

THE  
AMERICAN LAWYERMore Successful Mediations Through  
Authentic Persuasion

By Matthew Larrabee

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**A**uthentic persuasion is a valuable advocacy skill in almost any setting. We all intuitively understand that effective advocacy can make a critical difference when speaking to groups both large and small, arguing in a courtroom or dealmaking. The value of genuine persuasion is perhaps a bit less obvious during a mediation. Mediation best practices today limit direct, adversarial confrontations, and mediation participants tend to focus on their negotiating strategies and “the numbers.” But it is a mistake to shortchange effective mediation advocacy. Authentic persuasion matters enormously in mediation, and all participants would be well served to hone this craft.

Specifically, mediation advocates face the challenge of persuading diverse audiences with distinct interests: the mediator, the adversary’s counsel, any insurance participants and, ultimately, the adversary. Advocates also frequently have a need to persuade their own client to make wise choices. Experienced mediation participants understand that the amount of the next offer or demand may well be less important than the accompanying message or rationale. Written and oral communication skills thus are critical to consistently achieving the most successful mediation outcomes.

For those seeking to hone their authentic persuasion skills during a mediation, it is important to respect the craft of developing skills in four key dimensions: (1) knowing your audience; (2) honing your message; (3) knowing your opposition and their



message; and (4) becoming the best version of yourself, as an authentic and effective participant.

**Know your audience.** One of the most overlooked tenets of effective communication and persuasion is that you must know your audience; the better you understand it, the better your odds of persuading it that you have something important to say. In a mediation, you will be ahead of the curve if you adhere to some simple but powerful practices. Being present in the moment (not immersed in your phone) is a necessary threshold. Demonstrating your presence by asking questions to draw out the logic and rationale of the discussions is also critical and often has the added benefit of exposing weaknesses in an adversary’s arguments. Similarly, understanding the interests, needs and strategic context driving each

member of your audience will give you important insights into finding common ground. Especially in complex, multiparty mediations, it is well worth the time to learn what is driving each of the interested parties so that you can negotiate with those interests in mind.

**Know your message.** Albert Einstein was a powerful advocate for simplifying complex messages, taking the view that if you cannot explain your message in one sentence, you do not know it well enough. This is good advice at many levels, as it will at a minimum make you focus on the jugular (not the capillaries). Simplifying your message to that degree, while adhering to the truth, is not easy. If your simplified message cannot withstand rigorous examination, you are in trouble and will have lost the point. But honing your message rigorously is worth the effort, as it will seriously test whether you genuinely believe the essence of your own position and can defend it with integrity. If you can do this, you will be in a powerful posture for any mediation communications. If you cannot, you will know you need a new message.

**Know your opposition.** Effective mediation advocates respect their adversaries enough to fully understand their positions. Genuine understanding allows advocates to acknowledge truths the other side has focused on, and make strategic concessions where appropriate, without undermining their core positions. Certainly, acknowledging the reality of our adversary's position is far more effective than the ostrich strategy, trying to ignore positions that will not go away. Spending the time to understand the opposition also allows advocates to preempt and rebut weak positions effectively and efficiently. In the end, knowing both your opposition and your message prepares you to deal with the unexpected, giving you the ammunition to pivot, reframe and move forward even when confronted with surprise developments.

**Be your best self.** Persuasive communicators come in all styles, and when using these persuasion skills, many styles can be equally effective. But the most persuasive communicators exercise their EQ, not just their IQ. This requires self-awareness, knowing when your heart rate, pace and voice are elevated; when you are distracted; and when you are overly combative. It also requires group awareness,

reading the room correctly to understand which messages are resonating and which are falling flat. Persuasive communicators of many styles also consistently offer values-based messages, providing a genuine and strong foundation for their positions. Communicators building from genuinely held values are almost always more effective, especially those who can be vulnerable when the moment calls for that. Having the self-confidence to allow yourself to be vulnerable is a strength, not a weakness, when persuading your listeners of the message you need to get across. To be sure, the best version of yourself also requires you to develop a strong presence, through physical self-awareness (posture, voice, breath, eye contact and facial expressions), but everyone can and should develop a presence that fits their personality, background and style.

Ultimately, it comes down to respecting the craft. Resolving complex, highly charged disputes amicably is a daunting challenge. Mediators routinely draw on skills developed over decades to assist parties in achieving negotiated resolutions. But the success of any mediation is also highly dependent on the communication skills of the other participants as well, and the reality is that the level of practice in this area varies considerably. This naturally creates opportunities for those who develop their craft to a high level. This is not easy; honing these skills requires dedication to the craft, in the form of thought, practice and the incorporation of objective feedback. If advocates and clients respect this craft, there is no doubt their mediation experiences will improve and the challenges of resolving complex disputes will be met more often.

*Matthew Larrabee, Esq., serves as an arbitrator and mediator at JAMS where he handles business and commercial, antitrust, agribusiness and food law, and securities matters.*

