



# Behavioral Legal Ethics

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# A Few Bad Apples?

- It is tempting to blame lawyers' and neutrals' ethical lapses on "a few bad apples"
- But psychology tells a richer, more interesting, and scarier story



*In our conventional way of thinking about ourselves, we are confident that we would know in advance that to do some set of actions would be morally wrong, and that this realization, occurring prior to the actions, would prevent us from taking them. These comforting thoughts turn out to be not true.*

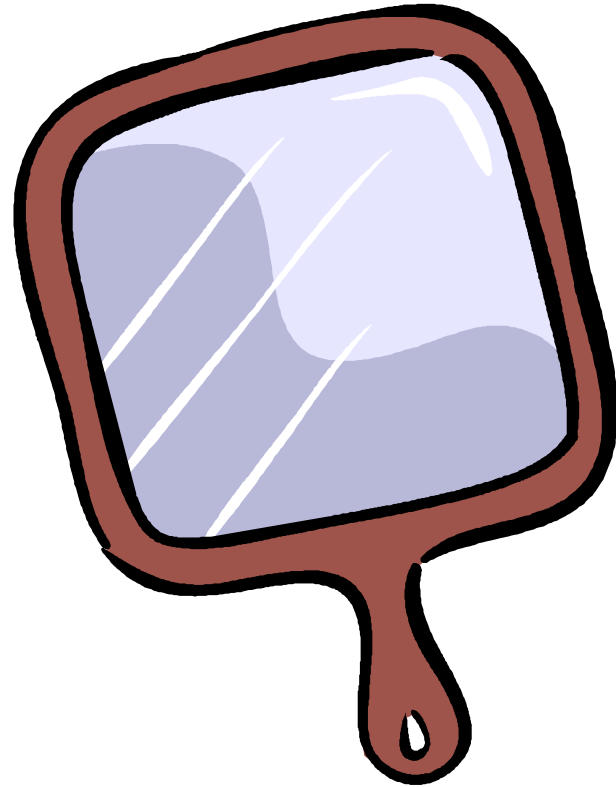
– Psychologist John M. Darley

# Bounded Ethicality

- a set of “psychological processes that lead people to engage in ethically questionable behaviors that are *inconsistent with their own preferred ethics.*”

conduct as accepted  
cal·ly adv. — eth/i  
**eth·ics** (eth/iks) n. pl.  
The study and philo  
on the determination  
of right conduct with  
of life, etc. 3. A  
E·thi·c·i·an

# Bias Blind Spot



# Ethical Blind Spots

- People tend to see themselves as more fair, unbiased, competent, and deserving than average
- Attorneys tend to believe their own ethical standards are more stringent than those of other attorneys



