



DISPUTE RESOLUTION

ALERT

AN UPDATE ON WORLD DEVELOPMENTS IN ARBITRATION AND MEDIATION

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Inside the Judicial Mind

by Chris Guthrie, Jeffrey J. Rachlinski,
and Andrew J. Wistrich

The institutional legitimacy of the judiciary depends on the quality of the judgments that judges make. Even the most talented and dedicated judges surely make occasional mistakes, but the public understandably expects judges to avoid systematic errors.

This expectation, however, might be unrealistic. Psychologists who study judgment and choice have learned that human beings rely on mental shortcuts, which psychologists call “heuristics,” to make complex decisions. For example, if someone asked you whether there are more male or female attorneys in the world, you would not count all the male attorneys in the world and all the female attorneys. Instead, you would take your own experience and assume that the attorneys you knew were a representative sample of the rest of the world. Such a reliance on heuristics facilitates good judgment most of the time, but it also can produce errors.

Just as certain patterns of visual stimuli can fool people’s eyesight, leading them to see things that are not really there, certain heuristics can undermine people’s judgment, leading them to believe things that are not really true. The deceptions that trick your eyes are optical illusions. The deceptions that trick your mind can be thought of as *cognitive illusions*.

Are judges subject to these illusions? Even though judges are experienced, well-trained, highly motivated decisionmakers, they might be vulnerable to cognitive illusions. The research on human judgment and choice indirectly supports this suspicion. Empirical studies show that cognitive illusions plague the assessments many professionals make, including doctors, real estate appraisers, engineers, accountants, options traders, military leaders, psychologists, and even lawyers. Before the studies that we are about to describe, there was no hard empirical evidence that cognitive illusions affect judges.

To begin to fill this gap in our understanding of judicial decisionmaking, we conducted an empirical study to deter-

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mine whether common cognitive illusions would influence the decisions made by a sample of 167 federal magistrate judges. We administered a brief questionnaire to these judges during an educational conference sponsored by the Federal Judicial Center. We tested three cognitive illusions: anchoring, hindsight bias, and egocentric biases. Our findings are described below, but let it suffice to say that judges were not immune to errors of judgment.

Anchoring

When people make estimates (*e.g.*, the fair-market value of a house), they commonly rely on the initial value available to them (*e.g.*, the list price). That initial value tends to “anchor” their final estimates. Reliance on anchors is often reasonable because many of them convey relevant information about the actual value of an item. The problem, however, is that anchors that do not provide relevant information about the value of an item also influence judgment. For example, people asked to estimate the average daytime temperature in downtown San Francisco provided higher estimates when first asked to determine whether the correct answer was greater or less than 558 degrees Fahrenheit. While everyone knows that the temperature in San Francisco never approaches 558 degrees, and even though the number is ridiculous, it still has a strong distorting effect when people try to hone in on the real temperature.



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In litigation, anchors, such as damage awards requested by plaintiffs' attorneys or damage caps provided by statute, have been shown to influence the amount of damages awarded by juries.

We tested for the effect of anchoring on the judges in our sample by providing the judges with a description of a serious personal injury suit in which liability was clear but the amount of damages was in dispute. We asked half of the judges to indicate what they thought an appropriate damage award would be in light of the plaintiff's extensive injuries. We asked the other half of the judges the same question, but first we asked them to rule on a motion to dismiss the case on the ground that the plaintiff had failed to meet the \$75,000 jurisdictional minimum for a diversity case. The motion had no merit, but it had an effect.

We found that the motion did have a large effect on the judges' damage awards. Those judges who did not rule on the motion awarded, on average, \$1,249,000, while those judges who did rule on the motion awarded, on average, only \$882,000. The frivolous motion to dismiss, which forced the judges to consider whether the case was worth more than \$75,000, lowered damage awards by 29 percent. These results suggest that judges are affected by anchors, even those that may be unrelated to the likely value of the case.

Hindsight Bias

Hindsight is 20/20. People overstate their ability to predict events that have passed. Everyone knows about Monday-morning quarterbacking — people think that if they had been in the same position as someone whose game plan didn't work out, they would have made better choices. People also believe that others should have been able to predict events better than was possible. Psychologists call this tendency for people to overestimate the predictability of past events the "hindsight bias."

