that "[o]f course, such a result would be preposterous."[43] In sum, though many sources recognize the shaky foundation upon which this exception purportedly sits, they nonetheless reaffirm its place in the hearsay scheme. And cases and commentators continue to expound the (questionable) rationale for the exception.

As with the exception for excited utterances, the justifications for the dying declaration exception[44] often sound more in rationalization than rationale. The

38. The Confrontation Clause claim was premised upon the unreliability of the statement. U.S. CONST. amend. VI. Though the constitutional analysis is obviously superseded by the Supreme Court's subsequent decision in *Crawford v. Washington*, 541 U.S. 36 (2004), its discussion of the reliability of statements made under the stress of an exciting event remains instructive.

39. Ferrier v. Duckworth, 902 F.2d 545, 548 (7th Cir. 1990). This point would seem to apply to all of the hearsay exceptions, not only to excited utterances.

40. *Id.* The court denied the petition on the ground that "[t]he confrontation clause is not a proper vehicle for revolutionizing the law of evidence." *Id.*

41. FED. R. EVID. 803(2) Advisory Committee's Note (citations omitted). It is difficult to know what to make of such statements (and there are others) in the Advisory Committee's Notes. They suggest that adoption of the rule in question is more a restatement than a reasoned choice. On the other hand, as I argue *infra* at text accompanying notes 71–72, experience may be a perfectly valid basis for retaining rules for which logical rationales are elusive.

42. Hutchins & Slesinger, *supra* note 35, at 439.

43. *Id.*

44. *See* FED. R. EVID. 804(b)(2). The rule provides an exception in homicide and civil cases where the declarant is unavailable and the statement was "made by a declarant while believing

exception ostensibly rests on the idea that a person who believes that her death is imminent will be unlikely to lie about the circumstances of her impending death.[45] The Advisory Committee and the House Committee on the Judiciary both expressed some doubt as to the traditional justification for the exception,[46] but the rule expanded the exception beyond its common law boundaries nonetheless.[47] As Professor Lilly has pointed out, it is difficult to square the contours of the exception with its stated rationale.[48]

It has long been recognized that where an exception (such as this one) is grounded in certain beliefs about human psychology, it might be well to investigate—to the extent possible—whether those beliefs are accurate.[49] Their accuracy is at least debatable in the case of dying declarations, as noted by numerous sources.[50] For example, Professors Mueller and Kirkpatrick, in a hornbook consulted by countless Evidence students, state that

> [w]hether it makes sense to suppose awareness of impending death leads one to be truthful in comments about cause or circumstances may be debated. Some lines in Shakespeare argue that the dying have no need to do mischief by deception and hesitate to deceive before meeting God, but Balzac painted a

that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death." *Id.*

45. As noted *supra* at note 25 and accompanying text, Professor Richard Friedman has argued that the true, or better, reason for the exception is grounded in the doctrine of forfeiture. Traditional rationales also recognize that this exception in particular rests in large part upon necessity. *See* United States v. Thevis, 84 F.R.D. 57, 63 (1979); *infra* note 51 and accompanying text.

46. The Advisory Committee's Note states that "the original religious justification for the exception may have lost its conviction for some persons over the years . . . ." *See* FED. R. EVID. 804(b)(2) (originally submitted as 804(b)(3)) Advisory Committee's Note). The House Committee Report states that "[t]he Committee did not consider dying declarations as among the most reliable forms of hearsay," and that it therefore "amended the provision to limit their admissibility in criminal cases to homicide prosecutions, where exceptional need for the evidence is present." *See* H.R. REP. NO. 93-650, at 7089 (1973) (Report of House Committee on the Judiciary, FED. R. EVID. 804(b)(2) (originally submitted as 804(b)(3))).

47. FED. R. EVID. 804(b)(2) expanded the exception to civil cases.

48. *See* GRAHAM C. LILLY, AN INTRODUCTION TO THE LAW OF EVIDENCE 333–35 (3d ed. 1996).

49. *See* JON R. WALTZ & ROGER C. PARK, EVIDENCE: CASES AND MATERIALS 138 (10th ed. 2004) (quoting CAIRNS, LAW AND THE SOCIAL SCIENCES 173–74 (1935)) ("Psychology may or may not confirm the law's assumption but at least it would be wise for the courts to inquire what it has to offer."); *see also* LILLY, *supra* note 48, at 334 (noting that if the psychological assumptions upon which the exception is based are faulty, then the statements should not be admitted in homicide prosecutions, and if these assumptions are valid, then the statements should be admitted in a wide variety of cases rather than limited to homicide and civil cases).

