

# Just Culture

## Understanding Biases of Judgement for Judicial Proceedings



## Introduction

The way that individuals think and act, along with associated outcomes, is the focus of deliberations in the judicial system. 'Irrationality' in everyday life, and in working situations, is of particular interest, and so-called 'cognitive biases' have been the subject of research for decades in cognitive science, social psychology, and behavioural economics. These can help to explain some aspects of judgement and decision making – both adaptive and maladaptive – in the context of the wider system.

We rarely consider the same sorts of biases in terms of judicial proceedings, where people also need to create a subjective reality in order to make judgements. Since these biases are universal, no-one is immune.

These cards are designed to help promote understanding of biases of judgement that may be relevant to judicial proceedings. Each has been chosen from hundreds of reported biases in the literature based on relevance and a reasonable body of evidence.

The cards can be used by individuals and groups for reflection and discussion.

# Types of Bias

Each card introduces a different issue for reflection or discussion. The biases are organised into the following categories.

**Outcome & Baseline Frequency**

**Quality of Our Judgement**

**Understanding of Others' Mental States**

**Evidence Presentation**

**Suspects, Defendants & Witnesses**

**Penalty**

## How to use these cards

You can use these cards in any way that helps to think and talk about biases. The possibilities for using the cards are up to you. In the following cards are some suggested methods. Some of these are only subtly different, but create different discussions. You might wish to combine ideas from different methods, or do one exercise following another.

- **Method 1: Pick a card**
- **Method 2: One from three**
- **Method 3: Shein's cycle**
- **Method 4: World café**

**Facilitator:** If you are using the cards in a group, one person may need to act as discussion facilitator. The facilitator should choose the method and plan the exercise, considering the advice on these cards.

## How to use these cards

**Background and purpose:** Think carefully about the purpose of the session. Explain why the session is taking place, what is expected to be different as a result, and how this will happen. An exercise should be seen as relevant and meaningful to the participants.

**Group size:** Discussions tend to work better in small groups, e.g., 4 or 5 participants.

**Group composition:** Consider whether groups should be homogenous (e.g., same occupations) or heterogenous (e.g., different occupations). For heterogeneous groups, the cards chosen must provide common ground for discussion.

**Card selection:** When working with groups it is wise to start with a very small number of cards per person. You may need to focus on specific cards for specific purposes or people (e.g., judiciary, others).

**Note-taking:** A flipchart or whiteboard can help provide a visible record of the discussions.

## Contexts of use

**Small groups:** Small group sessions are especially effective. Sessions can be focused specifically on card exercises, or card exercises can be used to break up meetings and presentations. Discussion groups should normally comprise no more than 5 people.

**Large groups:** With large groups, each person will typically focus on one card, though this may be chosen from a small selection (e.g., 3). Simpler exercises are best suited to large groups, and methods such as World Café are especially effective.

**Individually or in pairs:** Some exercises are suitable for individuals and pairs. These can be more personal or complex.

## Method 1: Pick a card

**Purpose: Reflect openly on an experience, situation, event or idea**

This is the simplest of exercises. In a small group, each person takes just one card, or the whole group considers one card. The card may be selected:

- randomly from the whole pack
- selectively based on a previous discussion or presentation.

Each card may be discussed for a set time, e.g., 5-20 minutes.

This exercise may focus on the present situation and past experiences (the first question on each card) or ideas for the future (the second question on each card), or both.

The exercise may be used as a standalone exercise or to introduce more interactivity in a meeting. The exercise can help to introduce new perspectives about a situation or event.

## Method 2: One from three

**Purpose: Reflect on an experience, openly or using question prompts**

Give each person three cards, chosen randomly. Allow each person to choose one card, and ask them to describe an experience that they have had concerning the general issue on the card (the explanatory text on each card). The story may be told freely, or you may wish to develop some question prompts, such as:

- What happened?
- What did you think and feel about the experience at the time?
- How do you look back at the experience now?
- Have others had related or similar experiences?
- What can be learned from these stories?

It is important that people feel psychologically safe to tell their story without blame or adverse judgement (concerning the person telling the story, or those in the story) from others. There may therefore need to be some discussion and agreement about the use of feedback and language.



## Method 3: Shein's cycle

**Purpose: Reflect on an experience using a framework**

This exercise can be done alone or in groups of two or three. Consider a card from a small selection, or a safety culture element, that brings to mind an experience that had a lasting impact. Answer the following questions.

