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Applying Persuasion Techniques to Trial Proceedings

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APPLYING PERSUASION TECHNIQUES TO TRIAL PROCEEDINGS

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In every professional field there tends to be one primary or particular ability that separates the successful from the mediocre. Rarely is that necessary ability based solely upon one's knowledge of data in his profession. The most learned surgeon is only as good as his deftness with a scalpel. The professor, though he be a genius in his field, must be able to impart his knowledge to his students. The most imaginative authors must be able to express their ideas in comprehendible language.

With trial lawyers, all the "smarts" at their command are tempered by their use or misuse of persuasive techniques. This is especially true in the tenuous cases with unpredictable decisions.

Inasmuch as there are infinite variables in any communication situation, the technique is still referred to as the art of persuasion, and not the science of persuasion. Many of these variables have not been explored, others not even discovered. Yet, there remains a general body of knowledge on persuasion or opinion change which may be applicable to trial procedures or the arguing of appeals. These data have been garnered by psychologists, sociologists, anthropologists, educators and communicators.

Attorneys should neither be surprised if some of the techniques are based on common sense nor if they themselves have already employed many of them as a matter of course. The value here is to have the relevant findings reduced into applicable form. (The author, not being an attorney, is somewhat hampered in relating the known techniques to actual trials. He admits the traditions and rules of court proceedings will negate the effectiveness of some persuasive techniques unless the rules can be changed or circumvented. He is not so presumptuous as to suggest how or when these could be done. It would be up to the attorneys' creativity to attempt their implementation.)

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The process of communication has been broken down into five areas which make for a handy division of the data. They are: the source (attorney, client or witness); the message (facts, opinions and arguments); the channel (mostly voices); the receivers (the jury and/or the judge); and feedback (the decision of or questions from the jury or judge).

THE SOURCE

Numerous empirical data show that the higher the credibility the receivers (the judge or jury) allot to the source, the more persuasive his message is to them. Thus, an F. Lee Bailey or a Melvin Belli has a built-in advantage when he tangles with an obscure prosecutor, no matter what his competency. Such high credibility has been gained through tremendous exposure of their sensational cases in the mass media.

By merely viewing television commercials, it is evident that mass media also confer general credibility completely unrelated to the person's field of expertise. Testimonial commercials make this point. What does Johnny Cash, a singer, know about American gasoline? What does Peggy Fleming, a skater, know about Texaco oil filters? If such is the case on the national level, it is equally applicable on the local level. Attorneys could also benefit through media exposure.

Attorneys have traditionally sought public office to build up clients, but not necessarily to enhance their credibilty. However, even if attorneys do not curry political positions, it seems logical that they could get some needed exposure through leadership in civic, charitable, community, social or even societal endeavors.

But what of the attorneys who have not had the advantage of media exposure, those who may be obscure to the jurors? Certain procedures within the courtroom perhaps could be utilized to grab some instant credibility.

Jurors attach believability upon someone relative to their perceptions of his expertise, his trustworthiness and his dynamism. If these qualities can be successfully demonstrated in the early part of a trial, they could prove beneficial to persuasion. The establishment of expertness (showing the jury that the attorney is highly knowledgeable so they can feel "safe" with his messages) could perhaps be increased by the mere mundane use of arguments before the bench. There the

lawyer could employ all the legalese at his command. Even if the jury doesn't know what the attorney is talking about, they will get the impression that *he* knows what he is talking about. The lawyer should take care, however, that he will not be "shot down" by the judge, as this could cause a boomerang effect, decreasing the "safety" factor.

Trustworthiness is based upon the relative perceptions of honesty, fairness and non-bias. The jury would anticipate some prejudice on the behalf of the counsel, but the credibility gap of trustworthiness could be narrowed in opening arguments if the attorney should show he is honest and fair, that he is "seeking justice for all concerned regardless of the outcome." It is in the field of trustworthiness that some judicious decisions must be made. Though badgering of witnesses, deceit and trickery to make a point may enhance the jury's perception of expertise, it could also negate its initial perceptions of honesty and fairness attributed to the attorney.

