

[Lawyer] Anxiety, Self-Protective Behavior, Ethical Sinkholes, and Professional Responsibility

By [Dan DeFoe](#) On August 10, 2015 · Lawyers, judges, and legal leaders, is the legal profession an “ethical sinkhole”? Applying the discussion offered below about far-reaching findings from a recent first of its kind empirical research study to the legal realm, the word “yes” easily answers the question.

Numerous legal publications, academic commentaries, and reports from lawyer assistance programs document that hundreds of thousands of lawyers experience anxiety. This happens in their work. They experience anxiety as a result of doing their work. Lawyers experience nervousness, tension, dread, or apprehension because of their work or workplace environment.

A recent empirical study of “experienced anxiety”, perceived self-threat and defensive coping behaviors, and the workplace, suggests that the indisputable connection of anxiety with lawyers and the practice of law has some far-reaching ethical implications. After reading this post, the “sinkhole” question should not seem so puzzling. Instead, that issue should crystallize and appear more relevant, seem very timely, and assume a place as a critically important action issue, especially for lawyers, legal leaders, and their organizations.

Lawyers’ daily work involves many situations which can trigger anxiety: dread of delivering a big presentation or conducting a voir dire examination, nervousness about meeting a potential client or dealing with an unfriendly lawyer-bully, and apprehension about negotiating a big deal or appearing for the first time before a certain judge or appellate panel.

The authors of this post’s featured research article noted that “anxiety is a ubiquitous feature of modern life and, in particular, organizational life”. Lawyers, and other professionals, who adopt learning goals and take action to know more about anxiety generally, and also learn how anxiety influences our morally relevant behavior and judgment more particularly, stand to advance their possibilities not only for achieving greater personal health and well-being, but also to render to their clients, firms, and the courts more ethical, professional performance. That conclusion, supported by the research discussed in this post, should come to those who read this entire post down to the final “thank you”.

Post Outline. This post, which discusses first of its kind research which investigated far-reaching effects of defensive coping behaviors of anxiety at work, mentions the research background; provides basic information about anxiety, anxiety and unethical behavior, and threat perception & self-protective mode and defensive coping; mentions the methods and generally describes the six (6) studies briefly; summarizes and discusses the results; suggests practical

implications for lawyers, firms, and legal leadership, including a connection with emotional intelligence; and identifies an emerging resource about anxiety and lawyers.

Research Background. A line of research studies over twenty years old has shown that feeling anxious and worrying about things, in small, manageable quantities, motivates most people to stay focused on goals and improve performance on tasks. But, when a person worries about work or becomes anxious about challenges, decisions which have ethical implications often coexist with these situations. Emotions play a big role in these decision making situations. Emotions can tip the balance and differentiate acceptable, even exceptional performance, from bad performance and even unethical behavior.

Researchers have shown that emotions, including envy, anger, disgust, shame, sympathy, and empathy, often play a role in ethical decision-making. Relying on this past work, a research team recently investigated an important uncharted area of emotion in ethical decision-making – the effects of feeling anxious on moral behavior. Their recent study, discussed in this post, tackled this question, “. . . how are a person’s ethical judgments and behavior likely to be influenced by anxiety brought about by a prior or unrelated situation.?” Their research showed that state anxiety influences moral judgments and behavior.

Anxiety. The researchers investigated “state anxiety”. State anxiety, a transitory and unpleasant emotion, occurs in reaction to an ill-defined stimulus. It does its job, i.e. signals a potential threat and elicits behavioral, psychological, and physiological responses, and then goes away. The authors borrowed it from the “*Nervous Nelly*” article referenced below, and for their research and reporting used this definition, “a state of distress and/or physiological arousal in response to stimuli including novel situations and the potential for undesirable outcomes.”

So defined, state anxiety includes stress, nervousness, and dread. These attributes serve roles in our defense system. They mobilize our resources which help us defend, escape, or avoid danger. State anxiety helps us reduce aversive situations. In some situations, our experience of state anxiety benefits us because these feelings of nervousness and apprehension have become programmed parts of our self-protective system. The researchers, however, looked at how these cognitive, motivational, and behavioral forces of state anxiety, also referred to as “experienced anxiety” or “felt anxiety”, can play out in ethical decision-making.

