Wyoming Law Review

Volume 16
Number 2 *Psychology of Persuasion Symposium*

Article 1

January 2016

Introduction to Psychology of Persuasion Symposium

Kenneth D. Chestek

WYOMING LAW REVIEW

VOLUME 16 *2016* NUMBER 2

INTRODUCTION TO PSYCHOLOGY OF PERSUASION SYMPOSIUM

*Professor Kenneth D. Chestek**

In February, 2014, the University of Nevada Las Vegas hosted a two-day Conference on Psychology and Lawyering: Coalescing the Field. Twelve different panels, each with multiple presenters, discussed various ways in which the fields of law and psychology intersect.[1] Topics included psychology and client relations; legal ethics; perceptions of witness testimony; lawyer (and law student) wellbeing; and the psychology of persuasion. After the last sessions were concluded, the organizers[2] hosted an informal discussion centered on the question, "Where do we go from here?" Various options were discussed, ranging from scheduling another large-scale conference addressing a wide range of topics to sponsoring a series of smaller conferences focused on more discrete aspects of how psychology affects the practice of law.

I came away from the conference both energized and daunted by the wide range of possibilities for going forward. But as a professor specializing in courses on legal writing, analysis, and persuasion, I had become interested in how persuasion works and how judges think.[3] Thus, my attention gravitated toward the idea of a small, targeted follow-up conference focusing on the topic of the psychology of persuasion.

* Associate Professor of Law and Assistant Director, Center for the Study of Written Advocacy, University of Wyoming College of Law.

[1] Video recordings of all sessions are available online, see *2.21-2.22.2014—Psychology and Lawyering Conference*, VIMEO, https://vimeo.com/album/2771068 (last visited Apr. 17, 2016).

[2] The principal organizer was Professor Jean Sternlight, Director of the Saltman Center for Conflict Resolution at the University of Nevada Las Vegas.

[3] *See, e.g.*, Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ASS'N LEGAL WRITING DIRECTORS 1 (2010); Kenneth D. Chestek, *Competing Stories: A Case Study of the Role of Narrative Reasoning in Judicial Decisions*, 9 LEGAL COMM. & RHETORIC: JALWD 99 (2012). The work in process that I presented at the UNLV conference was later published, see Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, 15 NEV. L.J. 605 (2015).

In thinking about the conference, it occurred to me that not only was there a great deal more work to be done in this area, but that some work in this area was already going on in the psychology departments of universities all over the country, and that both law professors and psychology professors might benefit from an exchange of ideas and methods. It seemed to me like the legal academy was full of ideas about things that ought to be studied, but had little expertise in studying them in a rigorous and scientifically valid way. I further expected that the psychology academy was full of good ideas about *how* to study psychological phenomena, but might welcome some help from the legal academy on ideas about *what* phenomena deserved further study.

Luckily for us, the University of Wyoming is the home institution of Professor Narina Nuñez, a national leader in the field of Psychology and Law and a faculty member of the University of Wyoming Psychology and Law Research Lab.[4] I contacted Professor Nuñez with the idea of having the University of Wyoming Department of Psychology co-sponsor a Psychology of Persuasion conference to be held at the University of Wyoming College of Law in September 2015. She enthusiastically got behind the project.

The topic of "psychology of persuasion," of course, directly impacts the practice of law. Not only trial lawyers, but lawyers in general, are engaged in persuasion on behalf of their clients on a daily basis. Thus, it seemed logical to us to invite the practicing bar into the conversation too. We therefore took the steps necessary to get our conference certified for Wyoming continuing legal education credit, and then sent an invitation to all members of the Wyoming bar to not only attend, but also to make presentations during the conference.

Thus, on the afternoon of Friday, September 18, 2015 and continuing all day on Saturday, September 19, 2015, a group of nearly one hundred lawyers, law professors, psychology professors, and students gathered to hear eighteen different presentations on various aspects of the psychology of persuasion. The presenters included all three major groups: law professors, psychology professors, and practicing lawyers. The sessions were scheduled in such a way as to permit ample time for questions and answers, with sufficient breaks to allow all of the participants to engage with each other and share their perspectives on common issues. All but one session were video-recorded and are available online.[5]

---

[4] *See generally Department of Psychology: College of Arts & Sciences*, UNIV. OF WYO., http://www.uwyo.edu/psychology/research/psychology%20and%20law%20lab.html (last visited Apr. 17, 2016).

[5] For a synopsis of each session, with links to the video recording of each session, see *Schedule of Events: Psychology of Persuasion Conference*, UNIV. OF WYO., http://www.uwyo.edu/law/cswa/psychology-of-persuasion-conference/agenda.html (last visited Apr. 17, 2016).

The University of Wyoming Law Review got on board with the conference from the inception. The 2015–2016 Editorial Board agreed to publish a symposium issue consisting of the best articles presented at the conference, and agreed to review for possible publication any of the articles submitted from the conference. From those submitted, the Wyoming Law Review now presents, in this issue, six of the articles arising from the conference. These articles represent the broad mix of presenters at the conference: some are by law professors, some by psychology professors, and one is presented from the point of view of the practicing bar. All articles provide analysis of topics of immediate use to the practice of law.

