
Kluwer Mediation Blog

Negotiation and Memory

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy) · Tuesday, May 12th, 2015

Is it true that as we get older, we tend to forget things more easily? Or is it that some things are just less important?

As negotiators and mediators, we often deal with complex layers of information that appear all too much for any one person to recall. So we enter the negotiation room burdened with our big folders or sporting our slim iPads laden with mega data containing all the information that we might possibly need. I wonder though, if we sometimes rely too much on the documents when we could be structuring and presenting information and issues in ways that would maximise the negotiation experience — for everyone.

Let's start with an overview of memory. From my reading there seem to be three types of memory: immediate, short term and long term. Immediate memory can take in a massive amount of information, but only for a couple of seconds. Some of this information passes into short-term memory, which works as a kind of central processor for the brain. We can think of it as our working memory. Certain information from our short-term memory will eventually establish itself in our long-term memory.

Of course some male readers might be brave enough to suggest that much conflict would be prevented if information destined for a woman's immediate memory remained there rather than finding its way into her long-term memory – but let's not go there today. I want to focus on the short term memory and how we can make the most use of it in negotiation.

The capacity of our Short Term Memory has been the subject of significant neurological and psychological research over the last 60 years.

The first seminal study on Short Term Memory capacity was conducted by Millar (1956). He famously argued that our Short Term Memory can only hold 7 (+/- 2) pieces or 'chunks' of information at any given time, and so was coined the "Magical number 7" for Short Term Memory. While Millar's was an early seminal study in the field, more recent research has expanded on these early findings. Recent studies continue to show that our Short Term Memories do have a limited capacity, and that 'chunking' is critical to the amount of information we can hold in in our Short Term Memory. So this means that information needs to be presented in chunks both verbally and visually with the aim that negotiators at the table will be able to recall the chunks, rather than the detail. (You can look up your suitably-chunked iPad for detail).

At the same time, these studies show a lot of individual difference in the amount and type of

information that we can retain.



For example, some researchers posit that Short Term Memory is more likely to be the ‘Magical number 4’ than 7, and that other processes are important in influencing our Short Term Memory limits. Factors that can affect our Short Term Memory abilities may include:

- our level of rehearsal of the information in our Short Term Memory (e.g. practising in front of the mirror before going into a negotiation),
- our level of attention,
- the amount of time elapsed before we must recall the information,
- the amount of interference we encounter, and
- our memories’ overall ability to recall information when needed.

Further, certain types of information may be easier than others to ‘chunk’ and so seemingly increase their Short Term Memory capacity.

From a negotiation standpoint, the capacity of our Short Term Memory is important as this information is used by our executive functions for decision making. So if we are unable to take in enough, or the right kinds of, information, this will have a direct impact on the quality of decisions that we make.

A negotiator’s initial psychological state is important as certain negative states can reduce the amount of information we are able to hold in our Short Term Memory. For example, anxious individuals absorb and recall less information in our Short Term Memory than non-anxious individuals. This means if negotiators are anxious at the commencement of the negotiation process, they will be more likely to miss key information or more regularly need information to be repeated (particularly following breaks) as they may have trouble holding and recalling multiple pieces of information at any given time. Essentially, the calmer participants feel during negotiation, the more likely they are to absorb the required information. If you notice that some parties seem to be mis-recalling or missing key information, it could be related to their Short Term Memory and the way in which they process information.

The good news is that neuroscientific research suggests that we can influence how our Short Term Memory serves us as negotiators. Through pre-negotiation stress-reducing and focus-building

mindfulness activities, we can reduce sources of interference and raise our magic number. Here it's important to pay attention to how much information we can hold at any given time and whether we have a preference for how we like to receive information.

For example, when someone reads a news story aloud to you, do you find yourself asking to read it afterwards? If so, you may prefer to 'chunk' visual information. How do you cope with 'interference' during an actual negotiation such as interruptions, breaks, managing the process while also retaining and using key information? Recently I attended a negotiation with my 14 month old daughter in tow. although she was well-behaved (by baby standards, that is) one of the lawyers at the table was completely thrown. (And, no it wasn't a tactic, just an unavoidable situation.) So, depending upon your Short Term Memory strengths and weaknesses, you may need to adjust aspects the negotiation process. For example, you may choose to use checklists, note-taking, visualisations or you may ask to sit far away from the baby.

Consider taking steps to accommodate different communication preferences in your negotiations. Think about using multi-modal methods of communication such as visual and verbal summaries and physically walking around the proposed site of your joint venture development. This will help all negotiators to better absorb, process and understand information. Also keep breaks relatively short so as not to 'interfere' with the effective communication of key information from the session.

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