



How to Persuade Multi-Generation Juries

By Dr. Noelle Nelson, Ph.D.

Jurors under 30 are serving more on juries as the old guard ages out. These GenZers rely heavily on the Wild West of social media to shape their perspective. Most litigators are in the over 30 group (often in the “well over 30” group), and have little if any genuine understanding, much less appreciation, of how GenZers see the world, and thus their case. The presence of these jurors poses a conundrum: how to influence a group that is so little known to most attorneys?

But here’s the thing: no jury is ever composed of a single generational group. Jurors are a mix of the generations, from the barely emerging GenY through GenZ, Millennials, GenX and Boomers, to the Silent Generation, each of which has decidedly different attitudes, lifestyles and world views.

What’s a litigator to do? It’s impossible to speak to each of these distinct generations. Or is it? The solution is to address commonalities and to speak in a way that bridges the divide between the generations.

There are two categories of commonalities: the “what,” that is common to all generations, and the “how” to address jurors persuasively across their diverse ages.

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The “What” Commonalities Safety and Security

We are a society that values safety and security. Public safety is generally considered the highest priority among jurors. This cuts across not only all generations but across all types of businesses and professions. When you are defending a corporation, whether it be in the airline, food, medical, automotive or any other industry, the first questions jurors have are “Why wasn’t it safe? How could they allow a product/service to be marketed to the public when it wasn’t safe?” The same is true for a professional. Take, for example, a surgeon or anesthesiologist: “Why didn’t they pay more attention to the patient’s safety?” That “safety” could have been taking steps to prevent sepsis, monitoring a patient’s progress more closely or being up on the latest medical techniques.

Transparency

“Transparency” is differently defined by the generations. To the older generations, transparency is about openness and honesty: “What you see is what you get.” To younger generations, transparency is more about revealing the behind-the-scenes workings of everything from cryptocurrency to AI. Yet transparency comes down to the same common theme that is important to all jurors: “no secrets.” As in “operating in such a way that it is easy for others to see what actions are performed.”

Accountability

Accountability, in the broadest terms, is the willingness to accept responsibility for one’s actions and their impact on others. Although accountability has always been important to jurors, it has become increasingly relevant in the face of the growing socio-political divide, prompting various conspiracy theories and suspicions of corporate and government

motivations. It doesn’t matter which side jurors are on, nor which generation they belong to, the great majority of jurors walk into the courtroom convinced that defendants, corporate or professional, lack accountability. A far smaller percentage believe the same of plaintiffs.

The “How” Commonalities Tell a Story

Nothing beats the power of story when it comes to persuasiveness. Whether we are 23 or 83, stories access our emotions and make sense of life. Decisions are not made at the logical level, rather they are driven by our emotions and then backed up with whatever logic we have at hand. Too often, defense lawyers rely on “deny and defend,” which fails to harness the enormous power of story. Plaintiff attorneys plunge deep into storytelling, sometimes ignoring facts or logic. No matter how annoying it is to the defense, this tactic can be successful because it appeals to our reptilian mind, touching on our primal emotions.

Plaintiffs, however, do not have the exclusivity on storytelling much less on emotion. Corporate defendants, professionals and CEOs all have a story to tell, an emotional one. They just don’t ordinarily think in those terms.

It’s your job as a defense attorney to help your clients find their story. The tale of how they and their business care about the public they serve, how that’s exemplified in the way they dealt with the circumstances that led to the present lawsuit, and then the bigger picture: why they engage in their particular business, what it means to them and employees, not in dollars or lifestyle, but in terms of their values, hopes and vision. The story is what makes your client’s actions understandable, and therefore in some way relatable to your jurors’ lives. The story must be based on fact so that concerns of transparency and accountability are satisfied. Mistakes and errors are forgivable, hiding them is not.

