

PITCHING THE GEN-X JURY

As jurors get younger, law schools are thinking more like MTV.

By Lisa Brennan

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MORE THAN 40% of the national jury pool is made up of younger "Generation X" and "Generation Y" jurors, according to experts.

That demographic shift has litigators changing the way they present cases, while a handful of law schools are pioneering courses on technology and presentation skills geared to connecting with young jurors.

An old-school trial lawyer's long-winded opening statement no longer hits home with today's jury the way it once did with more senior juries raised on newspapers, Walter Cronkite and Jim Lehrer.

Generation X (defined as people born between 1966 and 1981) and Generation Y jurors (born in 1982 and after) were raised on cable television, computers and video games. They are more likely to zone out during a rambling presentation—no matter how eloquent—than they are during a succinct statement punctuated by electronic visuals meant to give them the feeling that they figured it out for themselves.

The change is so profound that Northwestern University School of Law, upon opening its trial advocacy research center four years ago, began offering a course that introduces law students to the technology and advocacy skills they'll need to appeal to the changing face of the contemporary jury.

Professor Steven Lubet, the director of Northwestern's trial advocacy program,

describes the use of high-tech trial techniques and their impact on case presentation to Gen X jurors as a fundamental shift, and he expects other law schools across the country to incorporate technology into their advocacy programs.

Such changes, in fact, have already begun to take place at four other law schools with well-known trial advocacy programs.

Temple University's James E. Beasley School of Law in Philadelphia incorporated technology into its J.D. program two years ago. In addition, Professor Paul Zwier, director of education at the National Institute for Trial Advocacy, was brought in last July to head trial advo-

cross-examination in the 1870s and formal discovery in the 1930s. This will be the greatest change in advocacy in the career of anybody currently alive or about to be conceived."

Rather than offer a separate course on technology to reach Gen X and Y jurors, Professor Edward Ohlbaum, who heads Temple's trial advocacy program, said the school has incorporated technology into its second-year courses on evidence and advocacy, and students are required to work with PowerPoint programs and other high-tech tools. The emphasis, he said, is not on "how-to," but rather on using technology most effectively.



'What we're teaching is an entirely different set of skills.'

—Chris Lind, who teaches 'High-Tech Trial Techniques'

cacy at Emory University School of Law in Atlanta, and has spent the past year incorporating technology into that school's trial advocacy program.

Similar changes, said Lubet, have been under way at the College of William and Mary's Marshall-Wythe School of Law in Virginia and Stetson University College of Law in Florida.

"We are standing right at the edge of the third revolution of jury trial advocacy in the last hundred years," said Lubet. "The use of electronic visuals is as significant as the introduction of

While the J.D. program's technology component is relatively new, Ohlbaum said Temple's unique track offering an LL.M. in trial advocacy began requiring students to use technology in their mock trial presentations four years ago.

"Gen Xers have grown up with Sports Center and CNN, and for them it's 'slam bam thank you ma'am, let's get out of Dodge,'" said Ohlbaum. "Their expectations have changed exponentially."

Zwier, since joining the Emory faculty last July, said he's "spiffed up" the school's trial techniques program by incorporating a

technology component, which has meant purchasing projectors and laptops “so students can make fully teched-out” presentations. “We’ve really jumped into it,” said Zwier.

“Generation X jurors are used to getting information through their eyes,” Zwier noted.

The pioneering course at Northwestern on presenting cases to Gen X and Gen Y juries, called “High-Tech Trial Techniques,” is taught by Chris Lind and Peter B. Bensinger Jr., both partners at Chicago’s 70-lawyer Bartlit Beck Herman Palenchar & Scott, a firm known for its effective use of technology in trials.

The course, Lind said, is all about presenting a case to a Gen X jury, which he sometimes refers to as “acronym jurors” or

video clips and doing fancy stuff in PowerPoint,” said Bensinger, 35. “As trial lawyers, we’re in the business of telling stories visually, of turning a complicated explanation into a coherent, compelling story. There is no complex case that doesn’t want for visuals and simplicity.”

