



The Jury

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Values, Priorities, and Decision-Making: Intergenerational Law Offices, Intergenerational Juries

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Our age and our generation shapes the lens through which we view the world. Not only because of the number and type of life experiences age presents, but also due to the key events that teach each generation what is important, and what needs to be considered in determining personal priorities and justice. Those experiences have patterns across the generations, but also differences. The marker events that shape our views can't be transferred so easily. For those who grew up looking at black and white television images of the civil rights demonstrations in the 1960's, the world is different than for those who grew up with iPods and text messaging. But how? Are we really that different? Can a workplace successfully accommodate the differences? Can juries come to a collaborative verdict with diverse age groups in the box?

The legal blawgosphere has been filled with anecdotal tales of what is termed "generational conflict" for years now. Based on conversations with our clients, contentious inter-generational interaction is not just out there "on the web". It's everywhere. We've written extensively on issues related to generations—both in the courtroom and in the office.

As litigation consultants, we hear senior partners aiming sharp criticism toward both younger jurors and younger lawyers (especially new law school graduates), and we see the associates roll their eyes and grit their teeth at the disrespect they feel from some partners. The work ethic of the younger attorneys (judged as inadequate by older attorneys) is blamed for their trouble in finding jobs. "If they were not so lazy", the opinion seems to go, and "if they did not want instant success, they wouldn't have such a tough time finding work." It is, in short, their own fault they are unemployed. They have bad values. Or so it is said by many of their elders. Especially the subgroup of employers, supervisors, and—occasionally—parents. But is that accurate?

It turns out that it's likely untrue. A recent editorial in the [LA Times](#) points out that from 2004 to 2008, the legal field [grew less than 1%](#) on average (and the same growth rate is predicted until 2016). The number of likely attorney positions opening per year is thus 30,000. US law schools are graduating 45,000 new JDs every year. Fully one-third of US law school graduates will likely not find employment as attorneys.

What we've learned is that cross-generational communication is complicated. There isn't an easy recipe for success, but there is a path toward effectiveness. There are principles and strategies to use both in successful intergenerational work teams as well as effective jury dynamics. In other words— they don't all have to be just like you in order for things to go smoothly. The following pages are an effort to show you both “how to” and “why to” strategies that will aid you in skillfully negotiating generational differences—in the courtroom and in the office.

The Intergenerational Office

Generational names are the handiwork of popular culture. Some are drawn from a historic event; others from rapid social or demographic change; others from a big turn in the calendar.

The Millennial Generation falls into the third category. The label refers those born after 1980 – the first generation to come of age in the new millennium.

Generation X covers people born from 1965 through 1980. The label long ago overtook the first name affixed to this generation: the Baby Bust. Xers are often depicted as savvy, entrepreneurial loners.

The Baby Boomer label is drawn from the great spike in fertility that began in 1946, right after the end of World War II, and ended almost as abruptly in 1964, around the time the birth control pill went on the market. It's a classic example of a demography-driven name.

The Silent Generation describes adults born from 1928 through 1945. Children of the Great Depression and World War II, their “Silent” label refers to their conformist and civic instincts. It also makes for a nice contrast with the noisy ways of the anti-establishment Boomers.

The Greatest Generation (those born before 1928) “saved the world” when it was young, in the memorable phrase of Ronald Reagan. It's the generation that fought and won World War II.

Generational names are works in progress. The zeitgeist changes, and labels that once seemed spot-on fall out of fashion. It's not clear if the Millennial tag will endure, although a calendar change that comes along only once in a thousand years seems like a pretty secure anchor. ([Pew Research, 2010](#))

Generations in the both the workplace and jury room now include: the Silent Generation (born 1933 to 1945); Baby Boomers (born 1946 to 1964); Generation X (born 1965 to 1980); and Generation Y/Millennials (born 1981 to 2000). Were it not for the economic recession of the past decade, Boomers would now be retiring. However, for many, retirement accounts (if they had any to begin with) have been undermined by recent economic instability, and they are now planning to work for the indefinite future. This leaves members of Generation X without upward mobility (since Boomers hold many of the senior positions) and the Millennials with record levels of unemployment despite (simultaneously) having educational accomplishments unmatched by prior generations entering the workforce.

Given this “new normal”, workplaces have begun to shift their focus from an aging worker focus [as members of the Silent Generation and the Boomers age] to a multigenerational focus (Cekada, 2012) with many large workplaces now employing four distinct generations of workers. With this shift, more attention is being paid to major themes around which the various generations differ. Communications styles, attitudes toward authority, comfort with technology, boundaries between work life and non-work life, and the role of family, friends, and religion are among the ways the generations are distinct.

Cekada (2012) offers a glimpse of the differences in various life events and perspectives across the four generations now (and for the indefinite future) in the workplace. Despite the increased attention being paid to focus and perspective of the various generational groups, there continue to be common areas of friction and tension in the workplace. We are not all alike. And there are patterns of difference that need to be expected and respected for a satisfying workplace environment.

Major Generalizations of Each Generation (Cekada, 2012)

Silent Generation	Baby Boomers	Generation X	Generation Y/ Millennials
Self-sacrificing	Committed	Practical	Optimistic
		Accept diversity	Embrace diversity
Great Depression economy	Booming economy	Downturn in economy	
Kids contributed to family success	Strong home support	Latchkey kids	Coddled kids
	Develop and follow rules	Resist rules	Rewrite rules
	Fight technology or use it efficiently	Use technology	Assume technology
	Typewriter	Use the PC	Internet/portable technology
Strong work ethic	Independant workers	Solve problems on their own	Prefer work in teams
	Hard workers		Sense of entitlement
	Argumentative		Prefer getting along (community)
Long-term loyalty to company	Loyalty to company	Mistrust organizations	Irrelevance of organization
		Multitask	Multitask fast
“Do the time” before you make demands			Demand flexible work schedules
	“Live to work”		“Work to live”—want flexibility in their jobs

Common Areas of Friction/Difference

Here are some of the most frequent complaints we hear about office friction/differences which we've detailed in [earlier writing on generation and office relationships](#) :

Millennials are lazy with bad attitudes. (The research doesn't support this belief.)

