


Psychology and Settling Disputes

James Savory

Mediator, Facilitator, Trainer, Coach
www.rapproche.co.uk



Who Are We?


Where do we come from?

How long did we spend on
the journey?




Development of Species

SPECIES	TIME PERIOD
Australopithecus – various	5 to 1.6 m years ago
Homo habilis	2.2 to 1.6 m years ago
Homo erectus	2.0 to 0.4 m years ago
Homo sapiens archaic	400,000 to 200,000 years ago
Homo sapiens neandertalensis	200,000 to 30,000 years ago
Homo sapiens sapiens	200,000 years ago to present



Brain Size


SPECIES	BRAIN SIZE
Homo habilis	Up to 800 cc
Homo erectus	800 – 1200 cc
Homo sapiens neandertalensis	1450 cc
Homo sapiens sapiens	1350 cc



Settling Litigation


How Good Are We?

Beyond Right and Wrong
The power of effective decision making for
attorneys and clients
by
Randall Kiser




Issues Investigated

- Do plaintiffs and defendants win and lose 50% of cases?
- Are each equally good at predicting outcomes?
- Do they suffer equal costs of wrong settlement decisions?




Decision Errors

- No Error 15%
- Plaintiff Error 60%
- Defendant Error 25%




Psychological Biases

- Attribution Error
- Selective Perception
- Over Confidence
- Framing - Risk
- Anchoring
- Status Quo Bias
- Fairness
- Reactive Devaluation



Attribution Error

- What Causes Negative Events?
- Dispositional or Situational
- Emotional Effect of Dispositional Cause
- Name, Blame, Claim
- Actor-Observer Bias
- Naïve Realism




- Selective Perception
- Selective Memory
- Over Confidence




Risk Frame Experiment

Group A - Gain	Group B - Loss
Choice 1: Certain \$240	Choice 1: Certain loss \$750
Choice 2: 25% chance of \$1000	Choice 2: 75% chance of losing \$1000



Risk Frame Experiment

Group A	Group B
Choice 1: Certain \$240 – 84%	Choice 1: Certain loss \$750 – 13%
Choice 2: 25% chance of \$1000 – 16%	Choice 2: 75% chance of losing \$1000 – 87%



Costs of Decision Errors

- Plaintiff Error
- Defendant Error
- 8-12% of award
- 150-225% of award



Anchoring

- African Countries in UN
65-45% - 10-25%
- Accountants estimating fraudulent accounts >/<10/200 per 1000
- $1 \times 2 \times 3 \dots \times 7 \times 8 = 521$
- $8 \times 7 \dots \times 3 \times 2 \times 1 = 2250$
- \$12,000 offer after \$2000/10,000



Status Quo Bias Mug and Chocolate Experiment

- Given Choice –
 - 56% for mug
 - 44% for chocolate
- Given Mug
 - 11% would trade
- Given Chocolate
 - 10% would trade



Fairness

- Get into pairs
- Decide A and B
- Imagine I offer you £20
- Divide it as I describe



Reactive Devaluation

A solution offered is valued less than before it was offered

- Fear of Private Information
- Malevolent Utility Function
- Aspiration
- 'Pure' Reactive Devaluation

The achievable is inherently less attractive than the unachievable – Professor experiment



Resistance is not Futile!

- Awareness
- BATNA
- Evaluate Litigation Risk
- Probability of Winning
- Switch Sides
- Deal with Attribution Early
- Use Mediator
- Separate Team?
- Don't Wait for More Information
- Enlarge the Pie