50. *See, e.g.*, Stanley A. Goldman, *Not So 'Firmly Rooted': Exceptions to the Confrontation Clause*, 66 N.C. L. REV. 1, 24–25 (1987); Leonard Jaffee, *The Constitution and Proof by Dead or Unconfrontable Declarants*, 33 ARK. L. REV. 227, 291, 313 (1979).

> picture of a wronged woman vicious even in her dying breath, and both viewpoints find echoes in decided cases.[51]

Likewise, courts have questioned the reliability rationale for the exception. For example, one court, after dutifully reporting the traditional rationale, stated that "[m]ore realistically, the dying declaration is admitted, because of compelling need for the statement rather than any inherent trustworthiness."[52] What is curious here is not the admission of the statements; need may well be a compelling and logical reason for their admission. Rather, it is the sources' constant and repeated recitation of the reliability rationale as a basis for admission while at the same time acknowledging that it is perhaps a rather thin reed upon which to hang a murder conviction.

The extension of the medical treatment exception to statements made for purposes of diagnosis[53] provides a further example of the phenomenon. Under the common law, statements made to doctors for purposes of treatment were viewed as reliable based upon the patient's interest in getting effective medical treatment.[54] The Federal Rules expanded the exception to include statements made for purposes of diagnosis as well as treatment. The Advisory Committee and the commentators have recognized that the reliability rationale does not apply to this latter class of statements. The Advisory Committee's Note acknowledges that "[c]onventional doctrine has excluded from the hearsay exception, as not within its guarantee of truthfulness, statements to a physician consulted only for the purpose of enabling him to testify."[55] The Committee explains the elimination of this limitation as related to the operation of the rules governing expert testimony: Because the expert medical witness will be

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51. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE, *supra* note 18, § 8.71 (citations omitted). It may well be that Shakespeare and Balzac are the best we can do in terms of analyzing the psychological assumptions that underlie the dying declaration exception. It is difficult to conceive of an experimental design that would be both ethical and feasible. *But see* Goldman, *supra* note 50, at 24 (stating that "[e]mpirical data from various studies suggests [sic] that the pressures which favor the reliability of dying declarations may be outweighed by other factors"). In any event, the fact that the assumptions may ultimately be untestable does not necessarily mitigate the effect of teaching a rule based on what intuition, cases, and commentators suggest are highly questionable psychological justifications.

52. United States v. Thevis, 84 F.R.D. 57, 63 (1979).

53. *See* FED. R. EVID. 803(4) (providing an exception for statements "made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment").

54. *See, e.g.*, MUELLER & KIRKPATRICK, *supra* note 18, § 8.42 ("The main reason to admit statements made for purposes of getting treatment is that they are trustworthy. . . . [The patient] knows his description helps determine treatment, so he has reason to speak candidly and carefully, and risks of insincerity and ambiguity are minimal.").

55. FED. R. EVID. 803(4) Advisory Committee's Note.

permitted to testify to the basis of her opinion under Rule 703,[56] juries will hear the statements in any event and will be unlikely to restrict their consideration of the evidence to non-truth purposes.[57]

Though this expansion of the common law rule may more reasonably be seen as a quirk of the codification and amendment process than as a genuine instance of rationalization in the face of contrary evidence, it nevertheless represents a prime example of a rule unsupported—at least after the amendment to Rule 703—by *any* rationale whatsoever. Professors Mueller and Kirkpatrick put it thus: "But it is odd, to say the least, to find in place a hearsay exception that was broadened on the theory that the statements are going to come out anyway, then to retain the broadened exception after FRE 702 was amended to cut off the opportunity that was the basis for expanding the exception in the first place!"[58]

The above-described rules present perhaps the starkest examples of rationalization in the law of evidence, but there are others as well. Several of the definitional hearsay exceptions contained in the admissions doctrine of Rule 801(d)(2), including the exception for statements of co-conspirators as noted above,[59] rest on very questionable assumptions. In addition to Judge Posner's characterization of the justification for the co-conspirator exception as a "rationalization," the Advisory Committee's Notes acknowledge that "the agency theory of conspiracy is at best a fiction . . . ."[60] The scholarly literature has noted that the decision to exempt admissions from the definition of hearsay is "justifiable as to direct and authorized admissions but not as to the vicarious admissions of agents and coconspirators."[61]