Few judgments in ordinary life require people to assess the predictabil-

ity of past outcomes, but in law, people are often asked to make exactly this kind of judgment. For example, when a judge or jury sets out to determine whether a defendant was negligent, they must evaluate the reasonableness of precautions that the defendant took against causing an accident, and they make this decision knowing that there was an injury.

Empirical studies have demonstrated that precautions that seem reasonable to people before the fact can seem negligent afterward. In addition to questions about negligence, the hindsight bias probably influences findings of counsel incompetency (decisions a lawyer makes in the course of representing a criminal defendant can seem less competent after the defendant has been convicted), the levying of Rule 11 sanctions (a motion or allegation can seem more frivolous after a judicial ruling), and assessments of the liability of corporate officers charged with making false predictions about their company's performance (which can look like fraud after the predictions fail to come true).

To test whether judges are susceptible to the hindsight bias, we presented each of the judges who participated in our study with a hypothetical fact pattern based on an actual case. The case involved an appeal from a district court sanction imposed on a prisoner in a *pro se* Section 1983 lawsuit. The materials indicated that the appeal had three possible outcomes: an affirmance, an order vacating the sanction, and a remand for a lesser sanction. The materials then identified one of these three outcomes as the actual outcome and asked the judges to identify which of the three outcomes they would have predicted had they not known the outcome.

Knowing the outcome affected judges' assessments significantly. Judges who were told about a particular outcome were much more likely to have identified that outcome as the most likely one than those who weren't told anything about the outcome. For example, when told that the court of appeals had *affirmed*, 81.5 percent of the judges indicated that they would have predicted

that result. By contrast, only 27.8 percent of those told the court of appeals had *vacated* and only 40.4 percent of those told the court of appeals had *remanded for a lesser sanction* indicated an affirmance was the most likely outcome.

Overall, the sum of the percentage of judges in each of the three conditions who selected the outcome that they were provided as “most likely to have occurred” was 172 percent, whereas it would have been 100 percent if learning the outcome had had no effect on the judges. The judges exhibited a predictable hindsight bias; when they learned that a particular outcome had occurred, they were much more likely to identify that outcome as the most likely to have occurred. Judges, too, have 20/20 vision when they look backward.

Egocentric Biases

People tend to make judgments about themselves and their abilities that are “egocentric” or “self-serving.” People routinely estimate that they are above average on a variety of desirable characteristics, including health, driving, productivity, and the likelihood that their marriage will succeed. Like Lake Wobegone, everyone thinks they are above average, and most think they are right at the top.

Moreover, people overestimate their contributions to joint activities. Following a conversation, for example, both parties will estimate that they spoke more than half the time. Similarly, when married couples are asked to estimate the percentage of household tasks they perform, their estimates typically add up to far more than 100 percent.

Egocentric biases can have an unfortunate influence on the litigation process. Because of these biases, litigants and their lawyers might overestimate their own abilities, the quality of their advocacy, and the relative merits of their cases. These views, in turn, are likely to undermine settlement efforts as each side remains too optimistic about its chances of winning at trial.

Like litigants and lawyers, judges might also be inclined to interpret information in self-serving or egocentric ways. Egocentric biases might make it difficult for judges to realize that they can make mistakes, issue unfair rulings, make choices that reflect personal biases, or even be subject to cognitive illusions of judgment.

To test whether judges are prone to egocentric biases, we asked the judges participating in our study to respond to a simple question. We told them, “United States magistrate judges are rarely overturned on appeal, but it does occur. If we were to rank all of the magistrate judges currently in this room according to the rate at which their decisions have been overturned during their careers, [what] would your rate be?” We then asked the judges to place themselves into the quartile corresponding to their respective reversal rates: highest (>75%), second-highest (>50%), third-highest (>25%), or lowest (lowest 25%). The materials explained the meaning of each quartile in careful detail.

The judges exhibited an egocentric bias. Overall, 56.1 percent of the judges reported that their appeal rate placed them in the lowest quartile; 31.6 percent placed themselves in the second-lowest quartile; 7.7 percent in the second-highest quartile, and 4.5 percent in the highest quartile. In other words, nearly 87.7 percent of the judges believed that at least half of their peers had higher reversal rates on appeal. This pattern of results differs significantly from what one would expect if judges were unbiased.

