



Five Things a Trial Attorney Can Learn From a Teacher

By Jennifer Cuculich, JD, Jury Consultant

After more than four years, [evidence continues to trickle in](#) supporting long-theorized concerns about the COVID-19 pandemic's effect on students' learning progress. The battle to claw back this lost education has even [led to lawsuits](#) alleging that states like California failed to provide adequate support to already underserved students. For their part, teachers have had to learn the ins and outs of online or hybrid classrooms and also relearn how to approach students of various ages in their delayed stages of educational development. The silver lining? Adapting to students' needs, whatever those may be, has always been a hallmark of great teaching.

But what does being a trial attorney have to do with being a teacher? Before becoming a jury consultant, I was a lawyer, and when I stopped practicing law to teach math, everyone around me had that exact same question. To some extent, I did too. I mostly just knew I wanted to teach.

When I entered the classroom each new school year, I became responsible for teaching a group of strangers who may not have wanted to be there, about a subject that they may not have wanted to learn and were largely ill-equipped to understand. This easily could be considered the job description of a trial attorney. They are tasked with presenting complex information to a panel of jurors, many of whom would rather not serve and are completely unfamiliar with the issues at the heart of the litigation.

Even the busiest trial attorneys have limited opportunities to present to jurors, but teachers do this kind of work with students every day. As I developed my teaching skills—with no shortage of learning through my mistakes—I came to the realization that not only do teachers and attorneys share many similar goals, but that my treasured time in law school could have prepared me much better for the role of trying a case to jurors. The connection between my

passions, I discovered, lay in the skills successful teachers have that allow them to brave even the insanity of a post-pandemic catchup: their ability to meet every student where they are.

So, without further ado, here are five lessons I learned as a teacher that can help you be a better trial attorney:

1. If You Want to Be There, So Will They

When we are confronted with an audience whose interest we fear is lukewarm, it is easy to fall back on self-deprecation. Lawyers trying dry or complex cases may find it tempting to apologize up front: “I’m sorry this is boring” or “I’m sorry this is complicated” or “You’ll have to bear with me.”

But the moment you suggest to jurors that even you do not believe in the value and appeal of the subject matter, you have given them a free pass to check out or take the easiest cognitive path. That typically means buying into the plaintiff’s often simpler, easier-to-understand story.

Instead, try emphasizing how passionate you are to be there and represent your client. If the matter is complex, you might acknowledge the complexity while assuring jurors that you had to learn some new things to try this case, and they will need to do the same to decide it. Express your confidence in their ability to do just that; show them that you are with them and equally invested in the importance of this experience. One good example of this technique comes from a defense attorney I heard explain to jurors during his opening (in a criminal tax case), “You may find the tax code overwhelming or intimidating, but I am confident that by the time this case ends, you will feel differently. In fact, justice requires that you understand and fairly apply the tax code.”

Jurors want an attorney excited by their client’s case and excited to share it with them. They also want to be assured that you will provide them with everything they need to reach a fair and just outcome, which leads to my next point.

2. Jurors Will Learn What You Teach Them

Upon grading the very first assessment I gave my students, I was horrified to see that 90% of them failed. I sat in shock, lamenting all the effort I had put in and wondering why my students had been unwilling to do the same. My teaching coach then reminded me that “if they have not learned it, you have not taught it.” The mismatch could not be placed solely on their shoulders.



Emphasize how passionate you are to be there and represent your client.

The same can be said about jurors. So often, attorneys bemoan the outcomes that jurors reach, stunned at how they can get it so “wrong.” However, having spent hundreds of hours listening to and interviewing jurors, I can say with certainty that the vast majority of jurors want attorneys to tell them how to reach the right outcome. They want the tools to make the correct decision and are relying on the attorneys to lead them to a just result. So, if you know the evidence was strong in your favor, the mismatch may have occurred in the way the case story was presented to them. It may take a trip back to the drawing board.

How do you know if you are on track to “teach” the jury? Try your material out on colleagues in another practice area, on a mock jury, or even on your partner or child. If your teen, partner, or colleague does not understand the complex parts of your case or what outcome you want them to reach, a jury likely will not either.

3. Meet Jurors Where They Are

On my first day in the classroom, I was both over-prepared when it came to the subject matter I was teaching and woefully unprepared when it came to dealing with students. Armed with knowledge, enthusiasm, and confidence that I could connect with my class, I began working through a problem involving discounted prices. At the end of my 10-minute tutorial, a student raised her hand and asked me, “What is that weird picture you keep drawing next to the numbers?” Caught off guard, I stopped and scanned the board. I slowly realized that she was asking about the percent symbol. And when I turned back to see her fellow students nodding, sharing her bewilderment, I quickly understood my first-day lesson: Falsely assuming my students and I shared the same language meant my attempts to teach them had created more questions than answers.

Attorneys often make the same mistake. Both law school and the practice of law involve regular use of a vocabulary that, while customary in the field, is not common anywhere else. Even the proper application of terms like “reasonable,” “consideration,” “duty,” or “causation”—the building blocks of any first-year law student’s vocabulary—is entirely foreign to most jurors.

Consider the following example from a recent mock trial. During presentations regarding a lawsuit brought by the family of a man involved in a lethal auto accident, attorneys frequently and casually referenced the “estate” of the deceased. Simple, straightforward stuff for a lawyer. Come deliberations, however, we discovered that most of the jurors believed “estate” referred to extensive assets—home, car, savings, investments, etc.—due to how the word is often used colloquially. Their (faulty) conclusion was that the deceased was a considerably well-to-do man. Thus, they argued, his surviving children had little need for a damages award.

