CHAPTER 4

Who Are Today’s Jurors and How Do You Reach Them?

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The courtroom is quiet. The jury sits up a little, attentively expectantly, as the judge says, “You may proceed, counsel.” A seasoned, experienced litigator moves into position to begin the opening statement. Even though the attorney has been here many times before, the ever-present subtext runs through his mind: “I hope they’ll get it; that they’ll stay with me and believe me and my theory of the case. Is this the right approach? Are they listening?” Not much has changed over the years in terms of format or process except one thing: The jury.

The jury has changed in more ways than you realize. And with it, the old litigation tactics have to change, too. How you think,

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what you plan, what you will say, and how you will say it need to be revisited and rethought in light of this new jury.

The first major challenge is to recognize differences among juror groupings, both generational and multiethnic. They present differing approaches to life, varied goals and motivations, different standards, moralities, expectations, belief systems, and information-gathering processes. Second, you must gather insights into how radically our new information communication processes have changed—what effect television, computers, and e-mail have had on human communication and thus on your jurors.

Generational Differences

We face the evolution of Generation X into the majority segment of the jury pool. As of the year 2000, here are the demographics of today’s jury pool:

- Generation X (b. 1961–1981) 41 percent
- Baby Boomers (b. 1943–1960) 32 percent
- Seniors (b. before 1943) 27 percent

GenX’s arrival brings unique issues into the courtroom. GenXers listen and learn quite differently than Boomers and Seniors. Their differing life experiences and expectations also create different attitudes and standards about relationships, families, social responsibility, marriage, race, social mores, and institutions, as well as work, money, careers, and the establishment. As reported recently in the Wall Street Journal, “Gen X has a mistrust of authority and a contempt for ambition.” Think about how you—or your witnesses—will explain to them what you once assumed were common principles and goals.

Differences in background and belief systems. Boomers grew up knowing an established, predictable way of life. But their participation in the protests surrounding civil rights, Vietnam, and the women’s movement also made them feel they could participate in and change the world. GenXers, by contrast, are not big-time activists. They want a good life, replete with material goods and toys. They see jobs horizontally, moving from one job to another, while Boomers see their work vertically, climbing ever higher in position and power.

The increase in working mothers has created a generation of latchkey and day care children, a more independent, self-sufficient, money-savvy generation. What has this taught GenXers
about trust in social institutions, about dependency and forgiveness? Because they are alone more, the key motivator has become Me—what satisfies, interests, pleases, indulges Me. How much harder will it be to motivate sympathy, empathy, or a hewing to basic social principles in these jurors? How much less judgmental and laissez-faire will they be about familial permutations they encounter in the courtroom? Will unusual behaviors upset them as much as they would Boomers and Seniors, whose expectations and experiences were based on fairly structured, predictable models of family and community life?

**Consumer products and the value of money.** GenXers excel in the consumption, analysis, and comparison of products. This is the ultimate shopper generation. Labels, fads, keeping up with peers, and media ads have never been at a higher level of importance. The working two-parent family provides GenXers with more money, toys, clothes, and permission to spend than ever before. Why is this important to litigators? Because this generation of mall-denizens is a much more sophisticated and demanding group of shoppers, real scrutinizers of what is sold to them. They have definite attitudes and assumptions about consumer rights, “nefarious” profit motives, and lack of quality. They expect and demand value and service. In a product-liability case, they are less willing to accept excuses than previous generations and are more analytical and knowledgeable about the marketplace, products, and transactions.

**Careers and work ethic.** GenXers’ attitudes toward work and a career—toward what is important and how much they are willing to give up in order to get it—is another area of important attitudinal differences. Boomer men and women who worked hard to gain the success they enjoy do not understand when a GenXer expresses reluctance to make personal sacrifices for the sake of a career. Boomer women were willing to sacrifice some of the family life, which they had in oppressing abundance, in return for a struggling chance at a career. Generation X women have a clear shot at the executive suite but often have been working since high school (in their drive for consumerist “spending money”) and long for a change of pace. They place greater importance on the home and family life they missed out on as children and are unwilling to compromise that ideal for a job. While GenX women will continue to work, they will not sacrifice their personal lives or families for a career to the degree that Boomer women did.
Many Boomers who grew up in the 1960s followed ideals and believed they could change the world. This made their careers important to them because they felt they personally could make a difference. GenXers do not care that much, do not believe they personally can make a difference, nor do they feel accomplishment is more important than comfortable living. They make a conscious effort to avoid engaging in anything that requires a descent into the rat race. Consider these attitudes when your case involves entrepreneurial solutions, driven executives, or corporate shortcuts.

