article

Thinking Open-Mindedly to Promote Good Decision-Making

By Richard G. Waterman

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It is a high honor to be recognized by your peers to serve on an arbitration panel. It is also a gratifying and humbling experience to be considered as someone worthy of serving in a judicial capacity to resolve an industry dispute. I enjoy working with knowledgeable colleagues on arbitration panels who demonstrate their skills to navigate complex arbitration proceedings with a heightened appreciation of their vital responsibility to balance fairness with utmost integrity and professionalism.

Integrity and professionalism are high-minded words that few of us can define fully. If you have not recently read the *ARIAS·U.S. Code of Conduct*, I suggest you get a copy, read it again and re-read it every time you consider accepting an arbitration appointment. The Code of Conduct serves as a reminder of how important it is for each of us to uphold the integrity of the arbitration process by acting honestly, diligently and in good faith in rendering fair and just decisions without being influenced by outside pressure, fear of criticism or self-interest. It's a daunting reality that we really need each arbitrator to be an exceptional, unbiased kind of person. Quite a job description. Obviously, we cannot expect perfection when coping with intractable arguments and making judgments in an environment of practical uncertainties.

Rendering Just Decisions

All of us believe that we are capable of rendering fair and just decisions when serving on arbitration panels. Under ideal conditions, that is probably true. ARIAS·U.S. members are known to be smart and thoughtful, and they usually base their decisions on facts and experiential reasoning. Nonetheless, predispositions, outside pressures, influences and the demands of fairness are probably far more powerful than we can imagine. Arbitrators are not professional judges, we are not subject to the constraints of judicial ethics, review of our decisions, and our panel appointments are short-term, unlike some judges appointed to life terms. Consequently, extraneous pressure, criticism and second guessing are commonplace.

Furthermore, since we are business people with business experience deciding a business controversy, our judgment and reasoning have a tendency toward our expectations, preconceptions, and prior beliefs that influence our interpretation of new information. When examining evidence relevant to a given belief, people are inclined to see what they expect to see and conclude what they expect to conclude. Information that is consistent with their preexisting beliefs is often accepted at face value, whereas evidence that contradicts them is critically scrutinized and often discounted. Our beliefs may thus be less responsive than they should to the implications of new information.

More generally, the early stages of arbitration decision analysis, before all the possibilities and evidence are available, can be useful to understand what the disagreement is about and measure the probability of different outcomes. The evaluation of facts and search for possibilities can also be used as a way of understanding what sort of evidence is needed to support a particular hypothesis. Since we have a natural tendency to look for evidence that confirms our vision of the facts, early stages of thinking analysis should take into account facts that disagree with our initial hypothesis. Even in testing a hypothesis, however, decision makers tend to look for instances where the hypothesis proved true. We take pieces of information that corroborate our hypothesis and treat them as evidence. Of course we can easily find confirmation for just about anything if we just look.

The confirmation problem pervades our decision making since most conflicts usually involve a mental bias that is not receptive to alternate perspectives. When people say they sincerely believe a particular view, that is what they sincerely believe. Each of us has unique experiences and convictions. Democrats and Republicans, for instance,

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look at different parts of the same data and rarely converge to the same opinions. Global climate change and immigration policy are two highly contested real world issues that define political identity and produce strong feelings that affect decision making. Once our minds have developed a certain view of the world, we tend to only consider instances proving us to be right. Paradoxically, the more information we have, the more justified we feel in our opinions.

Open-Minded Thinking

Open-minded thinking to increase the probability of good decision making is something we all want to do. Acquiring the ability to think open-mindedly allows us to consider alternate possibilities and evidence against possibilities that we have already determined seem strong. Good open-minded thinking and decision making consist of an active search for relevant information in proportion to the problem to be decided, effective use of the available information to develop confidence that an appropriate amount and quality of thinking has been done, and fairness to other possibilities than the one we initially favor.

