

BY DR. GLEB TSIPURSKY

# Debiasing the Law: How Understanding Cognitive Biases Leads to a More Just Legal System



**Cognitive biases can have profound implications in any legal case. This article explores how cognitive biases arise in the law, how they affect various aspects of legal practice, and how debiasing techniques can help cultivate a fairer legal system. The author provides legal professionals with concrete strategies to guard against unconscious mistakes and make decisions rooted in facts and equity, rather than mental shortcuts and flawed assumptions.**

**T**he pursuit of justice is at the core of every lawyer's work. Attorneys, judges, and other legal professionals dedicate themselves to ensuring fairness, accuracy, and integrity in legal proceedings. Yet the human mind, brilliant as it might be, can be subject to systematic errors and misjudgments. These errors, known as cognitive biases, shape our perceptions in ways we often do not realize. Cognitive biases are not a minor academic curiosity; in fact, they can have profound implications in any legal case, from employment disputes to criminal defense matters, from business negotiations to jury selection in trials, from bankruptcy hearings to police misconduct investigations. Understanding – and actively mitigating – these biases is essential for building a legal system that aspires to be truly just.<sup>1</sup>

This article thoroughly explores how cognitive biases arise in the law, how they affect various aspects of legal practice, and how debiasing techniques can help cultivate a fairer legal system.<sup>2</sup> This expanded overview goes well beyond a surface-level discussion, diving into specific biases, examples from both famous and lesser-known cases, and practical techniques for minimizing bias at each step in the legal process. The goal is to provide attorneys, judges, jurors, and all professionals in the legal arena with concrete strategies to guard against unconscious mistakes and make decisions rooted in facts and equity, rather than mental shortcuts and flawed assumptions.

### Why Bias Matters

Legal philosophy often emphasizes objectivity and fairness. The iconic image of Lady Justice wearing a blindfold conveys the aspiration that the law is neutral, weighing evidence without prejudice. Yet, even well-intentioned individuals rely on mental heuristics – quick methods or rules of thumb for making decisions. These heuristics

help us navigate a complex world but can become distortions when they systematically deviate from rational judgment. Behavioral scientists have documented hundreds of such cognitive biases, with direct ramifications for legal practice.

Consider a simple example: a trial attorney reading a case file forms an initial impression of the defendant. This first impression – whether it is about the defendant's demeanor, background, or history – can unconsciously shape how the attorney interprets subsequent evidence. The attorney might selectively emphasize information that confirms the original impression and discount contradictory facts. This mental shortcut, known as confirmation bias, is just one of the many ways bias can creep into seemingly rational processes. When repeated or multiplied by the biases of jurors, judges, or opposing counsel, the outcome can be an injustice.

The stakes for understanding bias in the legal field are high. Unchecked biases can lead to wrongful convictions, unfair sentencing, discrimination in hiring, and unproductive or unethical corporate decisions. Conversely, legal professionals who learn to spot and mitigate these biases can champion more consistent, principled, and accurate decision-making. Over the last several decades, the cross-pollination of psychological research and legal scholarship has begun to produce valuable tools for combatting bias – tools that are within the reach of any attorney willing to recognize that none of us are fully objective.

### A Lesson from the O.J. Simpson Case

One particularly famous instance of cognitive bias in action comes from the trial in 1995 of O.J. Simpson, a well-known former NFL player and actor, on charges that he murdered his ex-wife, Nicole Brown Simpson, and her friend Ronald Goldman. This trial captured national attention





for months, and its high-profile nature made every moment a subject of intense media scrutiny. As the trial unfolded, the defense team presented many arguments, but one stands out in history: the phrase “If it doesn’t fit, you must acquit.”

This line, delivered by defense attorney Johnnie Cochran, has entered popular consciousness as a powerful rhetorical moment. While part of its impact was related to the dramatic moment when Simpson struggled to put on the gloves allegedly used in the murders, another part of its success can be explained by the rhyme-as-reason effect.<sup>3</sup> This effect is a cognitive bias that leads us to perceive statements as more truthful if they rhyme or are phrased in a manner that seems easy to understand. Scientific research on cognitive fluency indicates that our brains tend to interpret easily processed information as more credible.

