



The Secrets of Persuasion

Barrister's Club • Nov. 14, 2012

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Overview

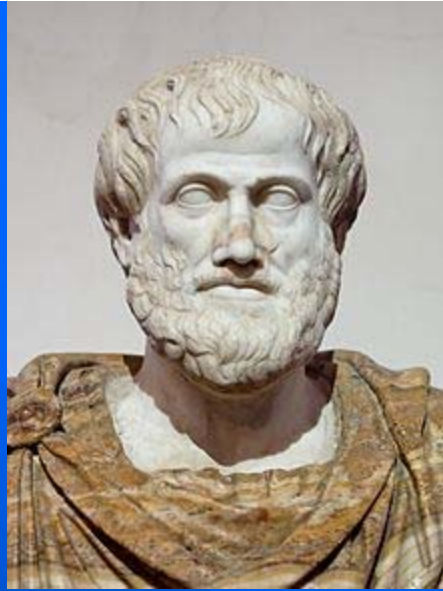
- Importance of persuasion
- Lessons from antiquity
- Modern theory and research
- Specific suggestions

Importance of Persuasion

- “Persuasion is at the heart of the lawyer’s craft ... part of your job is to persuade people to make decisions, or do things, that they may not have chosen to do but for your intervention.”
– KATHRYN STANCHI
- “Although we like to think of the courtroom as a setting where we seek truth and justice, in reality the courtroom is fundamentally a world where the art of persuasion is paramount.”
– HERBERT M. KRITZER

Caveat

- Persuasion is something you do *with* another and not *to* another.
- To be truly effective, persuasion must not rely on deceit, manipulation, or coercion.
- These tactics remove the persuadee's choice and lead to undesirable effects.



Aristotle's *Rhetoric*

4th Century BC

- Book I, Chapter 2 identifies three means of persuasion
 - *Ethos*: grounded in credibility
 - *Pathos*: grounded in the emotions
 - *Logos*: grounded in reasoning

Ethos: The Key To Persuasion

- Aristotle divided ethos into three categories
 - Skill, wisdom, expertise
 - Virtue, trustworthiness
 - Sincerity and goodwill toward the audience
- Research has shown that credibility is the key to influence.

Modern Research: Unconscious Triggers of Persuasion

- Mental shortcuts we employ in making judgments.
- Operate below the level of conscious thinking.

Consistency and Commitment



“It is easier to resist at the beginning than at the end.”

— Leonardo Da Vinci

- Once we have taken a stand, we encounter great pressure to behave consistently with that commitment.
- The drive for consistency is both the greatest obstacle to persuasion and the greatest tool of persuasion, once achieved.

Reactions to Dissonance

- “Cognitive dissonance”
 - Coined by psychologist Leon Festinger in 1956
 - Describes the discomfort caused by holding two or more conflicting cognitions (e.g., ideas, beliefs, values, emotions).
- Actions used to reduce dissonance include
 - Denial
 - Downplaying
 - Devaluation
 - Distinguishing
 - Discrediting
 - Inventing a rationalization
 - Altering or discarding existing cognitions

How Do You Overcome Commitment?



"I love the way you make me rethink my commitment to family values."

Changing the Person's Perspective

- How do we change a person's perspective?
- Aristotle taught
 - Facts and logic are helpful – logos
 - An appeal to emotions can be helpful – pathos
- Other unconscious triggers of persuasion

Connectivity

- We are much more likely to be persuaded by those we feel a connection with.
- Elements of connection:
 - Attraction
 - Similarity
 - Rapport

Establishing Rapport

- Remember and use people's names
- Balance the asking and the telling
- Look for things in common
- Show respect
- Sit rather than stand
- Make eye contact
- Appropriate touch

Active Listening

“If we want others to listen to us, we must first listen to them.” – Stephen Covey

- Listen not only to the words used, but also the feelings behind them.
- Pay attention to the speaker’s verbal and nonverbal communication (e.g., tone, inflection, gestures).
- Listen without interrupting.
- Avoid judging or giving advice.

