JURY CONSULTANT RESEARCH IN OIL AND GAS DISPUTES IN LIGHT OF “FAKE NEWS,” “ALTERNATIVE FACTS,” AND SOCIAL MEDIA: STRATEGIES FOR PERSUADING MILLENNIALS AND EVERY OTHER GENERATIONAL COHORT TODAY

Presented by:
SHELLEY C. SPIECKER, Ph.D., Denver, CO
Persuasion Strategies

Co-author:
KATERINA OBERDIECK, M.S., Denver, CO
Persuasion Strategies

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CHAPTER 8
Dr. Shelley Spiecker has been advising attorneys and developing strategic trial solutions for over 24 years. With a doctorate in legal communication, Dr. Spiecker has extensive experience in case strategy, witness preparation, and trial persuasion. She uses her experience and knowledge of juror, judge and arbitrator decision making to advise clients on trial tactics, settlement strategies, and jury selection. Since 2002 Dr. Spiecker has specialized in litigation involving the oil and gas industry. She has worked with over 40 different energy companies on cases ranging from royalty disputes, legacy environmental matters, personal injury, lease disputes, and drilling problems on and offshore. Dr. Spiecker has received national recognition for her significant work in energy litigation and is frequently asked to lecture on emerging research findings to industry leaders including to the American Petroleum Institute, the Rocky Mountain Mineral Law Foundation, and the Institute for Energy Law.
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I. OIL AND GAS ATTITUdINAL TRENDS
To understand the uniqueness of Millennials and their attitudes toward energy companies in the courtroom today, it is helpful to first understand the litigation landscape of juror attitudes toward oil and gas companies over the past 15 years. Since 2003, Persuasion Strategies has conducted an annual nationwide Gallup-type survey of jury-eligible individuals asking questions that illuminate jurors’ attitudes toward issues facing oil and gas companies in litigation. Highlights of the findings and attitudinal trends and public opinion distinctions from this data are reported as follows:

A. Net Unfavorability with Evidence of Improved Public Opinion
As Figure 1 indicates, attitudes toward oil and gas companies are more negative than perceptions of other companies, notably insurance companies and banks. Opinions were recorded on a four-point scale with “1” equating to “very unfavorable” and “4” to “very favorable.” From 2005 to 2010, the average opinion of oil and gas companies was “somewhat unfavorable.” Attitudes started to improve in 2012, and in 2013 for the first time since 2003, we say public opinions average between “somewhat unfavorable” to “somewhat favorable” as compared to other organizations. Only in 2012, for the first time, did we observe that government agencies and oil and gas companies were ranked the same. Over the past five years, a constant trend has remained that oil and gas companies are perceived slightly more favorably than government agencies.

Figure 1. Mean Favorability of Companies and Entities Over Time.

Figure 2 more precisely tracks attitudes toward the oil and gas industry alone. Highlight findings include that attitudes favoring the industry were most polarized in 2013 and 2014. Perhaps most importantly, since 2013 the jury-eligible population has shown an overall increase in “somewhat favorable” industry opinion.
Percentage of Favorability Rankings for Oil and Gas Companies Over Time

Despite an overall average negative perception, our research illustrates that negative public opinion has softened in recent years.

How Have Oil and Gas Companies Changed in the Way They Treat the Public Over the Last Five Years?

Despite an overall average negative perception, our research illustrates that negative public opinion has softened in recent years.
As the chart below illustrates in more detail, we have seen a decline in perceptions that the oil and gas industry is treating the public worse than in the past.

Figure 4. How Have Oil and Gas Companies Changed in the Way They Treat the Public Over the Last Five Years? (Percentages)

And when it comes to relating to oil and gas companies on a more personal level, public perception is even more favorable.

Figure 5. In General, How do You Feel Oil and Gas Companies Have Impacted the Community Where You Live?
Consistent with a general anti-corporate bias, however, is a perception that if an oil and gas company could profit by being unethical it would do so.