# Egocentrism

- Positive views of own abilities/contributions



# Egocentrism

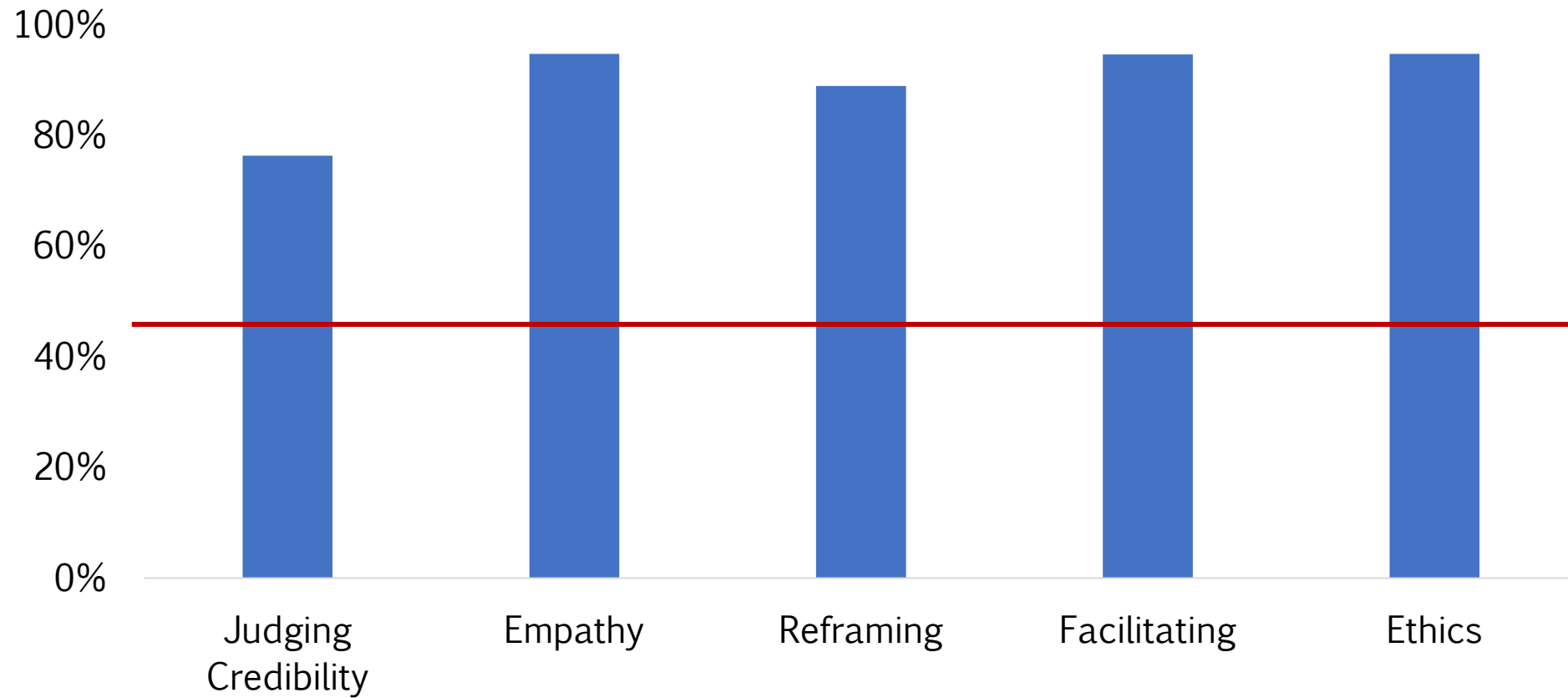
## New Study Finds Majority Of Bullshit Calls Go To Other Team