Dynamism is conveyed through the use of many personal techniques which come naturally to some people or can be acquired by others. Generally the dynamic person can be characterized as emphatic, frank, bold, active, energetic and fast. These qualities can be conveyed both vocally and with gestures. We have all been impressed by the seeming ability of someone who "thinks on his feet." Those not born with this quality admit it was acquired through practice and conscious application.

Research has shown that the intentional communicator who has an ax to grind is perceived as having something to gain. He is more suspect and less credible. Not much can be done to alleviate this negative value in trials, but fortunately it is attributed to both sides of a case. The counsel who can minimize selfish motives and emphasize sincerity will probably have the advantage in the fight for credibility.

So far we have concentrated on the attorney as a source, but certainly witnesses and clients are also sources of persuasion. The principles of source credibility apply equally to them and should be considered if control in the selection and examining of witnesses is possible.

The accrediting and discrediting of witnesses, particularly "experts," are common practices. If their credibility were based or attacked on the above-mentioned known variables, the effect on the jury would probably be increased.

The selection of eye witnesses is mostly an uncontrollable factor and the importance of their credibility tends to be minimal. Basing or challenging credibility should probably be determined on an individual basis.

Challenging an eye witness' perceptions or retention of data is another matter. (Perceptions will be covered in detail later). Psychologists have shown that people tend to forget 10 per cent of what they are exposed to within 24 hours and 90 per cent within a week. It is highly unlikely that a witness could recall in toto or in detail what he saw or heard months earlier. Counsel could ask him while he is on the stand to repeat what a prior witness had said an hour earlier. By comparing it to the transcript, in all probability, it would be shorter, in less detail and with some misperception. Pure memory recall is, at best, tenuous.

It would seem the use of character witnesses calls for some judicious thought, particularly concerning the makeup of the jury or the personality of the judge. Counsel should avoid the danger of choosing a witness who the attorney "feels" has high credibility. The majority of the jury may or may not agree. For instance, a rabbi or a Catholic priest may prove counter-productive if several Klan members or other highly prejudiced people are serving on the jury. On the other hand, research data show that Catholics put far more trust in their religious leaders than do Protestants. With a Catholic majority a priest as a character witness would make good sense. Regardless of which character witness is chosen, the attorney should take pains to establish a high credibility of him in the jurors' minds. It could well be that the witness is a complete nonentity to them. As such, he would have little initial persuasive powers.

Every social, racial and ethnic group and other sub-culture within a community has what is known as "opinion leaders." If those that some of the jurors look to for guidance could be isolated and used by counsel, the advantage would be obvious. Here, again, the attorney's choice should be an objective one and not one based on his own feelings. The sex, the age and the education of a character witness would be less important than his "similarity in attitude" to the jurors.

One further matter worth noting is that empirical data reaffirm the traditional practice of displaying a normal and

conservative appearance. Sloppy or bizarre dress greatly decreases credibility unless the audience is of a similar propensity.

THE MESSAGE

Many four letter words sparkle attorney's vocabularies. The most important of these is the word "word."

The word is the attorney's paramount tool. Above that, it is civilization's foundation, progress and salvation, for without communication, civilization and perhaps even existence, would cease.

This little four letter abstraction, w-o-r-d, is too often misunderstood and ignored. The legal profession can ill afford this luxury of ignorance.

What people learned about words in their early schooling dwells inconsistently with contemporary knowledge. Words are merely symbols. Mr. Webster attributed to these symbols one or more definitions. When put together, or sometimes standing alone, traditional use designed them to convey information which would indicate they carry meaning.

Here is the rub. Words fail, per se, to carry their meaning with them.

Think back a few years to your English class and the texts you used. Your school grammar books were wrong. There were no concrete nouns; there were no concrete words, only abstractions. Meaning of words exists in our heads, not in the words themselves. And all communication depends on people's perception of words.

In legal procedures, both civil and criminal, words are the means of deriving the truth, the adequacy, the justice of a hearing or a trial. Thus, how words are perceived or interpreted has tremendous implications to the legal profession.