**How Often Do You Believe an Oil and Gas Company Would Lie if it Could Benefit Financially From Doing So?**

![Graph showing the percentage of respondents who believe an oil and gas company would lie if it could benefit financially from doing so.](image)

*Figure 6. How Often Do You Believe an Oil and Gas Company Would Lie if it Could Benefit Financially From Doing So?*

Figure 7 compares perceptions of oil and gas companies to large corporations in general. Interestingly, there is very little difference in perceptions of dishonesty about the oil and gas industry compared to corporations more generally.

**The Following Would Almost Always Lie if it Could Benefit Financially:**

![Graph showing the percentage of respondents who believe certain entities would lie if it could benefit financially.](image)

*Figure 7. The Following Would Almost Always Lie if it Could Benefit Financially.*

B. **Correlation to Unfavorable Attitudes**

Persuasion Strategies’ proprietary data has consistently demonstrated that environmental concern, political affiliation, and general opinion of corporations are correlated with opinions of oil and gas companies. As Figure 8 shows, there is a moderate correlation with a belief that large corporations cause environmental harm and unfavorable opinion of oil and gas companies. For the past two years the strength of the negative correlation between favorability ratings of oil and gas companies and the belief that large corporations cause environmental harm has been increasing, and is now the strongest it has ever been.
Correlation Between Favorability of Oil and Gas Companies and Belief That Large Corporations Cause Environmental Harm

Figure 8. Correlation Between Favorability of Oil and Gas Companies and Belief That Large Corporations Cause Environmental Harm.

Based on what we have observed regarding Millennials and environmentalism, the correlation between environmental attitudes and opinion of oil and gas companies is likely to strengthen going forward. For the past four years we have tracked what most concerns juror opinion regarding oil and gas companies. As Figure 9 shows, concern for how oil and gas companies treat the environment is now the most pressing concern by far – held by approximately twice as many jury-eligible individuals than gasoline prices or corporate profits.

When it Comes to Oil and Gas Companies, Which Concerns You Most?

Figure 9. When it Comes to Oil and Gas Companies, Which Concerns You Most?
Not surprisingly, as illustrated by Figure 10, political affiliation is reliably related to industry favorability over time, as Democrats are less favorable than Republicans towards the oil and gas industry.

**Political Affiliation and Favorability of Oil and Gas Companies**

![Political Affiliation and Favorability of Oil and Gas Companies](image)

Figure 10. Political Affiliation and Favorability of Oil and Gas Companies.

As Figure 11 shows, while political affiliation was trending to have decreased influence over opinion of oil and gas companies in the 2013 – 2016 time frame, after the conclusion of the 2016 Presidential election, we saw a notable spike in the relationship between political affiliation and favorability to the energy industry. While the partisan divide had declined to what is traditionally considered by social scientists to be a small effect, it has increased dramatically to a moderate effect.

**Effect Size of Partisan Split on Oil and Gas Favorability**

![Effect Size of Partisan Split on Oil and Gas Favorability](image)

Figure 11. Effect Size of Partisan Split on Oil and Gas Favorability.

When it comes to specific issues facing the oil and gas industry, political affiliation is even more determinative of public opinion. We asked jury-eligible individuals if fracking is always acceptable (“The benefits of fracking outweigh any potential disadvantages”), acceptable in some circumstances, or never acceptable because of the potential harms it may cause. Notably, the percentage of Democrats who say fracking is never acceptable has increased by over 10 percent for three consecutive years, while Republican attitudes have stayed relatively stable. Figure 12 illustrates this relationship:
In 2011, Persuasion Strategies released an Anti-Corporate Bias Scale comprised of seven questions that reliably predicts anti-corporate leaning in litigation. This scale has been validated in intellectual property, employment, product liability, contract, investor dispute, and oil and gas litigation. Two examples of questions in this predictive scale include, “How much responsibility should large corporations be held to in comparison with individuals?” and “What is your opinion of the number of lawsuits against large corporations?” Figure 13 shows the scores at which approximately 70 percent of potential jurors will have a favorable or unfavorable opinion of oil and gas companies. In 2016, respondents to our national survey had to have an anti-corporate bias score of only 2.14 on a four-point scale to have a 70 percent likelihood of holding a favorable view of oil and gas companies. This is far below the national average Anti-Corporate Bias Scale score for the same year, which was 2.89.

