



# Cognitive Bias in Negotiations

Presented by  
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**FMCS**

FEDERAL MEDIATION &  
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# Agenda

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What is a cognitive bias?

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How do biases impact us?

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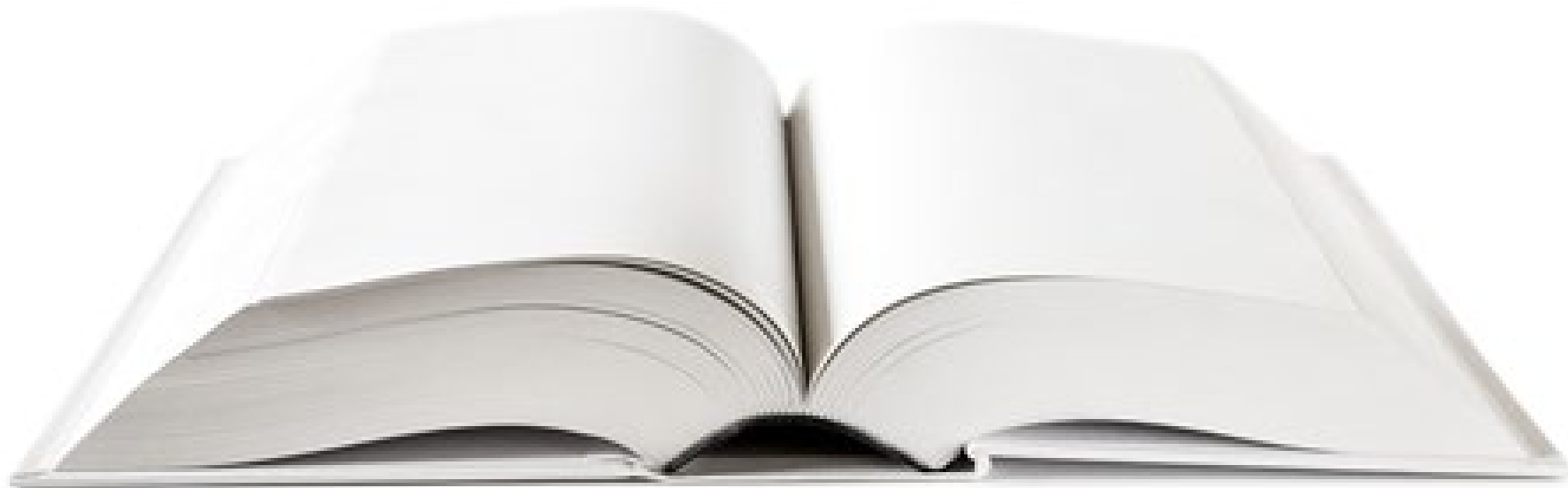
Biases that impact us in negotiations

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Tips for navigating negotiations more effectively

# **implicit/cognitive/unconscious bias**

: a bias or prejudice that is present but not consciously held or recognized



# Why this topic?

- Allows us to see that the way people act in negotiations is perfectly *normal!*
- Can suggest approaches to help work through negotiations
- Can make *us* more *effective*

# SYSTEM 1

Intuition & instinct



Unconscious  
Fast  
Associative  
Automatic pilot



# SYSTEM 2

Rational thinking



Takes effort  
Slow  
Logical  
Lazy  
Indecisive



# Deciding on your initial offer

- **Offers are signals** - taking a **strong position** you are saying you expect a **favorable outcome**
- **Three kinds** of opening offers (**fair, moderately unreasonable, absolutely unreasonable**)
- **Advantage to going first**
  - Allows you to **frame negotiations**
- Clear understanding/**confident of case value** - **go first**
- **Disadvantage** to going first
  - Forces you to **set the outer limit of bargaining range**
- **Uncertain of value** - let **other side go first**
  - do this by **delaying or asking questions**

# Anchor Bias

Cognitive bias that causes us to rely too heavily on the first piece of information given on a topic.



# What is the impact?

- **Starting point** for all further negotiations
- **Final decision** is biased towards the initial **information value**
- Subjects who see a **higher number** will give **higher estimates** about an **unknown fact**
- **Less clear** you are on your **case's value** the **more** you are **affected**





