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Heuristics and Biases at the Bargaining Table

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Editors' Note: *So you still think that negotiation is based on "rational" thought? This chapter describes several key aspects of psychology and economics which impact our behavior—whether we like it or not and whether we know it or not. The authors summarize extensive work on how cognitive biases and other "non-rational" decision-making can be recognized, and then used to help reach the agreement you want.*

Negotiation is an inherently *interpersonal* activity that nonetheless requires each participant to make *individual* judgments and decisions. Each negotiator must evaluate a proposed agreement, assess its value and the value of alternative courses of action, and ultimately choose whether to accept or reject the proposal.

The interdisciplinary field of "decision theory" offers both a normative account (how individuals *should* act) and descriptive accounts (how individuals *do* act) of decision-making. According to the normative model, negotiators should compare the subjective expected value of an agreement to the subjective expected value of non-agreement, taking into account such factors as risks, differential transaction costs, and reputational and relational consequences of each possible course of action.[1] Once a negotiator has calculated the expected value of each course of action, the negotiator should then select the one that promises the greatest return.[2] [Senger, *Risk*]

There is less agreement about whether negotiators actually make decisions consistent with this approach. Proponents of descriptive or "positive" models based on "rational choice theory" assume that negotiators will invest optimally in the amount of information needed for decision-making, draw accurate inferences from the information they acquire, and then select the option that maximizes their expected utility. In short, proponents of the rational choice-based models assume that negotiators will make choices consistent with the normative model.

Skeptics of rational choice-based models argue that negotiators rarely behave this "demonically."[3] Instead, negotiators routinely employ more intuitive approaches to judgment and choice that rely on a variety of "heuristics" or mental shortcuts to reduce the complexity and effort involved in the reasoning process.[4] While some researchers

believe that negotiators intentionally employ such heuristics to economize on the time and effort required to make decisions, others believe that reliance on heuristics is unconscious. In all likelihood, there is truth in both perspectives; that is, negotiators rely on heuristics intuitively and unconsciously in some circumstances and consciously employ heuristics in others. Either way, negotiators should appreciate the important role that heuristics are likely to play in their decision-making—and in the decision-making of their counterparts—at the bargaining table.

In this chapter, we examine the role of heuristics in negotiation from two vantage points. First, we identify the ways in which some common heuristics are likely to influence the negotiator's decision-making processes. Namely, we discuss anchoring and adjustment, availability, self-serving evaluations, framing, the status quo bias, and contrast effects.[5] Understanding these common heuristics and how they can cause negotiators' judgments and choices to deviate from the normative model can enable negotiators to reorient their behavior so it more closely aligns with the normative model or, alternatively, make informed choices to take advantage of the effort-conserving features of heuristics at the cost of the increased precision that the normative approach offers. Second, we explore how negotiators might capitalize on the knowledge that their counterparts are likely to rely on heuristics in their decision-making processes. We consider, in other words, how negotiators can exploit heuristic reasoning on the part of others for personal gain.

Understanding Negotiator Judgment and Decision-Making

When deciding whether to accept or reject an actual or anticipated set of deal terms, a negotiator must perform two cognitive tasks. First, the negotiator must evaluate the content of the available options, a task we can loosely call "judgment." For example, a negotiator contemplating the purchase of a particular business must try to evaluate the market value of the business's assets, determine what percentage of the business's current clients will be retained in case of a change of ownership, estimate how much profit the business will earn in the future, and evaluate the likelihood that the negotiator would find a similar business to purchase if the negotiator opted not to purchase this one. From this perspective, judgment involves a search for facts about the world.

Second, the negotiator must determine which available option he prefers, a task we can call "choice." For example, would he rather purchase the business under consideration for a specific price or reject such a deal in favor of continuing his search, thus taking a chance that he will find an equally desirable business at a lower price or a more desirable business at the same price?

In performing both of these tasks—i.e., judgment and choice—the rational negotiator *should* evaluate options and make decisions consistent with the normative model of choice. However, both social science research and common experience suggest the negotiator's decision-making processes will often depart from the normative model.

Judgment

Negotiators cannot know the objective values and probabilities of every option they might consider before reaching a negotiated outcome. Thus, to estimate the values and probabilities associated with each option, negotiators are likely to rely on heuristics. Heuristics often enable negotiators to make good judgments in a "fast and frugal" manner.[6]

On other occasions, heuristics prove to be poor substitutes for more complex reasoning and result in decisions that fail to best serve the negotiator's interests.