Discussion

Judges, it seems, are human. Like the rest of us, they use heuristics that can produce systematic errors in judgment. Unlike the rest of us, however, judges’ judgments can compromise the quality of justice that courts deliver. Fortunately, however, litigants, judges, and the legal system as a whole can take steps to minimize the impact cognitive illusions may have on decisionmaking.

First, litigants can take matters into their own hands by pursuing nonadjudicative forms of dispute resolution, like mediation. In an adjudicative process like trial, disputants cede decisionmaking power to a judge who imposes a decision; in a nonadjudicative process like mediation, disputants retain decisionmaking power. It is true that mediators (as well as the disputants) are likely to commit decision errors due to cognitive biases, but mediators, in contrast to judges, have no authority to impose a potentially biased decision on the disputants.

Furthermore, to the extent that judges play into the same biases as anyone else, at least in arbitration (even if it is administered by an ex-judge), parties can exercise some choice over who the judge is, and they can also have a hand in crafting the process by which the arbitrator will make a decision. For example, they can help determine the range of awards or the information available to the arbitrator. Compared to litigation, there is a bit more control.

Second, judges can play a constructive role in improving and ensuring the quality of their decisions. One step judges can take is to make a concerted effort to approach decision problems from multiple perspectives. When evaluating settlement offers, for instance, judges might compare them not only to the status quo, but also to other reference points to minimize the effects that arbitrary frames can have on their decisionmaking.

Another step judges can take is to seek out information likely to improve the accuracy of their decisions. When assessing what damages to award a plaintiff, judges should recognize their vulnerability to anchoring effects and rely not on self-serving damage requests made by plaintiff’s counsel but on damages awarded in prior, similar cases.

Finally, the legal system as a whole can minimize the effects of cognitive illusions on judicial decisionmaking in at least two ways. First, the legal system might reallocate decisionmaking power from judges to juries. Like judges, juries

are prone to cognitive illusions. Unlike judges, however, juries make decisions in groups. Consequently, there are circumstances in which juries are likely to be more resistant than judges to some cognitive illusions.

The second thing the legal system might do to minimize the impact of cognitive illusions on adjudication is to craft legal rules with that purpose in mind. Some rules like this already exist. For example, courts in professional negligence cases (*e.g.*, medical malpractice) assess a defendant's liability based on an *ex ante* standard of conduct (*i.e.*, whether the defendant conformed to the preexisting standard of care) rather than on the *ex post* determinations of "reasonableness" (*i.e.*, whether the defendant behaved reasonably under the circumstances) employed in ordinary negligence cases.

In the end, judges, like all other human beings, will continue to rely on heuristics that may induce decision error. Because of this, additional psychological and legal scholarship devoted to exploring the various ways that the cognitive processes of judges (and other legal actors) have influenced and can and should influence the administration of justice is needed. A greater understanding of these cognitive processes can only improve the legal system.

The preceding is abstracted from an article forthcoming in the Cornell Law Review in May 2001: Chris Guthrie, Jeffrey J. Rachlinski, & Andrew J. Wistrich, "Inside the Judicial Mind: Heuristics and Biases." Chris Guthrie is acting associate dean and associate professor at the University of Missouri School of Law; Jeffrey Rachlinski is associate professor of law at the Cornell Law School; and Andrew J. Wistrich is a U.S. magistrate judge for the U.S. District Court for the Central District of California. The views expressed in this article are solely those of the authors and not of the Federal Judicial Center, the Administrative Office of the U.S. Courts, or the Judicial Conference of the United States.

CASES OF INTEREST

Failure to Join Additional Wrongdoer Does Not Bar Arbitration

Hreshko v. Harleysville Ins. Co., 2001 WL 92400 (N.J.Super.A.D. 2001).

Francis Hreshko was driving his car when he was rear-ended. He sued and recovered from the driver of the car that struck him. An investigation revealed that the second car back, driven by Fernando Coehlo, may have struck the car that struck Hreshko's, causing a second impact.

Hreshko failed to join Coehlo in the lawsuit and instead wanted to collect uninsured motorist insurance (UIM) from Harleysville, his own insurance company. His UIM clause in his policy with Harleysville stated that if either party did not agree on whether the insured is entitled to damages or on the amount of damages, either party can request arbitration.

