Changing Minds:
The Work of Mediators and Empirical Studies of Persuasion

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I. INTRODUCTION

Take this case: Diana Halverson, age 59, worked for eleven years as an office manager in the Hartford, Connecticut office of TSG Corporation, an East Coast manufacturer of seamless gutters. Sixteen months ago, she was denied a promotion for which she applied-- a mid-level managerial position at the company’s corporate headquarters in Philadelphia. The job went to a more recently hired male employee in his late thirties, on the ground that his “potential” was much greater. Ms. Halverson felt that she had an excellent work record, and was hurt and offended. Needing her job, however, she bit her tongue. But when soon thereafter that job was eliminated in an administrative reorganization, she consulted a lawyer and, with his assistance, filed a charge of age and gender discrimination with the state human rights commission. The company responded to these allegations with a blanket denial of all charges, claiming that its decisions were lawful and justified by legitimate business considerations. When contacted by the agency several months later to see whether this matter might be mediated, both parties accepted the invitation.

You are a private mediator who handles approximately 8-10 employment discrimination cases per year on assignment by the human rights commission. You have been assigned to mediate this matter.

The pleadings, exchanged documents and early summaries by counsel at the outset of the mediation revealed the following: 1) the claimant’s previous work evaluations were all positive to very positive, but the evaluations of the male employee who got the promotion were quite positive as well; 2) the two supervisors most directly responsible for the decisions adversely affecting the claimant have been overheard on a number of occasions in the past three years making overtly sexist remarks, though in informal rather than formal work settings and not directed at the claimant; 3) cursory analysis of several documents pertaining to the administrative reorganization is somewhat suggestive of age and gender discrimination, though the reorganization itself seems legitimate, given tough economic conditions resulting from the plummeting housing market. The case, in other words, appears plausible on its face, but anything but a slam dunk.

During a pre-mediation phone call with claimant’s counsel, you had learned that in the twelve months since she was laid off, she has been able to secure various odd jobs but has been unable to find comparable full-time employment. The strong sense you got between the lines from claimant’s counsel is that Ms. Halverson has financial problems and probably wants to avoid a trial if possible, preferring (assuming that the company cannot or would not re-hire her), some
quick money to resolve the dispute. In a pre-mediation phone conversation with the other side, defense counsel had taken the same hard-line position reflected by the pleadings, denying any liability and calling the complaint a “bunch of junk.”

At the mediation, the following people are present: the claimant; her lawyer; Jason Hernandez, the claimant’s former immediate supervisor; Sharon Stone, TSG’s human resources director; and outside counsel for the company. On being invited by you to state her side of the case, the claimant’s lawyer lays out a twenty-minute summary of the facts and the law that supports her liability and damages claims, demanding “$150,000 to resolve this.” You then ask the claimant if she had anything to add. In response, she provides an emotional account of her employment history, weeping openly while recounting the early days of the job and how gratifying it had been. She also describes how degrading it was to be laid off after so many years of loyal service with nothing more than an impersonal email, explaining the financial conditions prompting the reorganization and giving her just one week’s notice.

At this point, the company’s attorney apologetically interrupts, telling you that “We, of course, could offer a different view of all of this. We could focus, for example on the angry display Ms. Halverson put on at the office when she was passed over for the promotion she says was ‘rightfully hers.’ In front of several work colleagues, she made nasty and unprofessional personal comments about her supervisors. But perhaps we can make some progress if we try to deal with the legal and monetary issues instead of rehashing contested allegations.” At this point, the company lawyer reiterates at length her denial of any unlawful intention or action and summarizes its justifications for the company’s decisions. At the end of her presentation, defense counsel makes a $15,000 (“nuisance value”) settlement offer. Claimant’s counsel immediately rejects this offer as “insulting.” You ask the human resources director and the claimant’s supervisor if either has anything to add. Both shake their head no.

At this point, about an hour into the mediation, the claimant is fuming and the emotional climate in the room has deteriorated badly. You decide to call a caucus and to meet first with the defendant representatives and their lawyer.

In order to persuade the defendants to become more flexible in their view of the situation or negotiating position, you have identified the following options:

a) ask the defense representatives or counsel to try to view and articulate how the situation looks from the claimant’s point of view;

b) ask the claimant’s supervisor in confidence whether there is anything about his or the company’s course of conduct or the situation that he regrets, and if the answer is yes, encourage him to express that to the claimant;

c) ask the defense representatives questions that suggest your views of the company’s potential liability in the dispute in order to get them to assess the costs and benefits of not reaching a
mediated settlement;

d) *tell* the defense your impressions of the company’s potential liability in the dispute in order to get them to assess their potential costs and benefits in not reaching a mediated settlement;

These persuasion options (and many others) present themselves to mediators every day in virtually every dispute. Which options strike you as likely to be effective? None of the above? All of the above? If all, and time is limited, in what order should the mediator attempt these interventions? Why?

Throughout this article, we use the terms “persuade and “persuasion” in accordance with their everyday meaning: a conscious or deliberate attempt to use one’s influence to affect another person’s beliefs, attitudes or behaviors. As Alan Tidwell has pointed out, merely by entering a conflict, neutrals inevitably bring some degree of *influence* to bear on it. Their presence in the mediation room, the questions they ask or don’t ask, the statements they make, the agenda they help to create—all of these can and do affect how the parties communicate and the results they achieve. But it is the *deliberate use* of this influence that is the hallmark of persuasion, and it is on persuasion that we focus here.

Some mediators call themselves “communication facilitators” and take the position that mediators do not (or should not) engage in persuasion at all. To them, the word has a connotation of pressure or excessive influence that the more friendly “problem-solving” does not. But while we do not primarily focus on normative questions in this article, in our experience, this view ignores the reality of most mediation practice. First, persuasion is an everyday part of human discourse, used not only by timeshare and used car salesmen, but also by parents, teachers, mental health therapists and many others we consider in the “helping” professions. Second, in the vast majority of disputes in which the assistance of a mediator is needed or requested, far more than mere “facilitation” is necessary to help the parties resolve deeply held or competitively bargained differences. Mediators in different practice settings and with differing ideological perspectives may well disagree about proper *goals* and *methods* of persuasion, but all mediators engage pervasively in persuasion activities.

If you question this statement, first consider possible persuasion *goals* in mediation. Virtually all

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1 Provide some comparable definitions, cites.

2 Tidwell cite

3 Cite to book. Problem solving as a mode of persuasion.

4 Cite to book.

5 Tidwell quote here or in text.
mediators, we assume, routinely engage in what could be termed “process” persuasion, as in “I tried to persuade the parties to: give the process a good faith try/not to interrupt the other party or engage in name-calling/agree to devote another hour to the mediation before declaring impasse.” In addition, mediation is claimed to “add value” to unassisted negotiations by helping parties overcome cognitive, psychological and strategic barriers to resolution that they cannot readily overcome themselves. Thus, we believe that most mediators—at least those who want to be effective—work hard at what could be called “attitudinal” persuasion, as in “I tried to persuade Mr. Gonzales: to be less frightened/not to demonize the other side or react in anger to their proposal and reject it out of hand/to consider carefully and objectively his alternatives to a negotiated settlement.”

