

Mediation Settlement Day Kick-Off Celebration

Remarks: Honorary Chair Gary Belsky,

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Thank you.

As I'm sure you expected, I will begin my talk with a true story from 45 years ago, which happened at Hebrew University in Jerusalem, in a classroom filled with flight instructors for the Israeli Air Force, who were being taught by a young psychology professor. The IDF—the Israel Defense Force—invests a lot of money in its fighter pilots, who are very much like high-strung athletes, and the IDF wants its pilot trainers to have a fundamental grasp of human psychology.

Anyway, on this particular day the professor was discussing a basic principle of psychology, familiar to

most of us: In terms of motivation, you will generally get better results from people using praise and reward than you will using criticism and punishment. This principle, of course, has been demonstrated many times over, but the flight instructors took exception to the point. In fact, one senior instructor raised his hand, stood up and made a little speech, explaining how their experience with actual fighter pilot trainees was the exact opposite. When a trainee was praised or rewarded for a well-executed maneuver, he tended to do worse the next time around. Likewise, those pilots who were criticized or punished after a poor performance routinely did better the next time they flew. So you are completely wrong, this instructor explained to his professor: vinegar is more effective than honey.

Now, without doubt, those of you here today who are familiar with statistics probably recognize the flaw in the instructor's conclusion and theory of motivation. Our psychology professor certainly did. In the nineteenth century, the British scientist Sir Francis Galton introduced a concept called "statistical regression." He explained how in any series of uncertain events that tend to fall around an average or mean—imagine taking two dozen swings on a driving range, for instance—any extraordinary single event will likely be followed by one closer to average. So a really lousy golf shot will generally be followed by a slightly better one, and a really awesome drive will likely be followed by one that isn't so crisp. That's how probabilistic events play out, and it's why exceptionally tall couples tend to have children who

are not as tall and why exceptionally short couples tend to have children who are not quite as short. This is why—since we know that most people mate with a partner of similar size—humans are not a species of giants and pygmies.

In any event, our professor recognized that any single performance by a pilot—good or bad—would likely have been followed by a flight that moved closer to that pilot's long-term average. So the pilots who were criticized or punished for a weak maneuver were more likely to do better the next time *regardless* of what their instructors said or did, while those who had received praise or reward were statistically more likely to do worse on their next flight. Not knowing this, the flight instructors had concluded that criticism was helping their pilots perform better and praise was

somehow making their work suffer.

The immediate consequence of this classroom tale is long forgotten, although we can presume that the instructors started being nicer to their trainees. The long-term consequences, on the other hand, are much clearer. The name of that psychology professor was Daniel Kahneman—you might recognize his name from the recent bestseller lists—and it's not too much of a stretch to say that the classroom episode I just recounted was a key step on a journey that led to his receiving a Nobel Prize in 2002 for economics. The real significance of this episode, you see, was that it contributed to a course of inquiry for Kahneman and his longtime research partner, another Israeli psychologist named Amos Tversky. Essentially, in the late 1960s and early 1970s, the two men began

thinking about and experiment in the fields of human judgment and decision making, creating almost from whole cloth a social science now called behavioral economics.

What was remarkable about the flight instructors' experience was that real-life clues seemed to conspire against the correct conclusion. Sub-par flights *did* tend to follow praise, and superior flights *did* tend to follow criticism. And unless a flight instructor knew about regression to the mean ahead of time, the logical conclusion was that punishment worked and rewards didn't. All of which got Kahneman and Tversky to wonder: In what other areas of life were proper conclusions hard to see because of faulty intuitions or the complicated nature of the available information?

The answer, as it turns out, is: In most areas of life.

To understand why, you need to think for a second of the human brain as a world-class decision engine, one that has evolved over the long course of the human experience on the planet. Depending on which experts you ask, the average human makes anywhere from a few thousand to a few hundred thousand decisions every day. There would appear to be, I grant you, some irony in the inability of decision scientists to decide on how many decisions we make each day, but a lot of the difference has to do with how one defines a choice. I make a conscious, albeit lightning-fast, choice to utter every word I speak, but I also make a host of non-conscious choices to fire synapses, contract muscles and expel air in order to make the sounds required to utter each of those words. So am I making one decision per word, or dozens?

