Predictable Misjudgment: How Intuition Misleads Lawyers, Judges, and Others

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Predictable Misjudgment

• Professionals commonly rely too heavily on their intuition when making decisions

• Although intuition is surprisingly accurate, it is a common source of mistakes
Intuitive Versus Deliberative Judgments

• Intuitive Judgments rely on association and emotion

• Deliberative judgments involve the application of rules, mathematical calculations and deductive logic
The Problem With Intuition

- Fast
- Confident
- Unconscious
Question #1

A bat and a ball cost $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost?
Answer #1

A bat and a ball together cost $1.10. The bat costs $1.00 more than the ball. How much does the ball cost?

Intuition: 10 ¢
Answer: 05 ¢
Question #2

If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets?
Answer #2

- If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets?

  Intuition: 100 minutes
  Answer: 5 minutes
Question #3

In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?
Answer #3

• In a lake, there is a patch of lily pads. Every day the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?

Intuition: 24 days
Answer: 47 days
CRT: Three Basic Findings

1. Even though the questions are not difficult, most people get most of them wrong.

2. The wrong answer most commonly chosen tends to be the intuitive one.

3. Those who get a problem wrong tend to think it an easier problem than those who get it right.
Triggering Intuition in Laws & Judges

• Methodology
• Results
  – Intuition in judges
  – Intuition in lawyers
  – Intuition in insurance executives
Intuition in Judges: Example #1

- 136 Trial Judges at National Conference in US
- Criminal sentencing decision
- Defendant stabbed victim to death after victim taunted him about fiancé
- Defendant is guilty of voluntary manslaughter
- Without regard to your jurisdiction, what is the appropriate sentence?
Sentencing Format Variation

_____ /Years

_____ /Months
Average Sentencing by Format

98th Dies Natalis
Intuition in Judges: Example #2

- Case involving the firing of a secretary who because of her racial ancestry

- Only damages are for “mental anguish” arising from being called names in front of her co-workers and her daughter and being fired for complaining about this treatment
2 Versions

- Plaintiff asserts that she recently saw a case similar to hers on a “court television show where the plaintiff received a compensatory damage award for mental anguish.”

- Plaintiff asserts that she recently saw a case similar to hers on a “court television show where the plaintiff received a compensatory damage award of $415,300 for mental anguish.”
Irrelevant Numeric Anchor: Results
(Median Award, in $ thousand)

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Intuition in Lawyers

- Breach of contract case
- Allegation that a manufacturer delivered defective machines
- Close case—50% chance the purchaser would win $1,000,000 at a costly trial
- Manufacturer offers to settle for $480,000
The Sunk Cost

• 2 versions:
  – Already spent $90,000
  – Already spent $430,000

• As compared to $480,000 settlement
Sunk Cost: Results (% Rejecting Settlement)

98th Dies Natalis
Intuition in Insurance Executives

- 2 Hospitals each have a malpractice rate of 1 in 200 surgeries
- Small Hospital: 1500 surgeries per year
- Large Hospital: 4500 surgeries per year
2 Hospitals Problem

• At which hospital is it more likely that the rate of malpractice claims will exceed 1% per surgery in any given year?
  – Small Hospital
  – Large Hospital
  – Both are equally likely
2 Hospitals: Answer

The Small Hospital!

The small hospital is 3,000 times more likely to have an excess number of claims (3/1000 versus 1/1,000,000)
Neglect of Sample Size: Results Among Insurance Lawyers

Small: 17%
Large: 14%
Same: 69%
Neglect of Sample Size: Results among Reinsurance Execs

Small: 22%
Large: 19%
Same: 59%
Conclusions

• Intuitive thinking can lead professionals astray, even in legal contexts in which they are expert

• Mechanisms to engage slow deliberative strategies are essential to quality decision making