Although their approaches may differ, most facilitative and evaluative mediators also engage in at least some forms of “substantive” or “outcome-oriented” persuasion, such as “I tried to persuade the plaintiff: that his high monetary demand might produce a hostile reaction from the defendant/that there might be some question about his ability to prove pain and suffering damages/that it was up to him of course, but before he rejects defendant’s offer of $50,000 as a reasonable compromise, he may want to consider his non-settlement alternatives, especially fees and costs.” And transformative mediators engage in what might be called “empowerment and recognition” persuasion, for example: “I asked Mrs. Roberts whether she could acknowledge Mr. Ingersoll’s perspectives” or “I urged her to keep in mind that, despite her feeling of being overwhelmed, all negotiation decisions were ultimately hers.”

Consider also the many various methods of persuasion that are available to mediators. When mediators try to improve the parties’ communication and affect their attitudes by active listening, re-framing or the use of “I” statements, they are engaged in persuasion. When mediators use “just between us” type statements in caucus, they are trying to create a sense of intimacy and trust with the parties and thereby increase their persuasive influence.

Mediators persuade by “conditioning” parties through flattery and humor. They persuade by obtaining “incremental commitments” for example, by first obtaining the parties’ agreement to mediate, then their agreement to abide by a set of ground rules, then their commitment to a set of norms and standards that may guide the negotiations, etc. They may work to influence

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6 Bush

7 Bush & Folger

8 Trust study.

9 F & S

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11 Tidwell.
disputants’ attitudes by conveying or “packaging” information to make it “go down more easily” or, conversely, by strategically delaying or even withholding it. Sometimes, mediators persuade by instilling optimism and hope; at other times, by sowing doubt or anxiety. Mediators can regulate the degree of pressure that disputants experience, by giving them frequent breaks to think things over, conveying a “now or never” sense of urgency, creating time scarcity via deadlines, or holding the parties in exhausting, all-night bargaining sessions.

Some of these sample methods of persuasion are benign and universally accepted; others might well be considered inappropriately deceptive or coercive. Our only point is that persuasion is endemic to mediation and the list of persuasion tools available to mediators—from which they may pick and choose—is very long.

The study of persuasion traces its roots back to Aristotle. In the past fifty years or so, social psychologists and communication theorists have made substantial inroads in demonstrating empirically what kinds of persuasive interventions work, in contexts ranging from advertising to jury advocacy to politics. Today, well conducted meta-analyses of many smaller empirical studies help social scientists generalize about empirical findings with greater statistical confidence. Given the prevalence of persuasion in all forms of mediation, it is surprising that more attention has not been paid by mediators to the many ways this body of empirical work might inform their practice. What might explain this? Writing more than fifteen years ago, Deborah Kolb and Kenneth Kressel observed that because mediators are frequently uncomfortable about the persuasive—potentially coercive—powers they exert, they are prone to engage in a “kind of denial about what they do. [This] denial stands in the way of learning and keeps the field from better understanding the uses and limits of pressure.”

We suspect that most mediators who are comfortable acting in a persuasive mode have standard or default approaches for doing so. These may be based on some combination of a) intuitions about what is effective, b) normative views about what is “good” or “ethical” mediation, c) personal style and comfort and d) a sense of mastery or lack of mastery of specific persuasive techniques. But if persuasion is an inevitable part of mediation, it behooves professionals in the field to acquaint themselves with what social science can teach about more and less effective persuasive practices, and the psychological and contextual factors that may make them so. If there are any potential tensions between “ethical” mediation and effective persuasion, mediators ought at least to be aware of these tensions, so that they can make more informed choices about how they wish to practice. Indeed, if research reveals new understandings about how persuasion works, this might even affect what we view as “ethical.”

Define meta-analysis. O’Keefe methodology article.

The social science literature on persuasion is vast and complex, and we obviously make no attempt to canvass it all here. Many important topics are omitted. For example, we do not address the myriad source factors that may affect the credibility of the messenger or his or her message, as important as these factors have been demonstrated to be. These include the likability, personal attractiveness and authoritativeness of the person engaging in persuasion, as well as the success of his or her attempts to establish a sense of similarity, or personal connection, with the persuasion subject. Nor, with one important exception, do we focus on subject or receiver factors that may affect how persuasive messages are likely to be processed or how easily a subject may be persuaded. For example, we largely exclude from our discussion the effect on persuasion of receiver variables such as differences in a receiver’s education, intelligence, self-esteem or levels of stress, all of which have been subject in various degrees to experimental study.

The principal emphasis of this article is on selected behavioral and message variables over which mediators may have most choice or control. By “behavioral” variables, we are referring to the influence that a disputant’s own behaviors—behaviors that are requested or induced by the mediator—may have on that disputant’s attitudes, beliefs or conduct. By “message” variables, we refer to variables in how the mediator’s various communications are conveyed—and the impact these variables may have on their persuasive effect.

Four disclaimers are in order. First, we are lawyers, not social scientists. While we have made every effort to master this literature and have endeavored to consult with experts to answer some of our questions, all errors of omission, presentation and interpretation are ours.

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15 O’Keefe book summary
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21 Extent of subject’s ego-involvement in message.
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26 This emphasis also stems from our overarching interest in learning more and teaching about what makes for skillful execution of the mediation function. Cite F&S.
Second, the studies we canvas are of persuasive messages in diverse fields such as advertising, disease prevention and politics; virtually none are of persuasion in mediation. Making reliable generalizations from any body of empirical work, no matter how broad or sound, is a dicey proposition. While we are obviously interested in speculating how the studies we canvas may apply to the world of mediation, we also want very much to avoid overly broad claims and generalizations. Clearly, persuasion effectiveness research in the specific context of mediation would help better inform our practice.

Third, in making statements throughout this paper such as “[x-type] interventions have been shown to be more effective in persuasion than [y-type] interventions,” we obviously do not mean to suggest that any particular persuasive intervention will or will not work in a specific situation. Social scientists deal in generalities, not particularities. Moreover, theorists agree that persuasion is usually an incremental process, in which people’s minds are changed gradually and by degrees, by means of multiple interventions over time.

Fourth, as important as the topic is, detailed exploration of the ethical limitations of appropriate persuasion is beyond the scope of this article. For our part and for what it’s worth, we are comfortable with persuasive interventions that are primarily party-centered rather than mediator-driven -- i.e., designed to help the disputants to evaluate their needs, goals and options more objectively and to achieve quality resolutions to their problems that might otherwise elude them, rather than serving mediator goals, such as “settlement for settlement’s sake.” As for choosing proper means to achieve disputant-centered goals, we do not think that there are any simple litmus tests to determine when interventions cross the line from “proper” persuasion into inappropriate coercion or manipulation. Ultimately, these are difficult questions that individual mediators have to decide for themselves, based on their mediation philosophy, the settings in which they practice and the context of particular disputes in which they are engaged.