# First Offer Strategies

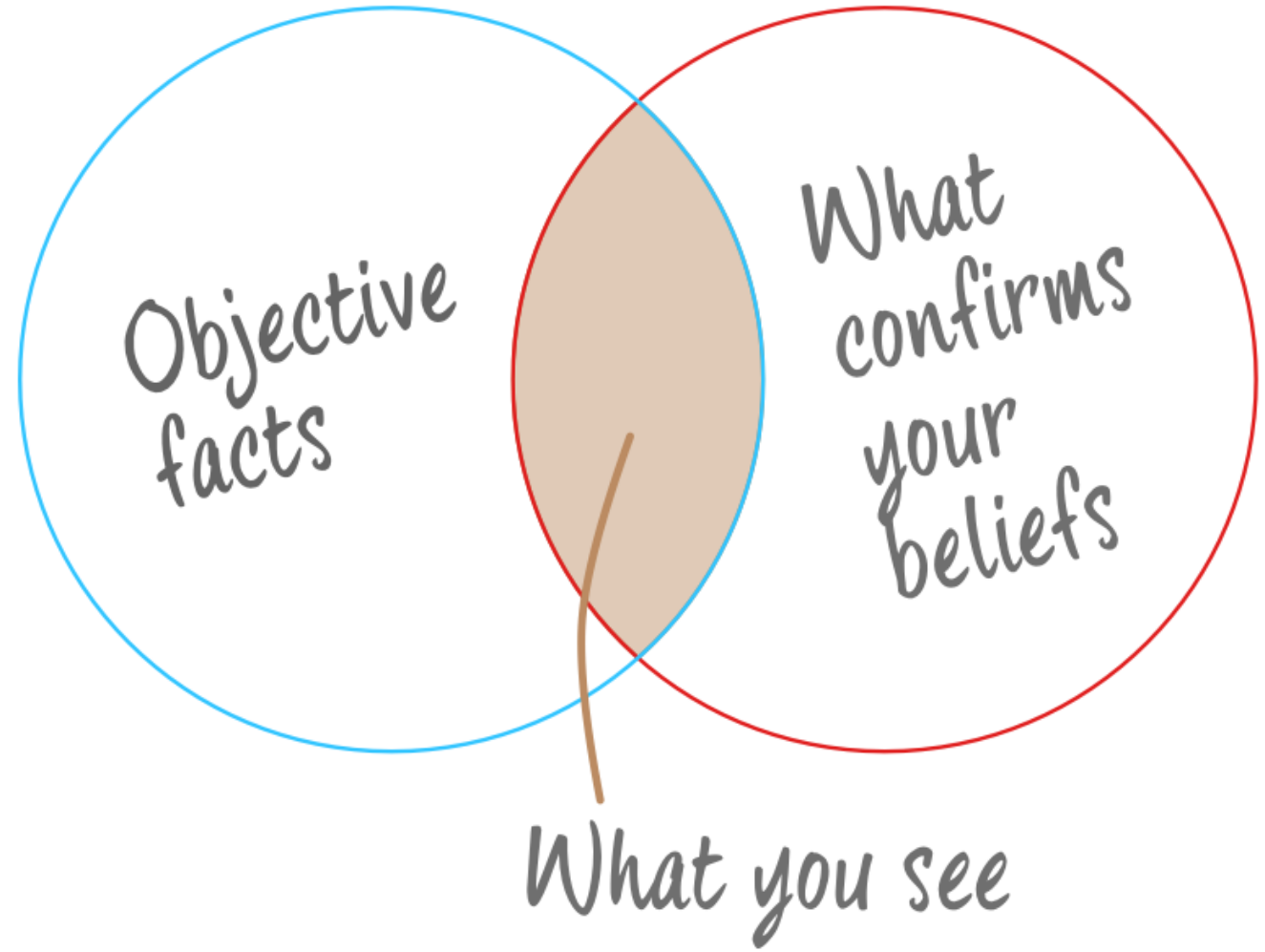
- Set the anchor to expand **outer limits** of the **bargaining range**
- **Anchor** impacts **bargaining relationship**
- **Compromise** is **expected**
- Include **multiple options to negotiate** in opening offer



# Confirmation Bias

Image Source: [Capital.com](https://www.capital.com)

The tendency to seek out and/or favor information that confirms an existing belief



# Great Quotes on Confirmation Bias . . .

- *“What the human being is best at doing is interpreting all new information so that their prior conclusions remain intact.”*  
— Warren Buffet
- *“The human understanding when it has once adopted an opinion, draws all things else to support and agree with it. And though there be a greater number and weight of instances to be found on the other side, yet these it either neglects and despises, or else by some distinction sets aside and rejects.”*  
— Francis Bacon



# Confirmation Bias in Negotiations

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- Can lead you to incorrectly assess proposals and their outcomes
- Can lead you to ask questions that support original beliefs rather than seek an honest appraisal of what is intended
- Can prevent you from building a better relationship with your counterpart
- In summary . . . *lost opportunities that may have been better for your team*

# Confirmation Bias— Antidote

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- Slow down
- Ask questions
- Look at all of the information before drawing conclusions
- Seek the perspective of another person who may not have the history you do
- Try to prove yourself wrong
- Finally, if you can't express a respectful "no" and explain your reservations—ask the other party how they would answer them so that you could say "yes"



# Poll

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- You are offered a wager on a coin toss.
  - Tails – you lose \$100
  - Heads – you win \$150

Do you take the bet?