Harleysville claimed that Hreshko's failure to join Coehlo barred him from arbitration because Hreshko could

have recovered from Coehlo's insurance coverage. The court held that Harleysville was not prejudiced as a result of Hreshko's failure to join Coehlo and allowed arbitration.

Participation Without Objection in Arbitration Waives Right to Vacate Award

Bevona v. Roxanne Management, 2001 N.Y. Slip Op. 00778, 2001 WL 85136 (N.Y.A.D. 1 Dept. Feb. 1, 2001).

Reads Ventures purchased a building and turned its management over to Roxanne Management and Jadam Equities. (All three companies were owned by the same person.) When Reads bought the building, it refused to sign a collective bargaining agreement (CBA) with its employees' union, but it retained almost all of the building's employees even though they were union members.

Juan Mendez was an employee/union member who was fired by Roxanne. He requested arbitration in accordance with his CBA. The arbitration was held, and the arbitrator awarded reinstatement and partial back pay. The management company sought to vacate the award.

The court found that even though Roxanne was not a party to the CBA requiring arbitration, (1) its failure to object to the arbitration in a timely manner and (2) its participation in the process waived any right to object to the process. Moreover, the court found that the award was not indefinite because it could be rationally read in a way consistent with the CBA's back-pay mitigation requirements.

Presumably, Gus Bevona, the nominal plaintiff, is a union representative, but he is never mentioned in the opinion except in the caption!

Arbitration Award Reduced Because of Settlement with Nonparticipating Party

Doig v. Chester, 2001 WL 85535 (Fla.App. 5 Dist.), February 2, 2001.

Mary Chester pursued medical malpractice claims for her husband's death against Halifax Hospital and Dr. Doig, the husband's physician. The hospital settled its lawsuit for \$150,000. Chester and Doig went to arbitration, and the widow was awarded more than \$500,000. The arbitrator's award included \$250,000 in noneconomic damages, the most allowed under Florida statutes.

Doig moved to have his award offset by the amount the hospital paid in its settlement. Chester's agreement to arbitrate confirmed the cap amount and stated that the arbitrator would decide the total damages for her husband's death.

The court held that Chester's settlement established that the hospital would contribute \$150,000 toward the total damages. Because no allocation of fault between the doctor and the hospital was made, they were jointly and severely liable. Thus, the arbitration award is set off by the settlement with the hospital.

Arbitrator May Decide Initial Issue of Whether Insurance Coverage Existed

State Farm Insurance Co. v. Sabato, 2001 WL 95855, (N.J.Super.A.D. 2/6/01).

Three brothers were injured in an automobile accident. The brothers were passengers in their father's car. The father was insured by State Farm. The defendant, Dr. Ulises Sabato, was the assignee of the brothers' claims. Sabato moved for arbitration of the claims.

State Farm commenced an investigation that included interviewing the brothers. Only two of them were available (neither spoke English, although an interpreter was present). The insurer claimed that one brother gave misinformation about his social security number and the other gave answers that were confusing and difficult to understand. State Farm alleged that the fraud on the part of the brothers caused prejudice and that the insurance company should be released from its obligation to arbitrate as a result of the fraud.

The lower court held that since State Farm was unable to investigate the claim adequately and get further accurate information, the claims were barred. Sabato appealed, arguing that the lower court should not have handled the substantive matter of whether the alleged fraud disqualified the brothers from recovery, but, rather, the court should have referred the whole matter to arbitration.

The appellate court held that the state arbitration statute should be read broadly and that arbitration was appropriate for issues dealing with whether there was coverage, whether there was fraud, and what the extent of an injury is as well as the amount of recovery.

Finding No Initial Cause of Harm Properly Signaled Dismissal of Related Claims

Lawhead v. Ulwelling, Hollerud & Schultz, 2001 WL 96159 (Minn. App. 2/6/01), unpublished.

Nancy L. Ulwelling and Tammara D. Lawhead are real estate brokers and members of the Austin Multiple Listing Service (MLS). Ulwelling represented a home seller, and Lawhead represented a prospective buyer. Ulwelling offered a three percent commission to any MLS realtor who procured a buyer. Lawhead presented an offer to Ulwelling, and there was oral acceptance. The offer was contingent on the buyer's ability to obtain financing by the closing date.

