



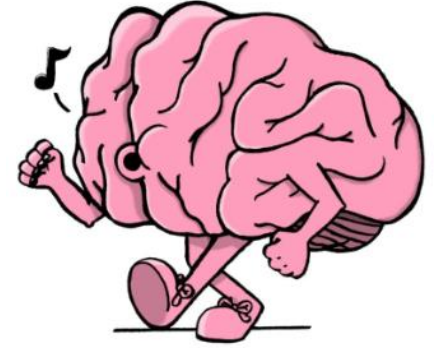
“What Are They Thinking??”
How Cognitive Biases May Affect Your Client’s
Perceptions during Negotiation

PRESENTED TO THE COLLIN COUNTY BAR ASSOCIATION,
CORPORATE COUNSEL SECTION

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Brainiac Fun Facts



The Brain is unfinished at birth

In infants, 2 million new synapses form per second

Memories generally start forming at age 2.5 years

Logic portion finishes forming around age 25-27

We have 35-48 thoughts a minute or 70,000 thoughts per day

We retain only about one-fifth of what we hear

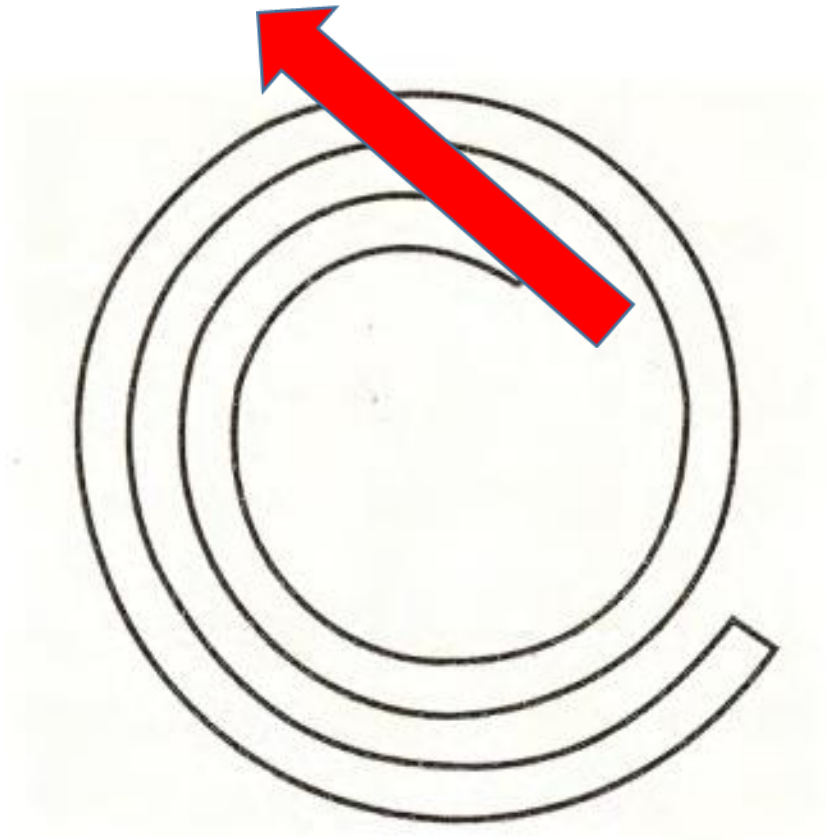
Attention span is about 8 secs

The brain makes thousands of decisions every day, most emotionally driven

Brain's goal is to maximize rewards

We evaluate information using self-serving memory

Overvalues the "now"



System One and System Two Thinking

System 1 - **Fast Thinking**

Automatic, Intuitive, Involuntary, Effortless

System 2 – **Slow Thinking**

Deliberative, Reasoned, Problem Solving, Focused, Effortful

What are Heuristics or Cognitive Biases?

Heuristic - Shortcut that allows quick and efficient decisions, passing judgment or solving problems.

Cognitive Bias - The consequence of System One Thinking.

Occurs when information is missing, complex, or when a client is faced with uncertainty, the unknown, or unknowable.

Some Decision-Making Cognitive Biases

Perception of Losses

Loss Aversion Bias

Status Quo Bias

Endowment Effect

Sunk Cost Bias

Blind Spot Bias



Loss Aversion/Framing

We take **more risks** to prevent loss

We take **less risk** to achieve gain

Losses loom large

Meaningful loss compounds effect

Triggered by framing narrative with “loss” language

We ramp up commitment

Result: Unbalanced and irrational over-commitment to position or option





Status Quo Bias

Prefer current position rather than risk to improve outcome

An “anchor” to which options are compared

Magnified with

difficult decisions

multiple/conflicting choices



Endowment Effect – Is A Stradivarius Just A Violin?



Endowment Effect/Offer Asking Gap

Value what we own more than others do

Happens even if ownership is hypothetical

A form of Loss Aversion

- Emotionally attached

- Desire to maintain the “status quo” of ownership

- Avoid regret (seller’s remorse)

Item is of such importance there is resistance to assigning value

Behavioral/evolutionary - ownership less risky than giving up item

Entangled with selfhood – I am what I own

Sunk Cost Fallacy

Continue to invest in losing propositions. Why?

To delay the realization of the loss, or

Prove the original plan was appropriate, or

So as to not look foolish or a waste of funds

Vindication

Want to win back already spent funds

Causes over-commitment to losing plan

Objectives change – goal is now to recoup

THE ECONOMICS
OF THE PROJECT
HAVE CHANGED. WE
NEED TO SHUT IT
DOWN.



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IF WE STOP NOW,
THE \$10 MILLION WE
ALREADY SPENT WILL
BE WASTED.



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AND IF
WE STOP
LATER?



THE TRICK
IS TO NEVER
FINISH THE
PROJECT.



PHEW!



Caveat - Blind Spot Bias

We believe we are better at spotting/preventing biases than we actually are

We perceive biases more in others than in ourselves

We make errors about biases because our brains cause biases we are trying to avoid!

Helping Clients Battling Biases

Slow down thinking – ours and theirs

Go to the balcony

Ask powerful open questions – engage in curiosity

LISTEN – think W.A.I.T.

Challenge their initial impressions – “What if?”

Step in their shoes – their perspective/lens matters

Simplify choices

Dissect the narrative and reframe using gain language

Assess with them the benefits, not just risks, of decision

With spent money, let bygones be bygones

Future think with the client



Conclusion

Many cognitive biases are normal psychological reactions

Preventing/mitigating cognitive biases is difficult

Make sure we are not misjudging the client's reactions

Our goal is to move our clients into System Two deliberative thinking

- By listening
- By asking questions
- Reframing and/or limiting choices
- Viewing problems from their lens

A red curtain with a blue starry light shining through the center. The text "The End" is written in white cursive across the light.

The End

Laura A. Frase is an Assistant Professor of Law and Director of Advocacy Competitions at UNT Dallas College of Law, teaching Client Interviewing and Counseling, Negotiation, and Conflict Management.



Prior to joining the College of Law, Laura practiced law in Dallas for over 30 years, concentrating on insurance defense and mass tort litigation. She served as Regional and National Coordinating Counsel for several of her clients and trained attorneys across the country on strategies for defending those clients. She also served several of her clients as Negotiation/Settlement Counsel.

Laura is an accomplished author of numerous articles on cognitive biases that impact negotiation and decision-making. She is also a frequent local and national speaker on these and other topics related to dispute resolution. Laura is a member of the Texas Bar Foundation, the Dallas Bar Association, a Sustaining Member of the Junior League of Dallas, and has served in numerous leadership positions in business and in our community.

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