



Checking – and changing – the status of the players

In every negotiation there is a pecking order

This story is for you if:

- It's difficult to tell who the decision makers are on your cases.
- You are looking for different approaches to influence your adversary.
- You need to adapt to changing events in order to maximize your client's settlement.



Krivis

JEFFREY KRIVIS

In every negotiation, like in a social setting, there is a pecking order. This means that the person who is lower in status defers to the person who is higher in status. Status is a major driver of human behavior. An obvious example is making an appearance in court. Clearly, the judge represents a higher status than the clerks and attorneys and the behavior toward the judge reflects that high level of status.

Looking at a negotiation as a scene in a play, most successful scenes involve status changes between the players. Lowering your own status or the status of another party can impact the scene and the negotiation. In fact, lowering someone's status is about as painful to them as physical pain. People go to great lengths to avoid situations which put their status at risk. Consider politicians who might say just about anything to avoid being wrong. Compare that to decision makers in litigated negotiations and there is no wonder why cases reach impasse when lawyers attack their adversary, particularly to their face.

On the other hand, raising someone's status will bring bigger rewards. Something as simple as showing recognition to your pet dog usually results in you giving the dog a treat. People are wired to feel rewarded by incremental increases in their status. Imagine a claims examiner who is shown some recognition for the manner in which they handled the case, or a defense lawyer who has been polite though firm in their defense. They are more likely to not hold back their reserve on the file if they have the sense that you have raised their status.

Status is established generally by social position, *e.g.* judge and lawyer, but also by the way you interact with the other party. If you interact in a way that indicates you are not to be messed with, the other person must adjust to you, therefore establishing your high status. If you interact in a way that says you are willing to go along and don't want responsibility, that is a low status behavior. This shifting status occurs through every word, gesture and bit of body language and is constantly changing. Consider the famous television show "The Sopranos." Clearly, Tony So-

prano ("the Boss") behaved in a way that put a fine line between him and his subordinates. He made it clear through his words and his gestures that he was not to be messed with. His subordinates bought him gifts, spoke to him with respect and generally recognized his high status in their society, unless of course they tried

to kill him!

High and low status behaviors impact the way parties negotiate and settle cases. Behavior that increases a person's status generally activates reward circuits in their brains. They are more likely to reveal all the money they have in reserve on the case as opposed to low status behavior which activates threat circuits.

Examples of high status behavior in a negotiation include asking for permission to do something, asking the parties' opinion about something, asking them for advice or help, expressing gratitude for a move they made, addressing them with an honor or title, and so on.

Lowering another person's status is to attack or discredit the right to be high in the pecking order. It is often viewed as humiliating them. Examples include criticizing something they said or did. Contradicting them, correcting and insulting them, giving them unsolicited advice, talking sarcastically to them or ignoring what they just said.

It is no surprise that litigants prefer to avoid joint sessions in mediation because many of us have been trained to utilize behaviors that lower the other side's status which puts them into threat mode. When in that mode, they are less likely to be receptive to ideas and concepts that might match with your value of the case.

You can always maximize your chances of getting a fair result by raising the status of your adversary, particularly when they are surrounded by their client. Here are four simple ways to achieve higher status in mediation and get a better result:

- Give positive feedback to your adversary;
- Give the positive feedback publicly;
- Avoid pointing out all the faults and weaknesses in their case – give that job to the mediator;
- Find a strong "director" *i.e.* mediator who can do your dirty work.

Jeffrey Krivis has mediated complex dispute issues in Northern and Southern California for 20 years. He teaches at Pepperdine Law School/Straus Institute for Dispute Resolution and has been named one of the Top Neutrals in the state by the Daily Journal.