THE MODERN JURY
In November 2008, the Lord Chief Justice of Great Britain, Sir Igor Judge, sounded a warning about the generational shift occurring as web-savvy citizens accustomed to getting their information online entered the jury box. Noting the consequences of this shift for the system of trial by jury, the Lord Chief Justice observed, “If a generation is going to arrive in the jury box that is totally unused to sitting and listening but is using technology to gain the information it needs to form a judgment, that changes the whole orality tradition with which we are familiar.”

Indeed, the impact that the so-called “Generation Y” or “Millennial” population is having on society at large makes it more important than ever for lawyers to understand the effect that they are having on how they communicate to jurors. Along with “Generation X” (those born between 1965 and 1981), the members of Gen Y (those born between 1982 and 1995) comprise more than half the adult population of the United States and nearly 60 percent of the nationwide jury pool.

Those struggling with how best to communicate with a whole new generation of jurors have to keep in mind how these jurors have come of age, how they expect to receive information, and what influences their decision-making. As Dr. Mary Noffsinger, a litigation psychologist with Courtroom Sciences, Inc. in Dallas, has pointed out, “An individual’s generation accounts for communication strengths and weaknesses and is an important factor to consider in interactions with those we serve, manage, represent, mentor, instruct, and attempt to influence.”
The “digital natives” of Gen Y that Noffsinger and other jury consultants have written about present new challenges to the lawyers who seek to communicate effectively with them. Gen Y jurors have grown up in an era in which one can check the news anywhere, anytime via smartphones and other wireless technologies, so they expect to get information immediately. From the Internet and email to instant messaging and social media, Gen Y jurors have grown accustomed to instant access to information and can become frustrated with lawyers who might be perceived as taking too long to present their case. LaVerne Morris, a jury consultant with Trial Graphix, says this reliance upon technology translates to Gen Y jurors placing more emphasis on visual communication, making it necessary for lawyers to adopt more of a storytelling approach when trying cases. According to Morris, Millennial jurors “don’t want to hear all the details to substantiate a claim. They want everything up front. They take fewer notes.”

Knowing the audience is certainly the first step in effectively communicating to Gen Y jurors. These Millennials, roughly 76 million strong, are as characterized by their own sets of beliefs and concerns as the Gen X and Baby Boomer generations who preceded them. They not only came of age in a digital environment, they also emerged in an era of corporate scandals, 9/11 and its aftermath, and conflicts in the Middle East. According to a number of studies, Gen Y jurors tend to be more socially liberal, have high rates of unemployment but remain upbeat, and are our most diverse generation (only 59 percent are non-Hispanic whites). Not surprising in light of this diversity, Gen Y members tend to be more tolerant of differences. They are the least overtly religious of any generation, with 65 percent reporting that they rarely or never attend worship services.3 Gen Y jurors also tend to have higher expectations of government and corporations, demanding more openness and transparency.

Yet as some legal analysts have noted, this different value system doesn’t necessarily translate to less of an emphasis on personal responsibility. Some jury consultants believe Gen Y jurors are actually more defense-oriented and prone to question a plaintiff about what conduct or failure to act by that plaintiff may have played a role in the event leading to the lawsuit. LaVerne Morris points out, “What we are seeing in a lot of medical and personal injury cases is Gen Y jurors asking why [the plaintiff] didn’t get a second opinion. They do not understand why someone would completely trust a doctor.”

So what are the keys to effectively communicating with Millennial jurors? Technology is essential — 91 percent use the Internet and 86 percent have at least one presence on a social networking site such as Facebook (the figure climbs to 95 percent of those aged 18–24). As Noffsinger reminds us, “Verbally presented messages should be accompanied by demonstrative exhibits (e.g., photos, videos, illustrations), which foster improved attention, reduced boredom, enhanced memory, increased credibility, and entertainment value.” Speaking in “sound bites” and utilizing technology is more important than ever with Gen Y jurors, given their tendency to process information visually and rapidly and the likelihood that elaborate explanations and protracted arguments will make them bored and impatient. Adopting an interactive style helps to empower these digital natives as listeners and learners. Noffsinger offers some other helpful tips in communicating with Gen Y jurors. Because they have grown up in a learning atmosphere that emphasized teamwork and participation over individual achievement (ninth-place ribbon, anyone?), Gen Y jurors are apt to be more receptive to a communication strategy that focuses on collaboration, emphasizes fairness or the greater good, and talks about the “big picture.” And while trial lawyers should always be cautious when it comes to humor in the courtroom, Gen Y jurors tend to expect more entertainment value and more frequent use of humor than jurors of older generations.8

While there is no better way to get a feel for the perspectives and expectations of Gen Y jurors than through actual trial practice, studies that have examined this generational shift can be highly illuminating. In fact, for this article, we decided to hear straight from the horse’s mouth, so to speak, about what members of Gen Y think about not only the use of technology in the courtroom and how evidence is presented, but also about the notion of jury service in general. We decided to go with a captive audience — namely, the students in the Legal Practice classes at Texas Tech University School of Law. We have two caveats about this study. First, the size of the sample is certainly smaller than what statisticians would normally consider to be statistically reliable. Second, while these law students represent a microcosm of the more diverse pool that is Generation Y,
they are, at the end of the day, law students — and therefore their expectations and understandings of the jury system may be somewhat better informed than those of a typical Gen Y juror. Nevertheless, we believe these survey results are instructive and help shed light on how Americans within a certain age (the respondents range in age from 20 to 30, with the majority falling into the 22–25 age group) feel about how evidence is communicated in a jury trial and about jury service generally.

