THE PERSUASION METHOD: WINNING CONCEPTS, SKILLS, AND TOOLS

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The Persuasion Method is a method consisting of the best practices from multiple disciplines for persuading jurors by using powerfully persuasive concepts, skills, and tools. The foundation is humanistic, not legalistic.

Using legalistics, thinking and sounding like a lawyer, does not persuade jurors because they are not lawyers and do not think like lawyers. They think like the laypersons that they are. The legal analysis method derived from law school simply does NOT work in jury trials. Law school training, however useful for other lawyer purposes, is not a good foundation for jury persuasion.

The Persuasion Method was developed beginning with training in debate with its numerous principles, skills, and techniques for persuasion. It incorporates ideas from Aristotle and Cicero to persuasion experts of today and ideas from numerous non-law disciplines and, of course, concepts, skills, and tools from great trial lawyers. The Persuasion Method is dynamic and each Trial Persuader is urged to add powerfully persuasive concepts, skills, and tools.

I. CONCEPTS, SKILLS, AND TOOLS FOR TRIAL PERSUASION.

A. PERSUASION. The central idea of persuasion is that the focus is on the audience, here the jurors. The case is built for the jury and every part of the trial is carried out to persuade the jury, being aware of and on the same page as the jurors. Jurors are interested in whether the Defendant is actually guilty, not whether the prosecutor has met a burden of proof. Therefore, we work to show Johnny did not commit the crime.

B. PERSUASION PROCESS. The main objective of the first part of the trial is to become the trusted advisor of the jurors. Soft sell, therefore, is suggested to avoid resistance. Later parts of the trial can be more hard sell.

C. THE SELF. You may be the most important factor for the Defendant. Experts tell us that the Trial Persuader’s power depends on (1) credibility, (2) competence, (3) authenticity, (4) likeableness, and (5) connectedness to the jurors.

D. PEOPLE SKILLS. People skills, as always, help. Have an attitude of helping the jurors determine the truth and like the jurors. Reciprocity is central to human relations.

E. PSYCHOLOGY. Our knowledge of psychology, especially social psychology, helps us to know what is going on with jurors, the judge, and witnesses. Psychology can often be used in the story of innocence to explain people’s actions.

F. ANALYSIS IN DEPTH. In-depth thinking and analysis wins cases when used instead of the shallow, theory of the case and using just obvious facts, method often used.

G. BRAINSTORMING. Ideas win cases. Brainstorming is the active, proactive and dynamic use of the imagination to come up with numerous ideas from which to select and combine into a powerful case. It is not settling on the first thought to come to mind. The greatest obstacle to doing brainstorming is not seeing what ideas would be produced. Brainstorm and ideas never dreamed of will be produced.
H. CREATIVE THINKING. Numerous books are available containing suggestions for coming up with hitherto unthought positive thoughts.

I. CRITICAL THINKING. Critical thinking is attack thinking looking for the numerous things that are wrong with the prosecution’s case. Read about it in courses labeled Skepticism 101.

J. POINT DEVELOPMENT. The point, not the sentence, is the working unit in trial work. When a point is intended to be made, it will be weak unless there is SUPPORT for the point with facts, inferences, argument, etc. Stating a point in conclusory terms without support is practically useless.

K. STRATEGY AND STRATEGIC THINKING. Compare the prosecution and defense cases and determine where the defense should fight the case. It is seldom strategic to fight many issues. Pick one issue to fight, use DEEP THINKING to develop your side of the issue with SUPPORT, CONCENTRATION OF FORCE, and FORCE MULTIPLIERS to overwhelm at the point of attack.

L. STORY OF INNOCENCE. Studies show jurors decide between the story of the prosecution of how the event happened and the story of the defense. The story of innocence must be developed in detail including facts, inferences from those facts, context, motives, etc. in a way that makes sense consistent with innocence. Just having a theory of the case is far too shallow compared to a more fully detailed story of innocence.

M. STORYTELLING. Storytelling is a most important skill for opening statement. It is not a speech and it is not told in conclusory statements as lawyers almost inevitably do. It is a soft-sell story in detail so that the jury sees in living color the event happening consistent with innocence. Watching professional storytellers on the internet or in person furnishes a most useful model.

N. DEBATE SKILLS AND CLASH. Debate and trial both involve CLASH and verbal blows between the two sides. There are, incidentally, numerous concepts, skills, and tools which expert debaters use that are directly transferable to trial. Above all, it is not a series of speeches.

O. EXTEMP SPEECH. Extemp speech is prepared, but articulation is left to the moment in delivery. Speech written and read or speech written and memorized is dead and not authentic compared to speech from the heart and “IN THE MOMENT.” It is, of course, thought out and a STRUCTURE is in place from which the presentation is organized.

P. COMMUNICATION. The model for communication is SMCR—sender, message, channel, receiver. Unless the point is received and ENCODED (remembered) by the receiver, there has not been communication. Communication involves much more than stating something.

Q. LANGUAGE. Lawyers speak in abstract and conclusory language, which is about as weak as it can get in trial. In addition to being a wordsmith and expert in how-to-say- its, we need to use different language for different purposes and in different phases of the trial. Language can be usefully categorized as follows:

1. Abstract
2. General
3. Conclusory
4. Specific
5. Sensory
6. Visual

Specific, sensory, and visual language is often most useful, especially in storytelling opening statement.

R. EMPHASIS AND EMPHASIZING. There are numerous tools mentioned in the literature for gaining emphasis, such as repetition, dramatizing, giving examples, restating, and use of demonstrative evidence, visual aids and rhetorical devices. Emphasis is a FORCE MULTIPLIER.

S. RHETORIC AND RHETORICAL DEVICES. How something is said makes all the difference. We will expand on this in the closing argument lecture, but using rhetorical devices is the ultimate force multiplier.

T. ARGUMENT. Argument is not the same as giving a speech. It is arguing using arguments, rhetorical devices, concentration of force, force multipliers, argument language and other skills and tools which will be discussed in the closing argument lecture.

U. MOMENTUM. The side that has the momentum at the end of the trial is likely to win the verdict. Using the concepts, skills, and tools described here can result in that momentum.

V. EMOTION AND EMOTIONAL INTELLIGENCE. Emotions are human and important to the dynamics of a trial. But the major emotion to create on the part of the jurors is the FEAR OF CONVICTING AN INNOCENT MAN. Use of the concepts, skills, and tools of the Persuasion Method can create that fear.