



17th Annual Interactive Conference

November 5, 2005
Pepperdine University
Malibu, California

“Social Science of Persuasion and Influence to the Art of Negotiation”[©]

By Myer J. Sankary, Esq.



Advanced Mediation Services

"Finding better ways to settle disputes."

myerj@sankary.com
12925 Riverside Drive, 3rd Floor
Sherman Oaks, CA 91423
(818) 325-8989
www.sankary-mediate.com

**SCMA's Annual Mediation Conference
November 5, 2005**

"Applying the Social Science of Persuasion and Influence to the Art of Negotiation"

By Myer J. Sankary, Esq.
Advanced Mediation Service
12925 Riverside Dr. 3d Floor
Sherman Oaks, CA 91423
818-325-8989
www.sankary-mediate.com

The best mediators know how to do it! They can tell you what they do, but few understand why it works. They don't realize that there is a social science that explains why their techniques are so successful. This program will provide you with an innovative framework that tells you why people say yes under the influence of persuasion. The six universal principles of persuasion are based not only on theories from academic research but also from real world experience of what works in the market place where persuasion is used to survive and to flourish. This program is based on the original work of Dr. Robert Cialdini, one of the leading experts in this subject and will be presented by Myer J. Sankary, a graduate of the Harvard Law School, '65. Mr. Sankary is the only attorney and mediator trained and certified by Dr. Cialdini to teach the Principles of Persuasion workshop. This entertaining and interactive program has been presented by Mr. Sankary to hundreds of MBA students at USC Marshall School of Business, to attorneys at the State Bar of California, at local bar associations and law firms, as well as to human resource consultants, strategic planners, business consultants, and managers of a numerous organizations.

----0000----

Mediators are often drawn to the profession of mediation because of their highly developed skills of negotiating. Most mediators have taken numerous courses that teach how to apply various strategies and tactics in negotiation to a variety of situations in which two or more parties are in conflict. As we gain more experience, we realize that we must pay as much attention to the way people feel toward the other parties as to the merits of a given dispute. Fortunately, great advances have been made in understanding how people behave in conflicting situation and what influences them to resolve their differences. Indeed, an entire science has developed over the past fifty years that has mapped the way humans behave in given situations so that we are better able to understand why people behave in certain patterns, how we can predict behavior based on certain influences and how we can shape behavior of others to comply with our requests. Indeed, the science of influence is a potent tool when combined with the art of negotiation in the hands of a skilled mediator.

Litigated disputes can degenerate into highly charged, contentious and emotional conduct by the participants during each step of the litigation process, including discovery, motions and trial. Settlement negotiations between the parties are often unproductive or impossible, and mediation offers the only hope for resolution of the problems. Claims are based upon alleged wrongdoings by one or more defendants. Injuries are perceived as causing physical and emotional harm. Often, both plaintiffs and defendants are offended by the other's actions and each side feels a need to reciprocate with bad behavior. Even attorneys and mediators are not immune from the emotional aspects of the dispute. Paradoxically, oftentimes participants to litigation contend that the same facts and same law that is used by the other side supports an outcome that favors their case.

Indeed the latest research from the field of social science as well as the neuroscience of the brain indicates that all reasoning and decision making is influenced by emotions. The highly acclaimed

neuroscientist, Antonio Damasio, discusses his findings in several books, including *Descartes Error*¹ and *The Feeling of What Happens*,² that the structure and function of the human brain incorporates our emotions and feelings in all reasoning and decision making. Without emotional guidance, humans are unable to make rational decisions that are in their best interest. Likewise, uncontrolled emotions can also interfere with our ability to make decisions that are in our best interest. Thus, to reason and to make decisions that affect our future course of action require a delicate balance of emotional well being.

In highly emotional litigated disputes, it is important for attorneys and mediators to understand the role of emotion and human responses to social stimuli to be effective as negotiators to achieve settlement of disputes that affect the future well-being of their clients. Unfortunately, the cultural bias of most attorneys is the common belief that the more adversarial, the more aggressive, the more demanding and the more competitive they are, the more effective they will be in satisfying their clients' interests. Social science has found that this commonly held belief is generally incorrect. Controlled scientific studies and experiments prove that professionals can be significantly more effective advocates for their clients by skillful application of cooperation and persuasion.

In the 1970's, Roger Fisher, the author of *Getting to Yes*, introduced a new approach to principled negotiations by focusing on the interests of the parties, and encouraging the separation of people from the problem or putting distance between the emotional and rational side of problem-solving. Fisher urged parties to use reason to invent options and use objective criteria to make decisions about the fairness of a settlement. He also coined the phrase, "BATNA," the best alternative to a negotiated agreement, as a reference against which to measure whether the last best offer should be accepted or rejected. Fisher's approach was based on the belief that we could separate reason from emotion to reach a settlement of disputes and to achieve a wise negotiated agreement.