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**the ONION**

# Egocentrism – Your Data





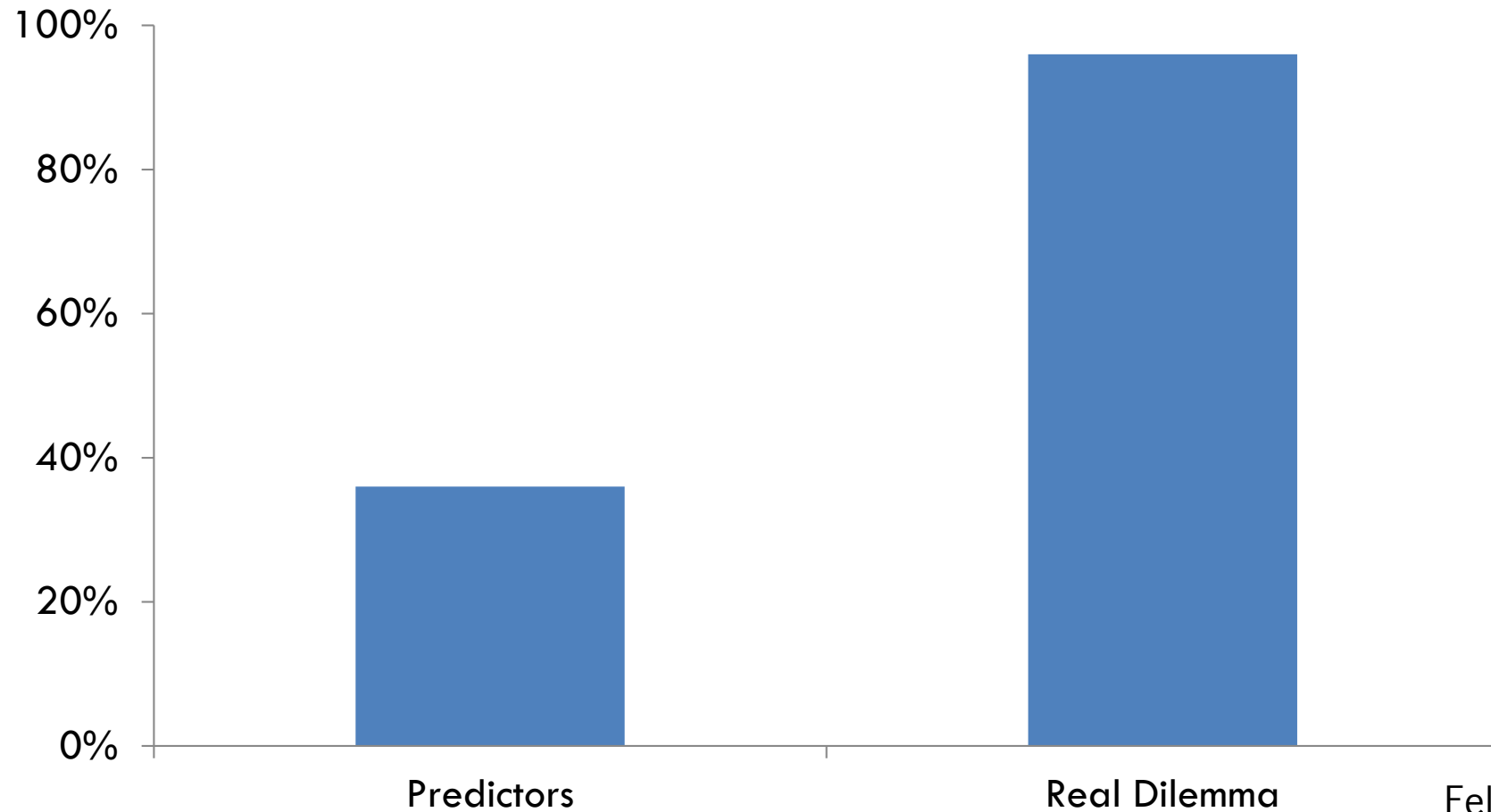
# Affective Forecasting

The situations in which we find ourselves can often be decisive in determining the direction toward which our moral compass turns.

– Karl Aquino et al., 2009



# Will You Shock Someone for Money?



FeldmanHall et al., 2011

# Forecasting Errors

- Difficulty forecasting emotions and behavior
- Failure to anticipate motives and pressures
- Predicted ideal self v. current pragmatic self



*There can be a lot of pressure to win. You don't want to embarrass yourself or your office. You know if you lose the case, the criticism will come in full force.*

– Patrick Collins  
Partner at Perkins Coie, former U.S. Attorney

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Try This.....