Again, this is when your partner, colleagues, or children make great collaborators. Give them a five-minute summary of your case and ask, “What concepts were confusing?” In addition,

reread your own opening and closing, and highlight every word you learned in law school. Those will need further explanation for a jury.

Some of the most skilled attorneys I know are acutely aware of speaking “legalese” and consistently provide jurors with the context and understanding they need to navigate legal terms. One of the places where jurors struggle the most is on verdict forms and jury instructions. Use your time during closing to walk jurors through the key terms they need to understand and apply to side with your client.

4. Framing Comes First

Teaching is a lot like helping students build a house. You start them with a solid foundation, construct the essentials, and, if time and budget allow, add the finishing touches. One of the first things teachers learn in graduate school is to begin lessons with a learning objective, e.g., “Students will be able to multiply fractions” or “Students will be able to balance a checkbook by adding and subtracting with decimals.” The idea here is that when students know exactly what is expected of them and why it is important, they can begin to activate their prior knowledge and become engaged in the learning process.

This technique is called “framing,” and it is equally important in the courtroom. After months or maybe even years of living with a case, attorneys can forget to build the foundation for jurors; they do not frame the trial story. Jurors want to understand why they are there, know how to get it right, and feel that their service matters.

Mock jurors’ deliberations over a recent antitrust case offer one such illustration. As they were analyzing relevant markets and debating what constituted anticompetitive behavior, a juror asked, “What laws were even broken here?” Not a single juror could answer her question. No one had framed the case for them.

While it does take time to give jurors the framing they need, it is time well spent. Only after appropriate framing can they understand the relevance of the evidence and—most vital of all—appreciate what actions you are asking them to take on the verdict form. You may have worked countless hours to build a strong case through heaps of documents and deposition tape, but make sure you take the time to frame the case so jurors know how to use all that evidence appropriately.

For example, in the antitrust case mentioned above, spending a few minutes during opening to explain the background and purpose of antitrust laws would go a long way to frame the case



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for jurors. You have now set the stage for jurors to filter the testimony for evidence of harm to competition, increased prices, or lower supply. In the absence of framing, this testimony runs the risk of falling on deaf ears—or, more accurately, ears that have not been primed to receive and process how the evidence relates to their task.

5. Incorporate Multiple Learning Styles

Great teachers and great lessons tend to incorporate several different “styles” to engage all types of learners. [Learning styles](#) are the methods that best allow us—as unique individuals—to understand, express, and remember information. According to one popular education-psychology model, there are four basic learning styles: Visual, Auditory, Reading/Writing, and Kinesthetic. Most of us benefit from a mixed approach but have one dominant style—e.g., you may love reading your favorite novel, someone else might go for the audiobook version, and another person might understand the story best by acting it out. And while [research is hazy](#) on whether people achieve at higher levels when taught in their preferred style, there is no doubt that they are more engaged. You will likely have learners of multiple styles sitting on your jury; to sway those jurors, you must first engage them.

One of the most effective teachers I ever observed was a master in appealing to these learning styles. She was teaching photosynthesis, a process I had long forgotten. But over the course of the lesson, students were rapping about photosynthesis (auditory learning), illustrating the cycle of photosynthesis (visual learning), using a mnemonic device to write out the steps of photosynthesis (read/write learning), and using choreographed body and hand motions to act out photosynthesis (kinesthetic learning).



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What might this look like in a trial?

- **Auditory Learners:** The courtroom setting defaults to appeal to auditory learners. Witnesses give oral testimony, lawyers argue aloud, and the judge rules audibly—all so an accurate record is maintained. Only around a third of people, however, are auditory learners. So, if you are not engaging in a multimedia approach, you are likely missing the mark with most of your jury.
- **Visual Learners:** Most people are visual learners, increasingly so in a world full of quick imagery on social media and the internet. To the maximum extent possible, make your case visually. I often hear attorneys say that their case is too complicated for a graphic; I would argue that it is the complicated cases that need graphics the most. The right graphics team can do astounding work to break down and simplify concepts into jury-friendly pieces.

- **Read/Write Learners:** Likewise, appeal to those read/write learners by using PowerPoint slides with short and simple language that does not distract from the speaker. Avoid full sentences, blocks of text, and visually “busy” slides when possible. A flipchart on an easel also remains a tried-and-true option to this day, offering a visual exclamation point and a bit of variety from your standard slide deck. Jurors can watch you write down that critical theme, and you can even leave it up on display as you continue.
- **Kinesthetic Learners:** Thankfully, kinesthetic learners tend to be the rarest among the general population, as they are the most challenging to reach in a courtroom setting. If your case involves a product or device, you may consider using your hands to demonstrate how it works or was misused, in the hopes they might recreate those motions. Of course, in an ideal world, the judge allows the product or device into the courtroom for jurors to interact with directly.

The secondary benefit of accounting for various learning styles is that it encourages variety in your presentation methods. Keeping jurors on their toes with new types of media encourages engagement during long days when mental fatigue threatens to set in.

In Conclusion

When thinking about trying a case to a jury, put yourself in the jurors’ shoes. Think of your least favorite class in middle school. Remember how it felt to be in a place you did not want to be but had an obligation to be, or a place where all the information was unfamiliar and overwhelming.

Now remember your favorite class or teacher. What made the difference? Odds are your best memories came from a teacher who used the techniques above to engage you in the learning process. Viewing jurors as learners—individuals willing and able to learn your case if given the proper shot—lends a fresh perspective to addressing them, and one that might make all the difference in your next case.

A version of this article is also available on Law360.com.

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