Now, Fisher together with a psychologist, Daniel Shapiro, have recently published a new book, entitled *Beyond Reason, Using Emotions as You Negotiate*, (Viking 2005) which advises negotiators to devote attention to the emotional and human behavioral aspects of negotiations. The book gives a prescriptive guideline about how to address the concerns of participants in any negotiation, by addressing fundamental human needs of the other side. So even at the highest levels of the academic world, authorities such as Fisher, Shapiro, Max Bazerman, and many others, are now focusing their attention on the emotional, psychological and human behavioral aspects of the negotiating process.

To understand why Fisher's and Shapiro's advice about using emotion works, and to provide us with a framework of understanding how and why we need to influence one another in all human relationships, we should turn to the research and studies of one of the leading social scientists in the field of influence and persuasion, Dr. Robert Cialdini, the Regents Professor of Social Psychology at Arizona State University. Not only has Dr. Cialdini researched the theoretical underpinnings of this subject and written extensively in this field as an academic, but he has also developed a systematic practical approach to the ethical application of the science of persuasion based on one or more of six universal principles he found were always present from observing "compliance professionals" in the market place. Indeed, Dr.

¹ In *Descartes' Error, Emotion, Reason and the Human Brain*, Avon Books 1994, Damasio argues at p. xiii, that "certain aspects of the process of emotion and feeling are indispensable for rationality. At their best, feelings point us in the proper direction, take us to the appropriate place in a decision-making space, where we may put the instruments of logic to good use. We are faced by uncertainty when we have to make a moral judgment, decide on the course of personal relationship, choose some means to prevent our being penniless in old age, or plan for the life that lies ahead. *Emotion and feeling* (emphasis added) along with the covert physiological machinery underlying them, assist us with the daunting task of predicting an uncertain future and planning our actions accordingly." He goes on to state that "human reason depends on several brain systems, working in concert across many levels of neuronal organization, rather than on a single brain center... The lower levels in the neural edifice of reason are the same ones that regulate the processing of emotions and feelings, along with the body functions necessary for an organism's survival. In turn, these lower levels maintain direct and mutual relationships with virtually every bodily organ, thus placing the body directly within the chain of operations that generate the highest reaches of reasoning, decision making, and by extension social behavior and creativity. Emotion, feeling, and biological regulation all play a role in human reason. The lowly orders of our organism are in the loop of high reason."

² Damasio, *The Feeling of What Happens; Body and Emotion in the Making of Consciousness*, Harcourt Brace 1999.

Cialdini found a common thread that explains why executives, managers, lawyers, politicians, fundraisers, recruiters, salesmen and other leaders in their field were successful by applying intuitively certain powers of persuasion. His findings are published in his popular book, *Influence; Science and Practice*, (Fourth Edition, Allyn & Bacon) and his practical application of these principles can be learned through his unique interactive Principles of Persuasion workshops.³

This program will introduce you to Cialdini's new breakthrough concepts based on the six scientific principles of persuasion that will help guide us to become more effective advocates and/or mediators and will increase the likelihood that you will be able participants in a mediation to a satisfactory settlement in highly emotional litigated disputes..

We first set forth the six principles of persuasion and then briefly show how to apply them in mediated disputes.

THE SIX PRINCIPLES OF PERSUASION

- **PRINCIPLE 1: RECIPROCITY**
 - People feel obligated to give back to others who have given to them.

- **PRINCIPLE 2: LIKING**
 - We prefer to say “yes” to those we know and like.

- **PRINCIPLE 3: CONSENSUS**
 - People decide what's appropriate for them to do in a situation by examining and following what others are doing.

- **PRINCIPLE 4: AUTHORITY**
 - People rely on those with superior knowledge or perspective for guidance on how to respond AND what decision to make.

- **PRINCIPLE 5: CONSISTENCY**
 - Once we make a choice/take a stand, we will encounter personal and interpersonal pressure to behave consistently with that commitment.

- **PRINCIPLE 6: SCARCITY**
 - Opportunities appear more valuable when they are less available.

³ I was introduced to the work of Dr. Cialdini while lecturing at USC in 2003 and was so influenced by what I thought was the effectiveness and simplicity of his theoretical and practical analysis, that I took his training course in Tempe, Arizona, and was certified by Dr. Cialdini to become a trainer to present his unique Principles of Persuasion workshop. This experience has changed my entire approach to mediating cases and has increased my effectiveness immeasurably. Rarely is there a case that I mediate that cannot be settled by using one or more of the principles of persuasion.

1. RECIPROCITY

In every culture and in every generation, everywhere in the world, each new generation is taught either directly or indirectly that if you give a gift or positive behavior to another, you can expect that a gift or similar good behavior will be returned to you. Likewise if someone gives a gift to you, you are taught that there is an obligation to give a similar gift in return.