# Loss Aversion

- **Losses are twice as powerful, psychologically, than gains**
- **Pain of loss more acute than pleasure of gain**
- **Tendency to strongly prefer avoiding losses over acquiring gains**



# Negotiation Strategies to Address Loss Aversion

- **Loss** is viewed **based on original reference point (anchor)**, not actual net value
- Negotiators **discount** value of **gains** and **overvalue unexpected losses**
  - **Losses** felt more when they occur in **series of small steps**
    - **Bundle losses together and offer at one time**
  - Small gains felt more valuable than same total gain in lump sum
    - **Offer series of small gains in small steps for maximum impact**
- Look for **ideas not previously discussed**
- **Agreement is often reached if neither side in a negotiation feel that it has “lost”**





# Poll

- Would you accept a bet that offers a 10% chance of winning \$95.00 and a 90% chance of losing \$5.00?
  - Yes
  - No
- Would you buy a \$5 lottery ticket that offers a 10% chance to win \$100?
  - Yes
  - No



# Framing

The idea that our **judgments** and **decisions** about information, events, motives, etc., can **depend upon the way** it is **presented** to us.

## Two focus groups were asked the same questions framed differently

- Do you get headaches frequently? If so, how often? 2.2/week
- Do you get headaches occasionally? If so, how often? .07/week
  
- How long was the movie? (minutes) 199
- How short was the movie? (minutes) 130
  
- How tall was the basketball player? (inches) 79
- How short was the basketball player? (inches) 69

# Get the Language Right

Parties consistently report that a **shift in positive or negative framing shifts** their feelings about reaching **resolution**



## PEANUTS



United Features Syndicate, Inc.

Why does Conflict  
Lead to the Downward  
Spiral?

### Fundamental Attribution Error

Natural tendency to ascribe negative events to actors' character or ill motive.

# Fundamental Attribution Error

- **Everyday human behavior is heavily influenced by external factors**
- **Over-emphasizing** personality-based explanations for other people's behaviors while **under-emphasizing** the actual situation



# Why does this matter?

- Brain fills in gap with negative story
- Placing blame on PEOPLE instead of Circumstances, we feel less obligated to find solutions

## **What can you do?**

- Share as much information as you can, share the why
- Unpack with questions and good explanations

# Why it can be more important who says it than what is said

## Reactive Devaluation

- Devalue a proposal as **reaction to its source**, rather than apparent value
- Occurs when we **distrust the offeror**
- Example: an offer is rated less highly after it has been put on the table than beforehand





# Reactive Devaluation - Tips

- Prior to making a proposal, ask your negotiating partner what their goals and interests are around a topic, and then present the proposal *in response* to their stated interests
- Have the concept or proposal presented through a third party neutral or other person who is respected by your negotiating partner



How Does Loss Aversion Drive Decision Making?



# Risk Tolerance

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- **Risk-averse as to gains**
  - **Loath to give up something gained** in favor of **strong chance of gaining more**
- **Risk-seeking as to loss**
  - To **avoid loss**, more **willing to take a risk**, if there is some chance, however **small of evading any loss**
- **Status quo bias**
  - **Overvalue** current **known state**
  - May attach **greater-than market value** because it is **yours**



# Watch Traps and Tendencies

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- **Good offers** may nevertheless be **rejected** because:
  - Negotiators may reject reasonable offers b/c they are seen as a **loss compared to a high reference point** (e.g., the original demand)
  - Our motivation to **avoid loss** leads to preference for status quo
- Sunk costs trap: **costs to date** becomes part of the “value” that must not be “lost”
- **Aggregate losses, enumerate gains!**



# Mitigating Cognitive Bias

- Seek out people who disagree and ask them genuinely curious questions
- Ask someone to play “devil’s advocate”
- Surround yourself with a diverse group of friends and associates
- Practice self-awareness
- Empathize and put oneself in the other party’s shoes
- Separate the person from the issue
- Focus on objective facts



# Harnessing Cognitive Bias

- Set your anchor to expand the range of settlement without shutting down your negotiating partner
- Frame proposals in terms of gain (not loss)
- Give the bad news all at once; dole out the gains bit by bit
- Think carefully about who should present a given proposal (consider using a mediator)

# In closing . . .

Thoughts, takeaways,  
questions?



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## So in Summary

*While our brains and behaviors are largely innate, we have the ability to critically challenge and overcome these tendencies and make better decisions. Your challenge as a negotiator is to help both sides use this ability to get the best possible settlement under the circumstances.*