



Principles of Persuasion in Legal Negotiations

By: Amit Patel & Dennis P. Stolle

Researchers have been studying the factors that influence us to say “yes” to requests for decades. There is a science to how we are persuaded and a lot of the science is surprising. A key figure in persuasion research is Dr. Bob Cialdini, author of a book called *Influence*. He’s been studying the science of persuasion and influencing others for nearly 40 years. In his book, he details six principles of persuasion: reciprocity, scarcity, authority, commitment & consistency, liking, and consensus. For lawyers, whether you are a litigator or a contract lawyer, understanding these principles and strategically employing them in an ethical manner can increase the persuasiveness of your negotiation positions. Here, we’ll look at three of the six principles: liking, consensus, and commitment and consistency.

Liking

People are more likely to comply with a request from those that they like. One study showed that the simple act of sharing personal information prior to negotiating led to a 35% increase in parties reaching an agreement. Another study found that lawyers who litigated against one another frequently were more likely to settle cases, and to settle more quickly. This shows how people are more inclined to work with people that they understand, recognize and like. Taking a little time to get to know your counterpart can clearly make a big difference in negotiation outcomes.

So how do lawyers take advantage of the liking principle? At a base level, you and your counterpart are both attorneys and have profession in common. Develop rapport, particularly if you’re working with someone you

haven’t worked with previously. Look up their bio on their firm’s website or LinkedIn, and raise an interesting tidbit or shared commonality when you next speak with them.

Consensus

Cialdini defines the consensus principle as individuals viewing “a behavior as correct in a given situation to the degree that [they] see others performing it.” In short, people do what they observe other people doing— it’s safety in numbers. For instance, individuals are even more likely to laugh when watching a sitcom if the show uses canned laughter.

An interesting study of the phenomenon looked at the behavior of hotel guests. Hotels had been placing placards in rooms asking guests to agree to reuse their towels. Some guests would agree, while others would not. The researchers experimented with simply changing a few words on the placards to point out the percentage of guests before them who had agreed. This resulted in a large increase in agreement levels simply because the hotel guests were willing to go along with what those before them had done.

For lawyers engaged in negotiations, consensus can work in conjunction with the liking principle to facilitate persuasion. One method is by framing the negotiation as a search for jointly desirable outcomes, rather than an adversarial exercise. If you’ve already exhibited liking behaviors prior to the negotiation, you can then “model” that behavior for the negotiation counterpart, inducing the counterpart to conduct themselves in a similar manner. You can also utilize consensus by drawing verdict and settlement data from similar cases (via Lex Machina, for example) and showing them to your



negotiation counterpart. By showing that similarly situated others have settled at particular amounts, you may increase the chances of reaching a settlement in your case.

Commitment and Consistency

People feel strong pressure to be consistent with their own words and actions. Once we make up our minds, it is very difficult for us to change. We also strive to be consistent and future decisions are made to justify earlier decisions. Marketers use this technique all the time because they know that someone is more likely to agree to a larger request if they have already agreed to a smaller one.

In one study, a clinic reduced missed appointments by asking patients to write down their appointment details on a card, rather than having staff do it for them. This small change led to an 18% reduction in missed appointments simply because patients made a commitment to coming back.

Lawyers can utilize this principle by encouraging their counterpart to make small commitments early in the negotiation process. For example, in a contract negotiation, you might begin by getting your counterpart to agree to a minor substantive term, like a clause you proposed, or by using a definition that you've drafted. This "smaller" agreement can lead to more substantial concessions later in the process because of a subconscious desire to act consistently over time.

The strategies presented here are clearly not magic that will lead to an opponent agreeing to a bad deal. But, even if they only move the needle in your favor a small amount, that can sometimes be the difference maker in getting a deal done. And unlike putting more money on the table, there is essentially no cost in implementing these strategies. So why not give them a try?

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Chris Guthrie, *Influence: Principles of Influence in Negotiation*, 87 Marq. L. Rev. (2004). Available at: <http://scholarship.law.marquette.edu/mulr/vol87/iss4/20>

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