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It's all in the mind, ask John Blumberg, Esq.

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UNDER SUBMISSION

Two score and a few more years ago, I was a student at the famed California Judges College. I use the quaint antiquated expression for all those yesteryears because during that distant time, I was a municipal court judge. That court was abolished over

a score ago. By then I was already a superior court judge. With the abolishment of the municipal court, superior court judges had no one to feel superior to. Oh well. But getting back to Judges College in the 1970s (may save you the trouble of looking up how many years there are in a score), there was a unique class that made a deep impression on me. It was not about doing things like sentencing someone, holding someone in contempt, or dividing community property. This was a course that became so imprinted in my memory that I have carried it with me for the entire two score and then some of my judicial career.

The instructor was a psychologist who I believe was named McCormick. If I am mistaken on the name, I hope the professor would nevertheless be pleased he made such an impression on me. What I learned from him informs who I am as a judge. Hope that doesn't induce some readers to move on to another column. Bear with me. The psychologist, McCormick?, showed us a photograph projected on a screen of an ordinary empty room in a simple wooden house. At least that is what everyone in the class said they saw.

But then on the screen we saw a second photograph of the same room with people inside the room. Now there was nothing ordinary about the room. The people did not appear to be Hobbits or fugitives from a Barnum & Bailey Circus. The people in the room had to bend over and crouch because the ceiling, walls and floor were slanted. The contours of the room were now seen as they, in fact, were. A lesson smacked me in the face with a lasting epiphany: Things are not always what they might first appear to be, nor are our immediate perceptions, colored by personal experience, necessarily accurate. Note, I hope no smart-ass reader will ask, "How do we know the rooms in the photographs projected on the screen were the same?"

A well-known attorney, who later became a judge on the 9th Circuit, was in court arguing a motion on a complicated legal issue. His opposing counsel seemed to be missing the point. The judge asked the trial attorney to step out in the hall with opposing counsel and explain the intricacies of the motion to him. The attorney said to the judge, "Your Honor, I can explain it to him, but I can't understand it for him."

Our profession, like all others, involves imparting information. And that involves the mind. Let us avoid the meaningless "meeting of the minds." If the information one is imparting is presented so that another reasonably intelligent person cannot understand it or misinterprets it, all is lost.

And this takes me to noted trial attorney John Blumberg. He wrote a book that is a must read for all lawyers and judges, though it is directed to trial lawyers, "Persuasion

Science for Trial Lawyers" (Full Court Press, 2022). Blumberg's comprehensive research into how the mind understands and receives information is an invaluable tool for trial lawyers who must communicate with juries and judges. But it also serves as a vital source of understanding how we receive and interpret information.

And the book is written so that the wealth of scientific information of how the mind functions is in a prose style that is accessible and clear. It captures the reader's interest, stimulates self-reflection, and provides enlightenment. It is an example of writing that enables the reader to understand what is written without having to ponder the meaning of sentences and without having to read them over a few times.


But this book is not about writing per se. It is about how trial lawyers can best persuade juries by providing insight into the science of how the mind processes information. It's not about rhetoric, or polished phrases, though they may be effective when appropriate. But they are useless when a juror is likely to misunderstand the message, often to the detriment of the client.

What is most important for lawyers, and anyone living in a civilized society, is the ability to make an informed, persuasive argument that avoids barriers to receiving and considering that argument. Blumberg gives you the way to do this, and the way he presents the information proves his point.

No matter one's perspective, every case is a story and how that story is told and how it is understood determines the outcome of a case. In the chapter "Keep it Simple," Blumberg cites the famous paraphrase of Einstein that is etched into my brain, "Make it as simple as possible, but no simpler." In the chapter "Mental Shortcuts and Biased Preexisting Beliefs," Blumberg explores heuristics, which are mental shortcuts, and the role they play in processing information. The shortcuts often involve prejudices and biases. Based on scientific studies, Blumberg shows us the way to avoid these barriers to understanding.

All of us are faced with such barriers. In a past column I reviewed a law review article, "Inside the Judicial Mind" (Cornell Law Review, Vol. 86, May 2001) that discusses ways in which "cognitive illusions" lead to errors in judicial judgments. Judges would do well to read and reflect on Blumberg's insights.

What is particularly useful today is the chapter "Finding Shared Values of Liberals and Conservatives." Yes, those values exist and Blumberg demonstrates how they can be used to benefit the client. But that chapter is useful in how we can carry on discourse in today's fractured society.

In his final chapter, Blumberg offers some valuable final thoughts. He posits that there is more to advocacy than confidence, respect, and civility. This involves the recognition that not all jurors think as we do or have the same values. Blumberg demonstrates how to present a case so that jurors of widely differing values and beliefs can understand and appreciate the values underlying the story the lawyer tells them. This is the science of persuasion. 

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