Anchoring and Adjustment

One heuristic approach to judgment that can lead to suboptimal results is known as "anchoring and adjustment." To estimate the value of an option, negotiators are likely to start with the value of a known option, the "anchor," and then adjust to compensate for relevant differences in the character of the known and unknown item.[7]

For example, a negotiator buying a business might estimate its future profits by starting with the known profits recently earned by a similar business and then adjusting his estimate based on the fact that the known business has fewer current clients and higher labor costs than the subject of the negotiation. Alternatively, the negotiator might base his estimate on the profits earned by the business in question the previous year and then adjust his estimate of next year's profits based on changing market conditions or the presence of new competitors. Although adjusting from a known anchor is a useful approach to making a judgment, experimental evidence indicates that people often fail to adjust sufficiently away from the initial "anchor." In other words, negotiators who rely on this heuristic will often undervalue the differences between the known and unknown values.

In addition, especially when numerical estimates are necessary, individuals sometimes anchor on values that are largely, or even completely, irrelevant. In one well-known example, subjects estimated that the average annual temperature in San Francisco was higher after first being asked if it was higher or lower than 558 degrees![8] In an example more obviously relevant to negotiation, we found that the opening offer in a litigation settlement negotiation can affect the recipient's judgment of a subsequent final offer even when the opening offer does not convey relevant information.[9]

Whether a negotiator bases a judgment on an inappropriate anchor or on an appropriate anchor from which he fails to adjust sufficiently, the negotiator's resulting judgment will often be less accurate than it would have been in the absence of that anchor. Returning to our original hypothetical, depending on the anchor consulted, the negotiator could make a suboptimal estimate of the profits the target business is likely to achieve the next year.

Availability

When an option could have a variety of consequences rather than a single certain outcome—for example, if the negotiator enters an agreement to buy the business under consideration, the business might make a large profit or, alternatively, it might go bankrupt—the negotiator will often evaluate the likelihood of the various possible outcomes based on the ease with which they come to mind. Negotiators who make judgments based on how mentally *available* the possible results are, rather than their estimated statistical likelihoods, use a method of judgment known as the "availability" heuristic.[10]

Basing judgment on the availability of outcomes is a reasonable, time-saving device that will often yield acceptable outcomes because availability is often correlated with frequency. But when the available outcomes are not typical, or when there are important differences between the past and future circumstances, the heuristic can lead to flawed predictions. For example, a negotiator evaluating the prospects of entrusting his or her

lawsuit to a jury for the purpose of deciding whether to accept a settlement offer might overestimate the likelihood of winning punitive damages at trial if he recalls a recent multi-million dollar verdict in a tobacco lawsuit publicized in the news, because the media exposure afforded to that particular verdict does not reflect how atypical it actually is.[11]

Self-Serving Evaluations

Substantial evidence indicates that individuals are particularly likely to make judgments in ways that confirm pre-existing belief structures,[12] assume high degrees of personal agency in the world,[13] and create a positive presentation of self.[14] This tendency will often result in judgments compromised by what is called the "self-serving" or "egocentric" bias.[15]

A plethora of studies demonstrate that individuals often judge uncertain options as more likely to produce outcomes that are beneficial to them than an objective analysis would suggest.[16] Depending on the specific context, the bias could cause negotiators to overestimate either the likely benefits that would result from reaching a negotiated agreement or the likely benefits that would result from rejecting a proposed agreement and pursuing an alternate course of action. In one study, for example, George Loewenstein and his colleagues assigned some experimental subjects to the role of plaintiff and others to the role of defendant and then asked each to judge the value of the lawsuit based on the very same information.[17] Plaintiff subjects estimated that a judge would award the plaintiff substantially more money should the case go to trial than the defendant subjects estimated, suggesting that, on average, subjects' judgments of the merits of their positions were inflated.[18]

Choice

After judging the objective attributes of available options, negotiators must eventually make a choice between them. Normative models assume that negotiators will make choices based on a comparison of the expected values of each option; the decision theory literature suggests that choices often fail to reflect this reasoning process.

