



Tuesday, October 20
9:00 am–10:30 am

1105 Psychology of Negotiation

Mark K. Stephens

Executive Vice President

CAN Insurance

Gerald Strachan

Managing Attorney

AIU Holdings

Ettie Ward

Professor of Law

St. John's University School of Law

Faculty Biographies

Mark K. Stephens

Mark K. Stephens is vice president, legal services group for CNA Insurance where he is responsible for the general oversight, direction and strategy for staff and panel counsel representing CNA insureds in commercial, risk management, and specialty lines business units. Mr. Stephens provides strategic litigation management direction for staff and panel attorneys nationwide. His group is also responsible for the E-Invoicing system and centralized bill review of all outside legal fees for property and casualty.

Prior to joining CNA, he was deputy general counsel with the United States Small Business Administration in Washington, DC. He had direct oversight of Small Business Investment Company (SBIC) litigation and liquidation as well as home office and legal field operations. Prior to joining SBA, he was in private practice in Washington, DC and Washington, Pennsylvania.

Mr. Stephens was deputy editor-in-chief of the Ohio Northern Law Review. He is a past chair of ACC's Staff Counsel Committee. Mr. Stephens is a member of the Defense Research Institute and a member of the DRI Insurance Roundtable Steering Committee. He is also a member of the DC Bar and ABA.

He received his BA, cum laude, from Indiana University of Pennsylvania and his JD from Ohio Northern University.

Gerald Strachan

Gerald Strachan is a managing attorney for AIU Holdings in Philadelphia.

He is a member ACC and ACC's Insurance Staff Counsel Committee, serves on the board of directors of the New Jersey Defense Association, is vice chair of the ABA TIPS, ADR committee and is an editor of the Comprehensive Guide to the CGL policy. He is also a nationally recognized speaker on insurance defense litigation topics.

Mr. Strachan is a graduate of Rutgers School of Law, Camden.


Ettie Ward

Ettie Ward is a professor at St. John's University School of Law in New York. She teaches and writes primarily in the areas of federal civil procedure and court process. Professor Ward also teaches international dispute resolution. She is the editor and contributing author of a book on legal issues involving the New York Yankees.

Before joining the law faculty at St. John's, Professor Ward was a litigator in a major New York law firm. While in private practice, she litigated complex securities, labor, fraud, contract, and other commercial cases in state and federal courts.

Professor Ward has been active in the Federal Bar Council, the ABA, the City Bar of New York, and the New York State Bar Association. She is currently a member of the program committee of the Federal Bar Council and a director of the Federal Bar Foundation. She is currently a member of the executive board of the AALS Dispute Resolution Section. In addition to her bar and professional association activities, Professor Ward is a practicing mediator who currently serves as a pro bono mediator in federal district court.


Professor Ward received her JD from Columbia University School of Law, where she was a Harlan Fiske Stone Scholar each year and a member of the Columbia Law Review. She received her BA, cum laude, from Barnard College.

 **Arm Exercise Rules**

- 1) No Talking!
- 2) Goal: As Many Points as Possible for Yourself
- 3) Get Points by Touching Partner's Arm to Table

2009 Annual Meeting
October 18-21 Boston


Don't just survive. Thrive!

 **ARM EXERCISE LESSONS**

- Assume The Worst
- Assume Based On Past Experience
- Tend To Wait For Signal
- Different Assumptions Are Made
- Interests Not Necessarily Opposed
- Pie Can Be Expanded Or Shrunk


2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

 **Negotiation Effectiveness**

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Three Styles of Negotiation

- True Problem-Solving
- Cautious Problem-Solving
- Adversarial

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Adversarial v. True Problem-Solving

- Nasty
- Negative
- Egotistical

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!



Cautious Problem-Solving v. True Problem-Solving

- Assertive
- Empathetic
- Flexible

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Ethical Behavior

- Ethical (highest ranked adjective for effective behavior regardless of style)
- Ethical conduct (highest ranked goal)
- Honest
- Sincere
- Trustworthy

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Pleasant Personality

- Dignified
- Personable
- Self-Controlled
- Sociable
- Agreeable
- Friendly
- Poised

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Better at Asserting—Case

- Astute
- Prepared
- No Unwarranted Claims
- Realistic
- Accurate Representation

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Better at Asserting—Talking

- Communicative
- Fortright
- Poised
- Reasonable
- Sincere

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Better at Understanding Others—View

- Cooperative
- Negotiation = Mutual Benefits
- Trustful

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!



