

Unconscious bias: Judicial stress and its impact on decision-making

Pacific Judicial Integrity Program

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A bat and a ball cost \$1.10 in total. The bat costs \$1.00 more than the ball. How much does the ball cost?

____ cents.



If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets?

____ minutes.



In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes **48** days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?

days.



What is unconscious bias?

Definition:

Unconscious influences on judgment, based on associations we hold that are outside our conscious awareness or control

"actors do not always have conscious, intentional, control over the processes of perception, impression formation and judgment that motivate their actions"

Greenwald & Krieger (2006). 'Implicit bias: Scientific foundations, California Law Review, 94, 945.



How does unconscious bias work?

Two decision-making systems in the human brain:

- System 1: 'Intuitive'
 - Rapid, effortless, confident
 - Operates outside cognitive awareness
 - Evolutionarily old
- System 2: 'Deliberative'
 - Slower, effortful, less confident
 - Conscious reasoning and logic
 - Distinctly human



Good human decisions involve an appropriate synthesis of intuitive and deliberative systemics

Common categories of unconscious bias

- 1. In-group bias Favouring members of our own group
- 2. Racial, gender and class bias

 Attaching negative or stereotypical assumptions to certain races, genders, or social groups



Implicit Association Test (IAT)

LEFT





good lovely saafe

RIGHT





bad negative unsafe

Implicit Association Test (IAT)

LEFT





good lovely safe

Women + Family v
White faces + good v
Black face + weapons v

RIGHT





bad negative unsafe

Men + Career Black faces + bad White face + harmless objects

Common categories of unconscious bias

- 1. In-group bias Favouring members of our own group
- 2. Racial, gender and class bias

 Attaching negative or stereotypical assumptions to certain races, genders, or social groups
- 3. Anchoring

 Excessive reliance on numeric reference points when making numeric judgments
- 4. Hindsight bias

 Over-estimating the foreseeability or

 predictability of an outcome after it occurs



Other possible threats to impartiality

- 1. 'Unknowing'

 Assuming judges can ignore inadmissible evidence
- 2. Emotion

 Expecting judges to reject emotion as a source of guidance
- 3. Heuristics *Mental shortcuts*

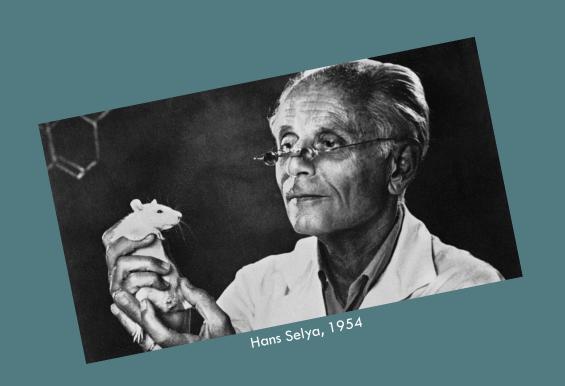
- 1. A bat and a ball cost \$1.10 in total. The bat costs \$1.00 more than the ball. How much does the ball cost?
- 2. If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets?
 - 100 minutes? No 5 minutes

10 cents? No, 5 cents

- 3. In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes **48** days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?
 - 24 days? No 47 days



What is stress?

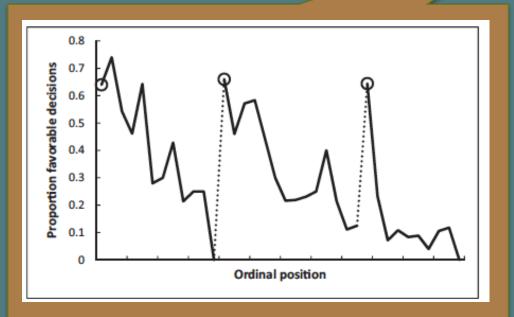


"... the non-specific response of the body to any demand, whether positive or negative, made of it"

Stress and unconscious bias

Stress undermines:

- Emotion regulation and impulse control
- Objectivity and critical thinking (System 2)



Extraneous factors in judicial decisions

f Management, Ben Garion University of the Nager, Geor Devo Seriof, brank and "Columbia Business Edical, Columbia University, New York, Oariel Kahneman, Prinston University Prinston, N.J. and approxed February 25, 2011 (newland the review Occumber 8, 2019

