



The psychological science of persuasion

People (read: jurors) will adhere to their beliefs despite overwhelming evidence to the contrary

BY JOHN P. BLUMBERG

Why don't the best facts always win the case? Why are logical arguments rejected? The answer is that the brain accepts some information but rejects other information. This article explores important aspects of how the brain works and how trial lawyers can present their cases in ways that overcome the brain's built-in resistance to persuasion.

When a person's belief is challenged with solid evidence to the

contrary, the belief often becomes stronger. When people are told what they should believe, many reject the message and strongly consider the opposite. And when the subject matter is complex, it is frequently rejected in favor of more simple explanations that seem logical. Each of these phenomena occurs in part because of how the brain works.

In a recent national experiment, these phenomena were tested, and the result was the election of a person who

offered simple solutions to complex problems and recognized that appealing to core beliefs would overcome a more logical recognition of how complex things really are. This is the world from which our juries are selected. This article will be in two parts: the first part will explain why the brain works this way, and the second part will suggest some ways of advocating positions that will not be rejected by a brain that is built to be skeptical and resistant to attempted persuasion.



The brain works this way

Memories form the basis of our recognition and ability to function in the world. Neuroscientists still debate exactly where these memories reside in the brain. For purposes of our discussion, however, it doesn't matter. What does matter is to understand that the brain has two hemispheres: left and right. The left has organized memories into a logical world-view, a model of the way things are supposed to be. The right has been described as the emotional brain that comprehends metaphor, love and deduction. The left brain is the more dominant. Neuroscientist V.S. Ramachandran is the director of the Center for Brain and Cognition at the University of California, San Diego. He theorized that:

The left hemisphere's job is to create a model and maintain it at all costs. If confronted with some new information that doesn't fit the model, it relies on Freudian defense mechanisms to deny, repress or confabulate; anything to preserve the status quo.

Dr. Ramachandran explained why we have this tremendous need for consistency, coherence and continuity:

At any given moment in our waking lives, our brains are flooded with a bewildering variety of sensory inputs, all of which have to be incorporated into a coherent perspective based on what stored memories already tell us is true about ourselves and the world. In order to act, the brain must have some way of selecting from this superabundance of detail and ordering it into a consistent 'belief system,' a story that makes sense of the available evidence. When something doesn't quite fit the script, however, you very rarely tear up the entire story and start from scratch. What you do, instead, is to deny or confabulate in order to make the information fit the big picture. . . . Far from being maladaptive, such everyday defense mechanisms keep the brain from being hounded into directionless indecision . . .¹

Dr. Ramachandran's theory is consistent with the earlier work of Stanford University psychologist, Leon Festinger, who developed the concept of "cognitive dissonance" which he explained as the state of two completely inconsistent or irreconcilable thoughts that cannot co-exist because of the mental "discomfort" that results.

Confirmation bias and the left brain

Dr. Festinger's student and later collaborator, Professor Elliot Aronson, concluded that when cognitive dissonance is present, the left brain will distort or rationalize one of the thoughts so that it is consistent with the other. In other words, because people don't like to believe that they may be wrong, they will limit or reject new information that doesn't fit within their pre-existing beliefs. Psychologists call this "confirmation bias." This is important for trial lawyers to understand because it explains why strong evidence is rejected when it conflicts with a contrary belief. The key is to present evidence in a manner that does not create the dissonance.

People will adhere to their beliefs despite overwhelming evidence to the contrary. Well-known examples: Vaccines cause autism, and climate change is a hoax or is unrelated to carbon pollution. In their 2010 article "When in Doubt, Shout!" Northwestern University researchers David Gal and Derek Rucker found that when closely held beliefs were shaken, people "engaged in more advocacy of their beliefs." In other words, when people started to have doubts about their beliefs after being confronted with contrary evidence, they became stronger advocates.

When people are told what to do (or what not to do), there is often a "boomerang effect" where people respond by wanting to do the opposite of what they were told. It is called "reactance," a theory developed in 1966 by social psychologist Jack Brehm. Reactance is the resistance to something that is perceived as a threat to one's autonomy

or freedom of choice. Words like "must," "should," and "need" are known reactance triggers. I learned this lesson during a mock trial. I was going through the verdict form and told the jurors how the questions should be answered. I had noticed that a young woman juror was paying close attention. I thought that I must have been very persuasive. Shortly afterward, while I observed deliberations on a remote monitor, I was stunned when she said, "Can you believe that douch-bag plaintiff lawyer telling us what to do?"

As V.S. Ramachandran observed, because our brains are flooded with a superabundance of detail that cannot be absorbed, it is designed to reject much of it. In human behavior terms, it can be described as a desire for a sense of order and predictability in their lives. TED-Talks speaker, Seth Godin, put it this way: "In a society with too many choices and too little time, our natural inclination is to ignore most of it." (Carmine Gallo, "Talk like TED: The 9 Public-Speaking Secrets of the World's Top Minds.") Whether it is called "skepticism" or "reactance," "mental overload" or "cognitive dissonance," it is a fact that can't be ignored.

