

Mediation/Negotiation Tactic – Stonewalling

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Known as dependably impenetrable, Confederate General Thomas Jonathan Jackson earned the nickname “Stonewall”. While he may not have been the choice to lead an offensive attack, Jackson’s effectiveness at rebuffing Union advances earned him respect among both sides of the great conflict.

Despite being defined as “to play defensively rather than trying to score”, stonewalling tactics are often employed in negotiations paradoxically, in an effort to score concessions while giving none in return. When used subtly and opportunely, stonewalling can be an effective weapon against the unsuspecting adversary.

Mediators who are faced with a complex, multiple issue dispute are regularly instructed to begin the task by focusing on the smaller or least-disputed issues. Momentum is gained and trust is developed as each of these lesser issues is addressed and resolved. The theory holds that parties are more likely to resolve the central, hotly contested matter if they have already resolved lesser issues. The same holds true in a single-issue dispute, where the gap between in the parties’ respective demands or positions has been greatly narrowed during the course of the negotiation. Generally, disputants become more reluctant to quit as time and effort are invested in the process.

This conventional wisdom has the potential for negotiation abuse and tactical exploitation. Blatant stonewalling at the beginning generally proves ineffective. However, as the negotiation/Mediation proceeds and progress is made, the effectiveness of stonewalling increases. To be clear, not every refusal to make further compromise is stonewalling, as there may be a justifiable reason why your adversary has suddenly hit the negotiation brakes. However, if none is offered, resist your impulse to carelessly see the process through. That may be the very objective of the stonewaller.

So, how do you handle stonewalling tactics? First, distinguish stonewalling tactics from principled negotiation decisions. Second, do not let your judgement be clouded by the progress already made. A truly shrewd stonewaller may have conceded on some of the lesser issues or moved from an earlier unreasonable position to inflict upon you that very pressure. If your adversary’s stance would have been quickly dismissed and rejected if made initially, don’t evaluate it any differently just because it has come three hours belated. Third, challenge the tactic head-on, by either making a reciprocal stonewall move or otherwise calling the bluff. Determine to carry through with any asserted ultimatum, or your negotiation credibility and power will be severely damaged.

In times of crises or war, people look up to those whose morals and objectives are as impenetrable as a stone wall. While some of your negotiations or Mediations may seem like war, be careful to recognize and respond to a well-utilized stonewalling tactic, lest you be overrun.

This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at bgmccarthy@sprintmail.com.