Framing of Risky Choices

When choosing between an option with a known outcome and one with an uncertain outcome, individuals often consider not only the expected value of each choice but also whether the possible outcomes appear to be "gains" or "losses" relative to a reference point.[19] In the standard case, individuals tend to exhibit risk aversion when choosing between an option that promises a certain gain and one that has a chance of resulting in a greater gain but risk-seeking tendencies when choosing between an option associated with a certain loss and one with a probabilistic chance of a larger loss.[20]

These findings suggest that if agreement will generate a certain outcome (such as the settlement of a lawsuit for a fixed sum of money) and non-agreement will leave the negotiator to pursue a risky alternative (such as a trial with a probability of winning a large sum and a probability of winning nothing), the negotiator's choice between agreement and impasse could depend on whether her base of comparison for evaluating the decision options is the status quo or some other reference point, such as a prior state of affairs or her aspiration level. For example, a plaintiff in a lawsuit who believes she has a

fifty percent chance of prevailing at trial and can demonstrate damages of $100,000 would probably accept a settlement offer of $50,000 if she evaluates the choice from the perspective of her current financial position, in which she has no money. From this perspective, settlement represents a certain gain and litigation represents a probabilistic but risky chance at achieving a larger gain. However, the same plaintiff would be more likely to reject the settlement if she evaluates her options using the reference point of the $100,000 that she used to have or believes she deserves. From this perspective, a $50,000 settlement represents a certain loss of $50,000, whereas continued litigation offers the risk of a larger loss but the possibility of prevailing and thus avoiding the perceived loss entirely.

The Status Quo Bias

Individuals generally prefer an option if it is consistent with the status quo.[21] Often, we prefer the status quo because we receive more utility from the current state of affairs than we expect to receive from some other state of affairs, suggesting that the status quo bias is consistent with the normative model of choice. In other circumstances, however, reliance on this heuristic can lead decision-makers to make choices that depart from the normative model. The status quo bias suggests that, all other things being equal, negotiators will prefer their initial endowments over endowments they might hope to receive through exchange,[22] that they will favor deal terms that are consistent with legal default rules,[23] and that they will prefer terms of trade that are conventional for the type of bargain that is at issue.[24]

Evidence of the status quo bias suggests that negotiator choice can depend on the negotiator's particular perception of the status quo. Consider, for example, a customer whose car lease is about to expire and who is evaluating the car dealer's offer to sell the car to him for $10,000. The customer's choice between accepting the offer and rejecting the offer (and shopping elsewhere for transportation) could conceivably be effected by whether the customer's perception of the status quo is (a) that he does not own a car or (b) that he operates the leased car. Both descriptions of the world are factually accurate, but the customer is more likely to purchase the car if he focuses on the latter rather than the former because doing so would be consistent with the latter vision of the status quo but not the former.

Contrast Effects

Evidence also suggests that choice can depend on the full range of options available to the decision-maker, even when the normative model suggests that the availability of certain options should be irrelevant. Researchers investigating such "contrast effects"[25] have demonstrated, for example, that individuals are more likely to select an option in the presence of a similar, inferior option than in the absence of the inferior option.[26] In one illustrative experiment, Itamar Simonson and Amos Tversky found that 28% more subjects chose an elegant Cross pen when they were also offered the alternative choices of $6 in cash or an inferior pen than when subjects were offered only the choice between the Cross pen and the $6 in cash. That is, the availability of the inferior pen substantially increased the likelihood that subjects would choose the Cross pen over the $6.[27] The implication is that a negotiator's preference for one agreement possibility over another, or for a proposed agreement over an outside alternative, might depend on whether oth-

er options that make the proposed agreement appear desirable in contrast are also considered as part of the calculus.[28]

In some contexts, the presence of a third option, C, could logically affect a decision-maker's preference for A versus B, because C provides information about the quality of A or B. But if C sheds no new light on A or B, any impact it has on the A versus B decision would violate the normative model of choice. As Mark Kelman and his colleagues explain, an individual who prefers chicken to pasta might rationally change her preference to pasta upon learning that veal parmesan is on the menu because "the availability of veal parmesan on the menu might [indicate] that the restaurant specializes in Italian [food]."[29] But "[a] person who prefers chicken over pasta should not change this preference on learning that fish is also available."[30]

Influencing Negotiator Judgment and Decision-Making

Negotiators who recognize that their counterparts are likely to rely on heuristics when making the types of judgments and choices commonly required in bargaining settings can use this knowledge to increase the likelihood both of securing agreements and of securing agreements on highly favorable terms. This section briefly outlines some ways in which a negotiator can make use of heuristic reasoning to influence her counterpart's judgment and choices. We rely heavily on litigation bargaining anecdotes as examples, but the concepts can be employed just as effectively in other negotiation contexts.