The buyers failed to obtain financing by the closing date, and the closing did not occur. Ulwelling never provided a signed purchase agreement showing Lawhead as the procuring agent.

After the closing date had passed, Ulwelling told Lawhead that she and a business partner were thinking about buying the property and renting it to the buyers until the latter could obtain financing, in which case Lawhead would not receive a commission.

Ulwelling offered to sell the property to Lawhead, who could then resell it to her buyers once they could obtain financing. Lawhead said no. Ulwelling bought the house and rented it to the buyers until they eventually purchased the property. Lawhead asked for her three percent "finder's fee," but Ulwelling refused to pay.

Lawhead submitted her claim to binding arbitration under the MLS realtor's contract. The arbitration was limited to the issue of "who was the procurer." A panel of five arbitrators decided that Lawhead was not the procurer and therefore was not entitled to any commission on the sale. A review tribunal affirmed the decision.

Lawhead brought this lawsuit, alleging breach of contract, wrongful interference with contractual relations, and fraud and misrepresentation, requesting vacation of the arbitration award, and demanding payment of the commission and damages for mental suffering and emotional distress.

The court held that since all of the damages were predicated on Lawhead being the procuring agent, all claims had been properly dismissed once there was a finding that she was not the procurer.

Management Rights Nonarbitrable; Terms and Conditions of Employment Arbitrable

Mayor and City Council of Baltimore v. Baltimore City Firefighters, 2001 WL 92362 (Md. App. 2/5/01).

Every year, Baltimore's mayor and city council try to work out a CBA with the city's firefighters regarding the terms of employment. If they can't come to an agreement, they go to arbitration. In 2000, the parties couldn't reach agreement on a final deal, but they also couldn't agree about what to submit to arbitration. The issues were whether it was appropriate to tie the firefighters' raises to those of police officers (a "parity" provision) and whether the union could use its preferred method of selecting who would be promoted (the so-called "rule of one"). That rule conflicts with the city's method of selecting people for promotions.

The court concluded that certain management rights are excludable from a mandate to arbitrate. Here, there was a direct conflict between a city's promotional policies and a proposal by a union to change that policy: The "rule of one" requested by the firefighters required that the person who ranked the highest on the eligibility list be promoted. Such managerial rights are not arbitrable.

On the other hand, arbitration was appropriate for the parties' "parity" issue — since "parity" had been agreed on between the parties in the past and since salary is clearly a "term and condition of employment."

Assignee of Subcontracts Bound by Arbitration Clause

Ohio State Department of Admin. Serv. v. Moody/Nolan Ltd., Ohio App. LEXIS 5759, 2000 WL 1808330 (Ohio App. Dec. 12, 2000).

The Ohio Department of Administrative Services (ODAS) contracted with a number of entities for a building project. The entities included a general contractor, an architect, and several consultants, one of which was the defendant, Moody/Nolan.

After the building project was completed, there were several architectural problems, and ODAS filed a lawsuit. As part of the settlement of its portion of the case, the general contractor assigned all of its rights and claims against its subcontractors to ODAS.

ODAS filed a demand for arbitration against Moody/Nolan and the other subcontractors. Moody/Nolan disputed the assignability and arbitrability of the dispute, raising eight individual legal defenses to the underlying claim. ODAS filed for a stay of arbitration so the court could decide whether the defenses were legally valid.

The court determined that the claims were properly assigned, including the general contractor's right to force the subcontractors to arbitrate, and that the arbitrators, not the courts, should be the ones to rule on the legal defenses. The motion to stay the proceedings was denied, and the case was ordered to arbitration.

OTHER NEWS OF NOTE

New Draft of UMA Out — Comments Welcomed

In early February 2001, the National Conference of Commissioners of Uniform State Laws (NCCUSL) released its latest draft of the Uniform Mediation Act (UMA). Various earlier drafts of the UMA have created a stir in the dispute resolution community, with some observers concerned about its effect on such core issues as mediation confidentiality. More recent drafts have addressed most concerns, and the NCCUSL expects completion in the near future.

