



The Psychology of Persuasion

University of Wyoming College of Law
September 18-19, 2015

Schedule at a glance

Key: Presentation from perspective of psychology academy, legal practice

	Room 178	Room 170
Friday, Sept. 18		
Noon-2:00	Registration	
2:00-2:20	Welcome and Introductions (Room 178)	
2:25-3:50	Memories May Be Beautiful, and Yet... Steve Easton and Major Jessica Martz, (University of Wyoming)	“Mr. Bad Example”: Why Lawyers Need to Embrace Therapeutic Jurisprudence to Root out Sanism in the Representation of Persons with Mental Disabilities Michael L. Perlin & Alison J. Lynch (New York Law School)
4:00-4:45	The Devil You Know: The Power of Cognitive Uncertainty in Policy-Based Persuasion Michael Smith (University of Wyoming)	The impact of emotions on juror decision making Narina Nuñez, Victoria Estrada and Kimberly Schweitzer (University of Wyoming)
5:00-6:30	Welcome reception (Foyer outside of Room 178)	

	Room 178	Room 170
Saturday, Sept. 19		
8:00-8:30	Continental breakfast	
8:30-9:15	Persuasion through Understanding: Using the Craft of Backward Design in the Art of the Opening Statement Danielle Cover (University of Wyoming)	The Science of Persuasion and Storytelling in Litigation Andrew G. Deiss (Deiss Law PC)
9:25-10:10	Categories and Categorical Thinking: The Dark Side of Cognitive Rhetoric Lucy Jewel (University of Tennessee) and Elizabeth Megale (Savannah Law School)	Mastering the Science and Art of Interpersonal Effectiveness for Successful Legal Negotiations Sarah Shelton (Chicago School of Professional Psychology)
10:10-10:40	Coffee break/snacks	
10:40-11:25	Religion's Role in Juror Decision Making Monica K. Miller, Logan A. Yelderman, Alicia DeVault (University of Nevada–Reno)	Using Psychological Persuasion Tactics in Judicial Writing Anne Mullins (University of North Dakota)
11:35-12:20	The Science of Legal Writing—Is There Any? Lance Long (Stetson)	Tell It to Win It: Motivating Jurors, Judges & Arbitrators to Find In Your Favor Arianne Fuschberger (Persuasion Strategies) and Partick Day, Esq. (Holland and Hart, LLP)
12:20-1:00	Lunch	
1:05-1:50	Psychodrama and the Art of Persuasion Dana K. Cole (University of Akron School of Law)	Can hot-tubbing enhance jurors' understanding of expert testimony? Edie Greene (University of Colorado–Colorado Springs)

	Room 178	Room 170
2:00-2:45	Teaching Psychology to Law Students to Make Them “Practice Ready” Marybeth Herald (Thomas Jefferson School of Law)	A Tale of Two Countries: Cell Phone Searches -- Nothing to Wurie About and Much to Fearon Julie St. John (University of Detroit Mercy)
2:45-3:00	Coffee break/snacks	
3:00-3:45	How cognitive psychology forces us to rethink the teaching of persuasive legal writing to first year law students Adam Todd (University of Dayton)	Zen and the Artistry of the Emotionally Regulated Advocate Christine Kelton (Whittier Law School), Rob Durr (Northwestern University) and Debra Austin (University of Denver)
3:55-4:40	Is Bad Stronger than Good in Selecting a Persuasive Theme? An Empirical Investigation Ken Chestek (University of Wyoming)	

Detailed schedule

Friday, Sept. 18

Noon-2:00

Conference registration

2:00-2:20

Welcome and introductions

Room 178

2:25-3:50

Special Presentation

Memories May Be Beautiful, and Yet...

Steve Easton and Major Jessica Martz (University of Wyoming)

Room 178

This presentation will discuss how some witnesses may construct a memory which they come to believe is true, but which is objectively inaccurate. It will discuss a recent trial in which Prof. Easton and Maj. Martz confronted a series of witnesses with consistent, but inaccurate, memories of an incident, and how they attempted to persuade the jury to reject that constructed memory.

