The Science of Persuasion

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Many lawyers — and most humans for that matter — have a fundamental misunderstanding about persuasion. We are convinced that if we have the better, more logical, more legally sound, more morally righteous argument, we will convince our adversary to abandon her position and realize the correctness of ours. While this approach may work in a courtroom where there is a neutral arbiter of fact and law, most of the work we do as lawyers will never see the inside of a courthouse. Our arguments will never be judged by a neutral decision-maker. Most of the persuading we do will be judged by only one person — the adversary sitting across from us.

That adversary may be an employee, a customer, a competitor, an agent, an auditor, another lawyer, or even a colleague. Whoever it is, you can be certain of one thing: She will have come to the table with different facts from you, a totally different view of the history of the dispute, and, most certainly, a firm conviction that you are very wrong.

This is not a recipe for success. It's a recipe for frustration, escalation, and, often, unnecessary litigation. But there are ways to change that recipe.

Stanford psychology professor Robb Willer has spent a lot of time studying the science of persuasion and particularly the mistakes people make in their efforts

to persuade. According to Willer, one very common mistake is that we argue as though we are in front of a judge, or some other cosmic arbiter of correctness, rather than asking ourselves *what might move our opponent*.

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To increase our chances of moving our opponent, we need to recalibrate our goals, re-think our strategy, and reframe the discussion. And to do that, we have to try to understand what is motivating our opponent. What different facts, incentives, life experiences might she be bringing to the table that might be causing her to see the world differently from us? What does she really want? What points will best resonate with her (as opposed to a judge)?

We are not naïve. We recognize that sometimes the person across the table is delusional or is only in it for the money. Sometimes it's just a shakedown. But more often than not, it's much more complicated than that. More often than not, the person sitting across from you truly has a different worldview.

Years ago, we were brought in by a client to interview an internal whistleblower. The company was quite large and held multiple federal contracts, so the possibility of a whistleblower, and the accompanying False Claims Act, SOX, and DOJ implications, was a big deal. The company's initial inclination was to go in guns blazing and prove to her why she was wrong. We had a different idea. Summoning our inner Professor Willer, we recommended we hear her out. She always had been a smart, hard-working employee, and always had been loyal to the company. We thought it quite possible she actually just wanted to be heard. The client said we could give it a shot, albeit with a modicum of skepticism.

The tone of the meeting took the employee totally by surprise. Indeed, it took her a few minutes to realize that she actually was being listened to rather than lectured to. The meeting ended well and we followed it up one week later with proof that we had fixed several of the problems she identified and were in process of fixing the rest.

A situation that was moving in the direction of a False Claims Act lawsuit, ended up not only improving the Company's internal compliance program, but retaining a loyal employee for years to come. A more traditional "let us tell you why you are wrong" approach could have led us down a very different path. Listening had paid off.

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For us, this experience — and many others like it over the years — solidified our thinking that persuasion is more science than art. Talking louder, talking down, threatening, pontificating, and chest-thumping do little to change someone's views. Listening, trying to understand the source of disagreement, trying to understand motivations and incentives, and looking for points of commonality, on the other hand, go a long way.

Based on the work of Professor Willer and other academics, coupled with our decades of experience in the legal trenches, here are a few tips for your next adversarial discussion:

- **Listen.** The philosopher Zeno perhaps said it best — or at least first — in 300 BC: "The reason we have two ears and one mouth is so we may listen the more and talk the less."

- *Reframe*. Reframing your position in terms of the values of the person you are trying to convince, rather than your own values, may not be easy, but will return significant dividends.

- *Learn that passion does not persuade*. Experiments by Willer and others make clear that, while amping up the volume of your argument may help you win a high school debate, it will not help you convince an adversary of anything.

- *Remember your goal*. Don't confuse silencing your opponent with changing her views. As author David Robson put it, remember, your goal is to change minds, not signal your superiority.

- *Empathize*. Try to see things from your adversary's viewpoint. You don't have to agree with her, but if you don't understand what is driving her, you're never going to change her direction.

- *Be civil*. As the English poet Mary Wortley Montagu advised in 1756, "civility costs nothing and buys everything."

While these steps obviously won't guarantee you will convince everyone to see things your way, they will increase your odds of achieving reasonable, mutually agreed-upon, non-litigious solutions. And, heck, they might even help you win a few rounds at your next family gathering when the conversation turns to politics. . . .