

## Trials & Litigation

# Lawyers—Especially Men—May Be Too Optimistic About Case Outcomes, Survey Says

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Elizabeth Loftus. Courtesy of UCI.

When asked to predict the outcome of civil and criminal cases, lawyers are often too optimistic.

That's the result of a survey co-authored by Elizabeth Loftus, a University of California-Irvine psychologist and law professor, along with other academics, published this month in the American Psychological Association's *Psychology, Public Policy & Law*.

The [article](#) is titled "Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes."

"The higher the expressed level of confidence, the more likely lawyers were to fall short of their goals," Loftus said in a UCI [release about the survey](#). "In addition, male attorneys were found to be more overconfident than female attorneys."

Specifically, the study asked two questions of 481 American lawyers representing plaintiffs and defendants in cases expected to go to trial within a year. First, they were asked, "What would be a win situation in terms of your minimum goal for the outcome of this case?" Second, they were asked how confident they were of achieving the goal set in their first answer, on a scale of 0 to 100.

When the researchers conducted follow-up interviews, they found that 32 percent of the lawyers met their goals, 24 percent exceeded their goals and 44 percent were less successful than predicted.

The research, which is in accord with prior findings of a general tendency toward overconfidence in decision-making, also found that the accuracy of lawyers' predictions about case outcomes was not enhanced by practice experience.

When turning to policy implications of the research, Loftus and her colleagues suggested that lawyers ought to be seeking feedback from third parties to help them counter potential overconfidence, which could translate to client disappointment. The researchers note that many law firms hold case review meetings, meant for caseload management. But these meetings could also be used for feedback.

"These meetings provide ideal opportunities to obtain objective opinions from other legal professionals in the form of third-party feedback about the strengths and weaknesses of a case and the likelihood that the stated goals can be achieved," the researchers note.

Yet, many of the most overconfident lawyers will be senior partners who may not typically seek out review or feedback.

In those instances, law firms need to step in, according to the paper. "Law firms should take affirmative steps to incorporate third-party feedback for the more experienced or senior litigators in their case management systems," the researchers recommend.

And the feedback shouldn't stop there. According to the paper, "Practitioners should also consider regularly obtaining customer feedback by sending their clients anonymous survey questionnaires at the close of every case; these should include