In Parts II-IV, we analyze three common mediator interventions: role reversal (Part II), seeking/coaching apologies (Part III) and brainstorming (Part IV) -- that utilize a behavioral approach to the persuasion process. In Parts V-IX, we turn to message variables that may affect the persuasive effect of a mediator’s interventions, including the role of “negative” emotions such as guilt and fear (Part V), the use of sequential requests to orchestrate positional bargaining concessions (Part VI), the choice of rhetorical questions or statements (Part VII), the relative effectiveness of one-sided versus two-sided statements (Part VIII), and message explicitness (Part IX). In our recently published textbook, we proposed a “progressive” model of persuasion,


28 Herbert Simons, PERSUASION IN SOCIETY 30 (Sage Foundation 2001).

29 Cite to Joint Standards disclaimer about the difficulty of disentangling mediator and party needs and articles on the difficulty of achieving outcome neutrality.
in which a mediator moves from persuasion based on empathy (role reversal), to healing (apology), to appealing to interests (problem-solving), to sowing doubt by providing feedback and evaluation. In our conclusion, we revisit this model and reconsider the extent to which social science research supports it. And to the extent that this body of research may have normative implications for mediation theory and practice, we address those questions as well.

II. “Saying is Believing”: Persuasion Through Counter-Attitudinal Advocacy

One approach to seeking to change a person’s mind is to have them actively engage and momentarily experience the competing perspective in some fashion. That engagement by the subject has been labeled counter-attitudinal advocacy. A classic instance of this mode of persuasion—used by mediators, therapists and others—is role reversal.

Role reversal is a technique that asks each party to “step into the shoes” of the other party and consider how a situation or an issue might look from that person’s perspective. The goal is to have each person acknowledge—verbally if possible—that the situation might look differently when viewed from the other side.

Interventions using role reversal generally ask parties to (a) put aside their own perspective for the moment; (b) try to see the issue as the other side does (not as they would if they were the other side); and (c) articulate that other perspective. The theory is that once disputants have experienced saying (and hearing themselves say) such words, the other side’s perspective may become more understandable (even if not totally convincing), and opposition to it may soften. On a deeper level, it is hoped that role reversals can trigger empathy for the other side, producing some thawing of strained relationships.

There are many variations on this basic concept, all of which involve the mediator’s helping the party see the other perspective even if they cannot, or will not, at first. As examples, the mediator can help the parties to:

- Consider how their own past statements and actions may have been understood (or misunderstood) by the other side, as in “If you were Ms. Halverson, how would your conduct (proposal) look?” Or “Put yourself in Ms. Halverson’s shoes. What do you think she might have thought when she read her email notice of termination?... I know you don’t agree, but try to say in words what she might have been thinking.”

- Consider how the other party’s past actions might have a different and more innocent explanation, as in “Looking at it from Ms. Halverson’s perspective, why do you think she ____________________

30 FRENKEL & STARK, supra n. __ at 226-241.

31 This description of role reversal and the examples that follow it are adapted from FRENKEL & STARK, supra n. __ at 227-228.
acted as she did when she learned that she had been passed over for the promotion? Is it possible that she didn’t know that co-workers were around?"

- Better appreciate each other’s arguments. A mediator can ask each party, including their counsel, “If you were the other side, what arguments would you make in support of your position?” Or specifically here: “If you were Ms. Halverson’s attorney, how might you use the overtly sexist comments attributed to Mr. Hernandez to buttress your case?”

- Consider how a party’s own negotiation offers might affect or be viewed by the other side, for example: “You stated in joint session that Ms. Halverson was making $75,000 at the time she was laid off, is that correct? And she’s now been essentially unemployed for more than 12 months? How do think your “nuisance value” offer to settle this case might look and feel from her perspective?” Or in caucus with Ms. Halverson: If you were the company, would the demand you are making—that they pay you $150,000 today-- be attractive to you? What might they be saying about it?"

Note how role reversal purports to work: Through a series of questions, in a type of role-playing process, the mediator attempts to engage each party actively in a process of self-persuasion. Each party is asked to consider a viewpoint that is different from his or her own and to improvise arguments in favor of that opposing point of view. Is role reversal effective in changing minds? Empirical studies of this type of persuasive intervention—called “counter-attitudinal advocacy”—date back more than fifty years, and the research evidence appears strongly to support its efficacy.

Counter-Attitudinal Advocacy Studies. Two early experiments by a well-known Yale social psychologist and his research colleague were among the first to investigate empirically whether getting people to verbalize and advocate opinions that may not correspond with their inner convictions produces greater attitudinal change than merely exposing them to the same opinions passively (i.e., by their reading or hearing the material).32

In both studies, subjects were found more likely to change their opinions on the topic if induced to give a speech to others formulating and elaborating their own arguments in support of a position opposed to their own, as opposed to merely hearing another person’s arguments (in the first study) or reading or repeating another person’s arguments (in the second study). In the second study, this was the result even though subjects reported being generally more “satisfied” with their performance when they read another’s words rather than being induced to formulate their own arguments. The second of these studies may be of particular significance to mediators,

(who often deal with loaded subjects), because it involved attempts to persuade male college undergraduate subjects about a subject quite likely to be of concern to them the early 1950’s: the military draft.

These findings have been replicated often in subsequent years. One later study, for example, confirmed that active role playing had a “significant” positive effect on opinion change, even on topics at odds with deeply held religious beliefs. Students at a conservative Christian college were more likely to change their opinions on subjects such as the sale of alcohol to raise money for the improvement of public schools if they were asked to prepare in writing their own best reasons for such an initiative, rather than being asked simply to reproduce the ideas of others.33

In another series of studies, white college students were asked to write essays publicly endorsing a controversial proposal to double the number of academic scholarships available to African-American students at their college. The general attitudes of the student subjects became more favorable towards African-Americans as a result of writing these counter-attitudinal essays.34 The results from persuasion experiments involving other forms of role-playing are generally similar.35

What are the psychological mechanisms underlying the effectiveness of counter-attitudinal advocacy? Janis and King theorized that this effect was not caused by deeper processing or increased comprehension, but rather by “a lowering of psychological resistance whenever a person regards the persuasive ideas coming from others as his ‘own’ ideas.” 36 The studies provide evidence, according to the authors, that opinion change is substantially augmented by one’s active participation. As they put it, “saying is believing.” 37


35 See, e.g., I. L. Janis & L. Mann, Effectiveness of Emotional Role-playing in Modifying Smoking Habits and Attitudes, 1 J. of Experimental Res. in Personality 84 (1965) (female smokers induced to act in role-plays in which they learn from their doctor that they have severe lung cancer far more effective in inducing attitude change about smoking than listening to audiotapes of same session).

36 King & Janis, supra n.__ at 183.

37 Janis & King, supra n.__ at 211. This theory builds on earlier work by H.L. Hollingsworth (The Psychology of the Audience (1943)) positing that “resentment and
Subsequent research, by Janis and others, has focused on two other factors that also may help explain the persuasive effectiveness of counter-attitudinal advocacy. One factor is “biased scanning”: the process of focusing the attention of the subject on arguments that are different from his or her own views and thereby increasing the accessibility of those arguments to the subject.” According to one researcher, people are generally able “to generate arguments ‘hand-tailored’ to meet the opposing arguments of which [they are] aware.”