You get the point. Humans make a lot of decisions every day, the process of which can get in the way of, well, getting out of bed in the morning if we don't watch it. We can't parse every thought or action to its base component choices. If that was how our brains worked, the decision to run from a lion back in the jungle would have taken too long—and none of us would be here today. As a result, over many millennia our brains evolved a toolkit of tricks to make choosing and deciding easier and quicker. These tricks are referred to in the trade as heuristics, but they are really just rules of thumb we use, consciously and non-consciously, to speed our thinking. When I decide to talk, my non-conscious brain relies on these rules of thumb, these lines of code, to make speaking seem easy, rather than requiring me with each phoneme to

think anew about larynxes and windpipes and the like.

Likewise, we consciously rely on heuristics all the time. When I look out my office window and see everyone walking with an umbrella, I assume it's raining even though I cannot see anything falling. My brain has a rule of thumb that says people generally walk with open umbrellas only when precipitation is falling from the sky. So far, that heuristic has never failed me.

And I think we can all agree that the majority of our heuristics, conscious and non-conscious, work just fine. Probably 99.999% of the thousands we employ. But over the course of time, it's fair to guess that some of these rules of thumb stopped being useful or applicable, or at least stopped having the same implications. A while back, for example, researchers

conducted an experiment in which participants were told that an uncle had left them some money, and they had to choose between four different investment options for their inheritance: They could invest their money in Treasury bills, municipal bonds, Blue Chip stocks and biotech stocks, which they understood to be a range of four options going from very safe to very risky. The results came back as you might imagine. It was a normal distribution, a bell curve. That is, about one fifth of Americans surveyed said they'd invest that inheritance in T-bills, the most conservative option, while another fifth opted for biotech stocks, the most aggressive option. Everyone else was split between muni bonds and Blue Chip stocks—that is, somewhere in the middle. That is the baseline of American investing attitudes, which is what the researchers

expected. But in later stages of the experiment, new subjects were presented with the same option, except they were told that their uncle had left them the money already invested in Treasury bills. They could keep their inheritance where it was, or switch it to one of the three other options. In this scenario, fully HALF of all participants elected to keep their money in T-bills. Even more amazing, other subjects were told that their uncle had left them the money in municipal bonds or biotech stocks or Blue Chip shares...and HALF of each of those groups also said they'd keep the money wherever it was. Suddenly, basic American investing attitudes were being turned upside down.

It was a stunning result, unless you understand something about the human brain, something we know from behavioral economics. Imagine if you will a pair

of early humanoids, walking along in the savannah, when they happen across a bush with bright green berries. Now, both of these proto-humans had been dining on black and red berries for quite a long time, and they were tired of the same old food. But one of those fellows was, by random mutation, more prone to risk-taking, while the other was more conservative.

And so, our more adventurous ancestor decided to try the new green berries, which were delicious and, as it happens, very poisonous. Which explains why very soon after eating the green berries he seized up, foamed at the mouth and dropped dead in the weeds, leaving our conservative ancestor with a new appreciation of the awesomeness of those boring old black and red berries.

It's a silly story, to be sure, but the point is serious:

We are all descendants of people who didn't eat the new berries—that's why we're all here—which explains why many if not most of us suffer from what behavioral economists call the status quo bias. All things being equal, we prefer things to stay the same, no matter how we view ourselves. That is, even people who think of themselves as a 9 on a 1 through 10 scale of variety-seeking turn out, when you examine their life, to actually be 7s; and people who rate themselves as 5s turn out to be 3s! And they are making decisions based on this bias, this heuristic—new is bad, change is dangerous—without ever being aware of it.

That, in a nutshell, is the underlying insight of behavioral economics. Because of various biases and heuristics—which may have once been useful but now may be obsolete—humans regularly form judgments

and make decisions for reasons other than what is optimal or, in any event, what they might think is optimal.

But what, you might ask, does any of this have to do with mediation? Quite a lot, to be honest, given that conflict resolution is as much about choice and judgment as it is anything, and the most successful mediators, I would imagine, are those who can understand judgments and frame choices in the best way possible to lead people to the most advantageous results. Toward that end, I want to discuss a few biases that I think might be relevant to your line of work.

The first is best illustrated with a story of an experiment first conducted by Tversky and Kahneman nearly three decades ago. The two researchers wanted participants to estimate the percentage of African

countries in the United Nations. But first, a wheel of fortune was spun, and participants were asked if they thought the percentage of African countries in the UN was higher or lower than the random number just spun. They were then asked for a specific guess.

Amazingly, given that the number was obviously a matter of chance, participant answers were strongly influenced by the wheel's location. When the spin was 10, the median guess was 25%. When the number spun was 65, the median guess was 45%.