There are multiple layers to how the rhyme-as-reason effect played out in Simpson’s trial:

**Brevity and repetition:** A short, catchy phrase like “If it doesn’t fit, you must acquit” is simple to remember and repeat. Jurors, immersed in weeks of complex forensic evidence, found themselves confronted with one straightforward statement that seemed to encapsulate a key defense point.

**Emotional resonance:** The phrase, by virtue of rhyming, creates a slightly stronger emotional impression. People often recall catchy slogans more vividly, which can reinforce the sense that the underlying claim is valid.

**Cognitive fluency:** Because rhymes are processed smoothly by the human brain, they leave a positive impression. Research has shown that individuals associate fluency of processing with truthfulness, even if they are not consciously aware of doing so.

As a result, a potentially complicated piece of forensic evidence (the fit of the gloves) became locked in the jurors’ minds in a simple “doesn’t fit = must acquit” equation. Although legal

arguments are (in theory) meant to rest on logic and objective evidence, the rhyming statement contributed to shaping the mental narrative of the defense’s position. Whether or not one agrees with the ultimate acquittal, this example highlights the potent role that cognitive biases – and rhetorical devices that exploit them – can play.

The rhyme-as-reason effect provides a cautionary lesson. Lawyers often craft memorable soundbites in closing arguments, not necessarily out of malice but because jurors are people, subject to mental shortcuts. The lesson here is not that rhyme-as-reason arguments must never be used (it might be unrealistic for attorneys to avoid persuasive phrasing) but that the legal system should recognize how easily these devices can sway an audience.

### Anchoring: The Impact of First Impressions

Another pervasive cognitive bias frequently encountered in legal contexts is anchoring.<sup>4</sup> Anchoring refers to the human tendency to rely heavily on the first piece of information we receive when making subsequent judgments. After an anchor is established, all later assessments are subconsciously tethered to that initial value or impression, even if it is arbitrary or irrelevant.

Consider a scenario in which a potential juror, before being formally seated, sees a sensational headline about the defendant’s criminal history. This headline plants a seed: “Defendant is dangerous and prone to wrongdoing.” Even if subsequent testimony contradicts that impression, the initial “anchor” lingers. The juror’s mind continually references that original claim when processing new evidence, often discounting exculpatory facts or overweighing any detail that might confirm the defendant’s guilt.

The anchoring bias does not affect only jurors. Prosecutors, defense attorneys, and even judges can fall prey to it. For example, in plea negotiations, a prosecutor’s opening offer (for example,

a multiyear sentence) can form an anchor that shapes all further bargaining. Even if the defendant’s counsel counters with a vastly different figure, the discussion takes place in the shadow of that initial number.

Anchoring can also influence how judges set damages in civil cases or impose sentences in criminal cases. For instance, if a plaintiff demands an extraordinarily high amount in a personal injury suit, that figure may serve as an anchor and push the judge to award a higher sum than the judge otherwise might, merely because it skews the perception of what is “reasonable.” Similarly, in the context of bail decisions, an initial recommendation or a standard bail schedule can anchor a judge’s judgment, even if the specifics of the case would logically demand a different outcome.

Anchoring is insidious because it is difficult to counter simply by willpower. Awareness helps, but the bias can creep in subconsciously. Legal professionals, therefore, can take steps to minimize anchoring’s negative impact:



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**Strategic order of presentation:** By controlling the order in which evidence is presented, attorneys can attempt to set a more favorable anchor or at least mitigate a damaging one.

**Jury education:** During jury instructions or voir dire, informing potential jurors that humans tend to over-rely on first impressions can help them watch out for that pitfall.