Note that this line of research links up in interesting ways with research from the field of cognitive psychology on biased assimilation of information. In a well-known experiment demonstrating how partisan perspectives affect how we assimilate new information, groups of proponents and opponents of capital punishment were each presented with two opposing studies, one supporting its effectiveness as a deterrent to crime, the other providing evidence showing no deterrent effect at all. After reading the two studies, each group thought that the study supporting their preexisting views was logically superior to the study opposing them. Not only that, but after reading the mixed evidence from a combination of the two studies, each side felt more committed to its original position than before. However, in a follow-up study, these researchers found that subjects told to “consider the opposite” were able to overcome their cognitive biases to a much greater extent than those told merely to “be fair and objective.” The authors give 120 Stanford undergraduates, who had earlier indicated support or opposition to capital punishment, two summaries of studies to read, one supporting and one not supporting the deterrent effect of the death penalty. Respondents were then divided into three groups, consisting of 20 opponents and 20 supporters each. As in the first study, the attitudes of respondents in the “replication” (of the 1979 study) group were more

negative reactions may interfere with acceptance of a direct suggestion from others, whereas the individual’s belief that he is making a decision on his own initiative may increase the influence of an indirect suggestion.” King & Janis, supra n. at183, emphasis in the original. The authors also note: “The notion that a direct approach tends to stimulate internal resistance seems to be a major assumption in theoretical discussions of the rationale for non-directive psychotherapy.” Id, at183, citing CARL ROGERS, COUNSELING AND PSYCHOTHERAPY (1942).

Later studies confirm that active role playing generally produces greater attitude change than passive exposure to comparable information. See, Alice H. Eagly & Shelly Chaiken, THE PSYCHOLOGY OF ATTITUDES 502 (1993), listing studies in support of this generalization.

38 Id. at 502-4.


polarized rather than less in their thinking after reading the conflicting studies.

Respondents in the second group were admonished (like a judge or jury) “to be as objective and unbiased as possible in evaluating the studies you read.” The attitudes of the respondents in this second group were just as polarized as that of those in the replication group after reading the studies. However, respondents in the third group--instructed (actively) to consider the opposite--specifically to “ask yourself at each step whether you would have made the same high or low evaluation had exactly the same study produced results on the other side of the issue”--experienced significantly less belief polarization then either of the other groups.” Thus, counter-attitudinal advocacy may have robust persuasive effects because it forces subjects to personally engage with opposing viewpoints, thereby overcoming their partisan biases.

According to another school of thought, counter-attitudinal advocacy works because of cognitive dissonance. According to cognitive dissonance theory, “dissonance (an unpleasant feeling) is aroused when an individual says or does something that runs counter to his or her own beliefs, especially if this action threatens the individual’s self-concept of being a decent or rational person. To reduce dissonance, people will try to bring those disparate cognitions into greater harmony.” Applied specifically to counter-attitudinal advocacy, tools like role reversal seem to work as a mode of persuasion because subjects ask themselves: “How can I come up with such plausible reasons if I don’t believe they have merit?”

Persuasion researchers working generally in field of cognitive dissonance have also spent a good deal of time investigating how external incentives affect attitude change. In a famous early experiment, Festinger and Carlsmith demonstrated that smaller incentives produce greater self-persuasion than larger ones. Students paid $1 to falsely tell other students that a boring task was fun later rated the task as more fun than those students paid $20 to tell the same lie. According to one commentator, “The lower incentive facilitated more self-persuasion, presumably because these subjects had less external motivation to lie. As a result, they provided


\[\text{\textsuperscript{43}}\text{Greenwald & Albert, supra n. \_ \_ at 33.}\]

Another fascinating pair of studies involved preschool children. In the first study, the children were divided into two groups and told not to play with an attractive toy. One group was given a severe threat for doing so; the other group a mild threat. When the threat condition was later lifted, children given the severe threat went right back to playing with the toy; children given the mild threat did so far less. Why? Because children given a severe threat knew why they were not playing with the toy: they would be severely punished by an adult if they did. Children given the mild threat had to “supply some additional justification on their own....[they] subsequently convinced themselves that the forbidden toy was less attractive....”

These toys studies have been replicated on a number of occasions. In one follow-up study, the second experiment was conducted—with similar effects—forty days after the first. In another replication, boys who were given severe or mild threats not to play with an attractive toy were later asked to falsify their scores on a separate test another researcher administered to them. Those boys who had earlier received the mild threat were significantly less likely to cheat than those who received the severe threat. Apparently, the boys who earlier complied with only a mild threat were more likely to develop the self-perception that “I’m a good boy who resists temptation....” The moral, according to one long-time researcher in the field, is that “self-persuasion has staying power.”

A general caution is in order, however, about this field of empirical research as it relates to mediation theory and practice: Many studies of counter-attitudinal advocacy tend to test subjects’ persuadability on topics of relatively low interest or ego involvement to them. A


49 Geller, supra n. __ at 7.

50 Aronson, supra n. __ at 877.

1976 study\(^{52}\) sheds some light on how counter-attitudinal advocacy may work differently with subjects who --like many parties in mediation-- have strong opinions and feelings about a topic. The authors contend that most research measurements of attitude change are somewhat simplistic, “operationalyzed generally as a single score representing a person’s stand on a continuum ranging from highly favorable to unfavorable.” \(^{53}\) They argue further that attitudes and attitude changes “should be considered to include a most acceptable position along with latitudes of acceptance, non-commitment and rejection.” \(^{54}\)

To test these hypotheses, the researchers constructed a study of U.S.C. undergraduate students’ attitudes about “required on-campus housing for all students.” Pre-testing sorted out students with strong negative feelings about this topic from those without strong views. Subjects were then asked to write essays advocating compulsory on-campus housing and were told that their essays would be used in subsequent efforts to convince others to adopt this policy.

The study mostly found what the researchers predicted: Low-involvement subjects showed a significant change in their “most acceptable” positions as a result of writing these essays. Highly involved subjects reported no significant changes in their “most acceptable” positions: they maintained extreme, negative positions toward compulsory on-campus residence. However, their latitudes of acceptance with regard to the topic expanded and their latitudes of rejection contracted, indicating persuasion “at the margins.”

**Mediation Applications and Questions.** Role reversal, “consider the opposite” and other forms of counter-attitudinal advocacy are persuasion tools that ought to be acceptable to most mediators, no matter what their role orientation or philosophy. After all, they are comparatively non-directive devices, by which the mediator asks questions rather than makes statements. They are tools by which the mediator attempts to lower tensions by inducing in each party greater appreciation of the other side’s arguments and concerns. They appear to help overcome at least one common type of cognitive bias. Asking questions, lowering tensions and overcoming biases are all considered important components of what effective mediators do, according to conventional theory.\(^{55}\) Because these devices are widely applicable to all kinds of cases—including pure money disputes—and to the extent that the research unambiguously suggests that they work, this is good news indeed.

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\(^{52}\) See, e.g., Edward M. Bodaken & Kenneth K. Sereno, *Counterattitudinal Advocacy, Ego-Involvement and Persuasive Effect*, 39 (3) Western Communication 236-48 (Fall 1976). (Undergraduate students arbitrarily assigned to improvise arguments in favor of either general or specialized undergraduate education.)

\(^{53}\) Id. at 236.

\(^{54}\) Id.

\(^{55}\) Need a footnote here?
Even more important, some of this research suggests that self-persuasion devices like role reversal produce lasting changes in attitudes. This is a potentially highly significant finding for mediators. Disputants who attitudes have really been changed are more likely to “own” their agreements—and are more likely to comply with them as well. 56 As we will see, many other modes of persuasion can also be effective, but if they produce more ephemeral attitude changes, this can lead to post-negotiation regret and repudiation of agreements that are reached.

