



# Trial strategy tips for Generation X, Y and Millennial jurors

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Most experienced plaintiffs' attorneys have well-developed mental images of the "ideal" (or not so "ideal") juror for particular types of cases. Frequently, these images are based on what we know about the relationship between certain demographic characteristics and the propensity of an individual to lean one way or another when making judgments. We all know that Democrats tend to favor plaintiffs and that Republicans favor the defense – right? Accordingly, many people believe that certain Northern California counties tend to be pro-plaintiff or pro-defense; but is that assumption accurate, or even applicable, to modern jurors?

As a rule, demographic information such as age, gender, ethnicity, education level, marital status, occupation and even income level are rarely a stand-alone reason to strike a potential juror. If enough pretrial research has been conducted, certain demographic information might be useful, as long as a quantifiable relationship has been identified. Generally, when it comes to the decision making process of a juror, the juror's life experiences will override any influence exerted by his or her demographic traits.

Nevertheless, one demographic trait that warrants attention is the dramatic difference in the generational makeup of today's jury. This generational change was readily apparent in the 2008 presidential election, where a record number of younger, newly registered voters went to the polls. Accordingly, these new voters are changing the pool of potential jurors. Another factor that will change the

## Question of the Month

### Should I strike all Millennials from the jury?

Answered by Katherine James, MFA, ASTC

This question comes from the first trial I ever worked on, the trial that starts tomorrow and almost every plaintiff's trial for the last 31 years:

*"I hate all young male jurors and most young female jurors – they just don't sympathize with plaintiffs. They always side with the defense. Don't you agree that I should strike them all for every trial?" — Grumpy Old Time Lawyer*

This old time lawyer's tale may or may not have been true in the past. At this point, it actually doesn't matter. The generational tide has turned. You cannot get rid of them (the Millennial Generation) because soon there will be more of them showing up to serve on your jury than you can possibly strike.

It is time to buckle down and figure out how to communicate with younger jurors, how to persuade them and how to find what motivates and moves them. As you read the information in the accompanying article, keep this in mind: Millennials are not afraid of large amounts of money.

Have you ever seen a Honda Element? This vehicle was designed based on information obtained from focus groups made up of drivers age 25 and under. (One of my favorite features is the "clamshell" rear doors that pivot backward a full 90 degrees. Without a B-pillar to intrude, opening both side doors creates an extra-large portal through which to easily load bulky cargo, such as a widescreen television.) What this means is that there are young people in your potential jury pool who expect to be able to buy a widescreen television set at a young age, meaning that they expect to have lots of money. Do you think they are afraid of your damages numbers?

*Don't forget – this column relies on you, our readers, to ask questions. We will respond with articles aimed at answering those questions. If you have a question that cannot wait, I will endeavor to make sure that it is answered by me or by one of my colleagues at ASTC. Please feel free to e-mail me at [katherine@actofcommunication.com](mailto:katherine@actofcommunication.com) or call me at 310-391-9661.*

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makeup of the jury pool includes the many people in the "millennial generation," which includes people born between 1977 and 1997. From now until about 2015, the numbers of these people entering the jury pool will continue to increase.

## Generational demographics

Outdated notions concerning the beliefs and attitudes of certain age groups are of particular concern because following them may lead to an inaccurate assessment of the jury. Ironically, it is the most experienced lawyers who are most



susceptible to relying on inaccurate assumptions regarding generational differences of jurors.

This is certainly true when it comes to assessing younger jurors. The current pool of jurors under the age of 40 may not fit with “conventional” views of youth. Unlike the members of the Baby Boom generation (persons born between 1946 and 1964), and the members of the Traditionalist generation (persons born between 1901 and 1945), the members of Generation X (persons born between 1965 and 1976) and Generation Y, also known as the Millennial Generation (persons born between 1977 and 1998) were raised in the information age. As a result, the way these individuals process, evaluate and retain information differ markedly from that of their elders.

This distinction can be further divided in the two younger generations because the Millennial Generation has had digital media in their lives since they were born, while members of Generation X did not learn how to use computers until they were in high school or college. These differences will greatly influence trial strategy. For example, the younger the jury panel, the more important it is to communicate with the jurors via technology.

### **Understanding Millennial and Generation X jurors**

Recently, a lot of attention has been devoted to Millennial and Generation X. Many members of the Millennial Generation are now of voting age and are exerting a marked influence in the deliberation room. In fact, every juror under the age of 30 is a member of the Millennial Generation. With 82 million of them, the Millennials rival Baby Boomers in number, meaning their influence will only grow in the years to come.

To build rapport and credibility with Millennials during a trial, you need to understand them. Their world has always included AIDS, a unified Germany, an-

swering machines and remote controls. They have never even seen a tab that can be completely pulled off of a soda can. Nonetheless, the most important thing to remember about this generation is that they have always had digital media.