Anxiety and Ethical Decision Making. A number of research studies, pieced together, can account for the role of experienced anxiety and decision-making in ethically relevant situations. A four element process comes into play. Research shows that state anxiety has the following elements: (1) anxiety leads us to identify threats, both real and imagined; (2) threats garner more of our cognitive resources; (3) anxiety causes us to interpret ambiguous situations as threatening; and (4) we selectively attend to threatening, i.e. real or imagined, situations and recall information related to those things more easily than neutral information. Speed counts when it comes to dealing with threat.

During the state anxiety process, stress hormones released in our brains help our cognitive resources respond quickly to threats. This speed, however, comes with a cost. It gets charged to ethics and decision-making. This state, according to authors’ argument, which their research

tested, “causes people to be mindful of their own needs such that they tend to be relatively unmindful of principles that guide ethical and moral reasoning, thus leading them to behave unethically.” Past research suggests what happens here – experienced anxiety causes people to seek material resources and psychological buffers to deal with aversive circumstances. And, the researchers’ argument goes, “individuals are motivated to cope with the perceived threat by behaving unethically, given the opportunity.”

Anxiety, Threat Perception, Defensive Coping, and Unethical Behavior. The gist of the researchers’ argument relates to our innate drive for self-preservation and how to get the resources to accomplish that goal in the face of self-perceived threats.

Many threads from several lines of research, ranging from Freud’s survival instinct to threat response model to coping and defense mechanisms to self-preservation, along with past research about anxiety and immoral behavior, e.g. attachment anxiety and dishonesty, anxiety about sexual performance and infidelity, get weaved together to create the resulting “ornate tapestry”.

The authors describe their research foundation generally as from “the evolutionary perspective”. They rely on this foundation for their examination of the link between perceived threat, anxiety, and self-interested unethical behavior.

The authors investigated how perceived threat and anxiety gets people to experience a motivational shift, and behave unethically. In part, research shows that anxiety’s darker side gets us to “focus more on extrinsic goals such as financial success, attractive appearance, and social popularity as opposed to intrinsic goals such as personal growth, intimacy, and community” when we experience uncertainty from perceived threats. Examples of threats from past research include unprovoked aggression, feelings of animosity and rivalry.

When employees experience anxiety, past research shows that an inner conflict often develops. We can behave ethically, and maintain a positive self-image. Or, we can behave unethically, and advance our self-interest. The authors noted, “Not surprisingly, the ethical decision-making literature suggests that people are more likely to behave unethically when that behavior benefits them somehow.” Relying on some past research which suggests that the acquisition of resources, i.e. money, can overcome it when a person experiences anxiety from perceived threat, the researchers relied upon their “evolutionary perspective”, and argued that acquiring resources resulting from unethical acts becomes one way “to overcome a threatened self”.

Research Studies, Results, and Discussion. This part very briefly describes the six (6) experimental studies which comprise this broad examination of the link between anxiety (feelings of being nervous, anxious, worried, and apprehensive) and also perceived threat and self-interested unethical behavior. Without getting into the particulars of the anxiety induction methods, e.g. music clips, videos, or the anxiety measures, e.g. scales, surveys, of this elegantly designed and sequenced investigation nor the details of the descriptive statistics or analyses involved, the findings, according to the authors, “demonstrate the robustness of the anxiety-unethical behavior link.”

The first two studies compared anxious state versus neutral state individuals and found that anxious individuals are more willing (a) to participate in unethical actions in hypothetical scenarios and (b) to engage in more cheating to make money in situations that require truthful self-reports. The next two studies explored the psychological mechanism underlying unethical behaviors when experiencing anxiety. From the findings of studies 3 and 4, the authors suggest those findings show that anxiety increases threat perception, which, in turn, results in self-interested unethical behaviors. The fifth study showed that, relative to participants in the neutral condition, anxious individuals find their own unethical actions to be less problematic than similar actions of others. The sixth, and final, study considered survey data from subordinate-supervisor groups. Here, the employees' reports of anxiety at work positively correlated with unethical behaviors like falsifying records or reports, lying to clients or the public, or misreporting actual time or hours worked.

The results from three laboratory experiments, two online studies, and an organizational study replicated findings in a number of settings, and provided the first empirical demonstration that experienced anxiety at work has a positive behavioral link with experienced threat and unethical behavior. The authors stated, "In sum, our general pattern of results demonstrates the link between experienced anxiety, either as a state or trait measure, on increases on unethical behavior." The authors concluded their article, stating that their "new and fundamental findings" about behavior in the workplace "demonstrate that compared with people in a neutral state, those who experience anxiety tend to behave unethically when the situation permits."