**Structured decision protocols:** Judges, prosecutors, and defense attorneys can use checklists or standardized guidelines that force them to systematically review all the evidence, helping offset the gravitational pull of an initial anchor.

**Anonymized procedures:** Whenever possible, try to anonymize or conceal certain initial details that might prejudice or anchor decision-makers prematurely. Examples include conducting blinded evaluation of evidence when practical, such as removing the source of the evidence before a crime lab technician performs an analysis of the evidence, or redacting references to prior records before the relevant context is established.

Anchoring, like the rhyme-as-reason effect, reinforces a broader takeaway: human cognition is far from purely rational. By recognizing this, attorneys and judges can be more vigilant about how they and others might unfairly weigh or interpret information.

## Confirmation Bias: How We See What We Expect to See

In legal contexts, confirmation bias is one of the most dangerous forms of cognitive distortion.<sup>5</sup> Confirmation bias leads people to notice and favor information that aligns with their existing beliefs, while downplaying or ignoring evidence that challenges those beliefs. Once an attorney, juror, or law enforcement officer believes a particular narrative – say, that a defendant is guilty or that a plaintiff is exaggerating claims – they naturally filter incoming facts in ways that support that conclusion.

This bias becomes especially

problematic in investigations. When police detectives fix on a suspect early, they might steer the inquiry toward evidence of the suspect's guilt. They can subconsciously overlook exonerating facts or fail to pursue alternative leads. Similarly, a prosecutor convinced of the defendant's guilt might focus on cementing the case, rather than seeking out contradictory evidence. This phenomenon can lead to miscarriages of justice, including wrongful convictions based on incomplete or slanted evidence.

Confirmation bias can also show up in civil litigation, when attorneys, paralegals, and investigators collect data to substantiate a lawsuit. With a narrow focus on building a convincing narrative, it is easy to miss or ignore contradictory details. Even if someone tries to be objective, confirmation bias can creep in subtly – for example, by recalling contradictory evidence less clearly or giving it lesser weight.

Ways to combat confirmation bias include the following:

### Devil's advocate techniques:

Encouraging colleagues or members of a legal team to argue the opposite side of the case forces everyone to confront evidence that does not support their preferred narrative.

**Training and checklists:** Investigators or attorneys can use standardized questionnaires that explicitly ask for “evidence that could contradict the main hypothesis,” serving as a reminder to look beyond confirmatory data.

**Peer review:** In larger law firms or prosecutor offices, peer-review structures (such as case audits or “fresh-look” committees) can help detect biases. A colleague not involved in the initial investigation can often spot leaps in logic or evidence gaps more easily.

**Judicial oversight:** Judges can remain attentive to the risk that attorneys selectively present evidence. They can ask

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probing questions or request clarifications that might expose any overlooked exculpatory aspects.

Addressing confirmation bias requires a conscious effort to question oneself. Legal professionals who develop a habit of systematically seeking disconfirming evidence can strengthen their cases, avoid blind spots, and better serve justice.

### Overconfidence Bias: When Certainty Outstrips Reality

Overconfidence bias involves an inflated sense of one's ability to predict outcomes or assess facts correctly.<sup>6</sup> In the legal arena, this can manifest when attorneys overestimate their likelihood of winning a case, causing them to reject reasonable settlement offers. It may also influence expert witnesses who appear too sure of their conclusions without acknowledging uncertainties.

This bias is especially problematic in negotiations. A lawyer who believes, with unwarranted certainty, that a jury will award a large sum might push for an unrealistic settlement figure or might refuse any compromise. If that prediction is incorrect, the client could pay a steep price for the miscalculation. Overconfidence can also show up in trial strategy, when attorneys might rely too heavily on a single piece of evidence and neglect other crucial angles.

Ways to curb overconfidence include the following:

**Reliance on data and precedent:** By systematically reviewing settlements or verdicts in similar past cases, attorneys can root their predictions in empirical evidence, not just instincts.

