

Generation Y Jurors

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Generation Y Jurors

I. Introduction

The youngest generation of jurors constitutes an increasing percentage of today's jury pools. Generation Y, born between 1980 and 2000, now makes up 20 percent of the U.S. population and likely an even higher percentage of today's jurors.

Given the growing presence of this youngest generation in the jury box, attorneys should be aware of the differing expectations of these jurors. This article and presentation provide a broad general overview of this generation, so that you may begin to have a better understanding of this generation to help you develop and modify your trial strategies accordingly. Of course, the discussion below includes only generalizations about a large segment of the population. It is always important to keep in mind that each juror's life experiences, bias, and personality will likely have more impact on their verdict than their generation alone.

II. Getting to Know the Generation Y Juror

Generation Y Jurors:

A. Experienced the following defining life events

- 9/11
- Dot-com bust
- Hurricane Katrina
- Corporate corruption like Enron
- Iraq wars

B. Value use of technology

Generation Y came of age with regular access to personal computers, the internet, and cell phones. Carol L. Bauss, *Generations X and Y's Influence in the Jury Box*, 50-SEPT OCLAW 42 (Sept. 2008). One study suggests that an average of 20 percent of Generation Y started using computers at age five. Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775 (2008). The integration of technology into their daily lives has allowed Generation Y to be in constant communications with their family and friends via email, text messaging, and social networks like Facebook and Twitter. Generation Yers use this technology frequently and are accustomed to getting information at the touch of a finger from these devices. *Id.*

Generation Y's reliance on technology has arguably shortened their attention span. Generation Y jurors are more likely to "zone out" during long monologues. Katrina Grider, *Good-bye Flip Charts, Hello Plasma Screens*, 68 TXBJ 567 (July 2005). Generation Y expects attorneys to use technology during trial, just as it is used in their daily lives. Incorporating technology into your trial presentation will help keep a Generation Y juror's attention. It can also help them organize the information presented and help them better understand your case. Using clear computer and visual exhibits during trial can help break up your presentation into "sound bites" of the important issues. *Id.*

C. Are comfortable being “educated”

Generation Y is the most educated generation yet. Carol L. Bauss, *Generations X and Y's Influence in the Jury Box*, 50-SEPT OCLAW 42 (Sept. 2008). They are better able to examine the facts analytically. Karen Lisko, *Closing the Generation Gap*, 32 Law Practice 4 (June 2006). They tend to be comfortable in a classroom. Presenting your case in logical order, as you would teach a class can be an effective strategy.

D. Are independent thinkers

Generation Y jurors often value their own independent judgment over that of others. A survey of 4,670 mock jurors over a five-year period nationwide found that nearly 60 percent of Generation Y jurors agreed with the statement “If I were a juror, I would do what I believed was right, even if it went against the judge’s instructions.” La Verne Morris, *Why Gen Y Jurors Bring a New Dynamic into Deliberations*, 809 PLI/Lit (Dec. 2, 2009). Generation Y jurors are also more comfortable analyzing situations “outside the box” than are other generations. *Id.*

E. Are politically liberal but favor lower damage awards

Generation Y is the most politically liberal generation. *Generations X and Y's Influence in the Jury Box*, 50 OCLAW 42 (Sept. 2008). One study found 48 percent identified as Democrats and only 35 percent as Republicans. *Id.* Nonetheless, demographic research shows Generation Y to be more fiscally conservative than Generation X (1965-1979) or Baby Boomers (1945-1964). Although Generation Y are less familiar with tort reform issues, many believe jury damage awards are too high. They believe in personal responsibility.

In awarding damages Generation Y jurors tend to value quality of life based on factors other than money. La Verne Morris, *Why Gen Y Jurors Bring a New Dynamic into Deliberations*, 809 PLI/Lit (Dec. 2, 2009). During deliberations, they will evaluate information on the plaintiff’s actual economic loss, and award what is needed to make a plaintiff whole pre-injury, as opposed to awarding what the plaintiff requests. *Id.*

III. Pitfalls of the Generation Y Juror

Generation Y jurors’ integration of technology into their daily life can also lead to some potential pitfalls during trial. Jurors can now Google your client’s company, your witnesses, your experts and anyone in the courtroom they choose. This can lead to jurors finding information that is not relevant to the litigation or worse yet, harmful to your client. Jurors’ misuse of technology during trial can be juror misconduct that could lead to a mistrial. Text messaging, the internet, Twitter, and Facebook are so pervasive that some jurors may not even realize the impropriety of using this technology with regard to the trial. As a consequence, courts are addressing jurors’ potentially inappropriate use of technology during trial with increasing frequency. *See, e.g., State v. Mitchell*, 45 Kan.App.2d 592, 252 P.3d 586 (Kan. Ct. App. 2011) (examining whether juror’s text messages required court to declare a mistrial); *Juror Number One v. California*, 2011 WL 567356 (E.D. Cal. 2011) (ordering juror to consent to release of Facebook information after he allegedly posted information on another juror’s Facebook page during trial); *U.S. v. Fumo*, 639 F.Supp.2d 544 (E.D. Pa. 2009) (examining whether one juror’s Twitter usage and other jurors’ knowledge of Twitter use required the court to declare a mistrial); *People v. Ortiz*, 2009 WL 3211030 (Cal. Ct. App. 2 Dist. 2009) (examining whether juror’s blog entries during trial required declaration of a mistrial); *State v. Goehring*, 2007 WL 3227386 (Ohio Ct. App. 2007); *People v. McNeely*, 2009 WL 428561 (Cal. Ct. App. 2009) (examining whether juror blog provided sufficient proof of misconduct such that a mistrial must be declared); *Wilgus v. F/V Sirius, Inc.*, 665 F.Supp.2d 23 (D. Me. 2009) (examining whether mistrial was required where juror “friended” plaintiff on Facebook).

Although the courts in the cases listed above declined to declare a mistrial due to a juror's use of social media, the increasing frequency that these issues are arising should be a concern.

One measure that can help prevent this misconduct is to request a specific jury instruction regarding the use of technology. An instruction that specifically references the prohibited technologies will remind younger jurors that using technology like Facebook, Twitter, or a blog, to discuss the trial or research trial issues, is as harmful as face-to-face discussions or following news reports regarding the trial. Courts are using such instructions more regularly in recent years, but may not do so unless you request such an instruction. A New York court has used the following instruction:

[S]pecific instructions to jurors not to use 'internet maps or Google Earth' as well as not to actually visit any place mentioned during the trial, not to use 'the internet' to do any research about the case, and not to use 'text messages, email, internet chat rooms, blogs or social websites, such as Facebook, MySpace, or Twitter' as well as face-to-face conversations to discuss the case.

People v. Jamison, 2009 WL 2568740 (N.Y. Sup. Ct. 2009). Requesting an instruction similar to this may help avoid the complications that can arise when juror uses these technologies during trial.

