Top Ten Psychological Traps

The following is an alphabetical list of the top ten common mental traps that can create disputes or make them more difficult to resolve. Some are interrelated; some have multiple labels. We return to these cognitive shortcuts and expand the list later when we examine why negotiations fail. They also come into play in a later chapter on how mediators can move negotiations through an impasse to settlement.

- *Anchoring*: A dispute over the value of an item often arises because we form an estimate of an unsure value by comparing it to something we know or to a number to which we are exposed that is then planted in our brain. The number you are exposed to as a value anchors your calculation and influences your thinking. When a client is burnt by hot soup at a restaurant, she may think the restaurant is to blame and her claim is worth millions because she read about a multimillion-dollar verdict against McDonald's for coffee that was served too hot. You, as a sophisticated lawyer, understand that this case is distinguishable from the McDonald's case, which was reduced on appeal as excessive, and that this client's case is much weaker and worth less than that one, so you adjust from the McDonald's verdict downward. The question is whether you adjust far enough. Research suggests that you will not adjust sufficiently because of the anchoring effect of the headline verdict, which distorts your analysis and expectation.
- *Confirmation bias*: We tend to give credit to information that is consistent with our preexisting beliefs and wishes rather than information that challenges or contradicts them. This can dig us deeper into conflict when dealing with those who have different beliefs or

values. We read and believe articles that confirm dark chocolate and red wine are good for us, and skim past articles that question the studies.

- *Consensus error (projection)*: We tend to falsely believe that others think the way we do or have values similar to ours. We also believe that others like what we like and want what we want. Those who enjoy loud music assume that everyone will enjoy their amplified radio selections. Conflict can be created when we find out we were wrong.

- **44**

  Framing: Our thinking about an issue and our answer to a question are affected by how the question is presented. For instance, asking a priest if you can smoke while you pray is likely to result in a different answer than asking if you can pray while you smoke.

- *Loss aversion (status quo bias)*: Losses tend to be felt more than equivalent gains are relished, so that the pain from the loss of a dollar is felt greater than the joy of a dollar gain. We tend to overvalue what we have to give up relative to what we might get. Most will not give up a "bird in the hand for two in the bush." In other words, we are willing to take more risk to avoid a loss than to obtain a gain. As a corollary, negotiating parties are more likely to view their own concessions (losses) as more valuable than equivalent concessions they get from the other side (gains).
- *Naive realism*: We tend to think that the way we see the world is the way it really is and anyone seeing it differently is naive. We each see the world through the lens of our own experience and culture, believing what we see is reality. This bias is in play when your idea or offer is rejected with the preface that in the "real world" things are different.
- *Overconfidence (egocentric bias)*: We tend to rate our abilities, chance of being right, and good luck more highly than is warranted. Why else would people buy lottery tickets? We are also overconfident about our ability to assess uncertain data and tend to give more weight to what we know than what we don't know. As a matter of fact, we are overconfident about ourselves in general. As examples, surveys have found that 70 percent of all drivers believe that they are more competent than the average driver, and 80 percent of lawyers think that they are more ethical than the average attorney (Fox and Birke 2000). In negotiation, overconfidence can be compounded by positive illusions we have about the relative righteousness of our case or cause and how much we deserve.
- *Reactive devaluation*: Whatever proposal comes from the other side cannot be good for us. Anything done or suggested by them is suspect. For example, if Democrats propose legislation, Republicans are likely to reject it, and vice versa. Also, any information or offer received is perceived as less valuable than what might be withheld. This tends to escalate conflict.

- *Selective perception*: Whenever we encounter a new situation, we must interpret a universe of unfamiliar, often conflicting data that is more than we can process. We respond by instinctively forming a hypothesis about the situation, then organizing what we see and hear with the help of that premise. Our hypothesis also operates as a filter, by automatically screening out anything that doesn't support it—which in turn reinforces the belief that our initial view was correct. Henry David Thoreau may have been thinking about this when he said, "We see only the world we look for." Selective perception is also the basis of self-fulfilling prophesies and stereotyping. For example, if you are negotiating with a lawyer you

believe is hostile and not to be trusted, you may dismiss his initial friendly greeting as manipulative and selectively see him scrutinizing

45

you with suspicion. Your stilted behavior toward him will likely result in him seeing you as antagonistic. Mutually reinforced surly behavior will be selectively observed and remembered to the exclusion of overtures of civility. You will feel that your own insight and keen ability to "read" others is confirmed, and your self-fulfilling prophecy will be realized.

- *Self-serving bias (attribution error)*: We are our own best friend in justifying our actions while seeing the same behavior in someone else as a shortcoming. For instance, we know that we are personally responsible for our successes, but our failures are the result of bad luck or circumstances beyond our control. When we are late it is for good reason; others keep us waiting because of their bad planning and insensitivity. Our miscalculation or misstatement is a simple mistake, but our opponent's similar error is attributed to deception. We also tend to take more credit for favorable results than others attribute to us.

Some of the psychological factors and biases described above may work against one another when making tactical decisions driving a negotiation. For example, as will be discussed later, there are differing views about the advantages and disadvantages of making the first offer in a negotiation. Making the first offer, particularly if the values involved are uncertain or without ready comparisons, could take advantage of the anchoring bias set by your offer. However, reactive devaluation, which may be at a peak near the beginning of negotiations, could cause the other side to radically discount your first offer because of their suspicion. (For a more extensive catalogue of psychological principles impacting negotiation and decision making, see Birke, "Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications," 25 Ohio St. J. on Disp. Resol. 477 (2010).)