**Team decision-making:** Group discussions – especially with colleagues who have varying viewpoints – tend to mitigate overconfidence by introducing multiple perspectives.

**Contingency planning:** Lawyers can prepare for multiple potential outcomes, forcing themselves to consider the possibility that their primary assumption might be incorrect.

**Calibration training:** Some legal

education programs and professional development seminars focus on teaching attorneys to calibrate their judgment by comparing predictions with real-world results, thereby improving their accuracy over time.

Overconfidence not only risks unfavorable outcomes for clients; it also undermines the trust that is central to the attorney-client relationship. Recognizing the humility needed in legal practice can increase the probability of realistic planning and fair results.

### Halo Effect and Horn Effect: How One Trait Colors the Whole Picture

The halo effect describes the tendency for a positive perception of a single characteristic to “spill over,” creating an overall favorable impression that might not be justified. Conversely, the horn effect occurs when a negative attribute unduly tarnishes a broader evaluation. In a legal context, this can happen when a witness's likable demeanor leads jurors to trust everything the witness says, regardless of the factual basis. Or, a defendant's prior offense, while not directly related to the current case, may overshadow a neutral or even exculpatory set of facts.

Public figures often benefit or are harmed from these effects. A charismatic celebrity might receive more sympathy from jurors simply because their public image fosters a halo effect, while a defendant with a surly appearance might face an uphill battle in court, irrespective of the evidence.

Halo and horn effects can be mitigated with the following techniques:

**Structured evaluation:** Encouraging judges and jurors to evaluate separate dimensions (credibility of witness, consistency of testimony, corroborating evidence) independently can prevent a single trait from influencing all aspects of assessment.

**Jury instructions:** Reminding jurors specifically that a person's demeanor or unrelated personal history should not determine the person's credibility

encourages conscious checks on bias.

**Segmented testimony:** Breaking down witness testimony into discrete factual claims rather than having a free-flowing narrative can help jurors assess each fact on its merits.

**Anonymized or filtered procedures:**

In some contexts, attorneys can present evidence without revealing certain personal traits of involved parties, focusing on objective elements first.

Combating halo and horn effects requires an intentional strategy. However, it is worth the effort to ensure that extraneous impressions do not overshadow the core facts of a case.

### Groupthink and Conformity Pressures: Collective Bias in Juries and Teams

Legal decisions often occur not in isolation, made by one individual, but within groups – juries, law firm teams, or boards of directors working alongside corporate counsel. These group settings introduce another layer of bias: the tendency to conform to a perceived majority view or to avoid dissenting opinions. Groupthink arises when the desire for harmony and consensus overrides a critical evaluation of alternative perspectives.<sup>7</sup>

In a jury, groupthink can lead to quick verdicts that are not fully deliberated. Jurors might feel pressure to agree with a dominant individual or with what seems to be the majority sentiment. In law firms or corporate legal departments, newer associates may hesitate to challenge a senior partner's conclusion, even if they have legitimate doubts. As a result, important concerns may go unvoiced.

Here are some potential strategies to limit groupthink and conformity:

**Anonymous feedback:** Before an open discussion, jurors or team members can submit written or digital votes or comments about the case. This allows each person to express their opinion without immediate social pressure.

**Appointing a devil's advocate:** Assigning someone the explicit role of questioning assumptions can spark



deeper discussion and unearth neglected viewpoints.

**Encouraging minority voices:** Judges, or those leading a team, can actively ask for dissenting opinions, framing disagreement not as conflict but as thorough inquiry.

**Sequential opinion sharing:** Having individuals state their view before hearing others can prevent the first speaker from unduly influencing the rest of the group.

By fostering an environment that values robust debate, legal professionals can reduce the risk of groupthink. This vigilance is crucial because group dynamics can amplify or reinforce individual biases, undermining the entire fact-finding and deliberation process.