2:25-3:10

“Mr. Bad Example”: Why Lawyers Need to Embrace Therapeutic Jurisprudence to Root out Sanism in the Representation of Persons with Mental Disabilities

Michael L. Perlin & Alison J. Lynch (New York Law School)

Room 170

Litigants with mental disabilities are taken less seriously by their own lawyers, trivialized by opposing counsel, and disparaged by judges. This is largely a result of “sanism,” an irrational prejudice of the same quality and character of other irrational prejudices such as racism, sexism or homophobia. Recognizing and combatting sanism creates extra burdens on lawyers who do seek to provide effective counsel for this population. Such lawyers need special tools to combat sanism, and we believe that lawyering skills rooted in therapeutic jurisprudence provide the best foundation through which to create a positive psychology of persuasion in this representation.

4:00-4:45

The Devil You Know: The Power of Cognitive Uncertainty in Policy-Based Persuasion

Michael Smith (University of Wyoming)

Room 178

One of the most powerful types of policy arguments in legal advocacy is the precautionary policy argument. Under a precautionary policy argument, an advocate warns the court of the future negative social consequences that will occur if the court decides in favor of the opposing party and explains that the way to avoid those consequences is to decided in favor of the advocate's client. This presentation will explain that one of the main persuasive forces underlying precautionary policy arguments is the cognitive phenomenon called The Uncertainty Effect: the tendency of people, when deciding between alternatives, to avoid options that reflect uncertainty.

The impact of emotions on juror decision making

Narina Nuñez, Victoria Estrada and Kimberly Schweitzer (University of Wyoming)

Room 170

Jurors have long undergone scrutiny as the public, justices, and legal commentators have challenged the notion that jurors are rational decision makers and capable of meeting the important challenges they face. One specific concern surrounding jurors is how emotions, aroused at trial, may negatively impact their decisions. This talk will examine the research concerning the factors during the course of the trial that may prompt emotional reactions from jurors, how those emotions impact juror judgments, and and the implications these findings have for the courts.

5:00-6:30

Welcome reception

Saturday, Sept. 19

8:00-8:30

Continental breakfast

8:30-9:15

Persuasion through Understanding: Using the Craft of Backward Design in the Art of the Opening Statement

Danielle Cover (University of Wyoming)

Room 178

This presentation will examine ways attorneys can use the curricular development technique of backward design to craft opening statements that achieve the ultimate goal of persuasion by helping the listener to acquire an understanding of the client's position, develop meaning for themselves (and consequently, empathy for) of the client's position, and transfer of that meaning into a favorable ruling.

The Science of Persuasion and Storytelling in Litigation

Andrew G. Deiss (Deiss Law PC)

Room 170

This presentation will discuss the science behind the persuasive power of stories over rhetorical argument in actual litigation. It will describe the scientific research that explains how judges and jurors perceive and are persuaded by narrative. It will then turn to what stories are, what stories are not, and how to incorporate storytelling in all aspects of trial and litigation.

9:25-10:10

Categories and Categorical Thinking: The Dark Side of Cognitive Rhetoric

Lucy Jewel (University of Tennessee) and Elizabeth Megale (Savannah Law School)

Room 178

This presentation expands upon our earlier work with categories and cognitive rhetoric. This time we focus on the negative impact that cognitive rhetoric can have on the legal system, civic culture, and even legal education. We then consider how we might address these problems.

Mastering the Science and Art of Interpersonal Effectiveness for Successful Legal Negotiations

Sarah Shelton (Chicago School of Professional Psychology)

Room 170

Successful conflict resolution, mediation, settlement negotiations, and verdicts all

require keen interpersonal perceptiveness and advanced persuasive abilities by legal professionals. This presentation will provide education and training in practical strategic skills supported by empirical evidence to yield successful results in these domains of legal practice. Psychological techniques originally utilized in treatments for ineffective relationship dynamics in a clinical setting and later adapted for business transactions in the corporate world will be presented within the framework of legal persuasion. Attorneys will acquire increased knowledge, comprehension, and ability to employ specific skills in a systematic and strategic manner to obtain desired results within a legal framework.