Social scientist, Marcel Mauss (1954) put the rule this way: “In every society, there is an obligation to give, to receive, and to repay. Cialdini states, “It is the foundation of every relationship and society, as it provides a system of exchange among humans that safeguards the giver from unequal exchanges.”

Indeed the Bible teaches us in many ways: “Give, and ye shall receive.” We are also familiar with the Golden Rule that enjoins all of us to “Do unto others as you would have them do unto you.” But did we understand why the rule works? In this rule, who should be the first mover?

The Roman statesman, Seneca, put it well: “We should give as we would receive, cheerfully, quickly, and without hesitation; for there is no grace in a benefit that sticks to the fingers.”

In modern terminology, the rule is stated as follows: *"Life is 360 degrees. What you put out is what you get back."* (Sign above entrance to Boston Metro Juvenile Detention Center– April, 2005)

The rule especially applies in politics and government – known as “logrolling” - politicians who receive gifts are beholden to persons or companies who give such gifts. Even Governor Schwarzenegger was quoted last year in the LA Times, **“Any of those kinds of real big, powerful special interests, if you take money from them, you owe them something.”**⁴

Reciprocity is at the core of every negotiation and every social transaction. The human brain has been conditioned over eons of time to calculate exchanges of all types for survival. If good behavior is given to another, in general, it is expected that similar behavior will be returned. If bad behavior is given, the same will be received. Indeed, we are all familiar with the negotiating rule of “tit for tat.” More ominous is the biblical injunction of an “eye for an eye” which seeks equal revenge for past grievances. Reciprocity is a matter of life and death in cultures all over the world. (Think of the Hatfield and McCoy's in America, and the Irish Protestants and Catholics, the Palestinians and Israelis, Muslims and Hindus, and on and on in every part of the world.)

The good news is that the principle of reciprocity can be used to encourage the kind of positive behavior you want from your negotiating partner. By giving to the other first, you can get back something in return that eventually will lead to a good result that is mutually beneficial.

Reciprocity is generally activated by making a gift to another that is significant and personal, and when given unexpectedly, it has the power of creating an obligation in the other person to reciprocate in a similar manner. When you invite friends for dinner, you expect your friends will reciprocate. If they fail to invite you in return, soon you will stop inviting the friends that don't reciprocate. The social consequences of not reciprocating are severe. Words like “moochers” and “takers” are used in a pejorative way to describe those who take and do not reciprocate.

In negotiations, concessions have a similar affect as a gift. To obtain reciprocal concessions from each of the parties is among the greatest challenges and responsibilities of a mediator. Indeed no resolution of a dispute is possible without reciprocal concessions. The most skilled mediators are those

⁴ Governor Schwarzenegger must have been guided by the rule of reciprocity when he decided to give up his \$8 million contract with Fitness Magazine. While on its payroll he vetoed legislation regulating the supplement industry which provided the revenue to pay his consulting fee. After he terminated the contract, he signed a bill regulating the same industry.

who know how, when and under what circumstances reciprocal concessions can be obtained from the warring disputants.

To be effective, a gift or concession does not have to be monetary. Think of the many exchanges that are “gifts” of positive behavior given to others that could initiate a similar response. Simple gestures, such as a “thank you,” doing a favor, complimenting others for good work, showing a “smile,” expressing “empathy” and “understanding” are also non-monetary gifts that are ways to get similar behavior in return. Showing courtesy, respect and concern for other individuals in the negotiations is more than a nice gesture – it can have huge rewards. Indeed in the recent publication of the Harvard Negotiation Journal (April 2005), researchers concluded from a study of participants after numerous mediations that *communication of one’s understanding of the interest of the other side in a dispute is a major factor that allows a cooperative effort to emerge from an otherwise contentious negotiation and that the atmosphere of cooperation leads most often to a satisfactory resolution of the dispute.*⁵

Much attention is now being given to the role of an apology in the resolution of a dispute. In effect, an apology is a powerful non-monetary gift and concession. Some have written that getting or giving an apology is much overrated.⁶ The reality is that in areas where apologies really count, entire industries are adopting sweeping changes in acknowledging errors and offering apologies.⁷ In no less a prestigious setting than the Harvard Medical School’s major teaching hospitals, management of medical health delivery systems are establishing procedures for physicians to openly acknowledge medical and other bad results to their patients, and provide training in apologizing.⁸ The Boston Globe article reported that Colorado’s largest medical malpractice insurer, COPIC, has enrolled 1,800 physicians in a disclosure program that encourages physicians to immediately express remorse to patients when medical care goes wrong. Malpractice claims against these 1,800 doctors have dropped 50 per cent since 2000 while the cost of settling these doctor’s claims has fallen 23 percent. In the Boston Globe article, Dr. Delbanco, of Beth Israel Deaconess is quoted as saying, “Yes, we’re recommending that doctors say they’re sorry. Be a human being. Don’t just say it; mean it.” The emphasis here is on the genuineness of the apology to be effective. The mediator should view a genuine apology given timely and appropriately as a concession that would lead to a reciprocal concession by the other party.