Active Listening Techniques

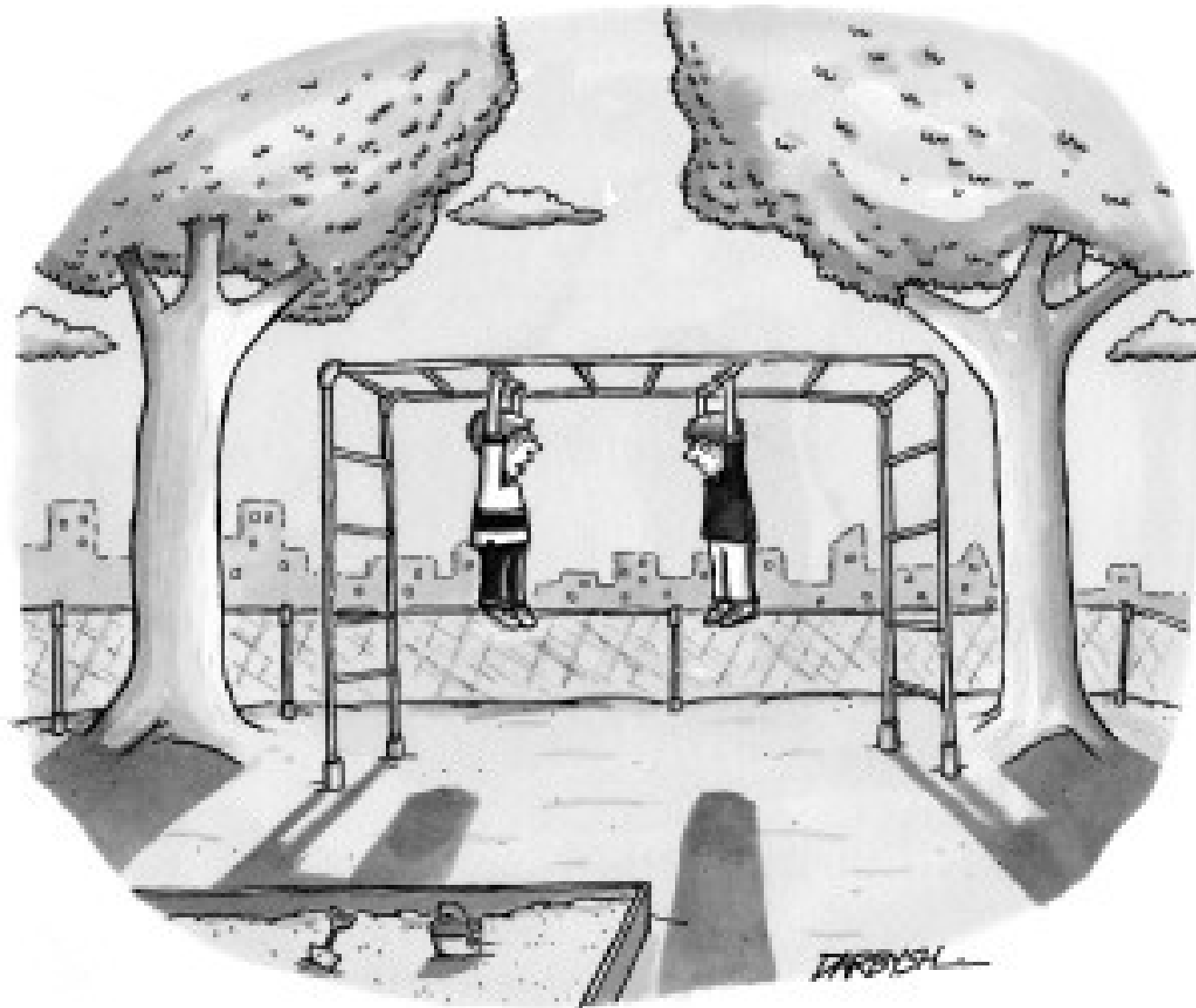
- Encourage
- Clarify
- Restate
- Reflect
- Reframe
- Summarize
- Validate

Empowerment and Recognition

- Active listening helps the person become:
 - Clear
 - Calm
 - Unafraid
 - Logical
 - Trusting
 - Open-minded
 - Able to see the other's perspective

Mirroring and Pacing

- When people have a deep rapport, their body language becomes synchronized.
- You can enhance rapport by mirroring
 - Posture
 - Tone, volume, and speed of speech
 - Language
 - Breathing patterns
 - Energy level



"I like you, Henry—you're one of the few people around here who actually get it."

