Checking for Biases Remotely: Best Practices for IOLTA Program Decision Making in a Time of Social Distancing

Destiny Peery, JD/PhD
First Impressions

Write down your impressions of each person I show you.

• Who is this person?
• What is this person like?
What is Bias?

Definition: a feeling in favor of or against a thing, person, or group, especially relative to another

- Power in naming: Biases are usually considered unfair (regardless of + or -)

- Compared to prejudice (negative bias), a bias isn’t inherently good or bad in nature, but they often lead to less than ideal outcomes if not outright disparities

- Biases can also result from shortcuts our brains take to process information efficiently
20 COGNITIVE BIASES THAT SCREW UP YOUR DECISIONS

1. Anchoring bias. People are over-reliant on the first piece of information they hear, which makes the first offer establishes a range or reference point, which is resistant to change.

2. Availability heuristic. People overestimate the importance of information that is easy to recall. For example, you might argue that smoking is not unhealthy because you know someone who lived to 100 and smoked three packs a day.

3. Bandwagon effect. The probability of a person adopting a belief increases as the number of people who hold that belief. This is a powerful form of groupthink, and reasonably conducted surveys are often inaccurate.

4. Blind-spot bias. Failing to recognize your own cognitive biases is a bias in itself. People are often surprised and shocked when they learn about the most common and most obvious biases others make to others than to themselves.

5. Choice-supportive bias. When you choose something, you tend to find reasons about how good it is, even if that choice has flaws. For example, when the thermostat is set at 80 degrees, you might say it’s 75 degrees, even if it’s actually 65.

6. Clustering illusion. This is the tendency to see patterns in random events. It is key for random gambling. For example, someone might keep buying lottery tickets, thinking they’ll win more or less likely to win up a set of matches after a string of losses.

7. Confirmation bias. We tend to listen only to information that confirms our preconceptions — one of the reasons it is so hard to have an intelligent conversation about climate change.

8. Conservatism bias. When people favor prior evidence over new evidence or information that has emerged. People were able to accept that the Earth was round because they continued their earlier understanding that the planet was flat.

9. Information bias. The tendency to seek information when it does not affect action. More information is not always better. With less information, people are more likely to make more accurate predictions.

10. Ostrich effect. The tendency to ignore dangerous or negative information. For example, imagine you’re a tourist. Your guide suggests that you avoid the area near the airport because it’s dangerous, but you simply ignore the warning.

11. Outcome bias. Judging a decision based on the outcome — rather than how good or bad the decision was made in the moment — because you wonder how things ended up. More gambling more money was a smart decision.

12. Overconfidence. Some of us are too confident about our abilities, and this means we take greater risks in our daily lives. Experts are more prone to this bias than laypeople, since they are more convinced that they are right.

13. Placebo effect. When simply believing that something will have a certain effect on you causes it to have that effect. In medicine, people given fake pills often experience the same physiological effects as people given the real thing.

14. Pro-innovation bias. When a proponent of an innovation tends to overestimate its usefulness and underestimate its limitations. Toward London, Silicon Valley?

15. Recency. The tendency to weigh the latest information more heavily than older data. Investors often think the market will always keep the way it looks today and make wrong decisions.

16. Salience. Our tendency to focus on the most easily recognizable features of a person or concept. When you think about dying, you might think of dying to larvae, as opposed to what is statistically more likely, like dying in a car accident.

17. Selective perception. Allowing our expectations to influence how we perceive the world. For example, becoming a football game between students from two universities showed that one team saw the opposing team commit more infractions.

18. Stereotyping. Expecting a group of people to have certain qualities without having real information about the person. It allows us to quickly identify strangers as friends or enemies, but people tend to overestimate and disbelieve.

19. Survivorship bias. Awareness of those events that have come true and are evolving. Considering the probability of survival of a situation. For instance, we might think that an entrepreneur is very high because we haven’t heard of all those who failed.

20. Zero-risk bias. Sociologically, we have found that we love certainty — even if it’s counterproductive. Eliminating risk entirely means there is no chance of harm being caused.


4. **Blind-spot bias.**

Failing to recognize your own cognitive biases is a bias in itself. People notice cognitive and motivational biases much more in others than in themselves.

7. **Confirmation bias.**

We tend to listen only to information that confirms our **preconceptions** — one of the many reasons it’s so hard to have an intelligent conversation about climate change.

12. **Overconfidence.**

Some of us are too confident about our abilities, and this causes us to take greater risks in our daily lives. Experts are more prone to this bias than laypeople, since they are more convinced that they are right.

18. **Stereotyping.**

Expecting a group or person to have certain qualities without having real information about the person. It allows us to quickly identify strangers as friends or enemies, but people tend to **overuse and abuse** it.
What are new bias challenges we’re facing due to the pandemic?
Poll
General Biases & Challenges of Virtual Interactions

- Bad connections, glitchy video and audio, and other technical difficulties may negatively affect judgments even if beyond control
  - e.g., job candidates rated less hireable
  - And certain populations may be more prone to these disruptions

- Framing of your face and body affects empathy and other reactions toward those we’re interacting with
  - e.g., framing yourself so that your upper body (not just your face) is visible leads to more empathy from those you’re talking to
  - Showing more of the body increases access to non-verbal cues and body language important to communicating effectively
General Biases & Challenges of Virtual Interactions

• Virtual interactions are more draining (“Zoom fatigue”)
  • Enhanced self-awareness is draining (tip: hide your view of yourself)
  • Interactions are less fluid and fluent, and thus more challenging
  • Cue we’re normally rely in perceiving and reacting to others are missing or diminishes, and thus interacting is more challenging
  • When we’re drained or engaged in a mentally-taxing task, we’re more prone to bias

• Distance Bias
  • Preference for proximate others, preference for in-office colleagues over remote colleagues
  • Assumptions about whether people are working (or not) and what they’re doing when working from home
Virtual Interactions in Law

- **Bail Hearings**
  - Bail significantly higher for those with video hearings vs in-person hearings

- **Judging truthfulness, emotion, and other aspects of testimony**
  - Decreased eye contact and decreased access to body language affects judgments of witnesses

- **Disruptions to attorney-client interactions & relationships**
  - Concerns about attorney-client privacy
  - Video proceedings often mean less attorney access to clients, which affects strategy, delivering effective counsel, etc.
Real World Examples & Observations

- Regulator hearings and proceedings
- Court hearings and proceedings
- Trials (bench and jury)
Taking Organizational Decisions Virtual

- Recruitment & hiring
  - Conducting and assessing interviews
- Staffing cases, projects, and committees
- Bringing people back to the office (or not)
- Performance evaluations
- Promotion & advancement
Questions?