Millennials believe they are entitled in the workplace. (The research says that may be true.)

Millennials are lacking in loyalty and appreciation.(The research doesn't support this belief.)

Millennials are needy and immature.(As were we all.)

Most of these issues seem to revolve around what is commonly referred to as a “failure to communicate”. Failures to communicate come in multiple forms: conflicting goals,

timing, power struggles, geography, perceived risk, technology and lack of trust. These are often attributed to intergenerational differences rather than what they likely reflect—ineffective communication. While it may be hard to believe that conflict in the workplace stems from communication failures and not from generational idiosyncrasies—it is largely true.

We need to back up a bit here and give you a little information about “defining events”. These are the moments in time experienced by all members of a generation that, in hindsight, shape their lives and perspectives. Think the Great Depression, World War II, Vietnam, the sexual revolution, birth control, dual career couples, latchkey kids, divorce rates, 9-11-2001, the Second Great Depression, and so on.

These defining events have had impact on the generations and color how all of us see the world, cement our attitudes and values, and look at those who are different than us. Papers on “generations” necessarily summarize (and therefore stereotype)

large groups of people. We do not mean to infer (nor do we believe) that all members of generations are the same and every person of this age will share the same characteristics. If that were true, voir dire would be a simple matter indeed. Instead, generational groupings (and stereotypes) allow us to consider broad categories which must be refined via pretrial research and careful examination of life phase, attitudes, values, experiences and beliefs.

The following table briefly presents generational groups, birth years, current ages, size of group, defining moments and the perspective each generational group has had historically as well as their current perspectives. [For additional data on current perspectives, see our most recent generational update paper \[here.\]](#)

Major Generalizations of Each Generation (Cekada, 2012)

Generation Name	Birth Years	Defining Moment(s)	Generational Descriptors	Current Perspectives
Silent Generation Came of age during Truman and Eisenhower presidencies. Now 66-83 years old.	1928-1945. Turned 18 from 1946 to 1963. Comprise 80% of those aged 65+ in the US. Now roughly 34M in size.	Korean Conflict	Helpmate Mediators Conservative Recently political activists	Conservative. More uncomfortable than younger generations with social changes (including racial diversity & homosexuality). Social Security as top voting issue. 79% non-Hispanic whites. Very frustrated with government and seen as important political activist voting block for upcoming elections.
Baby Boomers Came of age during LBJ, Nixon, Ford and Carter. Now 47-65 years old.	1946-1964. Turned 18 from 1964 to 1982. Roughly 79M in size.	Vietnam War	In Youth: Idealistic, Dreamers and Entitled. Now: Worried about money	Nearly half say life in US has gotten worse since the 1960s. Concerned about finances & may not retire. Express as much frustration with government as the Silent Generation—Boomers have grown more critical of government in the last decade. Jobs most important voting issue.
Generation X Came of age during Reagan, George H.W. Bush and Clinton. Now 31-46 years old.	1965-1980. Turned 18 from 1983 to 1998. Roughly 51M in size.	Social changes: Divorce Latchkey Increased violence 9/11/2011??	Multicultural Friends replace 'family' Work/life balance "Emerging adulthood" introduced for this generation	Similar to Millennials on social issues. Since 2009, financial worries. Backed Obama in 2008 but went Republican in 2010. Jobs most important voting issue.
Millennials (aka Gen Y) Came of age in G.W. Bush presidency. Now 18-30 years old.	1981-1993. Turned 18 from 1999 to 2011. Roughly 75M in size.	Candidates: Terrorist attacks in US 1st Gulf War Iraq War Columbine shootings	Civic personality "Can-do attitude" Entitled Disorganized Digital natives	Socially liberal. High rates of unemployment but still upbeat. Most diverse generation: only 59% are non-Hispanic whites. Welcome the new face of America. Jobs most important voting issue.

Stereotyping Those Younger and Older (“This is how they are”)

Older generations stereotype younger generations. It’s been true for countless centuries.

“I see no hope for the future of our people if they are dependent on frivolous youth of today, for certainly all youth are reckless beyond words...When I was young, we were taught to be discreet and respectful of elders, but the present youth are exceedingly wise [disrespectful] and impatient of restraint.” –Hesiod, 8th century BC

Those who are established see change and resent it. Our generation made the rules (and they are right and should not be questioned) and here are these young (read: undeserving) upstarts coming along and challenging our authority and the wisdom of established rules.

You will thus hear most of these stereotypes through the eyes of the Boomers (the previously largest and now one of the oldest generational groups). And it doesn’t only go one way. Younger generations are also quite prone to stereotyping older generations as controlling dinosaurs who resent having their rules questioned. If this sounds like typical family conflict—it is likely a good analogy to consider.

Generation X members are the children of the older Boomers while Millennials are a combination of the children of the older members of Generation X and the (“second chance children”) of the younger Boomers. Gen X parents are reacting to their own experiences as [latchkey kids](#) and Boomers with Millennial children are trying to get it right this time. You’ve heard of [helicopter parents](#)? That’s what happened to the Millennials. We all are a product of our times and the attention (or lack thereof) lavished upon us by our parents.

With that analogy in mind, let’s examine a few of the stereotypes we hold of each other and compare that with the actual facts:

Generation X: Remember them? Cynical, jaded, depressive punks of the 1980’s and 1990’s? Unwashed slackers? Well, it’s time for a mental reset. They grew up. Gen Xers are now 30 to 45 years old and have mortgages, families and careers. And guess what they’ve done?! They are the most educated generation ever. They are employed at a higher proportion than any other generation. They are married with children and are credited with reducing the divorce rate to the lowest we’ve seen in decades. They have retained and concretely defined their

youthful values of family, work/life balance and acting locally not globally so that their lives actually reflect their values. [And they are happy.](#)

The Millennials: This group was born with an internet connection in their mouth. They expect immediate communication regardless of the hour of the day or mode of communication chosen. Older generations can see this as indicative of the younger person’s impatience rather than as indicative of their proficiency in multitasking. They avoid responding to voice mail or even email messages. They have a bad habit of simply texting into the office when they are sick or going to be late. They don’t call in. As a Boomer partner in a client law firm once said (while grinding his teeth into dust) of a Millennial associate, “I asked him why he hadn’t responded to the voicemail and he replied

‘I don’t do voicemail.’”

