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# *Are Arbitrators Susceptible to Hindsight Bias?*

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# Are Arbitrators Humans?

Arbitrators have tendency to rely excessively on intuition that may exacerbate the impact of illusions on their decision making. Our results reveal that “arbitrators are human” and perform about the same as judges.

Helm, Wistrich and Rachlinski, *Are Arbitrators Human?* *Journal of Empirical Legal Studies*, 13(4) (2016).



Source: José Luis García-López's ©

# Hindsight Bias Definitions

➤ “ People **overstate** their own ability to have predicted the past”

Guthrie, Rachlinski and Wistrich, , *Inside the Judicial Mind*, 86 Cornell Law Rev. 777, 799 (2001).

➤ “I knew it all effect ”

Fischhoff and Beyth “I knew it would happen: Remembered probabilities of once-future things”, 13 Organizational Behaviour and Human Performance 1, 1-16 (1975).

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# Research Conducted on Judges and Arbitrators

A city has a drawbridge that operates only from spring to autumn (arbitrators and judges) were asked to determine whether the city should hire a bridge operator during winter.

**Group One:** 24/100% of the subjects who were asked to rely only on the facts above considered the city responsible to hire a bridge operator off-season.

**Group Two:** 57/100% were given the additional historical fact that “hiring a bridge operator could have prevented debris from becoming lodged under the bridge and causing a flood.”

*American College of Commercial Arbitrators (2013), experiment conducted by Helm, Wistrich and Rachlinski previously suggested by Christopher R. Drahozal, Behavioral Analysis of Private Judging, 67 Law & Contemp. Probs. 105, 109-110 (2004).*

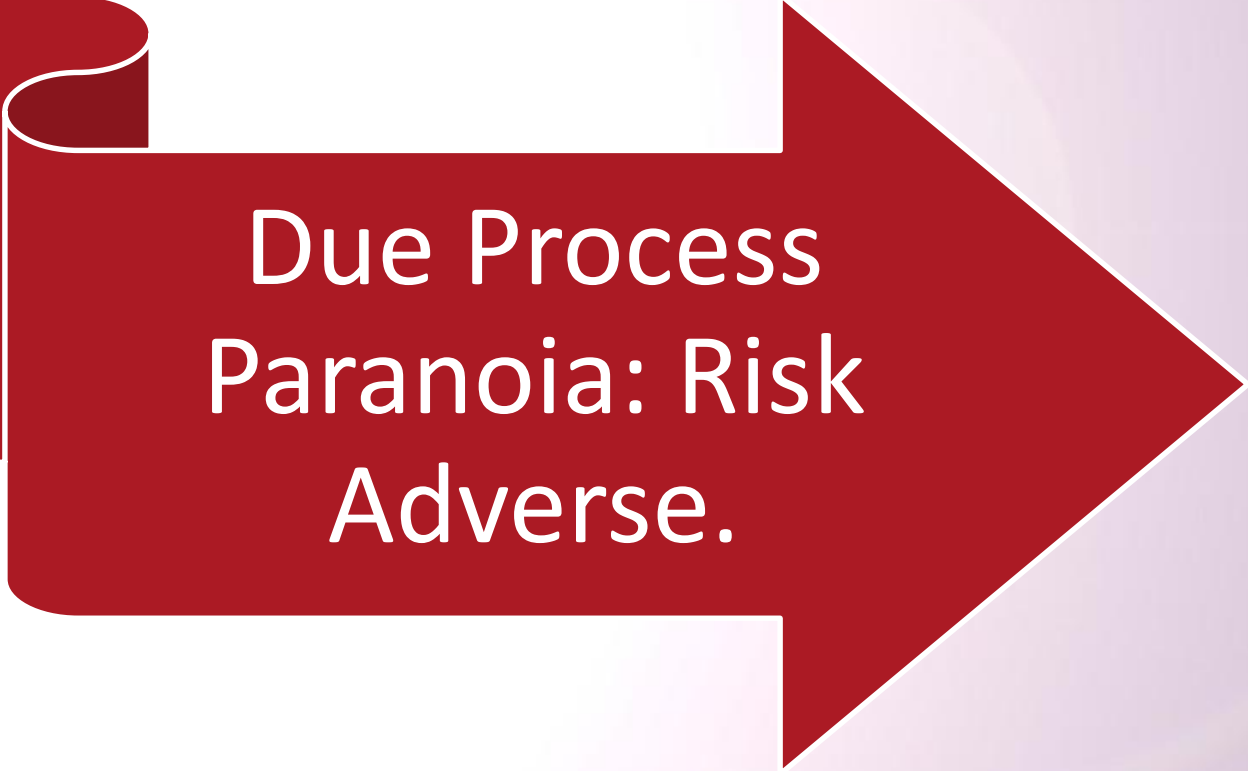
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# Hindsight Bias in Arbitration

## The Two Negative Spectra



Arbitrator's  
Established  
Mental Models.



Due Process  
Paranoia: Risk  
Adverse.

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*Transforming the world  
with greater knowledge  
and learning*

Muito Obrigada!

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