Of course, not everyone automatically rejects new information. A recent study by the Pew Research Center ("How People Approach Facts and Information") concluded that the rejection of new information does not necessarily depend on a person's knowledge and education; rather, those who enjoy learning new things are more open to persuasion than those who find that trying new things is stressful. The more stress in a person's life, the more likely they will resist new information. The bad news is that 49% of the sample fit into the categories of "doubtful" and "wary." Many of these were distrustful in general of news sources.

Advocacy to overcome rejection

There is a story about a man who visits his doctor and complains, "When I raise my arm like this, my shoulder hurts." The doctor's advice: "Well, don't do that." If *reactance* is the expected result



of being told what to think or what to do, then don't tell jurors "you need to" or "you must" or "you should." Don't tell jurors that the evidence "compels" a verdict for your client. Social psychology studies on reactance have found that words like "possibly," "perhaps," "maybe" and "you might consider" do not ignite the reactance attitude of "you can't tell me what to do." Other studies on this phenomenon have shown that after making a suggestion of how the evidence might be evaluated, a simple *postscript* like "but you are free to decide for yourselves" almost completely eliminates the threat to personal autonomy. In other words, telling jurors that "the decision is up to you" prevents the rejection of your advocacy.²

In my article, "Keep it Simple" (Plaintiff magazine, Feb. 2015), I described the effect of presenting too much information and suggested how to package persuasion so that it avoided mental fatigue and cognitive overload. And much has been written on the effect of framing and themes to provide mental shortcuts that resonate with what seems to be common sense. But little has been written about the effect of questions that induce curiosity and can lead to self-persuasion. Curiosity has been described as a need to know and can be sparked by a question like, "why do you think that happened?" Studies have shown that when a question like that is posed to people, they don't wait around for the answer; instead, they surmise for themselves what the answer is. And because they figured it out themselves, it bears none of the phenomena of reactance or belief challenge.

The devil's advocate

Earlier, I discussed V.S. Ramachandran's theory that the left hemisphere of the brain is designed to protect and maintain the status quo. But Professor Ramachandran also theorized that the *right* hemisphere is fundamentally different and acts as a "devil's advocate" that forces the left hemisphere to revise its previous belief system. Stated another

way, the right brain looks for inconsistencies and questions the status quo. When the left brain can no longer resist, it gives way, and a different belief becomes part of a new status quo.

Even though the left brain resists being convinced, the right brain, acting as devil's advocate, can overcome the resistance. The title of "Devil's Advocate" was given to a canon lawyer of the Catholic Church in 1587. When a candidate for sainthood was nominated, the job of the Devil's Advocate was to take a skeptical view of the candidate's character, to look for holes in the evidence and to argue that any miracles attributed to the candidate were fraudulent. In modern usage, it is a person who challenges assumptions to test the validity of a position.

Using the methods of persuasion discussed above – that is, posing simple, non-confrontational questions that spark curiosity and self-persuasion, you can be the devil's advocate by spurring the right brain into action and motivating the "do nothing," "leave me alone," left brain to accept the logic of your advocacy.

Self-persuasion is the goal of the devil's advocate technique. In the 17th century, French philosopher, Blaise Pascal, observed: "People are usually more convinced by reasons they discovered themselves than by those found out by others." This principle was studied by Elliot Aronson, a social psychology professor (now emeritus) at the University of California, Santa Cruz. Dr. Aronson observed:

Self-persuasion is almost always a more powerful form of persuasion (deeper, longer lasting) than more traditional persuasion techniques – that is, than being directly persuaded by another person, no matter how clever, convincing, expert, and trustworthy that other person might be – precisely because in direct persuasion, the audience is constantly aware of the fact that they have been persuaded by another. Where self-persuasion occurs, people

are convinced that the motivation for change has come from within.³

Conclusion – and introduction

The plaintiff is required to satisfy a burden of proof. "Burden" is an appropriate word because of the difficulty in motivating the brains of jurors to accept a change in the status quo. Asking jurors to transfer defendant's money to plaintiff is seeking a change in the status quo. The jurors are asking themselves, "Why should I do that?" It takes less effort not to act. The brain's resistance to persuasion cannot be overcome by overwhelming evidence or eloquent oration. *The second installment of this article*, which will be published next month, will apply the psychological principles discussed in part one, and suggest how to use the devil's advocate approach to persuasion in voir dire, opening statement, expert examination and final argument.



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Endnotes

¹ V.S. Ramachandran, "The Evolutionary Biology of Self-Deception, Laughter, Dreaming and Depression: Some Clues from Anosognosia" (Medical Hypotheses, 1996)

² Steindl, et al., "Understanding Psychological Reactance" (Zeitschrift für Psychologie, Oct. 2015)

³ Aronson, "The Power of Self Persuasion" (American Psychologist, Nov. 1999)