



The Jury EXPERT

The Art and Science of Litigation Advocacy

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Four Generations in the Jury Box

What you need to know about the four generations in the jury box. With responses from three experienced trial consultants.

Page 1

Staying Organized in Voir Dire

How to do the best job in voir dire and jury selection by having organizational strategies and tools to de-stress the experience.

Page 7

Research-Based Recommendations for the Capital Defense Attorney

An update on the death penalty research and recommendations for defense attorneys. With responses from three experienced trial consultants.

Page 10

Got an iPod?

Take a look at the many ways to use your iPod to do things you never dreamed you could do with that sleek beauty.

Page 23



Myths and Truths in Witness Preparation

Identify common myths and avoid their pitfalls as you prepare witnesses.

Page 28

Communicating by Listening

What? Learn how to communicate more effectively by improving your skills in listening.

Page 32

Generations in the Jury Box: *Tailor Your Message, Make the Connection*

by Cam Marston of Generational Insights

There has been a lot of buzz lately about generational challenges in the workforce as companies struggle to make sense of the different needs and perspectives of four distinct generations working side by side. Businesses worldwide have entire budgets dedicated to understanding how to connect with employees and customers based on generational nuances. Jurors are no different.

Understanding how shared life experiences and perspectives can color one's view of the truth – or overall trustworthiness – is critical to connecting with jurors. Choosing words and arguments carefully with a view for how specific generations of jurors will receive them can make or break a case.

So, how do you communicate with a group of jurors who may be Matures, Boomers, Gen Xers, Millenials, or more likely, all of the above? Meet them where they are, so you can bring them where you want. Ignoring the truths of generational norms will get you nowhere.

You need to know how each gained its collective persona in order to craft a message that earns credibility and brings them closer to your side of the case. So, let's discuss the differences in each generation.



Matures

Our nation today lives in the world created by a generation known collectively as the Matures. Born prior to 1945, they total approximately 30 million people. Heavily influenced by the military, the Mature generation places great emphasis and power in hierarchy – they desire a clear chain of command. Their work life, likewise, was defined by climbing the corporate ladder and earning the associated perks along the way. This same sense of order and expectation is desired today. The Mature juror needs to know the process, and will follow it implicitly.

Matures also place great trust in the traditional institutions that many Gen Xers dismiss. Degrees and longevity hold great swaying power. This presents a challenge when addressing a jury of mixed generations – one must be able to

present expert testimony that is deemed trustworthy on both ends of the spectrum: traditional, established experts and unaffiliated, unbiased peers.

The Mature juror needs facts, a proven history and a sense of order amid a world that, in his perspective, is becoming increasingly chaotic and loose with the fundamental truths. Straight talk by pedigreed experts will gain favor. Younger attorneys should refrain from attempting to establish false camaraderie with a Mature juror, as they have not yet had time to climb that hierarchal ladder. Courtesy and respect for the sacrifices they've made are the keys to connecting with a Mature audience.

Boomers

Born between 1946 and 1964, Baby Boomers are an optimistic bunch who value a strong work ethic. They grant credibility based on proven history. There is your hook. The Boomer juror needs to know that there is a successful background supporting the argument. Your challenge is to find a way to say “we’ve proven ourselves worthy of your attention and trust.”

Boomers also bring an interesting dynamic to the jury box in that they are facing a life change themselves. The United States is entering a period of mass Boomer retirements, so this group is beginning to think about their personal legacies. Craft a message that speaks to this hunger...how will this jury experience work into the Boomer's legacy?

Finally, it is important to recognize that Boomers are often traditionalists. They may use technology happily or begrudgingly, but as a whole they view it as something to augment the old way, not replace it. They do not want to be outdated or pushed aside. When introducing technologies into the case argument, it is important to balance the need to inform about new innovations with respect for the way things used to be. Never imply a disdain for the traditional approaches that many Boomers still prefer. Nor should you assume a Boomer is not informed about the latest technologies. It's a fine line, but walking it carefully will minimize unintended insults.

Generation X

Born 1965-1979, Gen Xers are a smaller generation – 49 million compared to 80 million Boomers and 75 million Millennials - that has made a big impact. Raised in a world that appeared to be falling apart, they have always questioned authority and maintain a strong skepticism today. They are not easily impressed and want to know all the details for themselves before making a decision. They approach jury duty with a sense of defiance, requiring you to prove yourself, your client and your case. Trustworthiness is not blindly bestowed to anyone.

Understand that Xers take nothing at face value. To an Xer, everything requires reputable support and that support comes from individuals, companies, organizations that they, the Xers, deem trustworthy. Want to further your credibility with Xers? Demonstrate the use of unbiased resources and experts to prove you've got nothing to hide. Remember, these are the folks who lived through church scandals and presidential affairs. Honesty is unexpected yet highly treasured. If you can capture their trust, it will open the doors to their hearing your argument.

Another way to address the cynicism of GenX is to poke a little fun at it. Gen Xers can laugh at themselves and will appreciate your direct approach, *if done well*. Be careful not to belittle the choices they make, but rather the cynical way they see the world. It's all about the attitude.

