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**Persuasion Science
for Trial Lawyers**

By John P. Blumberg

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Persuasion Science on Trial

BY MIKEL STEINFELD

When I lost my first trial, I blamed it on the facts. “Who could’ve won *that* case?” I whined to my supervisor on the walk back to the office. The fourth time I lost, it was the judge. “I could’ve won if it hadn’t been for that ruling!” The sixth time, I realized that *I* was the common denominator. *I* didn’t know how to convince a jury.

When John Blumberg faced a similar call to action, he devoted himself to learning how lawyers can persuade jurors. We can now benefit from all his hard work.

Blumberg is board-certified as a trial lawyer by the National Board of Trial Advocacy, as a medical malpractice specialist by the American Board of Professional Liability Attorneys, and as a legal malpractice specialist by the State Bar of California, Board of Legal Specialization and the American Board of Professional Liability Attorneys. And in *Persuasion Science for Trial Lawyers*, he explains how people think, how they relate, and how they can be persuaded. While Blumberg’s book is geared toward trial lawyers, his advice applies to several practice areas. Whether you’re arguing to a jury, writing for a judge, or emailing an opposing attorney, the knowledge and tactics contained in Blumberg’s book may help you succeed.

Persuasion Science for Trial Lawyers

John P. Blumberg



Full Court Press

Persuasion Science's Message

The foundation of Blumberg’s book is neuroscience—the study of how the brain works. For years, companies and salespeople have used the lessons learned from neuroscience studies to sell us more candy bars and widgets. Blumberg looks at those same studies with an eye toward helping trial lawyers persuade jurors.

Working through the book, three things stood out to me: how people make decisions, why folks might reject information, and the

role of cognitive limitations.

How people make decisions

Remember learning the whole “left brain, right brain” distinction? As I learned it back in elementary school, the left brain is responsible for mathematics and linear thinking, whereas the right brain is responsible for creativity and imagination. While not a perfect description, this distinction plays a role in how people make decisions. Part of our brain is logical; part is emotional.

So which side makes decisions? They work in tandem.

Blumberg explains, “The rational brain comes up with the *reasons* that its owner should do something, but the *emotional* brain makes its owner desire, empathize and fear.”

The power of the emotional brain, however, is substantial. So substantial that, when persuasion is involved, the emotional brain drives the rational. Quoting from a study, Blumberg points out, “Human beings aren’t rational animals; we’re rationalizing animals who want to appear reasonable to ourselves.”

The key, then, is to appeal to the emotional brain. But that becomes tricky because everyone has their own experiences and biases that may cause them to reject information.

Information Rejection

After losing a case he thought was strong, Blumberg started looking into why people might reject information.

He found a few reasons, including reactance and bias.

Reactance is what happens when you tell someone what they *must* do. When we tell a jury that they “*have to* find the defendant liable,” the reaction is automatic: “The hell I do!” It’s a gut reaction that everyone experiences.

Bias is another problem attorneys run into. Bias is grounded in how we understand the world around us. It affects our decisions and our ability to accept new information. It helps people reach quick decisions, but it also makes these decisions difficult to overcome. Decisions based on experience and bias are generally emotional decisions. Folks then have an easy time using the other part of their brains to rationalize that emotional decision.

Fortunately, Blumberg has some easy-to-follow advice for how we can approach our cases to deal with both reactance and bias. He also explores how attorneys can apply his advice at each stage of the trial. And since Arizona abolished peremptory strikes, Blumberg’s advice for incorporating persuasion techniques into voir dire could be especially helpful.

To make sure people are receptive to this

advice, though, we should be aware of cognitive limitations.

Cognitive Limitations

This won’t surprise anyone who had to sit through property class during their 1L year, but we all have limits on our ability to process new information. In trial, lawyers often just keep talking and feeding jurors more and more testimony and data and exhibits. But the brain can absorb only so much—when jurors are inundated with facts, statistics and figures, they get tired. Thinking all day long can be exhausting; in trial, it can be devastating.

Stories work.
Emotional decision-making
motivates jurors—
and judges and
opposing attorneys too.

So how can we help our audience? Blumberg offers two solutions: chunking and telling a story.

Chunking is the process of grouping things together under a single heading. It’s the same way we remember phone numbers and social security numbers: we break a long string of digits into smaller groups—smaller chunks. Chunking doesn’t reduce how much information is absorbed; a social security number is still nine digits long. Rather, chunking reduces the cognitive load, making retention easier. In his book, Blumberg provides some great guidelines for how to chunk information effectively.

We also can reduce cognitive load by telling jurors a story. This recommendation was speaking my language. After losing several trials, I worked on my storytelling. The results were fantastic—jurors understood what I was saying, they could relate, and they agreed (at least more than they had before). I went through almost the same process as an appellate lawyer. Folks are hard-

wired to remember stories. Rather than feed people facts, figures and statistics, Blumberg encourages us to tell jurors a story. When we listen to a story, we make connections with the information and identify common experiences. That helps with retention. It also helps the jurors reach an emotional decision—a decision they’ll be able to rationalize on their own.

The Ideal Audience

Persuasion Science for Trial Lawyers is particularly well suited for plaintiff-side trial attorneys. Blumberg is a plaintiff-side trial attorney and writes for that audience. For example, when he explores how to overcome bias with perspective in chapter 13, Blumberg focuses on how attorneys can overcome anti-plaintiff bias. When he discusses how to find shared values in chapter 14, Blumberg talks about how to find shared values with jurors who might be predisposed against plaintiffs.

Folks who work on the other side of the aisle—or in a different field—are left to extrapolate what they can. Blumberg doesn’t explore how a civil defense attorney might address juror bias; he doesn’t give examples of how a criminal defense attorney could find shared values with jurors; he doesn’t consider how prosecutors might present expert testimony to persuade jurors. Everything is explored through the lens of the plaintiff-side lawyer.

That said, there’s a lot of helpful information in Blumberg’s book, regardless of practice area. The emotional decision-making that motivates jurors also motivates judges, opposing attorneys, mediators and parties. My practice is exclusively criminal appeals, and I found several tips and tricks I’ve already started incorporating.

Ultimately, the decision to read *Persuasion Science for Trial Lawyers* boils down to a question: Would you benefit from a better understanding of *how* to persuade jurors? **A**

MIKEL STEINFELD supervises the appeals unit of the Office of the Maricopa County Public Defender. He also has strong opinions on comic book movies, adores romance novels, writes terrible poetry, and dives dungeons and destroys dragons.