
Kluwer Mediation Blog

Your Truth, My Truth And The Truth

Charlie Woods (Core Solutions Group / Scottish Universities Insight Institute) · Tuesday, October 3rd, 2017

The story of the blindfolded men who each approach an elephant from different angles (at the tusk it's described as a spear, at the tail a rope, at the leg a tree etc.) is a good example of how multiple truths can exist depending on the perspective you take. Different views can often be the starting point for disagreements. Mix in a few cognitive biases and things can quickly escalate. For example, as evidence is sought to back up an initial conclusion (confirmation bias) and the behaviour of others is interpreted to be a reflection of their underlying character, regardless of context (attribution error).

Cognitive biases are all around us and are entirely normal, they are a key feature of our evolutionary make up and were critical to our survival when energy was at a premium, danger was all around and being able to trust close neighbours was vital. Because they speed up our decision-making in the not so distant past they could often be the difference between life and death.

As the environment in which we live is now dramatically different from the one in which we evolved it is important that we develop a fuller understanding of how these biases might be influencing our understanding of events and our decision making. Psychologist, Daniel Kahneman in his book 'Thinking Fast and Slow', provides the most comprehensive exposition of the role that cognitive bias can play. Along with his colleague Amos Tversky, Kahneman identified many of the most influential biases. He was awarded the Nobel Prize for economics for the insights this work gave to how people make decisions in practice.

At the recent CI Arb annual mediation symposium in London Ken Cloke and John Sturrock discussed some of the biases that can have most influence on conflict and its resolution, they included:

- Availability heuristic: The tendency to overestimate the likelihood of events with greater "availability" in memory - influenced by how recent the memories are or how unusual or emotionally charged they may be.
- Anchoring: The tendency to rely too heavily, or "anchor", on one trait or piece of information when making decisions (usually the first piece of information acquired on that subject).

- Belief revision: The tendency to revise one's belief insufficiently when presented with new evidence.
- Empathy gap: The tendency to underestimate the influence or strength of feelings, in either oneself or others.
- Endowment effect: People ascribe more value to things just because they own them.
- Framing effect: Drawing different conclusions from the same information, depending on how that information is presented.
- Loss Aversion: The pain of loss is greater than the pleasure from gain.
- Over optimism / over estimating own ability: often experienced by advisers.
- Priming: Exposure to one stimulus influences response to another stimulus.
- Reactive devaluation /overvaluation: De/over-valuing proposals only because they purportedly originated with an adversary.

These are just the tip of the iceberg and they give a flavour of the influence bias can play.

In many ways the process of mediation offers the opportunity to engage the 'slow', energy intensive, thinking that is more rational and is needed to counter some of the biases resulting from 'fast' thinking. It can allow parties to a dispute to better understand issues and how they look from different perspectives, it offers the chance to bring the different perspectives to bear to try to explore options to increase the size of the pie before trying to divide it and it can help reality test possible ways forward.

The role and skills of the mediator in the process are critical as well. Ken offered a number of helpful examples of what can be done to both build on and address biases, these included:

- Create an environment with objects that "prime" or encourage collaboration and dialogue.
- Slow, soften and relax your tone of voice, and create a context of acknowledgement and appreciation.
- Listen closely to the words they use and search for ways of reframing them from negative to positive.
- Use words that emphasize the outcomes you want to achieve, like "fair" or "satisfying" or "creative." Try to avoid words like "tough" or "win" or "dissatisfied" or "hard".
- Seek unilateral, unexpected concessions from the parties.

By their very nature, cognitive biases will always be with us and thinking fast often serves us well. The more we're aware of the downsides, the more we can be on guard for when they might be getting in the way and when it might be time to slow down.

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