My own introduction to decision tree analysis began in 1988, shortly after joining Endispute, Inc., now JAMS ADR, Inc. Endispute had contracted with a Boston law firm to provide a workshop in decision analysis for their litigation department. Endispute's Eric Green, Jonathan Marks, and I were scheduled to teach it and so I had to learn it. We benefitted from terrific articles by Marc Victor, who deserves full credit for pioneering its use in litigation practice over the past 30 years. At Endispute, we often used decision trees as analytical and communication tools when mediating legal disputes.

At about this time, Boston attorney Morris Raker invited us to a demonstration of the beta version of the TreeAge software for decision tree analysis—software he developed with David Hoffer, the “teenage whiz kid down the block” in Brookline, MA. I remain grateful for having had the opportunity, not long after that, to sit with Morris Raker to build a particularly complicated Endispute case in TreeAge, producing a tree far more refined than we had scribbled on easel paper during the mediation. I have been using the TreeAge software ever since.¹

Of course, as my grandfather used to say, “time marches on.” The whiz kid David Hoffer interned at Endispute, then earned a JD/MBA at Harvard. In 1996, it was my pleasure to co-author a book chapter with him on our favorite topic—decision analysis for legal disputes. Morris Raker retired from his law firm in Boston and established TreeAge, Inc. in Williamstown, MA. While TreeAge was originally created for lawyers and litigation practice, its business has greatly expanded to the areas of health care and policy applications. A number of years ago, I was privileged to be hosted by Morris Raker on a visit to TreeAge in Williamstown to meet the TreeAge team. While the company has since been sold, Joel Sartori remains at TreeAge as the extraordinarily patient technical support expert I have relied upon over the years.

I owe a debt of gratitude to many other professional colleagues and friends for tolerating and encouraging my persistent belief in the value of decision analysis for legal practice, and for inviting me to teach it in various forms. Professor Michael Wheeler invited me to an early Program on Negotiation (PON) conference on analytical methods for negotiation and prompted me to write on the use of decision analysis in mediation. Professors Michael Wheeler, Jim Sebenius, and Howard Raiffa² also encouraged my 1993-94 work with John Hammond on decision analysis for the legal case used in the Harvard Business School Negotiation course. They also organized a spectacular short course module on decision analysis by George Wu, then at HBS and now at the University of Chicago. The late Howard Raiffa's PON lectures on Negotiation Analysis were highly mathematical, but they strongly communicated the idea that analytical methods can support excellence in practical negotiation and decision-making. And

¹ Marc Victor was also an original TreeAge adopter, as reflected in his articles, public seminars, and website: www.litigationrisk.com.
² Professor Raiffa passed away in the summer of 2016, at the age of 92. Though he would have been the first to say that his was a long, full, and rich life, I wish I had been able to send him this piece.
to me, that Howard Raiffa’s boundless warmth and wisdom coexisted peacefully with his commitment to analytics in negotiation and decision-making disproved the false dichotomy of humanistic vs. analytical. Though known as the father of decision analysis, Howard deeply respected emotion, intuition, gut sense, and the idea that the method was valuable only as much as it was useful for people thinking through decisions that mattered to them.

My friend and colleague Dwight Golann deserves full credit for accepting a chapter on decision analysis for his 1996 book *Mediating Legal Disputes* (after asking for something else), and for collaborating with me in any number of writing projects on mediation evaluation and decision analysis since then. After the CPR Institute for Dispute Resolution’s VP Susan Scott invited me to present the method at CPR’s 1996 June conference, an informant (Dwight) leaked her comment anticipating the session would be “a real snore”. Challenge accepted! It committed me to the effort to make all teaching on the topic both lively and grounded in practicality. I am ever grateful for that opportunity, her challenge, and Dwight’s loyalty as a snitch.

After that, I began to present short lectures and longer workshops on decision analysis first in Boston and, since 1998, in Cincinnati, Ohio. At some point after joining the faculty at the University of Cincinnati College of Law, I started to sneak an introduction to decision analysis into a dispute resolution course, and then into my client counseling course. To my surprise, many students seemed to like it and asked if I might teach an ‘advanced’ course, and so I did.

In truth, there is no better way to learn a subject than to teach it. Preparing that course forced me to dig deeper into the relevant literature, and also to articulate the subtler aspects of its application in practice. Inevitably, when we were working on a problem in class, a student would propose constructing the tree one way and I would say, “no, you wouldn't do it that way,” but then struggle to explain why. I came to understand what types of problems the students found difficult and the questions I found hard to answer. A shout out is due to the students at Hamline and at North Carolina Central State University who stuck with decision trees during workshop courses in the summer term’s heat. The panel mediators in the Western District of Michigan and the Middle District of Pennsylvania (especially Director Joseph Barrett and lawyer-mediator Grace D’Alo) are also owed great appreciation for holding me to step-by-step explanations and practical answers. It’s fair to say that the “how to” portions of this book seek to address the basic questions, confusion, hesitance, skepticism, and resistance expressed by law students, lawyers, and lawyer-mediators first learning the method in my presentations over the years. Students in the Advanced Decision Analysis courses at UC Law deserve full credit for portions of the text addressing its application in the more complex cases we worked on in that class.

It would be wrong to neglect to mention several lawyers and friends whose enthusiasm for this method and for collaboration in teaching have enriched my practice and my classroom. Many years ago, Attorney Dan Klein took to decision trees based on my short presentation at a Harvard Law School mediation workshop, undertook his own deeper research, and made decision trees a central part of his practice.3 What an honor for my students when Dan taught an Advanced Decision Analysis class session via video conference!

I am indebted to former students, now lawyers John Bennett, Patricia Foster and Sarah Alford, who developed decision trees for fantastically complicated cases and have come back to class to speak about the method’s usefulness for clients and lawyers. Attorney Patrick Lane, then at Procter & Gamble,
deserves appreciation for teaching us how the P&G lawyers use this method to communicate with in-house clients in complex patent litigation. IP Attorney John Bennett recently shared the terrific decision analysis presentation he created for the Intellectual Property practice group at the Cincinnati Bar Association. And I owe him thanks for every time he has demonstrated to my students how this method enables better communication with clients.

Locally, I owe a debt of gratitude to Cincinnati’s Potter Stewart Inns of Court and Attorney John Pinney for encouraging a fresh programmatic approach with experienced inside and outside counsel, focusing on the attorney challenges in delivering case assessment both with and without decision analysis. Not to be outdone by their rivals across the river, Kentucky Judge Candace Smith and the Solomon P. Chase Inns of Court graciously let me work them through the simple stuff and some particularly tough decision tree problems, with warm hospitality and a gift basket that included Kentucky’s best bourbon.

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