To assess the predictive power of our Anti-Corporate Bias Scale in oil and gas litigation we used participant responses to five oil and gas-related questions to calculate a mean score for each respondent. After removing approximately the middle third of respondents, we then assessed differences in anti-corporate opinions based on opinions regarding oil and gas. We found that anti-oil and gas respondents were statistically significantly more likely to hold anti-corporate beliefs in regards to every scale question. The largest discrepancy came to light when we asked jury-eligible individuals...
how often they believe a large corporation would lie to benefit financially. Fifty-nine percent of anti-oil and gas respondents responded that a corporation would *almost always* do so, while only 11 percent of pro-oil and gas respondents chose the same option.

### Attitudinal Divides Between Pro- and Anti-Oil and Gas Respondents

<table>
<thead>
<tr>
<th>Statement</th>
<th>Pro-O&amp;G</th>
<th>Anti-O&amp;G</th>
</tr>
</thead>
<tbody>
<tr>
<td>A large corp. would almost always lie for money</td>
<td>48% Gap</td>
<td></td>
</tr>
<tr>
<td>Large corps. cause a lot of environmental harm</td>
<td>47%</td>
<td></td>
</tr>
<tr>
<td>The gov. very much favors large corps. over Americans</td>
<td>34%</td>
<td></td>
</tr>
<tr>
<td>Cases against large corps. often/always have merit</td>
<td></td>
<td>26%</td>
</tr>
<tr>
<td>There are somewhat/far too few suits against large corps.</td>
<td>26%</td>
<td></td>
</tr>
<tr>
<td>The gov. should police large corps. more</td>
<td>23%</td>
<td></td>
</tr>
<tr>
<td>Large corps. should face some/much more responsibility than individuals</td>
<td></td>
<td>14%</td>
</tr>
</tbody>
</table>

*Figure 14. Attitudinal Divides Between Pro- and Anti-Oil and Gas Respondents.*

II. MILLENNIAL ATTITUDINAL TRENDS

A. Millennials as a Defined Generational Cohort

While definitions vary, for the purposes of our research, Millennials are defined as persons born between 1980 – 1996, aged 21 – 37 as of 2017. This is compared to Generation X jurors born between 1965 – 1979 aged 38 – 52 as of 2017, Baby Boomer jurors born between 1946 – 1964 aged 53 – 71 as of 2017, and Traditionalists jurors born between 1900 – 1945 aged 72 years or older as of 2017.

Because there are now more Millennials in the U.S. than any other generation, it is likely that Millennials’ influence on society will be noteworthy. As the following Pew Research table shows, Millennials have overtaken Boomers as the largest generation in the U.S., and will likely become even larger over time due to the influx of young immigrants. *Richard Fry, Millennials Overtake Baby Boomers as America’s Largest Generation, Pew Research Center, April 25, 2016.*
Millennials are also now the largest generation in the work force. Just as the Baby Boomer generation impacted society based on the size of its numbers, so too are the Millennials likely to impact attitudes for the coming years. Richard Fry, *Millennials Surpass Gen Xers as the Largest Generation in U.S. Labor Force*, Pew Research Center, May 11, 2015.
B. Millennials Seek Work and Life Balance

When it comes to work, Millennials are stereotypically thought to be more of a ‘slacker’ generation – less committed to career and less concerned about workplace success. Millennials tend to be less concerned with traditional ladder climbing and more concerned with integrating work and life – freedom and flexibility are important values. Millennials want to achieve, but they are focused on achieving different goals than previous generations. Rob Asghar, *What Millennials Want in the Workplace (And Why You Should Start Giving It to Them)*, Forbes, 2014. In 1976, 75 percent of Boomers said they expected work to be a central part of their lives, compared to 63 percent of Millennials in 2006. Jean Twenge, *A Review of the Empirical Evidence on Generational Differences in Work Attitudes*, *Journal of Business and Psychology*, 2010.