Anxiety, Lawyers, and the Legal Profession – Important Connections and Practical Implications. Legal commentators and authors have described the legal profession and its members as tense, overworked, stressed out, and "anxious". Other words which generally describes the state of lawyers and their work and workplaces include nervous, worried, and apprehensive. Research shows how that connection between anxiety and work can have very important ramifications for us on many fronts. These include personal well-being, health, and ethics and professional responsibility. The scientific literature shows the following **important connections**:

- Negative emotional experiences at work has an association with decreased performance, increased job-related tensions, and lower commitment,
- In the presence of job-related tension and stress, employees are more likely to engage in negative coping behaviors,
- Anxiety has been shown to lead to worse outcomes in negotiation,
- Anxiety has been shown to negatively impact performing tasks that require the use of creativity,
- Higher levels of the stress hormone cortisol are correlated with anxiety,
- Anxiety has been linked to diabetes and hypertension,
- Anxiety triggers feelings of threat, which in turn may increase unethical behavior

The research featured in this post did not involve lawyers or their organizations. The authors' work made an important contribution towards understanding the far-reaching effects of anxiety

in the workplace. They noted, “Our work suggests that it is important to alter organizational culture in order to curb anxiety levels among employees as well as upper level management.” They offered several suggestions about the **practical implications** of their work. These alterations take aim at organizational, or corporate, culture, which includes legal organizations of all types, and the ones most applicable to legal culture include the following:

- In work environments which concern innovation, use furniture and other items which emphasize that play plays an important role and that failure also plays an important role in experimentation and innovation,
- Adopt policies about flexible work hours as these may help to ameliorate anxiety in workers,
- Sponsor gym memberships and encourage workers to get adequate physical exercise as that keeps stress in check and can lower blood pressure,
- “Meditation and deep breathing are known to calm frayed nerves, and encouraging yoga and similar exercises may not only boost the general well-being of employees but also improve the ethical climate of the organization”,
- “Setting realistic expectations for employees so that they have a manageable workload and do not need to work extra hours in the night or over the weekend can ensure that anxiety levels can be kept at a minimum”,
- Taking steps, such as offering on-site daycare services, to alleviate imbalances in work-family relationships may help alleviate workers’ stress

Leaders and managers of legal organizations may ask, “Why do these things?” or claim “These cost too much!” or argue “Our clients will not pay for these. . . .” But, the savvy ones appreciate that the benefits outweigh the “costs” because, as the authors suggest, “Thus, by altering corporate culture to reduce anxiety, organizations may benefit not only from having a healthier workforce but also an ethical workforce.”

Anxiety, Lawyers, and the Legal Profession – Ethical Sinkholes and Emotional Intelligence. Certain workplaces foster the type of anxiety featured in this research. This type of workplace has been referred to as an “**ethical sinkhole**”. The popular work about behavioral ethics, *Blind Spots* (see source noted below), and referenced by the authors, describes this unfortunate and, for lawyers, professionally dangerous work environment. Uncertainty, time pressure, and isolation describe features of those anxiety-provoking workplaces.

Lawyers’ work involves most, if not all, of the features associated with “ethical sinkholes”. Much uncertainty shrouds many areas of legal work, especially in litigation. Time pressures abound in the legal environment. Rules, statutes, regulations, and other time boundaries or limitations bear down on and factor greatly in a lawyer’s work on each case or legal matter. Time pressures divert cognitive resources. This affects our abilities to make “should”, i.e. ethics-related, choices. Isolation relates in part to control of information. “Experts” with substantive knowledge create silos. They often control information flow. These and related circumstances can contribute to the “isolation” factor in creating ethical sinkholes. The anxiety-related unethical behavior occurs in these places as a result of “ethical fading”, according to the

authors of the book and the research article featured in this post. Ethical fading, “our tendency to forget about our ethical values and the ethical implications of our actions, occurs in ethical sinkholes because when anxiety drives us into self-protective mode, those affected by such opportunities can tend to “focus narrowly on their own basic needs and self-interest, when can cause them to be less mindful of principles that guide ethical and moral reasoning, thus leading them to behave unethically.”

Experienced anxiety constitutes an “individual difference” variable of human performance. This applies to lawyers, too. **Emotional intelligence** can moderate the effect of anxiety on ethical behavior requirements according to the authors. They suggest consideration of emotional intelligence as a future direction for research. A prior post on Psycholawlogy, [\[Trial\] Lawyers and Emotional Intelligence: How Does Emotion-Understanding Ability Relate to Incidental Anxiety and Decisions Involving Risk?](#) (several links to other emotional intelligence-related posts) has discussed the role of emotional intelligence as a moderator of lawyer anxiety.