Influence Through Anchoring

The anchoring and adjustment heuristic suggests that a negotiator can affect her counterpart's judgment of the quality of a proposed agreement if she can dictate the content of the anchor. In commercial negotiations, where monetary values are usually the bargaining currency, a monetary figure that appears even superficially related to the subject of the negotiation can affect one's counterpart's judgments.

In litigation bargaining, the settlement versus adjudication decision rests in large part on the negotiator's judgment of what a court would award the plaintiff should settlement negotiations fail. Because adjudication results are notoriously difficult to predict, the plaintiff's lawyer has a clear opportunity to improve his chances of convincing the defendant to choose settlement at a favorable price over adjudication (and vice versa for the defendant's lawyer) by manipulating the defendant's evaluation of adjudication. Of course, the plaintiff's lawyer might accomplish this by persuasive argumentation. He might also accomplish this by exposing the defendant to a high anchor—perhaps by making a very high initial settlement demand. Even if the defendant immediately rejects the high demand, the demand could anchor the defendant's prediction of a jury verdict, making that "judgment" higher than it otherwise would be, and thus increasing the likelihood that the defendant would choose a somewhat lower settlement demand over the adjudication alternative.

Several pieces of experimental evidence support this contention. Researchers have found, for instance, that those who open with an extreme demand may be more likely to reach agreement;[31] that those who open with extreme demands may be more likely to receive larger settlements;[32] and that extreme demands are likely to influence mock jurors' assessments of the value of a plaintiff's case.[33]

Influence Through Availability

Recall that the availability heuristic causes probability estimates of outcomes to be influenced by the mental availability of similar prior outcomes. That an outcome's availability is not always highly correlated with its frequency offers an opportunity for exploitation in bargaining. A negotiator can increase the chances that her counterpart will accept a proposed agreement favorable to the negotiator if the negotiator can increase the availability in the counterpart's mind of outcomes that are favorable to the negotiator and unfavorable to the counterpart.

As we identified in the context of the anchoring and adjustment heuristic, the best opportunity to exploit the availability heuristic is when negotiation decision-making requires probabilistic judgments of highly uncertain events, such as outcomes of adjudication. By drawing the defendant's attention to large verdicts in recent cases that bear at least a surface similarity to the case at hand, for example, the plaintiff's lawyer might increase the defendant's prediction of the likelihood that a jury would return a large plaintiff's verdict. This might, in turn, induce the defendant to accept a settlement offer that he would otherwise reject.

Influence Through Framing

The effect of frames on risky choices suggests that a negotiator's choice between a certain option, such as a litigation settlement agreement, and a probabilistic option, such as adjudication, will depend in part on the reference point from which she compares the two options. Assuming that the options have a similar perceived expected value, she is more likely to choose the certain choice if the options appear favorable (i.e., look like gains); if the options appear unfavorable (i.e., look like losses), she is more likely to prefer the risky choice. A negotiator can therefore increase the likelihood that her counterpart will accept a settlement proposal if she can cause the counterpart to select a reference point that makes settlement look positive.

In litigation, for example, a plaintiff is likely to perceive both settlement and the expected value of a judgment at trial as gains relative to the current state of affairs, while a defendant is likely to view both options as losses. Thus, we would predict that a defendant is more likely than a plaintiff to reject a settlement proposal that is roughly equivalent to the expected value of trial.[34] A plaintiff who wishes to maximize the likelihood that the defendant will accept such a proposal, or even one more favorable to the plaintiff, can do so by attempting to reframe the options.

Specifically, the plaintiff might try to induce the defendant to compare his available options not to the status quo but to a different reference point that will make those options seem more attractive. For example, she might try to persuade him to compare his options to a realistic worst-case outcome at trial. Relative to that reference point, a settlement is likely to look like a "gain," which should make the idea of paying the certain settlement appear more attractive.

Influence Through Contrast Effects

A negotiator familiar with contrast effects will recognize that her counterpart is likely to evaluate an option more favorably if a similar but inferior option is available. The negotiator might thus be able to increase the likelihood that her counterpart will select a particular proposal if a similar but inferior proposal is offered in the alternative.

Suppose, for example, that a fired employee files suit against a company for which she used to work, asserting employment discrimination claims under Title VII. Suppose further that the defendant has offered to pay the plaintiff $30,000 cash to settle the case but that the plaintiff is wavering because trial holds some appeal. Assuming that the defendant wants the plaintiff to accept the $30,000 settlement offer, what might defense counsel do to encourage her to accept it?

