



By James B. Stiff, Ph.D. | May 2017

## The Science of Persuasion: Understanding the Norm of Reciprocity

The norm of reciprocity is the principle that when someone performs a favor for another, the recipient of the favor should return the kindness. Speculation surrounds whether this ethic is innate or learned. Its roots in human psyche have been attributed to feelings of gratitude, sense of obligation, and fear of social disapproval, particularly a selfish sense that failing to reciprocate kind acts will decrease one's likelihood of receiving aid in the future. Regardless of its origins, the norm of reciprocity has been a powerful force in human social interaction throughout the ages. Indeed, all major ethical and religious traditions teach reciprocity as a primary rule of moral conduct. This norm induces a spirit of cooperation that ultimately contributes to social stability.

In Chapter 9 of *Persuasive Communication*, Paul Mongeau and I discussed how the norm of reciprocity comes into play as people attempt to gain compliance from others. In legal trials, the norm of reciprocity is often at work during juror deliberations, particularly once jurors reach an impasse during discussions. At that point, when one juror makes a concession concerning his viewpoint on a trial issue, this offering is typically followed by a reciprocal concession by another. These trade-offs can quickly change the tone and direction of the deliberations.



Such give and take often occurs naturally during the course of juror debates. Attorneys can encourage or discourage ideological trade-offs between jurors during deliberations. Attorneys can utilize their understanding of the norm of reciprocity, and its potential to be at work during deliberations, when they devise their strategies concerning the nature of the claims, damages testimony, and the jury charge to be submitted to fact finders.

This paper describes two common concessions that occur during jury deliberations, their influences on

In August of 2016, Jim Stiff and Paul Mongeau published the third edition of *Persuasive Communication*. The book is a comprehensive review of the theory and research on persuasive communication that spans more than 80 years of academic work in the fields of communication and social psychology. This research note is part of a series that briefly discusses topics related to the science of persuasion. It describes the practical implications persuasive communication techniques offer to lawyers practicing their craft.

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decision-making processes, as well as ways lawyers can inspire or dissuade offerings of these concessions.

***Morality Concessions.*** Jurors routinely disagree about the levels of egregiousness and liability to be assigned to a party's conduct. Moralistic reasoners are more deeply impacted by malefactions. They are likely to decide that, when a party's actions were immoral, they were also illegal. Legalistic reasoners will look to the letter of the law to make determinations about the legality of a party's conduct.

Disagreement on these issues often leads to impasses during deliberations. These deadlocks are many times resolved when both types of reasoners make morality concessions. When legalistic reasoners acknowledge that a party's conduct was immoral, such recognition validates the personal beliefs of moralistic reasoners. This nod to the legitimacy of their opinions renders moralistic reasoners more likely to concede on the issue of liability. Morality concessions serve to validate the personal beliefs of moralistic reasoners, while enabling legalistic reasoners to maintain that sufficient proof of the party's liability is absent.

***Action Item:*** Lawyers can encourage jurors to make morality concessions by reminding them that decision making should not hinge on personal values, and that they have a sworn duty to remain objective as they determine the questions of fact. Urging focus on the facts, serves to untwine personal mores from the factual and legal matters. In contrast, lawyers can discourage jurors from engaging in ideological reciprocity by emphasizing the portion of the judge's instruction that "you should use your common sense." The concept of common sense is very personal in nature.

***Horse Trading.*** When jurors reach an impasse about the overall guilt or liability of a defendant, they will routinely utilize the norm of reciprocity by making concessions on one count or claim, so as to achieve consensus on another count or claim. Plaintiff-oriented jurors in a civil lawsuit alleging antitrust and breach of contract claims may concede that there

was insufficient proof of the antitrust claim with the expectation that defendant jurors will reciprocate by yielding on their finding of liability on the breach of contract claim. Defendant-oriented jurors in an auto-accident case may concede that a driver was speeding, in an effort to reach agreement from plaintiff jurors that there is insufficient proof the driver was distracted by using a cell phone at the time of the accident. Sometimes these reciprocal concessions are explicitly negotiated, but most often they emerge naturally during the deliberations after one set of opposing jurors offers a concession. For jurors making the initial concession, there is always a risk that it may not be reciprocated. Quite often, however, a concession by one juror leads to a reciprocal concession by another.

It would, of course, be highly improper for a juror to trade support for a verdict that violates his or her individual judgment in exchange for support from an opposing juror on another verdict question. The norm of reciprocity is properly utilized, however, when it acts as an encouragement for jurors to reconsider their opinions through opening their minds to other possibilities, not when it serves as impetus for jurors to decide in discordance to their conscience.

It bears mentioning, as well, that jurors may be unaware of the legal implications of a concession. In an insurance case, a concession that there is insufficient evidence of a party's gross negligence, in order to achieve consensus about that party's negligence, can have a significant effect on whether a claim is covered by an insurance policy. In a patent case, conceding that the patent is invalid, in hopes of achieving agreement on a finding of non-infringement, can have disastrous consequences for a patent holder.

***Action Item:*** Reciprocal concessions can be fostered by encouraging jurors to conduct a comparative analysis of the facts in the case. During presentations, and often through use of visual demonstratives, attorneys can clearly bring to light those issues jurors should compare. For instance, if a defendant corporation accepts that it was negligent, but rejects the suggestion

of gross negligence, the defense attorney should be certain to present conciliatory language acknowledging that mistakes were made or procedures could have been improved, while clearly presenting evidence portraying the absence of the company's reckless or intentional misconduct. Armed with a lens thorough which issues should be compared or rated, reciprocal concessions between deliberating plaintiff- and defendant-oriented jurors will be fostered.

In contrast, the norm of reciprocity will be less at play during deliberations if jurors are dichotomously presented the evidence that supports the claim of negligence and the evidence that supports the claim of gross negligence. Such action will render the issues of negligence and gross negligence less likely to

be perceived as a hierarchical continuum of behaviors or issues to be compared, but as distinct issues. Furthermore, jurors should be instructed to engage in separate analyses of each verdict question and advised that their answers on one question should be independent of their findings on other questions.

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