The folks in Kahneman and Tversky's experiment would have been surprised to learn that their answers were so heavily dependent on their starting point—that they unconsciously anchored on whatever number had been spun on the wheel and used it, meaningless as they knew it was, to reach a conclusion about an

unrelated matter. But that's what people do every day in order to make choosing easier. We want—we need—a place to start. That's why MSRPs are so powerful. People want someone, anyone, to give them something to react to. The problem, of course, is that we often don't know on what fact or figure or idea we've anchored. And the problem for mediators is that they often don't know either. Once, when I was a writer at Money magazine, I was reporting a story for a series we ran called One Family's Finances, for which we would bring in a host of experts to solve a particular clan's needs. In this case, the issue was trust and estates. The couple in question, retirees who lived in Iowa, had done quite well as investors, thanks to a very competent financial planner. They were in Year 8 of a very sound investment plan, but as I was getting

to know them I came to understand that they were thinking of firing their planner. It seems that they were big fans of cable TV, watching a variety of business shows, from which they had become very familiar with the benchmark Dow Jones Industrial Average. And this familiarity had convinced them that their planner was sub-par. When they explained this to me privately I was surprised, and told them so.

“But your plan called for 8% average-annual returns and your portfolio has been averaging 10% over the past 8 years,” I said.

“Yes,” they replied, “but the Dow Jones Industrial Average has been averaging 13%.”

“But your portfolio is much less volatile than the stock market overall,” I said. “It’s safer.”

“Yes,” they replied, “but the Dow Jones Industrial

Average has been averaging 13%.”

And so we went for a few minutes, back and forth, me explaining why their investment returns were better and safer than they had a right to imagine, they fixated on the Dow and on the “poor performance” of their planner. He was this close to being fired, and clueless to that fact, because he had no idea against what anchor his clients were measuring him. I told him what they were thinking and he was able to explain to them why the Dow’s performance wasn’t as relevant to them as CNBC might make them think, but I tell this story to anyone who’s job or mission it is to influence another human being. If you don’t understand their anchors, you will have a hard time trying to move them. Harder still because anchoring isn’t the only bias or heuristic that makes impedes

change or progress. Another to keep in mind is called the confirmation bias. Let me explain:

Imagine that sitting before you are four index cards. You have been told that each card has a letter printed on one side and a numeral on the other. The sides facing up each show one the following: A, B, 2, and 3. Your mission is to assess the validity of the following statement by turning over the fewest cards: “All cards with a vowel on one side have an even number on the other.” Which cards would you turn over to determine whether that statement is true or false?

Think about. You could turn over all four, and then you’d be certain, but the challenge here is to turn over the least but know for sure. How many would need to turn over, and which ones. Anybody?

Most people, I will tell you, choose Cards A and 2,

or Card A alone. They look at a vowel card to see if there is an even number on the flip side and look at an even number card to see if there is a vowel on the other side of that. The problem, though, is that people are not asking themselves the correct question.

They're asking, Is the statement true? But they need to also ask, Is it false? Why? Because there could be a vowel on the other side of Card 3, which would mean that *not* all cards with a vowel on one side have an even number on the other. So the correct response is Card A (to make sure there's not an odd number on the other side) and Card 3 (to be sure there's not a vowel there).

The confirmation bias is a heuristic that tells us to believe what we see, feel, smell, sense, hear and think, because more often than not what we see, feel, smell,

sense, hear and think is true. Most of life is as we observe and understand it. People who were born with mutations that made them overly skeptical or questioning of reality as it presented itself were not generally rewarded. In fact, they were often eaten.

Think back to our ancestors on the savannah:

There's a pair of men, there is a lion. The lion looks dangerous and hungry to both men, who consider running away. Then the lion roars. One of the men, because of the way his brain works, thinks: *Oh, he's not hungry, he's in pain, and perhaps I can help him!*

The other man thinks, *Yup, that sounds like a mean and hungry lion about to attack. I think I'll run for the hills.*

We are all descendants of people who ran from lions, whose subsequent processing of information

generally confirmed their initial instincts. That's why the confirmation bias is so powerful. Because it's often so helpful in making decisions. The problem, though, is not that it leads us to overweight information that conforms to our existing beliefs—that confirms what we already know—but also that it tends to cause us to underweight and even ignore information that disconfirms what we know. We're all generally teenagers in love when it comes to many of our beliefs and theories. When someone tells us something about our crush that's flattering to him or her, we hear it loud and clear—and we believe them. When we're told something unflattering, well, it must be a mistake or misinterpretation. We make excuses or rationalizations. We discount and dissect and dismiss. You need only go to Facebook and see how your

Republican and Democratic friends can view the same debate so differently. This is the confirmation bias in action, and it puts a heavy burden on anyone trying to convince anyone else to change their thinking. Triple the burden, by my estimation. That is, when I'm trying to get someone to change their position or see another side, I assume I'll have to give them three times the argument I would otherwise. Three different takes on the same issue, just to get them to start thinking about turning over Card 3!