## Debiasing Techniques: Tools for a Fairer Legal System

The legal system cannot eliminate cognitive biases altogether. Nonetheless, numerous debiasing strategies exist, many grounded in decades of peer-reviewed behavioral research. Implementing these strategies system wide, or even within individual law offices and courtrooms, can significantly reduce the negative impacts of bias.<sup>8</sup> Below are some of the most effective debiasing techniques:

**1) Blinded Procedures.** Blinded or double-blinded approaches aim to remove identifying information from evidence or decisions. For instance:

- **Double-blinded lineups:** Neither the witness nor the lineup administrator knows which person is the suspect, reducing unintentional cues and suggestions.

- **Anonymized document reviews:** When reviewing legal briefs or resumés, redacting names and demographic data can help ensure judgments focus on merit rather than subconscious stereotypes.

- **Redacted transcripts:** In disciplinary or misconduct cases, decision-makers can be presented with transcripts stripped of personal identifiers, ensuring the decision-makers weigh the content without being anchored by who said it.

**2) Expert Testimony on Bias.** Incorporating psychologists or other

behavior experts as witnesses can enlighten jurors or judges about common cognitive distortions. By learning about biases – such as confirmation bias or anchoring – decision-makers can become more self-aware and skeptical of overly simplistic narratives.

- **Eyewitness identification experts:** These experts explain how memory can be influenced by suggestion, stress, and time, helping jurors understand that eyewitness testimony is not always reliable.

- **Bias and heuristics experts:** Academics or other individuals specializing in cognitive science can detail how everyday mental shortcuts can create distortions, urging jurors to slow down and scrutinize evidence carefully.

**3) Deliberative Decision-Making.** Slow, structured deliberation processes reduce the risk of snap judgments driven by biases.

- **Checklists and bench cards:** Judges can use standardized lists to ensure

they consider all evidence methodically, preventing unconscious reliance on initial impressions.

- **Guided jury instructions:** Beyond generic admonitions to remain fair, instructions can outline specific steps for evaluating evidence, reminding jurors to remain alert for possible biases.

- **Sequential evaluation:** Presenting different categories of evidence in a deliberate sequence or asking jurors to evaluate certain claims independently can limit the overshadowing effects of a single dramatic piece of information.

**4) Bias Education and Training.**

Regular seminars, workshops, and continuing legal education courses can keep legal professionals updated on the latest findings in behavioral science. These sessions can:

- **Highlight known pitfalls,** by summarizing common biases such as anchoring, overconfidence, or halo effects.

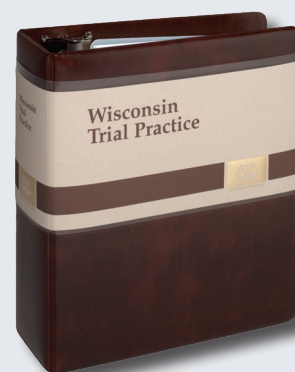
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- **Promote self-auditing**, by encouraging attorneys and judges to reflect on past decisions, analyzing whether biases may have played a role.

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**5) Peer Review and Accountability Mechanisms.** One reason biases persist is that individuals rarely receive transparent, corrective feedback about their decisions. Establishing peer review processes – in which teams of colleagues review each other's major pleadings, sentencing recommendations, or negotiation strategies – can uncover patterns of bias. Similarly, judicial oversight committees can track case outcomes to detect anomalies in sentencing or bail decisions that might indicate bias.

**6) Empirical Feedback Loops.** Leveraging data analytics is increasingly viable in the legal system. By analyzing large volumes of decisions – sentencing disparities, success rates of certain arguments, or negotiation outcomes – patterns of bias can be identified and addressed. For instance, if a particular prosecutor's office regularly negotiates harsher plea deals for some categories of defendants than for others for the same offenses, that data can prompt further investigation and corrective measures.

## Extending Debiasing to Systemic Legal Reforms

While individual attorneys and judges can adopt debiasing measures, truly systemic change requires reforms at

multiple levels – legislative, administrative, and cultural. Initiatives such as the following could be considered:

**1) Mandatory Bias Training.** Many law enforcement agencies and prosecutors' offices have begun implementing implicit-bias training. Extending similar requirements to judges, defense attorneys, and court staff can broaden awareness of common mental pitfalls.