Better at Understanding Others—Listening

- Accommodating
- Agreeable
- Helpful
- Perceptive
- Tactful

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Better at Creativity/ Crafting Agreement

- Adaptable
- Facilitated
- Flexible

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Preparing your client

- Your professional obligation
- Big picture or laser focus?
- Where did they go?

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Preparing internal constituencies

- Wyatt Earp
- Timely & clear communication
- The best surprise
.....

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Preparing other Parties

- So, how big is your boat?
- What's new?
- Soccer or pistols at dawn?

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Preparing yourself

- Commit to a written plan
- Opposition research
- Funnel
- Identify prime numbers

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Tips and Tools

- Listen & Learn
- Avoid attack & defend spirals
- Plan issue presentation, not your sequence
- Make specific offers/demands

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Avoid Phrases That Inhibit Understanding

- Always/Never
- Should/Shouldn't
- ... but ...
- Assumptions about their intentions
- Labels

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Guidelines for Speaking

Use the **ladder of inference** as your guide to telling your side of the story

3. Share your **Conclusions**:
"In turn, that led me to believe..."
2. Share your **Reasoning**:
"Based on that [data], I thought..."
1. Share what you saw (**Data**):
"My experience of what happened was..."

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!


ACC Association of Corporate Counsel

Other Speaking Tips

- Outline your goals and main points on a post-it or note card that you can check easily
- Do NOT end your sentence with a question
- Use Silence—ask for what you want and be quiet
- Do NOT bargain against yourself

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Snappy Answers

- That's a great point!
- Excuse me?
- Can you do better?

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!




Metaphors

- Metaphors as Reflecting Emotion
- Metaphors as a Reflection of the Relationship
- Metaphors as a Reflection of the Rules

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!



Metaphors as Reflecting Emotion

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Metaphors as a Reflection of the Relationship

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Metaphors as a Reflection of the Rules

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Why Do Aspirations Matter?

- Help determine what you ask for
- Work harder at achieving goals
- More patient

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Aspirations in Negotiation

- Optimistic
- Specific
- Justifiable

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Aspirations Should be ... Optimistic

Empirical studies consistently show this

✓ \$2.10 goal	▶	\$3.35 profit
✓ \$6.10 goal	▶	\$6.25 profit

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!


ACC Association of Corporate Counsel

Miswanting

- People know what will make them happy, but. . .
- People overestimate emotional impact
- Stress & complexity of negotiation adds to the
- Lawyer/Mediator can serve a mitigating role

2009 Annual Meeting
October 18-21 Boston


Don't just survive. Thrive!

 ACC Association of Corporate Counsel

People Know What Will Make Them Happy

2009 Annual Meeting
October 18-21 Boston


Don't just survive. Thrive!

 ACC Association of Corporate Counsel

People Overestimate Emotional Impact

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

 ACC Association of Corporate Counsel

Stress & Complexity of Negotiation

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Mediator Can Mitigate

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Association of Corporate Counsel

Using Mediation

- Choice of Mediator
 - Style
 - Approach
 - Expectations

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!


ACC Association of Corporate Counsel

Using Mediation

- Preparation
 - Self
 - Client
 - Other parties
 - Mediator

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!



Using Mediation

- Participation
 - Who attends?
 - Who speaks?

2009 Annual Meeting
October 18-21 Boston

Don't just survive. Thrive!

ACC Extras

Supplemental resources available on www.acc.com

Negotiating Skills for Lawyers.

Program Material. July 2008

<http://www.acc.com/legalresources/resource.cfm?show=19811>

Negotiating International Commercial Agreements.

Program Material. March 2008

<http://www.acc.com/legalresources/resource.cfm?show=19825>

106 Building Better Negotiation Skills.

Program Material. July 2006

<http://www.acc.com/legalresources/resource.cfm?show=20194>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.