



Three Tenets to “Teach the Jurors Well”

By G. Christopher Ritter, JD, Senior Jury Consulting & Strategy Advisor Affiliate

The American historian Arthur Schlesinger, Jr., once commented that successful political action requires education, coalition-building, and collective action. He further observed that of the three, **education is the most important**, because without it, coalition-building and collective action are impossible.

Why would I offer political advice to trial lawyers? I do so for two very important reasons:

- First, at its core, the jury system is a highly political process that requires its decision-makers (i.e., the jurors) to form a **coalition** capable of reaching a **unanimous** agreement. After closing arguments (while you pace the courthouse hallways, drink crummy coffee from the basement cafeteria, and anxiously wait for a verdict), twelve ordinary citizens (often with widely diverse backgrounds and viewpoints) are struggling among themselves, working hard as we ask them to do, to unanimously agree on a verdict. Unanimity does not happen without a whole lot of “politicking” in the jury deliberation room.
- Second, Professor Schlesinger is right; education is the most important element in this political process. That is why successful trial lawyers are teachers. Yes, they are advocates, and often very forceful ones, but these trial lawyers know they are more likely to prevail if they take time and make considerable effort to **educate** their jurors.

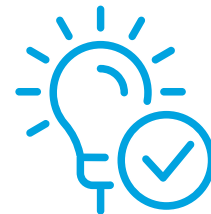
Given the way American jury trials are structured, it makes sense that education plays such a powerful part in the process. We randomly select a group of average citizens and insist they resolve complex disputes—often involving issues with which they have no prior knowledge or experience. To the extent that a prospective juror happens to have any meaningful relevant expertise that may aid in this process, counsel often challenges and strikes them in voir dire. As a result, the jurors who are ultimately left to serve often face a steep learning curve dealing with new and complex testimony.

Despite these handicaps, **most jurors believe there is a right answer** and are confident they can find it, especially if the lawyers provide the appropriate information and learning tools.

As a trial lawyer or an expert witness, if you are going to teach jurors, you must understand how they learn. Obviously, a full discourse on that subject is far beyond the scope of this article. That said, below are three of my most important tenets to “teach the jury well.”

1) Facts, Memorization, and Learning Are Different and Should Be Viewed Hierarchically

Often, when we think about education, we conflate **facts**, **memorization**, and **learning**. In reality, while these three concepts connect at some points, each is different. To better understand this, think of them as a three-layered pyramid, with facts at the base, memorization in the middle, and learning as the capstone.



Outside the courtroom, a fact is generally defined as something that has actually occurred and is objectively known to be true.

Outside the courtroom, a **fact** is generally defined as something that has actually occurred and is objectively known to be true. Due to the nature of lawsuits, we would do better to think of the facts as the “evidence you are allowed to collect in discovery and present at trial.” This is what comes from discovery practice. It is information counsel gleans from key documents, depositions, and answers to interrogatories, which, having been collected, is subsequently presented to jurors through non-argumentative witness testimony and exhibits.

Memorization is a step towards learning, but it is not learning itself, or at least not a very effective way of doing so. Memorization involves surface-level processing and, consequently, has extremely limited utility. In reality, the benefit of memorizing a fact is often nothing more than being able to recall it (e.g., knowing the capital of South Dakota is Pierre).

While memorization is necessary, it is by no means sufficient to ensure your jurors receive a meaningful education. Learning (the objective of any trial lawyer seeking to educate the jury) requires the person doing the teaching to add **context** that makes a fact usable. This context transforms individual, free-standing memorized facts with limited utility into tools that permit old information to connect with new information.

2) Learning Requires Context and Cannot Take Place in a Vacuum

This is essentially a corollary of the first tenet. Learning cannot begin or sustain itself in a contextual vacuum. As noted above, one does not learn by merely memorizing a series of facts. Likewise, the process of learning, which requires context, cannot begin unless jurors are provided **a familiar place to start**.

As Edward Tufte, the Yale professor who pioneered the field of Informational Architecture, was fond of noting, the first question we all ask when we learn something new is, “Compared to what?” Said differently, jurors need **toeholds**—already familiar concepts they can compare, assess the value of, and ultimately decide whether and how to use as they are learning during trial.

Examples of these **toeholds** include analogies, metaphors, and comparisons of familiar and unfamiliar benchmarks. For example, telling a jury that a micron-sized defect is one thousandth of a millimeter provides far less context than noting that finding a micron-sized defect on an eight-inch circular silicon wafer is as challenging as finding a single soccer ball in the 49 square miles that make up the City and County of San Francisco, California.



Examples of these toeholds include analogies, metaphors, and comparisons of familiar and unfamiliar benchmarks.

