

# Wyoming Lawyer

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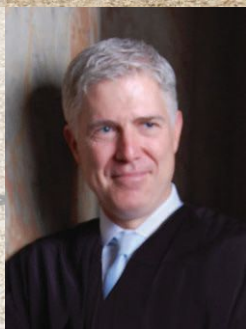


## Liberty and Justice

## ...for some

**"Bridging the  
Affordability Gap"**

Special Feature  
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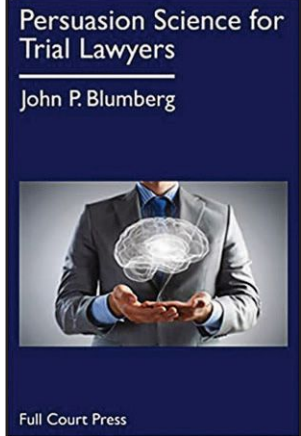




# Book Review

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## *Persuasion Science for Trial Lawyers* by John P. Blumberg



There is no doubt that reading John P. Blumberg's "*Persuasion Science for Trial Lawyers*" will make you a better trial lawyer.

In fact, it will make you a better lawyer in general. Blumberg bases his book not on tireless anecdotes and war stories (although he certainly could do that and produce an enlightening book, as he's tried over 200 jury trials in 45 years of practice), but rather on an impressive array of scientific research comprised of psychological, social, and biological studies. His references span from seventeenth century philosopher and scientist Blaise Pascal to Albert Einstein, from Shakespeare to Charles Mingus. He cites well over 100 academic studies and social science publications to support his advice. In short, he applies a wealth of knowledge from outside the field of law to the complex and subtle science of persuasion. And persuasion is what being a good trial attorney is all about.

So how does one persuade? It is not always easy, but it can be done by applying the principles Blumberg presents. These principles are supported by the aforementioned social and psychological studies that span centuries and various academic fields. Blumberg weaves all these studies together seamlessly in order to help you be a better trial lawyer. Below are a few of my favorite pieces of advice:

1. Keep it simple. Some of our cases are factually complex and complicated. When you throw in the mountain of laws that apply, it becomes even more complicated. Juries don't like complex and complicated. They like simple. Keep it simple. Find a way to boil it down, distill your case to something the jury can respond to emotionally. One of my favorite quotes from the book is, "Making the simple complicated is commonplace;

making the complicated simple, awesomely simple, that's creativity." I have seen many trial lawyers make their cases much too complicated. It is a grave mistake.


2. Emotion is stronger than reason. Jurors react more to their feelings than to their thoughts. Almost all people will have an initial feeling, a gut reaction to your case, and will then later find reasons that support their gut feeling. They will *rationalize* how they feel. Blumberg uses the analogy of riding an elephant to make this point, where the elephant represents the heart

and the rider represents the brain. The rider may appear to be in control, but "any time the six-ton elephant and the rider disagree about which direction to go, the rider is going to lose." As such, you must appeal to the jury's emotions to be successful. You cannot make a rational appeal only and expect to win. Always be thinking what the emotional hook to your case is.

3. You cannot force your position on the jury.

They must come to your side on their own. Resist telling the jury they "must" decide this or they "should" do what you want them to do. Not only is such a tactic unhelpful, but it can also in fact backfire, as there is a natural tendency Blumberg describes as "reactance" or "boomerang effect," where a jury will actually do the exact *opposite* of what you tell them they "must" or "should" do *simply because you told them they must*, regardless of your argument. Instead, use persuasive questions. "Did the State persuade you beyond a reasonable doubt?" "Is it okay, what the defendant did in this case?" The jury will know what side you are on when you ask the question, and when you ask such an open-ended question, the jury will be less likely to re-


**"...this book deserves to be read by all trial lawyers not just once, but often. It should be consulted when you start to get those 'trial vibes' and it becomes time to start digging in and preparing your case for trial. This book will inspire you to distill your case down to its essential elements and make it simple, clear, emotional, and powerful. It will help you persuade and, ultimately, win."**



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sist and reject your argument.

4. Framing is critical. The same facts can be framed in drastically different ways that produce dramatically different reactions from the jury. Rather than focusing on the fact, as a plaintiff's lawyer, that "everyone makes mistakes," frame the issue as "our American system requires that innocent people harmed by the failings of others be compensated." Studies have shown that people of different political persuasions can reach the same outcome through different routes: liberals generally believe that innocent people who suffer should be helped, while conservatives generally believe in individual accountability and that there should be consequences for substandard conduct. Both could be reasons for people of different backgrounds, with different worldviews, to side with your client. Know your audience. Find the common ground. Frame your argument in a way that will appeal to your audience.

I could go on and on but then I'd just be paraphrasing Mr. Blumberg's entire excellent book. Instead, I will just end by saying that this book deserves to be read by all trial lawyers not just once, but often. It should be consulted when you start to get those "trial vibes" and it becomes time to start digging in and preparing your case for trial. This book will inspire you to distill your case down to its essential elements and make it simple, clear, emotional, and powerful. It will help you persuade and, ultimately, win. **WL**



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