REACHING OUT TO Jurors

Trial Consultants Agree That Jury Pool Demographics Have Changed. Now Lawyers Must Consider Altering Their Trial Tactics to Keep Pace.

MARK HANSEN

TODAY'S JURY POOL LOOKS A LOT DIFFERENT THAN THAT OF 10 OR 20 YEARS AGO.

Back then, baby boomers constituted the single biggest source of potential jurors. And boomers, many of whom grew up in the 1950s and '60s, have been variously described as being more patient, more ambitious, more attentive, more trusting and more idealistic than younger jurors.

These days, however, the group often called Generation X makes up the largest segment of the jury pool. And Xers, most of whom grew up in the 1970s and '80s, are generally characterized as being less patient, less ambitious, more self-reliant and less trusting than their elders.

But are they really all that different from baby boomers? Are they harder to reach? And can anybody really say with certainty how any juror is likely to view a case based on when he or she was born?

It depends on whom you ask.

Some trial consultants contend that Gen Xers not only listen and learn differently than baby boomers, but also...

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have different attitudes, values and beliefs that may come into play in their role as jurors. And the sooner lawyers realize that, some say, the better off they’ll be.

Sonya Hamlin, a New York City-based trial consultant who has written a book called *What Makes Jurors Listen Today*, says lawyers should learn to recognize the differences in jurors of different generations—and cultures—and figure out how to relate to those jurors in a way that will capture and hold their attention.

“The jury has changed in more ways than most lawyers realize,” Hamlin says. “And with it, the old litigation tactics have to change, too. How lawyers think, what they plan, what they say and how they say it all need to be revisited and rethought in light of today’s jurors.”

Other trial consultants agree that juries have changed, all right. But they contend that the changes are universal, not age-specific.

“I’ve spent a lot of time talking with jurors of all ages,” says Ross P. Laguzza, a Houston-based trial consultant.

“And I’ve never gotten the feeling that age has any correlation with verdict orientation.”

That’s not surprising, he says, when you stop to consider that we have all been subject to the same social forces. We’ve all become less formal, more impatient and more desensitized to things that used to shock us. And while personal responsibility has declined across the board, we all feel a greater sense of entitlement these days than we used to, Laguzza says.

“I’m not saying there are no differences between generations,” he says. “That’s obvious. What I’m saying is, we all have more things in common than we have differences. And if we’re really worried about what’s important to a jury, we ought to be worrying about the changes that affect everybody rather than differences between us.”

During the past two decades, an entire cottage industry has developed around the notion that an expert can predict what a juror will do based on demographic factors such as age, race, sex and socioeconomic status. But even these experts disagree as to what those differences are and how they should be defined.

**GENERATIONS X, Y AND D**

Consider the current generational breakdown of jurors. Gen Xers, most of whom are now in their 20s and 30s, make up about 41 percent of the jury pool. Boomers, mostly in their 40s and 50s, account for about 32 percent of today’s eligible jurors. And seniors, everyone born before about 1943, constitute the remaining 27 percent.

And now, a new generation of potential jurors has been identified. Known as Generation Y, it includes everybody born since about 1981. And while some trial consultants insist that Gen Yers are as different from Gen Xers as Xers are from baby boomers, Yers are just starting to reach the age where they are old enough to serve as jurors, so their impact has so far been negligible.

Some marketing guru has even defined a subset of both Generation X and Generation Y known as Generation D. But Gen D, which stands for digital, is less an age group than an attitude, proponents say.

“Generation D is all about technology,” says Todd Hilsee, president of Hilsoft Notifications, a Philadelphia company that develops notice plans in class action and mass tort bankruptcy cases. “These are people who were born digital. They understand acronyms like DSL and VPN. They’re the kind of people who learned how to host Web sites in their dorm rooms. They live and breathe the Internet.”

Hilsee admits he’s no expert on jurors. But he says it only seems fair to assume that the characteristics that distinguish one generation from another outside of the courtroom—about which he claims to know a great deal—would apply inside the courtroom as well.

And if that’s the case, he says, it would seem to suggest that a lawyer who is trying to reach a Gen X juror, for instance, should be brief and to the point. The reason: Gen Xers crave stimulation, have been conditioned to expect immediate gratification and are used to getting things done their way.

Hamlin says the chief difference between baby boomers and Gen Xers is the way in which they gather and use information. Baby boomers are used to going to the library and looking things up, she says, which indicates they are accustomed to spending time and effort on getting information. But Gen Xers prefer to stay at home and do their research online, she says, which shows they are accustomed to getting information quickly and with minimal effort.

Another big difference between baby boomers and
Gen Xers, according to Hamlin, has to do with their attitudes about work and career. Boomers were willing to work hard and make personal sacrifices for the sake of their careers. But Xers place greater value on home and family, and feel that a balanced life is more important than professional accomplishments.