56. Under the version of Rule 703 that existed at the time that Rule 803(4) was expanded in this manner, an expert was permitted to testify to the basis of her opinion—including otherwise inadmissible hearsay—so long as such facts or data were of a type reasonably relied upon by experts in the particular field. The rule has since been amended to restrict the disclosure of such evidence "unless the court determines that [the] probative value [of the otherwise inadmissible evidence] in assisting the jury to evaluate the expert's opinion substantially outweighs [the evidence's] prejudicial effect." FED. R. EVID. 703.

57. *See* FED. R. EVID. 803(4) Advisory Committee's Note.

58. MUELLER & KIRKPATRICK, *supra* note 18, at 835–36.

59. *See supra* notes 4–7 and accompanying text.

60. Fed. R. Evid. 801(d)(2)(E) Advisory Committee Note.

61. Stewart, *supra* note 36, at 26. A slightly different but related attribute of the Evidence course, which might be expected to create dissonance in students, concerns a structural feature of two of its central topics: hearsay and character evidence. In both of these areas, it may be said that the exceptions threaten to swallow the rule. Students are likely to come away from the study of character evidence, for example, with the impression that the rules purport to exclude evidence of character to prove propensity, when in fact much evidence of that nature is admissible for other reasons. Similarly, they likely come away from studying the rule against hearsay with the message that the rules claim to exclude hearsay while not actually excluding much hearsay. A potential message to students reading the cases in these areas is that even if the rules are logical in theory, they are often arbitrary in application. *See, e.g.*, G. Michael Fenner, *Law Professor*

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Students are presented, in sum, with a set of evidence rules of which some significant number seem to be not only grounded in rationalization, but unabashedly so. In discussing these rules, the drafters who created them, the courts that apply them, and the scholars who analyze them question the validity of the reasons underlying the rules but reaffirm the rules themselves. They question the logic of the rules while affirming the behavior of applying them. They set the paradigmatic stage, in other words, for cognitive dissonance.

III. COGNITIVE DISSONANCE AND OTHER UNCOMFORTABLE PSYCHOLOGICAL STATES

The theory of cognitive dissonance, as noted above, posits that people feel discomfort when they hold two discrepant cognitions in mind at once. As a result, they are driven to reconcile these cognitions by somehow bringing them closer to consonance. A paradigmatic instance of dissonance is presented when one's beliefs conflict with one's behavior or experience.[62] And a paradigmatic response to such conflict, as predicted by dissonance theory, is rationalization.[63] By rationalizing—constructing reasonable justifications that appear to bring the attitude and experience into consonance—the person satisfies the psychological drive for coherence and reduces the discomfort of dissonance.

Humans are exceptionally adept at rationalization.[64] Indeed, recent research suggests that at least some attitude change occurs automatically and

Reveals Shocking Truth About Hearsay, 62 UMKC L. REV. 1, 1 (1993) (revealing several "truths," including "Everything is Nonhearsay," "Everything is Hearsay," and "Everything Fits Under an Exception").

62. For example, a person believes that smoking is harmful and the person smokes. *See* Eddie Harmon-Jones & Judson Mills, *An Introduction to Cognitive Dissonance Theory and an Overview of Current Perspectives on the Theory*, *in* PROGRESS ON A PIVOTAL THEORY, *supra* note 12, at 4–5.

63. *See* Lieberman et al., *supra* note 1, at 135 (using illustration of Aesop's tale of the fox and the grapes, in which the fox tries in vain to reach the grapes and when he cannot, says to himself: "The grapes are sour, and not as ripe as I thought").