Older generations may see this as disrespectful or inappropriate when to the younger person, it is simply habitual and convenient (and potentially respectful, collegial and totally appropriate). Further, these are ambitious, rapid paced individuals. They want careers and workplaces that match them now—not when they have done their time.

Boomers and Gen Xers can see this expectation as entitlement, or at best, over-ambitiousness. The Millennials constant use of social media does not sit comfortably with Boomers: “ Boomers are more comfortable with handshakes and chats than with pokes and posts” (Keegan, 2011). Despite the economy and unemployment rates, Millennials are notoriously upbeat and optimistic.

Boomers: The flower children of the 1960s who espoused free love, peace and individuality have grown up to be “the man”. They waited their turn, made the new rules for the workplace (and in the world) and have paid their dues. They resent efforts to change the world they re-designed. They are also (following the economic collapse decimating their retirement accounts) anxious about the future and more downbeat (compared to other age groups). Boomers are currently glum. More glum—it should be pointed out—than their own parents (the Silent Generation). Ironically, Boomers are the new “grumpy old men and women”. They are more likely to say they have been hurt financially by the current recession and more likely to say they are cutting back. They are less religious than their parents and more religious than their children (the Gen X and Millennial groups). Boomers cling to youth with the average Boomer saying “old age begins at 72” but they [have lost optimism for the future.](#)

“ Boomers were always the center of the universe, both at home and at work. Now they are blamed for the country’s economic problems and resented in the workplace by the younger generations who are trying to push them out.”

Dirty. Spoiled. Controlling. Disrespectful. Entitled. Grumpy and old. That’s how different generations see each other. It’s a recipe for conflict and incivility—not to mention assuming the worst in each others’ behavior. Boomers were always the center of the universe, both at home and at work. Now they are blamed for the country’s economic problems and resented in the workplace by the younger generations who are trying to push them out. No wonder Boomers are bummed.

A simple query posed by the [Pew Research Center](#) in 2010 shows the glumness of the (now second largest generational group) Boomers:

“I am dissatisfied with the way things are going in the country today”

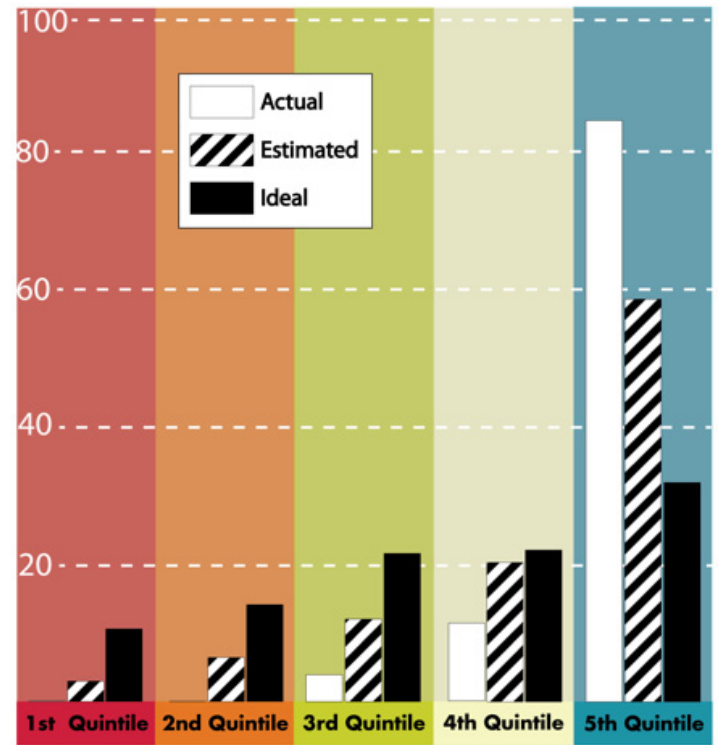
Generation	Number (and Per Cent) Agreeing
Silent and Greatest Generations (65 and older)	76%
Boomers	80%
Generation X (30-45 years)	69%
Millennials (18-29 years)	60%

What is additionally intriguing is that we Boomers raised the Millennials and Generation X. They are our children and now our colleagues and coworkers. We taught them to expect accommodation, to question authority, to challenge the status quo and to do what works for them. And now those birds have come home to roost.

To paraphrase an [old Jimmy Buffett song](#) “they are the people we never warned ourselves about”. Or to paraphrase my mother when I said I wanted a strong-willed girl child—“I hope you get exactly what you wish for and then you will understand just how much fun that is!”. Or to [paraphrase some old wife somewhere](#)—we made this bed..... (See our specific management recommendations for the intergenerational law firm [here](#).)

But there is good news. Membership in differing generations does not necessitate conflict. We are truly more alike than we are different. Despite all the nasty ads we are seeing as the election season ramps up—what we can tell you is that Americans [no matter our age, politics or income] want to live in a country that is much more financially equitable. We want wealth distributed more equally. We want a fairer nation. [That’s the good news](#). The bad news is that we have no idea that’s what we want and we have no idea just how bad things are!

Some new research illustrates this reality nicely. The graphic below shows American’s responses to three questions about the distribution of wealth in America. Researchers asked Americans to consider wealth in this country divided up into 5 buckets or pots. The bottom 20% goes in the first bucket, the second 20% goes in the second bucket, and so on.



Most of their participants guessed that the bottom 2 buckets (the poorest 40% of the population) had about 9% of the wealth while the top bucket (the wealthiest 20%) had about 59% of the wealth. You can see their estimates in the graphic above. You can also see the reality which is wildly disparate from the guesses—the bottom 40% has only 0.3% of the wealth while the top 20% has 84% of America’s wealth.