The meanings of words directly bear on a judge making his charge, on a prosecutor making his accusation, on a witness recalling what he heard (plus his own testimony on the stand), on the defense in offering counter-arguments, and on the jury in its deliberation. The written indictment, deposition and affidavit have no immunity from concern. No facet of legal work exists without words. No legal workers should ignore the perceptual meaning people give to words.

Semanticists, psychiatrists, journalists and educators have shown implicit interest in the relatively new field of word meaning. Attorneys, for the most part, have largely neglected its implications.

In addition to the necessity of concern for the initial perception of a verbal communication, attorneys should also be aware of what happens to a communication with the passage of time. Research indicates rather startling transformations occur to a message received by various individuals.

As an example, there was a recent Florida contempt case, *Lambeth v. Messick,* since dismissed, which had elements of perception and memory retention directly related to words in legal jurisprudence.

The contempt citation grew out of remarks made by a newspaper reporter, acting as a private citizen, before a civic body. The gentleman commented on a pending case which involved a sheriff indicted by the grand jury for permitting illegal lottery (bolita) to flourish in the county. The case was to be tried before a judge who had never sentenced to jail any of the numerous persons convicted of bolita in his court. Also, the judge, in an interview several months earlier, was quoted in a newspaper as saying, "A thousand sheriffs could not stop bolita."

Basing his remarks on this background of the judge, the reporter sought the help of the civic association in getting a new judge assigned to try the sheriff. During his presentation, the reporter used the terms "bolita-judge," "the outcome is as sure as a Greek play," and "judicial farce." The reporter correctly predicted a directed verdict of not guilty.

Later the judge brought criminal contempt proceedings against the reporter. The citation was based on an affidavit sworn to, more than eight weeks after the incident, by a citizen attending the civic meeting. The citation listed several quotes, all incomplete and taken out of context, exactly as the three above mentioned quotes were presented to the reader—incomplete and out of context. As you read these quotes, "bolita-judge," "Greek play," and "judicial farce," what meaning did you give to them?

A newspaper report of the statements was similarly out of context. What meaning did the writer of the article give to them?

The judge read the article. What meaning did he give to the words?

The citizen, who made the sworn affidavit for the judge, was accidentally exposed to the statements, his having attended the meeting for a completely different purpose. What meaning did he give them?

Should you, and the writer of the news article, and the judge, and the affidavit signer each write one page on how each of you perceived the meaning of the quoted words, no two would be alike. Eight weeks from now, should you write another page (without referring to the first) there is little chance of its being exactly the same as your initial interpretation.

Why would four different people perceive the same words in four different ways? Why, eight weeks hence, would they perceive the words somewhat differently than they do now?

Numerous research, study and experimentation show that individuals' perceptions of word meaning depend upon several factors, none of which can be wholly anticipated or wholly controlled. The factors relate to and overlap in the fields of psychology, sociology, anthropology, economics, education, sex, politics, religion, etc. All the factors are far too numerous and irrelevant to mention.

Those which are pertinent to the subject, however, include the different individuals' initial interest in the subject, their personal involvement, their conscious purposeful use of the communication and their knowledge of the meaning of words.

The affidavit signer probably had no or only passing initial interest as he was accidentally exposed to the words. The newswriter, either consciously or sub-consciously, distorted the words to give more news value to them. The judge was emotionally involved as he perceived the words as a personal attack on his integrity.

One of the interesting developments in the field of word meaning to different individuals is a relatively simple scientific method devised by a noted communication researcher, Charles Osgood. This procedure mathematically measures people's perception of words. Called the semantic differential scale, it consists of assigning polar modifiers to a seven point line gauge and then rating a word or thought on this scale.

Using the examples quoted in the sworn affidavit, let's utilize the word "bolita" and modify it with "bad thing" and "good thing."

Bolita

Bad Thing 1 2 3 4 5 6 7 Good Thing

If you were conscious that bolita is a criminal activity, you would probably mark it either "1", "2", "3", depending on how severe a crime you perceived it to be. Had you never heard of the word, you would probably mark it "4" (neutral).

Assigning the modifiers "honest" and "dishonest" to the noun "judge" you would probably mark it anywhere from "5" to "7", unless your experience has been that most judges are dishonest.