- 1. Observations** – What did I actually observe (described neutrally, as if viewing the event on film)?
- 2. Reactions** – How did I react emotionally to what I observed? What feelings did I experience?
- 3. Judgements** – What did I think about all of this? How did I evaluate what happened at the time?
- 4. Interventions** – What did I do or not do? How did I intervene or not intervene to make something happen?

Following this, the person can go back through the cycle once again looking for alternative observations, reactions, judgements, and interventions that one could make. The person may then invite supportive questions or comments from others. The learning experience can help to reframe past experiences, open the mind to new ways of interpreting interactions, and take action based on the insights gained.

## Method 4: World café

**Purpose:** Use the cards to help host a large group

The World Café method is a simple and flexible format for hosting large groups, split into smaller tables, ideally with refreshments and writing paper.

Arrange round tables in a room, with suitable for 4 people (maximum 5). The space should be inviting and comfortable. Each table may have a dedicated 'host', who welcomes each group and takes brief notes. Preselect cards before the session, depending on the focus. In some cases, all cards may be used, or just one element, or a smaller selection of 4 (or 5) cards.

Leave the cards on each table, which participants will take when they join a table. The cards on each table may be different (but related), or the same. Each participant then reads their card, answers the questions, and invites others to share their perspectives.

In addition to open discussion, you may wish to add an overarching question, such as "What were the most interesting new insights?" or "What did each group consider to be the best ideas to take forward?"

## Outcome Bias

We tend to judge a decision based on the eventual outcome instead of the quality of the decision at the time it was made

The same decision or behaviour will tend to be evaluated more negatively when it happens to produce a bad rather than good outcome, even by chance.

How can we reduce the influence of knowledge of outcome on our decisions about a person's performance?

### Outcome & Baseline Frequency



# Neglect of Probability

We tend to disregard probability when making a decision under uncertainty

Seriousness of outcome and emotional resonance may inflate our intuitive estimation of risk.

How can we take into account probability when judging a situation?

## Outcome & Baseline Frequency



## Omission Bias

We tend to judge harmful actions as worse, or less moral, than equally harmful omissions

Actions are more visible than omissions and tend to be seen as more harmful in the context of unwanted events.

How can we see actions and omissions as equivalent rather than fundamentally different?

### Outcome & Baseline Frequency




## Naïve Realism

We tend to think we are objective, but we are not

We sometimes believe that our worldview is objective and that others will interpret information similarly. We may think that others are thinking irrationally. In reality, people interpret the world differently.

How can we acknowledge and take into account our own subjectivity?

### Quality of Our Judgement

A dark blue rectangular street sign with gold lettering that reads 'LOGIC LANE'. The sign is mounted on a light-colored stone wall.  
LOGIC LANE

## Overconfidence Effect

We tend to be overconfident in the accuracy of our judgements

We tend to overestimate our own performance, be overconfident that we know the truth, and believe ourselves to be better than others, or 'better-than-average'.

How can we moderate our confidence in our own judgements, while still being able to make decisions?

### Quality of Our Judgement



## Bandwagon Effect

We tend to believe things because many others do

People often derive information from others and prefer to conform, especially with more popular views.

How can we maintain our own independence of judgement and not be unduly affected by others?

### Quality of Our Judgement





## Confirmation Bias

We tend to search for, interpret, focus on, and remember information in a way that confirms our preconceptions

This effect tends to be stronger for emotionally charged issues and deeply held beliefs (especially with ambiguous information).

How can we challenge our own preconceptions and consider alternatives?

### Quality of Our Judgement



## Hindsight Bias

We tend to believe events were predictable at the time that they happened

People often attribute responsibility on the basis of the supposed predictability of events. Hindsight bias is stronger for more severe negative outcomes.

How can we see situations from the point of view of people who were in the situation at the time, considering what they knew, their options, and focus of attention?

