

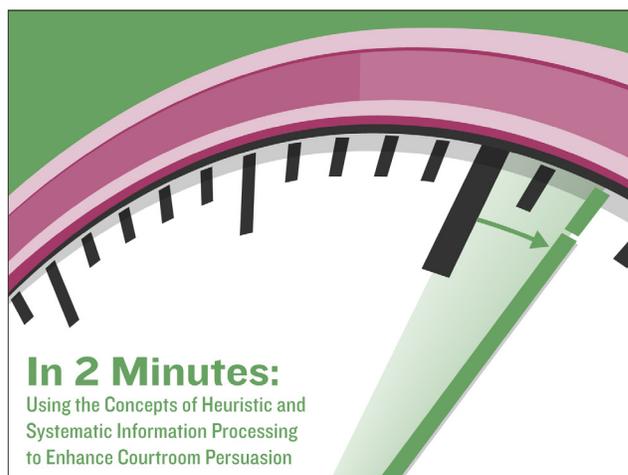


By James B. Stiff, Ph.D. | May 2017

The Science of Persuasion: Using the Concepts of Heuristic and Systematic Information Processing to Enhance Courtroom Persuasion

Research has shown that, in order to process and form opinions about persuasive information that has been transmitted to them, receivers generally adopt one of two cognitive approaches. They utilize either a *heuristic* or *systematic* information processing method. The heuristic-systematic model of information processing was first developed by Dr. Shelly Chaiken, a social psychologist.¹ In chapter 5 of *Persuasive Communication*, Paul Mongeau and I described the differences between these two approaches. Knowledge of how these cognitive-processing strategies come to bear on jurors' decision-making can be of great value to trial attorneys, particularly during their process of persuasive argument formulation.

A heuristic approach to persuasive message processing involves utilization of a familiar knowledge or rule structure as the means to process and reach judgment about that message. As opposed to careful analysis of the message at hand, seizure of a familiar mental schema conserves cognitive energy usage. For instance, jurors using heuristic reasoning might invoke mental schemas such as, "Experts



are usually correct," "Long messages are strong messages," "People I like generally have correct opinions," or "If other people believe it, then it is probably true." They tend to use heuristic reasoning, and forgo long, effortful processing of information, when their schemas seem relevant to the facts at hand, when the complexity of the information is beyond their ken, when time limitations for decision-making exist, or when the ramifications of their final judgment seem inconsequential.

In August of 2016, Jim Stiff and Paul Mongeau published the third edition of *Persuasive Communication*. The book is a comprehensive review of the theory and research on persuasive communication that spans more than 80 years of academic work in the fields of communication and social psychology. This research note is part of a series that briefly discusses topics related to the science of persuasion. It describes the practical implications persuasive communication techniques offer to lawyers practicing their craft.

Systematic processing, on the other hand, involves careful evaluation of the evidence and arguments a persuasive message sets forth. Jurors who engage in systematic processing scrutinize the logical validity of an argument, the quality of the evidence supporting the position being advocated, and the qualifications of the source of the message. As thorough, thoughtful reasoning is the hallmark of the systematic approach, it is the preferred method when consequences of decision-making are important, such as they are in a courtroom. It should be noted, as well, that opinions reached through careful analysis of persuasive information are less subject to waiver over time, that is, their mental staying power is more persistent than are opinions reached through heuristic methods.

Litigators should be aware that every juror will engage in some level of both systematic and heuristic processing during the course of a trial. Therefore, it is inaccurate to dichotomously categorize people as either systematic or heuristic processors. Effective judicial advocacy involves providing jurors with the tools and motivation to engage in effortful, methodical processing of the information they receive. At the same time, attorneys must be aware that some measure of heuristic processing will occur. They, thus, must ensure that they enhance the persuasiveness of those messages that have high likelihood of being analyzed through heuristic processes.

A trial lawyer can promote systematic reasoning by:

- Motivating jurors to exert cognitive effort. Such motivation can be achieved by reminding jurors of the significance of the issue being presented to them in the courtroom and of the implications of their final judgment. They must be inspired, as well, to recognize that their role in deciding the case carries a responsibility of great import.
- Simplifying complex issues and presentations. When jurors understand the material presented to

them, they are more likely to engage in the thoughtful processing that leads to measured judgment.² Complicated subject matter can be rendered more palatable by demarcating large issues into smaller segments. Multifarious issues can be more easily understood, as well, when visual exhibits depict the information through, for example, timelines, charts, and graphs.

- Identifying fact and expert witnesses who will be capable of effective teaching in the courtroom. Counsel should also ensure that these witnesses use consistent language and examples to explain concepts. Such consistency enables jurors to better organize, integrate, and recall information.

Recognizing that there will be situations where jurors will resort to heuristic reasoning, counsel must likewise encourage their adoption of those knowledge schemas that will prove favorable to the client's position. Optimal ways to facilitate favorable heuristic processing include:

- Ensuring that witnesses are likeable, knowledgeable, and trustworthy. The relatively low cognitive involvement inherent in heuristic information-processing strategies means jurors' agreement or disagreement with a message will primarily rest on their reactions to non-content cues, such as perceived communicator credibility and likeability.³
- Appealing to universal values such as integrity, fairness, and common sense.
- Provision of simple, typical cognitive decision-making schemas that jurors can use to form judgments about an issue, for example, "The test procedures conformed with industry standards," or "The wording on the contract he signed was clear."

Familiarity with these two cognitive-processing approaches empowers attorneys to more effectively

persuade others. It enables them to better tailor their persuasive arguments to influence the mindsets of their listeners. They can prepare trial strategies that encourage systematic information processing, as well as plan for juror use of heuristic processes.

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