Poor thinking tends to be characterized by too little search for facts. We often ignore evidence that goes against a possibility we like. The favoritism for a particular possibility may cause us to prematurely cut off our search for alternative possibilities or for reasons against the one we have in mind. This favoritism therefore leads to insufficient thinking and overconfidence in hasty conclusions that are generally biased in simply reaffirming beliefs that were previously found to be appealing.

To a large extent, open-minded thinking and rational judgment are contextual. Some people have better judgment in some contexts than do others. A person may have astute judgment in practicing a certain trade or profession and quite poor judgment in another such as politics or teaching. To understand how people process and reflect about reasons underlying their judgment, it is important to emphasize the distinction between technical and practical knowledge. Technical knowledge can be abstractly acquired from books and lectures and employed in a step-by-step fashion. Technical knowledge is composed of factual and theoretical knowledge that enables us to understand a particular field of endeavor. Practical knowledge, by contrast, is acquired through experience practicing it. Practical knowledge cannot be taught in classrooms or books and cannot be fully acquired by attending a series of lectures. We learn important things about complex and unpredictable problems that emerge in real life situations by gaining experience doing the activity and absorbing practical knowledge from mentors who know what they doing practicing the skills of a particular kind of activity.

Open minded thinking challenges us to use both technical knowledge and experiential knowledge that we have already acquired when addressing decision analysis. Experience, coupled with a sufficiently thorough search for facts and possibilities, deepens our ability to decide rationally. It allows us to search memories for possibilities centered on knowledge that is already there. To illustrate, the popular notion of a superior chess player is someone who has a logical mind and makes deductions on the basis of each move, planning many moves ahead. It is well established now, however, that is not how a chess player's mind works. An expert player usually thinks only a few moves ahead. What makes the expert so formidable is the immense number of specific patterns of pieces on the board that are stored in memory. An expert beats a novice because the expert can recognize a pattern of pieces on the board, matching it to a similar pattern stored in memory, to which is attached a memory of a suitable move. Nonetheless, if an arrangement of pieces is randomly placed on the board not part of an actual game, the chess expert's powers of recognition and memory drop to the level of a novice.

It has been commonly observed that no board game can replicate the complexity and unpredictable conditions of an arbitration. Since all pieces of a chess match are visible on the board, the game eliminates any hidden strategic placement of pieces or opportunity for deception by opponents. In an arbitration setting, omissions of relevant evidence are frequently prevalent, satisfactory answers to pertinent questions are unavailing and underlying argument strategy is concealed. Card games are better models of an arbitration. Contract bridge, for example, is a popular card game that entails a mixture of memory, tactics, probability and the exchange of communications. Most of the time a bridge player sees only one-quarter of the cards in play and some of the observable information might be false or misleading. The difficulty of weighing truth and deception is one reason computers do not win at bridge whereas at the highest level of chess, computers do very well. Experienced people simply have an enormous store of technical knowledge, practical conceptual knowledge and problem solving reasoning methods to draw on that no machine can imitate.

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Accuracy in Decision-Making

We should not expect that more and more technical knowledge will obviate the need for informed, reflective judgment during arbitration deliberations. Each piece of evidence presented in an arbitration proceeding has weight with respect to a given possibility. The weight of a given piece of evidence determines how much it should strengthen or weaken the possibility. Obviously, all pieces of information are not equal in importance. Sometimes a lot of data can be meaningless. At other times one single piece of information can be very meaningful. Critical reasoning that is overly focused on details may not always be beneficial for the quality of judgments. A deliberation style focused on too much detail may overlook aspects of the global picture that affect accurate judgment. In the view of many, being able to use just the right amount

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and type of information is essential for good decision making. With the knowledge that business disputes entail ambiguities, interpretations of facts along with a range of contingencies and possibilities, the human judgment of experienced arbitrators will be needed to think open-mindedly and draw on their networks of knowledge to make better decisions to achieve fairness.