Just as learning cannot *start* in a vacuum, the process cannot sustain itself in a structural void. And while toeholds jump-start the learning process by providing a place to begin, jurors need the context of a familiar structure to keep that process going.

I ask you: what is more familiar and provides more continuing context upon which to include facts and the context to understand those facts than **a story**? Stories combine all kinds of familiar contexts. These include recurring themes, recognizable characters, identifiable underlying motives, a common structure (e.g., chronological order), etc. That is why humans as a species have relied on stories to learn for tens of thousands of years, and you (and every other person who may potentially serve as a juror) have been learning from stories since toddler age.

3) Since Jurors Rely on Their Conscious and Subconscious Minds, You Must Effectively Appeal to Both

During a trial, we flood jurors’ brains with unfamiliar and often complex information. In response, jurors process what we provide using both their **conscious mind** and their **subconscious mind**.

Working together, the conscious and the subconscious minds form a highly effective “dual processing system.” Both processing methods are essential; operating separately, neither “processing unit” works optimally. When they join forces, not only does each unit perform more effectively, but there is also **a synergy** in making the juror’s whole brain more powerful than the sum of its parts and thereby increasingly capable (with appropriate assistance from counsel) of resolving complex disputes.

The conscious brain absorbs what lawyers think of as the evidence, that is, facts that are **literal** and **tangible**. These include names, dates, amounts, what was said, what was done, the sequence of events, etc. These are details unique to a particular case. As such, the juror is most likely hearing of them for the first time.

The subconscious is a warehouse for the **figurative**. What is stored there is familiar, often having been accumulated over the years. There are virtually no limits to what is found there, including commonly held social beliefs, rules of thumb, assumptions, prejudices, lessons learned from past personal experiences, core values, helpful metaphors, analogies, adages, other forms of imagery...the list goes on. Think of the warehouse scene at the very end of "Raiders of the Lost Ark," except this subconscious warehouse is familiar and relatively easy to search. As such, the subconscious *generally* locates, retrieves, and relies on what is stored there instantaneously.



The subconscious is a warehouse for the figurative. What is stored there is familiar, often having been accumulated over the years.

When they work together, the conscious and subconscious **engage in a multiphase dance:**

- The juror's conscious mind leads by absorbing the new (and usually complicated) details unique to the lawsuit.
- More or less simultaneously, the subconscious mind responds by first searching itself for similar (but not necessarily identical) items stored there.
- If it finds something, the subconscious mind next compares, evaluates, and determines the value of this new information.
- Finally, the subconscious mind shares what it has concluded is worth sharing with the conscious mind.

After uploading enough of the subconscious mind's feedback, the conscious mind (mistakenly thinking it is acting independently) determines the relative value of the individual pieces of information, whether or not it has enough data to take action, and what that action should be.

This overall dance occurs at least twice. Initially, it occurs **internally** within each juror, based on what that particular juror absorbed from the lawyers. The second time is **external**, occurring as a discussion among the jurors as they attempt to work their way to a unanimous decision. This discussion can and often does get heated because twelve jurors have often processed the trial in multiple different ways.

Putting the Tenets into Practice

So, why does all of this matter? Because jurors want you to educate them, they *appreciate* it when you make the effort to do so, and their verdicts often *favor* the lawyer who does the best job teaching them what really matters. Mastering and applying the tenets of teaching and learning discussed above will substantially **increase your chances of persuading jurors** that your client is entitled to their unanimous verdict.

Ultimately, teaching jurors well is not about adding *more* information; it is about structuring what is most important so it can be understood, retained, and applied. When facts, context, and cognitive appeal are aligned, you give jurors the tools they need to reach the right conclusion.

About the Author

With more than four decades of litigation experience, G. Christopher (Chris) Ritter, JD, is an expert in jury decision-making and strategic courtroom storytelling. Chris was a partner and litigator at a major San Francisco law firm before his career as a nationally respected jury consultant. He is a master at helping clients clarify the complex and make esoteric topics both understandable and compelling. Chris is the author of four highly acclaimed books about trial strategy and graphics, published by the American Bar Association.

IMS Legal Strategies is a trusted partner to law firms and corporations worldwide, providing the expertise and technology needed to solve dispute-related challenges and protect reputations. IMS delivers strategic solutions for the entire litigation lifecycle, including advisory and analytical support, specialized expert witness services, data-driven jury consulting, powerful trial graphics, and seamless presentation technology. We work closely with clients to develop a strong case around key themes and present compelling narratives that leave a lasting impression on decision-makers. Our integrated teams have decades of practical experience in more than 65,000 cases and 6,500 trials. Together, we win. Visit imslegal.com for more.