



Max Factor III

Recognizing the real demon: A discussion of splitting and projective identification

It's a recession. Your income is down. You are thinking of borrowing from your pension funds to pay for your child's college tuition, but the value of the equity in your pension is well below your retirement goal.

Just then, a policeman pulls up slowly along side your car and looks at you. Although you have done nothing wrong, you are inexplicably very nervous about getting a moving violation and having to pay more for car insurance. When he passes you by, you silently say to yourself, "He must already have his quota or he would have found a reason to give me a ticket."

You arrive at the dentist for your annual teeth cleaning. The dental hygienist tells you that it would be wise to schedule a second cleaning in four months because your plaque buildup is substantial. You immediately feel she is simply trying to generate more income from you; and you let her know she is not going to double her income off cleaning your teeth – "Try that line on someone else's teeth."

When you get home, you tell your spouse about your stressful encounters with the policeman who slowed down and stared at you and the dental hygienist who wanted to make extra money by seeing you every four months instead of once a year.

It doesn't occur to you to mention you were feeling very anxious about how you're going to fund your son's education. Instead, you got "relief" by splitting off that anxiety about finances from yourself and projecting it into the minds of the policeman and the dental hygienist – each of whom were probably just doing their job, not looking for extra money.

People under stress create false demons

In the litigated case, it is common for one litigant, or even two or more litigants, to assure respective counsel or a mediator at the beginning of a mediation that the opposing litigant is "a liar," "a true scoundrel," or simply and elegantly, "venal."

Yet, we attorneys know that neither our clients nor the opposing litigant is likely to be anywhere near as untruthful, as wicked or as venal as our clients initially describe to us. And further, we know that our accusing clients often have the very same nasty characteristics as the accused opposing litigant. Sometimes our clients' charges against another more accurately describe our own clients rather than the accused adversary.

In fact, sometimes we need to be extra careful in working with a client who describes the opposing side in angry or with fighting words, because it is possible that same client may turn on us when the going gets difficult. Why is this so?

Most of the matters I handle are real estate, employment and business disputes in which one participant frequently "demonizes" the other. Legal counsel are more effective in negotiation and in representing their client's interests when understanding better whether the demon(s) one's own client sees on the other side is, in whole or in part, actually the devil inside the client himself.

I will illustrate the process of "splitting and projective identification" which so often results in demonizing falsely the opposing litigant or counsel by using a recent real estate case between Buyer Bob and Seller Sam.

"This will *never* settle," counsel for Sam emphatically advises the mediator. "Bob the Buyer is a housing speculator and a cheap sneak, who concealed material facts and refuses to acknowledge accountability for his own bad behavior. You can tell Bob, 'We are only attending the mediation because the Purchase and Sale Agreement provides that we must mediate first or we are not entitled, when we win, to full reimbursement of our attorneys' fees and costs.'"

"Tell me," the mediator asks, "Why does your client Sam believe the Buyer Bob is a sneak who conceals material facts and denies accountability?"

"My client Sam bought another and larger house shortly after he signed a 150-day escrow with Bob. So, Sam asked Bob for an earlier closing date and offered a \$25,000 price reduction so he and his pregnant wife Sarah wouldn't be paying two mortgages at the same time."

Sam's counsel continued, "In response, Bob readily agreed that he'd close in 30 days, provided that Sam would pay Buyer Bob whatever it cost to correct any significant problems in the House Inspection Report that was expected shortly. The amendment to escrow was signed by Sam and Sarah, as Sellers, and Bob, as Buyer."

"Just one day later, Bob presented Sam and Sarah with a House Inspection Report that was dated three days earlier. The report stated that the area below the upstairs shower pan showed years of plumbing leaks and that the header over the living room entrance was full of dry rot and could collapse in the event of a significant earthquake. Estimated repair costs of \$15,000."

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His voice rising in anger, Sam interrupted his counsel to announce, “Bob told Sarah and me that we had two choices: One, we could deduct another \$15,000 from the sales price and he’d fix it at his expense; or two, we needed to extend the escrow back to 150 days so that there can be time for the repairs to be made at our expense after proper plans and permits are issued.”