Although the best judgments and decisions are made after careful deliberation and a thorough analysis of the pertinent facts, we also engage an intuitive system during our decision making. Intuition is assumed to yield better judgments in certain situations. For instance, recent research has revealed the importance of intuition in making decisions when faced with uncertainty created by incomplete information. Intuition is a process of thinking. It refers to concepts ranging from gut feelings to snap judgments to premonitions. Intuition has been generally defined as a process of thinking and judgment in the absence of complete information. Decision making influenced by intuition is most accurate when experience has been acquired in a similar environment.

In our consideration of intuition as a reliable and valid assessment component in arbitration deliberations, we need to distinguish between general knowledge and expertise in the role of judgment and decision making. Expertise depends on a person's experience with and knowledge about a particular subject matter. People with general technical business knowledge but insufficient practical experience are often unsure of why they feel the way they do and are more likely to rely on intuition to generate reasons that are only marginally related to their expressed judgment. In contrast, knowledgeable people who possess both technical and practical business experience have a better understanding of why they feel the way they do based on actual experiences and are more likely to come up with high quality reasons to support their opinions during deliberations. This type of expert judgment is characterized by the ability to make accurate judgments when complete relevant evidence is unavailable or when unqualified assertions are not supported with evidence. Once formal knowledge and expertise in a domain have been established, intuition can be highly reliable for judgments and decisions. This makes sense because the knowledge necessary to perform competently is often the same knowledge required to guide open-minded decision making.

An important difference between arbitration and litigation to resolve industry disputes is recognition of the different levels of knowledge and experience that are available for analytic judgment. A judge in court is an expert on the law. Because judges lack practical knowledge and experience in a large variety of contexts in which they are called upon to make judgments, judges have learned to rely on legal argument and explicit legal rules on which to base their reasons for their judgment. A distinctive characteristic of arbitration is the knowledge and experience arbitrators have gained through training and years of practical experience that qualifies them to put their knowledge into practice during their deliberations and decisions. Experienced arbitrators are likely to make accurate judgments when they rely on factual determinations and analytical reasoning as well as the use of their experience-based intuition. As the quality of evidence improves, the role of intuition diminishes.

Summation

Opened-minded thinking and good decision making require the active search for information and use of knowledge that has already been acquired and is stored in memory. Of course, knowledge is used in all thinking, not just problem solving. In the context of arbitration deliberations, debate and differences are a necessary part of the process. Deliberation calls for a high degree of respect in listening to opposing views and the ability to acknowledge the good faith and strong arguments of those with other opinions. We are not in a position to disagree with sincere beliefs. What we can do if we disagree with opposing views is encourage open-minded thinking based on an examination of hard evidence and stimulate an awareness of biases, obsolete opinions or inaccuracies of knowledge in memory to counter thinking that might be the basis for errors in judgment. In some instances, a clear-cut solution cannot be found. To decide rationally in situations where a winner-take-all outcome cannot be reached, a third position or synthesis that combines the strongest features of the contending party positions may be a sensible outcome as well as more integrity preserving than either of the polar alternatives.

It is not clear how one acquires the disposition and capacity to think open-mindedly, to see matters from another's point of view, engage in various forms of give-and-take discussion and reflectively review and revise previously held positions. Psychological investigations into practical knowledge indicate that it is reasonable to suppose that such a disposition and capacity are often fostered by example, encouragement and criticism. Technical knowledge and practical experience deepen an ability to decide. Persons who serve on arbitration panels want to make decisions that are just or equitable. Because of this desire, we learn to make good judgments in various contexts by emulating others who know what they are doing and are regarded as having sound judgment. We also acknowledge that each other's viewpoints have some claim to equal respect and consideration. Thus, we need to cultivate in ourselves and in others the capacity and willingness to investigate and assess previously held positions in response to new information, insights, arguments, or understanding. ▼

ENDNOTES

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