64. The extent of this ability was illuminated in a fascinating series of natural experiments done by neuroscientist Michael Gazzaniga. In the human brain, the left hemisphere controls movement and receives sensory input from the right side of the body and the right hemisphere from the left. With a patient whose right and left cerebral hemispheres had been severed, professor Gazzaniga and his team directed him to do a task with his left hand (while keeping the left side of the brain in the dark, so to speak, by flashing the direction in the part of the visual field that only the right hemisphere can see). He then asked the patient why he had done the task with his left hand. The patient knew he had done the task, yet he did not know why. In response to the question, he convincingly advanced quite a detailed and plausible explanation that was, however, completely false. For a more detailed account of this experiment, see STEVEN PINKER, THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE 43 (2002); *see also* Julie A. Seaman, *Form and (Dys)function in Sexual Harassment Law: Biology, Culture, and the Spandrels of Title VII*, 37 ARIZ. ST. L.J. 321, 342–43 n.42 (2005). Neuroscientist V.S.

without conscious processing.[65] Thus amnesiacs—who have no conscious memory of the contradictory behavior—exhibit the same degree of attitude change in free-choice paradigm studies as persons without memory impairment.[66]

As illustrated above, the law—and in particular evidence law—is also exceptionally adept at rationalization. Just like the patient whose right and left hemispheres have been disconnected, the law sees a behavior (a rule) and constructs plausible explanations for that behavior (a rationale or rationalization).[67] In this way, it minimizes dissonance. Students (and professors) of the law are at one remove from such consonance-seeking stratagems: it is not just their own behaviors and attitudes that appear inconsistent, but those of the actors in the system they study.[68] As they learn the rules and their rationalizations, the fact of dissonance is, for a time, presented in stark relief. Because of this, there may exist a unique opportunity to use the dissonance induced by the rules and their rationalizations to create a space in which genuine learning can occur. That space—the space between experience and reason, between rules and their rationales—is elusive. Dissonance theory predicts (and psychology experiments teach) that people feel uncomfortable in that space and will work hard to close it.[69] To the extent

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Ramachandran hypothesizes that the left hemisphere acts as a sort of "general" whose "job is to create a belief system or model and to fold new experiences into that belief system." V.S. RAMACHANDRAN & SANDRA BLAKESLEE, PHANTOMS IN THE BRAIN: PROBING THE MYSTERIES OF THE HUMAN MIND 136 (1998). Though not addressing the theory of cognitive dissonance per se, he suggests that such dissonance reduction strategies as denial, repression, and rationalization flow from this function of the left hemisphere. However, "[w]hen the anomalous information [from the "Devil's Advocate" in the right hemisphere] reaches a certain threshold, the right hemisphere decides that it is time to force a complete revision of the entire model." *Id.* The left "always tries to cling tenaciously to the way things were." *Id.*

65. As professor Lieberman points out, it is probably misleading to call such processes "rationalization," which implies some conscious motivation. *See* Lieberman et al., *supra* note 1, at 139.

66. *See id.* at 136–38. In addition, Lieberman's experiments showed that persons under cognitive load similarly experienced attitude change in response to dissonance, again suggesting that unconscious (non-rational) processes were at work. *See id.* at 138–39.

67. Some recent neuroscience research suggests that humans' pervasive sensation that their decisions follow from rational thought processes may be in many instances an illusion created by the brain. Instead, studies show that many decisions are intuitive—they originate in the more primitive, emotional centers of the brain—and are afterward rationalized by the higher centers of the brain. *See* Gazzaniga & Steven, *supra* note 15, at 87; *see, e.g.*, DANIEL M. WEGNER, THE ILLUSION OF CONSCIOUS WILL (2002).

68. In a larger sense, dissonance may be created in the students themselves insofar as they arrive in law school with the belief that the law is rational and fair, and this belief is challenged by their experience with actual cases and with the rationalizations behind the rules.

69. Festinger suggested that "low-importance" attitudes and behaviors are less susceptible to dissonance-reducing strategies. *See* Judson Mills, *Improving the 1957 Version of Dissonance Theory*, *in* PROGRESS ON A PIVOTAL THEORY, *supra* note 12, at 33–35 (discussing FESTINGER,

that we, as teachers and students of the law, are able to enlarge that space—to keep our students for a time suspended in the interval between dissonance and consonance—we may find some small degree of transformative understanding.[70]

Furthermore, advances in neuropsychology and related fields teach that emotion and intuition often play important roles in moral decision-making. Though difficult or perhaps even impossible to articulate,[71] our "gut" feelings have a significant place in individual decision-making. In thinking about legal rules, too, these non-rational processes should play some role.[72] The benefit of creating and exploiting cognitive dissonance is that it can highlight the place of emotion, moral judgment, and experience in formulating and applying the rules so that the process becomes transparent rather than opaque. In other words, we should look upon the dissonance created by the rules and their rationalizations as an ideal teachable moment: By focusing attention on the dissonance, we can help students to gain insight into the proper role of emotion and moral judgment in the rules, as well as to better understand the true reasons behind them.