The NCCUSL's drafting committee welcomes comments. You can reach the reporters at the following places: Nancy Roger, rogers.23@osu.edu, Ohio State University, 203 Bricker Hall, 190 North Oval Mall, Columbus, OH 43210, (614) 292-5881 and (614) 292-3658 (fax); Richard Reuben, ReubenR@missouri.edu, University of Missouri-Columbia School of Law, Hulston Hall, Columbia, MO 65211, (573) 884-5204, and (573) 882-3343 (fax).

Look for a lengthier discussion of the UMA in these pages in the coming months.

New York Arbitration Plan for Attorneys' Fees Disputes in Place

In January 2001, the New York Court of Appeals announced the implementation of a program by which all disputes over attorneys' fees in noncriminal matters will be decided by binding arbitration. The program will take effect on June 1, 2001. Other states with similar programs include Alaska, California, Georgia, Maine, Montana, South Carolina, and Wyoming. For more information, see *U.S. Law Week*, Vol. 69, No. 29, p. 2454.

Feingold Bill Would Invalidate All Predispute Consumer Credit Arbitration Clauses

On January 25, 2001, Senator Russell Feingold of Wisconsin introduced Senate Bill 192, which, if passed, would invalidate all predispute arbitration clauses in consumer credit contracts (*e.g.*, credit cards and revolving credit lines). Postdispute arbitration would be unaffected.

Feingold has introduced similar bills in the past, none of which has passed. He remains a vocal opponent of mandatory arbitration but seems to be a lone voice in a body that believes, as so many do, that mandatory arbitration is appropriate when the initial contract was entered into freely.

SB 192 is headed to the Senate Judiciary Committee. As of this writing, no hearing date had been set.

WORTH READING

The Handbook of Conflict Resolution: Theory and Practice

Reviewed by Richard Birke

Some years ago, Roger Fisher, one of the authors of the classic *Getting to Yes*, said that conflict was a growth industry. Of course, this statement could have been made anytime in the history of humankind and still be true.

What Fisher might have said that would have been equally true is that the study of conflict is a growth industry. Some 25 years ago, there were almost no law school courses on negotiation or mediation. Today, virtually every law school has multiple courses — negotiation, mediation, arbitration, survey courses in alternative dispute resolution, and more.

At the dawn of the 21st century, lawyers understand that most cases settle and that negotiation and mediation are not alternative ways to resolve conflict. They are the mainstream ways, and trials are quickly becoming artifacts of a different time, one in which the courts were available to try civil cases of less importance than *Bush v. Gore*.

With this sea change in the way conflict is handled has come the attendant understanding that conflict resolution is a multifaceted enterprise. Conflict resolution is about more

than law. The field is highly multidisciplinary, with important contributions to our understanding emerging from such fields as social and cognitive psychology, economics, history, sociology, law, cultural anthropology, and linguistics. There are practitioners and theoreticians — and people whose mission it is to bridge the gaps between those two fields.

Once in a while, someone has the chutzpah to try to capture a broad slice of the complex spectrum of our emerging field in a single text. *The Handbook of Conflict Resolution* is just such a work and is destined to become a classic of our times. Editors and authors Morton Deutsch and Peter T. Coleman have collected a fabulous set of works and knit them together in a single volume that is already inspiring teachers, researchers, and practitioners to reexamine the field they thought they knew and understood.

Indeed, by the time this book review is in print, a group of more than 50 academics from around the country and from a variety of disciplines will have gathered for a two-day conference in Boston to discuss ways to bring the themes from this powerful book into their classrooms and into the lives and practices of those who toil in the field.

The last time I can recall such an event taking place was more than a decade ago, when the Stanford Center on Conflict and Negotiation held two conferences on the book *Barriers to Conflict Resolution*. That text was superb but highly theoretical, with little for the practitioner. And the conferences' focus was on increasing the understanding of the multidisciplinary nature of the field, not on adapting the work into a teaching tool. How far we have come in 10 short years when a book can be deeply theoretical and multidisciplinary and its readers' first instinct is to see it as imminently practical.

The book consists of eight sections containing an introduction, 27 chapters, and a concluding overview written by nearly 40 authors. The book is far too dense to cover in a single month's review, so I will take three months in a vain attempt to do the work justice. Even at that pace, I expect to merely scratch the surface of this remarkable work. So don't worry — after reading the review(s), you'll still need to go get the book to appreciate the knowledge it contains.