As evidence of this preference for flexibility, 77% of American Millennials say they have had to or would be willing to change jobs to better manage work and family or personal responsibilities, compared to 71% of Gen Xers and 49% of Boomers. When it comes to changing careers to have better work/life balance, 76% of Millennials say they have or would be willing to make the change, compared to 62% of Gen X and 44% of Boomers. Forty-four percent of Millennials have or would take a pay cut to have flexibility, as opposed to 35% of Gen X and 31% of Boomers. In fact, Millennials said they were more willing to make a change than other cohorts to in regards to every sacrifice they were
polling about, including giving up a promotion, moving to another location, and reducing their or their spouse’s hours. *EY, Global Generations, 2015.*

While life balance is a priority, it does not mean that Millennials are slackers. Eighty-seven percent of Millennials say that opportunities for professional development or career growth are very important to them – purpose and growth are common themes of Millennial work goals. *Amy Adkins, What Millennials Want from Work and Life, Gallup, 2016.* Kathleen Davis writes “Millennials are goal setters. To understand their ambition, just look at their pop-culture heroes: overachievers like Steve Jobs and Mark Zuckerberg.” Davis notes that while the stereotype depicts Millennials as irresponsible, they start saving for retirement four years before Gen X did, and 10 years before Boomers. *Kathleen Davis, Five Secrets to Communicating Effectively with Millennials, Entrepreneur, 2013.*

**C. Millennials Gravitate Toward Optimism, Inclusivity, Liberalism, and Authenticity in Communication and Work**

Millennials are typically far more collaboration-oriented than competition-oriented. Eighty-eight percent of Millennials prefer a collaborative work culture rather than a competitive one. *Rob Asghar, What Millennials Want in the Workplace, Forbes, 2014.* Desire for collaboration manifests in unmatched support for “big government,” as the following Pew Research chart shows. *Pew Research Center, Millennials in Adulthood, Detached from Institutions,*
Networked with Friends, March 7, 2014. Millennials believe in more government services which they perceive have the ability to make a difference on both individual and societal levels.

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**Support for Bigger Government Highest Among Millennials**

<table>
<thead>
<tr>
<th></th>
<th>Smaller government, fewer services</th>
<th>Bigger government, more services</th>
<th>Depends/DK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>51</td>
<td>40</td>
<td>90-100</td>
</tr>
<tr>
<td><strong>Millennial</strong></td>
<td>40</td>
<td>53</td>
<td>90-100</td>
</tr>
<tr>
<td><strong>Gen X</strong></td>
<td>40</td>
<td>43</td>
<td>70-100</td>
</tr>
<tr>
<td><strong>Boomer</strong></td>
<td>59</td>
<td>32</td>
<td>80-100</td>
</tr>
<tr>
<td><strong>Silent</strong></td>
<td>64</td>
<td>22</td>
<td>140-100</td>
</tr>
</tbody>
</table>

Note: Figures may not add to 100% because of rounding.