Then the researchers asked what the research participants thought would be an “ideal” wealth distribution and you can also see that in the graphic. What is most interesting in these findings is the researchers found no differences by political affiliation, income or gender. We want the same things. But we don’t realize it, and instead tend to objectify one another. This is an important lesson for us as we plan case presentation and narrative. When we emphasize universal values, we [tap into the “best” of everyone in that jury box](#) .

Before we move on to the intergenerational jury now seated in venues across the country, let’s summarize [the research data on differences](#) between generational groups. This won’t take long since the actual, data-based list is much shorter than the stereotypes we all carry.

- There is a more liberal/tolerant focus on social issues among the Millennials and Generation X.

- There is a concern about financial issues shared by Gen X and the Boomers.
- The Millennials have an unprecedented rate of unemployment.
- The Silent Generation is happiest and yet, the most angry with government.
- There is a divide between the youngest generation (the Millennials) and the oldest generation (the Silents) that appears to be a major obstacle based on the Pew Report. Some of this is due to the age gap and the increasingly liberal views of the younger generations.

That's it. So with all the press on the "slackers" and the "narcissists" and the "flower children" of yore—why do we not see more differences between the generations? They grew up differently. They had different formative experiences. Why is there not a bright line of difference? It could be that there is—in some instances.

As it turns out, the stereotype of the Boomer rebel/hippie/flower child actually applied to only a small, iconic segment of the Boomer population. But it's the image we retain of the 1960s generation. It's part of what we do. We put people in boxes. It makes things simpler. And often, it makes us completely wrong.

We all use stereotypes as shortcuts to decision-making. Readers of [our blog](#) know that we rely heavily on the newly published (not the sadly outdated) research literature to understand the evidence of emerging trends, rather than to merely parrot the anecdotal opinions found in the popular media. Here's a terrific (and pretty succinct) explanation of why stereotypes persist in spite of (data-based) evidence to the contrary:

“So, why might stereotypes persist in the face of evidence to the contrary? In fact, the stereotype and the data can both be correct simultaneously. If one considers a normal distribution of people, it would only take a small increase in numbers at either tail of the distribution to cause people to believe that one generation was different from another due to the disproportionate impact outliers have on influencing perceptions. This might occur even while the average within one generation stays the same as the other generations.” (Gentry, et al., 2011)

It's a critical lesson in both personal and work relationships. When a conflict is assumed to be “generational”—the communication failure at the root of the conflict is often lost. “Generation” is often a codeword for “kids” or “geezers” and as such, can be a pejorative means of avoiding responsibility for considering alternate explanations. It is dismissive. And it doesn't just happen in the office. It happens in the courtroom too.

Knowing general information about your jurors (in this case their generation) allows you to assess attitudes and beliefs that are relevant to your case and alerts you to the importance of not relying on stereotypes alone to make decisions you then have to live with throughout trial. Let's look at the realities of the intergenerational jury based on the evidence and not our assumptions.

The Intergenerational Jury

Of course, the jury pool evolves with the rest of society. Based on [2010 US Census Data](#), the Millennial Generation is now the largest population segment in America. If you combine their numbers with those of Generation X, adults between 18 and 46 years of age comprise over 50% of the adult population in this country (and are by far more heavily represented in jury pools than their older neighbors). [This is why when we recruit mock jurors for pre-trial research, we normally have about half between the ages of 30-50, with a quarter who are in the Millennial age group, and a quarter in the older Boomer group.]

Jury pools are shifting in numerous ways, and the proportion of various generations in the jury box isn't the only thing changing. Earlier this year, we did an exhaustive analysis of the research on differences between the generations that reflect visible or measurable distinctions.

There are changes in educational achievement; ethnicity makeup; the role of work; finances; comfort with multicultural diversity; gender roles and family structure; liberal versus conservative orientations; our willingness to trust others; preferred source of information; attitude toward the government; environmental views; acceptance of scientific findings; and attitudes toward the death penalty and religion. [You can review all of these distinctions in the \[article we wrote in January of 2012.\]](#)

Litigation advocacy, like office relationships, must take the diversity of the new jury pool into consideration with every case. The law reflects reason and our interpretation of that law, combined with our life experiences and visceral reactions to the event, often reflects a complex combination of our reason and our passions. We know some groups of jurors have more sympathy for [mitigating circumstances](#). We know some prefer a Dragnet approach to justice: “[Just the facts, ma'am](#)”.

[In any group of twelve](#), you are likely to have those swayed by sympathy and those determined to apply the evidence to the law with cool detachment. But no one decides entirely based on sympathy or entirely on evidence. Instead, all of us make decisions based on both ends of this judgment spectrum. Telling stories that speak to both ends of the continuum always serve us well, as your jury is bound to [include both types](#).

The following pages summarize the varying expectations and predilections of the different generational groups when it comes to specific aspects of trial and case presentation. (If you want

to understand more about [Gen X jurors](#) or the [Millennials](#) , follow the links to see our earlier work.)

Differences in Learning Style and Information Application

One of the most well-known differences between jurors (and employees!) of varying ages has to do with work styles. Boomers and Gen X members tend to prefer to work alone. On the other hand, the Millennials grew up doing team projects and group exploration at school. They learn by doing, and respond positively to team tasks. Working in a cubicle farm or sitting in silence during endless video excerpts is experienced as “soul crushing”. Boomers are not as positively disposed to team tasks and often are not productive or effective team members (Cekada, 2012). But they are better at solitary work tasks. For Boomers, especially men, true collaboration and idea interchanges can be very difficult, as it isn’t a work style that they have been trained to embrace. It is more often about the dominance of ideas, and whose perspective ‘wins’.

When it comes to deliberation, it makes sense to teach all of the jurors about the team nature of the task and how they should approach deliberations. This education both levels the playing field (with all group members having access to basic information on deliberative processes) and gives all group members an equal chance to participate and be heard. We’ve seen mock juror deliberations where Millennials play an active role and are respected for their contributions. We’ve seen other deliberations where they are quite silent, and appear to be oppressed until someone directs a question to them, at which point they disclose valuable views. While the views might not otherwise have been added to the discussion, that doesn’t mean that their voting was passive. They aren’t any more interested in submitting to domination than anyone else, but they might not offer a viewpoint that isn’t welcome. Education and information allows everyone to participate in the process.

