

A second opinion can be helpful ... or not

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By Jim Mathie

As you approach mediation, one of the things that you might do to figure out what your case is worth is get a second opinion.

That's a good idea. Two heads are better than one.

Given the wide variety of injuries and circumstances that can be found in cases, relying solely on your own experiences can sometimes result in poor predictions.

But getting a second opinion won't help if you don't use it right. And doing this correctly can be difficult because it can be counterintuitive. If you're like most people, your normal tendencies aren't likely to produce the most accurate use of other opinions.

When combining opinions, there are two questions — one statistical and one psychological: When does combining opinions improve accuracy? And how does the decision-maker use the other opinion?

As for the first question, it doesn't matter whether opinions are combined intuitively, that is, subjectively, or mechanically, such as by a simple or weighted average. Whatever the method, accuracy improves.

As for the second question, studies show that people tend to discount others' opinions and favor their own at a rate of roughly 70 percent for themselves and 30 percent for others.

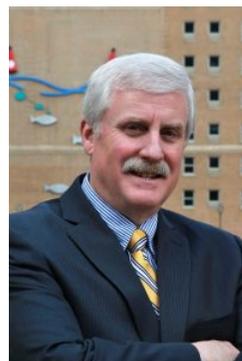
Once you have an opinion, you can use it in one of three ways: you can disregard it entirely; you can substitute it fully for your original opinion; or you can adjust your own opinion to somewhere between the two opinions. Which is the most helpful?

One study sought to answer that question. Researchers used a four-round estimation procedure to examine and compare the estimation accuracy and estimate-weighting strategies of both law students and experienced plaintiff's personal-injury attorneys to determine the role of a second opinion in the accurate prediction of civil-jury verdicts.

The cases evaluated were six actual lawsuits that had gone to trial in California and ranged from a car accident with minor injuries (leading to a \$35,000 verdict) to a wrongful-death suit resulting from the sexual molestation of a five-year-old (leading to a \$4,250,000 verdict).

In the first round, participants estimated a jury verdict without any interaction. In round two, they could see their partner's estimate and modify their own as they saw fit. In the third round, members were required to agree on a joint estimate. In the final round, participants made another individual estimate and were free to give their partner's previous contribution as much or as little weight as they chose.

The first-round results showed that experienced attorneys were indeed more accurate than law students. The mean estimation error for law students was 0.828, whereas it was 0.391 for attorneys. In dollar figures, for a theoretical \$100,000 verdict, the students would range from a "too low" estimate of \$15,000 to a "too high" estimate of \$670,000. The attorney range would be \$41,000 to \$244,000. Underestimates were more common for both groups. Attorneys underestimated 63 percent of the time and law students a whopping 87 percent of the time.



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The opportunity to view a partner's estimate in the second round improved accuracy for both groups. In the hypothetical \$100,000 case, the error range for students was \$19,000 to \$532,000 and for attorneys \$48,000 to \$210,000.

How attorneys used the other opinion was significant. Eighty-two percent of the attorneys moved less than halfway, including 53 percent who disregarded their partner's estimate entirely. Only 12 percent moved more than halfway, including 3 percent who adopted their partner's opinion.

On average, attorneys moved 20 percent toward their partner's estimate. Law students moved one-third of the way.

Researchers concluded that attorneys were better able than law students to distinguish more or less accurate estimates and accept or reject them. However, the attorneys could have reduced their estimate error even further by simply averaging the two estimates. Only 5.5 percent of the attorneys split the difference.

In round three, when the partners discussed and agreed on an estimate, accuracy improved further still for both groups. For the attorneys, it was roughly the same as the increased accuracy that would have resulted from simple averaging.

Finally there was round four, which tested the ability to retain the benefits of the discussion-and-agreement round. In the end, the results from this round were better than those of round two but not as good as round three.

Researchers were also able to test the "wisdom of the crowd" by aggregating the first-round estimates. As the size of the group increased, accuracy also increased, showing the most improvement as the members in the group went from one to two in number and then from two to four. Of special note, an aggregation of all the law students produced a more accurate estimate than the average of a single attorney, meaning that working alone to come to an opinion concerning value can mean that you may be no more accurate than a bunch of law students.

The upshot of all of this is that the best thing to do with a second opinion is probably just to average it with your own. And if you can get more opinions, your accuracy will improve by the simple averaging of all of them.

Remember, when you request a second opinion, make sure not to offer your own. Doing so will probably bias the opinion you request because of the anchor effect — people tend to anchor to an offered number and insufficiently adjust away from it. So, if you want a true second opinion, don't give your own beforehand.

Also, for ideal accuracy gains, the second opinion should be independent. Little gain can be expected if the two judges are essentially the same. This means that a law partner whose practice is similar to yours may not be the best choice.

In the research, the greatest accuracy gains came from bracketing — in which the two estimates fell on opposite sides of the actual verdict — meaning that any move toward the other estimate meant an improvement in accuracy.

Mediation of course offers you the opportunity to consider another estimate of the value of your case. Conveniently, that other opinion promises to be from a different perspective and likely to bracket what the actual verdict will be. So, it's always worthwhile to pay attention to where the simple average of the estimates would fall once the negotiations have moved to a point where reasonable numbers are being exchanged. That figure is probably closer to the actual verdict than either of the bookend amounts.

See you at mediation.

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