Psychological studies tend to show that "individuals seem to have a remarkable capacity for avoiding awareness of inconsistencies unless their noses are quite vigorously rubbed in them."[73] Cognitive dissonance is increased when people are reminded of the inconsistent cognitions rather than

supra note 1). In other words, where persons do not care very much about the beliefs in question, they are less apt to worry about consistency with other beliefs or with behavior. That this observation might apply to Evidence students is probably a mixed blessing.

70. *Cf.* THOMAS KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1962) (advancing the notion of transformative paradigm shifts in science).

71. The evidence rules provide an analogy in FED. R. EVID. 701, the rule expanding the admissibility of lay opinion testimony.

72. There is, of course, the danger that affirming the place of non-rational components of decision-making might allow prejudice and bias to infect the process. Indeed, neuroscience studies confirm that bias and fear reactions originate in the amygdala (the "emotional" brain). *See* David H. Zald, *The Human Amygdala and the Emotional Evaluation of Sensory Stimuli*, 41 BRAIN RESEARCH REV. 88, 106 (2002); Elizabeth A. Phelps et al., *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 J. COGNITIVE NEUROSCI. 729, 729 (2000). However, surely it is better to recognize the role of intuition, emotion, and experience rather than to rationalize decisions and rules and thereby pretend that those decisions and rules are devoid of emotional grounding. The role of emotion in law has recently been the focus of much scholarship. *See, e.g.*, THE PASSIONS OF LAW (Susan A. Bandes ed., 1999); Terry A. Maroney, *Law and Emotion: A Proposed Taxonomy of an Emerging Field*, LAW & HUM. BEH. (forthcoming 2006), *available at* http://ssrn.com/abstract=726864; Dan M. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269 (1996).

73. Ian McGregor et al., *"Remembering" Dissonance: Simultaneous Accessibility of Inconsistent Cognitive Elements Moderates Epistemic Discomfort*, *in* PROGRESS ON A PIVOTAL THEORY, *supra* note 12, at 325, 331.

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distracted from focusing on them.[74] In a study using the "forbidden-toy paradigm," for example, children were told that the researcher was going to leave the room, and that they should not play with a particular (and very desirable) toy. They were told that if they did play with the toy, the researcher would be very angry with them and they would be punished.[75] The study demonstrated that the greatest amount of "toy derogation" (the children's rationalizing response to the dissonance created by wanting to play with the toy and not playing with the toy) occurred where the children were reminded during the experiment of both cognitions.[76] On the other hand, when they were distracted from one or both cognitions, the level of toy derogation was lessened.[77] In what the psychology literature calls a state of "induced hypocrisy"[78]—intentioned focus upon the dissonance—individuals are the most susceptible to learning and attitude change.[79]

On the other hand, where participants are allowed to focus on the implementation of the course of action that has already been decided upon, they tend to experience "hardening of the attitudes."[80] This is consistent with one of the original findings of cognitive dissonance research: When a person with a strong belief is challenged by contradictory evidence, he is less likely to discard the belief than to "show a new fervor about convincing and converting other people to his view."[81] However, such hardening requires social support.[82] Where the person "is a member of a group of convinced persons who can support one another, we would expect the belief to be maintained and the believers to attempt to proselyte or to persuade nonmembers that the belief is correct."[83] Courts and commentators expounding upon the rules of evidence might be inclined to cling tightly to their rationalizations; students might be

74. *See id.* at 332–40.

75. *See id*. at 333–35 (discussing earlier study done by Aronson & Carlsmith).

76. *See id*. at 333–34.

77. *Id.*

78. *See* Elliot Aronson, *Dissonance, Hypocrisy, and the Self-Concept*, *in* PROGRESS ON A PIVOTAL THEORY, *supra* note 12, at 103, 113–19.

79. Aronson's studies involved attitudes of college students toward condom use and their conflicting behavior in not using condoms though they knew that such behavior was dangerous. He found that by inducing hypocrisy—bringing home to the students in a very stark way the conflict between their professed beliefs and their counterattitudinal behaviors—he was able to induce significant change. *See id.* at 115–16 (reporting that "[t]hose participants who were in the high-dissonance (hypocrisy) condition showed the greatest intention to increase their use of condoms. . . . 2 months later, there was a tendency for the participants in the high-dissonance cell to report using condoms a higher percentage of the time than in any of the other three cells").

