

A Book Review

by Rita Handrich

The Science of Attorney Advocacy: How Courtroom Behavior Affects Jury Decision Making. [298 pages]

By *Jessica D. Findley and Bruce D. Sales* - 2012 from the American Psychological Association

We are all constantly trying to prioritize all of the reading that we'd love to do. We hear about something new, and it can idle on the to-do list for too long. Truth be told, this new book by Findley and Sales would have been stuck there for too long, if it wasn't for this review. I'm glad I was obliged to tackle it; it was time well spent.

This is an academic book written in a very accessible style with limited jargon and lots of information as to what advocacy lore is supported (and what is not supported) by the research literature. The book covers a wide variety of topics: attorney demeanor, attorney verbal communication as well as paralinguistic and kinesic communications (all are defined), the attorney-client relationship and attorney storytelling.

The authors say the book was written to document which aspects of trial advocacy lore are actually supported by the literature. They comment that:

“trial commentators are [typically] relying on ‘pop’ psychology and seldom using social and behavioral scientific research as the basis for their proposed strategies.”

This book addresses that omission by summarizing trial advocacy lore in each area and then examining the research literature to see what is actually supported and what is not. Each chapter is similarly structured. An overview of the trial advocacy literature is followed by a review of the social and behavioral research to see what recommendations are supported and which are not.

For example, the initial chapter on attorney demeanor addresses likability (how to be likable, honest and credible) based on trial commentator's published advice. Then the authors review the research to see what of trial advocacy lore is supported or not supported by the literature. In the chapter on attorney demeanor, they address whether likability affects whether the jury sees you as truthful, credible and persuasive and whether any of those things is related to ultimate success in your advocacy efforts. It's kind of like a “Mythbusters” for trial strategy and persuasion. The first chapter alone is a 48-page sprint through the research literature underlying much of what we know about the role of the various facets of demeanor on persuasion.

As an avid blogger, I was entranced by the potential blog topics I saw as I read through the book.

- Why you should limit your use of homographs [words spelled alike], homophones [words that sound alike], and homonyms [both of the former] in courtroom communication [page 73];
- Contractions are not good things [page 84];
- Painting a picture with your words is very persuasive [page 78];
- Communicating at a 10-year old level (common advocacy lore according to the authors) is not a good idea [page 86];
- Why channeling your inner Meryl Streep and using accents in the courtroom is sometimes a terrific idea and sometimes not so much [page 104];
- The vagaries of facial hair, hair in your face and, even long hair for both men and women [page 130];
- Really liking your client can save his or her life and how you can communicate that liking to courtroom observers [page 144];
- Four ways the story model works in the courtroom [page 203].

And there is a lot more. This is a good introductory book for many of us:

If you are a law student wanting to know more about the intersection between trial advocacy lore and the research literature, this is a good introduction.

If you are a trial consultant or professor and want a good resource for finding lots of references quickly or a quick overview of the literature to which you may not have been introduced in your academic training, this is a good introductory and readable text.

If you are a fairly new trial attorney and want to understand the “why” behind much of trial advocacy recommendations, this is a good overview with an easy to digest narrative style.

If you are an experienced attorney and just want a reference for information on, for example, how accents work for or against you depending upon your role in the case, this book has references and examples.

It would serve you well as a chapter book you pick up to learn about one area of trial advocacy lore at a time.

It is not perfect. I was disappointed in the time frame of the research cited. Most of the references range from 1970 to 2005. There are a dozen or so thrown in after 2005—as if the research was done and then a few well-known, more recent pieces were tossed in to make the book seem more comprehensive than it actually is.

There is a huge amount of research conducted and published since 2005 that could have been used to great effect in this volume. There are no easy answers to the questions raised about how what the trial lawyer does, says and communicates in court impacts jurors. It depends on many and myriad factors. While Findley and Sales have done a terrific job of addressing the classic research studies and research through 2005—I'd like an update that includes the huge quantity of research churned out by social sciences researchers in 2006 through the present day.

Rita R. Handrich is a trial consultant with Keene Trial Consulting and an avid reader of all things research [the more recent the better]. She is also Editor of The Jury Expert and blogs regularly at the Keene Trial Consulting blog: The Jury Room.