Source: Pew Research survey, Sep. 4-8, 2013

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Straight talk and passion are important elements to making a favorable impression on Millennials. Sixty-six percent of Millennials approve of business leaders who use straight-talking language. Millennials also have more highly-favorable attitudes towards leaders they believe are making efforts to be inclusive. *A Preference for Plain Talk and Inclusiveness, The Deloitte Millennial Survey, 2017.* Marketers recommend avoiding Millennial skepticism by using everyday language instead of jargon. *David Baker, Marketing to Millennials, 2016.* Kathleen Davis notes that Millennials respond affirmatively to humor in communication, and she notes the popularity of memes for this generational cohort as one anecdotal example of the popularity of humor. She states that Millennials consume media that’s “goofy, earnest and confident.” If communicators can tailor their message with “quirk in an authentic voice” without pandering, Millennials may be more receptive. *Kathleen Davis, Five Secrets to Communicating Effectively with Millennials, Entrepreneur, 2013.*

Notably, Millennials as a generation are more optimistic than those that have preceded them. This is true despite the fact that the economy is not as friendly to Millennials as it has been to older individuals. *Elena Holodny, Millennials are Way More Optimistic About the Future than Baby Boomers, Business Insider, 2016.* Millennials believe they can have a positive impact on their lives, their peers, and society as a whole, and they desire to do so. As Svaldi notes, “What older generations may see as impatience — and even impudence — comes out of a belief they [Millennials] can make a difference and a desire to be connected.” *Aldo Svaldi, The Denver Post, Millennials’ Perception of Hierarchy Flouts Unwritten Workplace Rules, 2014.* Additional support for the notion that Millennials gravitate toward inclusivity is evidenced by Millennials’ dislike of hierarchy, particularly in the workplace. Millennials want to be able to collaborate and feel heard, and are less interested in climbing ladders. They want to contribute without waiting to reach seniority. *Brigid Schulte, The Washington Post, Millennials Want an End to Hierarchies in the Workplace, 2015.*

While Millennials have been characterized as a particularly rebellious generation, this criticism is more likely than not unfounded. Millennial critics cite marrying late, foregoing home and vehicle ownership, and decreased allegiance to employers as examples of “rebelliousness.” In reality, these characteristics are more the result of pragmatic considerations and decreased options in response to downward trends in established markets than an ideological revolt. *Laura Marsh, The Myth of the Millennial as Cultural Rebel, New Republic.* Millennials are the first generation in Modern American history faced with a lower standard of living than their parents. In fact, as Paul Taylor of Pew Research Center writes, “Millennials lag behind their same-aged counterparts of yesteryear on virtually all key indicators of economic well-being — including employment, income, wealth, debt and poverty.” *Paul Taylor, Generational Equity and the “Next America,” Pew Research Center, 2014.* And economic trends such as high home rental rates, employers being less loyal to employees, and driving services such as Uber and Lyft have changed the options and opportunities facing this generational cohort.

Additional data refuting the rebellious stereotype comes from a survey reported in the Economist in which 5,000 individuals were surveyed and Millennials were most likely to agree with the statement, “employees should do what their manager tells them, even if they don’t see the reason for it.” Forty-one percent of Millennials agreed compared to
only 30% of GenX and 30% of Boomers. Schumpeter, Myths About Millennials, The Economist, August 1, 2015. Even though Millennials may not prefer strict hierarchies in the workplace, they still endorse the attitude that one should follow a dissenting decision of a supervisor at higher rates than other generations.

Millennials are more liberal than preceding generations. One example from our own proprietary survey research that supports the finding that Millennials are more liberal than other generational cohorts is the fact that Millennials are statistically significantly more likely than other generations to feel there are too few lawsuits against large corporations.

![There Are Too Few Lawsuits Against Large Corporations](image1.png)

*Figure 15. There Are Too Few Lawsuits Against Large Corporations.*

As another example of a more liberal bent, Figure 16 represents a statistically significant difference between Millennials/Gen Xers compared to Boomers and Traditionalists in their preference for ethics over the law when the two have the appearance of being in conflict.