**2) Revised Rules of Evidence.** Legislators or rulemaking bodies might explore introducing guidelines that promote the presentation of all evidence in a manner less prone to bias. For instance, tighter rules on the admission of prior bad acts could curb anchoring and horn effects.

**3) Technology Integration.**

- **Software tools:** Some court systems are experimenting with AI-driven platforms that offer sentencing recommendations or risk assessments. Although these tools can harbor biases based on training data, they also can potentially reduce human biases in certain respects. Transparency and oversight of these tools is vital.

- **Analytics for accountability:** Gathering large-scale data on sentencing, bail, or even attorney performance can help identify patterns that deviate from statistical norms, and deviations could be scrutinized, if appropriate.

**4) Cultural Shifts in Legal Education.**

- **Curriculum integration:** Law schools can embed courses on behavioral science within their core curricula, ensuring that new attorneys graduate with knowledge of how biases influence legal practice.

- **Case simulations:** Through simulated trials and negotiations, law students can receive immediate feedback on how bias influenced their performance, reinforcing best practices before they enter the profession.

## 5) Enhanced Transparency.

- **Publicly accessible records:** Open data about court decisions fosters accountability. When patterns of bias become visible in the public record, there is greater pressure to enact reform.

- **Community engagement:** Allowing civilians to participate in oversight boards or sentencing review committees can introduce fresh perspectives and reduce closed-loop decision-making.

Systemic reforms require stakeholders at all levels to acknowledge the universality of cognitive bias. Humans, as social and emotional beings, cannot shed these predispositions entirely. However, with continued research, dialogue, and practical implementation of debiasing strategies, the legal system can move closer to the ideal of dispassionate, fair decision-making.

## The Path to a Fairer Legal System

Cognitive biases are not aberrations that only afflict a few. They are embedded in the fabric of how our brains process information. Recognizing this reality does not diminish the aspiration for justice; rather, it can strengthen it. Legal professionals equipped with an understanding of cognitive biases can craft better arguments, design more equitable procedures, and hold themselves and others to higher standards of fairness. **WL**

## ENDNOTES

<sup>1</sup>Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux 2011); Gleb Tsipursky, *Never Go With Your Gut: How Pioneering Leaders Make the Best Decisions and Avoid Business Disasters (Avoid Terrible Advice, Cognitive Biases, and Poor Decisions)* (Red Wheel/Weiser 2019).

<sup>2</sup>While some external biases are based on a party's or an attorney's identity or physical characteristics and some of the topics of this article may inform those external biases, this article looks at even deeper, more universal cognitive biases that are always present even when other external biases are not a factor.

<sup>3</sup>Petra Filkuková & Sven Hroar Klempe, *Rhyme as Reason in Commercial and Social Advertising*, *Scandinavian J. of Psych.* 54.5 (2013): 423-431.

<sup>4</sup>Adrian Furnham & Hua Chu Boo, *A Literature Review of the Anchoring Effect*, *J. of Socio-economics* 40.1 (2011): 35-42.

<sup>5</sup>Joshua Klayman, *Varieties of Confirmation Bias*, *Psych. of Learning & Motivation* 32 (1995): 385-418.

<sup>6</sup>Till Proeger & Lukas Meub, *Overconfidence as a Social Bias: Experimental Evidence*, *Econ. Letters* 122.2 (2014): 203-207.

<sup>7</sup>Jeffrey Sanford Russell, John Hawthorne & Lara Buchak, *Groupthink*, *Phil. Stud.* 172 (2015): 1287-1309.

<sup>8</sup>Gleb Tsipursky, *The Blindspots Between Us: How to Overcome Unconscious Cognitive Bias and Build Better Relationships* (New Harbinger Publications, 2020). **WL**