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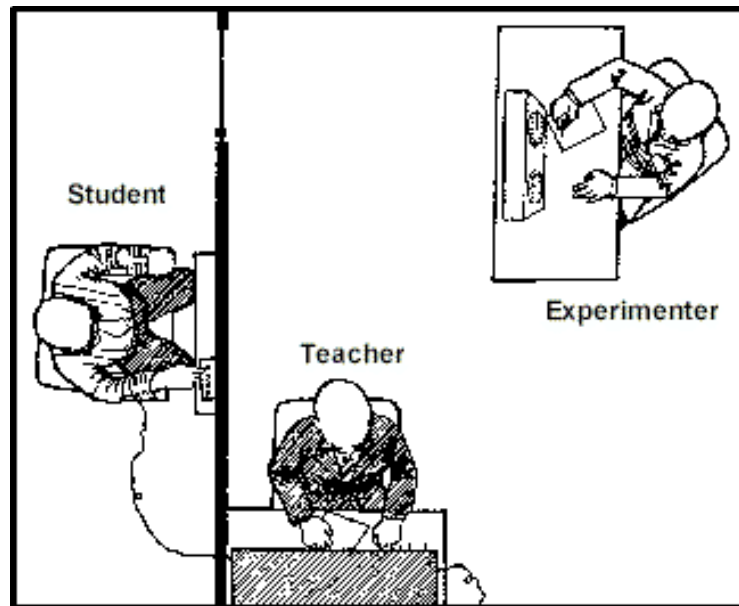


## Slippery Slopes and Boiling Frogs

*Folk wisdom says that if you throw a frog into boiling water, it will jump out. But if you put a frog in nice warm water and slowly raise the temperature, but the time the frog realizes the water has become too hot, it will already be cooked.*

