

Emotions in the courtroom: “Need for affect” in juror decision-making

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“The law is reason, free from passion.” Aristotle’s declaration continues to guide the philosophy of our legal system, and it is expected a jury will weigh all evidence equally and without bias before rendering a verdict. However, emotions are intertwined with any human enterprise, particularly decision-making (Forgas, 1995; Kuvaas & Kaufmann, 2004). Despite a juror’s honest attempt to not be swayed by emotion, some cases can be emotionally draining or attorneys might attempt to elicit emotional reactions from jury members to cloud their judgment. As such, when selecting a jury, it is important to consider individual differences in how one manages and uses one’s emotions when making decisions. The purpose of this paper is to discuss the role of emotions in legal decision-making and to discuss how the psychological construct of “need for affect” (NFA) can help trial consultants identify strike-worthy jurors.

The Role of Emotions in Decision-Making

Research suggests individuals frequently make decisions that are congruent with their mood-state (Forgas & Bower, 1988; Schwarz, 2000). Forgas and Bower (1988) posited that judgments are more likely to be affected by mood-congruent information when the target is complex, ambiguous, and there is no pre-existing evaluation of the target. Typically, this is the context in which a juror must make a decision about a defendant. A primary explanation for mood-congruent judgments is individuals recall material that is similar to the mood-state being experienced (Kuvaas & Kaufmann, 2004; Schwarz, 2000). Therefore, individuals are more likely to remember positive information for a target when in a good mood and negative information when in a bad mood (Forgas & Bower, 1987; Schwarz, 1990). For example, a juror who viewed gruesome pictures of a crime scene is likely to feel disgusted and/or angry and is subsequently more likely to remember case information that is not in favor of the defendant (i.e., the target of the decision-making) and to judge the defendant more negatively. Mood-congruency judgments can also be explained by the likelihood that an individual will directly attribute the cause of their current mood state to the target they are

evaluating (Forgas, 1995). For example, if a juror received a promotion at work while serving on a jury, he or she might misattribute feelings of enthusiasm and happiness to the defendant, thus making a decision favoring the defendant.

Need for Affect in Judgments

Until this point, the information regarding how affect influences decisions has assumed all people have the same motivation for processing emotionally-laden information; however, this may not be the case. Just as some people are more motivated to think through issues and find more enjoyment from thinking (i.e., need for cognition), some people may be more motivated to approach emotion-inducing situations and to seek out emotions (Cacioppo & Petty, 1982; Maio & Esses, 2001). Maio and Esses (2001) developed the need for affect (NFA) construct which is a personality variable defined as “the motivation to approach or avoid emotion-inducing situations” (p. 538). Using a measure they designed to assess NFA, they found that individuals with high NFA were more likely to approach emotional experiences and use emotions to help guide their behavior and judgments, whereas individuals with low NFA were motivated to avoid emotional experiences, especially when the emotions were intense and dangerous (Maio & Esses, 2001).

Maio and Esses’ (2001) research suggests an emotion-approach tactic (i.e., High NFA) is related to mood intensity, willingness to explore emotions (particularly positive emotions), ability to understand and utilize emotions, and high need for cognition. Furthermore, individuals with an approach tactic were more willing to experience strong negative emotions than individuals who endorsed an emotion-avoidance tactic. An emotion-avoidance tactic (i.e., Low NFA) is related to difficulty identifying, describing, and expressing emotions as well as an ambivalence toward emotional expression. Furthermore, individuals endorsing low NFA were more likely to avoid experiencing negative emotions, particularly ones that were distressing and anxiety-arousing.

Additional research exploring how the NFA construct is related to decision-making found that individuals with high NFA remembered more information from an affect-based message than from a cognitive-based message (Haddock, Maio, Arnold & Huskinson, 2008). An affect-based message is one in which the primary persuasive tactic is to appeal to one’s emotions and to generate an emotional response about an object. A cognitive-based message is one in which the primary persuasive tactic is to appeal to one’s logic and to create new beliefs or ideas about an object. Moreover, individuals with high NFA recalled more information from an affect-based message than individuals with low NFA. Thus, the NFA construct appears to be a crucial concept in explaining how individuals process and respond to emotionally-laden information or emotional experiences.

