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ANNUAL CONVENTION

THE BREAKERS PALM BEACH
JUNE 15-18, 2022

IN-PERSON AND LIVE STREAM
REGISTRATION OPTIONS AVAILABLE

PERSUASION SCIENCE FOR TRIAL LAWYERS

JOHN P. BLUMBERG, FULL COURT PRESS

by Wayne Hogan, Past President (1992-93), FJA®

The jury persuasion picture we trial lawyers are creating will never be beyond improvement, and John P. Blumberg adds science to art with precise strokes that reveal new perspectives for viewing the persuasion picture. *Persuasion Science for Trial Lawyers* combines extensive persuasion research with the author's decades of trying cases to juries and key concepts identified by other experts.

Careful to credit others, Blumberg sees the importance of innovations many of us have been studying and he expands on them. The result: a fresh, informed look at moving juries to verdict.

Blumberg smartly interlaces the book's insights, chapter by chapter, weaving persuasion science piece-by-connected-piece into an easy-to-grasp whole. As an example, consider this from the final chapter, discussing what we can do to help judges help jurors; note the looping to earlier subjects: "Trial judges ... tell us to 'respect the jury's time.' ... In theory, that makes sense; but in practice, it hinders their ability to fully comprehend the evidence. This was discussed in chapter 8 ('Keep It Simple – The Brain Has Limitations')."

Another example:

Chapter 5 ("The Science of Jury Education") and chapter 8 ("Keep It Simple – The Brain Has Limitations") discussed how jurors, as learners, may not be able to understand and absorb new information about unfamiliar subjects. Failure to understand and absorb means that the information won't be incorporated into the long-term memory necessary when recollection is needed during deliberations. When a judge maximizes the jury's time by urging a fast-paced trial, it actually minimizes their ability to ultimately weigh the evidence. In fact, it encourages their brains to resort to heuristics and stereotypes instead of the critical thinking necessary for the task of judging the facts. This phenomenon was discussed in chapter 12 ("Mental Shortcuts and Biased Preexisting Beliefs").

A lawyer with decades before juries could regale readers with stories of what was done, why, and how well it worked. Realizing that in writing *Persuasion Science for Trial Lawyers* he was not only teaching but also learning, Blumberg notes that just when you think you understand something, you see nuances and the need to update. So, the form and content of this book evolved — to the reader's benefit. Blumberg had

written many articles on trial work over the years, so the process began with what the author thought he knew, but:

As I began the preparation for this book, I re-read my articles and found that most of them needed significant revision due to the growth of my understanding of decision science. And, as I revised my articles into chapters, I found more research that led to new ideas on how trial lawyers could benefit from these studies. That led to more chapters. And even now, as I complete this guide for trial lawyers, I see more that is out there to learn and share.

We, the readers, may think we know how decisions are made, but Blumberg introduces the reader to how decisions are affected by emotions, cognitive capacity, biases, heuristics, reactance, cognitive dissonance, conservatism, and credibility. All of these are covered in the book — but these are more than topic lines; there is research behind them as well as suggestions for dealing with each. And there is more, as Blumberg concludes: "Cognitive science takes into consideration not only the predispositions and attitudes that color decisions, but also the limitations inherent in the ability of jurors to understand and absorb new and often complicated material."

This book pulls together experience, teaching, and science. Forty-five years ago, I learned the rule of probability from Louis Nizer in his book *My Life in Court*. While I count that as one of my most valuable lessons, it was based on his experience, not science (for me, Nizer's hypothesis has turned out to be correct). In writing *Persuasion Science for Trial Lawyers*, Blumberg declined to rely only on experience, his own or that of others, and dug into the science of persuasion. Readers will benefit from that. (And, when I say "readers," I include those listening to the audiobook version, as I did for part of my "read" of this valuable book.) ■



WAYNE HOGAN

of Terrell Hogan Yegelow, P.A., Jacksonville, is a past president of the Academy of Florida Trial Lawyers (1992-93), a Florida and National Board Certified Civil Trial Lawyer, and he has long served on key Florida Bar rules committees: Civil Procedure Rules (1995-2004, Chair 1996-97; 2008-14; 2020-present); Code and Rules of Evidence (2004-08; 2014-20). He represented Code and Rules before The Florida Bar Board of Governors and the Supreme Court, opposing the imposition of federal "Daubert" procedures. Hogan's products liability experience includes Florida's first asbestos disease punitive damages verdict, and he joined other FJA stalwarts in representing Gov. Lawton Chiles for taxpayers and Florida's children against the cigarette industry. Hogan's firm continues to represent those afflicted by malignant mesothelioma and other asbestos cancers statewide.