Finally, never underestimate the power of their peers to influence Gen Xers. They want to hear from real people, so peer-to-peer testimony carries tremendous weight. In the retail world, Xers invented reader reviews and buyer feedback for online merchants, underscoring how they rely less on the opinion of experts and more on the opinion of peers when making decisions. Examine your expert witnesses carefully to determine if they will carry weight with a Gen X juror, or if there is another, more peer-driven way to deliver the same message. For this generation, degrees and awards do not confer trust. In fact, sometimes they have the opposite affect. Choose wisely.

Millenials

Born between 1980 and 2000, the Millenials are, generally, more optimistic and ambitious than the Xers before them. However they are in a tricky spot right now as they slowly, and sometimes reluctantly, extricate themselves from their increasingly coddled childhoods and take on the world. They have been taught to look for the helping hand. Address Millenial jurors with the right touch and they will quickly seek to gain your favor.

Millenials as a whole are an inclusive crowd. They have been raised in a world of increasing diversity and their optimistic nature wants to continue that. Because they ultimately trust their peers over any other source, they want to see their peers in your argument. They have little tolerance for racial, economic, religious or social stigmatism and will respond negatively to any insinuation of elitism.

Millenials are incredibly active – frequently to the point of being stressed – and on the move. They look for the immediate application in everything. They are concerned about the world and their place in it. Include Millenial jurors in the conversation and guide them to see the bigger picture and their place in the outcome. Let Millenials feel like they are part of something bigger and your argument will hold more value.

Closing Remarks - One Size Fits Some.

Each generation has a strong personality and perspective that drives decision making. Ignoring those differences can backfire completely, pushing away a generation of potentially sympathetic jurors, or at the very least wasting time and energy on a message that doesn't fit. So while the rules of communication may change with each generation, the fundamentals do not – know your audience. What do they value and how do they see the world? A generational perspective provides that understanding and helps make the connection, ultimately helping you make the case.

Cam Marston is president of Generational Insights and speaks about generational issues to worldwide audiences. His book, *Motivating the “What’s In It for Me?” Workforce* details the cultural experiences that shape the collective views of each generation and provides strategies for effective communication. www.generationalsinsights.com.

CONSULTANTS REACT TO GENERATIONS IN THE JURY BOX...

We asked three experienced trial consultants who are members of ASTC (Katherine James, Tara Trask and Stanley Curbo) to react to Cam Marston's article on Generations in the Jury Box.

Here are their thoughts, on Cam's article and on the impact of generational status in general.

Katherine James, ACT of Communication

I think it is a wonderful idea and vital idea to consider generational differences between jurors. Heaven knows, it is a wonderful and vital idea to consider generational differences between lawyers. And, cryptically enough – we have to consider them within the trial consulting population as well.

How many times has this Boomer trial consultant found herself in the room with a Mature or Gen X attorney thinking, “Wh-a-a-a-a-t are you TALKING about...?” only to remind myself, “That’s right. Different crowd.”

My major comment about Cam Marston’s article is that the division of the generations isn’t “fine” enough. Meaning, I find that all people divide into much finer divisions than

the “big four”. The generational studies that define the generations in 10 year increments have always proven to me to be much more helpful. If the criteria for the division is a big defining cross cultural event, then 10 years is just more accurate.

Let’s just take Boomers. The event that defines my particular group in this broad category is “duck and cover”. You can hear it in the responses of jurors in focus groups all the time – we just don’t trust authority in general. I find that I have to watch myself so that I don’t assume that some person near my age who pipes up, “Yeah, right – as if you can believe THAT” about the government doesn’t get more credence from me simply because I hear my own point of view – generationally – echoed. Now, my sister, who is ten years younger than I am is still a Boomer according to the broad category, but her defining event is different. Put the two of us on a jury and you really will find that you need to address us differently according to our finer needs.

I am also fascinated by the group coming up – the ones who are young teenagers right now. There is no way they are in the same group as the people in their mid-twenties.

Katherine James is a California-based trial consultant who teaches

attorneys to be more effective and more relaxed in the courtroom. [<http://www.actofcommunication.com>]

Tara Trask, Tara Trask and Associates

Cam Marston does an excellent job of laying out the fundamentals of the different generations in the U.S. today. I agree with his characterizations of the different generations and also with his suggestion to keep in mind the historical context, learning styles and interpersonal needs of each of the generations.

He rightly challenges the trial attorney to take these issues into consideration when addressing the venire. The question that I often get from trial attorneys on this issue is how to best tailor a message with all four or even three generations represented in the venire. The answer to that question is two-fold.

First of all, it is impossible to please everyone all the time. The trial lawyer has to pick and choose which generation he is trying to persuade on which issue. Often, there is overlap, for example a well-pedigreed expert who is also relatively young with excellent communication skills has great cross-over appeal.