Unlike members of Generation X, who were born during a time when birth rates decreased, Millennials came along at a time when Baby Boomers began to value childrearing. The focus in the early 1980s was on fertility instead of contraception – it was the age of the yellow “Baby On Board” signs attached to auto windows. The Millennial Generation has been coddled and protected since birth. As children, they were strapped into car seats and had to wear a helmet when they rode their bikes.

The Millennial Generation also experienced a very structured and scheduled childhood. After attending Mommy and Me playgroups and Gymboree classes, these children attended preschool at an early age and had scheduled play dates. Soccer practice, music lessons and other scheduled activities filled every moment of every day.

Most of the members of the Millennial Generation have been the focus of their families. As a result, they feel that they are important and even have a sense of entitlement. Couple this with the egalitarian nature of the Web and it is easy to understand why they expect to have their opinions heard, despite their youth and inexperience. So, how do you use this awareness during voir dire and jury selection?

### **Voir Dire tips for Millennial and Generation X jurors**

#### **• Communicate, don't interrogate**

Interrogating jurors in voir dire is always discouraged, but it is even more important to avoid doing this with both Millennials and Generation X jurors. Because they are highly skeptical of authority and distrust institutions, the members of these two groups will not take kindly to being questioned, particularly if it is

done in an overly paternalistic or authoritarian way.

Most Millennials and Generation X jurors spend a considerable amount of time communicating, via cell phone, text messaging or e-mail. There may even be bloggers (people who think the entire world wants to hear what they have to say) on the jury panel. Generally, these two groups are very comfortable expressing themselves. In order to build rapport with these two groups and get the answers you need, all you have to do is just start a conversation with them. As long as you avoid aggressive questioning, you should be OK. You should also be sure to ask these potential jurors if they have a blog. Odds are that they do.

#### **• Let them talk**

Older generations got their information by reading newspapers and by watching the evening news. The information they received was easily accessible and just presented to them. They did not have to interact or participate in any way.

Things have certainly changed. Many members of the Millennial and Generation X groups get their information from the Internet. As we know, the Internet is not a top-down broadcasting mechanism, but rather a venue that allows the individuals to easily exchange ideas. Many young jurors are capable of creating their own Web sites, blogs and Listservs and often feel their opinions are just as important as those of Tom Brokaw.

In voir dire, attorneys are always advised to spend more time listening rather than speaking. This is especially true with potential jurors who are members of Gen X or the Millennial Generation. Certainly, taking the opportunity to sell case themes is important, but the most important part of voir dire is hearing jurors talk about themselves: their views, their experiences and their values. Considering how Millennials view the importance of their own opinions so the attorney's role in voir dire is not so much to get them to talk, but to not of-



fend them. If you do not give these jurors a chance to express their views, they may hold it against you later.

• **Tone down argument**

Telling younger jurors what to think is potentially dangerous. Both of these groups are very perceptive information gatherers. Gen X and the Millennials have been using the Internet to obtain information for most of their lives. Generally, they are incredibly skeptical of anyone or anything telling them how to think or what to do.

For example, while jurors of all ages consistently report in post-trial interviews that they dislike being forced into particular answers, it is even more offensive for younger jurors. Using questions beginning with “You would agree with me that. . .” can be quite offensive to members of these groups.

• **Supplemental juror questionnaire tips**

When you review juror questionnaire responses, keep the respondent’s generation in mind. For example, if a Baby Boomer checks “Democrat” on a juror questionnaire, that may mean something entirely different than if a Millennial does the same. This is because party affiliation in the younger generations is simply weaker across the board, so be ready to see a lot of “Independents” and “Libertarians” among the Millennial groups. It is not that they are disinterested; it is just that they are much less likely to attach themselves to a group they view as an institution.

Also, be careful of stereotypes. The Millennials are a relatively conservative group as a whole, although they may not look that way to more mature lawyers. It is not surprising to find honor students or founders of successful startups with body piercings, green hair or tattoos.

**Trial strategy tips**

• **Embrace technology**

Technology is no longer a luxury; it is mandatory. Younger jurors simply do not understand why lawyers are afraid of technology. The argument that something is too “slick” is arcane given the role technology plays in the lives of the younger set. To them, technology is a necessary means to an end.

• **Emphasize facts**

Both members of Gen X and the Millennial Generation have been fed facts since birth. They now have finely developed analytical skills that enable them to sift through large amounts of information.

They also have seen nearly every American institution, from corporate America to the presidency, called into question. Consequently, they take almost nothing at face value. For most of their lives, many of them have been analyzing data they find on the Web and learning to authenticate that data through multiple channels. Their innate skepticism and cynicism about the world makes them much more likely to be

swayed by facts, rather than by appeals to sympathy.

**Conclusion**

When deciding about trial strategy, you must incorporate generational demographics. With a changing trial landscape and an increasingly diverse jury pool, using all the knowledge available to you to understand the mindset of these potential jurors will become increasingly important. The changing jury pool has made generational insights a must for the perceptive trial attorney.

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