



Katie Rose Marion, Esq.

Review: Persuasion Science for Trial Lawyers

Innovative, informative, and downright interesting. In newly published *Persuasion Science for Trial Lawyers*, author John P. Blumberg sets out “to provide trial lawyers with a foundation for advocacy that is based

on proven social science rather than anecdotal success stories.”¹ This book is a thought-provoking read, best described as a behind-the-scenes journey of the human decision-making process with a trial lawyer for a tour guide. Although not an all-encompassing resource, the book highlights relevant data and provides significant insight on how to become a more persuasive, more effective advocate.

Mr. Blumberg, in essence, seeks to establish that a scientific method exists for achieving success on behalf of our clients in and out of the courtroom and that if the method is followed, success can be replicated.

Although there is not a *per se* “step-by-step” guide to success in the book, it does lay out a roadmap for a variety of skills, including how to become skilled in the art of persuasion and notable research that points the way. While particularly beneficial to the trial lawyer, the book also contains information that would assist any attorney in his or her practice as its focus is largely on the innerworkings of the human mind and *why* we think the way we do and *how* we process the information a particular way. However, trial lawyers would likely find its discussions on the politically diverse jury and overcoming bias especially noteworthy.

A jury is likely to be composed of both conservative and liberal people. Depending on which venue your case is in, that number may be slightly to extremely disproportionate. A relevant consideration highlighted by Mr. Blumberg is in the importance of finding the *shared* values between conservative and liberal jurors at trial and framing your case in a way that is relatable to *both* sides of the aisle. Not only does this book explore practical examples of framing cases out of the perspective of shared values, but it discusses the scientific research behind the cognitive thinking processes and

**FRESH IDEAS BRING FRESH PERSPECTIVES
NMTLA BRAINSTORM PROGRAM**

We are pleased to say that the New Mexico Trial Lawyers Brainstorm Program is back and very popular!

“Brainstorming Sessions may be the most valuable and under-utilized perk of the NM Trial Lawyers’ Association. A group of highly experienced plaintiffs’ attorneys are standing by to help you review your case—for nothing! In my session, I received fresh insight into my case, strategies to navigate less favorable facts and dirt on defendants. Most of all, I left encouraged and energized. I am in awe of the generosity and thoughtfulness of these wonderful attorneys, willing to share their time and talent with me. If you’re not taking advantage of this service, there is a good chance you are not realizing the full value of your case.”
– Bridget Hazen, Esq.

Designed to assist any member preparing for trial, arbitration or a difficult mediation. Sessions previously held resulted in creative and insightful discussions for both the member who requested the Brainstorm Session and the NMTLA members as trial consultants.

A member can request a Brainstorm Session (virtual) in which three to five NMTLA members will work as trial consultants over a two-hour period to brainstorm strategy questions.

Scheduled dates for upcoming sessions are:

As requested and subject to time availability

If you would like to initiate a request for one of the Brainstorm Sessions, please contact Cherie LaCour at cherie@bencoelaw.com.

Book Review

differences associated with those who identify as conservative or liberal. Mr. Blumberg underscores that fMRI (functional magnetic resonance imaging) studies have shown “there are liberal-conservative differences in how parts of the brain are activated in response to identical stimuli.”² His discussions on how conservative and liberals perceive the world differently based on fMRI studies provides novel insight that would be impactful during jury selection.

Other useful points expanded on in regard to understanding the differences between the minds of conservatives and liberals include the topics of cognitive flexibility and cognitive inflexibility, intellectual humility and intellectual arrogance, as well as the working memory. These topics, compiled from research and studies, are helpful to recognize how different minds process facts. For instance, some minds tend to be more “rigid” and resistant to change and will receive new facts through that lens. Understanding the thought processing of an individual can assist in understanding what can cause a particular person to accept or reject information. While these concepts arise out of how to present a case effectively to a jury, the methodology appears uniform across the board, and such knowledge is transferrable across the litigation process.

Litigation requires the ability to communicate persuasively. The “why” of persuasion is a core message in this book. Mr. Blumberg lays out the ingredients for a recipe for success with “science” and not by “accident.”³ Part of this scientific process emphasizes the mental processing of the “emotional brain” and the “rational brain” and how these two hemispheres interrelate. What is commonly referred to as the “left brain” is theorized to be the

rational side and the “right brain” is theorized to be the emotional side. Other research cited on this point includes the well-known “Reptile Theory.”⁴ These theories seemingly boil down to concepts on how “feelings” greatly impact decision-making abilities.

All in all, Mr. Blumberg’s book on the science behind decision-making and persuasion would serve as a useful arrow in any trial lawyer’s quiver.

¹ John P. Blumberg, *Persuasion Science for Trial Lawyers* (Full Court Press, 2022).

² *Id.*

³ *Id.*

⁴ See David Ball and Don Keenan, *Reptile: The 2009 Manual of the Plaintiff’s Revolution* (Balloon Press, 2009).



Capital Strategies
a MassMutual firm



OFFERING RETIREMENT PLANNING

To NMTLA MEMBERS

Benjamin Walton
BenjaminWalton@FinancialGuide.com • 505-453-6762

Keith Padilla
KPadilla@FinancialGuide.com • 505-350-8169

Keith Jordan
KeithJordan@FinancialGuide.com • 505-306-0919

Local Sales Offices are sales offices of Massachusetts Mutual Life Insurance Company (MassMutual), and are not subsidiaries of MassMutual or its affiliated companies. Securities and investment advisory services offered through registered representatives of MML Investors Services, LLC. Member SIPC/ Supervisory Office: 317 Grace Lane, Ste. 250, Austin, TX 78746. 512.346.6020.CRN202105-249022