Nonetheless, these persuasion techniques are obviously not a panacea. Research experimentation supports what our own experience demonstrates: When disputants are deeply entrenched (highly “ego-involved”) in a position—for example, furious at their opponent for having acted disrespectfully or in bad faith, or supremely confident that their case is a “slam dunk”—inducing them to consider opposing viewpoints produces, at best, slow, incremental change. Noted Harvard educational psychologist Howard Gardner suggests that most “self-persuasion” is like this. It occurs gradually—as a result of small shifts in perceptions and viewpoints—rather than as the result of any single argument or sudden realization.57 To the extent that this is the case, counter attitudinal advocacy interventions are probably best attempted early (and often) in the mediation process, in conjunction with other persuasive interventions—and well before the actual bargaining begins. 58

What are the optimal conditions necessary for role reversal or other similar devices to be persuasive in mediation? Three variables that may be of practical significance to mediators have received little or no attention from persuasion researchers. First, in general, does role reversal work in comparable ways when trying to overcome strongly held psychological barriers as opposed to cognitive ones? Put differently, even if role reversals can produce changes in opinions and ideas, is it comparably effective in inducing changes in feelings? 59 Second, does role reversal work any differently when a neutral is working with agents rather than principals? It may well be the case that neither of these variables has a significant efficacy effect. So far as we are aware, however, neither has been the subject of direct experimentation.

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58 Renkel & Stark, supra n. __ at 226-229 (proposing a “progressive” model of mediation persuasion, and recommending role reversal at an early stage of the persuasion process.)

59 We note in this regard that none of the studies of counter-attitudinal advocacy we have read address the role that induced empathy may play in changing minds. This may be because the principal studies in the field deal with beliefs and attitudes rather than feelings (to the extent that these can be separated). It is a common assumption among many mediators that role reversal works, in part, because of its capacity to induce empathy: the capacity to comprehend the other person’s thoughts, experience and emotions—and thus thaw damaged relations. This variable warrants further research and investigation.
Third, and perhaps most significant, does role reversal work equally effectively in joint session and in private caucus? The research evidence suggests that counter-attitudinal advocacy efforts conducted in front of others produce more attitudinal change than those conducted in private. But this finding begs the question: Do counter-attitudinal advocacy efforts conducted in front of the mediator produce more or less attitudinal change than those conducted in the presence of one’s opponent? Note that strategic and psychological considerations unique to the mediation process may complicate this question. Even if one assumes that public statements acknowledging the legitimacy of the other party’s feelings, ideas or beliefs have more meaning—and therefore are more self-persuading—when uttered in front of an opposing party in joint session than to a mediator in caucus, this has to be weighed against the greater practical difficulty of inducing such statements in the presence of one’s “adversary.” Additional research on these questions would be useful.

Note to attendees: We now include capsule summaries of Parts III-V to give you a flavor of what these sections might contain, so that we can seek your advice on whether or not particular topics should be included in this paper. As our research is incomplete at this point, the findings we suggest here should be considered tentative at this stage.

III. Persuasion by Apology

Much has been written in recent years about apologies in mediation and negotiation, with scholars focused primarily on their potential impact on the receiver of the apology, as well as on the strategic, structural, cultural and evidentiary barriers that make apologizing difficult. Comparatively little attention has been paid to the potential effects of apologies on the giver of the apology. Apology per se has not been a primary focus of persuasion researchers. Nonetheless, there is good reason to think that coaching apologies may be an effective way to induce attitude changes in the apologizer. First, inducing apologies (even—or perhaps especially—from reluctant or resistant apologizers) involves a similar kind of counter-attitudinal role playing as role reversal, with the mediator inducing a disputant to consider his or her own contributions to a dispute or bad behavior—thoughts and feelings that may not be paramount in the mind of a disputant at the beginning of a mediation. Second, cognitive dissonance scholars have found that dissonance effects are strongest (and self-persuasion greatest) when a person’s actions are inconsistent with his or her self-concept of being a good person. Third, a substantial body of research suggests that guilt appeals work well generally as a mode of persuasion.

IV. Persuasion by Group Brainstorming

Mediation practitioners and scholars who tout the power of brainstorming and problem solving in mediation usually emphasize the “value adding” aspects of the process: its power to generate

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60 Run down.
creative solutions. Less attention has been focused on the persuasive effects of inducing cooperation between the parties. From camp studies to race relations studies, persuasion research demonstrates that induced cooperation works very effectively as a tool of self-persuasion.

V. PERSUASION BASED ON EMOTIONS: FEAR AND GUILT

Persuasion is not entirely (or perhaps even primarily) a rational process. As one writer has recently put it: “‘feelings’ are millions of years older than the kind of conscious thought processes we call ‘reason’, and they have been guiding behavior far longer.” 61 Mediation theorists have focused a good deal of attention on the ways in which mediator can harness positive emotions (hope, trust, empathy, etc.) to lower tensions and reduce barriers to resolution. But research demonstrates that harnessing negative emotions such as fear and guilt is also very persuasive. This section discusses the persuasive efficacy of various types of guilt- and fear-inducing mediator interventions.

Note to attendees: Text picks up again here.

VI. PRODUCING MOVEMENT: THE POWER OF SEQUENTIAL REQUESTS.

Assume that you have spent nearly four hours with the parties in the Halverson mediation and it is clear that both sides are running out of patience. The defendant has yet to make what you would consider a serious offer to settle the case. They did throw out what they termed a “nuisance value” offer of $15,000; that offer was quickly rejected by plaintiff’s counsel. Given their voluntary presence at the table and their acknowledgment of certain risks they face, however, you are certain that they are prepared to go higher, although how high is unclear, given the fairly early stage of the dispute and the risks that the plaintiff also faces.

After a lengthy caucus, the plaintiff has stated that, if necessary, she will accept a figure of $35,000 to end the matter today—but not a penny less. Based on your extended and emotional conversations, you believe her. In any event, based on how far she has come down from her initial demand of $150,000, you would be reluctant to suggest that she take any less.

You calculate that enough time remains for two quick rounds of caucuses. In thinking about how you might get the defendant’s representatives to offer $35,000, three possible strategies come to mind:

(a) ask for a smaller amount that you are reasonably sure they would accept, say $22,500 and, if that’s accepted, go back to them with the $35,000;

(b) ask for a higher figure—one that you are reasonably sure they would reject-- say $75,000, and then ask for the $35,000;

You wonder: which of these is likely to be the most effective?62

Experimental research suggests that as between approaches (a) and (b), it may not matter. But either of those approaches is more likely to produce the target result than the direct approach, (c).

Sequential—as compared to straightforward—requests to gain agreement to a target goal have been the subject of study for more than four decades. The two best-known approaches have been termed “foot-in-the-door” and “door-in-the-face.” The foot-in-the-door strategy involves starting with a small, very likely-to-be-accepted request, followed (once accepted) by a larger (target) one. Door-in-the-face approaches use the mirror image technique: starting with a large, very likely-to-be-refused request, followed by a more moderate (target) one. In experimental settings, both approaches have dependably been shown to be more effective than direct requests in inducing compliance with the target.

