

Mediator Insights: Dropping Anchor Bias in Mediation and Negotiation

By: Sylvia Mayer

While we may think we are objective and open-minded, we all have internal cognitive biases that affect our understanding and decision-making. One common bias is anchor bias, which occurs when we rely heavily on one piece of data to the exclusion of all other information.

In Robert Cialdini's *Pre-Suasion: A Revolutionary Way to Influence and Persuade*, he asserts that "what is focal is presumed causal," meaning that what we focus on (focal) shapes (causal) our views on the subject matter. The book explores several studies and examples confirming the connection between focal and causal.

One such example is the 1982 Tylenol tampering incident. In 1982, someone injected cyanide into Tylenol capsules and put the bottles of pills back on the store shelves to be sold. People bought the poisoned Tylenol. At least seven people died from it.

Tylenol recalled over 31 million capsules, created a list of the lot numbers impacted, and published the list to raise public awareness and facilitate the recall. The first two lot numbers identified received the most publicity.

How does this demonstrate the connection between focal and causal? Immediately, lottery ticket purchases using those two lot numbers skyrocketed all around the country. The lottery purchases were so high using those two lot numbers that they stopped allowing those two numbers to be used at all in three states.

While it sounds irrational, it was human nature at work. Because of the publicity around these numbers, they had become a focal point. Because they had become focal, they had become causal – meaning subconsciously people believed these numbers could cause events to occur – like winning the lottery. But they were wrong. Neither of the numbers proved to be winning numbers.

How does this play out in mediation and negotiation? Anchor bias is a common barrier to resolution. It occurs when one party fixates on a particular piece of information (a fact, an event, a case, a statement made, a conclusion, a specific



dollar amount, an act, or an omission) to the exclusion of all other information. Anchor bias clouds our judgment by making us unable to process or accept new or conflicting information. Until we drop our singular focus on the anchor, there is no available path to resolution.

By way of example, I mediated a case in which the sole issue was to determine the amount of attorneys' fees. Liability for the fees had already been determined by final order, but the party found liable for the fees was fixated on the issue of liability. It was all they wanted to talk about in a continuous loop. We could not move forward on a path to a resolution until they dropped their anchor and became receptive to new information.

What's the lesson to be learned? We need to keep our eyes, ears, and minds open to finding a path to resolution. If you find yourself focusing on one thing to the exclusion of all else, then recognize it as anchor bias and drop the anchor. Set aside that one thing and look openly at the other information before you. It may open up unexplored possibilities and lead you to a resolution.

Author's Note: As a mediator, I am a "forever student" always seeking new ways to help people find a path to resolution in mediation. Robert Cialdini's "Pre-Suasion: A Revolutionary Way to Influence and Persuade" inspired this post. In reading his book, I was struck by the relevance to my mediation work. In the book, he explores a myriad of ways to enhance receptivity and focuses on laying the groundwork for receptivity before making any meaningful "asks." If you aren't a reader, but still interested in what he has to say, then you may enjoy this podcast in which he was interviewed about his book: Barry Ritholtz, Masters in Business (June 18, 2021), <https://podcasts.apple.com/us/podcast/robert-cialdini-on-the-psychology-of-persuasion-podcast/id730188152?i=1000423074089>.