
Utah State Bar Estate Planning Section
**A NEW PARADIGM FOR MAKING LAWYER NEGOTIATIONS
LESS STRESSFUL AND MORE PRODUCTIVE**

November 9, 2009

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RELATIONAL COMMUNICATION

- The messages we send each other when we talk contain two major elements: content and relational instructions (this is different than verbal vs. non-verbal)
 - Relational instructions are shared through the form of the responses we give each other to each speech turn in a conversation
 - Within each of our messages is an implicit statement of how we think the other person should use what is said
 - The implicit message is based on what we think the state of the relationship is at the moment of the utterance—and what we want it to be going forward
 - With our utterance we not only share facts, information, instructions, requests, etc. (content)—we also tell the other how we think our message should apply to the evolution of our relationship (relational)
 - Of course, the other person does the same thing with their responses
 - The relational essence of the conversation is how CONTROL is shared between those in the relationship
 - This phenomenon is present regardless of the length of relationship—but over time comes to define the relationship, its successes and enjoyments and its difficulties and problems (this, again, is despite the content that is discussed)
 - This phenomenon is generally outside the awareness of the interactors
 - Scholars code messages to make the relational movements “visible”
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- Each turn at talk becomes the precursor to the other person’s next message---AND---the follow-up to their last message
 - Each message can be coded for the type of response it represents to the other’s last message and is either:
 - * *One-Up*: Attempt to assert a definition of the relationship (Demand)
 - * *One-Down*: An acceptance of the other’s definition (Relinquish)
 - * *One-Across*: A non-demanding, non-accepting maneuver (Leveling)
 - Conversation patterns with all or mostly one-ups from both sides is conflict: ↑↑↑↑
 - Patterns with generally one-up, one-down alternations are collaborative: ↓↑↓↑
 - Combinations of one-across and one-down are leveling: →↓→↓, ↓→↓→
 - The optimum situation for most relationships is a liberal mixture of all the codes

THE RESEARCH: RELATIONAL COMMUNICATION IN NEGOTIATION INTERACTIONS
(The University of Utah, 2008)

- The attorney negotiators demonstrated a range of approaches to the negotiations
- The study found a statistically significant difference between interaction styles and the effect of those interaction styles on the content agreements
- Those attending to the relationship element of the negotiation, as well as the content particulars, reached better agreements
- Those using a more hardball/conflictive style reached lesser agreements or no agreements
- The negotiators successfully reaching a content agreement:
 - Used more messages/negotiated longer
 - Used more one-across (→) and one-down (↓) messages
 - Used relatively fewer one-up messages (↑)
 - Used one-across/one-down messages to break out of one-up conflict (↑↑↑)
 - Discussed more issues than just financial arrangements
 - Had more “backchannel” messages (“right” “OK” “Uh huh”) which had a leveling relational effect on the entire negotiation
 - Used more questions
- The negotiators NOT successful in reaching a content agreement:
 - Interacted shorter
 - Overly focused on one issue (financial)
 - Used twice the one-up (↑) messages
 - Used significantly more non-supportive responses to the other’s messages
 - Used relatively fewer questions
 - Spent more time in conflict (↑↑↑)
 - Did much less leveling (→↓ and ↓→)
 - Talked-over the other person more
 - Had less “backchannel” leveling messages

RECOMMENDATIONS

- Prepare relational strategy as well as content strategy
- Reduce the number of stressful one-up messages you use in your interaction
- React to one-up messages (↑) with one-across or (→) one-down messages rather than join to co-create conflict (↑↑↑)
- When conflict emerges (↑↑↑) in the interaction, use one-across (→) messages to change the patterns: ↑↑↑→↓↑↓↑
- Learn to level: use →↓ and ↓→
- Extend the discussion of topics a little—don’t push on too fast—breathe “air” into the interaction
- Use effective questions (↓) or (→) that allow the other person to respond as they wish—rather than using “disguised” questions that are really one-up (↑) statements in another form

CONCLUSION

You CAN have less stressful and more productive legal negotiations when there is a focus on the relational as well as the content dimension of the interaction!