For many students of negotiation, this conclusion may seem unremarkable, resonating with their experience, intuition and much else that has been written about effective bargaining.63 But empirical research into these two phenomena tells us more. The conditions under which these approaches work best and the cognitive and affective explanations for their success may offer helpful insights into how persuasive efforts in mediation might best be carried out. Let us take these sequential compliance-seeking tactics one at a time.

Foot-in-the-Door (FITD). The name given to this compliance technique conjures up images of a traveling salesman trying to gain entry into someone’s home in order to have a chance to make

62 Needless to say, a myriad of factors might influence the defense’s response at any given point to settlement figures suggested by the mediator. These might include their reactions to the plaintiff’s pattern of concessions, the degree of trust they have in the mediator, the impact of time scarcity on their willingness to make a next move that could settle the case today, and their calculation of the chances of settling the case favorably later, after they allow the mediation to end in an (apparent) impasse.

63 For example, the foot-in-the-door approach also implicates the commitment and consistency principle, which posits that a person, having made a commitment to act in one way, wishes to be seen as acting consistently. Cialdini cite. This tactic is also consistent with standard competitive bargaining behavior: By getting to the target in steps rather than all at once, a party avoids the risk of overpaying by making two moves without a reciprocal response from the opposing side. Similarly, the efficacy of the door-in-the-face approach might be seen as reflecting the power of anchoring: A second, smaller request always appears more reasonable when compared to the size of the first. Cite. Door-in-the-face also can be seen as demonstrating the reciprocity norm in action, with the second, smaller request by the requester seen as a substantial “concession” from the first, larger one, warranting a corresponding concession by the subject. Cite.
a sale. In fact, the conditions under which this strategy have been shown to work are typified by early experiments which involved entering subjects’ homes. Experimental research demonstrates that getting someone to agree to a small initial request increases the likelihood that they will comply with a second, larger one.

In the first of these studies, researchers first phoned Palo Alto housewives and asked them to take a few minutes to answer a questions about household products they used. Three days later, the researchers called the women again to ask whether they would allow a team of five or six men access to their homes’ kitchen and other storage areas for a two hours survey of such products. These women agreed to the two-hour request at twice the rate of another (the control) group of women who had only been asked for the two-hour home inspection.64

In another early study, the same researchers first asked one group of California housewives to either display a small window sign or to sign a petition in support of legislation promoting either safe driving or environmental beauty. Two weeks later, these subjects-- and a control group of whom no prior requests had been made-- were asked (by a different requester) to agree to a larger (“target”) undertaking: allowing a large, unattractive “Drive Carefully ”billboard to be installed in their front lawn for a week. The group that had earlier agreed to post the window sign or sign the petition complied with the second request at more than twice the rate (55%) of the control group members (20%).65

The effectiveness of foot-in-the-door in increasing compliance with the larger “target” request (as compared to straightforward target requests only) has been explained on the basis of changed self-perception: As a result of having agreed to the initial request, the subject sees herself as one who is cooperative, helps good causes and strangers. That inference, in turn, propels the subject to act consistently, agreeing to the second, larger request. Where the first request is made in the presence of a reward, threat, or other external justification, however, agreeing to that request is less likely to be attributed by the subject to his/her internal motivations. As with other types of induced compliance we have discussed, the sequential strategy is less likely to work in such situations.66

Given this explanation, it should not be surprising that the success of FITD strategy increases with the size of the agreed-to initial request67 (the more significant the first act of volunteerism, the greater the sense of being helpful) or that its effect is strongest when the requests are “prosocial” in nature (altruistic, benefitting communities or non-profit enterprises, doing a favor

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66Refer back to Part II. There is some doubt about this explanation, however......
for a stranger, etc.)\textsuperscript{68}

**Door-in-the-Face (DITF).** Inviting rejection also seems to pay off. An early and often cited experiment is representative of much of the research in this area: When stopped on a university campus and asked whether they would chaperone juvenile delinquents on a two-hour trip from their detention center to the local zoo, 16.7\% of subjects said yes. But when similar subjects had first been asked (and had refused) to volunteer \textit{two years} of time to serve as counselors to such youth, a follow-up request for the two hours of chaperoning drew a 50\% compliance rate.\textsuperscript{69} Although most studies of this phenomenon yield results of less dramatic magnitude (including some showing no or even negative impact), meta-analyses of many studies over three decades bear out the enhanced compliance produced by first asking for more than you hope to attain.\textsuperscript{70}

Further research in the intervening decades refined this conclusion in more and less predictable ways: While DITF worked in many settings (including requests on behalf of arguably harmful organizations\textsuperscript{71}), its effects were larger where the request was for a socially useful (“prosocial”) purpose.\textsuperscript{72} It also seems to work best when both requests are made by the same person, face-to-face, and where the second request follows the first without delay (defined as within 5 minutes).\textsuperscript{73} But interestingly, the size of the reduction between the initial, larger request and the second, more moderate one does not seem to impact the DITF effect dependably.\textsuperscript{74}

\textit{How} and \textit{why} DITF works are potentially even more significant to those seeking to persuade. The phenomenon was initially explained as an example of the social norm of reciprocity: Subjects complied with the second (smaller) request in exchange for (i.e., to reciprocate for) the requester’s “concession” from the first request, almost as if they were bargaining in a negotiation.\textsuperscript{75} More recent and comprehensive examination of DITF studies have cast doubt on this explanation, however. The reciprocity rationale seems at odds with the findings that DITF effects are not influenced by the size of the second request’s “concession” and that the time

\textsuperscript{68}Cites


\textsuperscript{70}

\textsuperscript{71}Describe media study.

\textsuperscript{72}

\textsuperscript{73}Cite. By contrast, FITD seems to work even when there is substantial time delay between the initial and the target request. Cite.

\textsuperscript{74}

\textsuperscript{75}Cialdini
interval between requests matters. The reciprocity explanation also does not account for the increased effectiveness of DITF in prosocial request situations.\textsuperscript{76}

Another early hypothesis was that the “perceptual contrast” from comparing the sizes of the larger first and smaller second request makes the latter appear to be less onerous (and thus easier to accept) than if it stood alone.\textsuperscript{77} But this (anchoring-like) explanation seems incompatible with DITF findings that assign significance to whether the same person makes both requests or whether the request is altruistic in nature.

More recent studies based on surveys of the feelings experienced by DITF subjects have yielded a different explanation—one that is again based on guilt. The idea is that most people feel guilty when they (metaphorically) slam the door in the face of someone who makes a request—particularly (although not exclusively) one who is perceived as selfless or altruistic. This causes them to want to assuage that feeling by complying with a second request from the same person. While not necessarily producing guilt reduction itself, agreeing to the second request may be motivated by the anticipation that it will produce a reduction of the guilt from having turned down the initial request.\textsuperscript{78} Although no one explanation\textsuperscript{79} has settled the question, the guilt rationale has emerged as the most plausible.

**Mediation Applications and Questions.** The conditions under which this research has been conducted seem far removed from the world of conflict. What might one extrapolate from such experiments to the domain of working with people in conflicts?

**Framing Offers and Concessions.** A consistent theme running through this research is the significance of the “prosocial-ness” of the requests on the rate of compliance produced.\textsuperscript{80} While either form of sequential request (FITD or DITF) produces enhanced compliance regardless of the nature of the request,\textsuperscript{81} both strategies are most effective at reaching a target goal when subjects are asked to perform acts that are seen as altruistic in nature.