10:10-10:40

Coffee break/snacks

10:40-11:25

Religion's Role in Juror Decision Making

Monica K. Miller, Logan A. Yelderman, Alicia DeVault (University of Nevada–Reno)

Room 178

Religion is important in the lives of many Americans, and it is no surprise that religion is related to legal attitudes and juror decisions. However, religion is rather complex, and includes multiple characteristics such as affiliation (e.g., Catholicism, Buddhism, Judaism), beliefs (e.g., fundamentalism, devotionism, evangelism), and orientation (i.e. intrinsic, extrinsic, and quest). Each of these characteristics plays a role in what individuals believe and how they express their beliefs. For example, fundamentalists tend to believe that people are responsible for their own behavior and thus fundamentalists tend to be more punitive toward wrongdoers than non-fundamentalists. In order to further understand the role of religion in the courtroom, it is necessary to explore multiple characteristics. Previous research has revealed relationships between religion and legal attitudes and behaviors. For instance, holding harsh perceptions of God was associated with favoring the death penalty, and attending a fundamentalist church, compared to a non-fundamentalist church, was associated with death penalty support. The aims of this talk are to review the literature on the relationship between religion and jurors' legal attitudes and behaviors and address gaps in both research and methodology. Finally, the legal implications of this research for judges, lawyers, and trial consultants are discussed.

Using Psychological Persuasion Tactics in Judicial Writing

Anne Mullins (University of North Dakota)

Room 170

Advocates are not the only legal professionals who use persuasion. Judges can—and do—use persuasion tactics in their writing. My presentation will focus on some of the psychological persuasion tactics identified and described by Dr. Robert Cialdini in his bestseller, *Influence: Science and Practice* and how judges incorporate them into their written opinions. My foundational article on the subject, *Subtly Selling the System: where Psychological Influence Tactics Lurk in the Judicial System*, is available at 48 U. Rich. L. Rev. 111 (2014). I am currently writing a more in-depth article on one of the persuasion tactics and how judges use it in civil rights opinions.

11:35-12:20

The Science of Legal Writing—Is There Any?

Lance Long (Stetson)

Room 178

I recently co-wrote a book called “The Science Behind the Art of Legal Writing.” The book discusses scientific and empiric evidence that supports what legal writing professionals think constitutes “good” and “persuasive” legal writing. My proposed presentation does not discuss the book per se, but rather a problem we discovered while writing the book; there is painfully little social and cognitive psychology specifically addressing legal writing—lots of K-12 and college studies, but not many legal writing studies. My proposed presentation will focus on why and what we should do to address this void.

Tell It to Win It: Motivating Jurors, Judges & Arbitrators to Find In Your Favor

Arianne Fuschberger (Persuasion Strategies) and Partick Day, Esq. (Holland and Hart, LLP)

Room 170

In our work we have identified seven key factors that motivate legal decision makers to find in your favor. This presentation teaches these factors interspersed with illustrations from actual case examples. Attendees will leave with an understanding of the psychology behind the motivations and with practical tips for effective persuasion to take back to their practices.

12:20-1:00

Lunch

1:05-1:50

Psychodrama and the Art of Persuasion

Dana K. Cole (University of Akron School of Law)

Room 178

PSYCHODRAMA is primarily a group therapy method, but it has become for lawyers a discovery tool that allows us to access the experiences of others—to see things as our clients and witnesses saw them, to feel it as they felt it, and then use what we have discovered in every phase of the trial. It empowers us to present our case to the jury in a way that reveals not only what happened but how it was experienced. The jury can relate to our client and the witnesses on an emotional level. The story as lived, felt and experienced is not only engaging—it is ultimately believable.

