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## NEWS

### The Best Educator Wins: The Psychology of Learning in the Courtroom.

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*Special to the Legal*

What William Butler Yeats recognized a century ago when he said, “Think like a wise man but communicate in the language of the people,” is what any smart litigator can apply today: Communication is all about making your audience understand.

If jurors don’t understand what your case is about, you risk losing a favorable verdict. In a recent mock trial for a trademark case, for example, the plaintiff, a Philadelphia pharmaceutical company, was suing the defendant over a similar product name for a competitive product. On a gut level, jurors did not feel as though the defendant in the case had done anything wrong and were skeptical of some of the plaintiff’s actions related to the lawsuit.

At the conclusion of the mock trial, however, jurors still did not understand relevant aspects of the pharmaceutical industry, the processes involved in creating and naming products and how pharmaceutical products with long, confusing and similar-sounding names are differentiated by sophisticated users (The target consumers for these products were medical specialists.). As a result, jurors relied on their own ability to distinguish clearly between the product names and assumed that there was a potential for the users of the products to become confused simply because jurors themselves were confused.

When communicating legal and technical matters to a jury, as an attorney, you have two primary jobs: First, you must convince the jury to want to find for your client, and second, you must teach them about the case in a way they understand so they can find for your client.



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In other words, being persuasive enough for jurors to want you to win only gets you so far. If you don’t educate jurors to formulate their own arguments and fight for your client in the jury room, you risk losing the verdict in the dynamic of group deliberation.

Because you can’t rely on having a jury with the education and experience to understand the technological and procedural issues central to many cases, you must focus a great deal of attention on the best ways to educate jurors on the basic foundations related to the key case issues.

How can you present your case so that jurors perceive and interpret the evidence in the way most beneficial to your case? How will they organize the information to develop the stories in their minds? What can you do to help them retain key information supportive to your case?

Here are four effective ways to educate jurors:

**1. Create positive feelings among jurors about your case.**

Noted psychologist Christopher Heffner describes learning as

“the process leading to relatively permanent behavioral change or potential behavioral change.” As we learn, we alter the way we perceive our environment, the way we interpret the incoming stimuli and, therefore the way we interact or behave.

At the most basic level of the psychology of learning is the concept of association. The concept was first illustrated by psychology pioneer B.F. Skinner and his studies in operant conditioning. Essentially, by pairing pleasurable or unpleasant stimuli with a particular behavior, that behavior is either reinforced or extinguished. Skinner rewarded pecking behavior in pigeons by giving them food pellets, thereby reinforcing the behavior.

In a jury trial, if jurors associate a particular concept (for example, a medical invention) with a pleasing stimulus (such as perception of the invention alleviating an illness), a positive and pleasing image of the invention is created. If jurors pair their decisions in the trial with supporting the invention (i.e., making a decision that will allow that invention to reach the highest number of people at a low cost), their decision is reinforced by the positive feeling that their decision has helped others.

**2. Break down information into more manageable bits.**

People mentally organize the information they take in. They categorize concepts. They put the pieces of a story together in a way that makes sense for them. If the entire picture is not provided, their natural tendency is to fill in the gaps with what they believe should be there,

as opposed to what actually may be there.

The process of organizing information is also key to information retention. A common exercise in understanding this notion involves grocery lists. If you are told to go to the grocery store and pick up the items as presented in List A (lettuce, chicken, milk, green beans, cottage cheese and pork chops), there is a greater chance that an item or two will be forgotten than if you are instructed to go to the store and pick up items as presented in List B (Vegetables: lettuce, green beans; Meats: chicken, pork chops; Dairy: milk, cottage cheese).

While the lists contain identical items, categorizing the items breaks the information down into a more organized pattern, allowing for greater retention of the content.

By providing context to help jurors organize information, you give them a complete picture of the story you are conveying. You help them see the case through your eyes.

It is critical to help jurors assimilate and argue for your position by understanding why, for example, a particular product's claim is relevant to the product's utility; a company would wait a certain amount of time before formally informing its insurer of a potential claim; or a manufacturer would not put every suspected side effect of a particular medication on a warning label.

While the "why" may not seem relevant in a legal sense to the questions jurors must answer on their verdict form, it is critical in the juror perspective to complete the story in terms favorable to your client, thereby helping to direct the way in which jurors organize case evidence.

### 3. Keep it simple.

A common mistake attorneys make in communicating to jurors is to focus on what they want the jurors to understand without providing the foundation upon which they can understand it. You cannot hope to change behavior or perceptions if you do not start from the ground up.

For example, when teaching the jury

about the financial issues involved when a large corporation borrows money from a bank, you could educate them in the following ways:

Provide a general overview of industry practices outside of the case. When Company X wants to get a loan from a bank, here is the process, the industries involved and the roles of each industry.

Bring the explanation down to the level of your client's specific business practices, again using graphics to supplement.

Explain through the story of your case and how these industry practices apply to your client's obligations.

That said, the first key is to determine what you need jurors to understand and what you do not need them to understand (Consider the adage, "If they only need to know the time, do not teach them to build a watch.") Once you isolate what understandings are necessary to your story, you can develop an educational strategy, from the ground up, that will clearly inform and not overwhelm (which can inadvertently create a negative association for jurors).

In simplifying and organizing the information you provide jurors will unfailingly take the path of least resistance, finding the easiest route to make their decisions. Therefore, if you don't provide the simple routes for them, they will do it for themselves. Keep the easiest route of decision-making in mind. Allow the jurors to find the simplest way to a favorable verdict. The concept of this simple route should be woven into the educational strategy at each level of your argument.

### 4. Present information that can be both seen and heard.

According to research, jurors -- and people in general -- learn more easily when information is both seen and heard. It increases retention and puts people on the same page in regard to understanding your argument.

Presenting information visually as well as orally has several benefits in regard to educating jurors. First, research shows that there is a 650

percent increase in retention of information when presented both orally and visually. Second, visual presentation is more compelling as it keeps the trial context fresh and engaging to jurors. Research shows that as many as 69 percent of jurors fall asleep during trial. Visual aids may assist in not only helping them learn and remember but also in maybe helping keep them awake.

Finally, using visual stimuli in tutorials allows greater control of how jurors are conceptualizing the information. For example, if someone tells a story about a little girl with pigtails, each person may see the child differently. One may see a little girl with blonde hair and blue eyes. Another may see a child with dark, curly hair. Providing a picture of the child along with the story controls how the child is perceived and assures that everyone is on the same page.

The same concept applies to the court scenario. The more visual support you can provide for jurors, the more clearly they will be able to retain and conceptualize the information.

To fulfill the two jobs that you have as a trial attorney, you must ask yourself the following questions: "With what will jurors associate my case, and how can I create a positive association so they will want to find for my client?" and "How will jurors organize the information in my case for themselves, and what tools can I provide for them to help them retain and understand the story so they can fight for my client in the jury room?"

When dealing with the complexity inherent in many cases, it often comes down to a simple concept: The best educator wins. •