

* V. Michelle Parry

Who Put the Mania in Tulipmania?

*If a person begins with certainties,
they shall end in doubts,
but if they can begin with doubts,
they will end in certainties.*

*Sir Francis Bacon
1561-1626*

Tulips probably arrived in Europe in 1593 as a gift from the French Ambassador to the Ottoman Empire. The recipient, Charles de L'Ecluse, was a Flemish medical professor and botanist. Charles figured out how to breed the tulips to withstand the cold winters in the Netherlands. He also bred them to have vivid colors and frilly petals. Some were rarities and others became quite common.

In February 1637, a single bulb could cost a thousand Dutch florins. To put this in perspective, the average yearly income at that time was around 150 florins and people who did not have the cash, traded their livestock, homes and land for ownership of a bulb future or in some cases, for a common garden variety bulb; hence the term 'Tulipmania'.

In modern times, "Tulipmania" has come to describe what happens when asset prices rise spectacularly as a result of psychological factors, rather than economic ones. People react to what others are doing. They think, hope and believe the rise will continue. However, just as with the tulips, eventually, someone will not be willing to pay more. When this happens, what changed is the way people are interpreting and reacting to what they think other people are thinking and doing.

Now, imagine a negotiation or mediation where people are trying to precisely value a case based on what might happen in the future - information is imperfect; key assumptions are always debatable; the future is not certain; interests are likely to be complex and largely competing; and the relationships between people within each group and among the people in the different groups are usually quite complicated.

Whether you are talking tulips, injuries to class members, allocating risk or merging companies; no amount of aspirin or 17th century chewed white willow bark will take away the pain caused by spending the day trying to explain the past and predict the future under alternative scenarios, while attempting to influence others to accept your view of a range of reasonable results, while resisting the efforts of others to influence you to accept their view of a range of reasonable results.

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To make the task that much more complicated, we are all vulnerable to at least a few kinds of bias, some of which might include the following:

- selective perceptions or recollections of facts;
- over-optimism about opportunities that will be available in the future;
- over-confidence about the ability to take advantage of those future opportunities;
- confusing correlation with causation;
- underestimating uncertainty in alternative scenarios;
- disregarding new information that does not support a preferred result, and
- inaccurate attribution of motives and characteristics to others.

Often, it is easy to recognize that our clients, counterparts and co-counsels - no matter how sophisticated - have fallen into the habit of seeing 'reasonable' in an extremely narrow way. However, it is often much harder to see the impact of the same mental shortcuts on our own decisions.

While the ultimate goal of negotiation is to eventually achieve resolution, in order to achieve a maximum return on the resources invested in the process, the resolution must be the result of good judgment rather than misjudgment.

Being aware of the potential of bias is the first step. Maintaining an ongoing dialogue with everyone - client, co-counsel, counterpart and mediator – is another. Adaptability, persistence and a willingness to help each other to make good decisions will also serve you well.

If those don't work for you – try what Benjamin Franklin did as described in a 1772 letter to the guy who invented pencil erasers:

“When difficult cases occur they are difficult chiefly because while we have them under consideration, all the reasons pro and con are not present to the mind at the same time; but sometimes one set present themselves, and at other times another, the first being out of sight. Hence the various purposes or inclinations that alternatively prevail, and the uncertainty that perplexes us. To get over this, my way is to divide half a sheet of paper by a line into two columns; writing over the one Pro and over the other Con. Then, during three or four days consideration, I put down under the different heads short hints of the different motives, that at different times, occur to me, for or against the measure. When I have thus got them all together in one view, I endeavor to estimate their respective weights; and where I find two, one on each side, that seem equal, I strike them both out. [A]nd thus proceeding I find at length where the balance lies; and, if after a day or two of further consideration, nothing new that is of importance occurs on either side, I come to a determination accordingly.”