Graphics and Visual Evidence

Many of us are also aware that the Millennials are often more visually attuned. They are able to grasp a wealth of information through graphics and visual representations but are often resistant to reading lots of text. Computer-based learning is second nature to them and they expect you to use technology. Gen Xers are also visually skilled but not to the same degree as most Millennials, who never knew a world without the internet.

On the other hand, delivering solely computer-based visuals to the older Boomer or Silent Generation member can be an exercise in futility if they are resistant to computer use or feel that your presentation is going to be incomprehensible simply due to the delivery method. There was a transitional period 10-15 years ago when computer graphics in court were not consistently embraced; using foam boards offered a physical presence in the room, while projected images are ephemeral.

Now, more people have embraced computer images, and they also like the smoothness of the presentation flow when the imagery is cleanly choreographed in a presentation. Again, you need to attend to the diversity of preferences in your audience and have something for everyone.

New research studies offer important information for the design of visual evidence. Our [attention is often drawn to the center](#) of a graphic, picture or page. And we pay more attention to what the researchers call “[biological cues](#)”—a pointing finger and directionally focused eyes—as we make decisions about what to examine in our environment. While a pointing finger or eyes may seem more casual than a professionally designed graphic using arrows and directional symbols—it may also be more effective with the viewer. We tend to say that whatever the conflict that has initiated the litigation—ultimately it’s always about people. This research would say that’s true with visual evidence as well. Make it more human (or more ‘biological’ as the researchers would say). Jurors will notice.

But graphics isn’t a solution by itself. A recent study reported by [Research Digest blog](#) provides an example of when we do better with text than graphics— in a hospital. Some of the many graphs and charts filling patient records are subject to misinterpretation by [harried and distracted staff](#). Researchers conclude that if those graphs were replaced or supplemented with short passages of text conveying the same information—fewer mistakes would be made.

Birth trauma cases often involve questions about proper interpretation of fetal monitor strips. In a recent case we consulted on, one challenge was that there were no physical strips. The entire system was digital—you read it on a monitor. The complication was that in order to see the pattern that had evolved throughout the labor, or through the last hour, you have to page back and back and back... and you can’t flip back and forth as easily. [The image becomes less clear](#). Jurors saw it as an easy way to get confused, or a reason to do less checking of the records than might be prudent.

Another recent study related to visual evidence tells us when to give prototypes to jurors for closer examination and when to keep them at a distance! Apparently, our ability to learn and to remember information depends on what we do with our hands while we are learning! In other words, there are differences in what you process and ‘see’ depending on whether something is in your hands!

If you hold something in your hand, you notice differences among objects more effectively.

If you look at something from a distance (not near your hands), you are more likely to note similarities and consistencies between those things.

The implications for patent and IP litigation are pretty straightforward, but they are equally relevant for other types

of cases. If you need jurors to understand subtle features or attributes, you want to give jurors the opportunity to hold prototypes or exhibits in their hands, so they can appreciate subtle but important differences. If the point you are trying to make involves how things are the same, or how confusion is reasonable, or to raise confusion about an identification, you want jurors looking at the prototypes from a distance, when differences are seen as superficial or invisible.

It's an interesting idea. We were in [North Carolina](#) on an infringement case and the prototype invention was a very heavy industrial device. Not huge, just heavy. And we saw this exact phenomenon in real life. Because of how heavy the prototype was, it was on the table in front of me as the focus group facilitator. I described the similarities and the differences in appearance and function. Jurors focused on appearance and how the two items 'looked' the same. As the group prepared for a break, jurors were told they could approach and examine the objects. They did. And as we listened in to their reactions from behind the mirrored glass we saw them poking and hefting and examining the prototypes and exclaiming they could now 'see' differences between the two prototypes.

The researchers say that humans developed this skill to survive—when we had to tell poisonous berries from non-poisonous berries. We cannot say with certainty that they are wrong. But for us as consultants and our clients as litigators, the knowledge that there are different processes involved in close-up examination and observation from a moderate distance is a game-changer. And for those who are more tacitly-oriented (overall, Boomers and older Gen Xers), the images are especially inadequate to tell the story. For those who are more imagery-oriented (Millennials and younger GenXers), they may feel satisfied reaching conclusions based on images, but the impact of touching the object in question can still be transforming.

Most IP litigation involves claims of infringement (“these two things are the same”) and validity (“this invention is different than what has come before”). The more physical the contact they can have with the exhibits, the stronger their belief in the correctness of their decisions. If the patent dispute is over highly abstract inventions (biotech compounds or organisms, software, or high-tech generally), that same value attaches to analogous objects that they might have encountered in their lives.

In short, you do best with all generations when you communicate visually:

Use charts and graphs to simplify complex transactions or concepts.

Use timelines to illustrate relationships between events and documents or transactions.

Use short bursts of text to clarify relationships.

Use “hard copy” (think of the missing birth monitor strip) strategically.

Make it familiar through touch, and the point can become more persuasive.

“Get to the point” and all your jurors will appreciate it.

Before we leave the subject of trial graphics, a comment begs to be made about PowerPoint. It is a tool, a great way of achieving some kinds of goals. But every tool has a purpose, and in trial, PowerPoint is often used for more than it can deliver. Just as you shouldn't use a wrench to pound a nail, don't try to deliver case narratives through PowerPoint. PowerPoint is most effective to present images, not text. Research has clearly established that text-heavy slides often end up getting in the way. Specifically, the research demonstrated that if a presentation is presented in 3 formats (the lecture is largely printed on the slides, or the presentation is lightly outlined on the slides, or no slides are used at all), the audience learns to different degrees. And the best learning comes from the use of slides lightly outline the material, or show images that represent the material. Verbatim slides are the least effective presentation style, and in fact are worse than no presentation at all. If you are going to use verbatim slides, research tells us that you'd do better to show the slides, and say nothing. Just let them read the text and you can simply click them through the deck. Evidently, people will read what you show them, and reading while trying to listen actually interferes with learning. The goal is to convey a story, so don't get in the way!