Bazerman & Moore, 2009

# Stanley Milgram – Obedience to Authority



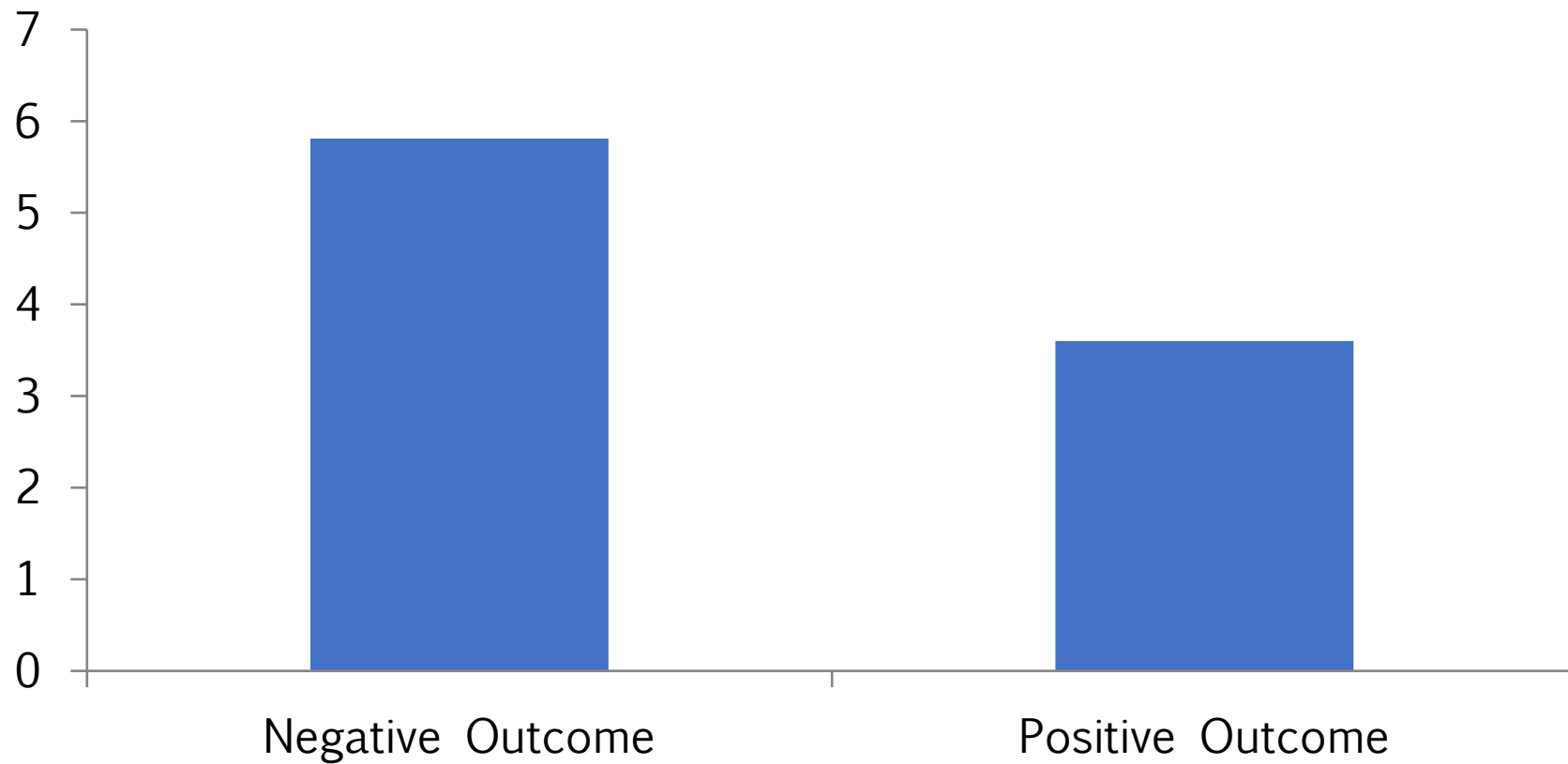
# Ethical Fading

- Decision makers “do not ‘see’ the moral components of an ethical decision, not so much because they are morally uneducated, but because psychological processes *fade* the ‘ethics’ from an ethical dilemma.”
- Scripts
- Euphemisms
- Almost meeting goals
- Outcome bias