Reciprocity works in conjunction with the principle of liking, as will be illustrated below. Obviously, if you receive a gift from someone, you will be more inclined to favor the donor in making decisions in which you are able to reciprocate. Fisher’s and Schapiro’s new approach to negotiation in “Beyond Reason,” incorporates the principles of reciprocity together with the principle of liking in numerous ways; their advice is based more upon their observations and personal experience than reference to scientific proof. The validity of their approach is foreseen in Cialdini’s principles that explain why Fisher’s and Shapiro’s advice works.

The principle of reciprocity is an important one that governs human behavior. Be aware of its power and effectiveness, but also be aware of the line that should not be crossed legally or ethically when applying this principle.

In all disputes which are mediated, to the extent that a negotiator or mediator is able to give a non-monetary “gift” such as acknowledgment of the other side’s interests, or a concession to an opposing party without appearing to be giving in or giving up, you will engage the reciprocity principle that will

⁵ Jean Poitras, “A Study of Emergence of Cooperation in Mediation,” Negotiation Journal, Vol 21, No 21. 4/05, 281

⁶ Jeff Kichaven “Apology in Mediation: Sorry to Say, It’s Much Overrated,” (2005) Online at Mediate.om. But see rebuttal by Darrell Puls, “Apology: More Power Than We Think.” (2005) Online at Mediate.com.

⁷ The “Sorry Works! Coalition,” whose website is found at www.sorryworks.com, states that it is a new nationwide organization of doctors, lawyers, insurers, and patient advocates dedicated to promoting full-disclosure and apologies for medical errors as a “middle ground solution” to the medical liability crisis. This network of health care professionals and their risk managers believe that full-disclosure together with a timely, sincere apology is the best way to control liability exposure and substantially reduces the cost of settlements. This would seem to refute the argument that apologies are overrated!

⁸ Liz Kowalczyk, “Hospitals Study When to Apologize to Patients,” Boston Globe, July 24, 2005.

permit similar behavior in return. Indeed, at the core of every satisfactory mediation, as cited in the Harvard article, is the emergence of cooperation, and the suppression of antagonism.

2. Liking

Most people would agree from personal experience that we tend to say yes more often to people whom we like than those we do not like.

Scientific studies confirm that people will follow and are more influenced by others whom they like and who are like them. This is not surprising that we tend to get along better with our own national, ethnic and religious groups than with strangers. We are more willing to listen to people who went to the same school, belonged to the same organization, and attended the same church or synagogue. We tend to be more open to suggestions from people who have similar background and experiences.

But similarity and liking are not limited to religion, race, national origin and gender. People are also influenced by others who have similar values and interests. For example, you might be inclined to be persuaded by others who enjoy similar movies, sports, social activities, and politics, even though the person is not of your same religious or ethnic background. Scientific studies have found for example that people who share similar backgrounds, experiences, attitudes and values will be more influential with similar others.

Another obvious but overlooked factor within the liking principle is that people will more often be convinced by someone they believe is attractive or good looking – based solely on appearance. We know why advertisers use beautiful models to sell their client's products? Between two competing candidates running for office, which one is more likely to get elected? Think of the recent California election to recall the governor! Who won? The movie star who never held office beat a politician whose entire life was dedicated to holding public office. Interview the voters and they will tell you that they liked the candidate who won and deeply disliked the sitting governor (even though he had recently won his second election).

Within your own profession, consider the attractiveness of those individuals who have reached respected positions of leadership and who are known for their incredible ability to persuade others. What are those qualities that make them so attractive? A pleasing personality? Well groomed and professionally dressed? Ask apparel professionals who specialize in advising people about the color and style of garments they should wear about why it is so important to wear appropriate clothes when you want to sell anything. Not only does it employ the principle of liking, but it also engages the principle of "authority" which we will discuss below.

The principle of liking is fundamentally about building interpersonal relationships before one tries to engage in negotiations of any type. One particular study revealed that spending time to get to know your negotiating partner will result in agreement more often than those who do not spend time "schmoozing." Indeed, comparing the results of two groups of on-line negotiators, researchers found that those who started the negotiations with a "strictly business" approach resulted in 30% more deadlocked transactions (unable to reach agreement) as compared to only 6% of those who spent time to get know each other so they were able to discover similarities of interests, values, and attitudes before they started to discuss the merits of the deal.

