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PERSUASION SCIENCE FOR TRIAL LAWYERS

John P. Blumberg

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PERSUASION SCIENCE FOR TRIAL LAWYERS – **A NUTS AND BOLTS REVIEW**

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Let us begin by saying that the breadth of insight relative to the study of cognitive sciences and how it impacts us as trial lawyers is exploding and fascinating. Author John Blumberg, a Southern California trial attorney, builds on the work that has come before and adds his unique perspective in his new book *Persuasion Science for Trial Lawyers*, released earlier this year by Full Court Press. Mr. Blumberg's humble and straightforward presentation is a veritable "how to" for newer lawyers while also providing novel tricks and tips for experienced trial lawyers.

While this review cannot begin to cover all that Mr. Blumberg's work has to offer, the following are some of our favorite salient points:

- There are benefits to failing. We learn more from a loss than we do from a win, because it is after a loss that we question everything and evaluate how we can become better. As hard as it may be, embrace this and know you aren't alone.
- From an emotional and financial investment perspective, there is a significant difference between defense attorneys and plaintiff attorneys. As plaintiff attorneys, we are more emotionally invested because we choose the cases we handle and have presumably formed a connection with our client and genuinely *want* to help them. We are financially more invested because we don't get paid if we don't win. Knowing that the other side has a different perspective may give insight on how you move forward.
- Communication, communication, communication – Mr. Blumberg offers fantastic advice with practical tips on ways to communicate with clients, opposing counsel, court staff, judges and juries.
- Speaking of communication – studies have shown that the use of legalese makes the author or speaker seem less credible, even to judges. After listening to this book (Emily in particular enjoyed the audio version), we have adjusted a number of our forms as well as new writings to take out legalese and other unnecessary jargon.
- The chapter involving deposition techniques actually caused Emily to laugh out loud when the author described that one way to handle inane objections is to ask the defense attorney how he would phrase the question. He gets to preen and you get the information – win win!
- Mr. Blumberg shares the results of numerous studies involving information processing. These are helpful in understanding not just **how** to present our cases to a jury, but also **why** we should take care in our presentation of images, spoken information, and written words. [**Practice tip** - if you blow up the verdict form and review it with the jury, stay quiet and allow jurors to read what is displayed. After they have had time to read on their own, then

narrate the text and emphasize important stuff. When we hand documents to a judge during a bench hearing, we give them a chance to read and review it before discussing. We should give the jury that same chance to process what they are seeing before attempting to persuade.]

- The reality of *cognitive overload* is explored under a variety of circumstances. While we can't undo cognitive overload once it has occurred, there are ways we can delay and hopefully prevent its occurrence. This is important because the less effort it takes to process a fact, the more truthful the fact seems. [**Practice tip** – keep your opening / closing / presentation to 18 minutes or less.]
- Juror bias can make or break a case. Taking the defense's position (in a controlled fashion) during *voir dire* can help you flesh out this bias.
- As attorneys we have worked on a case for years prior to the trial and are well versed with the facts and nuances, but jurors are new to the issues and may not understand why any of it matters. [**Practice tip** - Let your experts explain why the issue is important or why the defense's position is wrong. Ask the expert, "Why is X important?" "Defendant says, X, do you agree with X?" "Why?" "Why not?" Don't be afraid to tackle the questions head on. The jury is going to be thinking about these questions, and you can build a better relationship with the jury if you ask what they want to know.]
- While a few of the practice tips are set out above, Mr. Blumberg offers practice tips throughout the book such as a "Golden Rule" alternative; a reverse *per diem* argument (which we're anxious to try); and how to appeal to liberals and conservatives, including framing your argument to appeal to conservative values.
- The chapters provide a survey of multiple neuroscience studies performed by leaders in their discipline. The studies are juxtaposed with practical application techniques, providing an opportunity to explore the subjects in a deeper fashion.

While we both enjoyed Mr. Blumberg's book and found it helpful to our practice, one piece of advice didn't quite hit home for us. In a section addressing dynamics with opposing counsel, Mr. Blumberg encourages us to "be the water not the rock." Perhaps Mr. Blumberg is just a better human being, but we personally have a hard time being water rather than the rock, but alas this may be a failure we can embrace and learn from.

This is a book we would recommend to anyone interested in enhancing their persuasive abilities. It is not practice area specific, and the examples are universally applicable to Plaintiff attorneys. The book is also conveniently divided into various topics allowing the reader to jump to the sections/chapters of interest. Grab a highlighter and some sticky notes and enjoy!



Emily C. Guenin-Hodson is a 2000 magna cum laude graduate of Butler University and a 2003 cum laude graduate of Indiana University- Michael Maurer School of Law where she was a member of the Order of the Coif. Since law school she has practiced in Wabash, Indiana with her father Mark Guenin at Guenin Law Office, P.C. In addition to helping those who have been injured, Emily assists her clients with estate planning, estate administration, business planning and contracts.

Emily is a member of the Indiana Trial Lawyers Association (ITLA) where she currently serves in the position of President Elect. Emily is also a member of ITLA's Board of Governors and Amicus Committee. In addition to representing clients in jury trials, Emily also assists clients through her appellate practice and has authored appeal briefs not only on behalf of her own clients but also as Amicus Curiae on behalf of the Indiana Trial Lawyers Association and the National Center for Victims of Crime.

Mark Guenin has practiced law for over 40 years. Mark and his daughter, Emily, have tried multiple jury trials from Indiana to Idaho. Their practice focuses on personal injury cases involving motor vehicle crashes and products liability; however, Mark also litigates cases involving commercial business transactions, real estate disputes and estates.

Mark is a graduate of Wabash College and Indiana University - Michael Maurer School of Law. Mark has presented at multiple Seminars, Institutes, and Inns of Court. He is an active Board Member of the Indiana Trial Lawyers Association, where he also serves on the Board of Governors.

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