Are judicined unger benedited by on its wound that of Legal formalism As paties fired up the existency on is we and decay compileranism hosts that judges applying an assume to the facts of a case in an account and account and and delate register assume. In context, by one of the argue of the national applications and of larger amounts down to institute the account application of larger amounts down our authority of patients and date paychological, and the argue of the account of account and account of account and date paychological. position, and noted factors influence judded ratings. We test the common noted have of making the factors is "what the judge site common noted have of making that judge is "what the judge site defect in sequential perols died som made by expe he consecuted in acquaints person or extracts makes by supersonated lodges. We record the Judges "two daily food by sales, within multi-sagementing the deliberations of the day into the selection that are making," the first that the personating of forecasts unline dates are acquainted to the contract of the contract that the contract of the co for switch! We find that the percentage of invariate rulings drops gradually from x65% to many zero within each decision audion and section of the x65% after a break. Our findings suggest that judick inclings can be averaged by extran excusive tables and a section of the x65% after a break of the x65% after and a broad beam no harden on laund decision.

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Does the outcome of logal cases depend while on loss and factor? Logal formulation thinks; judge applying frameworks the facts of a case in a salinard, mechanical, and definedive and the control of the logal concentration of the logal concentration of the facts of a cross in a rational machinesism, and deliberative have (1, 2). An advantage wise of the law—exceptained in the observation of the factoring logal measurement—is moted in the reason of 128 Suprame Greet Artistic Obse Wendeld into the whole for the law has not been inject; it has been consistent of the law and the major, it has been Holman that "the life of the has has not herm logic; I has been experience" (3). Realists argue that the rational application of applications of the production of the product

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Materials and Methods

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(24 26), 50 January transfermance (8.5 %), and 9 Arab-bradi females (8.9%). (set on), to months one denine grave, and where the set of the first the passes bords process—disk of all parole requests in the course. The troo passes bords broke convicted of cleans such at we be always course, the prince boars block convicted of cleans such at we be always course. the frame force force to the force to the force of the fo then, means, and cape, each parties means a companion to time plane, as and as a oriented opts and a social survive who provide the judge with see as a streamorphic and a fixed motivar see planear tree judge sen-professional side, for each day we obtained the entire out of ruling. The rule of the decisions in our comple (Fig.7%) consist of purch request, required to the decisions in our comple (Fig.7%) consist of purch request, regardly or the decision or our company years process or personnel or the p.g., a request to remove a tracking device or request by parole rate gro, a request to rescore a transing serving or request by parcel candidate to disage the error of their inconnection \$40, a request for denotates to change the artist or most inconvenient p.g., a respectively index nobication for distance includes the legal window the appear in the case file number of previous inconvenients, gravity of crime constituted. resolves the served, and whether a rehabilitation program would be available machinerum, and memorar a restourant or program moust be assistate thousafthe prisoner be granted parole (90.2% of prisoner had such a prooccasions present on liverance parameters for presents internant a pro-gram is place). (A judge with @ years of experience on the bench, two gram is place). (A judge with 40 years of experience on the batch, two oriental attempts and particle was a present and the particle particle particle on the particle board, and has provided the gram apprecious services on the particle board, and the particle part the prisoner and his orber attorney) appeared before the parcele board the process part rick or not compared to the process of the proces of day is which the priconer's request was considered and its ordinal postor day in error are pressure a repeat on some standard strong in the sequence of decisions for that day.

Securise function can be exceeded and next at facility.

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Danziger et al., 2011

Other factors that exacerbate unconscious bias

- 1. Time pressure

 Increases stress and tendency to default to
 System 1 reasonsing
- 2. Lack of diversity and inclusion *Social pressure to conform*
- 3. Privilege and power

 Less need to challenge our assumptions and attitudes





Unconscious bias: Practical strategies for stress mitigation

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Individual strategies – ongoing

Cultivate curiosity

Willingness to challenge own assumptions



Implicit Association Test (IAT)



Harvard University 'Project Implicit'



Individual strategies – ongoing

Cultivate curiosity

Willingness to challenge own assumptions

Mindfulness techniques

Should be learned and practiced over time

Peer discussion and review

Encourages self-reflection through peer learning



Individual strategies – in the moment

Use emotion regulation strategies

- Develop arousal awareness
- Breathing
- Physical grounding techniques

Manage empathic response

- Bring awareness to empathic response
- Understand your triggers

Practice bi-lateral stimulation

Toe squeezes, Beetle wings, Butterfly hug

Monitor self-talk

- Notice levels of self-identification
- Promote self-talk that keep you in role



Thank you

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