



The Millennials in Action: Trial Strategies for a Challenging Generation

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I. Strategies for making your case appeal to Millennial Jurors, while still effectively engaging older jurors:

- a. **Engaging Short Narratives.** Present the information in small chunks, in narrative images and guide millennials in understanding and evaluating information, collective reflection and drawing conclusions.
- b. **Big Picture Themes.** Millennials communicate much more efficiently than other jurors. They are multitaskers and have short attention spans. That means effectively getting and keeping their attention by focusing on the “big picture” themes that support your overall case.
- c. **Cueing Important Information.** Focus millennials attention by highlighting the key points and concepts inside presentations that we want them to assimilate. Use bullet points and cueing to direct their attention and highlight key concepts that will help them assimilate your message. Don’t get caught up on long explanations or redundant testimony and evidence. Avoid lecturing to Millennials.
- d. **Integrate Technology.** Millennials are accustomed to a rich media environment, and learn and process information through various modalities. This is a must. Jurors today expect some technology. Don’t be concerned with the case looking “expensive.” Use technology efficiently to help them gather, analyze and process your message.
- e. **Assisting with Analysis and Processing.** Using a media rich environment that millennials are accustomed to, such as the internet, video clips, and by presenting otherwise documentary evidence and information in different modalities, such as timelines of evidence and events, concept maps showing relational connections,

statistics and charts, will draw them in, keep their attention and guide them in analyzing and synthesizing your message.

- f. **Appeal to justice and fairness.** Millennials have a spirit of volunteerism and are committed to social justice. They value fundamental fairness as much as money. They will appreciate the right of a defendant to obtain a fair trial. You must establish trust and your ability to present the evidence in an impartial manner. Let them decide the outcome, but early on you must condition your millennials to understand that a defense win can be the right conclusion, even if it takes weeks.
- g. **Invoke the idea of personal responsibility and living with your choices.** Millennials' self-image is one of personal responsibility and accepting the consequences of their choices. These are universal themes that can appeal to millennials and all jurors. Explain how the plaintiffs' claimed injuries are really the result of their own choices and it is not "fair" that they are now trying to blame others for the consequences of their own actions.

II. Voir Dire Strategies for neutralizing the attitudes that make Millennial jurors challenging for defendants.

- a. **Reptile Theories.** We know plaintiff attorneys are using this theory against defendants. So how do we use it to our advantage? How can we help the millennial understand the relationship that needless verdicts against businesses are bad for America, reduce our competitiveness against foreign competitors and increase costs to the average American. Assist millennials in seeing that businesses are made up of and run by individuals who strive to do what is right and best on a daily basis.
- b. **Focus on types of businesses.** America is made up of large, small and various types of businesses that are really made up of people, young and old, like you and I. Some of the biggest companies were started in the garage. What is your defendant's story? Help millennial jurors feel and experience the defendant's cause through storytelling, etc. Inspire them to feel the need of the defendant seeking their assistance.
- c. **Challenges of the legal system and defendants in general.** Don't be shy. Challenge the problems our legal system has with each millennial juror. Let them tell you what they think. Then in closing arguments, challenge them to make a difference, to decide the case on the evidence, not sympathy or prejudice. Encourage their personal responsibility to help the system render a legitimate result.
- d. **Beware of millennials who are too eager to get on the jury.** Many millennials see jury service as a chance to "make a difference." Rarely do millennials' views of

“making a difference” sync with finding for a corporate defendant. Millennials who obviously want to get onto the jury should be evaluated closely.

- e. **Listen.** Millennials are opinionated. They want to be heard so listen to them. Do not show disinterest in their opinions. Most importantly, do not interrogate them. Millennials distrust the system and big business. Let them speak and express their views. This will help you establish their trust which will go a long way in establishing your credibility and objectivity.

III. Creative Approaches to Develop Winning Outcomes

- a. **Lead them, don't tell them.** Present evidence and argument in a way that does not suggest or argue for a certain result, but leads the millennial juror to that result. Telling a millennial what to find or how to decide a case could be fatal. Challenge them to sift through the evidence. Tell them it is a difficult task. Thank them for trying. Acknowledge the difficulty they will have.
- b. **Challenge the millennial juror to make the right decision.** Sometimes the right decision is the toughest decision. It can be hard to sit through a 3-week trial only to tell a plaintiff “I'm sorry but you lose.” That's a challenge. But the system works when they rise to the challenge. All millennials want the system to work. A legitimate result is a result of evidence, not sympathy or prejudice. Guide them to their personal responsibility to guard against abuse and inequities that overtax the system with illegitimate verdicts.
- c. **Weighing evidence.** None of us witnessed the loss. Make sure Millennials understand that when one sues for money, it's not always about figuring out what really happened or whether someone is really that hurt - but oftentimes it is about weighing the evidence and if it doesn't weigh up, Plaintiff loses. That is the system we have and that is how the system is intended to work if it is to render a legitimate result.
- d. **CSI Phenomenon.** Let them figure it out. Give millennial jurors a problem to solve, make them part of the team and let them solve the case. They are smart enough. Give them the resources of statistics, information, and video to draw them in and engage them in your message. Millennials like to collaborate so give them something to figure out in the jury room.
- e. **Focus on the choices of the plaintiffs.** Whenever possible, tie your themes into the choices of the plaintiffs. Allow millennials to conclude they would have made different choices than the plaintiffs and therefore this event would not have happened to them. Millennials can be judgmental, so encourage them to “judge” the plaintiffs and find them “not worthy”.

- f. **Establish Trust.** Millennials inherently do not trust so you must build and gain their trust. That will require you take reasonable positions, concede where you need to and be transparent. Apologize in advance for how you might handle a certain expert or witness. Let them know it's coming in Opening Arguments. Avoid trying to sell your position or manipulate their opinion. Lead, don't tell.
- g. **Experts that appeal to this generation.** Millennials value experience. Use an expert that can communicate with millennials and support their opinions with logic and facts. You need a good teacher. As for your opposition, challenge the logic of your opposing expert's theories. Use animations if for demonstrative purposes only and if it is fully supported by the evidence and will assist the jury.

IV. Tools for weeding out unfavorable millennial jurors

- a. **Research during or before voir dire.** Millennial jurors are heavy social media users. Try to obtain a jury list as soon as practical. If during trial, employ an associate or paralegal to simply go through the list and search social media of millennials.
- b. **Effective tools.**
- c. **Listen for opportunities.** Millennials are opinionated people who want to be heard - so listen and listen well. Look for opportunities to help them out of jury duty.
- d. **Appealing to millennials sense of justice.** You can appeal to millennials sense of justice by explaining that if they truly feel they could not follow the law, they should tell the judge. Millennials have strong convictions, but they would not feel it is right to "hide" them

V. Millennial Trial Experiences

- a. Exchanging Millennial trial experiences - Open discussion with attendees.