![When Personal Ethics and the Law Conflict, You Should Follow Personal Ethics](image2.png)

*Figure 16. When Personal Ethics and the Law Conflict, You Should Follow Personal Ethics.*

Millennials are also more independent thinkers than previous generations, on average. As the following two Pew Research Center charts show, Millennials are far more likely to identify as independent voters than prior generations, more likely to self-report no religious affiliation, and more likely to lean toward the liberal end of the spectrum on
political issues, particularly political issues that have social implications. Pew Research Center, Millennials in Adulthood, Detached from Institutions, Networked with Friends, March 7, 2014.

Notably, despite increasing political polarity in local and national elections, Millennials are the least likely generational cohort to perceive big differences between U.S. political parties. Pew Research Center, Millennials in Adulthood, Detached from Institutions, Networked with Friends, March 7th, 2014. This is likely due to a more pronounced distrust of politicians in general as compared to other generational cohorts.

D. Millennials Are Data Connoisseurs
Millennials have grown up with more visual media and competition for attention than previous generations. Using visuals to communicate information is particularly important when speaking to this audience. Stephen Miller, To Reach Millennials, Speak Their (Largely Visual) Language, CEBS, 2016.
YouTube is now the second most visited website behind Google. *Alexa, The Top 500 Sites on the Web, November 28, 2017.* When Millennials’ attention starts to wane, 77% of them turn to their phones as compared to 10% of people age 65 or older. *Kevin McSpadden, You Now Have a Shorter Attention Span Than a Goldfish, Time, May 14, 2015.* While prior generations consumed their news from print, Millennials get their news from the Internet via their phones with information distilled in sound bite form. The New York Times recently reported that nearly two-thirds of Americans get at least some of their news from social media. *Benedict Carey, How Fiction Becomes Fact on Social Media, The New York Times, October 20, 2017.* There is evidence from a Pew Research Study conducted August 8 – 21, 2017 that Millennials get more of their news from social media than other generation. This does not mean they are not information connoisseurs. To the contrary, Millennials are ambitious data seekers. Davis quotes entrepreneur Will Pearson, who has studied this generational demographic, as noting that "Millennials start saving for retirement four years before Gen X did, and 10 years before Baby Boomers." To reach this ambitious generation, Pearson says that you should recognize their intelligence and present information in a fast-paced way to address the ambitiousness. *Kathleen Davis, Five Secrets to Communicating Effectively with Millennials, Entrepreneur, 2013.*

There is also credible evidence that Millennials can process more information than members of other generations. As one study noted, “Using the analogy of an 85-page newspaper, they found that in 1986 Americans received around 40 newspapers full of information every day but this had rocketed to 174 in 2007.” *Richard Alleyne, Welcome to the Information Age – 174 Newspapers a Day, The Telegraph, February 2011.* In our experience observing Millennials in mock trial research, the desire of this generation to want to conduct independent research about cases and case-related issues stems less from a rebellious nature and more from an inquisitive frame of mind.

### III. MILLENNIAL ATTITUDES TOWARD OIL AND GAS COMPANIES COMPARED TO OTHER GENERATIONAL COHORTS

A. While Some May Say Data on Millennials’ Opinions of the Oil and Gas Industry Is Mixed, We Believe Millennials to Be More Anti-Oil and Gas than Any Other Generation

Some research suggests that age is not a good predictor of attitudes toward the oil and gas industry. Our proprietary data and other published research suggest to these authors that this is an inaccurate conclusion, and in fact, Millennials hold views that cause them to be more anti-oil and gas than other generations. In the interest of fairness, a survey of 1,204 Americans conducted by FleishmenHillard for EY provides some evidence that age is not a reliable predictor of industry attitudes. They cite data that suggests that all generational cohorts have a net positive rating (the percentage of favorable ratings after subtracting unfavorable ratings) of the energy industry.

![Energy industry net-positivity](chart)

Source: *EY, Oil and Gas Perceptions Survey, 2017*

However, when respondents were asked more specifically about the oil and gas industry, rather than the energy industry as a whole, the results were striking. Younger people are less likely to think the oil and gas industry is good for society, as evidenced by an enormous 60 percent net positivity gap between the Silent generation (also called Traditionalists), and Millennials. *EY, Oil and Gas Perceptions Survey, 2017.*
It is these authors’ opinion that Millennials are more anti-oil and gas than other generations. Our proprietary data support this conclusion, as Figure 17 illustrates.