# Outcome Bias

Decision Rated as Unethical



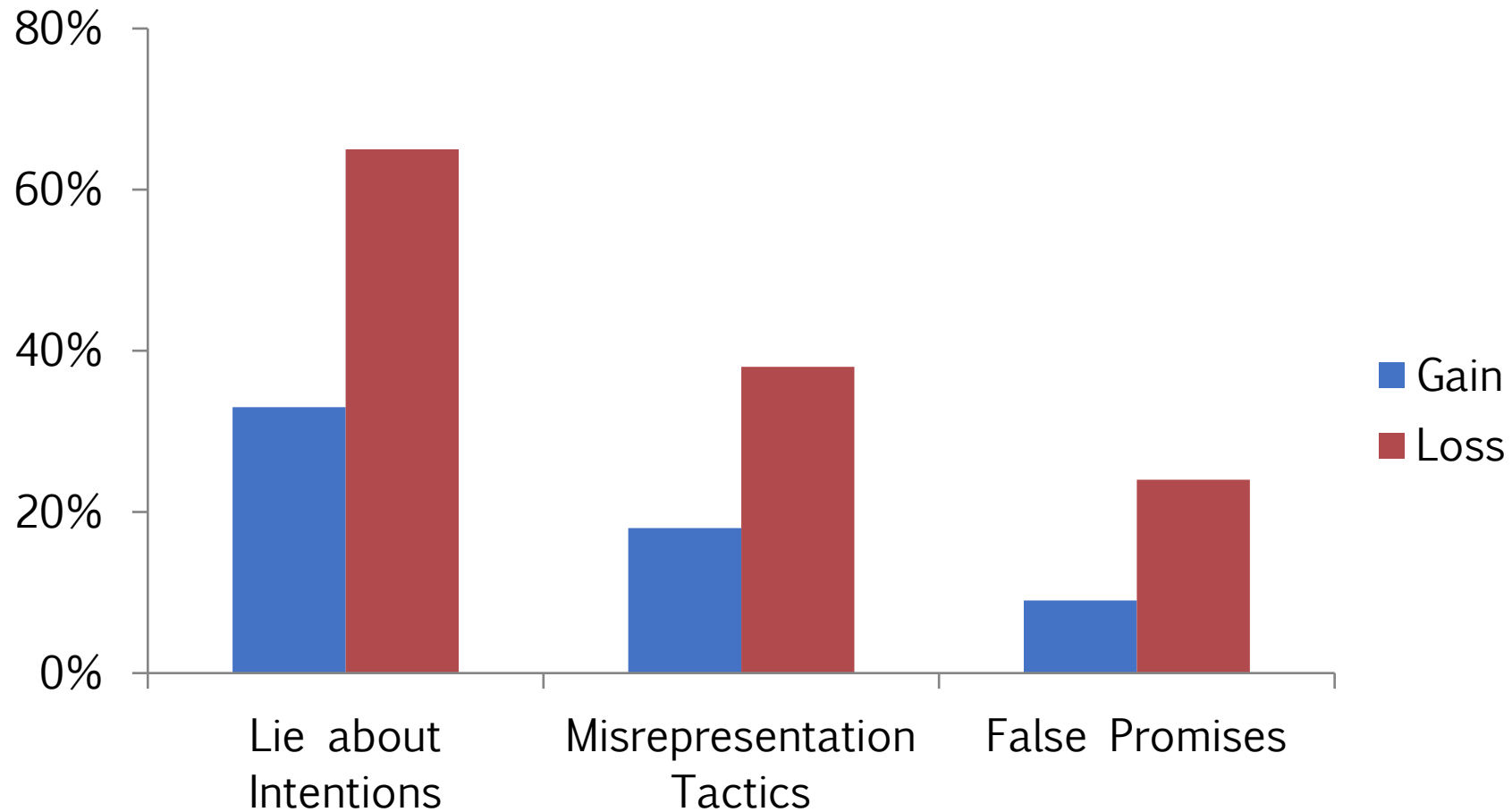


# Ethical Fading

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- Outcome bias
- Framing

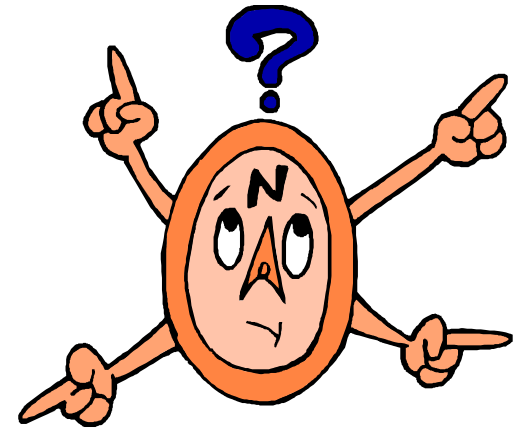


# Framing and Ethics



# Particular Challenges for Lawyers

- Nature of the ethical rules + “thinking like a lawyer”
- Lawyers as agents
  - Lawyer’s interests
  - Conflicts and disclosure
  - Indirect action
- Challenges of an adversary system
- Lawyers and mediators as social actors
- Physical, cognitive, emotional demands of practice