Case Narrative

The use of the story model is now second nature to many trial lawyers. But perhaps, the story model is not always the first choice.

A paper published to the Social Sciences Research Network ([SSRN](#)) in 2010, examined the impact of the story model among court personnel. Participants were appellate judges, appellate law clerks, appellate court staff attorneys, appellate practitioners, and law professors—95 participants in total. The researcher (Kenneth Chestek) described the study rationale as follows:

“In early 2009, I conducted a study in an attempt to fill that gap. I wrote a series of test briefs in a hypothetical case and asked appellate judges, their law clerks, and appellate court staff attorneys, appellate lawyers, and law professors to rate the briefs as to how persuasive they were. My purpose (which I did not disclose to the test participants) was to measure whether a brief with a strong strand of story reasoning, woven in with the logos-based argument, would be more persuasive than a “pure logos” brief.”

Chestek found that of all the court personnel surveyed, law clerks were the only group that did not express an overall preference for the story brief. Chestek hypothesized that these 'new' professionals (with less than five years experience) prefer a focus on "the facts" to aid them in their task— helping their supervisors (the judges) identify laws at issue. In other words, new professionals see the informational brief as one that more closely represents "thinking like a lawyer".

"Perhaps it is because "the law" becomes familiar and the stories become the "new" information that is interesting and engages the attention of the reader. Or perhaps it is related to the fact that emotional reasoning (the "story strand" of our DNA molecule) evolved in the human brain long before logical reasoning. Perhaps as we mature, we learn to trust our emotional reasoning processes more."

What isn't considered in his hypothesis is the generational difference that is well documented between Millennials (the law clerks) and the Gen X/Baby Boomer lawyers and judges. [We have written exhaustively on the subject](#), and believe that the distinctions between generations can explain the difference just as well.

As a member of one of these older groups who reads hundreds of pleadings, motions for summary judgment, and appellate briefs every year, I know how much more I look forward to reading those written in story form. My kids would probably tell me that they wish the author would cut that stuff out and just explain what needs to be shared.

This gives credence to the old advice to "know your audience". If you are speaking (or writing) to a professionally "newer" group or jury, you may want to use a more stream-lined and factual approach. If your audience (or jury) is more experienced, a story narrative may be both more interesting to them and more persuasive.

Finally, another study assessed [need for cognition](#) (that is, the enjoyment of thinking) as well as 'transportability' (the capacity to allow a story to 'transport' you into the narrative's alternate reality):

Research participants read two different stories:

"One story focused on the ability of affirmative action to increase social diversity. The second was based on the role affirmative action plays in redressing generations of discrimination and disenfranchisement. Another portion of participants read one of two analogous rhetorical communications that focused either on social diversity or historical oppression and were composed of simple listings of related arguments."

In other words, one focused on the story, and the importance of the issue, while the other focused on pure facts. The story transports, while the fact presentation has a less transporting effect. The researchers hypothesized that higher transportability would again be related to increased persuasion but only in the story conditions. And they were right.

Highly transportable folks were more responsive to the narrative and their attitude change corresponded to changes in emotional responding (empathy) as opposed to rational appraisals (objective thoughts).

This can be an important area to consider for voir dire: "How many of you are regularly 'transported' by reading a good story?" "Who can remember being brought to tears watching a movie or television show?" The research doesn't address whether a love for narrative dramas on television is as effective a screen as reading (a past-time not embraced by all).

If your story is one that relies on emotional appeal—you want jurors who are "high in transportability".

If your story is one with a more rational or objective appeal—you want those jurors who look at you with confusion when you ask that voir dire question.

And we might suggest that if you are really looking for jurors who are low in transportability, the challenge will be to [observe the jurors who sit disinterested](#) as the "transported" jurors tell their stories.

Metaphors and Analogies

As we've begun to do extensive work in patent and high-tech litigation over the past ten years, the relevance of metaphors and analogies has become ever more apparent. When your case is full of abstract and conceptual ideas (like in many intellectual property disputes), jurors need ways to have it make sense in their own lives. Sometimes those metaphors arise of their own volition like this one that simply emerged in East Texas:

We were telling a story of a company (the plaintiff) suing another company (the defendant) because a third party (let's call him Joe) had given an idea to the defendant and the defendant (not knowing 'Joe' perhaps did not have clear title to the idea) taught some people how to use it, improved on it, and provided consultation on how to use the improvements. So the plaintiff sued the defendant for infringement because we all know 'Joe' doesn't have the money to recover significant damages. Finally, a construction worker mock juror raised his hand:

"Let me get this straight. So some guy steals a drill and brings it to my worksite. I teach him how to use it. And now I get sued for teaching him to use the drill?"

A simple and straightforward metaphor for an abstract concept

with no relevance to the lives of East Texas residents. And just like that, the relevance was given to us. There was a stunned silence in the observation room filled with attorneys and then the sound of pens scratching and keyboards clacking as the example was recorded. What's interesting is that [the more huge the potential damages](#) are in a case, the more relevant the use of metaphors and analogies that relate the case facts to everyday life of the triers of fact.

Old and young alike can understand concepts, metaphors and analogies when presented in a familiar format. We've seen the esoteric technology underlying complex patents simplified using [for example] comparisons to drive through orders, vending machines, and pizza delivery. Use examples that are universal and jurors will 'get' enough of the concept to talk about it in their own words.

Along those same lines, I was recently reminded of a blog post from Dave Munger back in the glory days of [Cognitive Daily blog](#). In the post, Dave's spouse Greta (co-author of the blog) discovered that the fable of the [Fox and the Grapes](#) was unfamiliar to many of her college students. Cognitive Daily then did a survey of their readers to see how many were familiar with the origin and meaning of the phrase "[sour grapes](#)". As it turned out, it was relatively few. Aesop didn't make the Millennial reading list.

It's a good lesson in generational communication for the courtroom. As they saw in the [Cognitive Daily survey](#), those survey respondents who were avid readers were more familiar with the meaning and origin of the term "sour grapes". We need to remember the [phase of life](#) of our jurors, as well as how actual 'reading' has decreased for many. Movie references, TV show references, book references, Bible quotes and religious references, and even pop culture references become [quickly dated and meaningless](#) to your audience.