First, the students were asked about jury service itself. They were asked to respond to a number of statements by indicating agreement, strong agreement, neutrality, disagreement, or strong disagreement using a 1–5 scale. In response to the first statement — “In general, the public has a negative perception of jury service” — 68.5 percent agreed and 20 percent strongly agreed. Only 2.5 percent disagreed with the statement and 10 percent had a neutral response. Another statement that solicited a reaction was, “In general, persons aged 31 and younger have a more negative perception about jury service than persons over the age of 31.” Of the respondents, 42.5 percent remained neutral with respect to this statement, 30 percent agreed with the statement, and 22.5 percent disagreed. Only 2.5 percent of the respondents felt strongly enough about the statement posed to strongly disagree with it, and, similarly, only 2.5 percent strongly agreed with it.

The comments that were elicited about jury service were equally telling. Many identified juror compensation as a key factor in the public’s often-negative perception of jury service. One called the current rate “insulting” and called for a minimum wage scale to apply to jury duty. Another pointed out that “parking in Houston for jury duty costs more than the $7 they pay you for being there.” Others tied the negative connotations associated with jury service to the fact that “the pay is so low and you are taken away from your job for an indeterminate amount of time.” Another comment underscored the importance to Gen Y jurors of feeling empowered by and involved in the process. “Some county official gave this really great pep talk in the beginning about what an honor it is to do your civic duty and how appreciative the county is for your service — and I bought it for the first few hours of sitting there bored. Then being in a giant room full of strangers and not really knowing what’s going on and no one really communicates any sort of timeline to you — that got annoying,” one respondent answered.

The majority of the survey, however, dealt with the perceptions among prospective Gen Y jurors toward the use of technology in presenting evidence in the courtroom. Respondents were asked to react to the statement, “If you served on a jury, you would retain information better if you both heard and saw the information.” Of those surveyed, 60 percent strongly agreed with this premise and another 32.5 percent simply agreed. Only 2.5 percent were neutral, with the remaining 5 percent disagreeing. The survey also inquired about the statement, “In general, attorneys should use technology to present the evidence at trial.” There was overwhelming agreement among the respondents to this, with nearly 70 percent in favor (45 percent agreed, while 22.5 percent strongly agreed). Of those surveyed, 30 percent remained neutral on the issue, with only 2.5 percent disagreeing.

Other statements dealt with specific types of technology. The survey asked respondents to agree or disagree with the premise of “If a witness was unable to testify live, attorneys should present videotaped testimony rather than simply reading the testimony.” Again, there was overwhelming agreement: 55 percent of those surveyed strongly agreed with this statement and 42.5 percent simply agreed (only 2.5 percent disagreed). Another statement that elicited comment was “Attorneys should use graphic presentation software (such as PowerPoint) to summarize the main points during the trial, e.g., during opening statement and the closing statement.” Of the respondents, 52.5 percent agreed with this premise, while an additional 20 percent strongly agreed. Of the respondents, 25 percent remained neutral on the subject and only 2.5 percent disagreed. The students were also asked to comment on the statement, “Attorneys should use timeline software to help organize and explain events in the case.” Of the respondents, 60 percent agreed with this statement and another 17.5 percent strongly agreed with it. Of the respondents, 20 percent had no opinion, while only 2.5 percent disagreed with the concept of using timeline software.

Results were more evenly split on the issue of too much technology. The survey posited the question of whether too much technology in the courtroom during trial might lead to sensory overload. Of the respondents, 35 percent agreed and 17.5 percent voiced strong agreement. But 32.5 percent disagreed or strongly disagreed, with another 15 percent remaining neutral.
In short, the majority of these Gen Y representatives clearly favored the use of technology in the courtroom and indicated that they would be in a much better position to absorb information that was presented visually as well as verbally. Yet even among the multitasking members of Generation Y, the picture was by no means clear when it came to the possibility of too much technology in the courtroom and the risk of sensory overload.

Jurors from the ranks of Gen Y will only continue to play an increasingly important role in jury trials. Since inter-generational differences are often blamed for breakdowns in communication — both inside the courtroom and out of it — trial lawyers who devise their communication strategy with the unique traits and expectations of the Gen Y juror in mind are in a much better position to influence both the attitudes and decision-making of this new breed of juror.

NOTES
7. Noffsinger, supra note 3.
8. Id.

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