Now if you were to evaluate the words "bolita judge" without any qualifying explanations or interpretations, where would you mark the scale?

Bolita Judge

Bad Thing 1 2 3 4 5 6 7 Good Thing

If you perceived the words as a judge who protects bolita operators, you would probably mark "1." If you perceived the words as a judge who is somewhat lenient on bolita sentences, you may mark it "4." If you perceived them as a judge who is notoriously tough on illegal gambling, you may mark it "7."

How about "the outcome is as sure as a Greek play?" The evaluation of this meaning within any given individual would be almost entirely dependent on the individual's knowledge of ancient drama. There are many polar modifiers which could be used in the scale for this particular statement, each having a somewhat different meaning: "known-unknown," "tragic-comic," "interesting-uninteresting," "ridiculous-meaningful," etc. Merely by using these four sets of modifiers on a seven point scale, it is possible to get 28 different perceptions as to the outcome of a Greek play.

A student of Greek drama would be confused by the analogy. Greek comedy usually ends with the characters preparing for a bacchanal feast. The most famous Greek tragedy, "Medea," ends in a horrible revenge.

Did the reporter who was cited for contempt attempt to predict either of these outcomes?

The word "farce" means both humor and travesty. In one sense it could be good; in another sense, bad. "Judicial" could be either legal or astute; both usually convey a favorable perception. Put together, the two words "judicial farce" could convey four entirely different meanings, provided they were taken out of context.

Why did you perceive the words the way you did?

All of your past, your education, your experiences, your environment, your cultural background, your cohorts and other facets have molded preconceptions in your mind. These preconceptions are the primary determinants of your communicative behavior. Every individual is influenced by them.

Initially, the preconceptions control communications to which people tend to expose themselves. Preconceptions influence their choice of television newscasters. They influence which sections of newspapers people read. Headlines influence which news stories people will read. The term given to this phenomenon is "selective exposure."

Of equal import to the legal work, however, is "accidental exposure." Jurors, judges, witnesses and plaintiffs are often confronted with communications they did not actively seek. It is conceivable that such words would have a greater impact on people than would those communications purposely sought.

Regardless of how individuals receive a communication, attorneys should be most concerned with what people do with it.

This brings us to another phenomenon known as "selective retention." People retain little of the information they obtain. The rest undergoes systematic and meaningful changes reflecting tendencies to select, organize and interpret in line with their predispositions.

Numerous experiments indicate that congenial information is remembered longer and in greater detail than uncongenial things; people recall the longest that which supports their point of view. Uncongenial information, however, is not summarily dismissed by individuals. It tends to cause homeostasis, a progressing toward the maintenance of a relatively stable psychological condition with respect to perceptions.

G. W. Allport and L. Postman refer to these mental balance-searchings as "leveling, sharpening and assimilation."

In leveling, some data is kept; some data is slighted. Sharpening results in an exaggerated focus on particular data. Finally, assimilation is completed when the remaining, rationalized, distorted information is fitted to preconceptions.

In short, people see what they want to see, hear what they want to hear, remember what they want to remember and perceive it all to fit their individual fancies.

These phenomena can be related to the contempt citation case mentioned earlier. The sworn affidavit, made two months after the fact, by the citizen (he later was assumed to be hostile) could have been seriously challenged as not being a factual recounting of what was actually communicated to the civic association.

Since words play such an important part in the jurors' understanding, the attorney should logically choose language which carries the most common meaning to all people. Words of Anglo-Saxon derivative are shorter, have more impact and are more concrete than the Latin and Greek derived words. To help assure readability (understanding) the Associated Press hired Rudolph Flesch, a semantic expert, to come up with some guideline for AP writers. His formula is quite simple: no more than 150 syllables for every 100 words, and average sentence length not to exceed 19 words. Understanding is one key to persuasion. So, the wise attorney in addressing the jury should keep his message simple, avoid multi-syllable words, avoid vague legalese language and avoid rambling.