Might this have implications for the mediation process? Can mediators describe positional


\textsuperscript{77}Cite to other explanations not yet mentioned in the text.

\textsuperscript{78}To some extent, this was the most logical method of attracting the participation of subjects: stopping people on the street requires an acceptable premise

\textsuperscript{80}Some research suggests that, at least DITF is not dependent on the social nature of the request.
The distinction between selfish and selfless is a fine one. It can be argued that even the most altruistic of acts serves to satisfy a person’s own needs, albeit the need to benefit others. And concessions in mediation can always be seen as being given in return for getting something—at a minimum, the enhanced likelihood of the end of conflict.

Cite study showing enhanced effects when requester profusely thanks subjects for their altruistic help.

"Even when the pie has been enlarged, the time will come for it to be divided.” White critique of Getting to Yes.

Cite to book, Golann, etc.

This is hardly a radical notion and may already be typical of late stages of caucused bargaining. For example, mediators who launch their own “trial balloons” to avoid party reactive devaluation of offers, are, in essence, doing this.

Orchestrating the Bargaining. As experienced neutrals know, many mediated disputes are exercises in zero-sum adversarial bargaining from start to end. Even the most cooperative, interest-based negotiations often involve issues that are bargained over competitively. Such settlement discussions, usually seeking a compromise through incremental convergence of party positions, are often conducted through caucused shuttle diplomacy. This research may point to new ways of thinking about such caucuses.

Many neutrals who find themselves orchestrating a competitive bargaining process through private meetings routinely choose simply to carry offers from party to party, verbatim, perhaps adding a note or signal of their own impression of the likelihood of future movement. But the lessons of this research could be seen as pointing to a different approach—one in which the mediator displaces the parties as the focus of the bargaining. With the mediator operating as
the source of all proposals, he or she can seek to replicate the conditions—throwaway (small or large) first requests, optimal framing and timing of follow-up requests—best geared to yielding subsequent agreement to a settlement target.  

Finally, this empirical literature may be instructive for more conventional orchestration of bargaining by the parties themselves or for process management by the neutral. The lessons of DITF may provide arguable support for the neutral’s encouraging some parties to be less, rather than more, reasonable with their initial offers or demands—in order to harness the magic of power of a sequence that starts with a rejection. Or FITD may suggest the wisdom of seeking compliance with “benign” process-oriented requests (e.g. as to ground rules, agenda setting, or staying at the table despite doubts or anger) in order to capitalize on mediator-induced improved self-perception when problem-solving and bargaining begin.

Of course the research we are discussing may not lend a theoretical foundation for any such conclusions. Would these same experimental results obtain where subjects are emotionally (or strategically) in conflict with the person making requests of them? Would sequential request strategies that have been demonstrated to be effective in two (experimental) rounds work if—as in many tough mediations—three or more rounds of requests and concessions are involved? Or would other cognitive or affective processes take over? And even as to two-round sequences, how many times can they be used with one subject in one sitting? If FITD works to achieve early stage commitments (e.g. to proceed and to ground rules), will it be effective again in seeking positional movement toward settlement from the same party? Experiments conducted under mediation conditions would shed light on such questions.

VII. Persuasion by Rhetorical Questioning

Note: This section is in a preliminary stage of research. The summary that follows is included to trigger discussion and reactions to the themes identified.

Suppose in the Halverson case, despite your best efforts to produce an offer of $35,000, the company only (and “reluctantly”) moved to offering $20,000. You figure that you have one more chance to persuade them to agree to the $35,000 demanded by Ms. Halverson and you sense that pointing out the company’s liability risks and its costs of proceeding to litigation—interventions you have sought to avoid up to now—are the best hope of obtaining that movement.

87 Such a lesson might offend critics on a normative level. With all of the moment-to-moment bargaining information reposing in the neutral, notions of party control and self-determination may be compromised and impartiality sacrificed to the overarching desire to find a deal. Moreover a neutral’s consciously seeking to create (and then exploit) a sense of obligation or guilt might seem highly problematic. But, so long as the parties cede such control willingly, might not such mediator interventions serve as a needed antidote to the strategic, psychological and cognitive barriers that can otherwise deprive the parties of the resolution they came to mediation to achieve?
In considering how to try to accomplish this, two possible approaches have occurred to you:

(A) Tell them the legal and factual weaknesses ("From where I sit, this case will almost surely get to a jury. She makes a very good witness. And especially if those sexist remarks come into evidence you could be facing substantial exposure–including counsel fees.” or "Merits aside, the jury may not like the way you laid her off.") and costs as you see them, culminating in a recommendation that they offer $35,000.

(B) Ask them questions that suggest the legal risks you see ("How do you think a jury will react if the supervisors’ sexist remarks come into evidence?" ) and/or the costs of going forward ("Is it really in your interest to have the commission's investigators coming through your offices, interviewing staff, and going through files?") culminating, perhaps, in a final suggestion in question form ("Isn’t it worth $35,000 to limit those risks and put this behind you?")

If you prefer (B), you have lots of company. “The widely accepted persuasive technique of asking, then answering the question posed, is deeply rooted in Western rhetorical tradition. Demetrius advised rhetors to build force by asking audiences questions without giving answers…. Consistent with this rhetorical legacy, modern persuaders receive advice to use rhetorical questions (RQ's) to affirm or deny a point by asking an emphatic question to which no overt answer is expected.”88

A leading divorce text describes question-asking as “the core technique [of counselors and mediators] and a “more widely acceptable mediational approach [than making statements].” 89 Many mediation theorists echo this view. Professor Lela Love, in discussing the mediator’s duty to assure that participants are making fully informed decisions, captured it this way: “asking questions [regarding possible legal outcomes] comports with the mediator’s role, but giving or suggesting answers does not.” 90

Why do so many mediators prefer to ask questions rather than make statements when seeking to persuade? For some, this grammatical form is a matter of ideology: Questions seem less argumentative or pressuring–qualities that are anathema to widely-accepted norms of mediator neutrality and party self-determination. For others, questions may provide a measure of comfort: Doubt can be sown without having to make definitive predictions in an unpredictable legal world. Still others may view questions as being more likely to engage a subject or less likely than statements to trigger resistance to the persuasive effort. 91

In considering the efficacy of rhetorical questioning as a mode of persuasion, we should make clear at the outset what are and are not talking about. Research demonstrates that most effective

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91Cite F and S ("Ask, Don’t Tell) and other sources
persuasion is done *with* others, not *to* them. Competent adults generally cannot be persuaded to do something unless they want to do it. Effective persuasion is therefore an *interactive* process, in which the persuader must work closely with her subject to evaluate whether the advantages of taking a certain course of action outweigh the disadvantages.\(^92\) In general, questioning and dialogue are vital parts of that process.\(^95\)

Here we are concerned with the efficacy of a much narrower, but nonetheless commonly employed, form of mediator questioning: the highly suggestive rhetorical question, planted by the mediator acting as an “agent of reality” in order to sow doubt. What do we actually know about the relative effectiveness of such questions as compared to statements in changing attitudes? Research concerning the effectiveness of rhetorical questioning in persuasion is not as rigorous or uniform as one might like. Nonetheless, it tends to suggest that in high involvement settings like mediation, rhetorical questioning may not be effective as a persuasion device, and under certain circumstances may even be counter-productive.