It’s no accident that Lind and Bensinger ended up at the same firm and are teaching the course together at Northwestern. Their firm, Bartlit Beck, was co-founded in 1993 by Fred Bartlit, a former long-time Kirkland & Ellis partner for whom Northwestern’s trial advocacy center is named.

Bartlit and his co-founding partners, former Kirkland partners Skip Herman and Lanny Martin, currently chairman and

1,400-lawyer Sidley Austin Brown & Wood.

Endrizzi noted that her grasp on technologies she learned about in the course has given her an edge as a big-firm litigator.

“Everything they taught—using visuals in briefs, what issues need to be visually represented...I use [today],” said Endrizzi, 31. “I definitely think Gen X and Gen Y jurors have come to expect graphics...If you do graphics, your opponent has to. Otherwise you’ll crush them.”

Pockets of resistance

And as with any big change, it’s hard to teach old dogs new tricks.

The pockets of resistance to acknowledging the challenges posed by Gen X and Gen Y jurors and incorporating electronic visuals into trial practice has been chiefly, and not surprisingly, from more senior members of the bar who’ve built distinguished careers on their eloquence.

Many firms now have at least one partner who devotes time and energy to retooling senior partners with fresh thinking on how current cases should be argued before Gen X and Y juries.

Creighton Magid, who heads the trial department in the Washington office of Minneapolis’ 670-lawyer Dorsey & Whitney, lectures lawyers at his firm on what it takes to connect with Gen X jurors and make a highly receptive case.

“Gen X and Y jurors are not passive absorbers of information, they want to sample what’s available and reach their own conclusions,” said Magid, 42. “The notion of handing documents to witnesses and the passing them around to jurors doesn’t work any more. They want a real-time explanation.”

There is no formal program at Magid’s firm, but there are plenty of training sessions. “Very successful older trial lawyers might come in kicking and screaming. Once they embrace [new methods of presentation,] there’s no turning back.” **NLJ**

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‘If you do graphics, your opponent has to. Otherwise you’ll crush them.’

—Ellen Endrizzi, Sidley Austin Brown & Wood, who took the class



“alphabet jurors” because they were raised on MTV, CNN, AOL and *USA Today*. These people, he noted, are used to getting their information visually, graphically and in 10- to 30-second sound bites.

“The question is: How do you present your case to Gen X jurors?” said Lind. “Gen X jurors and even some baby boomers have been raised on television, so they’re used to learning visually, and the youngest jurors we’re beginning to see have also been raised on computers and are used to taking in visual information very quickly....You’ve got to be persuasive; another goal is retention.”

Lind noted that studies show people now retain 80% of what they see and hear, but only 20% of what they only hear.

“Universally, people retain more with visuals...and with Gen X jurors, instead of telling them what to think, you have to give them the feeling that they figured it out themselves,” he said.

It’s a much different approach than trying a case to more senior jurors who like to be told things, Bensinger said.

“Our course [at Northwestern] includes teaching the fundamentals of image management,

CEO of Titanium Metals Corp. in Denver, premised Bartlit Beck on the aggressive use of technology in the preparation and presentation of a case.

Among other things, their firm has a fully equipped courtroom where lawyers have access to the most advanced trial presentation hardware and software available.

The idea of using electronic image management and display of evidence to teach law students early on how to be more efficient lawyers rather than have them wait to learn this aspect of trial craft until they enter firm practice was completely new when Lind and Bensinger introduced it four years ago.

An associate’s praise

“What we’re teaching is an entirely different set of skills,” said Lind, 35, a 1993 Northwestern law graduate. “I brought the idea of this class to the dean four years ago. I figured the kids would be receptive to it.”

And they were. The class taught by Lind and Bensinger gets high praise from Northwestern graduate Ellen Endrizzi, a former high school English teacher who is now a junior litigation associate in the New York office of