

Psychologically Speaking©

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Negotiation 101

Advice about negotiation often focuses on procedure, strategy, and tactics. However, some of the most important factors in dispute resolution are the subliminal aspects of the interaction that operate outside the awareness of the participants, which may create unnecessary barriers to the effective resolution in dispute.

This newsletter will focus on some of these more frequently untold obstacles along with some suggestions for overcoming them.

When lawyers and others are faced with a new dilemma they typically rely on tried and true routines. Sometimes the tried and true works but not for the necessarily obvious reasons. When the typical approach does not work the person may blame their opponent for being unnecessarily rigid, obstinate, unknowing or even worse, rather than to look at their own behavior.

The problem with this common reaction is that your theory of the case may be acting as a distorted lens through which you are viewing your own strengths and weaknesses. This filtering causes a distortion of reality by screening out underlying conflicting information or weaknesses of your case. This barrier is referred to as “*selective perception*.” We selectively perceive our position and distort our opponent(s) strengths and weaknesses.

To overcome this filtered bias work with a colleague by representing opposing counsel, don't represent yourself. Give your perspective a rest and invest your self in opposing counsel's position.

Practicing your position does not get the job done. You are only practicing your mistakes. Role playing your opponent will prepare you for their way of thinking, which will in turn get you thinking more clearly about how you have to counter what they have to offer.

A second common obstacle in negotiation is “*reactive devaluation*.” People have a tendency to distrust and to minimize an opponent(s) argument. This is good for football games and boxing matches, but not so good for negotiations. When you do not give credence to opposing counsel they too will become unnecessarily resistant to your position. This is not to say you are their advocate. Rather, you are willing to consider their side and to match their bullet points with persuasive arguments supporting your position. The saying of gathering more bees with honey than vinegar is comes to mind.

Assuming that opposing counsel has no good points is naïve. Negotiation by intimidation is a style for some but offensive to most others. An alternative approach to use in responding to opposing counsel and avoid reactive devaluation scenarios is to first discuss their position out loud, point by point without countering. Have opposing counsel list their arguments and defend

their justification for their position. Nod, agree that that's what they think and how they believe the resolution should proceed without saying that you will give in. The goal is to ask for their thinking so you can offer yours. Listening to your opponent is disarming and a tactic that is frequently under-utilized in negotiation.

Obviously there is a strategic advantage to having them lay down their cards and it is naïve to think they will disclose all of their hand. However, a more cordial opening and some initial disclosure on both sides will result in more cooperation on the more difficult parts of the disagreement later in the discussion.

The next time you are faced with a negotiation consider role playing your opponent and opening the discussion with listening to their side of the argument.

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