The Secrets of Persuasion

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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.
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.
"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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