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Good Plans That Go Awry

Or Why We Conflate Bad Outcomes With Bad Decisions

By: Jonathan Aronie, Sheppard Mullin, April 2024*

Judging the quality of a decision by the quality of the outcome is a common, albeit dangerous, *cognitive bias.*

The research is clear. A good decision with a bad outcome is likely to be viewed – by others and by the decision-makers themselves – as a bad decision in hindsight. Equally so, a bad decision with a good outcome is likely to be viewed as a good decision in hindsight. Both views, however, are wrong – and, if allowed to persevere unchecked, can lead to all manner of flawed decisions going forward.

Let's say you are the GC of a mid-sized federal contractor and you learn your sales team has been selling non-compliant products to the Navy for the last year. You advise your boss, the CEO, that the company should make a self-disclosure to the DOD Inspector General. She resists, fearful that the matter will turn into a "federal case" and cost the company a lot of money. She ultimately relents and you make the call.

Now let's say, for whatever reason, the OIG becomes interested in the disclosure, refers the matter to the DOJ, and the company ends up handing over a big fat check. The GC soon finds himself in the boss's office for a very uncomfortable "I told you so" conversation.

Did the GC make a bad decision? Absolutely not. The decision was the right one. The federal Mandatory Disclosure Rule compels a disclosure in this situation. And the penalty for not doing so is severe. But the *perception* that he made the wrong decision may be every bit as painful.

Judging the quality of a *decision* by the quality of the *outcome* is a common, albeit dangerous, ***cognitive bias***.

Often referred to as the "hindsight bias" or "outcome bias," research makes clear humans are quite apt to attribute a currently known – but previously unknown – fact to a prior decision, and to then evaluate that decision as though those unknown facts were known to the decision maker at the time of the decision-making.

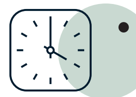
Such biases are not the provenance of the unschooled. They apply with equal force to highly educated, highly paid, and highly functioning corporate executives. Academics, doctors, finance professionals, juries, judges, and, frankly, most everyone else, succumb to these powerful invisible psychological forces more often than they care to admit. Lawyers, compliance officers, and our clients are no exception.

Unless you have the sort of help Tom Cruise had from Dustin Hoffman in *Rainman*, you hit on the twelve against the dealer's ten—every time.

The misperception that a decision was wrong because the outcome was unfortunate is not a trivial matter. A failure to differentiate between the *quality of a decision* and the *quality of an outcome* can presage some pretty weighty consequences, including (i) unfair and destructive internal finger pointing, (ii) chilling the willingness of future decision makers to make hard choices, (iii) irrationally guiding future decisions based on the unlucky *outcomes* of prior decisions, and (iv) masking a meaningful assessment of a decision because of its outcome. The problem is akin to a blackjack player deciding to hold on a 12 facing a dealer's 10 because the last time the player got unlucky and busted. The unlucky outcome does not change the wisdom or propriety of the decision. Unless you have the sort of help Tom Cruise had from Dustin Hoffman in *Rainman*, you hit on the twelve against the dealer's ten—every time.

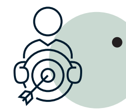
A bad decision that ends in a good result is equally likely to be misperceived by future evaluators, and equally likely to lead to irrational future decision-making. Let's return to our blackjack metaphor. A novice player who, based on a "feel," hits on a 20 and draws an ace does not make a good decision. He got lucky. But if he views his decision as wise due to the lucky outcome, he will keep making such decisions with great harm to follow.

So what can you do to improve the meaningful evaluation of an organization's decisions and the underlying decisions themselves? Here are a few things we do within the Sheppard Mullin Organizational Integrity Group that may work for you:

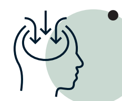


- Take the time necessary to meaningful assess key decisions to understand why things went wrong – *and* why things went right.

- Kick off post-mortem meetings with a clearly-stated recognition of the penchant for hindsight and outcome bias and the risks those biases pose to meaningful lessons learned.

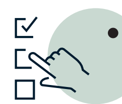


- Focus on *the decision-making process*, not the outcome.

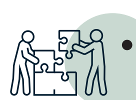


- Consider consequences that were intended, as well as consequences that were unintended, and distinguish between the two.

- Examine the outcomes that could have but did not unfold, and consider why they did not.



- Keep one another in check as the lessons learned process proceeds to ensure evaluators are discussing the facts known to (or reasonably contemplated by) the decision-makers *at the time of the decision*.



- Involve a diversity of perspectives in the evaluations of key decisions – and in the making of future decisions. The wealth of backgrounds, experiences, knowledge, and thinking styles will help overcome any number of cognitive biases – including the hindsight and outcome bias.

Through a better understanding of cognitive biases and a disciplined effort to mitigate the force of them, decisions can be evaluated in an honest, rational manner, and, consequently, future decisions can be informed and guided by relevant information rather than irrelevant perceptions.

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