

Book Review: Ideology, Psychology, and Law
Edited by Jon Hanson
Oxford University Press, Inc. (2012, 800 pages)

BY RITA HANDRICH

Rita R. Handrich, PhD is a trial consultant with Keene Trial Consulting and the Editor of The Jury Expert. She has a long-standing curiosity about the myriad ways our experiences, values and beliefs are reflected in our decisions and in how we 'hear' various fact patterns. She is a frequent contributor to The Jury Room <http://www.keenetrial.com/blog>, recipient of ABA Blawg 100 Awards for 2010 and 2011, where bias, ideology and persuasion are discussed in their ever-changing (and often a little scary) forms.

Trial consultants, and the very best trial lawyers, practice with an awareness of the law, the domain of the case facts, and the way jurors are likely to understand and misunderstand all of it. If these avenues of thought had a single intersection, you would find that Jon Hanson has been living on that corner for 25 years. As a Harvard Law School professor and prolific writer, he has done much to keep me and many others informed of the traffic coming from these diverse directions.

In March of 2012, the Harvard Law School [published an interview](#) with Dr. Hanson and asked him what big insights he has learned over his career that led him to study the intersection of law and the mind sciences. His reply follows:

"To keep things simple, I'll boil them down to two big insights.

First, mind scientists had learned that most people in western cultures operate with a naïve and commonsensical model of human psychology that presumes that an individual's actions reflect a stable personality or disposition and little else. From that perspective, people are presumed to be in control of, and responsible for, their behavior and its consequences. By the way, that's the same model of human behavior that is employed in law and conventional legal theory. And it's the same model that the tobacco industry actively promoted.

The second big insight was that that model of human behavior is fundamentally wrong. People are moved less by a stable disposition and more by internal and external forces that generally go unnoticed in our causal stories. The errors go beyond our causal assessments of other people's behavior; we confuse and deceive even ourselves, believing our own reasons, when social science reveals those reasons often turn out to be mere confabulations."

As trial consultants, these two paragraphs boil down what we repeatedly observe in mock jurors processing case facts and simultaneously supplementing the evidence with their own thoughts, values, beliefs, and assumptions at an often dizzying rate. Humans are not akin to logic- and reason-based data processors. We do not take in facts and spit out evidence-based conclusions. We hear your story and automatically supplement it with our own experiences and biases, forming conclusions that are strongly felt and defended—even when we cannot explain the ‘why’ of our conclusions. Ideology (what we believe and hold dear at our core) is inescapable. I cannot step outside my own biases and neither can you. Ironically, believing we can avoid our own intrinsic biases makes us more prone to step right in the middle of the proverbial ‘it’.

Bias is a fundamental element we consider in every legal case we test in pretrial research. But, as a word, ‘bias’ conjures up a negative reaction. Bias is bad. We don’t want to appear biased. Usually. I like the relative neutrality of the word ‘ideology’. It is more descriptive of how we each inhabit our beliefs, attitudes and values rather than a direct indictment of our character. We can invite jurors to consider their ‘ideology’ or we can shame them for having ‘biases’. In other words, we can curiously consider their reactions rather than punitively judging them.

I have long believed that the most insightful nuggets of information are found at the intersections of multiple disciplines. Although I was daunted at the prospect of 800 pages, this highly unusual tome illuminates the intersection of the “mind sciences” (e.g., social psychology, social cognition, psychiatry, cognitive neuroscience, neurolaw, decision theory, behavioral economics, and so on) and the law. In short, this book tells us that we are almost never impartial beings and our application of the law to specific fact patterns is also rarely impartial.

This book isn’t a fast read, but it is an exhaustive reference work, intended to be read topically. It is long, written by researchers as an encyclopedic resource for thinkers who want to learn more about how we make decisions and who are willing to take time to ponder how to apply that knowledge in the day-to-day challenges and questions of litigation advocacy. You might think of it like a series of densely written academic articles that one has to chew, digest, and ponder, one at a time. The articles requires study, and for those willing to do it, the knowledge will be worth the effort. If you do not enjoy reading (and, at times, deciphering) academic articles, you will not enjoy the majority of this book. If you want to take on the challenge, you may find it most useful initially to pick and choose chapters of immediate interest and then to expand your reading into areas not as familiar to you.

I began with Chapters 12 and 13 (both on bias and how we can buffer, aggravate or help make bias visible) and then chose Chapter 14 (the backlash against mind sciences among legal academics). The more I read, the more curious I became as to how many of my own assumptions are dated and inaccurate given the more recent research. That curiosity pushed me to read more.

The [summaries of literature](#) the chapters within this book provide are invaluable to those interested in learning more about how decision-making is done both psychologically and contextually, what we know now about how to influence that process, and (perhaps most importantly) how very much we still have to learn. Or, as [Jon Hanson himself summarizes](#):

“How we think’ affects ‘what we think’ and ‘what we want to believe’ about the law”.

This single sentence is lovely. It promotes curiosity rather than judgment. It opens our minds to consider ‘ideology’ rather than ‘bias’ and allows us to identify alternate ways of telling our story more inclusively and invitingly so that individuals with varying worldviews can come together on their conclusions about your legal narrative. And that, to me, is the essence of persuasion as seen through the particular lens of *Ideology, Psychology, and Law*.