Can hot-tubbing enhance jurors’ understanding of expert testimony?

Eddie Greene (University of Colorado—Colorado Springs)

Room 170

Jurors tend to under-utilize scientific and technical expert testimony (Bornstein, 2004; Koehler, 2001) and as a result, expert testimony often fails to aid jurors in understanding other evidence presented during a trial. This paper will explore a novel concept for addressing jurors’ comprehension problems: the “hot tub” technique that changes the nature of expert testimony. In its purest form, opposing experts testify on the stand together and question each other before the trier of fact. In a less radical version, expert testimony is re-ordered so the experts appear one after another. The hot-tub process, used in trials in Australia and in administrative and arbitration proceedings in several other countries, is virtually unknown to American judges and lawyers. I will explore the psychological and legal issues it raises and discuss its prospects for enhancing jurors’ comprehension of expert testimony.

2:00-2:45

Teaching Psychology to Law Students to Make Them “Practice Ready”

Marybeth Herald (Thomas Jefferson School of Law)
Room 178

The reality of practice is that law’s ability to resolve human conflict rests not just on legal rules, but a host of psychological factors. Legal education does not normally encompass this training. My presentation focuses on how to teach cognitive biases in law classes and explain their importance to law students. Selected biases would include explanations and examples of the following: (1) framing (in writing and speaking); (2) the egocentric bias; (3) the confirmation bias, selective perception, and rationalization; and (4) the availability bias. Students need to understand the subtle but effective influence of cognitive biases to counteract them effectively.

A Tale of Two Countries: Cell Phone Searches – Nothing to Wurie About and Much to Fearon

Julie St. John (University of Detroit Mercy)
Room 170

Both the Supreme Court of the United States and the Supreme Court of Canada recently grappled with the issue of the constitutionality of cell phone searches incidental to arrest. (Compare the Riley/Wurie decision from the Supreme Court of the United States and the Fearon decision from the Supreme Court of Canada.) Yet despite similar factual and legal underpinnings, the two courts come to contrasting conclusions. Rather than applying a traditional comparative law analysis, the cases are examined through the perspective of cognitive science as a means to reconcile the cases.

2:45-3:00

Coffee Break/Snack

3:00-3:45

How cognitive psychology forces us to rethink the teaching of persuasive legal writing to first year law students

Adam Todd (University of Dayton)
Room 178

This presentation explores whether the teaching of advocacy in law schools, particularly to first year students, needs to be rethought in light of the latest

research in the fields of neuroscience and cognitive psychology. Legal advocacy teachers need to grapple with the challenge of prioritizing rational, legalistic arguments in the classroom while acknowledging the equally or more powerful non-rational elements involved in judicial decision making. Teachers who embrace this challenge can better train students to be “practice-ready” for the 21st Century.

Zen and the Artistry of the Emotionally Regulated Advocate

Christine Kelton (Whittier Law School), Rob Durr (Northwestern University)
and Debra Austin (University of Denver)

Room 170

Our presentation will begin with the neuroscience of emotional regulation including lawyer brain structure, how emotions are manifest in the brain and autonomic nervous system, and how emotions impact thinking. We will introduce empirically supported strategies to enhance emotional regulation and guide an audience practice on mindfulness techniques such as STOP, the use of a mantra, and role of a thinking log can play in self-management. We will conclude by demonstrating how the emotionally regulated advocate is more likely to better serve the needs of clients and the legal community and effectively persuade clients, opposing counsel, judges, and juries.

3:55-4:40

Is Bad Stronger than Good in Selecting a Persuasive Theme? An Empirical Investigation

Ken Chestek (University of Wyoming)

Room 178

Cognitive psychologists have identified a wide range of phenomena in which negative stimuli are more powerful than positive stimuli. What does that mean for persuasive legal writing? This session will report the author’s findings of an empirical study he conducted with active judges as test subjects, to determine whether negative themes have more impact on judicial thinking as compared to positive themes.