

April 2010 Jury Tip: “Generations X, Y, and the new speed of trial”

For some of you, it may be hard to believe that there was a time when lawyers presented their cases entirely by speaking—no PowerPoint, no TrialDirector, no animations or blow-ups or demonstrative exhibits. For those who still try their cases the old-fashioned way, it may be hard to understand why other lawyers feel the need to bombard the jury with fast-moving visuals and multi-media presentations. Are multi-media presentations too distracting, too fast-paced, or too “slick” for jurors? Are plain-spoken, no-frills presentations too boring or dry to keep the attention of modern jurors? There is some good to both methods, and I’m not planning on discussing how much trial technology is too much or too little in this month’s jury tip. A large group of jurors are visual learners, so some visuals are necessary in trial. But I’ve also seen trial technology go too far and distract the jurors from what the lawyer has to say.

What matters most, more than ever these days, is that you keep your jurors engaged in the trial and focused on the things you want them focused on. Jurors try their best, but they won’t pay attention to everything you present to them in a trial, and they’ll remember even less by the end of the trial. So your jurors’ attention spans are limited, their memories are limited, and—perhaps most importantly—their patience is limited, and that’s the main focus of this month’s tip.

You may have noticed, as I have, that your jurors are less patient in recent years than they were 5 or 10 years ago. And with good reason—the world around us is changing, and so is the makeup of our jury pool. Information is available at our fingertips now, and the speed at which we can access news and information is light years ahead of where we were 10, 20, or 30 years ago. 60 years ago, Americans got their news from the radio or had to wait for the once- or twice-daily newspaper. When television channels like CNN Headline News came on the air in 1980, you would have to wait 30 minutes to see the news cycle or check a sports score. When the internet became commonly available 10 to 15 years ago, you could read breaking news or check a score anytime you were in front a computer. Now, you can check the news anywhere and anytime, on your cell phone or a wireless internet connection on your laptop. It’s not surprising that Americans expect to get information immediately and become frustrated when it takes time.

Perhaps more importantly, the makeup of our jury pool is much different than it was just ten years ago. Jurors who come from Generations X and Y, sometimes called “the computer generation” and “the MTV generation,” grew up expecting instant access to information. Instead of having to wait for the newspaper to arrive or television updates or to visit the library and open up an encyclopedia to get an answer, Gen X and Gen Y jurors can get the news or answer virtually any question online within seconds. Generation X witnessed the inception of the home computer and the internet. Generation Y, whose oldest members are already 30, were shaped by the inception of instant communication technologies from the internet, email, text messaging, instant messaging,

and social networking. It's not surprising that, as jurors, Generations X and Y expect to get information immediately and become frustrated when you take your time presenting your case.

Ten years ago, Generations X and Y were a growing minority of the jury pool. According to data from the 2007 census, they make up 52% of the jury pool nationwide, and that number is growing every year. Think about their numbers and their expectations. More than 50% of today's jury pool was 15 or younger when CNN Headline News began presenting the news 24 hours a day, every 30 minutes. 30% of today's jurors were 15 or younger when CERN released the World Wide Web in 1991. 22% of today's jurors were 15 or younger when online dial-up to the internet became available and 17 or younger when cell phones became widespread. The younger jurors just entering the jury pool were just ten years old when text messaging became widespread and iTunes allowed users to immediately download music.

The next time you being planning how you'll present your case, think about the jurors who'll make up your jury pool, and the expectations they'll have. Most of your jurors have grown up having information at their fingertips instantly, and even the older jurors have probably adapted to new technology that gets us information and answers immediately, too.

So what should you do differently? First, never present your case in an entirely spoken format—jurors don't listen to the radio much these days, they expect to see things, and they learn as much visually as they do aurally. Jurors expect to see your case—documents, emails, maps, schematics, photos, or whatever you're talking about. You don't have to wow the jury with a high-tech presentation, but jurors want to see, not just hear, your case. If you're talking about a car accident or an eminent domain dispute or a machine in a product liability or patent case, make sure to **SHOW** the jurors a traffic map of the lanes and roads, or a property map with boundaries, or a schematic of the machine, immediately. Once you start discussing and describing something that your jurors want to visualize, you'll frustrate and confuse your jurors if you wait before showing them a picture. Anticipate what the jurors want to see, because once the jurors want or expect to see something and don't get to, they'll become very frustrated and lose focus.

Today's jurors are no longer passive learners. They have either been raised or, if they're older, re-trained to pro-actively solve problems and seek out information. They aren't especially comfortable being powerless and relying on the lawyers to spoon-feed them information at any pace you choose. Jurors expect you to get to the point immediately. Unless you're the second coming of Alfred Hitchcock and a master of suspense, boil down your case to its essence and summarize it at some point in your opening statement. There's no harm, and plenty of benefit, to introducing your case by telling an engaging story, but make sure the story isn't overly long and complicated. Before you launch into detailed discussions of each issue within your case, make sure to give your jurors the big picture, literally and figuratively, so that they know why your details are relevant.

Aside from how quickly they demand information, Generation X and Y jurors are generally more cynical than older jurors. They grew up in a world with lawsuits, corporate scandals, and written contracts for every agreement instead of handshakes and trust. They're not necessarily more prone to favoring plaintiffs or defendants, but they tend to be more critical of plaintiffs, less trusting of defendants, and tend to have higher expectations of what the litigants "should have done" better.

On the one hand, they can be unrealistically critical; in a recent case of mine, a group of younger mock jurors felt that a defrauded investor "should have hired lawyers and accountants to double-check his stockbroker." In a completely different case, a group of younger mock jurors felt that the defrauded real estate buyers "should have hired lawyers or accountants to watch over their real estate broker." But in some situations, their criticisms can be fair; in that same real estate fraud case, the young jurors blamed the plaintiffs for being fooled about their property taxes and argued "I can go online and research parcels and property taxes in 60 seconds." Even their views on due diligence and personal responsibility have been shaped by their exposure to new technologies and their instant access to information, and they impose those expectations and responsibilities on others

Getting to the point, giving your jurors instant access to the information, and anticipating their questions with immediate answers is becoming more and more mandatory. If you think Generations X and Y are demanding, think about who's coming next. The oldest members of so-called Generation Z are already 15 years old. They've been called "digital natives," and in 3 years, your trials may include jurors who were internet-literate before they could read. The best way to present a case will always be the way your jurors learn best, so keep up-to-date on the makeup of your jury pool and the ways they expect to process information.

Harry Plotkin is a jury consultant in Los Angeles but practices nationwide. Mr. Plotkin specializes in jury research, assisting trial attorneys in jury selection, and developing persuasive trial themes and opening statements. He can be reached at 626-975-4457 and at harry@yournextjury.com.