All of these new issues have an impact on jurors’ identification with your client and witnesses and on their sense of fairness or fault. And we have not even considered these issues in the light of today’s multiethnic juries and what you need to do to help them to accept our culture, our laws, our belief systems, our regulations and concepts of fairness. What of the American barrios and ghettos? What different experiences do these citizens bring to a jury? The basic factor is, and always has been, the juror’s past experience and how that affects who the juror believes and why.

In your quest for the communication skills and information you need to lead and guide this diverse, demanding group, there is one more major issue to consider. We recently lived through an absolute revolution in how we communicate and get information. This flies in the face of the old, forensic, 19th-century style of oral courtroom advocacy.

The Communication Revolution

The major difference between how the two main generational groups gather information is their use of, and expectations about, time. Boomers and Seniors are more patient, willing to tune into the established newspapers and VHF broadcasting networks, waiting for something of particular interest. GenXers want control of their time. Highly selective and proactive, GenXers customize and control their entertainment and information, going for specialized magazines and TV narrow-casting-news, sports, and music cable networks. They use technology, taping programs so they can control exactly when they see them, while many Boomers and Seniors still cannot use a VCR.

A poll done in 1995 by Decision Resources studied the preferences, habits, and expectations surrounding how these different
groups gather new information or do research—tasks similar to what they must do in court. This is what was found:

**Information-gathering Boomers and Seniors**

- Go to the library, look up subject/author in card catalog.
- Go to stacks, peruse books for author’s style, content, credentials.
- Return to checkout, leave, and go home to begin work.
  Time spent: three hours and 15 minutes.

Significance to you: Boomers and Seniors are much more accustomed to investing time and effort to get information. They also select information based on the individual styles, knowledge, and credibility of writers, a process that matters to you as a storyteller and analyst. You need jurors to respond to you, and believe you.

Now let us analyze what GenXers do when challenged to find new information.

**Generation X**

- Stay home, sitting in comfort at the computer, log on, punch in the key word, and search online.
- Select the best paragraphs, delete the parts not needed or wanted with the flick of a key, rearrange, download, and print out information taken from anonymous sources.
  Time spent: 15 minutes and 36 seconds.

Significance to you: Getting information is easy and quick, and in their control. This means they are conditioned to spend very little time and effort on information-gathering. And what about authorship? Personal style? What of the definable, credible fact giver? That does not matter as much as just getting the job done, with no wasted motion. What do you, as a communicator to these two groups, need to learn from these examples?

Baby Boomers and Seniors have the patience to take three hours and 15 minutes in “real time” courtroom time to pursue information. They are most comfortable getting information through human, recognizable truth-tellers. The computer-using GenXer does it in “non-real time,” in Web-nanoseconds. They expect information to come anonymously, with little effort. Click a button, and there it is. This means that to keep a jury’s attention on often dull, abstract, or technical subjects, you no longer have carte blanche to talk until you are done, without visual, objective backup to make your points.
Effects of Television, Computers, and E-Mail

Boomers were the first generation weaned on television, but a typical child now logs about 22,000 hours watching television by age 18—more than twice the time spent in school. Here are some of the effects of television conditioning on all the generations and on how individuals now communicate and absorb information.

Passivity. It takes no effort to gather data. Information is delivered in a painless, nonchallenging, pureed form with built-in techniques that motivate audiences to stay tuned.

Inattention. One listens with barely half an ear. Television plays in a non-focused, busy home environment where people talk, argue, play, and cook while phones and doorbells ring, not in a quiet, focused atmosphere. Since TV is mainly background noise, we can still stop, look up, and catch on to what is happening with little effort.

Lack of continuity. Commercials and daily-life interruptions teach us to expect information in small bites. We catch up in the middle of a program through some co-watcher’s summary or bumble along until we figure it out. It does not disturb us to fade in and out of an ongoing story or event, so popping in and out of your speeches and examinations is natural since we know from experience we can catch up.

Tight, succinct stories. One and one-half minutes per news story, with no wasted words or extra ideas to chew on. Just the facts, ma’am, quick and easy!

Visual support. Words are no longer the message givers; pictures tell the story. Facts are given by a voice-over explaining a visual chart, graph, or happening.

Remote-control dismissal. We now know how much power we have to dismiss anyone or anything that does not capture and please us right away. This process encourages dismissal in the courtroom, too.

Computers and e-mail. Computers and e-mail have elongated these effects. Since Generation Xers play computer games in which they create or control reality and manipulate time, the real-time clock that ticks in the courtroom during presentations and witness testimony is a time trap for them.

Similarly, e-mail communicates by remote, static, personally invisible messages. It has the tendency to atrophy the ability to pick up nonverbal and vocal nuances.