Authority

- We feel a sense of duty or obligation to people in positions of authority.
- We believe we will be better off if we follow the lead of legitimate experts.
- Put this principle to use by
 - Citing authoritative sources to support your ideas.
 - Looking and acting like an authority yourself.
 - Explaining why your education and experience supports your ideas.

Reciprocity

Nothing is more costly than something given free of charge. – Japanese proverb

- We feel a strong urge to return favors.
- In litigation, give a courtesy to receive one.
- In negotiation, give a concession to receive a concession.

Expectation

- We aim to meet or exceed others' expectations of us.
- When we assign a person positive qualities or attributes, that person will strive not to disappoint us.
- Individuals make performance decisions based on how others expect them to perform.

Contrast

- The same thing will seem very different, depending on what precedes it.
- If the second item is fairly different from the first, we will tend to see it as more different than it actually is.
- Application in negotiations:
 - High initial demand followed by a significant decrease

Anchoring Effect

- People tend to rely too heavily on the first piece of information offered (the “anchor”) when making decisions.
- In situations of uncertainty, first offers have a strong *anchoring effect* on the rest of negotiations.
- First offers should be aggressive, but not absurdly so.
- The best first offers are those that fall outside the contracting zone, but not sufficiently far to cause an extreme reaction.

Scarcity

- Opportunities seem more valuable when they are less available.
- The possibility of losing something is a more powerful motivator than of gaining something.
- Appeals based on scarcity must be subtle or they will be perceived as coercive.

Framing



"You'll have to phrase it another way. They have no word for 'fetch.'"

Framing Basics

- Framing a message involves three interrelated goals:
 - First, we select an evaluative perspective believed to be most compelling and appropriate to our intent.
 - Second, we select the specific evidence that best supports that perspective.
 - Finally, we create a structure for organizing and evaluating the evidence.

Example of Effect of Framing

- **Risk Aversion** – People will act to protect gains rather risk them in the effort to obtain a higher payoff.
- **Loss Aversion** – People strongly prefer avoiding losses to acquiring gains.
- Studies suggest that the urge to avoid losses is twice as powerful, psychologically, as urge to protect gains.

Risk Aversion

(Focus is on preserving gains)

- Imagine the outbreak of a disease that is expected to kill 600 people. Which treatment program would you choose?
 - A program that is guaranteed to save 200 lives.
 - A program that has a one-third probability of saving all 600 lives and a two-thirds probability of saving none.
- 72% chose the first, less risky alternative
- 28% chose the risky alternative.

Loss Aversion

(Focus is on avoiding loss)

- Imagine the outbreak of a disease that is expected to kill 600 people. Which treatment program would you choose?
 - A program in which 400 people will die.
 - A program in which there is a one-third probability that nobody will die and a two-thirds probability that 600 people will die.
- 22% voted for the first plan
- 78% voted for the more risky plan!

Interests vs. Positions

- Mutual satisfaction is more likely when the parties' interests are met than when one "position" wins over the other.
- Types of interests:
 - Substance
 - Emotional
 - Process
- Technique:
 - Separate the people from the problem
 - Focus on needs and interests rather than positions
 - Invent options for mutual gain.

Social Proof

- People often decide what to do based on what they see others doing.
- Cialdini explains that we “view a behavior as correct in a given situation to the degree that we see others performing it.”

Persuading Your Client

- *Listen* to your client and validate his/her emotions.
- Avoid emotional entanglement.
- Demonstrate knowledge of the law and facts.
- Maintain reserve in discussing case merits.
- Explain the value of professionalism.
- Seek your client's commitment to patience and flexibility.
- Redirect your client away from focusing on "sunk costs."
- Try to frame the case in terms of interests and not just positions.

Persuading the Other Side

- Establish rapport with opposing counsel to benefit from “connectivity” and “reciprocity.”
- Build and maintain your credibility and that of your case.
- Get to know as much about the other party as you can, including their interests.
- Avoid overconfidence and partisan perception.
- Be aware of your competitive inclinations and what triggers them to escalate.
- Focus on getting the best deal and not beating the other side.
- Be conscious of the anchoring effect in setting opening demands and offers.

Final Word

- Recognize that in negotiations and mediation, a different persuasive skill set is needed than that of a trial advocate.

For Further Study

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