In the context of the anxiety, perceived threat, and self-protective and unethical behavior connection as described by the authors, this research reasonably can suggest to sincere observers that some people will not succumb to anxiety-driven ethical lapses. Others will experience perceived threats and their anxiety-driven defensive coping and self-preservation behaviors will surface. Translation of the research findings to the legal realm can show that some of those people will lie to clients or judges or colleagues. Others may misreport or misrepresent actual time worked. Anxiety-afflicted self-protective lawyers may even destroy or hide evidence.

Emotional intelligence training and interventions offer some hope for lawyers and other professionals who may work in “ethical sinkholes”. Emotional intelligence will not eliminate anxiety from the legal workplace, but the experts suggest that it “might moderate the effect of incidental anxiety on unethical behavior by assisting individuals in understanding that such anxiety is irrelevant and ought to be discounted when making current decisions.”

Lawyers, how will you deal with your experienced anxiety? How will your legal organization make the practice of law less messy? Legal leaders and managers, have you identified your organization’s professional responsibility – ethical sinkholes? Your strategies identified? Interventions planned? Is your firm’s ethical sinkhole 5 feet deep? 20? 200? For your organization’s sake and clients’ interests and rights, you should hope that you never have to measure. . . .

Thank You. Thank you very much. Dan DeFoe JD MS – Adlitem Solutions | Organization Development for Professional Services Firms and the Legal Profession: People. Projects. Practices | **Web** – www.adlitemolutions.com | Email: dan@adlitemolutions.com | **Blog** – www.psycholawlogy.com | Combining and leveraging 25+ years legal experience, allied health training and work experience, a Master of Science in Organizational Development Psychology, and educationally qualified or earned certifications in industry-leading normal and special business personality, emotional intelligence, leadership, and stress management assessments and tools to partner with clients to discover, design, develop, deliver, and evaluate custom interventions for individual, team, project, or organizational solutions. | **Mission:** “America’s leading resource for emotional intelligence assessment, coaching, training, and workshops for

judges, lawyers, law schools, bar associations, and other legal and professional services providers and their organizations and leaders.” Please visit again soon. Thank you.

Article Source: Kouchaki, M., & Desai, S. D. (2015). Anxious, threatened, and also unethical: How anxiety makes individuals feel threatened and commit unethical acts. *Journal of Applied Psychology*, 100(2), 360-375. <http://dx.doi.org/10.1037/a0037796>. Copy of article currently accessible for personal use [here](#).

Additional Resources: Brooks, A. W., & Schweitzer, M. E. (2011). Can Nervous Nelly negotiate? How anxiety causes negotiators to make low first offers, exit early, and earn less profit. *Organizational Behavior and Human Decision Processes*, 115(1), 43-54 (definition of anxiety). Copy of article currently available [here](#). See also Bazerman, M. H., & Tenbrunsel, A. E. (2011). *Blind spots: Why we fail to do what’s right and what to do about it*. Princeton University Press (“ethical sinkhole” reference). Access video links, commentary, and research references at the book/author webpage [here](#).

Lawyer and Legal Resources: *Managing Anxiety in Uncertain Times* (The Missouri Bar Lawyers’ Assistance Program) currently available [here](#) | *Practicing Law and Wellness: Modern Strategies for the Lawyer Dealing with Anxiety, Addiction and Depression* (State Bar of Texas, Lawyers’ Assistance Program) currently available [here](#) | See also Daicoff, S. (1996). Lawyer, know thyself: A review of empirical research on attorney attributes bearing on professionalism. *Am. UL Rev.*, 46, 1337 (oft-cited and a leading resource on the “attorney personality” shows, in part, how anxiety starts in law school, builds there, and continues into professional life). Copy of article currently available [here](#).

Emerging Legal Resource: *The Anxious Lawyer* webpage [here](#) – offers practical, scientifically-driven and often interesting, personal, insight into the issue, and offers to help lawyers tackle the issue of anxiety and legal practice with mindfulness meditation – According to this resource, “One of the most effective ways to deal with anxiety is mindfulness and meditation. [Karen Gifford](#) and [Jeena Cho](#) are currently writing *The Anxious Lawyer* (ABA). Readers will be guided through an eight-week program which will enable them to establish an ongoing meditation practice. This guided program will make learning practical and accessible to lawyers. This simple and straightforward introduction to meditation and mindfulness for lawyers is scheduled to be published in late 2015.”