80. *See* McGregor et al., *supra* note 73, at 342.

81. LEON FESTINGER ET AL., WHEN PROPHESY FAILS: A SOCIAL AND PSYCHOLOGICAL STUDY OF A MODERN GROUP THAT PREDICTED THE DESTRUCTION OF THE WORLD 3 (1956).

82. *See id.* at 4.

83. *Id.*

inclined not only to accept them but to insist that they are valid. If one needs social support to retain an unsupportable belief, it follows that one needs even more support to abandon it. Professors, by highlighting dissonance and rationalization, can provide such support.

In addition, if the pedagogic goal is to increase dissonance and thereby to increase learning, it is important that students not only feel the psychological discomfort created by the inconsistencies, but also that they correctly attribute that discomfort to the conflict between the rule and the rationalization. Misattribution decreases the degree of attitude change that ultimately results from the dissonance. In one study, some participants were given a placebo and told that the pill would make them feel anxious. Those subjects experienced little attitude change, presumably because they were able to attribute their feelings of discomfort to the pill rather than to the dissonance between their behavior and their existing attitudes.[84] To the extent that students are inclined to attribute their uneasy feelings to sources other than the inconsistency between the rule and the rationale,[85] such misattribution should be discouraged.

Finally, there are a few other dissonance-reduction red flags against which professors should be on guard. One method individuals use to escape feelings of dissonance is trivialization. Any suggestion that either the contradictory belief or behavior is not really very important and that the individual should not worry about it is likely to "give [those] participants permission to forget about [the] inconsistent behavior."[86] If, in the classroom, the professor is tempted to notice that a rationale does not quite support a rule, but to then tell students in essence just to learn the rule and rationale without concerning themselves about the inconsistency, a learning opportunity will be lost because dissonance will be overcome.

IV. CONCLUSION: IN PRAISE OF INDUCED HYPOCRISY

Benjamin Franklin famously remarked: "So convenient a thing it is to be a reasonable creature, since it enables one to find or make a reason for everything one has a mind to do."[87] In this Essay, I have attempted to advance a much less cynical account of the process of reason and even of rationalization. Indeed, I have come to praise hypocrisy in the law and to suggest that it be dug up and closely examined.

84. *See* Patricia G. Devine et al., *Moving Beyond Attitude Change in the Study of Dissonance-Related Processes*, *in* PROGRESS ON A PIVOTAL THEORY, *supra* note 12, at 297, 301–02.

85. For example, by believing that their discomfort stems from the difficulty of the subject matter or from the fact that the professor is boring.

86. McGregor et al., *supra* note 73, at 340.

87. *See* BENJAMIN FRANKLIN, THE AUTOBIOGRAPHY OF BENJAMIN FRANKLIN 31 (Peter Conn ed., University of Pennsylvania Press 2005) (1791).

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We tend to think of the law as the epitome of rational, linear thought. Intuitive thought processes, on the other hand, are more amorphous. Evidence law, because it operates in the place where reason and experience meet, exposes the cracks in the logical framework and allows intuition to seep through. Just as cognitive neuropsychology has begun to reveal the important role of emotion and intuition in human decision-making, evidence law reveals the role of such impulses in legal decision-making. In the Evidence class, students can learn to use the emotional brain of the law. To do so, however, they must be encouraged to attend to the dissonance created by the conflict between the rules and their rationalizations and to remain for a brief time suspended in the place between dissonance and consonance.

Dissonance is the place of change, of paradigm shift, of learning. Individuals, however, seek consonance. Students seek black letter answers to legal questions; teachers, courts, and scholars seek rational explanations for legal rules. An insistence that students focus on the inconsistencies in the rules, their rationales, and their application highlights the dissonance in the law and thereby creates a state of cognitive dissonance in the classroom. By doing this, teachers may be able to help students gain a deeper, more transformative understanding of the law. But in order for that to occur, both teachers and students must be willing to exist, for a time, in "the gap between consonance and dissonance, where new theories take shape, new beliefs are about to be born."[88]

88. LAUREN SLATER, OPENING SKINNER'S BOX: GREAT PSYCHOLOGICAL EXPERIMENTS OF THE TWENTIETH CENTURY 132 (2004).