This month, I'll describe the book's contents and touch on the introduction. In the coming months, I will cover the actual content of the 27 chapters and the summary. The eight sections are as follows:

- Part One — interpersonal and intergroup processes — contains chapters on cooperation and competition, justice and conflict, constructive controversy (and the value of intellectual opposition), trust, trust development and trust repair, power and conflict, communication and conflict, persuasion in negotiation and conflict situations, intergroup conflict, and problem solving and decisionmaking in conflict resolution.
- Part Two — intrapsychic processes — contains chapters on judgmental biases in conflict resolution (and how to

overcome them), anger and retaliation in conflict (the role of attribution), and self-regulation in the service of conflict resolution.

- Part Three — personal differences — contains chapters on process and outcome goals orientations (the importance of framing), personality and conflict, and the development of conflict resolution skills in children.
- Part Four — creativity and change — contains chapters on creativity and conflict resolution (the role of point of view), guidelines for developing a creative approach to conflict, change processes and conflict, and learning through reflection.
- Part Five — difficult conflicts — contains chapters on aggression and violence and intractable conflicts.
- Part Six — culture and conflict — contains a chapter with the section title and one on cooperative and competitive conflict in China.
- Part Seven — models of practice — contains chapters on teaching conflict resolution skills in a workshop, mediation, and managing conflict through large group methods.
- Part Eight — looking to the future — contains a chapter that provides a framework for thinking about research on conflict resolution training and the concluding overview.

The book's introduction starts with snapshots of three different conflicts, each quite different, but each highlighting the complexity of the field. A husband and wife are deep in conflict and contemplating a divorce; a school system is in disarray because the district's supervisory team has been assembled with almost no minority representation in a school district in which 75 percent of the students are nonwhite; and Northern Ireland remains embroiled in bitter war after decades of strife.

What do these conflicts have in common? Quite a bit, according to Deutsch. They all implicate questions related to cooperation and competition, the desire for social justice, party motivation and needs, trust and distrust, communication patterns and skills, attribution processes, persuasion, self-control, power, the potential for psychic and physical violence, judgmental biases, personality, cognitive development, problem-solving skills, creativity, intergroup conflict, culture, intractability, the use of third parties as helpers, factions in groups, the possibility that conflict can be constructive, and the essentially Western view we have of conflict and conflict resolution. All of these questions are addressed in one or more chapters of the book. With that in mind, it's a surprise that the book is only 27 chapters long.

Deutsch does more than merely give examples and frame questions in the introduction. He also discusses differences in the orientations of theoreticians and practitioners, noting that the former prefer analytical approaches while the latter prefer approaches that synthesize material into useful

paradigms. The former are skeptical and the latter pragmatic. The former like enduring truths, and the latter prefer useful ones. And there is more.

The introduction concludes with a marvelous but brief history of psychological theorizing about conflict. Starting with Darwin, Marx, and Freud, this section discusses how conflict study was all about the destructive or competitive aspects of conflict. Next came Kurt Lewin and his ideas about how conflict was a tension between positive and negative stimuli. Game theory emerged in the 1940s, and then the action zooms forward to the present day, with the introduction concluding with eight questions characterizing the past 55 years:

- (1) When is conflict productive, and when is it destructive?
- (2) What leads one party to do better than another?
- (3) What determines the nature of an agreement?
- (4) How can third parties help resolve conflicts?
- (5) How can people learn to manage conflicts constructively?
- (6) What is the appropriate timing and intervention in protracted conflict?
- (7) Why are ethnic, religious, and identity conflicts so hard?
- (8) Are Western theories of conflict resolution applicable to the rest of the world?

And that's just the introduction! Join me next month for the second installment of my three-part review of this marvelous work.

Call for Articles

The JAMS *Dispute Resolution Alert* is always on the lookout for articles or stories of interest to the dispute resolution community. If you have something that you think might be of interest, let us know. It never hurts to ask. Send an e-mail with your idea or article to rbirke@willamette.edu. Who knows? The appearance of your article in these pages might make you a star (or a bigger star than you already are).