

# Litigation Management

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## 21<sup>ST</sup> CENTURY JURY

Getting to Know the Millennial Juror p.28



CLM







# Your Jury Box In The 21st Century

*Getting to Know (And Manage) The Millennial Juror*

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**F**orrest Gump's mother once said, "Life is like a box of chocolates. You never know what you're gonna get." That same analogy can be used when considering juror demographics and when discussing litigation and the possibility of a trial — you just never know who will show up in your jury box. In years past, the carrier and attorney needed only to consider gender, race and possibly religious affiliation of potential jurors when discussing jury dangers. In today's trial environment, attorneys and carriers must be far more cognizant of the varying generations that encompass your jury pool.

Generations, like people, have distinct and differing personalities. Each generation has its own values, attitudes and views of the way the world is — or should be. Of especial importance is the emergence of jurors from the millennial generation, which now contains more members than any other generation. Because they are now the largest generation, they are becoming more prevalent and influential on today's juries. These millennial jurors have many characteristics that make them challenging jurors for defendants. When discussing the Millennial Generation, keep in mind that each person is inherently unique and although we are discussing the group in general terms, each Millennial is an individual and has differing personalities and charac-

teristics. Before examining the Millennial juror let's take a look at the general characteristics of all the generations.

## Traditionalists – the Silent Generation

Traditionalists grew up during the Great Depression (or soon after) and consider work a privilege. This generation believes you earn your own way through hard work. Traditionalists are willing to put in long, grueling hours to get ahead. Many Traditionalists worked for the same employer their entire life, were less likely to change jobs, were taught to respect authority and are usually good team players. As technology evolves and changes the world as we know it, Traditionalists struggle to learn new technology and often will resent those who rely on it. Lastly, they adhere to a chain of command style of authority and rarely buck the system. Other key values are privacy, trust, formality (written communications) and "things" — this generation is known to be pack rats!

## Baby Boomers

Most of this generation is in their 50s and 60s. Generally they hold many of the positions of power and authority. They are workaholics who believe Generations X and Y should pay their dues. They are confident, independent and self-reliant. They are dedicated and goal-oriented. They are extremely competitive and may criticize X and



Y Generations for their lack of commitment to the workplace. They grew up in periods of conflict and social change — Vietnam, civil rights movement and women's rights.

### Generation X

This generation totals approximately 44 to 50 million, most in their 30s and 40s. They are ethnically diverse and generally more educated than Boomers, with over 60 percent having attended college. Generation X holds middle management positions in the corporate world. They are often referred to as the "latch key kid" generation due to both parents in the workforce. They dislike being micro-managed and embrace a hands-off management philosophy. This is the first generation to grow up with computers. They are comfortable with technology, but not overly reliant upon it. This generation is said to work to live rather than live to work.

### Generation Y — The Millennials

This generation totals approximately 70 million. Born in the mid-1980s and later, they are just now entering the workforce. They grew up with technology and rely on it 24/7. They communicate through social media and prefer text messaging rather than telephone or face-to-face communication. Millennials are willing to trade high pay for fewer hours, flexible schedules and a better work/life balance. Millennials are achievement-oriented and have high expectations from their employers. They are extremely team-oriented but sometimes it is difficult to find a leader in this generation. They crave attention and want to be in the loop on everything. They believe they are entitled to higher pay and authority in an organization due to their tech skills. They don't value the experience that Boomers or Traditionalists have.

Popular media is focused on one type of Millennial, the upper middle class white Millennials. When you hear about kids who are spoiled, don't want to move out of their parents' house because they are used to the benefits of living in a great home and are "slackers," it is important to remember this is not how all Millennials are. While this is one type of Millennial, it is not the most prevalent and it is wrong to ascribe to all Millennials the motivations and attitudes of this one type that has been over analyzed in the media and the literature. What you will see is that most Millennials have much less economic security than this type and that has a great impact on how they act as jurors. Understanding this generation and their expectations is vital when strategizing for voir dire, jury selection, opening and closing arguments, evidence presentation and trial.

### Big Demands and High Expectations

Obviously, every individual juror is unique. While attitudes and beliefs ascribed here to Millennials are ones seen expressed in trials, juror research exercises and opinion studies, it is important to remember that not all

Millennials have these beliefs. However, these attitudes are prevalent enough to use them in considering how to approach Millennial jurors and the concerns they are likely to raise in deliberations at trial. In general, Millennial jurors are distrustful of large institutions, are greatly concerned about security and are unlikely to accept that information is not immediately accessible or that something important was not written down.

Millennials have grown up in a world of instant access to anything they want to know. Millennials have the Internet at their fingertips and expect information, products and anything they desire to be immediately accessible. As a result of these experiences, Millennials have certain expectations of a defendant in a case. For example, if an insured has lost records, the claims handler and defense attorney need to formulate a strategy and reasoning on how to address this issue. Because Millennials generally have shorter attention spans, defense counsel will also have to repeat this message in voir dire, opening statements, during trial and at closing.

