

Kluwer Mediation Blog

Reflections on the Reflection Effect

Rick Weiler (Weiler ADR Inc.) · Tuesday, November 22nd, 2011

You have a choice to make. In front of you stand two doors. If you go through the door on the right you will receive \$20. If you choose the left door you will have a one in five chance of receiving \$100. Which door do you choose?

It is now well accepted that the vast majority of people will choose the sure \$20 that awaits through the door on the right.

Now you have another choice to make. Again there are two doors. Choose the one on the right and you will have to pay \$20. Go through the left door and there's a one in five chance that you will have to pay \$100. What's your choice?

Again, research has demonstrated that most people will take the left door and risk losing \$100.

People tend to be risk averse for gain and risk seeking for losses. This is known as the *reflection effect* and is one of the [foundations of behavioral economics](#).

This all came back to mind when reading [Michael Lewis' review](#) of Nobel Prize-winning Daniel Kahneman's new book, *Thinking Fast and Slow* in the December issue of Vanity Fair. Kahneman and the late Amos Tversky published a series of papers in the 70s and 80s (including the one linked above) focusing on the distortion of human judgement when making decisions in uncertain circumstances.

As a commercial mediator I am consciously managing that reflection effect in virtually every case.

In the Plaintiff room you might expect that the reflection effect would be helpful to a mediator. Plaintiffs should be prepared to accept the sure thing represented by settlement rather than risk it all by going for the potentially higher payout that might result from a trial. The complicating factor is the [framing effect](#). Plaintiffs are prone to perceive the "sure thing" settlement as a *loss* – the loss of the higher monetary outcome they had expected – and thus, in accordance with the reflection effect, are prepared to risk trial to avoid that loss.

In the Defence room the impact of the reflection effect often depends on the experience of the defence representatives. For repeat players, such as insurers and other professional risk managers, the effect is muted because they tend to do their own reframing; the perception of loss is recast as gain by taking into account the positives of finality, closure and, perhaps most importantly, certainty (other "structural incentives" that are available for file closure don't hurt either).

For the one-off Defendant, however, the reflection effect is usually present in all its glory. Settling the case at mediation represents taking the sure loss and thus gambling on avoiding that loss at trial seems a very attractive option.

As a mediator my response to all of this is rooted in my belief that mediation presents the opportunity for the parties to make a *“good decision, all things considered”* (yes, in my mediations it’s almost a mantra). I stress that I don’t know what that good decision is but I have confidence that the parties do. All that’s need to find that good decision is the opportunity to discuss the various factors presented in the case, in safety, and identify and prioritize their own interests.

For me, one tool that’s helpful in particularly difficult cases is [Decision Tree Risk Analysis](#). Even a simple decision tree can refocus a party and their lawyer on rationally weighing the possible outcomes in litigation thus minimizing the reflection effect.

The reflection effect is only one of the potential cognitive barriers to settlement in mediation. An excellent article on this topic by Bennett Picker and Gregg Relyea can be found [here](#). The mediator adds real value by helping parties overcome these barriers.


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