This is not to suggest that the attorney should talk down to jurors. That, too, would be dangerous as it may insult their intelligence. Almost everyone wants to be regarded, not as he is, but as he wants to be. The attorney should assume with confidence that jurors are a little bit more intelligent and mature than they actually are. This flatters them, raises their interest and presents them with a challenge. Generally, counsel should use the highest level of comprehension the jury possesses without losing them. In addition, all people appreciate complete candor in persuasive message.

The use of highly emotional words and intense arguments tends to be more effective than the rational approach in persuasion. One precaution should be made, however, and that is the use of fear-arousal messages. For instance, descriptions of rape with words of anti-social or obscene nature would prob-

ably evoke an entirely different reaction from an old-maid school teacher living alone than it would from a truck driver.

After the attorney decides what kind of words and arguments to use, he should give careful consideration to the message's structure. This also requires a diligent study of the nature of the jurors. If little is known about the panel or if it is skewed widely on the educational scale, then the following points should be considered.

The recency order, that is, putting the most important and telling facts at the climax, has preference over the anti-climactic order. The least effective is burying the most significant data in the middle of the message. Climax order is particularly preferred in trials because studies show that where the audience is familiar with or feels deep concern for the subject, this approach is more effective.

Plaintiffs have an inherent advantage in any trial because they come first, particularly if opening statements are permitted. They have the initial crack at persuading or structuring the jurors' opinions. Structured attitudes are far more difficult to change than unstructured attitudes. In addition, the plaintiff can help immunize the jurors against counter-arguments by exposing them to what the defense may do, warning the jury not to be taken in. Refuting the opponent's positions before they are presented has been proven quite valuable in argumentation.

On the other hand, jurors will probably remember in greater detail those messages that they received last. This is an advantage for the defense. Also defense counsel may find that if he wishes to use a contradictory argument to the plaintiff's, he should employ the anti-climax message structure, giving immediate strong refutation rather than building up to it.

An important step in eliciting understanding from the panel is that of explaining relevancy. If jurors know what is being done, how it's being done and why it's being done, then the evidence they receive will be far more meaningful to them. The high value of "consequence" to a receiver is undisputed. The attorney must attempt to get the jury personally involved even to the extent of using, "*We* have seen. . . ."

Although the attorney wants this involvement, he should not carry it to the extent that jurors should be permitted to

draw their own conclusions. This is deadly. They may misinterpret or distort the intent of all the persuasion. It may seem redundant to an attorney but summations should not be limited to a mere recap of the facts. Logical conclusions must be instilled in the minds of the panel.

One final thought on messages. If the majority of the jury is comprised of highly educated and intelligent members, they will be more influenced by logic than by generalities or irrelevant arguments. They also are more likely to spot excess bias and intentional persuasion, particularly in one-sided arguments. This will put them on their guard and erect barriers to persuasion. Of course, such techniques may be effective if the panel is made up of poorly educated members.

THE CHANNEL

Inasmuch as the channel in trial procedure is primarily the voice, there is just one admonition for the attorney. Minimize all "static" or "noise" such as speaking too softly, stuttering, "uhing" and "ahing," permitting the witness to be misunderstood, and, especially, such as droning on in a monotonous montone. There was a case where a judge cited a juror for contempt for having fallen asleep in court. Perhaps the judge cited the wrong person.

THE JURORS

If the defendant in a trial happened to be 40 years old, an insurance salesman, a Methodist, a Rotarian and a family man, then the ideal jury for him would probably be comprised of middle-aged, middle-classed Protestant men who belong to civic clubs and have children. Research data confirm and reconfirm that, when other factors are uncontrollable, demographic similarities are highly effective in eliciting agreement from a source. The closer the respondents are to a source, the more likely they can relate to him and the more likely they have similar predispositions and preconceptions, all of which reduce the barriers to persuasion.

Even if the jury possessed all the demographic necessities, which is most improbable, other variables may exist which would tend to negate effectiveness. It is unrealistic to look upon people as being logical, natural creatures. They differ widely in the readiness and ability to respond to messages.

They generalize from earlier experiences which could either enhance or hamper their persuasibility. A man whose wife just got a $10,000 judgment against her in an accident case would respond much differently, if he were a juror in an insurance suit, than a man whose wife just spent three months in the hospital because of someone else's negligence. This would be true even if the two men were identical and inseparable twins with complete commonality of other experiences.