As stated above, in *Beyond Reason*, Fisher and Shapiro focus on the role of emotion in negotiations. They found that negative emotions can be obstacles to negotiation by diverting attention from substantive matters, damaging relationships, and used to exploit others. Because of the importance of their ideas, I have attached an addendum to provide the reader with a brief outline of authors' approach to dealing with emotions. Although the authors do not acknowledge Cialdini's contribution to this area of interpersonal relationships, it is my belief that Cialdini offers a much better theoretical and practical framework that mediators can learn and use in mediation practice. Fisher and Shapiro do provide a step by step approach for dealings with emotions, but Cialdini's principles help us understand why their prescriptive advice works. In effect, Cialdini offers the science of how influence works, and Fisher and

Shapiro describe the art of negotiation. See the addendum for a brief outline of the recommendations of Fisher and Shapiro set forth in *Beyond Reason*.

Learning from these studies can help lawyers and mediators to become more effective in dealing with difficult and emotional issues that arise in mediated disputes. By spending time to get to know the person whom you are dealing with – learning about their background, their interests, their needs, their likes and dislikes, and their objectives – will make you much more effective in persuading or influencing your negotiating partner to follow your direction. For example, when dealing with opposing counsel and his or her client, the effective professional would do well to spend time learning about the other persons, so that he can find similarities with his or her own interests and values. Talking about small personal things before getting down to business is more likely to engage the “liking” principle that will lead to the desired outcome.

3: CONSENSUS

People decide what’s appropriate for them to do in a situation by examining and following what others are doing.

Based on extensive studies over the past fifty years, social scientists have found that whenever a person is uncertain about what option or course of action to take, he or she will tend to look around to find out what others are doing, thinking and feeling, and choose the course of action that many others have taken. Certainly, there are a few non-conformists who do their own research and follow their own direction. But they are few and far between!

Studies of why teenagers smoke show that of the many factors that influence teenager smoking, they are more likely to become regular smokers if two or more of their peers are smokers. Advertising executives often use consensus principles to sell products by showing that large numbers of people use their product. Indeed, the J. D. Powers Survey of customer satisfaction is based on the principle that people are influenced to buy products or use services if polls show that large numbers of customers are satisfied. Politicians and political parties use polls not only to find out what voters are thinking, but also to persuade undecided voters to support their legislation or candidates.

Applying this principle in negotiations requires some careful thought and practice for lawyers and mediators. Do you typically use the argument that there are many other individuals in similar situations who are doing things the way you are advocating? Lawyers typically rely on many other jury verdicts and appellate cases with similar facts to persuade opponents to accept a similar outcome in the pending case. Have you ever told participants in a mediation that their case is likely to settle, because after all, ninety-six percent of all litigated cases settle before trial? Enlisting other influential people to advocate and substantiate your points can be very effective by demonstrating how many others support this solution. In this way you can enlist the principle of consensus to influence others. Knowing the limitation of your own persuasive abilities and enlisting the help of others is good advice to a wise advocate or mediator.

4: AUTHORITY

People rely on those with superior knowledge or perspective for guidance on how to respond AND what decision to make.

The principle of authority is also one that is rather obvious – we tend to rely on people with expert knowledge and experience for guidance on how to respond when making a decision. Studies have shown that people will follow the lead of someone who *appears* to be an authority even though that person may not be an expert on the topic which requires your decision. What is not obvious is how this principle can be employed by the mediator to increase his or her effectiveness.

For example, Robert Young was an actor who played the role of Dr. Marcus Welby on television for many years. He also played the role of the head of a family in *Father Knows Best*. Robert Young is

also known as the spokesman for Sanka coffee. It was one of the best commercials ever made and increased the sales of Sanka coffee over all other decaffeinated coffees. Why? Robert Young was not an expert or an authority about coffee, but he had a huge reputation for the TV roles he played both as a doctor and as a father. He had the trappings of authority that convinced people to buy Sanka coffee.

Within the mediation profession, there is evidence that those professionals who appear to be experts and who have a reputation as an authority on a specific legal matters are more successful because of their ability to persuade and influence others. Generally, other professionals, judges, jurors, public officials, as well as members of the public are more likely to be persuaded by someone who appears to be an authority on the matter that is the subject of the negotiations. To achieve the reputation of one who is an authority on the matter in discussion gives a clear advantage to that person.

How can a lawyer or mediator increase his or her persuasiveness by demonstrating that he or she is an authority? As in any other profession, the first step in becoming an authority is to acquire expert knowledge and experience in your area of work. It is important to demonstrate that expertise to others and to let others know the extent of your learning as well as your practical experience. This information should be given to the target of your persuasive efforts before your first meeting. Telling others about your expertise and credentials at the first meeting is not as effective as giving the information before the meeting, because others may tend to look at you as a braggart. It can have a negative effect.

Perhaps the most important quality that makes an authority persuasive in addition to his knowledge and expertise is his trustworthiness. One of the challenges for any expert witness, for example, is to demonstrate his trustworthiness particularly when the jury knows that the expert is being paid by the party to give her testimony. One of the interesting discoveries by social scientists that tends to enhance the trustworthiness of an authority is the willingness of an expert to acknowledge some relatively minor weakness in his case. Indeed, good trial lawyers will always acknowledge a weakness in their case, if one exists, before the other side has an opportunity to point it out, because the admission of the weakness strengthens the lawyer's credibility and trustworthiness.