Second, and most importantly though, many juries in many jurisdictions are not as diverse as the populations they represent. We know that older people are more likely to serve on juries than very young people. Most juries are largely made up of Boomers and Gen Xers with some Traditionalists thrown in. The savvy trial lawyer also searches out potential leaders and contemplates the generational dynamics of the potential leaders who have been seated.

Generational insight is a dynamic and ever-changing view of the venire. While I certainly agree that taking these issues into consideration is important, learning and understanding the youngest generation, the Millennials is really about preparing for what is coming next.

Tara Trask and Associates, San Francisco, CA

Author of “The Changing Face of Juries”, *The Recorder*, San Francisco, October 2003.

“Communicating to Gen X and Net Gen Jurors, Part II”, *The Jury Expert*, December 2004.

“Getting to Know Gen X and Net Gen as Jurors”, *The National Law Journal*, January 2005. [<http://www.taratrask.com/>]

Stanley Curbo, *Courtroom Sciences*

When I read Cam Marston’s piece on the generational

characteristics of Matures, Boomers, Gen Xers, and Millennials (a/k/a Gen Yers?), I sort of experienced a collective déjà vu awareness that “fast-reversed” over my twenty-eight years of interchange and dialogue with jurors – the real ones, the mock ones and the pseudo-real/shadow or mirror jurors. It was like a, “So that’s what was going on there” reaction.

The value I found in the piece was the refreshing of what I have known for some time. That is, that being aware of the unique generational characteristics of these four groups is the first step toward understanding how each may problem-solve issues distinctly differently and how each may “critique” the presentation of the story differently. Mr. Marston’s premise is that by understanding these specific generational distinctions, one can choose words and arguments to “tailor the message.” The author speaks to choosing the words to meet the generations where they are. If choosing words and arguments also includes “avoiding” certain styles and delivery that are not compatible with a generations belief system, I would concur.

For example, it has been my experience that Gen Xers and Millennials are not receptive to

emotional overtures and what they perceive as an advocate’s attempt to “play” them. They just want you to tell them the rules, don’t waste their time, and they will tell you who deserves to win and why. They can have some “hard bark” on them, brought on by what they perceive as a healthy cynicism. A long while back, I stopped asking attorneys at focus groups and mock trials if they would care to join in the focus session with the full panel at the end of the day for this reason. An attorney who wanted to come in and harvest feedback about her presentation of the Plaintiff’s case was told by a “thirty-something” young man that: “I was probably 75% in favor of the Defendant before you even got to the end of your presentation, primarily because I began to doubt whether in fact you were even a real attorney.” And, the young man delivered this sobering “slap-in-the-face” critique in an even, unemotional manner as if he had just said, “make mine a double-double, chocolate latte light moch-mocha hooma-homma!”

Boomers – a caveat. Being a boomer myself (1947 – 1951), and that is as close as I’m revealing without a fight: I would slightly challenge Mr. Marston’s description of my

“bunch” as totally optimistic. My experience, not so much my personal experience but what I have learned from my fellow boomers in decision-making settings relating to their perceptions of institutions (corporate and governmental), is that they have to some extent experienced an erosion of this optimism. They manifest a certain bitterness and cynicism brought on by their personal experiences with corporate lay-offs, jobs moving off-shore, and misdeeds by the officers and directors of the very institutions their parents taught them to have faith in. This bitterness and cynicism may not be totally pervasive across the collective Boomer generation; but it is there, and a bitter and cynical forty to sixty-something juror can take it out on his/her perceived nemesis, and vehemently!

Knowing your audience, appreciating the generational make-up of that audience and the distinct differences each brings to the game is the important message Mr. Marston’s piece delivers. How to tailor your message to this diversity is a challenge indeed, but a challenge that should be embraced for the benefits a successful connection with your audience can yield. Jurors make decisions and filter everything they see and hear through their unique perspectives. Understanding this uniqueness and how the

words one uses and the style one employs to deliver the message is essential for victory.

Stanley Curbo is a senior litigation consultant with Courtroom Sciences in Irving, Texas. [<http://www.courtroomsciences.com>].



Favorite Thing...

Tucked into every issue of The Jury Expert you’ll find a “favorite thing”. Something special you submitted or something we found and thought of value.

This issue, our favorite thing is a webpage from the website of ASTC member Kathy Kellermann.

It’s called “Jury Research Updates”.

Every seven days, Kathy takes questions from litigators and answers them based on social science research.



Take a look at our May 2008 “favorite thing” located at the URL below:

<http://www.kkcomcon.com/CCResear.htm>

Becoming Real

This is our first on-line edition of The Jury Expert. The labor was prolonged. We want to thank the authors in our first issue (and in those to come) for believing in this new digital concept of TJE and making its very existence possible by writing about their work. The Board Members of the American Society of Trial Consultants also deserve thanks for allowing us to dream big and to stretch the parameters of The Jury Expert into a living and breathing and changing entity.

We will continue to evolve over time based on your feedback and as we learn what works well and what we could rethink. Please send us your feedback, ideas, and perspectives on how we can make TJE a "must read" publication for litigators.

Send your comments to us at: EditorTJE@astcweb.org.



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