

Despite their hesitation, most people wind up either enjoying their jury service or, at a minimum, appreciating the majesty of our justice system. After nearly 100 jury trials in both federal and state courts I love the art of persuasion, and I've dedicated myself to being good at it. My mother was a victim advocate for the local solicitor's office. She wondered, "Why does someone charged with a crime get to hire any lawyer he/she wants, but the victim cannot?" Textbook answers are of no solace to a victim being defense attorney, while the perpetrator may or may not be cross-examined by a skilled prosecutor. I'm reminded of the fragility of life, the innocence of the young, the power of standing up for others, and the need within each of us to advocate for something significant.

Can you persuade by asking the right questions, at the right time, in the right order? More importantly, can you, in essence, have the person with whom you are talking convince themselves? The most effective persuaders listen as much as they talk and ask as many questions as they answer. Policies, precepts, procedures, and rules are used in courtrooms because they have stood the test of time and we accept them as being the best tools for elucidating the truth. We use it in courtrooms because it is right. I left the courtroom because I could not answer my own questions about what happened *outside* the courtroom.

I left the courtroom with just the tiniest remnant of faith left. Oddly enough, I left Congress with a higher opinion of mankind than when I left the courtroom. I left Congress because the questions were better than the answers and because the questions never matter in politics. Jurors are, by definition, willing to be persuaded. Members of Congress either cannot be persuaded or cannot admit they were. While I was on Congress, strangely, I became more open to being persuaded. I was being exposed to smart, credible people, with fact-centric arguments who were making an effort to be heard, understood, and willing to hear and understand me in the process. People are arriving to the table with different sets of experiences and opinions filtered through the lens of those experiences.

Persuasion is not about winning arguments—it's about effectively and efficiently advocating for what you believe to be true. Persuasion is about understanding what people believe and why they believe it and using that to either debunk or confirm their position.

As a teenager in a conversation with my best friend's mom, she gently asked me question after question after question. So. Many. Questions. But all of them out of her love for me, a kid she had known most of his life. What she accomplished in those 30 minutes changed my life. She took me from doing construction in Las Cruces, New Mexico, to going to law school. What she cared about was me, and I left the beach that morning persuaded to have higher expectations for myself.

*What do you want to accomplish? What is your objective? How do you measure success at the end of the interaction? What is your jury? How hard will it be to prove it?* Before you begin your interaction—before you ever open your mouth—

these are the questions you should ask yourself. Since no teenager—or anyone for the matter—likes being told what to do, **asking questions becomes the subtlest and most effective way to persuade.**

*Are you trying to begin a relationship, repair one, enhance one, or end one? Are you trying to pacify or infuriate? Is your objective consensus or conflict?* My chief motivation for using questions rather than declarative statements was and remains that it is a defense mechanism. I never thought I was smart enough to participate in conversations with smart people, but I was drawn to be around them. My dad was smart—a medical doctor. My best friend growing up, Keith Cox, wound up going to Duke University and became an oral surgeon—he was *really* smart.

One of the greatest needs we have is the desire to be heard. Most people are wired to want to talk, so I take advantage of that and leverage human nature to mask my own deficiencies. So, I suppress my own desire to be heard and replace it with my desire to avoid being perceived as uneducated. Questions can gather the time, information, and interpersonal connectivity to persuade in ways that simply proclaiming what you believe cannot. Even the most stupid question is 1000 times better than a stupid declarative statement. You own every declarative comment, but with questions you have an out. Because of that, questions are perhaps the safest route in the art of persuasion. A stupid statement discredits everything that comes out of your mouth from that moment on. You've lost your jury when you make affirmative, declarative statements if they are wrong or unproven.

To this day I am constantly asking myself questions and rehearsing the questions I would like to ask others. I play out every closing argument in my head before it ever happens in real life. **Questions have been the way I persuaded others for as long as I can remember because they have been the way I persuaded myself for as long as I can remember.**

Senator Tim Scott, driving with license plate US SENATOR 2, related to me that he was stopped 7 times in one year as an elected official. Thus, began the journey of my own persuasion on an issue as significant as criminal justice reform, racism, and some communities' view of law enforcement. It started with a mere question: *How many times had I been stopped by law enforcement in the last year?* Even a US senator had a different experience with law enforcement because he was black. In the process of persuading me, Tim Scott modeled the characteristic most necessary to be a compelling advocate or messenger—the willingness to be persuaded himself.

