

Harnessing “Expert Power” to Help Persuade the Jury

By Jessica L. Richman

When we make a presentation to a jury in a product liability case or any other case, we are attempting to persuade jurors to say yes to our characterization of the facts and evidence presented and, ultimately, to adopt our conclusions about the case. Psychologists and marketers have long studied the mechanisms by which people are successfully persuaded to a certain viewpoint and, more recently, have sought to understand what happens in the brain during this process. An understanding of these mechanisms, and some of the basic concepts of the psychology of influence, may help you make your arguments to the jury with maximum persuasive effect.

The Psychology of Persuasion: Authority Processing in the Brain

Robert Cialdini, a renowned social psychologist, has studied the psychology of persuasion for decades, both through real-world observation and more typical scholarly psychological research. In preparing to write his book, *Influence: The Psychology of Persuasion* (William Morrow & Co. 1993), Dr. Cialdini went “undercover” for three years: He applied for jobs and received training at used car dealerships, fundraising organizations, telemarketing firms, and similar organizations where economic livelihood depends on persuading others to say yes. Dr. Cialdini’s book, which is based on his observations during this time and subsequent study, remains the seminal work in the field and is used as a text in psychology and marketing classrooms nationwide. Given the central importance of persuasion in our profession, we as trial lawyers also may benefit significantly from learning to employ some of Dr. Cialdini’s key concepts.

Dr. Cialdini distilled six principles that are predictably and strongly connected

with the ability to influence others: reciprocity, scarcity, commitment and consistency, consensus, liking, and authority. According to Cialdini, this last principle—authority—means that people want to follow legitimate experts. Our attitudes and decision making are modulated by experts’ opinions, and we rely on those who have perceived superior knowledge for guidance in making our decisions. This “expert effect” has been widely documented and replicated in social psychological studies for decades. Recently, however, some researchers have been trying to understand why the “expert effect” is so powerful, and they have turned to neuroscience as a means to discover the explanation. Joseph R. Priester & Richard E. Petty, “The Influence of Spokesperson Trustworthiness on Message Elaboration, Attitude Strength, and Advertising Effectiveness,” 13 *J. of Consumer Psychol.* 408–21 (2003); Vasily Klucharev, Ale Smidts & Guillén Fernández, “Brain Mechanisms of Persuasion: How ‘Expert Power’ Modulates Memory and Attitudes,” 3 *Soc. Cognitive & Affective Neuroscience* 353–66 (2008).

Neuroscience is a field of the life sciences at the intersection of biology and psychology. It deals with the anatomy, physiology, biochemistry, or molecular biology of nerves and nervous tissue (such as the brain), especially as they relate to behavior and learning. Recent research has focused on finding out whether there are identifiable biologically based, or neuroscientific, models of persuasion.

One team of Dutch researchers found that those who were perceived by study participants as “experts” had the effect of modulating the activity in certain regions of the participants’ brains (the medial temporal lobe and the caudate nucleus) that were involved in trustful behavior learning and declarative memory encoding. Klucharev, Smidts & Fernández, *supra*, at 353–66. In

connection with the greater activity in these brain regions, the study participants were more trustful of, and tended to have a better memory of, information presented by those perceived as “experts.” The Dutch researchers concluded that the biological—or neuroscientific—explanation for effective persuasion through “expert power” is probably this enhanced memory formation and more favorable attitude toward objects presented by the expert.

Expertise and Trustworthiness

Psychologists studying the persuasiveness of communications have found that a critical variable underlying the persuasiveness of the sender of a message is credibility. Priester & Petty, *supra*, at 408–21. Credibility, in turn, depends on two qualities: expertise and trustworthiness. Not surprisingly, jurors are more likely to follow a proposal from someone who seems both expert and trustworthy. Donald E. Vinson & David S. Davis, *Jury Persuasion: Psychological Strategies & Trial Techniques* (Glasser LegalWorks 3d ed. 1996).

An audience may infer expertise or competence simply through a speaker’s reference to formal credentials or experience in similar situations, but attorneys have only a few opportunities to include these types of information in a presentation to the jury (and depending on jurors’ attitudes and backgrounds, too much information of this sort may impair another important aspect of your influence, likeability). Competence in presenting your case to the jury, however, suggests a more powerful expertise through command of the subject matter and the issues at hand. This involves not only a mastery of the facts, legal principles, and evidence but also your manner of delivery. It is unsurprising that a smooth delivery with an appropriate amount of eye contact, and good diction and succinct sentence

structure, will be interpreted as a sign of competence. What may be surprising is that researchers such as Dr. Cialdini have also found that listeners will lend more credibility to someone who speaks just a little—but not too much—faster than the average individual.

Trustworthiness is the other key aspect of establishing yourself as a credible presenter and capitalizing on your “expert power.” Trustworthiness is closely associated with a jury’s belief that you will only speak the truth and make assertions based on valid information. When a juror suspects that you are being insincere or making statements you only partially believe, or if a juror perceives that you have a commitment to one side to the exclusion of any contrary information, your trustworthiness may be impaired. This is why it is important that the information and the messages you are conveying should not be one-sided. According to Dr. Cialdini, you create trust as well as rhetorical power by conceding a weakness in your case immediately before—not after—you explain your strongest points. Peter Wilby, “Persuasion Is a Science: There’s a Proven Formula for Getting People to Do What You Want Them to Do—and Politicians Would Be Well Advised to Learn It,” *New Statesman*, Feb. 26, 2007, at 15. When you mention a downside to your argument, you

can establish yourself as a credible source of information. Then, when you move on to your strongest argument, Dr. Cialdini believes, “[p]eople then listen differently to the next thing you say. They open their ears and minds.” *Id.*

This advice has, at its root, the concepts of primacy and recency. People tend to believe more intensely what they hear first—this is the power of primacy. People may lose focus, or the power of your presentation may be diminished, as time passes. However, people remember better what they heard last than what they heard at an earlier point—this is the enhanced memory effect of recency. When you use the concepts of primacy and recency together, particularly when establishing trustworthiness, you can start a presentation with your key points, concede some counterpoints in the middle where they are more likely to be of diminished recall and power, and end with your strongest arguments that the jurors are most likely to remember. See, e.g., Russ M. Herman, *Courtroom Persuasion: Winning with Art, Drama and Science*, 122–23, 126 (West 2d ed. 2009).

The Limits of “Expert Power”

There are a number of components of persuasion that can powerfully affect how successful you are in influencing your jury in

combination with the principle of authority and the ability of jurors to approve and remember your messages. Understanding these additional principles will enhance your ability to tailor your presentation to take advantage of the techniques and principles that best suit your case and your jurors. In addition, the Dutch researchers found that “expert power” successfully affects audience attitudes and memory only when the “expert” is speaking about something within his or her expertise. It does not lead the audience to accept the “expert” as an authority on *everything*, so you will need to remember not to exceed the persuasive capital you build through your “expert power.” Nonetheless, being smart about how you establish credibility, expertise, and trustworthiness with your jury throughout trial, particularly at the outset of your case (primacy, in your opening statement) and at the end of it (recency, in your closing argument) may be a powerful tool to enhance how jurors remember and feel about your case and to increase your persuasive power. ■

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