But be sure to follow the admission of a weakness by pointing out your strongest point in support of your claim. This approach minimizes the weakness in your position while enhancing your credibility so that the person you are trying to persuade will be more willing to accept the argument in your favor. A good reminder of this principle can be found in a well known advertising commercial. Avis acknowledges that it is not the number one rental car company in the market place, but emphasizes in its well known slogan that it provides better service. When you are thinking about how to enhance your credibility as an authority, remember how Avis does it : "We're number two, but we try harder."

It is important to make every effort to enhance your position as an authority by employing the strategies set forth here – 1. acquire knowledge and experience, 2. give an appearance of authority by being well groomed and by wearing clothes that show success; 3. inform your prospects in advance of any meeting about your expertise by using brochure, testimonials or letter of referral; and 4. increase your credibility as a trustworthy authority by your willingness to acknowledge some weakness in your position followed by your strongest argument.

Application of this principle in mediated disputes can be very effective in reaching a settlement. When an attorney has a reputation for expertise and integrity, he or she will be much more effective as an advocate for his client than one whose honesty and knowledge in the field is suspect. Lawyers who have obtained substantial jury verdicts in other employment cases are likely to be respected by the opponent which can lead to a better settlement for their clients through mediation. Likewise a mediator who has a reputation for expertise and integrity will be more effective in helping the parties reach a settlement.

5: CONSISTENCY

Once we make a choice or take a stand, we will encounter personal and interpersonal pressure to behave consistently with that commitment.

When a commitment is made by an individual to another in a manner which involves the person actively, voluntarily and publicly, it increases the likelihood that the person will behave in a manner that is consistent with that commitment.

Researchers discovered an interesting phenomenon about people who make bets at a racetrack. People were much more confident of their chances for their horse winning after they made a bet than before they placed the bet. This is particularly interesting because nothing about the conditions of the race changed – the horses were the same, the jockeys were the same, the conditions of the track were the same – the only thing that changed was the placing of a bet. The scientists concluded that the mere placement of the bet – an open, active and voluntary commitment of funds to the belief that a horse would win, actually increased the bettor's confidence that his horse would win.

Think about wedding ceremonies. Why are they so elaborate and public? Why are such solemn vows exchanged in a religious setting and in front of family and friends? Why does society require a marriage certificate or contract signed by both parties? The ritualization of the marriage ceremony where vows are exchanged is an obvious example of the principle of consistency –it is done to increase the likelihood that the promises will be kept, because the internal and external pressures will require the married couple to live up to the vows they exchanged in public. Many people renew their vows over time so that they will act consistently with their commitments.

Consider the new year's resolution that we rarely keep. Why is it so difficult? Most resolutions are made to ourselves and are never written down. But if your resolution is made openly and voluntarily to a spouse or a friend, with specific timetables and goals, you are more likely to follow through because of the internal and external pressures of wanting to be consistent with your commitments.

Why do the laws of every state require certain transactions be in writing signed by the parties – the statute of frauds? **It is necessary to have written documentation to confirm the terms of the transaction so that there will not be uncertainty and confusion about the mutual obligations. From the perspective of willing and voluntary compliance, it is a sociological phenomenon that people are more likely to live up to what they write down.** Requiring a written contract also prevents fraudulent claims about whether or not there an agreement.

Even asking a favor from someone who doesn't particularly like you can lead to further commitments that can end in a resolution of the dispute. Benjamin Franklin told the story about borrowing a rare book from a political adversary that demonstrated that Franklin had similar interests in books as his opponent. Once the opponent loaned him book, he had made a commitment of liking that he did not otherwise have. After that encounter, Franklin became friendly with his former opponent because once he demonstrated a quality of caring and sharing with another, I was hard to say no to future requests, because of wanting to be consistent with a prior commitment.

Some mediators take the opportunity in joint opening session to get commitment to the process by asking will parties keep an open mind? Will the parties make a genuine effort to negotiate in good faith? Exploring the interests of the parties and getting a commitment that certain interests are primary can lead to the following: "If I can get a commitment from the other side that will meet your interest in getting paid within the next two weeks, will you be ready to accept a something less than your last demand?"

It is an important tool for mediators to get small commitments during a negotiations, which can lead to larger ones that will end the dispute. Mediators and lawyers know that if an agreement is reached during the mediation, it is essential to put it in writing and signed by the parties – to engage the principle of consistency.

6: SCARCITY

Opportunities appear more valuable when they are less available.