We saw this recently in a mock trial where the (Boomer generation) defense attorney was attempting to demonstrate the difference between the disputed technologies as the difference between a record album (which he held up for the mock jurors) and a CD. Both delivered music, but with much different technology. Jurors liked the comparison and it made sense for them. But an unanticipated message came through. The attorney displayed a record album by Barry Manilow. Younger jurors saw that choice as reflecting both the attorney's age and a questionable taste in music. They were unafraid to verbalize this perception directly. It made for some amusing razzing in the observation room, and an important lesson for trial.

Argument and Persuasion

The stereotype tends to be that Millennials are suspicious and cynical. They are dyed in the wool skeptics, and hard to please. But more realistically, society is generally trending in that direction. We do not like to be deceived and we are always

on the lookout for liars. We prefer to learn by discovery rather than by being told what to think. This is a big change from the Greatest Generation, which is more deferential to authority and respectful of the pulpit (in church or in court). For those who were raised watching Watergate and Viet Nam on television, and for their progeny, skepticism has always been greater. And now in the age of internet fact-checking, the reluctance to trust opinions of strangers is even greater. What they will say is "give me the facts, don't tell me what to conclude."

Recently, researchers studied participants with fMRI machines while they watched a series of print advertisements. They were not asked to assess the merits (i.e., evaluate) the ads, just to passively observe. The researchers exposed the participants to three (pre-tested) advertisements deemed "highly believable", "moderately deceptive" or "highly deceptive". What they found is intriguing in terms of how our brains deal with threats of deception.

When the print ads were either "moderately deceptive" or "highly deceptive", the fMRI results showed increased attention was paid to the ad. Specifically, the precuneus area of the brain (associated with focusing conscious attention) was activated. In short, the more deceptive the ad, the greater the threat and the more the participant focused their attention on the ad itself.

Intriguingly, ads that were "moderately deceptive" caused more overall brain activity than the "highly deceptive" ads. The researchers suspect it is because participants had to work harder with the "moderately deceptive" ads to ascertain the truth while they were able to quickly evaluate and toss away the "highly deceptive" ads.

So how is this connected to litigation advocacy? In several ways.

Most deception in cases that make it to trial is going to be of the "moderately deceptive" type. The good news is that jurors will automatically focus more on those issues to attempt to intuit the truth behind the evidence presented to them. What we see (over and over again) is that jurors do not want to be [told what to think](#). They want to figure it out for themselves. Most effective is a tight case narrative that answers the questions that naturally emerge in the minds of jurors as they hear your story—and you want to let them draw their own conclusions.

Secondly, it isn't just our youngest jurors (the Millennials) who are suspicious and look for deception everywhere. They may simply be more consciously aware of that process. For the rest of us though, our brains are lighting up. Make us [consciously aware of our suspicions](#) by questioning witnesses, subtly displaying doubt via facial expressions or tone of voice, and giving jurors alternatives to opposing counsel's explanations. What is paramount is that the jury sees you as the antidote for deception, not the source of it. Play it straight, and resist argument.

Technology

Technology comfort and use is thought of as another bright-line generational divider. According to a recent Pew Research survey, while 75% of those aged 18-30 report they use the internet daily, only 40% of those aged 65 to 74 have the same internet use on a daily basis.

“The older Gen X goes online to accomplish a task and then walks away from the computer. Gen Y goes online and offline seamlessly and does not make a distinction between one and the other” (Behrstock-Sherrate & Cogshall, 2010).

Technology use difference across generational groups can be seen even more strongly with cellphone use. For those 65 or older, only 5% get all or most of your calls on a cell phone and only 11% use phones to text. Conversely, 72% of those under age 30 use their cell phones for most or all of their calls while 87% text (Elmore, 2010). This is likely why it only makes sense for the Millennials to send texts to report that they are sick or will be late to the office. It’s not disrespectful—it’s simply habitual and normative for their generational group.

On the other hand, do not assume only your younger jurors are technology-wise. Ask! What may surprise you is that Boomers and even the Silent Generation are also [remarkably ‘connected’](#). Certainly not to the same degree as the Millennials, but [Grandma is also wired \(mostly\)](#).

Millennials: 91% use the internet (up from 89% in 2008) and 86% use social networks. Despite their constant connectivity, texting is more popular among this group than either email or social networks.

Generation X: 88% of Gen Xers were internet users in 2011 (up from 80% in 2008) and of those online, 73% used social media. Gen Xers are “fully comfortable using both traditional and digital media channels”.

Boomers: 75% use the internet (up from 70% in 2010) and 93% use email. Of those online, 47% used social networks in 2010 with 20% doing so daily. Intriguingly, Boomers spend more money on technology (monthly telecom fees, gadget/device purchases) than any other demographic!

Silents: 47% used the internet in 2011 (up from 36% in 2008) and of those online, 94% use email and 26% use social networks!

When you are in a tech-heavy case, make sure to use simple [even anthropomorphized] explanations for the complex layers of technology as exemplified in [Barnes \(2009\)](#). But for the sake of retaining your credibility and trustworthiness, be cautious about claims of ignorance regarding technology (or any aspect of your case). While you can get away with saying “When I first heard about this case, I didn’t appreciate much about this technology...”, jurors are not going to respect you if you don’t

display comfortable mastery of it at trial. Learn it and act like you know it, or sit down. Anything less means that you are not a reliable source of the information that they demand. You are the expedition leader, and you’d better know the route.

Younger jurors are going to expect that you will use technology at trial. Further, they are going to expect you to use that technology smoothly and effortlessly. A good trial technician can be worth their weight in gold when it comes to juror’s sense of your technological credibility. The days of getting juror commiseration and empathy with your self-deprecating comments about “not being good with technology” are long-past. You get no pass.

