Over the weekend, Chicago Law professor Brian Leiter posted what we think can best be described as a rather mild piece of hate mail. First, a wee bit of back story. Paul Campos wrote on Inside the Law School Scam that the phrase "thinking like a lawyer" is pretty empty. Brian Leiter then wrote on his blog a short post titled "Paul Campos admits he doesn't "even [know] what it means" to think like a lawyer." Then the e-mail came:

You're a "Law and _____" Professor, not a lawyer. How would you know how to 'think like a lawyer'?

This is hardly a unique criticism of legal academics, and it's especially fair when it comes to Leiter. He does teach Evidence, but his area of scholarship is purely philosophy. Here's his list of book titles from his CV: *Oxford Studies in the Philosophy of Law*, *The Oxford Handbook of Continental Philosophy*, *Nietzsche and Morality*, *The Future for Philosophy*, *Nietzsche*, *Objectivity in Law and Morals*, *Friedrich Nietzsche*, *Daybreak: Thoughts on the Prejudices of Morality*. Seven books, not to mention all of his book sections and journal articles. Leiter is quite prolific, which likely explains why he's a a professor at a top law school rather than making a third of the same amount teaching at the University of Chicago's philosophy department, since at the end of the day he's not a law professor. He's a philosophy professor who teaches Evidence on the side.

Here is Leiter's response to the e-mail:

Dear Mr. [-----],

Are you actually an attorney at the firm in question? If so, why do you not appear on the website? Do your supervisors know that you are using the firm's e-mail to send impertinent and juvenile messages to other professionals?

"Thinking like a lawyer" refers to a style of reasoning and analysis that is exemplified in the law section of appellate briefs and in judicial opinions; I assume you must be familiar with both genres. It encompasses, for example, the use of analogical reasoning to distinguish precedents or propose extensions or developments of existing doctrine, but also involves techniques of statutory and constitutional construction, the use of arguments from authority, facility with the law/fact distinctions, and so on. Again, merely looking at the chapter headings of Schauer's book *Thinking Like a Lawyer* would illuminate this apparently opaque topic for you. Alternatively, you might read Edward Levi's classic book
An Introduction to Legal Reasoning
; Mr. Levi was the former Dean of my Law School, as well as former Attorney General of the United States.

Of course, there are more skills involved in being a lawyer than thinking like a lawyer. There is industry-specific knowledge, know-how with respect to how local courts or regulatory agencies approach statutory language, rhetorical talent, as well as a range of psychological and interpersonal skills that are important. For example, most good lawyers I know, among my family and friends, exhibit maturity and professional judgment, that would prevent them from sending insolent e-mails from their's firm account to other professionals. I will be sure to send a copy of this entire correspondence to the name partners of your firm.

In other words, "I think you're wrong, *and now I'm going to complain to your boss about you.*" Brave action, from someone with the bullet-proof protection of tenure. David Bernstein at
Volokh Conspiracy picked up the story
, criticizing Leiter for his lack of civility and basic human dignity. Here's the choicest bit from that response:

I have a challenge for Prof. Leiter. Let's take the adjectives with which he has described the correspondence that prompted this round: juvenile, impertinent, and insolent. Let's get a panel of three neutral arbitrators, perhaps chosen from ABA ethics committees. And let's take some of Leiter's choicer blog posts, and let the arbitrators decide whether his posts meet the accepted definition of juvenile, impertinent, and insolent. (We can start with the one quoted above, though that's a relatively tame one by his standards). And since he obviously thinks

there should be professional consequences for juvenile, impertinent, and insolent writings, if the arbitrators agree that his posts meet the definition for which he chose to try to humiliate and punish his hapless correspondent, he'll take unpaid leave from Chicago for a year.

Of course, Leiter will never take him up on it. Why submit to any sort of authority when tenure means never having to say you're sorry?

Just for fun, let's look at a few of the best comments from Volokh:

David Neiporent says, "[Leiter is a smart guy] About some things. That nobody cares about. But if he were a tenth as smart as he thought he was, he'd have won the Nobel Prize. That is, all the Nobel Prizes."

Lashon Foster says, "Leiter reminds me of the character Jacob Ben Israel from Glee, who runs the school newspaper. He is wildly annoying and no one likes him, but because he controls the flow of the high school gossip, everyone must pay attention to him. Leiter's entire reputation in legal academia, at least, seems to be based on running a TMZ-esque blog. Perhaps he is more substantive in the philosophy community."

More to the substance of Leiter's response, John G. says, "Leiter: "'Thinking like a lawyer' refers to a style of reasoning and analysis that is exemplified in the law section of appellate briefs and in judicial opinions"

"That overly-narrow view of "thinking like a lawyer" exposes Leiter's ignorance of the profession and business of practicing law. Leiter is oblivious to the fact that 99% of thinking required of lawyers has nothing to do with the type of reasoning that goes into the law section of appellate briefs. In the real world, the "facts" do not magically appear as irrefutable knowledge from on high presented as a hypothetical question on a law exam. In the real world, there is no limited record upon which the arguments must be based. Litigation is about creating the record. Most litigation centers around developing the facts. A lawyer that doesn't understand that the job of "thinking like a lawyer" is focused on these tasks, not on legal argument, is not competent to handle litigation of any type without the assistance of other lawyers that do."

Now that we're all done having our chuckles about what a giant idiotic douche Brian Leiter is, let's ask the question this post started with. What's eating Brian Leiter? Why would he get so irrationally upset over a little one line e-mail? We think it's a combination of three factors:

1. Brian Leiter is a giant egomaniac. Not that we have anything against giant egomaniacs and aren't giant egomaniacs ourselves. But, it is a character trait that is quite unstable and can act as a sort of break-down catalyst.

2. Until recently, Brian Leiter was likely challenged rarely or never.

3. Brian Leiter's position of defending Law and Nietzsche is impossibly weak.

Law schools are coming under fire for needlessly raising tuition in order to support the wasteful fancies of tenured professors who write scholarship that is relevant to no one. If one were building a law school from scratch today, there is absolutely no argument that can be made for hiring Leiter over an expert in Evidence, or over borrowing a professor from the philosophy department at a fraction of the cost. The only defense Leiter can muster is that he is high profile among other professors and this helps boost a school's peer ranking for purposes of raising the US News ranking. Leiter's entire value to legal academia is as a trophy that other professors irrationally value.

Weak positions can sometimes be successfully defended, but only be someone with experience mounting a real defense. Leiter has tenure and his typical intellectual jousting partner is a law student. He doesn't write for peer-reviewed journals, and he writes in such an obscure niche that even if his writing were incoherent nonsense (and it may well be) there would be no other professors with enough knowledge of Law and Nietzsche to challenge him. With no one to fight, Leiter's capacity for serious intellectual engagement has atrophied.

His big-ass ego won't let that go. Lacking a defensible position or the ability to defend it, he resorts to name calling and threats for those who dare question their betters. The most telling

part of Leiter's response is not, as many have pointed to, his e-mailing the firm's partners. It is his use of the word "insolent," which means being not merely contemptuous, but contemptuous of one's superiors. That's how Brian Leiter sees the world. His academic pedigree and publication history don't just make him a higher profile professor. In his eyes, it makes him a better human being than the masses who instead of "thinking like a lawyer" merely think *as* a lawyer.