

John Sturrock Podcast

(transcript)

Session 13: Neuroscience, Mediation and Negotiation

When I started hosting training in negotiation and mediation over fifteen years ago, we used a little ice breaker which involves counting the number of “F”s in a statement. Many of you will be familiar with that exercise. We would then debrief on the learning. The whole thing would take about 20 minutes.

Nowadays, the exercise has expanded in parallel with the seemingly (at least to a lay person) exponential growth in our awareness of how the brain works and the impact of unconscious biases on our actions, responses and words. There is now such richness to be gained as we debrief on the many things we can learn from this hitherto simple exercise. We will often take over an hour and a half to cover the ground.

And it is vital work. As *Tim Hicks* and I have written in the recently published *Seven Keys to Unlock Mediation’s Golden Age* (<https://www.mediate.com/articles/hicks-sturrock-psychology-brain.cfm>), an understanding of cognitive and implicit biases (or “brain science” as the article describes it) is no longer optional if we wish to be high level performers in negotiation and mediation.

(And of course, the whole issue of unconscious bias has become even more relevant recently as we face the issue of racism in society. In our course, we have shown for a number of years a heart-breaking video about children’s reaction to differently coloured dolls (<https://www.youtube.com/watch?v=ybDa0gSuAcg>.)

I do not intend to spend time in this podcast describing all that we now know. There is a plethora of books to read of which *Daniel Kahneman’s Thinking, Fast and Slow* seems essential and *Rolf Dobelli’s The Art of Thinking Clearly* is a little gem.

Here I wish to discuss just a few of the biases to which I regularly refer as a mediator. Usually I mention these when we are gathered for breakfast early in the mediation day and they serve as reference points throughout the day, often supported by visual aids. The simplest of these is the drawing of a piece of cheese showing how, from different vantage points, we can view things very differently. We all have our version of the truth, which is informed by our perceptions, our preconceptions, our misperceptions, our prejudging, our limited information, our past experiences, our hopes, and fears and so on. The danger is that we assume that this is all there is to see and are open only to information which supports our perspective.

This “**confirmation bias**”, as it is called, is a serious impediment to creative problem-solving. It can cause us to ignore or distort what is right in front of us because it contradicts our view of the world, so much so that we become wilfully blind to the realities literally staring us in the face. “Face” is an interesting word to use because the **fear of losing face** is also a driver in difficult situations where we may feel that making a concession, acknowledging a



different point of view (literally and/or metaphorically) or giving something up is a sign of weakness which will be exploited.

I like to talk openly about these things, to normalise them and help people to recognise them, while understanding that these are perfectly understandable responses and not a reason to feel guilty or ashamed or to assign blame or fault. We are wired this way. I like to refer to Kahneman and his “*system one*” and “*system two*” thinking. We know that the vast majority of decisions we make are automatic, instinctive, and that, were it not so, we could not survive or cope with all the data with which we are presented every second. We also know however that this way of thinking is prone to error and can be really unhelpful in complex decision-making.

It was fine to do what it was designed to do: protect us from existential physical threats in pre-civilised times. Fight or flight, or freeze. There is no time for a flip chart analysis of pros and cons if we are faced with a large furry animal baring its teeth and sharpening its claws. Unfortunately, perhaps, these same “*system one*” instincts still kick in when we experience social unease, shame, threat or danger of a non-physical sort. Just think of difficult negotiations in an adversarial setting - and our reactions.

So, in talking about these things, I commend an approach to the negotiations which encourages parties and lawyers to engage “*system two*”. Located in the neo cortex part of the brain (the part which, as I understand it in lay person’s terms, developed with language, communication and civilisation), this enables us to pause (remember the podcast on The Power of the Pause?), consider, distil, apply reason and logic and assess complex issues rationally. It is not always easy to do and is energy consuming and therefore tiring. Apply all of this to a mediation day and ponder the implications.

I also talk about **attribution error**, our tendency to apply different standards to the same behaviour depending on whether it is our behaviour we are assessing or that of another person who we assume is acting contrary to our interests. We will seek to explain or justify our actions and words while dismissing those same actions and words of the other as antithetical to our interests and motivated by ill will towards us. Think about how that might hinder the negotiation, I will suggest.

Then there is **reactive devaluation** which, in a negotiation, may well result in one party rejecting out of hand an objectively reasonable proposal just because it comes from someone else who they do not trust or like. Combine that with attribution error and you get a heady mix to lay the ground for impasse. This is where the third-party mediator has such a vital role to play in detoxifying, if you like, the effect of these inbuilt impediments to progress.

Priming, loss aversion, sunk costs, group think, over optimism, endowment effect, these and many other biases can give really good material for illustrating what can happen, and get in the way, when people negotiate. In my experience, the key is to jettison the jargon, confess to not being an expert and use these ideas in the context of the matter in hand in a straightforward way. Explain how it might affect and be affecting how people see things. Explain that it is all helpful stuff. Make it common to all. People start nodding and they get



it. In some ways it is the application of what we know, common sense, but, as William Ury writes, sense which is seldom commonly applied.