Finally, I wanted to speak about a trick I like to use when attempting to move people to action. It derives from a corollary to one of the most basic principles of behavioral economics, a principle so well-known its become part of the general discourse about decision making. I'm speaking of choice conflict, the idea that

the more choices we have the less likely we are to choose. I can talk about this later if you'd like, but it's a pretty well known idea by now. We are attracted to diversity of choice, but excessive diversity of choice often paralyzes us. For many reasons, I might add, but the one I want to address right now is best explained by a little thought experiment.

Imagine Mr. A. is waiting in line at a movie theater.

When he gets to the ticket window he is told that as the one hundred thousandth customer of the theater, he has just won \$100.

Mr. B is waiting in line at a different theater. When he gets to the ticket window he is told that as Customer No. 1,000,001 he has just one \$150.

Who would you rather be, Mr. A or Mr. B?

Most people, of course, would rather be Mr. A. Why not; he wins 50% more money. But if I add just one fact to that scenario, changing nothing about Mr. A or Mr. B's outcome, I can convince nearly half of an audience to change their mind. What's the fact? Let's review the situation again:

Mr. A. is waiting in line at a theater. When he gets to the box office he learns that as the one hundred thousandth customer he has just won \$100.

Mr. B is waiting in line at a different theater. When he gets to the ticket window he is told that as Customer

No. 1,000,001 he has just one \$150. The one-millionth customer, as it happens, won \$1,000.

Now who would you rather be, Mr. A or Mr. B?

In this case, research has shown, many people people would actually prefer Mr. A's position (up \$100) to that of Mr. B (up \$150)! The reason is regret aversion. These souls would feel so bad about missing out on the \$1,000 prize—*If I had only got here a few seconds earlier*—that they would effectively pay \$50 to avoid regret over having been a step late to the theater.

Imagine that. A large chunk of humanity would give up money just to avoid feeling bad about something. This explains, by the way, another phenomenon that has long puzzled researchers, which

is the difference in attitude between investors holding losing shares of stock and those holding losing shares of mutual funds. In the former case, people have a very difficult time selling their shares. In the latter, they have a much easier time. I believe one reason for this is that when we sell a losing stock we're making our investing mistake final, and the pain is profound on several levels, not least self-recrimination. *Why did I screw up?* But with mutual funds, it's very easy to overcome self-blame. Why? Because it wasn't your fault the fund value fell. It was the mutual fund manager's fault. And that small difference—the ability to offload blame—is often enough to move people to take action. In such cases, to sell. Off-loading blame, I would argue, is one reason why people move in herds. It's not because people think the crowd knows best.

It's because most people don't know anything, and on some level people believe that if it a mistake doesn't work out they'll feel better having made a poor decision among many others in a similar situation.

My trick, then, when advising people who are paralyzed in a choice set, is to look for a way to allow them to offload their blame should it not work out.

Famously, in my social circle, I once told a good pal who couldn't decide if he should propose to his longtime girlfriend that he should ... and if they got married and it ended in divorce, I comforted him, *he could say it was my fault*. I don't know what that would have entailed had it not worked out—*I knew it was a mistake, but Gary Belsky convinced me to propose*—and yet he said it somehow helped him take the leap. Not because I was so sure they would be

happy, but because I was willing to take some of the blame if they weren't. We can go back to the savannah one more time to explain why regret aversion might be a useful bias or heuristic. People who are prone to regret, as most humans are, are by definition slowed by their thinking. That is, the more neurotic I am about the past, the less likely I am to act in the future. Our brains evolved, then, to avoid putting ourselves in regret mode whenever possible. Recognizing that, you can help people to act if you can convince their brains that they won't be slowed by self-recrimination down the line should their decision fail to work out.

I want to tell you also that my friends celebrated their 20th anniversary this past Memorial Day, and their eldest child is going off to college next year. I

don't know if anything I've told you today will have such fruitful consequences, but I'm confident that if you explore this topic further you'll find a lot to help you maximize outcomes in your practice and life.

Thank you.