**The most persuasive are the persuadable.** True and artful persuasion is teaching without either of you identifying who is the teacher and who is the student. Debating is science. Persuasion is art. **Debating is for the best talker. Persuasion is for the better listener.**

I feared defense attorneys who connected with the jury on a personal level and left it believing he will never intentionally mislead them. Between skill and authenticity, pick authenticity. Pick likability over technical superiority and persuasion over debate. People want to be led by someone they trust in a

direction they are thinking about going anyway. Think of persuasion as change, movement, incremental. In politics, the capacity to persuade is slight because the willingness to be persuaded is slight.

A fact that cannot be proven impacts your ability to persuade but doesn't diminish it. What are the facts? Can you separate fact from belief, opinion, theory, or feeling? What do I *know*? How do I know it? What are the limits of my knowledge? What do I *believe*? Why? What other options have I considered? Our generation has few excuses not to gather facts. Access to information and a skeptical mind are all you need, and both should be readily available. "There is evidence the earth is flat because the part I am standing on certainly is."

How are you going to structure your argument? Recency is a belief that people are most likely to be persuaded by whoever they last hear from. Start with your best fact first. Then move to your third-best fact or argument and save your second-best fact for when you need it most. Start with the Ace, move to the Queen, and hold the King. Do you have an objective that is knowable and visible?

You must meet people where they are. Learn how they think and what motivates, moves, inspires and scares them. Learn where they are, how they got there, and what it would take for them to move to somewhere else. What do they want and crave? Where do they derive meaning and worth? You must better understand them if you are going to move them.

We trust the jury process, so it is worth knowing how it works and what we can learn from it as we try our own hand at advocacy. Despite my lifelong romance with cynicism about human nature, I was continually amazed by my fellow citizens and their ability to be objective and fair during the jury process.

One dear friend said her mind had changed on immigration recently because of a couple she met at church. "They love this country, this is their home, albeit not lawfully, but I cannot support the displacing of this family." This talented, smart, conservative thinker changed her mind based on a relationship.

*How much evidence and advocacy will I need to win this discussion and accomplish my objective?* The larger the ask, the more convincing you need to be. Perhaps we want someone to attend a meeting on a new product or financial opportunity. You would never ask for the investment first. You ask for an open mind, a willingness to listen. When you are asked, "Have you ever considered..." or "Are you open to hearing..." about an issue, you will likely have a different reaction from a communication that starts like a "you should." No one considers her/himself to be closed. The burden of persuasion to get me to "consider" or be "open" is much lower than to accept or participate in something.

Police officers are free to approach citizens and ask if he/she has a minute. What about asking a motorist already stopped for a legitimate traffic infraction for permission to search the car. That is called "consent." Probable cause is more than a hunch but less than 50% sure. Think fighting for freedom when criminal. Think fighting for money when civil. In civil

cases, you must convince the jury that something is more likely than not. Decisions and the level of convincing—be it yourself or others—should correspond. 75% is "clear and convincing" and should more than meet your burden of proof. A reasonable doubt causes you to pause and consider not going forward on a serious issue in life. Sure beyond *all* doubt is an impossible standard. Be careful not to require others to meet a standard you could not meet.

Part of persuading others is being open to being persuaded yourself. What would cause you to pause in an important decision in life? That is the defensive way of looking at "beyond a reasonable doubt." Doubt is easy to create and hard to overcome. The burden of proof changes constantly in real life. It goes as follows: Consent—0%; Articulate Suspicion—20-35%; Probable Cause—35-50%; Preponderance—50.1%; Clear and Convincing—75%; Beyond a reasonable Doubt—95%; Beyond All Doubt—impossible.

Why is it that in the modern political arena, we act as if our burden must fall on the outer edge for our opposition and 0% evidence for those who agree with our beliefs? That makes the risks of cooperation often outweigh the potential benefits of making that cooperation either significant or public. Almost everything in politics now requires proof beyond doubt for our critics and little proof for our supporters.

I was once told, "The secret to being a good communicator, Trey, is sincerity. Once you learn to fake that, there is nothing you cannot do." If you don't believe what you are saying, no one else will. Passion is essential if you are engaging in passionate reasoning. Emotions are best deployed to augment and complement other tools of persuasion—like facts, rationality, and logic—rather than as a stand-alone tool. Be emotional about fairness, justice, opportunity or education. Do not simply *be emotional*. The best way to have earnest emotion is to connect it to some larger belief or truth. Real emotion moves. Contrived emotion repels. Find something *else* to be passionate about. Surely there is some fundamental precept you can latch on to. David Stephens, in drug cases, would talk about an "evil wind sweeping across the playgrounds and schoolyards of America, gathering lives in its wake."