Millennials also believe that policies and procedures are king. They believe any breach of these policies and procedures by a company is an indictment of liability. By understanding this concept, counsel should be able to formulate arguments as to why this is an unrealistic position by the Millennials. An example of this might be a hospital nurse providing care to a patient rather than spending all his/her time writing everything down per a procedure manual. Millennials also believe that if it is not written down, it did not happen. Explaining gaps in documentation is critical for defense counsel to deal with or Millennials will believe that the insured is not telling the truth.

Millennials are also very security conscious. They have grown up in a world where events like 9/11 and Columbine are the norm, not an exceptional event. As a result, they believe that everyone should have a security plan in place. They are fearful of similar events happening to them or someone close to them, and plaintiff attorneys are able to successfully play on these fears.

### Distrustful and Debt-ridden

Millennials have strong anti-corporate beliefs stemming from their experiences with Enron, the banking crisis, Iraq, the BP Oil Spill and other eroders of trust. There also is a high unemployment rate for Millennials who have gone to school for years only to find there are no opportunities in the market place for them. When their life experiences are coupled with a 16.2 percent unemployment rate for 18 to 29 year olds, it is understandable why Millennials do not trust companies. In addition to high unemployment rates, even the Millennials who have jobs are underemployed. Thirty-seven percent of recent college graduates have taken jobs that do not require a college degree because they were the only jobs available, and 36 percent of Millennials





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still live at home because they cannot afford to move out. It is not surprising that these experiences have left them with very negative views of institutions and companies that can be exploited by plaintiff attorneys.

Millennials believe that they can always determine the “real story” by using the Internet to determine “the truth.” Because of their strong anti-corporate beliefs and their belief that they can find everything out for themselves, Millennials are very cynical and have a strong “desire not to be fooled.”

### Let Me Google That

Millennials obtain their information relative to decision making from social media — Twitter/Facebook. They don’t buy a thing without first checking with others on the Internet. There’s a saying — Millennials trust no one but Twitter — so defense counsel better know what Twitter is saying about the client. Millennials consider the online reputation of companies, products and people from what they read online and thru social media in developing bias — for or against. Consider what the Internet says about the insured when going to trial. Who is the corporate defendant? What is their online reputation? Are they good for the community? Are they involved in social change? What are others saying online? In trial, it is essential to highlight aspects of the insured that appeal to the values of Millennials:

- ◆ Transparency
- ◆ Trustworthiness

- ◆ Relationships they have with the community, their employees, and their customers
- ◆ Connections they have with the military – because while Millennials don’t trust the government, they do trust the military

As a generation that has never lived without a computer or the Internet, Millennials are impatient and overly indulged when it comes to the methods of receiving information. This 24/7 access to instantaneous information not only challenges the carrier and counsel when presenting trial evidence, but it also can lead to juror misconduct. Both carriers and counsel need to be aware that this generation has an addiction to information at their fingertips.

Millennials also have short attention spans due to the quickness that they normally receive information, so long-winded scripts won’t cut it with this crowd. They desire to be entertained while learning about the evidence.

They believe there is an App for everything and any reasonable person should know that. If you cannot find the answer you can Google it. Millennials believe this and think everyone should work and live this way. This explains the high rate of juror misconduct now seen at trials where jurors bring in outside information from their own research on the Internet. As a result, defense counsel must include technology in their trial presentation.



**TRADITIONALISTS**  
(The Silent Generation)  
Age: 70s, 80s, 90s

- ◆ Hardworking
- ◆ loyal
- ◆ submissive
- ◆ tech-challenged
- ◆ traditional



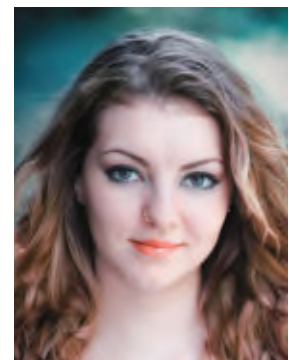
**BABY BOOMERS**  
Age: 50s and 60s

- ◆ Goal-oriented,
- ◆ collaborative decision makers
- ◆ stable
- ◆ optimists
- ◆ achievers



**GENERATION X**  
Age: 30s and 40s

- ◆ Individualistic,
- ◆ technologically adept
- ◆ flexible
- ◆ resourceful
- ◆ self-sufficient



**MILLENNIALS**  
(Generation Y)

Age: Teens, 20s, early 30s

- ◆ Confident and connected
- ◆ not wallflowers, narcissistic but worry about the community good
- ◆ seek freedom of choice
- ◆ see value in humor



## THE AFFORDABLE CARE ACT

# Big Changes Are On The Way. Is Your Business Prepared?



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### IT'S NOT JUST ABOUT HEALTHCARE BENEFITS

The Affordable Care Act (ACA) will not only impact how you handle healthcare benefits, it will impact how you run your business. It is critical for business leaders to clearly understand the far-reaching impact that this legislation will have on their corporations.