So what does it all mean for lawyers?

Hamlin says it means lawyers no longer have carte blanche to talk until they feel free or finished or without using visuals to back up the points they are trying to make.

To get through to today's jurors, Hamlin says, lawyers have to use language that is clear, explicit, succinct, all-inclusive and, most of all, visual, so jurors can picture what the lawyer is talking about.

Lawyers need to organize their content so it tells a story, Hamlin says. They should talk in word pictures, describing a scene and making the jury see, experience and become part of whatever it is the lawyer is talking about. Don't say, "The car was moving in a northwesterly direction," for example. Say, "The red car left the curb and started up Main Street toward the McDonald's on the corner," she says.

Hamlin cautions lawyers to watch out for legalese and opt instead for commonly used, recognizable language such as "before" or "after" rather than "prior to" or "subsequent to.

Examples, references and colloquial expressions can also be very effective with jurors, Hamlin says, although lawyers need to be sure what they say is something all jurors can understand. For example, don't try to use "cool" Gen X language if it is not native to you, she says. Say something like, "Lots of folks call it (such and such) these days, right?" she says.

Dan Wolfe, a Chicago-based trial consultant, comes from the same school of thought as Hamlin. He insists that one has to rely on some broad generalizations that won't apply equally to every member of the same generation.

Still, there is enough evidence out there to suggest that people of different generations will look at the same set of facts and come to the opposite conclusions, he says.

"You can't pigeonhole people into categories, and you're always going to find somebody who doesn't fit the mold," he says. "But that doesn't mean you can never rely on such generalizations because most of the time you can.

But Laguzza, the Houston-based trial consultant, isn't buying it.

He says some trial consultants have gotten a lot of mileage out of the suggestion that you can tell a lot about a juror from his or her age, race, sex or socioeconomic status. But those kinds of generalizations have a way of not panning out when they are put to the test, he says.

"When you get past the anecdotal stuff, these simple demographic distinctions rarely give you anything useful," Laguzza says. "In fact, I find a lot of that kind of thinking not only useless but misleading."

If it were that easy to predict how a juror would rule, Laguzza adds, there wouldn't be any need for jury consultants—or high-priced trial lawyers for that matter. A simple formula would do.

But it's not that simple, he says. Which means that lawyers must look at each juror individually, find a way to make that juror care about a particular case and give him or her a reason to side with the client.

"And there's nothing simple about that," says Laguzza, "because each case is different."

SOME GO WITH GUT FEELINGS FOR THEIR PART, TRIAL LAWYERS SEEM TO BE OF TWO MINDS ON THE MATTER.

Jere Beasley, a Montgomery, Ala.-based plaintiffs personal injury lawyer, says he doesn't have much use for trial consultants. "I don't have anything against them," he says. "I just don't see any need for them."

Beasley, who has been practicing for nearly 40 years, says he relies largely on instinct when selecting a jury. "Your first impulse is usually the best," he says. "If I don't like a particular juror for one reason or another, the chances are he or she doesn't like me, either."

Beasley says he doesn't put much stock in the notion that you can tell a lot about a juror from his or her age.

"I've had good jurors and bad jurors in every age group," he says. "But he also says age sometimes matters.

In a products liability case, for example, Beasley says he generally looks for younger jurors. "In the plaintiff's case," he says, you probably wouldn't want some 70-year-old guy who comes from an era when people did a lot of things for themselves—things that are now considered dangerous—bearing your case about a defective product."

Miami criminal defense lawyer Neal Sonnett says he hardy ever uses jury consultants—not because he has anything against them but because most defendants can't afford to hire one.

Sonnett says age is one of many factors he takes into account when selecting a jury. But he also says age—in and of itself—doesn't reveal much about a person.

"Age is one thing you want to take into consideration," he says. "But you have to look at the totality of the circumstances."

Fred Levin, a Pensacola, Fla.-based plaintiffs personal injury lawyer, says he has long been warned to stay away from Gen X jurors. But he doesn't subscribe to the theory that people can be categorized by age.

Levin, who has practiced for more than 40 years, says his approach to jury selection, which admittedly is not very scientific, is to avoid the books, whatever their age.

"I'm of the opinion that most jurors want to do the right thing, regardless of age," he says. "I think you can find Gen X jurors who would bust their butts to do the right thing. And I think you can find baby boomers who couldn't care less."

Veteran San Francisco lawyer James J. Brosnahan says Gen Xers, as a rule, tend to hold technology companies in higher regard than baby boomers do. And, he adds, baby boomers are generally thought to be more sympathetic to the plaintiff in medical malpractice cases than Gen Xers are.

But age is just one of a handful of factors that may come into play during jury selection, he says. And even then, it only serves as a starting point for an examination of each potential juror individually.

"Every decision is an individual decision," Brosnahan says, "because everyone is different."

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