If you cannot be sincere or authentic, you can, at the very least, be engaged. Make eye contact. Your body language is welcoming, not repelling. You listen. It is engaging to listen and repelling to not listen. Part of listening is asking follow-up questions. "Did you really?!", "That's amazing!", and "Then what happened?" People will vote for you if they do not like you, but they will never vote for you if they think you do not like them.

Why not start off a trial by complimenting your opponent? We routinely hear politicians from different parties refer to others as "my friend from Texas." It insulates you from potential future criticism and you appear to be above the fray. Once you learn that people would rather talk than listen, you can become a good listener, which provides you with a treasure trove of information. Concede the small points; start with your consensual point. Lying is a persuasion killer, so don't. Insults

are great at validating the convictions of your listener if he/she agrees with you in the first place, but you have no need to persuade those who already agree with you. When we are insulted, we become defensive and aggressive. Persuasion requires skill and it is rare, which is why we call it an art. You know the basics of what works (engagement, likability, and sincerity) and what doesn't (lying, insults, and hypocrisy).

Why is our justice system more respected than our political system? Why is there something called a rule of completeness in our justice system? While *sometimes* lectures work, questions almost *always* work. Questions either corroborate or contradict. The justice system is more respected than either politics or the media because completeness and fairness are coupled. Completeness is what we should all strive for if fairness is part of the process. It is easier to be both accurate and fair if you are also complete.

Softball questions corroborate and provide an invitation to persuade. Volunteering negative information oftentimes casts the volunteer in a more favorable light. "When it was between my husband and the police, I chose my husband. When it was between my husband and me, I chose the truth."

Direct examination is where the story is told, the information is imparted and cases are won and lost. Non-leading questions--who, what, when, where, and how--is where the focus is on the answer and not the question. They do not suggest what the answer should be, as leading questions do. There are several upsides to non-leading questions. They build rapport with the one you are questioning, you are less likely to offend, you allow the person to make his/her point uninterrupted. The downside to non-leading questions is loss of control in steering the direction and sometimes they talk a lot.

You almost never see non-leading questions used in congressional hearings. They aren't effective because of the 5-minute time limit. Leading questions essentially state an assertion and leave you with the option of assenting to or dissenting from that assertion. The questioner is in total control, while these questions are inherently argumentative. You essentially testify *for* them a fact and say, *Isn't that so?* My experience with questions comes from the courtroom, Congress, or my own life. If I enjoyed politics personally, I would not have left.

We are simultaneously wired to want to be understood and to explain. "Why" is a risky thing to ask, except it's what we most want to know! The single most powerful tool is impeachment. Perfect the art of impeachment and you are well on your way to being a master persuader. Think of impeachment as discrediting, undercutting, subtracting, and in line with contradicting and not corroborating--anything that makes you less likely to believe what comes out of a person's mouth.

Credibility killers abound. It can be lack of experience, expertise, or access to the facts, honesty or reputation. It can be previous acts of dishonesty, fraud, deception, or any act or crime of moral turpitude. It can be bias, interest or motive. Impeachment is the best way to undercut the argument of someone you are at odds with. Impeaching the facts is what most criminal trials are all about. When you impeach someone, your object is

to leave the listener not believing him. When you impeach the facts, you want the jury to conclude the person is wrong. Too often when things are going slowly on the facts because you can't make your point, you revert to the personal. You can examine or impeach how someone knows something. Never cease to ask for the source of and reliability of the facts. *How do you know that? What are the limits of your knowledge?* You should strive to find your own way of asking those 2 vital questions. Impeach the conclusion your opponent is trying to reach.

Only in DC can 14 million of any group be homogeneous and pass a background check. Because *some* have achieved, therefore all 14 million should benefit. Whenever you ask someone to provide the causal link or connection between the facts they are relying on and what they are asking for, you are impeaching the conclusion

The defense went to great lengths to impeach Mark Fuhrman as a witness, so that the jury would be less likely to believe other things he said. When the person with whom you are doing intellectual battle is biased, you should spend as much time as possible highlighting that bias as the facts reasonably allow--the impeachment of a person. I do not think Strzok's bias impacted how many people viewed his investigative work or his credibility as an agent. That is my reflection on the sad state of American politics.