Professor Lance Long gets things started with an insightful discussion of why empirical studies of the law are important, while lamenting the relative dearth of scientifically valid studies.[6] A professor of legal writing, he set out to discover the best scientific research on what writing techniques work the best so that he could be sure he was teaching only proven methods. Sadly, he found very little scientific research on written advocacy; he exhorts us to engage more rigorously in this work.

Next up is an important work by Professor Michael L. Perlin, the founding director of the International Mental Disability Law Reform Project, and Attorney Alison J. Lynch, an attorney at Disability Rights New York.[7] Before entering academia, Professor Perlin spent thirteen years as a lawyer representing persons with mental disabilities. Professor Perlin and Ms. Lynch discuss the serious problem of "sanism" in representing persons with mental disabilities. Sanist lawyers (and judges) distrust clients with mental disabilities and trivialize their complaints. In addition, sanist lawyers fail to forge authentic attorney-client relationships with such clients and reject their clients' potential contributions to case-strategizing, and take less seriously case outcomes that are adverse to their clients. They recommend a therapeutic jurisprudence model to help overcome these unconscious biases.

Professor Anne E. Mullins challenges some important assumptions about the readers of judicial opinions in her article.[8] She reviews the existing literature about why, and how, judges write opinions, but then observes that all of the existing literature assumes the presence of a "conscious and engaged reader; one

---

[6] *See* Lance N. Long, *Is There Any Science Behind the Art of Legal Writing?*, 16 WYO. L. REV. 287 (2016).

[7] *See* Michael L. Perlin & Alison J. Lynch, *"Mr. Bad Example": Why Lawyers Need to Embrace Therapeutic Jurisprudence to Root out Sanism in the Representation of Persons with Mental Disabilities*, 16 WYO. L. REV. 299 (2016).

[8] *See* Anne E. Mullins, *Jedi or Judge: How the Human Mind Redefines Judicial Opinions*, 16 WYO. L. REV. 325 (2016).

who uses a conscious mind to evaluate the judge's analysis."[9] She then astutely points out that readers actually approach a judicial opinion with two different minds: one that is deliberate, rational and logical, and the other much faster and more intuitive. Relying primarily on the work of Daniel Kahneman,[10] she argues that both judge and reader—writer and audience—need to be aware of his or her "fast" brain, and the possible cognitive biases that it may introduce into the process of communication and understanding.

Next, Professor Narina Nuñez and researchers Victoria Estrada-Reynolds and Kimberly A. Schweitzer present a fascinating review of some research they and others have been conducting into the behavior of mock juries.[11] The research team conducted numerous experiments in which they manipulated jurors' emotions in various ways, to determine what effect, if any, their emotional responses had on their ultimate decisions in the case. Jurors were given facts designed to evoke feelings of sadness, anger, disgust, and fear, to determine which of those emotions had the greatest effect on the final outcome. Their findings are important reading not only for legal academics but even more importantly for practicing trial lawyers.

Professor Edie Greene and researcher Natalie Gordon next challenge us to re-think the way expert testimony is presented at trial, in both the civil and criminal contexts.[12] After describing the growth of the use of expert witnesses at trial over the past several decades, they describe some of the difficulties that jurors report in trying to understand and interpret expert testimony. They report that, while jurors do appear to be able to detect and account for adversarial bias in expert testimony, in complex cases jurors still struggle with understanding and applying the testimony they have heard. The problem may be particularly acute when both sides present conflicting experts, often separated by days or weeks as the trial unfolds. They propose a unique solution, based on some promising results in Australian courts: the "hot tub" model in which experts testify either simultaneously or one right after the other.

Finally, Professors Debra Austin and Rob Durr turn our focus inward, toward lawyer well-being.[13] They posit that emotional intelligence is essential to success as a lawyer (in such areas client counseling, negotiation, jury selection, courtroom conduct, and navigating office politics), but is a topic rarely discussed in the law

---

[9] *Id.* at 334.

[10] *See* DANIEL KAHNEMAN, THINKING, FAST AND SLOW 9 (2011).

[11] *See* Victoria Estrada-Reynolds et al., *Emotions in the Courtroom: How Sadness, Fear, Anger, and Disgust Affect Jurors' Decisions*, 16 WYO. L. REV. 343 (2016).

[12] *See* Edie Greene & Natalie Gordon, *Can the "Hot Tub" Enhance Jurors' Understanding and Use of Expert Testimony?*, 16 WYO. L. REV. 359 (2016).

[13] *See* Debra Austin & Rob Durr, *Emotion Regulation for Lawyers: A Mind is a Challenging Thing to Tame*, 16 WYO. L. REV. 387 (2016).

school curriculum. Since a high level of emotional intelligence not only promotes lawyer well-being but higher levels of lawyer performance, Professors Austin and Durr encourage us to develop students' emotion regulation skills (one component of emotional intelligence) while in law school.

I thank all of the participants in the conference, and hope that the experience—and this symposium issue—will begin some conversations between the legal academy, the psychology academy, and the practicing bar. We all have a great deal to learn from each other.