In lieu of the $30,000 lump sum payment defense counsel might offer to donate $30,000 to the charity of the plaintiff's choice, offer $30,000 in merchandise to the plaintiff, or offer to pay her $10,000 per year for three years. Research on contrast effects suggests that the presence of any of these alternative options should make the $30,000 cash offer seem more attractive by comparison than it would appear standing alone. This, in turn, should increase the likelihood that the plaintiff will choose to accept the settlement proposal and forego trial.

Conclusion

Negotiators often lack control over the identity of their counterparts, the issues under consideration in a negotiation, and the bargaining environment. They do enjoy control over how they make decisions, however. By understanding typical patterns in judgment and choice, the negotiator can exercise that control effectively and even exercise some control over how her counterpart makes decisions as well.

Endnotes

This chapter is adapted from Russell Korobkin & Chris Guthrie, *Heuristics and Biases at the Bargaining Table*, 87 MARQUETTE LAW REVIEW 795 (2004).

[1] *See, e.g.,* RUSSELL KOROBKIN, NEGOTIATION THEORY AND STRATEGY 43-50 (2002).

[2] *See, e.g., id. See also* MAX H. BAZERMAN & MARGARET A. NEALE, NEGOTIATING RATIONALLY 1 (1992). The normative approach, while widely accepted, does have its detractors. *See, e.g.,* Gerd Gigerenzer & Peter M. Todd, *Fast and Frugal Heuristics: The Adaptive Toolbox, in* SIMPLE HEURISTICS THAT MAKE US SMART 3, 5 (Gerd Gigerenzer, et al. eds., 1999) [hereinafter SIMPLE HEURISTICS].

[3] Gigerenzer & Todd, *supra* note 2, at 5.

[4] Amos Tversky and Daniel Kahneman introduced the "heuristics and biases" program into the literature on judgment and decision-making. *See, e.g.,* Thomas Gilovich & Dale Griffin, *Introduction—Heuristics and Biases: Then and Now, in* HEURISTICS AND BIASES 1 (Thomas Gilovich, et al. eds., 2002) [hereinafter HEURISTICS AND BIASES]. In their initial formulation, Tversky and Kahneman explained that "people rely on a limited number of heuristic principles which reduce the complex tasks of assessing probabilities and predicting values to simpler judgmental operations. In general, these heuristics are quite useful, but sometimes they lead to severe and systematic errors." Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases,* 185 SCIENCE 1124(1974) [hereinafter Tversky & Kahneman, *Heuristics].*

[5] In their initial formulation, Tversky and Kahneman identified three basic heuristics—representativeness, availability, and anchoring and adjustment. *See* Tversky & Kahneman, *Heuristics, supra* note 4. More recently, Kahneman and Frederick have argued that the three basic heuristics are representativeness, availability, and the affect heuristic. Daniel Kahneman & Shane Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, *in* HEURISTICS & BIASES, *supra* note 4, at 53, 56. Nonetheless, most decision researchers use the terms "heuristics and biases" loosely to include several mental shortcuts that decision-makers are likely to make. *See, e.g.,* HEURISTICS AND BIASES, *supra* note 4; JUDGMENT

UNDER UNCERTAINTY: HEURISTICS AND BIASES (Daniel Kahneman, Paul Slovic & Amos Tversky eds., 1982).

[6] *See, e.g.,* Jean Czerlinski, et al., *How Good are Simple Heuristics, in* SIMPLE HEURISTICS, *supra* note 2, at 97; Jorg Reiskamp & Ulrich Hoffrage, *When Do People Use Simple Heuristics, and How Can We Tell?, in* SIMPLE HEURISTICS, *supra* note 2, at 141.

[7] *See* Tversky & Kahneman, *Heuristics, supra* note 4.

[8] SCOTT PLOUS, THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING 146 (1993) (referring to an unpublished study by George Quattrone and colleagues).

[9] *See* Russell Korobkin & Chris Guthrie, *Opening Offers and Out-of-Court Settlement: A Little Moderation May Not Go a Long Way,* 10 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 1, 11-13, 18-19 (1994).

[10] *See* Tversky & Kahneman, *Heuristics, supra* note 4.

[11] The availability heuristic is quite similar to what is sometimes called the "salience" or "vividness" heuristic. *See, e.g.,* RICHARD NISBETT & LEE ROSS, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT 8 (1980).