“We were suckered by Bob – that sneaky low life speculator, who doesn’t care that Sarah is pregnant and we can’t afford two mortgages. He tried to profit off his fraud by concealing intentionally the Inspection Report until after receiving the first price reduction of \$25,000.”

Sarah added, “It’s a matter of principle; we won’t be extorted by this lawsuit. We won’t pay that cheap sneak Bob a single penny.”

Sam and Sarah’s attorney added, “And, we’ll get punitive damages, too.”

Four hours later, the case settled. Surprisingly, Sam and Sarah agreed that Buyer Bob would close the escrow immediately in exchange for a \$35,000 reduction in the initial purchase price and an agreement that Buyer Bob, and not Sam and Sarah, would make the repairs at Bob’s cost and risk.

So, what happened that Sam and Sarah decided that “It’s a matter of principle” turned into “We’ll reduce the purchase price by \$35,000 of principal?”

The rational thinker doesn’t explain false demons

“A pragmatist would probably conclude that when Sam and Sarah weighed their options, which most certainly had to include that the house that they were selling had significant structural damage, that it was probably an efficient economic choice to pay the \$35,000,” according to E. Jane Arnault, President of JurEcon, Inc. a consulting firm which provides experts in economics, finance, and accounting.

From the perspective of an economist and most business attorneys, Dr. Arnault is correct in her assumption that “individuals seek to make rational decisions, weighing costs and benefits, and risks and rewards, in relationship to their own perceived interests.”

Yet, that is not the whole story. It does not tell us why Sam and Sarah came to the mediation with the attitude expressed by their counsel: “This will *never* settle.” “Buyer is a cheap sneak, who conceals material facts and denies accountability.”

In the instant case, it turns out that Bob is not a cheap sneak avoiding responsibility for his obligations. He is a contractor, recently divorced, looking for a small one-bedroom house he could fix up over time. Bob did not immediately turn over the report, because he was uncertain he could afford to spend any additional money on immediate repairs and wanted to think about how to proceed with Sam and Sarah. It was just then that Sam had asked for the greatly shortened escrow period and gave Bob the opportunity to protect his pocketbook and still purchase Sam and Sarah’s home.

If any party was “cheap,” it was probably Sam the Seller who was so reluctant to pay for the structural damage caused by the dry rot in the home Sarah and he had lived in. Also, it was quite possible that Sam or Sarah was “a sneak” because during prior plumbing repairs they may have received notice of the extensive dry rot damage. Finally, it was Sam who was “not taking responsibility” for his choice to buy a new home before he sold his old one.

Developmental Psychology does explain false demons

Some years ago, I turned to a leading psychotherapist, Dr. Judith Gondell, for the answer as to why all these damning (and ironically “self-describing”) characterizations of and by litigants occur. I was hopeful that a better psychological understanding of these heightened emotional charges by litigants such as Sam and Sarah about Bob would be quite instructive for those who seek to be more effective as negotiators and as catalysts for resolving disputes.

Dr. Gondell explained, “We see this frequently in high stakes situations,” adding that by high stakes she meant “periods of high dependency and concomitant anxiety.” She went on to say, “People in this kind of situation common-

ly regress to utilizing an infantile understanding of the world around them. Simply put, by taking negative aspects of themselves and attributing those characteristics to the other, the litigants maintain a view of themselves as ‘the good one’ and the other as ‘the bad one’... allowing them to blame the other for the current difficulties. We call this process Splitting and Projective Identification.”

Generating false demons starts in childhood

Dr. Gondell says that there is an important developmental process, which occurs in everyone almost from the time of birth. It is called “Splitting” which is frequently combined with another process called “Projective Identification.” “When a person becomes angry, hostile or simply frightened, they may regress to an infantile, emotional state and split off their anxieties, fears or fantasies about doing violence, for example, and imagine or project these negative feelings and motivations onto the other person who seems to have caused the conflict to arise.