Persuasion requires a jury that is openminded, and regrettably that is rarely the case in our modern political environment. Impeaching the person has such a pervasive and residual effect, it is typically the most effective form. *Hitchhiking* is using someone else to get you where you want to go.

Law enforcement agents don't announce charging decisions; prosecutors do. When questioning Comey, I still had this nagging feeling that I was taking a legal approach to what had become a nonlegal issue. What began as a desire to test and probe the intent and knowledge necessary to cross over from mistake/accident/simple negligence to careless/criminal had become a reluctant acknowledgment that Secretary Clinton's fans did not care about that and her foes likely didn't either. That is the difficulty of moving from the process-centric-justice system to the results-centric political system. In the justice system, the process is every bit as important as the result.

The majesty and uniqueness of our justice system is that *how* you do things matters every bit as much as the result you achieve. It requires not only that you catch the right person for the right crime, but that you also do it the right way. In politics the result is all that matters. In an election it is incumbent on voters to employ and enforce our own rule book. Comey has said that *no reasonable prosecutor would prosecute this case*, which essentially guaranteed that even a reasonable prosecutor who disagreed with him would never be able to successfully litigate that case. This was going to be impeachment of one person by using another person--impeachment of Clinton using Comey--using something else to undercut the believability of someone you want to impeach denies the person whose credibility is being attacked the chance to defend or explain.

I never said she lied. I positioned the answers to the questions within the questions themselves. Impeachment by hitchhiking is powerful. President Trump is fact-checked by the media on a daily basis. In fact, some media accounts keep a running total of what they believe to be falsehoods. The desired impact of that is much like it was with Secretary Clinton—to cast a wide net of doubt over what the person is saying. The first cousins to the impeachment of others by way of hitchhiking: impeachment by *reputation* and by *opinion*. Reputation is what you know *others* think about someone. Opinion is what *you* think about someone. Repetition emphasizes that the information being repeated is worth our attention.

In politics, the old saying goes that you have to touch a voter at least 7 times before that person will agree to vote for you. In advertising, they too have the Rule of 7 and the term “effective frequency” describes the number of times a buyer must be exposed to an advertisement before it elicits a response, be it buying the product or simply remembering the message. Hearing something again and again establishes familiarity, truth, and trust. The more we hear something, the more likely we are to remember it. The more we hear something, the more important we judge it to be. President Trump would have made a good prosecutor, because he fully employs the art of relentless, merciless repetition.

I would not use the word *everybody* under most circumstances, or “always.” Among the definitions and synonyms for “always” are “unfailingly,” “every time,” “at all times,” and “without exception.” With doing nothing but asking questions with all the safety that provides, you can have a witness own his words, own the explanations of those words, and own the reality that his actions do not match his explanations. All by doing nothing but asking questions.

“Why” is most powerful when there is no good explanation, because **human nature will try to explain even where something is inexplicable**. It is devastatingly powerful when you can couple it with the human desire to provide an explanation and there is none other than a person’s own error or misconduct. When you use the other person’s words in the form of questions, it’s quite impenetrable.

Clarification of terms is a classic question to use in any argument or persuasive conversation. (“What do you mean by ‘beginning’?”) “Why” might be the weightiest of words when used intentionally and carefully—especially when asking someone to explain the inexplicable. Precision of words is essential for effective communication. Be mindful of the words you choose and vigilant in looking for openings based on the words others use. Hyperbole must be intentional, not careless.

“Maybe” is a good word even if you are sure. “Probably” is a soft word. Soft words make room for escapes, parachutes, or pivots. In the hierarchy of persuasion, facts trump opinions and feelings. I prefer to use phrases like “Do you disagree” or “Have you considered,” or “Is it possible.” You lose little by erring on the side of caution. Making the other person define the terms is a powerful weapon in wars of persuasion.

When you are defining anything, you run the risk of leaving something significant out.

Repackaging is perhaps my favorite rhetorical tool. It forces you to listen to precisely what the other person is saying. Begin with “Is what I hear you saying...,” “*Surely* you are not arguing...,” or “Surely it is not your position...,” or “Surely you have considered...”