[12] *See, e.g.,* Charles G. Lord, et al., *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence,* 37 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 2098, 2102 (1979).

[13] *See, e.g.,* Neil D. Weinstein, *Unrealistic Optimism About Future Life Events,* 39 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 806, 814 (1980).

[14] *Id.*

[15] *See, e.g.,* Michael Ross & Fiore Sicoly, *Egocentric Biases in Availability and Attribution,* 37 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 322 (1979).

[16] *See, e.g.,* Lynn A. Baker & Robert E. Emery, *When Every Relationship Is Above Average: Perceptions and Expectations of Divorce at the Time of Marriage,* 17 LAW & HUMAN BEHAVIOR 439, 441-43 (1993) (finding that recently married couples expect that they will not get divorced, despite knowing the divorce rate); Ross & Sicoly, *supra* note 15, at 324-26 (finding that people overestimate their relative contributions to conversations and their relative contribution to housework); Weinstein, *supra* note 13, at 809-11 (finding that people routinely overestimate how healthy they are relative to others).

[17] *See* George Loewenstein, et al., *Self-Serving Assessments of Fairness and Pretrial Bargaining,* 22 JOURNAL OF LEGAL STUDIES 135 (1993).

[18] *Id.*

[19] This observation is derived from Daniel Kahneman and Amos Tversky's "prospect theory." *See generally* Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk,* 47 ECONOMETRICA 263 (1979).

[20] *See* Daniel Kahneman, *Reference Points, Anchors, Norms, and Mixed Feelings,* 51 ORGANIZATIONAL BEHAVIOR & HUMAN DECISION PROCESSES 296 (1992).

[21] *See* Russell Korobkin, *The Endowment Effect and Legal Analysis,* 97 NORTHWESTERN UNIVERSITY LAW REVIEW 1227, 1231-42 (2003).

[22] *See, e.g.,* Daniel Kahneman, et. al., *Experimental Tests of the Endowment Effect and the Coase Theorem,* 98 JOURNAL OF POLITICAL ECONOMICS 1325 (1990).

[23] Russell Korobkin, *The Status Quo Bias and Contract Default Rules,* 83 CORNELL LAW REVIEW 608 (1998).

[24] Russell Korobkin, *Inertia and Preference in Contract Negotiation: The Psychological Power of Default Rules and Form Terms,* 51 VANDERBILT LAW REVIEW 1583 (1998).

[25] *See* Joel Huber, et al., *Adding Asymmetrically Dominated Alternatives: Violations of Regularity and the Similarity Hypothesis,* 9 JOURNAL OF CONSUMER RESEARCH 90 (1982).

[26] *Id.*

[27] Itamar Simonson & Amos Tversky, *Choice in Context: Tradeoff Contrast and Extremeness Aversion,* 29 JOURNAL OF MARKETING RESEARCH 281, 287 (1992).

[28] *See* Chris Guthrie, *Panacea or Pandora's Box?: The Costs of Options in Negotiation,* 88 IOWA LAW REVIEW 601, 617-19 (2003).

[29] Mark Kelman, et al., *Context-Dependence in Legal Decision Making,* 25 JOURNAL OF LEGAL STUDIES 287 n.2 (1996).

[30] *Id.* at 287.
[31] *See* Korobkin & Guthrie, *supra* note 9.
[32] *See* Adam D. Galinsky & Thomas Mussweiler, *First Offers as Anchors: The Role of Perspective-Taking and Negotiator Focus,* 81 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 657 (2001).
[33] *See, e.g.,* Dale W. Broeder, *The University of Chicago Jury Project,* 38 NEBRASKA LAW REVIEW 744, 756 (1959); Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, The More You Get: Anchoring in Personal Injury Verdicts,* 10 APPLIED COGNITIVE PSYCHOLOGY 519, 526-27 (1996).
[34] Jeffrey J. Rachlinski, *Gains, Losses, and the Psychology of Litigation*, 70 SOUTHERN CALIFORNIA LAW REVIEW 113 (1996). This simple analysis is meant only to illustrate the framing issue, not to evaluate the full range of defendants' incentives. Thus, it assumes no transaction costs, no issues involving the time value of money (i.e., the payout would occur at the same time in the event of a trial or a settlement), no difference in reputational consequences between settlement and trial, and no particular desire or reluctance to go to trial beyond the monetary consequences.