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# Kluwer Mediation Blog

## What Tribe Are You In?

Jeffrey Krivis (First Mediation Corporation) · Monday, December 16th, 2013

This story is for you if ...

- You have a strong feeling of identity with and loyalty to a group or organization that shares your views;
- Your adversary appears to be part of a different tribe or group that doesn't understand your world view.

Litigators tend to divide themselves into groups who have common motives, a well accepted division of roles, established social rank, accepted norms and values and appropriate punishment if their values are violated. These groups are naturally pitted against other groups or organizations with differing or opposite views and values. Like a tribal unit, our views tend to follow a narrow path that leads us in a very specific direction whose goal is to achieve a good outcome. When a bad outcome occurs, it's usually because we haven't recognized what direction the other tribe is going and we missed an opportunity to mount a defense or realign our goals.

Consider the case of the doctor who was asked to resign his position or his employer will report him to the State License Board and try to get his medical license revoked. The doctor was over 80 years old when this happened and had built his career as a professional medical practitioner and thoroughly loved his practice.

While he had slowed down in recent years, he was sharp as a tack and able to keep up with the patient pace and manage surgeries very well. Ultimately, he was fired and sued his employer for age discrimination. The employer had many opportunities to settle before trial but chose to take a hard line, based on their assumption that the doctor's tribe (aged medical practitioner) could no longer serve patients properly. The doctor would have gladly settled for the ability to stay at work so long as he was productive and no monetary payment. The jury disagreed with the employer's worldview and awarded over \$10 million to the doctor.

Employers tend to be logical, analytical and cost-conscious. Empathy is not always on their radar screens when it comes to evaluating productivity of employees. This is obviously a generalization, but employers are their own tribe with a shared understanding about how the world works. Similarly, employees build their tribe on the self-worth and reputation that comes from their jobs. When these two views collide, cases develop that can only be solved through a better understanding of your adversary's perspective.

In order to better understand that perspective and increase your chances of success in a negotiated

settlement, the first question to ask is, “What tribe are they in and what are some of the traits of that tribe?” At the same time, ask yourself, “What tribe are you in and what are some of your tribal flaws?” By answering these questions, we are able to assess the assumptions we make about our adversary and fully understand their perspective.

Tribal understanding is not racial or gender oriented. It focuses on groups of people who, through training or some shared interest, have a bond that causes them to reach predictable decisions. Within the legal community, we have many different tribes representing numerous cultural norms, tendencies and biases. These strengths and weaknesses are the raw material that make up the tribe. While it is helpful to know your adversary’s tribal weaknesses, do you know what those are for your tribe and what efforts do you make to ensure that they don’t negatively affect your ability to have a successful negotiation?

My suggestion is to broaden your scope by understanding what tribe you are in and recognize its strengths and weaknesses. Impartial third parties often serve as a good filter for such feedback, but it requires an honest acceptance of information that might not be what is in the tribal view. When faced with a negotiation challenge, it may be difficult to think outside of your traditional playbook, but consider the rules that control your own tribe – that might help you appreciate the perspectives of your adversary. Consider how your adversary and your tribal members are viewing you and your motivation. Knowing your tribe’s tendencies is critical to getting to a better deal.

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