The following data have shown tendencies of difference which may prove beneficial in the selection of a jury if additional factors are unknown.

Irrespective of the present women's liberation movement, several studies indicate a greater susceptibility to persuasion is evident in females than in males.

Generally, the younger the people are, the more viable and changeable they are. This is probably the result of their not having selectively exposed themselves to "rewarding" messages. The older that people become, the less likely they are to seek information which is contrary to their existing beliefs. Thus, as they age, people tend to structure their opinions and attitudes upon non-corrosive bulwarks where contrary messages bounce off as a wave hitting a boulder.

As indicated earlier, the less intelligent and more poorly educated are found to be more easily persuaded. This is probably caused by their inability to spot biased messages in some situations. Additionally, inasmuch as they tend to draw membership from the lower to middle class and from the more liberal segments of society, Democrats tend to be more easily reached than are Republicans, who lean toward conservatism. These findings would be tempered somewhat in the South as neither party is all that homogenous.

Differences in ethnic and racial groups have not been confirmed. Perhaps this is due to other variables, such as the ones listed above, taking precedence.

Unless they are initially on his side, the attorney should avoid the selection of dogmatic closed-minded people. They have been found to be less able to bring various data together for comparison purposes. The authoritarians put up stronger resistance to messages from others unless the sources themselves are recognized authorties. Likewise, hostile and overly aggressive people have a bent against persuasion.

As we have seen, people actively seek and respond to rewarding messages. Since jurors are not on the panel by choice and in many cases against their will, they would probably look favorably upon any unexpected "reward." A simple statement of understanding and praise for their "civic-mindedness, patience and concern" may be enough to disarm any negativism.

Some of the most significant sociological findings hinge on the power of the social or primary group. Man by nature is a social being seeking acceptance from his peers by offering conformity to their beliefs. Obviously, most juries are a one-time group of short duration. Group data would apply only when the trial is lengthy, giving the jury the chance to become a primary group within itself. Such a cohesive panel would be easier to persuade as it would contain less deviants. Individuals tend to inhibit overt disagreements in a small group as their chance to get social support diminishes with the decrease in numbers. Unless a member of a group is an iconoclast, he will adopt the panel's opinions and norms. The astute attorney would spot these norms and apply them to this message.

Leadership emerges in groups with the passage of time. These people can be identified by their tendency to speak more, ask fewer questions, and by their ability to logically summarize information. If the attorney can pick leadership out, it may be advantageous to direct most of his messages to the leaders. Recognition of leadership is flattering.

The question of whether or not to place a defendant on the stand, the provisions of the Fifth Amendment not withstanding, is highly sensitive. Regardless of the admonitions from the bench, a jury is still composed of human beings who are naturally suspect of someone appearing to have something to hide. As pointed out earlier, whether people are with or against a source, they strongly appreciate candor. Another positive aspect of placing a defendant on the stand would be the possibility of enhancing the jury's ability to relate to and identify with the defendant. Otherwise, he is just a face in the crowd. He is completely unfamiliar to them. By his appearance as a witness, he becomes an active participant which is much better than passivism in persuasion. People find difficulty in maintaining negative attitudes towards others with whom they have relatively close contact over a period of time. The lengthy question of a defendant could turn perceptions

of him from the "face in the crowd" to a human being with all the attributes and frailties that the jurors themselves possess. If guilt is a foregone conclusion, it would seem that this procedure would be of value in reducing the penalties in a criminal case. Where the outcome is unknown, the test would lie in whether the attorney could really get the defendant to relate to the jury, and how counter-productive the cross examination would prove.

The present method of selecting jurors seems to be quite imprecise, especially when we consider qualitative procedures which show more exact attitudes are available. When a judge queries a potential witness and receives answers such as, "Yes," "No," "Maybe," and "Sometimes," the attorney has only vague generalities to guide him in deciding when to challenge.

