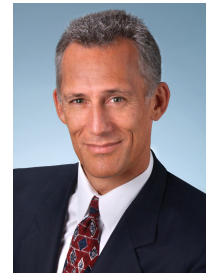


DECISION FATIGUE, MEDIATION, AND THE POWER OF M&M'S

OR WHY I DON'T CARE IF THE @#&*%@ DISH TOWELS HAVE DUCKS ON THEM!

By Michael D. Young *



You have to love cutting-edge scientific research. First we learned that red wine was good for us (thank you scientists...or God...or both!). Then came the celebrated revelation that dark chocolate was actually a health food (and all this time I've been eating kale!). And now? It's M&M's.

According to some very exciting new scientific studies (as interpreted by Your Author), M&M's may make you a better negotiator, leading to more successful mediations. I'll say it again for those of you who are hard of reading: M&M'S MAKE YOU A BETTER NEGOTIATOR.

According to research originating with social psychologist Roy F. Baumeister, and carried forward by others, people actually get tired when forced to make too many decisions. Of course, you and I don't need a PhD from Princeton to figure this one out...we only need to remember back to when we first got engaged. Remember that trip to Nordstroms (or in my case, to F.W. Woolworth's) to register for your wedding? What kind of china pattern should you get, or stemware, or thread count on your sheets, color of your towels, pots and pans, utensils, coffee maker, crock pot, shoot me now please!!! By the end of the day, WHO GIVES A @#&*%@ IF THE DISH TOWELS HAVE DUCKS ON THEM, JUST GET ME A BEER!

But the PhD's took it a step further. According to the excellent August 17, 2011, New York Times article by John Tierney entitled "Do You Suffer From Decision Fatigue?," these top scientists – using top secret scientific experiments on unsuspecting college students that involved ice water and those scary hand grip exerciser things – not only confirmed the existence of decision fatigue, **but discovered that the fatigue manifests itself in a loss of willpower or self-control.**

More importantly for those of us in the negotiation game, these studies showed that as we make more decisions, and suffer decision fatigue, **we tend to make decisions that offer a quick payoff — instant gratification — as opposed to ones that provide for a better long-term gain.** By comparison, when we are fresh, we tend to make decisions that are better for us longer-term. Brain scans (all the vogue in behavioral research these days) even corroborate this phenomenon.

Decision fatigue can have some significant consequences. One interesting study involved parole hearings in Israel. The study showed that the parole committee was much more likely to parole inmates early in the morning or right after breaks or lunch. In those parole hearings coming up towards the end of the day, the chance of parole was very low. The theory was that once decision fatigue kicked in, the committee members were less likely to do the hard analytical thinking on the case, and defaulted to the easy "no parole" decision.

Or think about your last trip to Trader Joe's. After all those difficult decisions over whether to get the extra virgin olive oil, or which of the 200 brands of merlot goes best with the Santa Maria Tri-Tip, or which of the 100 varieties of nuts you should get for a snack, you arrive at the checkout stand, and what do you see? 70% dark chocolate just waiting for you! Your will power is at its lowest, and you are now making short-sighted impulse decisions. (Luckily, science has proven that this chocolate is good for you, so go ahead and buy it!)

Now let's think about this in terms of your mediations. There is a reason that, at the end of a day of tough negotiations, parties sometimes find that middle ground. They are just too tired to continue. "Oh heck, just give it to them, I've got a pizza and duck towels waiting for me at home."

On the other hand, you have probably all seen times when a party dug in his or her heels at the end of the day and turned down a good deal simply because it was too hard to process the long term gains of the proposal: "Forget it, I've been moving all day and I'm not going to move any more. (Besides, I've got duck towels at home to get to.)" You are seeing the impact of decision fatigue.

Luckily, there is a cure! And if you've been paying any attention at all to this article, you will have figured out that the cure involves those ubiquitous bite-sized morsels of chocolate heaven.

According to the studies, **glucose** replenishes us and counteracts decision fatigue. It restores our will power; it allows us to concentrate on long-term gain rather than instant gratification; it makes us wiser negotiators. The empirical research (with the hand exercise things) and the brain scans confirm it.

Who knew that M&M's were so important to our ability to make

good decisions? Maybe Ronald Reagan was right all along to have a bowl of Jelly Belly's at every cabinet meeting.

This creates a cruel irony for dieters. You need willpower to resist all those times during the day you are tempted by a tasty but fattening treat. But every time you decide not to eat something, you increase your decision fatigue and lower your willpower. To get your willpower back ... you need to eat.

Of course, the real answer is to eat healthily through out the day, with proper proteins, grains, vegetables, fruits, etc., so you won't need the sugar hit to recharge your willpower and decision-making ability. (But "*How Kale Saved My Mediation*" is hardly a sexy title for an article.)

Some mediation providers even provide healthy snacks and lunches to keep their clients – as well as their mediators – happy and turbo-charged, so they can all perform to the best of their abilities right to the end of the day, making sound long-term decisions despite 14 rounds of mind-numbing distributive bargaining involving brackets and counter-brackets ("I'll go to up to \$28,517 if they'll come down to \$143,741....")

So the lesson from all of this for litigators, transactional attorneys, and mediators alike is to keep some healthy snacks with you during days of heavy decision-making, such as during your all-day mediations, to ensure you will be making solid, long-term decisions. And to those of you thinking of registering for a wedding shower, well, select the dish towels early in the day.

* **Michael D. Young** is a full time neutral with Judicate West in California, focusing on intellectual property and employment disputes, among other complex civil matters. He is a Distinguished Fellow with the International Academy of Mediators. Previously, he was an intellectual property and employment litigator with Alston & Bird (formerly Weston Benshoof). He welcomes your comments at Mike@MikeYoungMediation.com, or feel free to add to the conversation at www.MikeYoungMediation.com/ask-a-mediator.

© 2011 Michael D. Young

