

Something You Should Know: One in a series of observations derived from Academia

One mechanism by which people decide whether to trust strangers is the interplay between the stranger's initial appearance and the observer's intuitive biases. So, when entering a negotiation with opposing counsel who you have never met or meeting an opposing litigant for the first time at mediation, be aware that you may initially make a social judgment about the other person's trustworthiness, which is based on your past biases. The result can be unnecessary misunderstandings resulting in delays or missed opportunities.

Secondly, and perhaps more significant than the fact that first impressions may temporarily mislead one as to trustworthiness of another, is that the natural reaction to discovering one is misled by one's own bias is to attach a "penalty" to the innocently observed participant who is then deemed less likely to be worthy of your trust! To protect our clients, we must be aware of both of these counterproductive tendencies.

In *"Judging a Book by its Cover: Beauty and Expectations in the Trust Game,"* Rick W. Wilson (Rice Univ.) and Catherine C. Eckel (Univ. of Texas, Dallas) created a game to measure the extent to which individual strangers may trust each other. The Trust Game involves two persons – a first mover who we will call Jane and a second mover who we will call Lev. Both Jane and Lev are told that each may keep whatever amount of money that each possess at the end of the Trust Game. The laboratory experimenter will then give an initial endowment of a specific sum of money, say \$10 each to Jane and Lev.

Jane is then told that she may invest anywhere from \$1 to \$10 of her money with Lev. Once Jane chooses how much she wishes to give to Lev, then the laboratory experimenter will triple that amount and give the tripled sum to Lev. So Lev will have his initial endowment of \$10 and he will have received an additional \$30 from Jane and the lab experimenter's supplement. Lev is then asked to consider giving anywhere from nothing up to all of his \$40 to Jane, the first mover. For Jane, the first-mover, her transfer or investment in Lev is interpreted as a manifestation of trust; and for Lev, the second-mover, his transfers are interpreted as a manifestation of trustworthiness.

The experimenters discovered that "attractive" participants received a "beauty premium" (i.e., they were disproportionately trusted during the first round of the game and given a higher proportion of the initial \$10 start up monies). Thereafter, in those situations in which the "attractive" person did not reciprocate to the satisfaction of the initial donor, the feelings of the original participant switched rapidly to a "beauty penalty," in which the attractive person then received disproportionately less the next round of the Trust Game. When the positions were switched and the "attractive" person was placed as an initiator of the Trust Game, the person who had previously offered a "beauty premium" compared to the others, now gave back disproportionately less to the "attractive person."

Similar results have occurred playing the Trust Game when participants appear facially to be of similar ethnicity or otherwise kindred in culture or religion. An initial “premium” of trust is awarded, which when not reciprocated leads to a “penalty” response toward the “deceiver.”

It 's easy to think to ourselves: “I’m a smart, educated person; I don’t have such knee-jerk biases.” The trouble with this idea is that our brains are hard-wired to distrust those not like us. Professor Mahzarin Banaji of Harvard University found that viewing photographs of those who are “different” automatically activates the brain’s fear center, and that we are slower to think of them as having “good” qualities when we are required to react reflexively rather than consciously. (Cromie. William J., Harvard Gazette “*Brain shows unconscious prejudices: Fear center is activated.*” <http://www.news.harvard.edu/gazette/2003/07.17/15-prejudice.html> (visited 3/12/10).

The good news? Professor Banaji reports that if given time to be thoughtful about our actions toward those unlike us, and to interact before making decisions, we can overcome our biases.

Think of how easily we may betray our own client’s trust by making initial judgments based on such first impressions, and then over-reacting in a punishing fashion just because our initial judgment was hasty, based on fear, and not informed by any facts other than appearance.

The lesson here? Negotiate thoughtfully, not reflexively. Ask yourself: “Am I responding based on bias, or punishing a “traitor” who was supposed to behave favorably toward me?” Take some time to know your opponent, especially if he or she is unlike you in some important way. If you make the effort to be mindful, you will overcome the biases that get in the way of successful negotiating.

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