LeClairRyan's affordable care act team members, who regularly practice within labor and employment, taxation, healthcare, corporate services and regulatory litigation, are committed to helping clients understand the magnitude of these changes. LeClairRyan works with clients and their insurers weekly on a variety of ACA-related concerns as businesses prepare for 2014 and beyond. Some issues where we have already been of service include:

- Labor negotiations
- Benefit compliance and notifications
- Hospital (healthcare clients) and insurance related issues
- Training to understand potential actions by federal and state agencies
- Fiduciary liability
- Corporate structures
- ERISA and tax considerations
- Potential defenses for government based claims against employers and their benefit plans.

Learn more about LeClairRyan's ACA team  
at [leclairryan.com/affordable-care-act-team](http://leclairryan.com/affordable-care-act-team).

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They also must be aware of what is out there about the subject matter of their case on the Internet. It is very likely a Millennial juror will Google the product/injury/information that is central in the case to determine what “really happened.” However, counsel also has to be cognizant of the other generations on the jury that could be put off by too much technology. An example of this is that Baby Boomers want straightforward numbers, not fancy, slick graphs and charts.

### Tattoos, Piercings and Selfies

Millennials embrace multiple modes of self-expression. They often come to the jury box looking far different than their fellow jurors. Millennials are far more comfortable with their appearance than many of their counterparts. Be careful to not judge a book by its cover as appearance is not reflective of their ability to grasp concepts quickly. Millennials are on course to become the most educated generation in American history, a trend driven largely by the demands of a modern knowledge-based economy. They get along well with their parents.

Looking back at their teenage years, Millennials report having had fewer spats with mom or dad than older adults say they had with their own parents when they were growing up. And now, financial reasons have kept a significant share of adult Millennials and their parents under the same roof. They respect their elders. A majority say that the older generation is superior to the younger generation when it comes to moral values and work ethic. However, they do not defer to them in the jury room. They are not encumbered by their lack of experience and knowledge. They believe their voice is important and should be heard on any subject.

### Damage Awards

Not surprisingly, the attitudes displayed by many Millennial jurors have affected how they view damages in litigation. Using data from mock trials of over 700 surrogate jurors from 32 different jury research exercises, Millennials have shown to be significantly more likely to award higher damages in almost any type of case. The research showed:

- ◆ The medium damage award of non-Millennials was \$3.5 million.
- ◆ The medium damage award of Millennials was \$6 million.

This spread was even greater when looking at minority Millennials. The experiences they have had as Millennials have combined with other experiences shared by many young minorities to create an even more plaintiff-leaning mindset toward damages.

- ◆ The medium damage award of minority Millennials was \$9.7 million versus \$6 million for minority non-Millennials
- ◆ The medium damage award of white Millennials was \$4.02 million versus \$3 million for white non-Millennials

The deliberations of Millennial surrogate jurors yield quotes that show their attitude towards damage awards in trials. Here are some typical quotes Millennial jurors make:

- ◆ “It’s just money and they have lots of it.”
- ◆ “He should get everything possible.”
- ◆ “The defendant always low balls. They get a bonus for lowballing.”
- ◆ “Let’s do the right thing and give him everything. The defendant is a big corporation so who cares.”

Clearly with these types of comments, the carrier and trial attorney should be working on themes to counteract and diffuse millennial jurors with regards to damages. Countering pre-existing views regarding damages is imperative to being successful at trial. Defense counsel needs to discuss issues of personal responsibility to the millennial jurors in voir dire, opening statements and closing arguments. This is a concept that Millennials appear to embrace and can be an effective overall trial theme.

Trial strategies with universal appeal continue to be very important for all jurors. Beyond the trial themes, defense counsel and the carrier should be discussing how evidence should be prepared for both Baby Boomers and Generations Y and X.

Millennials love timelines because they favor open communication and feel the need to become educated on everything in the case. They want details and they want it laid out in a linear line. Timelines also lend to the transparency of who, what and when. Millennials also hate being told what to do. Instead, lead them to the conclusions and timelines are a great tool for taking their hand and leading them. Baby Boomers love timelines as well. Boomers are receptive to the storytelling method and timelines allow the evidence to be organized in story telling fashion.

For Generations X and Y, presenting evidence should be thought of in terms of providing graphs, models and high-tech presentations. Remember to make it shiny. By understanding the generational differences, defense counsel and the adjuster can approach trial with solid strategies and themes to address bias and decision-making methods of Millennial jurors. While no verdict is certain, understanding generational differences of jurors is clearly better than the alternative of a runaway verdict. [LM](#)

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