Pretrial Publicity (PTP)

When you have an upcoming trial with much publicity, there is always the concern about the impact of pretrial publicity on your potential jury. Recent examples for which this has been a concern are the Enron trials, Casey Anthony trial, the Conrad Murray (Michael Jackson’s doctor) trial, and the George Zimmerman/Trayvon Martin shooting (see our paper on this one [here](#)).

Despite our beliefs about the impact of pretrial publicity on the defendant’s right to a fair trial, the Supreme Court has differed from that common wisdom. There was much discussion when the [Supreme Court decided Jeffrey Skilling had gotten a fair trial](#) in Enron’s home town of Houston, despite extremely negative pre-trial publicity. Recently, researchers examined transcripts of 30 mock jury deliberations to assess whether pre-trial publicity affects jury deliberations.

Not only did pre-trial publicity have a powerful effect—that effect was consistent across all thirty juries. Every single one of the juries exposed to PTP discussed what they had read/heard about the trial. Rarely did a juror in any of the thirty groups halt the PTP discussion despite pre-deliberation admonitions to not discuss PTP and to halt any discussion that should arise during deliberations. Rather, they acknowledged the information came from PTP and then agreed to discuss it anyway! The researchers opine courts cannot rely on the jury to correct fellow jurors who raise PTP information.

Jurors who were exposed to negative PTP (anti-defendant) were significantly more likely than their non-exposed counterparts to discuss ambiguous trial facts in a manner that supported the prosecution’s case, but rarely discussed them in a manner that supported the defense’s case.

Negative PTP seems to be lumped in with the prosecution’s ambiguous evidence as though it is more evidence for the prosecution’s case. So ambiguous evidence is strengthened by negative PTP. As in, “That’s just like what I heard...”.

This study also found that PTP-exposed jurors were either unwilling or unable to adhere to instructions admonishing

them not to discuss PTP and rarely corrected jury members who mentioned PTP.

In essence, this study says that jurors' ability to hear and interpret ambiguous evidence is damaged by negative pretrial publicity. They are simply unable to process the evidence in a balanced fashion and instead they skew their interpretation to support the prosecution. Supreme Court ruling notwithstanding, pre-trial publicity does affect juror behavior. And [negative PTP stacks the deck](#) for the prosecution.

Why is this topic being included in a paper about generational differences? Because there is an important generational distinction surrounding PTP (Ruva & Hudak, 2011). Their study examined how pretrial publicity affects older jurors [range = 60-80 years old, average age = 69.5] and younger jurors [range = 18-21 years old, average age = 19]. In this instance, researchers looked at the impact of both positive and negative publicity on mock juror decision-making.

Mock jurors read either positive or negative pretrial publicity accounts of the case (via mock news articles) and then, one week later, they watched an edited 30 minute video of the trial. (This video was used in previous research and found to be realistic, believable and ambiguous as to guilt. Pretrial publicity is believed to be most important when guilt is ambiguous.) Following viewing of the trial video, they were told to disregard any relevant information from their readings the week before and then they wrote down their individual verdicts.

Older jurors were only affected by positive pretrial publicity.

Younger jurors were only moved by negative pretrial publicity.

In other words, even though the mock jurors were given identical information "pretrial" and then viewed the same video summarizing the trial, they came to very different conclusions. Older jurors were only biased by the positive PTP while younger jurors were more conviction prone than the older jurors only when exposed to negative PTP.

What this research would suggest is that when you have negative pretrial publicity, older adults (older Boomers and Silents) are going to be less affected by it than when they have been exposed to positive pretrial publicity.

If the case involves a well-known and positively regarded person, older adults are going to be more affected by the 'halo' surrounding them than will younger adults.

If there is a high level of negative publicity and the litigant is relatively unknown, younger jurors are going to be more swayed (negatively) while older jurors are largely unmoved.

It's an intriguing finding for two different reasons. First, this is a demographic finding—attitudes and values are almost always

more powerful in affecting decision making. The second point is the question of why the older jurors were only moved by the positive PTP. They are, for the most part, more conservative. If they were looking for reasons to be punitive, the negative PTP would be powerful. Instead, another finding in our analysis of generational research seems to fit: older jurors are happier. They prefer to pay attention to news and information that says 'the world isn't so bad after all'. Generally speaking, [expect older jurors to prefer positive stories](#), good character, and good manners.

Paths to the Attention of Younger Jurors

To Engage Both Millennial and Gen X Jurors

Like them, treat them as having something to contribute. This is especially true for the Millennials who are tired of being treated disrespectfully, like "kids".

Don't write them off as insensitive. Use universal values to engage jurors of all ages with your specific case.

Understand the impact of growing up digital but don't assume competence with all things technological. For both Gen X and Millennial jurors, some will be mavens and others will not. Age is not a totally reliable indicator of technological prowess.

Betrayal of trust is an important (and potentially powerful) theme. This is especially true for the Millennials who grew up in very protected and supervised environments. They are especially sensitive to betrayal of trust. Focus on issues of what is right and what is wrong.

Connection, tolerance and making a difference are case themes that resonate. Build connections: Make witnesses and parties "like" the jurors. Consider case narratives focused on relationships, family and friends. Consider how to use "balance". Demonstrate the meaning in your case and how it personally affects them, cut especially for the Gen X juror.

Religious affiliation is lowest among the Millennials and lower among Gen X jurors than Boomers or Silents.

Help them trust the sources of information by giving information on source validity that extends beyond educational credentials.

Use effective and crisp multimedia strategies in presentation. Make the trial visual. Highlight digitized material or sound bytes that outline key points.

Stay concrete and practical. Be "cool" but not "slick". Move around and vary your position and speech style.

Teach the jury charge so they understand what is expected of them.

Conclusions

In the courtroom, much as in the office, you are best served by maintaining your curiosity and minimizing your reliance upon stereotypes about the various generations. The ones ‘not like me’ (older or younger) are not the enemy, they are merely strangers. And strangers prefer people who appear to like and

respect them. Don't assume that disagreement or differences are a sign of disrespect or disdain— frequently, they are just a matter of habit and personal style. There has been intergenerational tension forever. We hope this overview of generational issues helps your navigation in the “new normal” of both the office and the courtroom. 🎧

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