It’s uncanny how much luck good golfers have. (Talent makes things look so easy, we mistake it for luck.) Good facts make good lawyers. There is a rhythm everyone naturally has when they communicate or tell a story, and if you can alter that rhythm, you can alter the effectiveness of that communicator. Deconstructing an argument is all about preventing your rhetorical opponent from laying any foundational blocks for what he/she seeks to build. One way to do that is to require proof before any block is laid down--“Kill the argument in the cradle” approach. Ask *how do you know that?* Not *how do you think, feel, or believe that.*

Victims are afforded great deference in our culture (deservedly so because most people are kind). Being a victim is an effective counter strategy on those days when things are not going well for you. The best of all worlds is someone else is attacking on your behalf and you enjoy the lofty status of being a victim. Ask the person who got their facts wrong how they managed to do so. Relish the status of being the victim of representation. The jury and your fellow humans have an innate sense of when enough is enough.

If you have the facts, pound the facts; if you have the law, pound the law; if you don’t have either, pound the table. Silence is the single greatest attention grabber you will ever have access to. Learn the timing of silence—longer than a breath but not long enough that others think it’s a nap.

While consensus is a not-so-great expectation, commonality is an admirable and reasonable one. Understand where they are coming from. Remember, persuasion is movement. Seek common ground over complete consensus. It’s far more achievable and in most ways far more admirable. Most of my failures have been the result of unmatched expectations or of getting too greedy in my persuasion. It is nearly impossible to conduct serious, fact-centric investigations in the current political environment. The jury is not really persuadable. Another aspect of effective communication is knowing who your jury is. The Benghazi investigation became hopelessly interlocked with the story of Secretary Clinton’s email arrangement. The jury I was trying to communicate to was not the jury anyone else was trying to communicate to.

People disproportionately remember how things end. Persuasion requires symmetry between the expectations of those involved. It is far better to set low expectations and exceed them than to fail to meet higher expectations. Overachieve with the delivery, not the expectations. Persuasion is incremental and subtle. We are better at rationalization than confession. Getting someone to listen without prejudice to your position is persuasive success. Think commonality, movement, progress, subtle

shifts over time. Persuasion requires a certain humility, a willingness to start the work without finishing it.

There is a painful growth process. Eventually that pain goes away and peace is left, a peace that comes from being prepared and knowing the objective you seek to accomplish. Young litigators need confidence and practice. I would have then stand up and convince me to go see their favorite movie. The mistakes I made early in my career were not understanding the dynamics of persuasion, nor the nature and characteristics of those I was seeking to persuade.

One of the most divisive topics in our culture is the issue of life—when it begins, who decides when it begins, and the role the state of federal government should have in defining, implementing, or restricting those beliefs. You can live at the margins and still have your persuasion reach the heart of the matter. Real, significant change will occur when the listener makes up his or her own mind, drawing the final logical line him/herself. I am a prosecutor who didn't like to ask for convictions and a politician who didn't like to ask for votes, yet I had pretty good runs of success at both.

I developed a total obsession to know how a jury and audience think. **People do not listen in groups. They listen individually.** There is no such thing as “public listening.” People process information individually, they hear different things even if the words are exactly the same, and they reach conclusions based on their own experience, education, and bias. So, if we are not nervous talking to one person, why would we be nervous talking to 100 versions of that one person?

Most people are forgiving and will overlook (or flat out miss) mistakes, unless it is an important fact and they believe you were intentionally wrong. You know you are closing in on your target of communication and persuading when you use the facts well and your objective is clear to you and to everyone listening. You will know you have arrived when the contrary positions or beliefs of others no longer threaten or irritate you. They present an opening to discuss, not an invitation to argue. Persuading those who do not agree with you is where the excitement and challenge lie. The best practice partner you will ever have as it relates to effective communication and persuasion is yourself.

Arguments regarding the constitution: I didn't hear you argue that the document was by “compromise.” I thought you were arguing that it was “inspired by God.” Do you think God approved of the 3/5 compromise? If there is no male or female in Christ, could there be a male and female in a document inspired by Him? My motivation is not to be better able to argue but rather to be better able to understand. Your mind will expand and you will develop compassion and understanding for people who have experienced things you will never experience. I often say, “I am open to being persuaded. I am open to being convinced I am wrong.” **We must be willing to do what we are asking others to do, which is to be persuadable.**

We spend lots of time waiting on other people to do what it is we think should be done, to do the persuading, to do the communicating. Politics reflects rather than leads. Today, it

is about ratification and validation rather than persuasion. If I believe strongly and logically about an issue, why is it not also my responsibility to advocate for the change I want others to effectuate. **The person we should begin to persuade first is ourselves.** Heroes die like the rest of us. They just don't live like the rest of us. Live a life that is persuasive enough to stand the test of time and the scrutiny of history. There is not much to show for those 8 years in congress except a renewed sense of enlightenment on how to live what remains of this life.

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