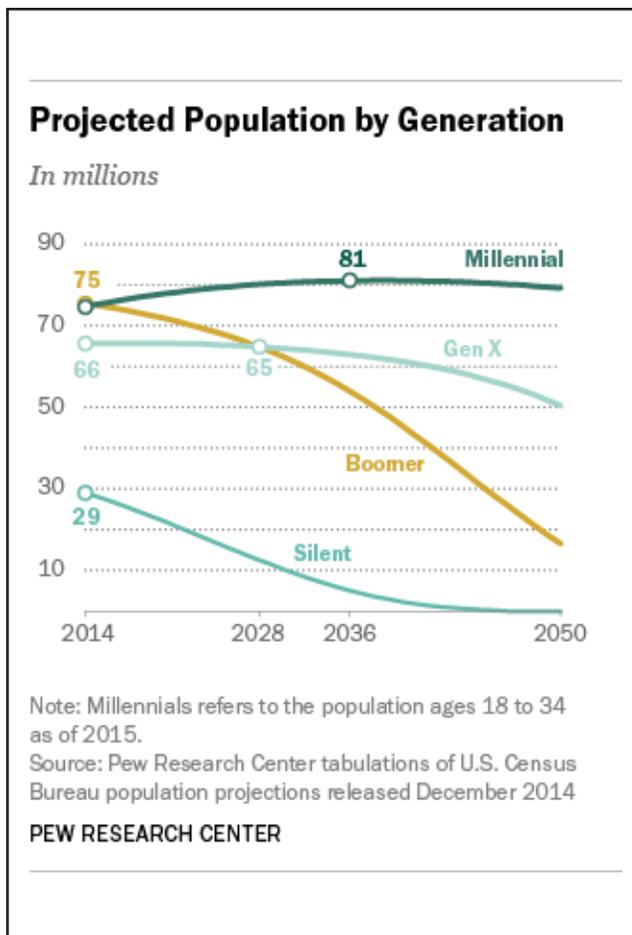




## The Millennial Jury

The Millennial Generation was born roughly between 1980 and 2000. In 2015 that would include ages 18 to 35. According to the Pew Research Center, Millennials will outnumber Baby Boomers for the first time in 2015. In the next ten years they will become a dominant part of the jury panel.



What do we know about the Millennials? Although they may have distinct traits and experiences compared to Baby Boomers and Generation X, it's a mistake to overstate those differences since their core values and beliefs have more in common with their parents than not. That said, compared to earlier generations Millennials are more educated, ethnically diverse, socially tolerant, politically liberal and (currently) more unemployed.

They are more personally expressive. According to Pew Research, three-quarters have a profile on a social networking site and 40% have a tattoo (though most are hidden). And who among them hasn't taken a selfie photograph?

They feed off social connections and are accustomed to working in teams or groups. They're natural multitaskers, having juggled school, sports, hobbies and social activities, not to mention feeding the baby, while listening to her mother give advice on child-rearing, while texting a friend, while sending \$50 to a crowd fundraising project for schools in Katmandu.

They were weaned on technology. Many had an iPad along with their Sippy cup. Their phone or tablet is the heart and soul of their digital lives. They are accustomed to instant solutions. They shop, watch movies, order books and get news instantly through multiple channels and from anywhere in the world.

So, how much do these traits matter in the context of a jury decision? A good argument can be made that they don't matter all that much except perhaps to give sociologists and consultants something to

talk about. After all, how relevant are generational portraits to an individual juror or case or region of the country? My sense is that they matter a little but not a lot. Let's look at where they could matter.

### **Personal Responsibility**

Millennials can be surprisingly tough on plaintiffs in a personal injury case and hold them to high standards of personal responsibility. For example, in a medical malpractice case they may want to know why the plaintiff didn't get a second opinion or run an Internet search of her medical condition and options. Unlike their grandparents, Millennials don't trust entirely the opinion of one doctor.