“Each of these two processes is part of normal psychological development. Infants organize their world into good and bad sensations, which become equivalent to good and bad feelings. Then, the infant gets rid of the bad feelings by magically projecting them onto another – the most obvious one to blame is “Mommy,” the generic, omnipotent caretaker.”

A mother closely supervises her infant to prevent that child from putting a wet finger in an electrical plug or eating a tempting cigarette butt. Since an infant cannot have everything he or she wants, when there is denial the denying person is regarded as bad. “You won’t let me. Bad Mommy!”

The demons reappear in adults under stress

Dr. Gondell explains that the demons that come from dividing childhood experiences into “good” and “bad” re-emerge when we are adults under stress or in conflict. Further down the developmental

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line, the bad feelings become even more complex, such as guilt, helplessness or fear of loss – to name just a few of the complex feelings that ultimately we have to learn to tolerate in ourselves. As adults under stress, we often regress back to this early level of understanding and relate to others based on those early simplistic definitions of good and bad while externalizing the source to a person other than ourselves.

When I mentioned to Dr. Gondell that we mediators sometimes notice that our litigants seemingly act like children, each blaming and demonizing the other's intentions and even their entire character, she replied, "Yes, the likelihood is that one or both are Splitting and are in a state of Projective Identification. They are relating only to the characteristic, the part they projected into the other guy, failing to see the whole person on the other side of the table, while not being able to tolerate within themselves the feelings of being 'fighting mad' or the feelings of guilt or fear (of losing or failing)."

Dr. Gondell concludes: "I would guess Sam and Sarah, faced with having to fund two mortgages and the structural repair, like most people, would be suffering a great deal of anxiety and guilt or perhaps shame. This makes the deal (and their dependence on Bob) of great emotional importance to them. Add to that their guilt about concealing the structural damage, and you have a perfect set-up – that is, to rid themselves of these intoler-

able feelings by attributing them to Bob. Bob, who in reality is a person with his own troubles, becomes identified in their minds, by their own projections and is now seen by them as the 'Cheap' the 'Sneak' and the 'Irresponsible.'"

Unfortunately, hiding our own nature from ourselves by accusing another may make one feel better in the very short term, but it is a dreadful error in the negotiation process to accuse falsely another of one's own wrongdoings.

Acted out in litigation, splitting off from and projecting negative parts of oneself is a destructive form of self-deception. Ultimately self-defeating, it falsely demonizes the adversary and prevents one from really listening to or learning important facts about or from him.

Recognizing one's demons creates a more realistic environment for conflict resolution

Dr Gondell gently jibbed at our legal profession's ardor, by observing: "A realistic understanding may not occur until the disputing parties have spent tens of thousands of dollars and hundreds of hours litigating against each other represented by their knights in armor, namely their fiercely protective and competitive legal counsel."

So, one reason why mediation shortens litigation and prepares for dispute resolution is that a neutral is not likely to project false personality characteristics onto either litigant. Instead, the mediator works with legal counsel to eliminate false

demons and restore the negotiations to a healthy state by listening, probing respectfully and communicating within a framework that frequently modifies the litigants' perceptions and refocuses the litigants on what is realistic in best meeting their own particular interests in the light of the resources, risks and rewards of each.

Clients left on their own may negotiate in a self-destructive fashion by inadvertently feeding their fears and anxieties. Legal counsel not able to be highly skeptical of the existence of demons presented by any litigants will not be negotiating in the true interests of their clients, and may drive away potentially wise and durable resolutions.

Kids in a playground can be heard to say: "Anything you call me, bounces off me and sticks to you!" Maybe our children instinctively know that the name caller is often really describing the name caller's very own faults.

We are well served as negotiators to be as intuitive when negotiating with others.

Max Factor III is a Fellow of the International Academy of Mediators and is a co-author of a book in progress: Merging Worlds: Conflict Resolution and Psychology with Judith Gondell, PhD, MFT and Charles Gondell, MA, MFT (psychotherapists) and E. Jane Arnault, PhD (economist).