The Role of NFA in a Legal Setting

Provided the integral role emotions play in decision-making, particularly when an individual is motivated to attend to the emotional components of an argument, we propose that NFA (Maio & Esses, 2001) can be used in a legal setting to help attorneys and trial consultants identify individual differences in how emotions influence jurors’ attitudes and guide their decision-making. Although limited, prior research has shown the utility of the NFA construct, as measured by the NFA scale, in predicting verdict and sentencing decisions. The NFA scale is comprised of two-factors (emotional-approach and emotional-avoidance) and is a 26-item questionnaire with good internal reliability ($\alpha > .80$).



An initial study examining the role of NFA in juror decision-making manipulated a defendant's level of remorse (i.e., remorseful vs. non-remorseful) in the context of the sentencing phase of a capital trial (Patty, Cramer, Adams, & Brodsky, 2009). Introductory psychology students at the University of Alabama provided a sentencing recommendation of either Life in Prison without Parole or the Death Penalty after viewing a video clip of the defendant exhibiting high and low levels of verbal and nonverbal remorse. Overall, mock-jurors' endorsement of high NFA was predictive of recommending a life sentence. In other words, the ability to predict whether a juror would recommend a life sentence increased as jurors endorsed higher scores on the "emotion-approach" factor of the NFA scale. A potential explanation for this finding is that mock-jurors were observing an emotional situation in which a defendant provided verbal and nonverbal accounts of remorse for his actions (an event with a positive mood valence), and jurors who were motivated to approach and process this emotional situation (i.e., individuals with high NFA) likely had related emotional experiences triggered. In support of the literature discussing mood-congruent judgments, jurors who were motivated to approach and process the positive emotional experience were primed to recall previous positive experiences and were likely to recommend the more "positive" sentencing recommendation of Life in Prison without Parole. Furthermore, this study revealed the "emotion-avoidance" factor on the NFA scale did not predict sentencing recommendation. This finding substantiates our initial explanation because individuals with low NFA were likely not motivated to utilize the emotional-stimuli (i.e., remorse) in their decision-making, and thus, there was no predisposition for their judgment to be mood-congruent.

A second study examining the role of NFA in legal decision-making investigated whether an individual's NFA would predict verdict decisions in a case that exposed jurors to emotionally-arousing evidence (Adams, Neal, Titcomb, & Griffin, 2010). It was hypothesized that after viewing graphic evidence (i.e., crime scene photos), jurors who endorsed high NFA would be more likely to experience a negative mood state and subsequently provide more guilty verdicts. Introductory psychology students at the University of Alabama viewed the video-recorded testimony of a mock-expert witness as well as multiple graphic images of the crime scene that contained blood and a dead body. Results revealed that participants who endorsed high NFA rated the defendant's likelihood of guilt significantly higher than individuals who endorsed low NFA. Similar to the explanation described for the previous study, it is likely that jurors who were motivated to attend to and process the emotionally-laden stimuli (i.e., individuals with high NFA) experienced negative emotions after viewing the graphic photographs (e.g., anger, sadness, disgust), and thus, they were primed to recall negative information about the case as well as negative past experiences. A mood-congruent judgment would be a guilty verdict.

Implementing NFA in a legal setting

This article has discussed the important role emotions play in decision-making, particularly within a legal setting; therefore, it is important to be aware of how jurors process and incorporate emotions in their judgments. To accomplish this, attorneys and trial consultants can use items from the NFA scale during jury selection. According to Brodsky (2009), social-psychological scales can be useful tools in trial consultation work because they provide questions that have been systematically developed and validated. Obtaining answers to items from a researched scale gives trial consultants and/or attorneys more meaningful information than answers obtained from self-developed questions because we know how well the items measure the content of interest as well as their limitations (Brodsky, 2009).

Similar to how items from the Need for Cognition scale are often used to identify jurors who are motivated to process complex arguments, items from the NFA scale can be incorporated into the voir dire process to identify jurors who are motivated to approach emotional information and rely on emotional stimuli to make decisions. Knowing such information about potential jurors can help attorneys strike high-risk jurors who might be manipulated easily by emotionally-laden arguments and case details. On the flip

side, if an attorney has a case in which he is depending upon a strong emotional reaction to get a favorable judgment, identifying individuals with low NFA would be helpful when determining whom to strike.

For practical purposes and time constraints, an attorney or trial consultant would likely want to administer only select items of the NFA scale, as opposed to all of the questions. Depending upon the freedom granted to attorneys during the voir dire process, one can request the items be added to a supplemental juror questionnaire, incorporate the items into voir dire questioning, or submit questions to the judge to ask during voir dire. If the latter method is an attorney's only option for incorporating items into the voir dire process, it might help to provide an empirical explanation for why the questions are being submitted so the judge has a better understanding of the context and purpose of the questions.