Why don't they? One reason is that the practice of medicine has changed, as has easy access to doctors. A second reason may be that Millennials are more skeptical of institutions. They don't trust authority or expertness as much. They trust themselves to do their own research and the Web offers them limitless resources. When it comes to knowledge they believe in DIY. That may lead them to impose a high standard of responsibility on patients and plaintiffs.

### **Injuries & Damages**

Some have criticized Millennials for being cool to the injuries or suffering of claimants and that they do not relate to losses such as pain and suffering or emotional distress. Although they probably don't have as much direct experience with suffering as Baby Boomers, I don't think they lack empathy. It may be that they look at suffering differently.

They value freedom and relationships. Rather than relate to the physical pain of someone in a wheelchair, they relate to that person's loss of freedom and mobility - to being trapped and confined. Rather than relate to mental suffering (can't you take Prozac?), they may relate better to images of loneliness and social isolation. Depression itself may not be viewed as a high value injury but the effects of that depression - suffering alone - may resonate more strongly.

### **Headlines, Texts, Stories and Visuals**

If the center of life for Millennials is a smartphone with a three inch screen (83% sleep with their phones, according to a Pew study), it's not surprising that they have strong communication preferences. They like headlines, stories, themes, photos and videos. The lawyer's training is the oral tradition, the written word (lots of them) and personal presence, although trial lawyers have actively used visuals for years.

But let's not underestimate the Millennial's intelligence or devalue the lawyer's oral tradition. Many Millennials were observed in a trance-like state listening to a Ken Robinson TED talk on creativity in schools and an Obama speech about race. Neither used a single visual. The oral tradition is not dead. We just need to up our game and develop better oratorical habits.

If the central challenge of Millennials is to shorten and amplify a message, that is not new. Federal judges have been restricting court time for years. The "Rocket Docket" in the Eastern District of Virginia gives litigants a few days to try an important intellectual property case. Trial lawyers have always sought to keep their opening statements to twenty minutes and TED talks limit speakers to eighteen minutes. Communicating efficiently is not a new concept. Jurors have complained about long-winded lawyers and witnesses for decades.

Yet there is an urgency now about focusing our evidence and getting to the point. And it's not just coming from Millennials. It's all of us. We live in a fast-paced, Web-centric, App-driven, Twitter-conscious world and it's made us impatient readers and listeners. Ted Selker of MIT has studied the effect of web surfing on attention spans. He found that heavy web users have a nine second attention span – about the same as a goldfish.

Very few people spend twelve hours a day on the Web, but average use, if you include apps, is now approaching five hours. This daily digital exposure is causing some neuroscientists to hypothesize that our brains are developing new circuits to help process the enormous amount of information online. We now tend to skim information because there are so many choices.

We read (“slow read”) a New York Times article because there isn't much visual competition but we have to skim and scan the Web because of all the hyperlinks, YouTube videos, RSS feeds, pop-up weather forecasts, texts, Facebook messages, breathless news breaks and the like. We walk through the New York Times. We sprint through the Web. This has made us more impatient as readers and listeners.

Dr. John Medina, a developmental molecular biologist and author of *Brain Rules*, says that a college student's attention starts to decline after ten minutes. “What happens at the 10 minute mark to cause such trouble? Nobody knows. The brain seems to be making choices according to some timing pattern, undoubtedly influenced by both culture and gene” [*Brain Rules*, p. 74]. I would argue, with no empirical support, that a thirty year old juror sitting in judgment in a courtroom may have a longer attention span than a college student in a 9:00 a.m. classroom but it's still not likely to be more than twenty or thirty minutes.

The challenge of the Internet and a Millennial jury is the same challenge teachers now face in the classroom. We need to think of the classroom lecture and opening statement and direct examination in a different way – not as a free 50 minutes to lecture as we see fit but as a series of small presentation strategies. We need to prepare the first two minutes of every voir dire, opening statement, examination and closing as if it was the only time we had. I can hear experienced trial lawyers say they already do that and in a variety of ways. I think they do. That is your art and craft and it will embrace the needs of the Millennial jury.