Through the use of the semantic differential scale explained previously, it is possible to scientifically measure prior attitudes about guilt or innocence, seriousness of a crime, a member of a race or any other factors relating to the case. For instance:

AN ACCUSED PERSON

is guilty	(1)	(2)	(3)	(4)	(5)	(6)	(7)	is not guilty
is not a criminal	(7)	(6)	(5)	(4)	(3)	(2)	(1)	is a criminal
is justifiably accused	___	___	___	___	___	___	___	is unjustifiably accused
is a good guy	___	___	___	___	___	___	___	is a bad guy
is honest	___	___	___	___	___	___	___	is dishonest
is capable of crime	___	___	___	___	___	___	___	is incapable of crime
is excusable	___	___	___	___	___	___	___	is not excusable
deserves punishment	___	___	___	___	___	___	___	deserves no punishment
is not valuable to society	___	___	___	___	___	___	___	is valuable to society
is unworthy citizen	___	___	___	___	___	___	___	is worthy citizen
is likable	___	___	___	___	___	___	___	is detestable
antagonizes me	___	___	___	___	___	___	___	doesn't antagonize me
has social value	___	___	___	___	___	___	___	has no social value
is normal	___	___	___	___	___	___	___	is abnormal
is criminally disinclined	___	___	___	___	___	___	___	is criminally inclined

There are fifteen entries in this scale. By giving the numerical value in parenthesis to each score, adding them all up and dividing by fifteen, the attorney will find the juror is rated somewhere between one and seven. The lower the rating, the better for the prosecution, and vice-versa. The best jurors would be those between "3" and "5." Deviants should be challenged.

Certain procedural rules must be followed to validate the measurement. The polar modifiers should be randomly ordered (see above) as to positive and negative positions. This would help prevent the respondent from marking, for instance, all "5's" by going right down the paper. He would have to think about the merit of each entry which would result in a truer picture of his opinions. Each potential juror should be carefully instructed as to how to mark the scale, i.e.: the degrees of pro and con; "4" for neutral, undecided, or no opinion; mark every entry; only one mark per entry; and no marks placed between points. The potential juror should mark his initial reaction, which means that only about two minutes should be allowed for him to complete the scale.

A variation of the semantic differential scale would be asking the respondent to agree or disagree with statements relative to his perceptions about factors involved in the case. The attorney could design a series of 10 or more statements such as:

NEGROES ARE MORE CAPABLE OF CRIME THAN WHITES.
Agree (7) (6) (5) (4) (3) (2) (1) Disagree

ARMED ROBBERY IS A HORRIBLE CRIME.
Disagree (1) (2) (3) (4) (5) (6) (7) Agree

ARMED ROBBERS SHOULD RECEIVE THE MAXIMUM PENALTY.
Disagree _____ Agree

AN ACCUSED PERSON IS GENERALLY GUILTY.
Agree _____ Disagree

Though this type of questioning does not meet traditional selection procedures, perhaps the added value of its preciseness could be used to convince some judges of its worth in assuring the empaneling of an unbiased jury.

FEEDBACK

Although feedback is not necessary for all communication, it certainly is most essential for effective communication. Only through feedback can an attorney be sure that his message is getting across. The paramount or ultimate feedback rests with the verdict. If the verdict coincides with the attorney's goal, then that is all he has to worry about. If it is a negative decision, then it is too late to worry about types of feedback. The value of feedback is that it permits a source to alter his message for clarification, repeat it for understanding or add to it to further entrench persuasion. A cocked ear, a quizzical gaze or a look of disgust should cue the attorney that some static exists in his or his witnesses' message. All jurors should know they have the right, through their foreman, to get a statement repeated or to seek clarification. As we have seen, there are enough sociological and psychological barriers to communication so as not to permit the added roadblocks of misunderstanding or mishearing to be erected.

CONCLUSION

Even if an attorney were extremely fortunate enough to have all the factors mentioned in this article working for him, he can never be assured of success. In any situation there may exist one unknown variable which could entirely negate all known positive persuasion factors. However, inasmuch as empircal data have proven that the use of these persuasive techniques generally are more effective than their non-use, it would be safe to assume that the attorney who employs them would have an advantage he did not have at the start.

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