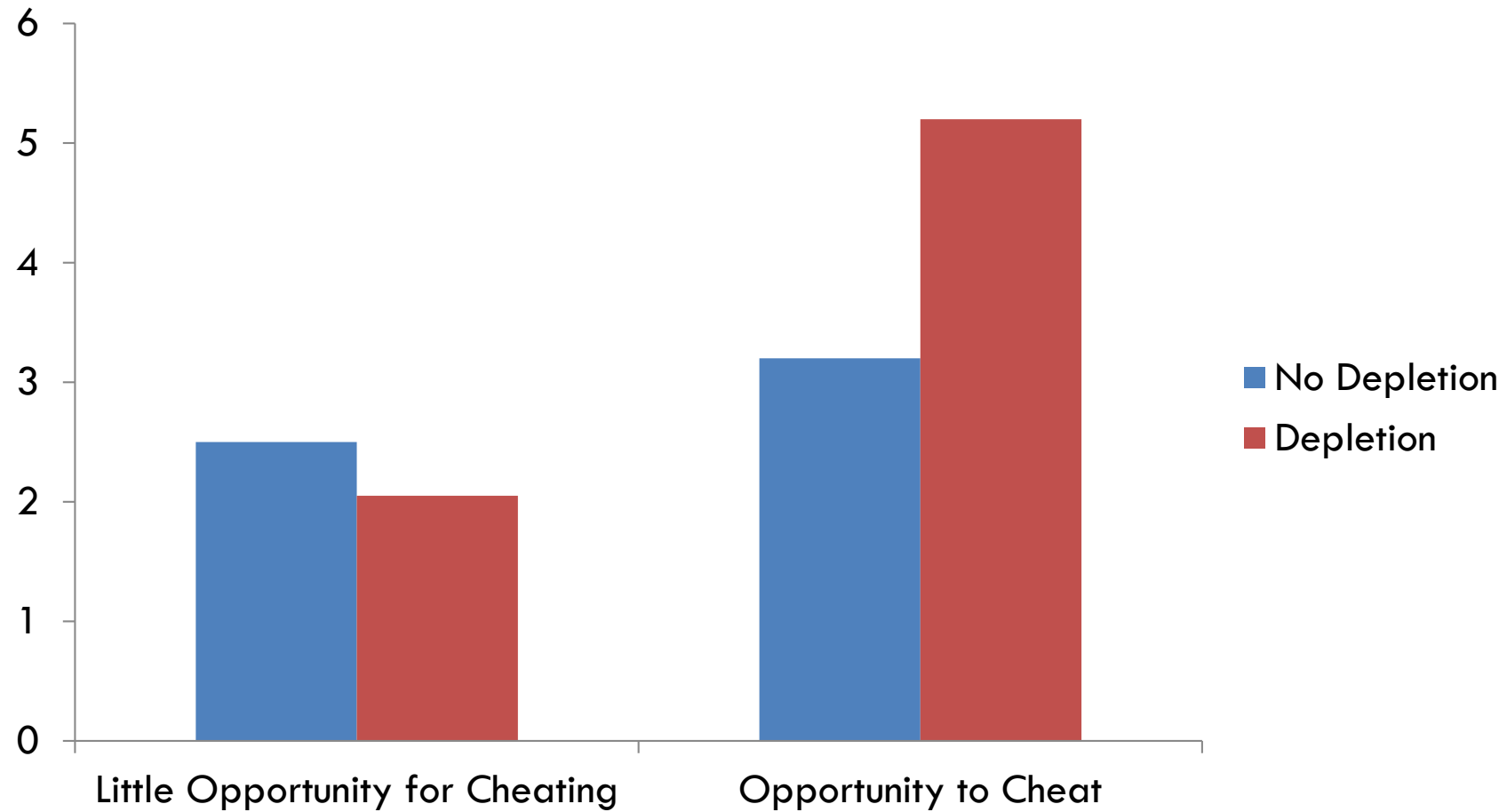


# The Demands of Law Practice

- We behave less ethically when we are stressed – whether physically, mentally, or cognitively



# Too Tired to Tell the Truth?



# Why We Don't Recognize and Learn

- Need to reconcile behavior with otherwise positive views of ourselves
- Post-hoc rationalization
- Moral amnesia
- Altered ethical standards



[A]ll the while that you're giving the Devil his due, a little bit more each day, you're also persuading yourself that the Devil is a misunderstood fellow whose hidden virtues are only now becoming apparent to you.

– David Luban

# What To Do?

## Individual Lawyers/Mediators

- Be Aware
- Make Ethics Salient
- Be Critical
- Plan Ahead
  - Ethical Habits
  - Anticipating Pressures
  - Implementation Intentions
- Recognize and Confront Others' Unethical Behavior

## Legal Organizations

- Discuss and Model Ethics
- Educate about Ethics
- Encourage Learning from Mistakes
- Protect Attorneys from Stressors
- Structure Rewards
- Encourage Reporting
- Monitor Ethics

The point is that to understand all is *not* to forgive all. But . . . to understand all may well put us on guard against doing the unforgivable.

– David Luban

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