If any attorney's goal is to strike jurors who would be inclined to rely on feelings and incorporate emotional stimuli into their decision-making, then the following items from the NFA scale would provide the most reliable and construct-valid information:

- 1) It is important for me to be in touch with my feelings.
- 2) I think that it is important to explore my feelings.
- 3) I am a very emotional person.
- 4) It is important for me to know how others are feeling.
- 5) Emotions help people get along in life.
- 6) Strong emotions are generally beneficial.



Each item is answered on a seven-point scale of *Strongly Disagree* to *Strongly Agree* with a neutral option of *Neither*. Stronger agreement with the aforementioned items is representative of individuals with high NFA who are motivated to approach emotions and incorporate emotions into their decision-making; therefore, attorneys will want to strike jurors who express strong agreement with these items.

If an attorney's goal is to strike jurors who avoid emotions and do not rely on feelings to make decisions, then the following items from the NFA scale would provide the most reliable and valid information:

- 1) I find strong emotions overwhelming and therefore try to avoid them.
- 2) Emotions are dangerous – they tend to get me into situations I would rather avoid.
- 3) I would prefer not to experience either the lows or highs of emotion.
- 4) If I reflect only on my past, I see that I tend to be afraid of feeling emotions.
- 5) I would love to be like “Mr. Spock,” who is totally logical and experiences little emotion.
- 6) I have trouble telling the people who are close to me that I love them.

These items are answered in the same manner as the other items. Stronger agreement with these items is representative of individuals with low NFA who are motivated to avoid emotions and are not likely to rely on feelings to make decisions; therefore, attorneys will want to strike jurors who express strong agreement with these items.

In addition to assisting with jury selection, knowing whether the jury is comprised of individuals with primarily a high or low NFA can inform attorneys or trial consultants about appropriate trial strategies. For example, if the jury has a majority of individuals with a high NFA, a prosecuting attorney will want to maximize the impact of any emotional evidence that evokes a negative mood state within the jurors. In that same situation, a defense attorney would know to be prepared to mitigate such emotionally-evocative evidence while at the same time proffer any evidence that might produce positive emotions among the jury.



Summary

Although Aristotle described a legal system free of passion and prejudice, individuals reference both cognitions and emotions when making legal decisions. As such, attorneys need to account for individual differences in how jurors process and incorporate emotional information into their judgments. This article described the psychological construct of need for affect (NFA) and presented research that suggests it can be helpful in identifying jurors who are most and least likely to approach emotional situations and integrate emotions when making decisions. Practically, items from the NFA scale developed by Maio and Esses (2001) can be used during the

voir dire process to determine which jurors are most strike-worthy and to subsequently develop trial strategies that will be best received by the selected jury.

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Editor's Note

It's the dog days of summer here in the heart of Texas but this issue is sure to keep you glued to your computer screen! Once again, we have a variety of pieces that are thought-provoking and provocative but also carefully researched and written. To start us off, Sam Sommers reviews the research he's done over the past ten years and sets the record straight on what we know (and what we don't know) about race and jurors. All of our stock portfolios have taken hits and been on something of a stomach-wrenching course for the past while but Eric Rudich has been watching something odd: how Wall Street reacts to the litigation verdicts of publicly traded litigants. Read and learn. Daniel Denis has an eye toward numbers as well but his focus is on how to talk to jurors about probability so they "get it".

Doug Keene and I review the literature (the real literature) on the Millennials (also known as Generation Y) and discuss how you can use this knowledge to inform your litigation advocacy (and learn a bit about tattoos along the way). Alexis Robinson looks at the phenomenon of white guilt and how it plays into jury deliberations. Thaddeus Hoffmeister examines the impact of the Skilling verdict and what we need to consider as we move forward in a changed litigation arena. And finally, Desiree Griffin and Emily Patty take a look at the need for affect (aka emotion) in jury decision-making. Why even go outside? Make some coffee (or maybe a cool drink) and sit down to read the July issue of *The Jury Expert*! And, as always, please comment on our website so we know what you're thinking and what you're especially interested in and intrigued by.

[Rita R. Handrich, Ph.D., Editor](#)

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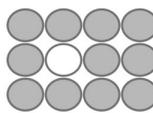
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