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The Science of Persuasion: The Power of Two-Sided Refutational Messages

When preparing opening statements, lawyers often ask themselves, "How much should I say about the other side's position in this case?" The traditional response to this question was that lawyers should simply design a persuasive message that focuses exclusively on that evidence which advances their position. That is, in opening statements, they should steer clear of any mention of the opposing point of view.

It can be quite beneficial for an attorney to recognize the opposing point of view, but only when that lawyer mentions, as well, reasons why that opposing point of view is incorrect. Avowal of the opposition's standpoint, paired with mention of the argument or evidence that refutes that point of view, is called a *two-sided refutational message*. Indeed, a large body of academic research expounds the power of the two-sided refutational message.

Chapter 7 of *Persuasive Communication* summarized the academic research concerning one- and two-sided messages. A *one-sided message* is one where only the speaker's perspective is set forth. A two-sided message is comprised of two types: 1) a *one-sided non-refutational message* is one that simply acknowledges the opposing point of view, but does not refute it; 2) a *two-sided refutational message* considers the opposing point of view and, furthermore, includes an argument or mention of evidence that refutes that point of view.[1]

Research findings on the effectiveness of these three types of messages are consistent and clear. Two-sided refutational messages are about 20 percent more persuasive than one-sided messages, and one-sided messages are about 20 percent more persuasive than two-sided non-refutational messages.[2] In short, lawyers are likely to be most persuasive if they both

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.

recognize the opposing viewpoint and provide evidence and arguments to refute that point of view. Simple recognition of opposing arguments, without including refutation of them, is the least effective technique for persuading the jury.

In a trial setting, two-sided refutational messages are generally more persuasive because they stimulate jurors to more actively process the messages they hear. This active weighing of information may then lead them to favorable support of the arguments the message giver asserts. Setting forth two-sided refutational messages also enhances a lawyer's credibility, because such action indicates that she thoughtfully considered the opposing viewpoint, and that she took upon herself the responsibility of relaying the results of her analysis to the jury. The lawyer went beyond simply slapping down perfunctory conclusions about the opposing position. Moreover, refutational arguments prepare jurors to become effective advocates by giving them the counterarguments they will need to respond to opposing viewpoints during deliberations.

Of course, another age-old question is how much time and consideration should be given to the refutation of the opposing party's position. Unfortunately, there is no crystalline answer to that question. What is evident, is that in most cases, it is important to devote at least a portion of the presentation identifying and refuting the position of the opponent counsel. My general recommendation is that attorneys present the affirmative argument in such sufficient detail that it can stand on its own merits, then time should be spent recognizing and responding to the opposing position, and, finally, attorneys should then circle back to remind the audience about the key points of the affirmative argument.

In conclusion, the least persuasive course of action counsel can take during an opening statement is to identify the opposing perspective, yet fail to spend the time to explain why such perspective is invalid. Although it may seem counterintuitive to spend time identifying opposing counsel's position, doing so allows attorneys to frame the scope of the dispute, and then respond to the arguments and evidence that jurors will hear during the opposing side's case-in-chief. Provision of such balanced perspective will help jurors comprehend the rationale behind, and the legitimacy of, the advocate's arguments.

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