Social scientists have observed a useful phenomena tracking sales of merchants who offer discount coupons for their products or services. As one would expect, sales do increase when such discount coupons are offered to the public. But scientists were put to the challenge of also explaining why sales increased even more dramatically when the discount coupons contained an additional statement that the offer was for a limited time or that the quantity of merchandise was limited. Why would sales increase substantially when the offer to buy products at a discount is limited by time or quantity? *Herein lies the principle of Scarcity.* People want and value more highly that which there is less of. When people are told that something is rare or is dwindling in availability, there is an increased desire to acquire the item. A product or service is deemed even more valuable when the buyer knows there are others *competing* for the limited supply. When a person believes his or her choice will be limited by diminishing supplies, there is a natural reaction to believe that the product is more desirable and they are often willing to pay higher prices.

There are many examples of this principle. By controlling the supply of diamonds, the DeBeers Syndicate has increased demand and maintained their high value. When Coca Cola removed classic Coke from the market in order to replace it with a new flavor, there was a customer revolt, requiring the reinstatement of classic Coke. How many car manufacturers have made their product sell at or above list price by making a limited quantity? This limitation or scarcity of the product creates an immediate increased demand for the product because it appears to be more desirable. Think popular toys and children products at Christmas! Now you know why you may find it difficult to find that special toy you promised your child. (Also consider the effect of gasoline shortages on the price of gas.)

The underlying human behavioral aspect that increases one's desire for a scarce product or service and thereby increases one's willingness to spend more for the product or service is that people do not want to be deprived of the opportunity or freedom to choose and acquire whatever they want. Social scientists have found that the reason for this is not so much about how people can benefit from acquiring the product or service, but more about the negative consequences of not getting what they want. Indeed, by showing a customer how he stands to lose by not buying the product or service can be a much more effective approach to persuasion than simply emphasizing the benefits. One should use caution not to create an artificial scarcity or mislead customers about the limited supply, because the temptation to increase sales by deception would clearly be unethical and can have serious repercussions to your organization. You don't want a disgruntled customer to complain to a local news reporter about the use of misleading tactics by your organization.

If lawyers and mediators can identify and honestly present the unique and special benefits of their settlement proposals as well as explain the loss that might genuinely occur by the failure of a party to take immediate action to agree to the settlement terms, they can increase the likelihood that their opponent will want to settle the dispute and not take the risk of loss that might occur if the case proceeds to trial.

Conclusion

The Principles of Persuasion are based upon the life long work of Dr. Cialdini of Arizona State and the research of hundreds of social scientists in the field of influence. At the root of each of these principles is the behavior that makes people want to comply with another's request by the ethical use of persuasion. And what makes someone more persuasive is his or her ability to understand and apply the rules of human behavior that build relationships and trust. The ethical use of the principles of persuasion can definitely make lawyers and mediators more effective and productive professionals who will be able to provide better services to their clients, to the courts and to their community, and who will be more respected and cooperative with their colleagues and friends. Applying the science of persuasion to the art of negotiation can enhance the effectiveness of every mediator.

ADDENDUM

Because Fisher and Shapiro's *Beyond Emotion*⁹ is the latest contribution by two leading authorities on how to deal with emotions in negotiations, the following is a brief summary of their work with an explanation of why their prescription works in light of Cialdini's scientific principles of persuasion. Here, the science of persuasion meets the emotional aspect of the art of negotiation:

"Most negotiators treat emotions as an obstacle to clear, rational thought. As a result, we do not realize the opportunity afforded by positive emotions." Fisher offers a common sense approach to pursuing better relationships in negotiations by stimulating positive emotions. He offers two fundamental propositions:

1. Fisher: Take the initiative in dealing with emotions, don't wait for emotions to happen then react. Cialdini: In applying the principle of reciprocity, we advocate that you should be the initiator of positive behavior because it will obligate the other parties to respond with positive behavior.

2. Fisher: Address the concern, not the emotion. By focusing on the underlying and widely shared concerns of all the participants in a negotiation, you will be able to stimulate helpful emotions in others and in you. Cialdini: Because we say yes to people we like, who are like us and who like us, we should make every effort to employ the liking principle by showing common interests and giving praise to others whenever it is genuine and authentic.

3. Fisher: There are five core concerns:

- **Appreciation.** Appreciate others by understanding their point of view; find merit in what they think, feel, or do and communicate your understanding through words or action.
Cialdini: This concern involves the principles of liking and reciprocity. By appreciating another's point of view, you demonstrate common interest which promotes mutual liking and initiates positive behavior that will be reciprocated.
- **Affiliation.** Build structural connections as colleagues and personal connections as confidantes. This will reduce alienation and feelings of being alone and disconnected.
Cialdini: Again this concern engages the principle of liking – building a relationship of cooperation and trust is fundamental to effective negotiations. By building a positive relationship based on common interests, each side is more persuasive and credible.
- **Autonomy.** Recognize that everyone wants to make choices. We should avoid impinging on their choices and expand our own autonomy.
Cialdini: Using hierarchical authority is not as effective as persuasion even if you are in a position to compel obedience. Indeed, attempting to compel behavior will often lead to unwilling compliance that will have negative consequences. Using one or more the six universal principles of persuasion allows the person you are attempting to persuade to make their own choices that may be aligned with your own recommendations, suggestions, and requests because they come to understand that their own interests are advanced by following your direction. The principle of scarcity works because it demonstrates that the failure to make a decision, or take action as recommended can result in a loss of freedom of choice.
- **Status.** Avoid demeaning others. Rather than compete with others who have high social status, we should acknowledge everyone's particular or unique status.
Cialdini: By recognizing the authority of certain experts, we are more likely to be persuaded by their points of view, provided the authority is credible and trustworthy. Acknowledging the authority or status of your negotiating partner also is a form of liking and reciprocity – By showing respect for the other persons status and expertise, you are giving positive behavior