**Rhetorical Questions and Cognitive Elaboration.** Questions are often thought to be superior to statements in encouraging the subject to continue to think about the statements and arguments that have preceded or will follow the question (or that may be imbedded in the rhetorical question itself). And greater cognitive elaboration yields more positive and negative thoughts about a persuasive message, either increasing or decreasing its persuasive effect on attitudes. Indeed, some earlier research indicated that questions do elicit more cognitions than statements.\(^94\)

This elaboration effect, however, may be limited to “low involvement” subjects. Where (as in mediation?) the recipient is already “high involvement” and engaged in deep thought about the message, a rhetorical question may serve to distract and thus reduce both elaboration and persuasion.

In one study, undergraduates were presented with both stronger and weaker audio-taped arguments in favor of a proposed comprehensive pre-graduation examination, which culminated in either (a) a statement summarizing the arguments or (b) a rhetorical (leading) question suggesting a conclusion. The goal was to measure which grammatical format—statement or question—would yield the most elaboration of (cognitive processing or thoughts about) the persuasive message.

Where students had low involvement in the subject matter (the exam would affect another school, not theirs) questions yielded more thoughts (positive thoughts when accompanied by

\(^{92}\) *Id.*, at 302.

\(^{93}\) Larry Suskind in *When Talk Works*, supra, at 472-3: “Questioning is a way to teach without lecturing.”

\(^{94}\) Zillmann (1972), but see Zillmann & Cantor (1974).
Rhetorical Questions and Source Assessment. Rhetorical questions also have the effect of focusing attention on the source of the persuasion in ways that may undermine persuasive efforts. According to one school of thought, message elaboration can potentially focus the subject on the message source and its tactics and these, in turn, can positively or negatively affect persuasion. One study—of reactions to advertisements for running shoes—sought to measure whether the grammatical form affected perceptions of the message source and its tactics. To introduce the source emphasis, subjects were given information about the shoe company (one group was told the company was socially responsible, the other that it was not). One version of the ad made use of questions, the other only statements, to convey the same message content.

In some cases, the use of questions constituted an “artful deviation” from the kind of message that the subject expected and this led the subject to try to understand that deviation in terms of the motives of the source. (They focused more on the source and its tactics than the message content.) And when the assessment of the source was unfavorable, subjects saw rhetorical questions as more pressuring than the same message in statements without questions.

Rhetorical Questions and Persuasion. A pair of experimental studies by John Swasy and James Munch attempted to synthesize some of the early research by comparing the impact of rhetorical questions versus statements on cognitive elaboration, source assessment and overall persuasiveness. Replicating and extending the work of Petty et al, they asked undergraduates

\[ \text{Supra } n._{\text{__}} \]
their views about instituting an undergraduate comprehensive exam at either their own business college (high involvement) or another business college far away (low involvement), varying RQ’s versus statements and high and low quality arguments as well. Among their findings:

1. Rhetorical questions caused more distraction than statements in high (but not low) involvement conditions. In the second experiment, fewer message arguments were recalled when RQ’s rather than statements were used in high involvement situations.

2. Questioners were perceived as less expert -- but no more polite -- than statement makers in strong argument conditions.

3. Rhetorical questions combined with strong arguments were perceived as slightly more pressuring than statements in high involvement conditions. A series of rhetorical questions a) increased the perception of pressure, b) increased subjects’ derogation of the source; and c) (most importantly) reduced message acceptance.

Mediation Applications and Questions. While some of this data may bring into question the conventional wisdom of using rhetorical questions rather than statements, the overall picture is far from conclusive. Researchers have not agreed on any common definition of RQs or schema. For example, is there one only form of RQ or many? Are rhetorical questions pseudo-statements, requiring no mental processing by receivers? Or are they (indirect) speech acts requiring at least latent consideration by receivers? Researchers have reached different conclusions about the persuasive effect of RQ’s but they have studied different grammatical question forms, different placement of RQ’s in an argument and different frequency of RQ usage in an argument, all of which may have affected their results.\footnote{As one meta analysis put it: “Aggregated effect sizes indicate that rhetorical questions are not potent persuasive tools. However, the host of related message feature [variables] preclude us from asserting that RQ’s disrupt the production of thoughts to distract the receiver, exert social pressure on the receiver to conform, direct the receiver’s attention to opposing arguments, or do not create a minimal intent to persuade.” Barbara Mae Gayle, Raymond W. Preiss & Mike Allen, Another Look at the Use of Rhetorical Questions, in Allen & Preiss, Persuasion: Advances Through Meta-Analysis 189-201, 198 (Hampton Press 1998)}

Moreover, when mediators use questions to persuade, the context–the stage of the proceedings (often late with limited time remaining), earlier information or arguments (often the opponents’)
from which questions stem, previous efforts to persuade and the subject’s reactions to them--
can all affect how a recipient perceives even an innocuous or objectively open-ended question,
much less leading or suggestive one.

Many of these studies also compared the effects of rhetorical questions to comparable statements
when used in conjunction with persuasive arguments. But some mediators are reluctant to use
“arguments” at all. What about the relative merits of just questions or just statements without
accompanying (before or after) arguments? Some older research, which is far from accepted,
suggests that we are conditioned to associate rhetorical questions with strong arguments and thus
questions will be more persuasive than statements. 101

Assuming, however, that the use of rhetorical questions poses at least some risk of undercutting
persuasion, mediators who seek to use questions to persuade by sowing doubt might be advised
first to seek to lower a subject’s ego involvement, i.e., by lessening how much he feels directly
affected by, or cares about, a particular outcome. This might be done by attempting to foster
empathy for the other side, developing alternative, interest-based ideas, re-framing to highlight
positives, lowering the perceived stakes and other similar interventions.

To reduce the potential for questions seeming to be deviations from what is expected (with the
attendant risk of turning the focus toward the source and his tactics), mediators might also do
well to prepare participants for their use in advance. But might such transparency not also
increase anticipation and thus resistance and counter arguing -at least by high involvement types?

Despite some methodological limitations of this body of research, persuasion by rhetorical
questioning seems at the very least risky in that–except in its most open-ended forms-- it may
create the risk of the persuadee’s focusing on the source and his tactics rather than the message.
This may be especially relevant to mediators, given the fact that a mediator’s rhetorical questions
are often appeals to fears, i.e. negative appeals which can lead to lowered source assessment.
Thus straightforward statements may be the best form of evaluation.

**VIII-IX. Persuasion by Direct Statements (Capsule Summary)**

In the next two sections (or perhaps one unified section), we present two separate but related
message variables that may affect the persuasive impact of any message: 1) Is the message one-
sided or two-sided? 2) How explicit is the message? Research establishes that “two-sided
refutational messages” --messages that present two (or more) sides to an issue or question, but
present reasons why one side is more persuasive than the other(s)--are more persuasive than
either one-sided messages or two-sided, non-refutational messages. Research also suggests that
explicit arguments are more persuasive than implicit ones. These findings have considerable
potential significance for mediators, who, for a variety of reasons may tend to “pull their

101 Cite to forewarn studies.

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punches” in delivering messages--or perhaps making suggestions--to disputants.

X. CONCLUSION