### Understanding of Others' Mental States



Photo by Andy G

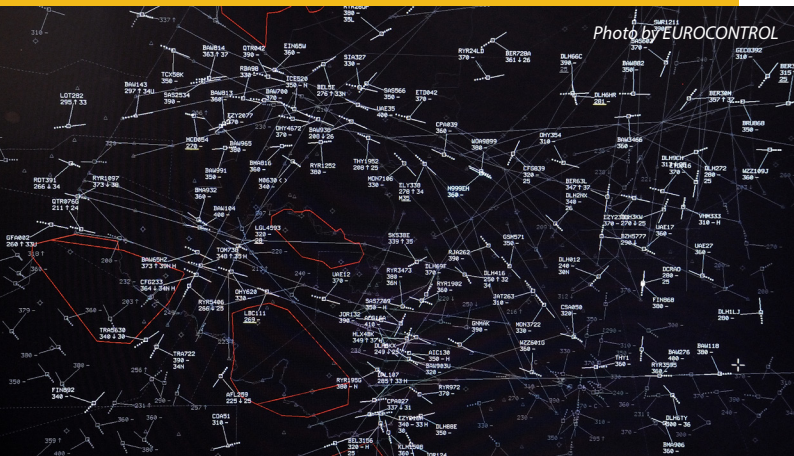
# The Curse of Knowledge

We unknowingly assume that the others have the necessary background to understand what we understand

A person with particular knowledge may misunderstand what and how a person (e.g., judge, jury) without that knowledge would think, or how they would act.

How can we better understand the knowledge of others, and help ensure they have the knowledge they need?

## Understanding of Others' Mental States



## Continued Influence Effect

We tend to believe previously learned misinformation even after it has been corrected

It is often easier to accept a piece of information than to evaluate its truthfulness, and truthfulness may be determined via other biases.

How can we challenge and disregard previously learned misinformation?

### Evidence Presentation

A photograph of a German dictionary page with a green highlight bar at the top. The text is slightly blurred but clearly legible. It defines 'Fake News' in German, including its grammatical gender and plural form, and provides a German translation: 'Fälschung, Schwindel'.

Fake, ...  
Substantiv, maskulin (Singular)  
Neutrum; umgangssprachlich, Be  
Fälschung, Schwindel  
**Fake News**; Lautschrift: [ˈfɛɪk  
die Fake News; Genitiv: der -  
(Pluraletantum); umgangss  
Bedeutung: Falschmeldung  
manipulativer Absicht, S  
im Internet

## Illusory Truth Effect

We tend to believe that a statement is true if it has been stated multiple times

Repetition tends to make statements easier to process than new statements, leading people to believe that the repeated conclusion is more truthful.

How can we reduce the impact of familiar or repeated statements on our perceptions of truth?

### Evidence Presentation



## Framing Effect

We tend to draw different conclusions from the same information, depending on how that information is presented or 'framed'

A positive or negative presentation of the same information (e.g., related to opportunity or risk) can lead to very different judgements.

How can we moderate the effect of framing of information on our judgement?

### Evidence Presentation



## Anchoring

We tend to rely too heavily - or 'anchor' - on one trait, piece of information or aspect of a situation when making decisions

Once a value of an anchor is set, future arguments may be discussed in relation to the anchor.

How can we ensure that all relevant information is taken into account, without undue emphasis on one aspect?

### Evidence Presentation



## Conservatism

We tend to revise our beliefs insufficiently when presented with new evidence

When we update our prior beliefs as new evidence becomes available, we often do so more slowly than we expect, or to a lesser extent.

How can we present new evidence and updated information, and take new information into account?

### Evidence Presentation





## Group Attribution Error

We tend to make assumptions about people based on group membership

People tend to think that the characteristics of an individual are reflective of a group to which they belong, and that a group's decision outcome must reflect the preferences of individual group members.

How can we challenge our own biases about group membership?

### Suspects, Defendants & Witnesses



# Defensive Attribution Hypothesis

We tend to be biased against people who are different to us when evaluating an event

People tend to assign more responsibility for mishaps to people who are dissimilar to the observer. A mishap may therefore seem controllable and thus preventable.

How can we reduce bias against people who are different to us?

## Suspects, Defendants & Witnesses



Photo by Heather Paul

## Just World Hypothesis

We tend to assume that a person's actions inherently bring morally fair consequences to that person

People often believe in a just world (for their own wellbeing), but may reinterpret an outcome, cause, or the character of a victim to fit this belief.

How can we moderate beliefs in a 'just world' so that victims are not blamed for their suffering?

### Penalty



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## **Feedback**

These cards were developed and designed by Steven Shorrock. If you have any comments on the cards, please contact [steven.shorrock@eurocontrol.int](mailto:steven.shorrock@eurocontrol.int) and [esp@eurocontrol.int](mailto:esp@eurocontrol.int).