⁹ For simplicity, I will refer to Fisher only, although their work is a joint effort with Daniel Shapiro.

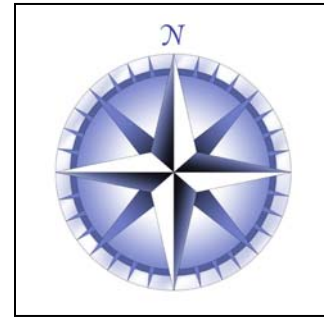
which you can expect in return, and you are creating mutual liking.

- **Role.** We all desire a role in life that is personally fulfilling. An unfulfilling role can make us feel frustrated, angry and resentful. We should be aware of the different roles we play and make each of them fulfilling and meaningful. Also appreciate the roles others want to play. Our identity, what we think of ourselves and others, is closely associated with the roles we play. In a negotiation, we should adopt at least a temporary role that fosters collaboration.
Cialdini: All intentional behavior is goal driven. To become an effective negotiator, one must learn how to become persuasive based on the science of how people typically behave so that we can achieve common objectives with our negotiating partners that are mutually beneficial and lead whenever possible to long term reciprocating relationships. We not only want to reach an agreement that is mutually satisfying, but we also want to commit to an agreement in which each party has participated through the process of reciprocal concessions. Both scientific studies and our common experience informs us that parties to a negotiation are more willing to live up to an agreement in which they are active participants in the process of give and take. The universal principles of persuasion apply to behavior in all countries, all cultures and ethnic groups, and in all social relationships; variations arise in different cultures regarding the emphasis and effective of a particular principle over another.

As mediators our goal should be to learn the ethical use of the science of persuasion as applied to the art of negotiation in order to have a fulfilling role as problem solver and peace maker. To achieve these objectives takes a commitment to learning the theories and practice of persuasion, and to be trained in the ethical application of these principles.



Advanced Mediation Service
12925 Riverside Dr. 3d Floor
Sherman Oaks, CA 91423
818-325-8989
www.sankary-mediate.com
myerj@sankary.com



Myer J. Sankary is a leading authority in the application and use of the principles of persuasion in legal advocacy and mediating disputes. Myer received his law degree at Harvard Law School in 1965 and his BA in Philosophy (summa cum laude) at Texas Christian University in 1962. In 2004, he was the only attorney and mediator trained by Dr. Cialdini to present the Principles of Persuasion Workshop and earned the Cialdini Method Certified Trainer Certificate after presenting the two day workshop under the supervision of Dr. Gregory Neidert, professor of social science and colleague of Dr. Cialdini at Arizona State.

Myer's mediation practice includes employment cases, probate, personal injury, real estate, and complex business disputes. He has received several certificates for completion of mediation training from the Straus Institute at Pepperdine Law School from 1996 to the present. He is on the Board of Directors of Southern California Mediation Association and the Board of Trustees of the San Fernando Valley Bar. He is senior advisor to the Solo and Small Firm Section of the State Bar of California. Myer serves as the representative of the SFVBA to the ADR committee of the LA Superior Court.

He is a popular guest lecturer at the USC Marshall School of Business teaching workshops on "Negotiations in the Mediation Process" to MBA students. He has presented programs on the introduction to the Principles of Persuasion at the annual meeting of the State Bar of California, the San Fernando Valley Bar Association, to major law firms, including Sheppard Mullen Richter and Hampton as well as Early Maslach, and has presented the program to various business and management groups, including the Association of Strategic Planners. He has written numerous articles on negotiations and mediations, including the articles, "*Critical Cross-Roads; Good Decision Making Is Key To Successful Negotiations,*" and "*Poker Lessons; Negotiators Should Use Mediators As Friendly Dealers,*" as well as a chapter in a book for real estate brokers on how to use the principles of persuasion to become more effective professionals. See www.sankary-mediate.com to get copies of the articles. In 2002, Myer was awarded the ABA Rikli Lifetime Achievement Award for Solo Practitioners and in 2003, he was awarded the first Outstanding Achievement Award by the Solo and Small Firm Section of the California Bar Association, an annual award which is named in his honor.