

**University of Connecticut School of Law**

**Law Students Needed for a Research Study on  
Judgmental Biases in a Lawyering Role**

**Study Title: “Towards a Better Understanding of Lawyers’ Judgmental Biases in Client Representation: The Need for Cognitive Closure”**

**Abstract:** This research study provides an opportunity to teach your students about the risks of self-serving biases when representing clients and give them greater self-knowledge about how their own motivational preferences may affect their susceptibility to biased judgments in a lawyering role.

**Who Might be Interested in This Study:** Teachers of Dispute Resolution courses (ADR, Negotiation, Mediation), clinical teachers, teachers of Litigation and Pre-trial Litigation courses, Torts and Advanced Torts teachers, Law & Social Science, Civil Procedure and Evidence teachers.

**Purpose of Study:** Lawyers are valued, in large measure, for their ability to make dispassionate decisions and provide their clients objective legal advice. However, we know from a substantial body of empirical research that they are prone to pervasive cognitive and motivational biases when acting in a representational role. These biases can lead to overly optimistic predictions and self-serving judgments of fairness, making resolution of legal disputes more protracted and costly for disputants.

One of the hardest things about overcoming judgmental biases in thinking and decision-making is the prevalence of a bias “blind spot”—the tendency all human beings have to think that “other people” are biased, but they themselves are fair and objective. *See, e.g.,* Emily Pronin et al., *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28 PERSONALITY & SOCIAL PSYCHOL. BULL. 369 (2002).

There is some research evidence that certain de-biasing prompts, such as requiring subjects to “consider the opposite”—for example, to list reasons why their predictions might be wrong or why they might lose their case—can be effective in reducing bias, thereby improving predictive judgment. *See, e.g.,* Linda Babcock, George Loewenstein & Samuel Issacharoff, *Creating Convergence: Debiasing Biased Litigants*, 22 LAW & SOCIAL INQUIRY 913 (1998). (Students given identical materials from Texas accident case assessed the case value differently depending on their assignment to plaintiff or defendant role; magnitude of assessment disparities between negotiating pairs found to be strongly correlated with bargaining impasse; de-biasing prompts reduced assessment disparities and improved settlement rates.)

This study seeks to replicate the Babcock, et al. study and to expand on it, by considering the role of individual motivational preferences as affecting law students' predictive judgment and susceptibility to de-biasing interventions. We will utilize a widely utilized (both here and abroad) psychometric scale--the "Need for (Non-specific) Cognitive Closure" (NFC) Scale--to measure individual differences that may affect students' lawyering judgment. NFC refers to the extent to which individuals tend to prefer an answer—any answer—to ambiguity or confusion.

NFC is a stable motivational trait, unrelated to ability or intelligence, and is value-neutral. On the positive side, high-NFC individuals tend to be more comfortable than low-NFC individuals in making decisions in situations where all necessary information is available, and under the pressure of deadlines. On the negative side, a strong need for closure has been shown to have a negative influence on open-minded judgment, at least in certain situations. Among other effects, high- (versus low-) NFC individuals have been shown to tend to reduce their discomfort with uncertainty by forming judgments quickly, based on early-received information (primacy effects, or "seizing"); to be resistant to subsequent relevant information and persuasion in order to maintain their beliefs (irrational belief persistence, or "freezing"); and to have undue subjective confidence in the validity of their own views (the "true believer" effect). *See generally*, ARIE W. KRUGLANSKI, *THE PSYCHOLOGY OF CLOSED MINDEDNESS* (2004).

As law teachers (and in the spirit of liberal arts educators everywhere), we assume that we can impart life-long habits of flexible thinking, appreciation for complexity and dispassionate judgment to *all* of our students. But is it really true?

**The Survey.** In this study, law students will be asked to take an anonymous, online survey which should take no more than 45 minutes of their time. If you decide to participate in this research project, we ask that you request your students to take this survey as an out-of-class homework assignment. The survey will include both the NFC scale plus a modified and updated version of the Texas motorcycle accident case materials that formed the basis of the original Babcock study. Student subjects will be randomly divided into four groups: a plaintiff lawyer control group, a plaintiff lawyer de-biasing group (this group will be given a de-biasing prompt), a defendant lawyer control group, and a defendant lawyer de-biasing group. Students in all groups will be given identical case materials and asked to predict what a retired state judge, sitting as an arbitrator, awarded as monetary award in the case, and also to state what a "fair" settlement in the case would be. At the end of this exercise, they will complete the NFC Scale. We will then analyze this data to determine 1) whether, on average, plaintiffs' and defendants' counsel evaluated the case differently; 2) whether de-biasing prompts ("list weaknesses in your case") were successful in reducing self-serving case evaluations; and 3) whether high (versus low) NFC scores were correlated with a) higher levels of biased assessment or b) greater resistance to de-biasing prompts.

Because the problem involves an assessment of the “fair value” of a negligence case from the perspective of plaintiff’s or defendant’s counsel, participating students must have completed at least the negligence section of their school’s basic torts course in order to be eligible.

**Post-Survey Negotiations.** Unlike the Babcock study, our study does not involve a negotiation component. However, to enhance the teaching and learning value of this exercise, we strongly urge that you have your students negotiate and we will give first preference to instructors who make that commitment. Negotiations can be conducted quickly and out-of-class. (In the Babcock experiment, students negotiated by exchanging simultaneous written offers and counter-offers once every 5 minutes, over a period of 30 minutes.) If you decide to conduct negotiations, you can then do some small-numbers analysis yourself to see 1) whether, on average, plaintiffs’ and defendants’ counsel evaluated the case differently; b) what effect these differences had on their negotiations and rates of bargaining impasse; and c) whether the de-biasing prompts (“list weaknesses in your case”) were successful in reducing bias and improving settlement rates.

Instructors who participate in the study will, upon request, be provided student negotiation instructions from the original Babcock study plus original PowerPoint slides to assist in their teaching. Once the NFC data is collected and analyzed, that data will be shared as well, upon instructor request.

**How will I know if my students take the survey?** Human subjects research rules require that participation in social science experiments be voluntary, and the student subjects in our survey will be told that their participation is not required. We expect that the vast majority of students, if not all of them, will enjoy the exercise and complete it fully. You will know whether they have done so if they are able a) to report to you the code number that the online software program randomly assigned them, and b) to provide their case predictions, associated only with their assigned codes. In the unlikely event that students choose not to participate, we ask you to give them some substitute reading and writing assignment on a topic of your choice. (This also is a standard way to incentivize students in a course to participate in social science research studies.)

**What’s in it for my students?** Participation in this study provides an opportunity for you to teach your students-- in a fun, hands-on way—not only generally about the role of self-serving biases in disputing and negotiation, but more importantly about how they themselves may be susceptible to biased judgments as prospective lawyers.

In addition, students who participate in the survey and who answer all questions will be eligible to win prizes ranging from a \$250 to a \$50 Amazon gift card, for case outcome predictions closest to the judgment actually awarded in the case by a Texas arbitrator.

We need approximately 400 students for this research project. To express interest in participating, or to learn more about it, please contact Professor Jim Stark offline, at [james.stark@uconn.edu](mailto:james.stark@uconn.edu), or (860) 570-5278.