

# Kluwer Mediation Blog

## The Big Bang Theory of Communication

Martin Svatoš (FORARB/Charles University) · Friday, November 20th, 2020



In theory, we expect the parties' opening statements to be swift, persuasive and forceful. At least, this is what I teach my students in ADR classes. In my mediation room, sadly, this occurs rather sporadically. The communication at the table is, unfortunately, not faultless. I guess every mediator has witnessed long, ambiguous monologue instead of sharp, clear communication that would help the parties to understand and be understood and to influence and be influenced. To facilitate the complicated discussions within the negotiation is, indeed, a large part of mediators' job.

## Once Upon a Time in Mediation

In a recent mediation case, I had the opportunity to meet two shareholders having a dispute about the future of their start-up. At first, this company producing high-tech packaging material went

smoothly and well. Later, the dispute arose. While one of the partners was secretly seeking a buyout the other one wanted both to invest more. As their common history went back some 5 years of successful cooperation, this became even more complicated for they once considered themselves being very good friends. Despite (or maybe because of) their long relationship, their communication was not easy. Here is a transcript (as I remember it) of the first-party opening statement:

*“Well, he is not happy I want to leave yet he does deserve it... His behaviour in all those years... It is just not fair... I build up the company name... And later, he was just trying to steal it from me. Actually, he should just leave instead of me. Gosh, he is not able to keep working for joint profit. I do not understand why all of sudden he changed his mind... I have invested a lot of my time and I did a lot of things you did not do [turning to the other shareholder]. I spent the evenings and weekends at the company. I did all the web page design, all the editing,... [lengthy description of all the tasks this partner has done when preparing the online presentation followed, shortened for the sake of readers]. And by the way...I brought the best and most important clients. I was the only one working there. I spent all of my time in the factory and at the office while you were enjoying yourself travelling around the globe. [turning back to me] And Mr. Mediator, it was me who has invented our packing machine. You know, it works based on [two minutes of technical monologue describing the functionality of the device followed]. To make the long story short, it is my company and this was all my contribution.”*



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Would this torment of words move you? It did certainly not work with the other party.

## Biggest Problem in Communication

Probably the single biggest obstacle between the parties and a fair settlement is the fact the parties do not understand each other. The difference between what we say and what we mean might be overwhelming. There is a quote summarizing this idea aptly:

*“The biggest problem in communication is the illusion that it has taken place.”*

Quite paradoxically, this sentence is commonly contributed to George Bernard Shaw. Except, he never said and/or wrote it. In fact, it appeared in the article “Is Anybody Listening?” by William H. Whyte. Apparently, his name not being catchy enough, someone picked up a famous Irish writer.

Yet another illustrative example of how communication is tricky. The communication misunderstandings, confusions and delusions happen all the time.

Like in our case. The first shareholder was trying to communicate: *“I think I have done enough work for you to appreciate it. Our joint business is over and I would appreciate it if you help me out of it now.”* Instead, of grasping this meaning, the other person heard something as follows: *“You are lazy and you have never contributed to my business. Now I want you to pay for it.”*

## Four Golden Rules

So if you are preparing for any kind of speech, remember that communication is tricky. To make your job easier, make sure you follow Grice’s Maxims. There are four of them:

1. Maxim of quality
2. Maxim of quantity
3. Maxim of relation
4. Maxim of manner



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Their charm is that they are quite easy to work with. The outcome is, however, overwhelmingly different.

The English philosopher Herbert Paul Grice proposed four maxims of communications for he described conversations as a cooperative effort where people aim to understand each other. However, by not following those golden rules, they make understanding even more complicated. The reason for it is called implicature. This phenomenon can be described as that part of communication that is meant but not literally said. Things that are suggested, implied or hinted at. And that’s just why we should follow the four golden rules: To prevent the implicature to mess up with our communication.

## Geeky Conversations

The parties in mediation sometimes remind me of the stars of the television sitcom *The Big Bang Theory*. At least as far as their communication skills are concerned. If you do not know the show centred on five characters: geeky and socially awkward scientist Leonard Hofstadter and Sheldon Cooper, Howard Wolowitz and Raj Koothrappali and Penny, a waitress in Cheesecake factory and aspiring actress who lives across the hall. Let’s watch this passage from and guess what maxims are violated there.

## Maxim of quality

**Try to make your contribution one that is true.**

**Do not say what you believe is false.**

**Do not say that for which you lack adequate evidence.**

NOT THAT GOOD EXAMPLE: Let's pick up a phrase of the opening statement described above. *“And by the way...I brought the best and most important clients. I was the only one working for there. I spent all of my time in the factory and at the office while you were enjoying yourself travelling around the globe.”*

This was clearly not true. As it proved later, the other partner worked hard too and his travelling was part of their agreed business model. He was doing the sale. No need to say, the other shareholder went crazy listening to those allegations.

It is always a bad idea to withhold important pieces of information. Sooner or later, the truth will come up and it will prove the speaker untrustworthy. This is even more important in mediation. The negotiating parties are usually a part of the same story. So they remember it well. Should we consider negotiation as an art of persuasion, this is definitely not helping. A pure attempt to “avoid” telling the total truth might often cause the other party to consider the other one as dishonest or deceitful.

## Maxim of quantity

**Make your contribution as informative as is required (for the current purposes of the exchange).**

**Do not make your contribution more informative than is required.**

NOT THAT GOOD EXAMPLE: “I did all the web page design, all the editing,... [lengthy description of all the tasks this partner has done when preparing the online presentation followed, shortened for the sake of readers].”

While this was true and might somehow influence the other party perception, it definitely failed as a result of information overload. It was absolutely not necessary to describe the different struggles faced when writing the web page code, the layout option considered and the design upgrades in past five years.

The second rule suggests that we share as much information as needed in order to be understood without sharing more than is needed. In my experience, this is one of the most underestimated skills in negotiation. People tend to add unessential arguments and pieces of information that will not change the mind of the counterpart and only diverge the attention.

## Maxim of relation

**Be relevant.**

EXAMPLE: In my case, there was a passage where one of the party in order to prove

their contribution spend a long time describing how does an invented device work: “And Mr Mediator, it was me who has invented our packing machine. You know, Mr Mediator, it works based on [two minutes of technical monologue describing the functionality of the device followed].”

While he struggled through the description (the mediation was not about the machine), he completely lost the other party’s focus. In fact, the other party picked up the mobile phone and texted someone which forced me to intervene and remind them of the rules of mediation. Unpleasant, yet not surprising.

## Maxim of manner

**Be perspicuous.**

**Avoid obscurity of expression.**

**Avoid ambiguity.**

**Be brief (avoid unnecessary prolixity).**

**Be orderly.**

NOT THAT GOOD EXAMPLE: “Well, he is not happy I want to leave yet he does deserve it... His behaviour in all those years... It is just not fair... I build up the company name... And later, he was just trying to steal it from me. Actually, he should just leave instead of me. Gosh, he is not able to keep working for joint profit. I do not understand why all of sudden he changed his mind...”

Well, does this need any further comment? In general, it is much more efficient to be concise and orderly when asking for what we want and need. All those frustrations and emotional outburst, however difficult to avoid, are not bringing the negotiator any closer to the sought goal.

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