

Persuasion

When law and logic aren't enough – techniques such as reciprocity – sharing a cookie – may work

By Nancy Neal Yeend

When attorneys attempt to persuade, they typically rely on the law and logic. This may work some of the time; however, incorporating a few psychological elements will enhance the probability of success – it does not matter the area of law: family, employment, intellectual property, personal injury or other.

There are a vast number of psychological elements that influence people, and a myriad of books and articles have been written on the topic; however, three simple and effective elements involved in persuading people are very straightforward – reciprocity, scarcity, and affiliation. Gently persuading people to do something, stop doing something, or to change their mind has an added benefit of enabling the person to feel that they had control during the decision-making process and that they were not coerced.

As Ben Franklin said, "Would you persuade, speak of interest, not of reason." Often reasoning and logic do not persuade people, especially if those individuals are in a high emotional state. Suggestions that hit the psychological "button" are far more persuasive than the rational mind's logic "button." Mastering these essential persuasion skills is important for attorneys, who want to better manage their clients, or persuade colleagues, judges or juries.

Reciprocity

The reciprocity principle is based on the fundamental belief that, "If I do something nice for you, you will do something nice for me." This form of influence or persuasion is also referred to as "quid pro quo": an equal exchange. If Bill offers Carol some of his potato chips at lunch, Carol might offer Bill one of her cookies.

Attorneys can learn a great deal from the business world as it relates to reciprocity. For example, as a marketing tool, companies may offer a "free" gift card, if a person buys their product. The quid pro quo principle is experienced regularly when non-profits or charities send a request for a donation and they include a modest "gift" of address labels, pen or some other small item. The person receiving the "gift" with the donation request is far more likely to make a contribution, because of the reciprocity principle.

Providing incentives or identifying benefits subconsciously influences people in two ways: First, a person's subconscious responds to the question, "What's in it for me?" Second, that benefit helps establish a relationship. When there is the perception of a relationship, people are more likely to listen to what is being said, and to place a higher value on the information provided.

As an example, an attorney might say to a jury, "I will provide you with sufficient evidence, so you will be able to make the right decision without undue deliberation." This statement speaks to the

Copyright © 2022 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



interests of a jury by not only "giving" them useful information, which will make their job easier, but also, this information will mean it will not take the jury a lot of time to make a decision. The statement provides "information" – the "gift" for a "decision." It also meets the need of "What's in it for me?" The "added carrot" of "undue deliberation" implies not having to serve on a jury for a long time. The relationship issue is built on the attorney looking out for the juror.

Reciprocity works a significant percentage of the time, and so it continues to be an indispensable way to persuade people to make a decision to do something or stop doing something.

Scarcity

The fear of missing an opportunity of getting something or dreading having to pay more for a product or service is another high motivator that persuades people to act. The scarcity factor is also referred to as FOMO, or the "fear of missing out." An ad might read, "Only two days left in the sale" or "There are only three cars left." When people think that this is their "last chance" to get something, they are more likely to act. The significant emotional impact of the scarcity principle motivates people to "get off the dime" and to do something.

Scarcity messages are short, sweet and to the point – they are not long or complicated. This brevity and the tone of voice used by the attorney also help create a sense of urgency. If a client is paying more attention to "advice" being provided by friends or relatives, and is resisting the suggestions of the attorney, then the scarcity technique, which appeals to a person's ego and emotions, may be appropriate.

As an example, an attorney might say to the resistant client, "If we do not respond to this document today, you may lose out on what is rightfully yours." This strategy also appeals to a person's ego – "I'm important." In addition, inserting the word "we" also helps develop the sense of "relationship" and so the client is more trusting of the attorney's advice. Of course, the statement emphasizes the emotional fear of missing an opportunity.

Affiliation

People like to belong to a group and are more likely to be persuaded to do something if they think others have previously done it or are doing it. The "group" may be made up of individuals who are loosely affiliated – plaintiffs or defendants, or members of a jury.

When using the affiliation technique, telling a story that weaves together the shared interests of the group and the subject under discussion is a straightforward process. The affiliation technique is more effective when using good eye contact while speaking, especially when speaking to the judge and/or the jury.

For example, when addressing members of the jury, "You are now familiar with the issues in this case, and the impact it has had on Miss Jones and her career. She had been a hardworking, single parent, appearing in numerous TV commercials, until this dentist totally destroyed her teeth and hence her vibrant trademark smile. As you are aware, there are many others in this world who have been taken advantage of by professionals." The short story about the client makes her more human and may persuade the jury to become more empathetic. In addition, this type of statement may subconsciously cause some of those listening to realize that they too are members of a group and have been abused by others.

When focusing on a client or colleague, the most commonly used affiliation technique is to explain how other clients or individuals, who have followed the attorney's advice, ended up much better off than those who did not. This technique also meets the "What's in it for me?" ego need.

Final thoughts

These and other persuasion techniques also help increase a person's perception that the decisions were theirs, and that they were not "told" what to do, and as a consequence they are more likely to feel satisfied with the outcome. Feeling in control of what happens to a person is a major motivational factor directly linked to persuasion.

Beginning to integrate a variety of persuasion techniques into conversations and writings will help people pay more attention to what is discussed or stated. It also helps people realize they are not alone, and there is someone knowledgeable there to help – someone who will guide them.

Before thinking about the type of persuasion technique to use, one must consider the goals to be met, the audience being addressed, and the human needs of the individuals involved. Once these questions have been answered, then the appropriate type of persuasion technique can be identified, developed and practiced.

One additional thing to remember – "If at first you don't succeed, then try, try again!" As with any new skill or technique, it takes practice. And as they say, "Practice makes perfect!"


Yeend

Nancy Neal Yeend is a dispute management strategist and mediator handling pre-suit, trial and appellate cases. As a strategist she designs programs to reduce workplace conflict, resulting in improved productivity and employee wellness. She is the founder of The End Strategy (TES) *in Portland, Oregon, and has served as faculty at law schools in California, New Hampshire and Florida, and faculty at the National Judicial College for 28 years.*

Copyright © 2022 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**