Story is not to be told solely as a narrative, but rather as the theme of your defendant, woven into your opening, how you shape your direct and lead your cross of all witnesses, expert as well as lay, and how you present your evidence. The more you can condense the story into a memorable bullet, to be repeated throughout the trial, the better. Hollywood is brilliant at creating memorable story-bullets, and can serve as useful training ground for case purposes: “The Good, the Bad, the Ugly” gives you the story in a nutshell. “Mission Impossible” tells you everything you need to know. Most importantly, both examples have emotional resonance: “good,” “bad,” “ugly,” and “impossible” are all words that evoke emotions. That is what makes them impactful story bullets.

Use Visuals

Older generations may not have grown up with the excess of visuals that are now commonplace, but they have certainly become accustomed to them. Grandparents communicate with their grandchildren across Facebook and Instagram and use FaceTime. Just because older generations do not spend nearly as much time on social media as do GenZers does not diminish the importance and power of visuals to them.

Science has repeatedly demonstrated the critical nature of visuals in supporting memory and enhancing comprehension. For example, research (Modern Psychological Studies, 2009) shows that visual learning produces greater memory recall than auditory learning. Other research shows that visuals (3M Meeting Network, 1997) have been found to improve learning by up to a whopping 400 percent. Use visuals throughout your case.

The visuals you select to illustrate or demonstrate your points must be chosen with keen attention to the emotions they are likely to trigger. Focus groups are invaluable in sorting out which visuals have what impact, but just keeping in mind

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the power of visuals will help you discern and use those most beneficial to your case.

As with story bullets, visuals are not to be used solely in your opening, or with the occasional expert. Use visuals as best you can throughout your case. Bear in mind that 3-D models, animated re-creations, and to-scale actual models are also visuals. Graphs and bar charts are helpful but don't count as emotionally triggering. Although a pie chart is a more useful visual than a graph because it is more visually memorable, it doesn't particularly trigger a vivid emotional response. The more your "facts and figures" can be demonstrated in a significantly emotionally triggering way, the better. A good graphics team can be of great help.

Keep It Simple

Lawyers, in particular defense attorneys, are fond of overwrought, rarefied vocabulary. Jurors are not. A trial is not the place to demonstrate the astounding vocabulary you've acquired in far too many hours of legal study. The problem is that often, attorneys don't even realize how arcane

their language is. Take the word "arcane." It's a prime example of a word that is never to be used in front of a jury since most won't have a clue what it means, and others, your GenZers for example, will think you are referring to "Arcane," an animated action-adventure series. That's why it is critical to speak a language all your jurors will understand.

Trying to win over GenZers with whatever buzzwords or acronyms are currently trending is useless. They will see the attempt for what it is, a manipulative ploy. Secondly, the non-GenZers will be annoyed at you for using "pop language" they can't understand. Pandering to your older jurors with outdated expressions from the 1940s or 1950s will alienate the younger ones. Neither approach is valuable or necessary.

The best rule of thumb is to keep your vocabulary as simple as possible and to speak in short sentences. Each sentence should convey just one thought. Don't ramble on and on to include half a dozen or more thoughts. Focus groups are excellent forums for finding out if your language, vocabulary and delivery are accessible to all.

Since you invariably will need to use certain technical terms, that are unfamiliar to most jurors, define those terms in the simplest language possible. Jurors' life experiences are different from your client's. Faced with a word or concept they don't understand, jurors will simply ignore it, or dismiss it as unimportant, rather than try to figure it out.

Understand the common attributes of your jurors and then use storytelling and visuals to convey your case in an emotional and compelling way. The results will be a jury that better relates to your client's position and will increase the likelihood of a successful case outcome. ▽



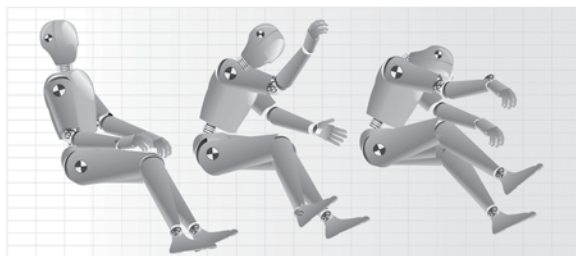
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