



By James B. Stiff, Ph.D. | May 2017

## The Science of Persuasion: Understanding Attitudes in the Courtroom

Lawyers are charged with the momentous task of inspiring, changing, and reinforcing the attitudes or beliefs of judges, arbitrators, mediators, and jurors. In Chapter 1 of *Persuasive Communication*, Paul Mongeau and I defined attitudes, discussed the various types of belief systems that underpin attitudes, and explained how various frames of thought serve to influence an individual's behavior. We defined a person's attitude as a collection of distinct beliefs, and then went on to further categorize various types of beliefs, based on research that social psychologist, Milton Rokeach, set forth in his 1968 book, *Beliefs, Attitudes, and Values: A Theory of Organization and Change*. He first proposed that beliefs could be categorized as descriptive, evaluative, or prescriptive in nature.<sup>1</sup>

**Descriptive beliefs** are presumptions that are verifiable through correlation with known facts. The object of the belief is either true or false. Indeed, advocates spend the brunt of their courtroom time demonstrating the evidence and arguments that substantiate the factual bases for their case. For example, a judge considering opposing arguments in an antitrust case might believe that reducing the number of competitors in a particular marketplace will lead to an increase in



the price of products and services. Counsel might then demonstrate through facts whether this belief statement is true or false.

**Prescriptive beliefs** are an individual's internal statements to himself concerning how things "ought to be." The object of his belief is perceived as either desirable or undesirable. These beliefs are reflective of the entire panoply of ethical, moral, and cultural values to which the individual has been exposed. For example, jurors who argue that small competitors should be given an "equal opportunity" in the

In August of 2016, Jim Stiff and Paul Mongeau published the third edition of *Persuasive Communication*. The book is a comprehensive review of the theory and research on persuasive communication that spans more than 80 years of academic work in the fields of communication and social psychology. This research note is part of a series that briefly discusses topics related to the science of persuasion. It describes the practical implications persuasive communication techniques offer to lawyers practicing their craft.

marketplace are espousing their prescriptive beliefs about the competitive marketplace.

**Evaluative beliefs** are positive or negative judgements about objects, actions, or positions that an individual forms through personal experience. The object of the belief is viewed as either good or bad. For example, a juror whose business went bankrupt might make a personal judgment that it is improper for one competitor to “target” another competitor in the marketplace.

Cognizance as to the various types of belief systems at play in the courtroom is information an attorney can utilize to provide more effective advocacy. He or she can sculpt arguments to both reinforce belief systems and to alter them. Lawyers should be aware that moral and ethical arguments are less persuasive for people whose attitudes are based on descriptive beliefs. These are the people who will want to know the facts, and where the legal line should be drawn. Conversely, factual arguments are less persuasive for people whose attitudes are based on prescriptive and evaluative beliefs. Our current political environment provides an excellent example of this phenomenon. People who hold strong political views that are based on moral or ethical reasoning are generally unpersuaded by factual evidence.

Lawyers should bear in mind that every message recipient has at work within her a combination of

descriptive, prescriptive, and evaluative beliefs. What differs is the *extent* to which these attitudes are based on factual and moralistic reasoning. Persuasive messages should be multi-faceted, addressing descriptive, as well as evaluative and prescriptive beliefs. A rational message that does not acknowledge the prescriptive and evaluative beliefs of message receivers is less likely to be effective, than a message that address all three types of beliefs.

Finally, attorneys should recognize that judges and arbitrators form attitudes in much the same way as jurors. Although judges and arbitrators have been educated in the law and trained to focus on rational arguments and relevant evidence, their views of parties, witnesses, and claims are also guided by their own evaluative and prescriptive beliefs. Legal training may reduce, but does not eliminate, the influence of evaluative and prescriptive reasoning on judgments about the issues in a case.

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**James B. Stiff** ([JimS@thefocalpoint.com](mailto:JimS@thefocalpoint.com)) is the Senior Director of Jury Consulting at The Focal Point and has over twenty years of experience specializing in complex litigation. He is an award-winning professor, and has authored more than 20 articles in academic journals and published two scholarly books, one on *Persuasive Communication* and another on the topic of *Deceptive Communication*.

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1. Milton Rokeach, *Beliefs, Attitudes, and Values: A Theory of Organization and Change* (San Francisco: Jossey-Bass, 1968).