Other recently-published research suggests that Millennials are less likely to have favorable opinions of the oil and gas industry because of the perception of the industry as an employer. An October 2016 article by McKinsey and Company authored by Handscomb, Sharabura, and Woxholth states that Millennials dislike the oil and gas industry as a prospective employer because of its image as a corporate hierarchy with limited collaboration opportunity and a more traditional employment structure. They reported that 14 percent of Millennials do not want to work in oil and gas due to the industry’s negative image. Oil and gas prompted this response more than any other industry. Christopher Handscomb, Scott Sharabura, and Jannik Woxholth, The Oil and Gas Organization of the Future, September 2016. An article by Paraskova reports that Millennials view the oil and gas industry as “dirty, difficult, and dangerous.” Tsetvana Paraskova, Why Millennials are Snubbing Jobs in the Oil Industry, July 20th, 2017. And certainly Millennials’ strong environmental concerns also contribute to negative perceptions of the industry.

There is also some evidence that the oil and gas industry has not effectively identified how to communicate with Millennials. During the 2017 Super Bowl, the American Petroleum Institute aired an advertisement aimed at
Millennials that opened with the phrase, “This ain’t your daddy’s oil.” The commercial drew criticism for attempting to market the oil industry as cool. Some critics also challenged the truthfulness of the ad, which focused on several popular uses of petroleum and petroleum derivatives such as aspirin, cosmetics, and paint. Critics of the ad perceived it to be pandering to Millennials and contrary to the “straight-talk” approach preferred by Millennials as noted earlier in this paper. Tsetvana Paraskova, Why Millennials are Snubbing Jobs in the Oil Industry, July 20th, 2017

B. Millennials Are Clearly More Pro-Environment Than Other Generations

Our conclusion that Millennials are more negative toward the oil and gas industry is supported not only by the aforementioned anecdotes, but also by clear evidence that Millennials are more environmentally focused than any previous generation. In our experience, this impacts oil and gas companies even in cases that do not contain environmental claims. As Figure 18 illustrates, Millennials rate ‘treatment of the environment’ as their top concern regarding oil and gas companies, evidence of the statistically significant association between generational cohort and concern rankings.

![Top Concern About Oil and Gas Companies by Generation](image)

*Figure 18. Top Concern About Oil and Gas Companies by Generation.*

Millennials are roughly twice as likely to endorse an extremely negative view of oil and gas companies and their environmental practices, as Figure 19 indicates.

![Oil and Gas Companies Almost Never Consider the Environmental Impact of Their Company](image)

*Figure 19. Oil and Gas Companies Almost Never Consider the Environmental Impact of Their Company.*
It is important to note, however, that Millennials’ concerns about environmental conduct are not limited to the oil and gas industry. As Figure 20 shows, Millennials are more likely to believe that a lot of environmental harm is caused by large corporations in general.

![A Lot of Environmental Harm is Caused by Large Corporations](image)

Figure 20. A Lot of Environmental Harm is Caused by Large Corporations.

There is a statistically significant relationship between generation and favorability ratings of the EPA, and Millennials expressed favorable opinions of the EPA more than any other generational cohort. This can be advantageous to defendant oil and gas companies in environmental litigation as the defense can frequently argue that government regulations were met and/or governed operations and remediation work. However, most Millennials, like members of other generations, expect oil and gas companies to not only meet but exceed environmental and other governmental regulations.

![Favorable Opinion of the EPA](image)

Figure 21. Favorable Opinion of the EPA.

Millennials are also more likely to agree with the statements “climate change is occurring” and “personal actions can influence the environment” than persons over 65 years of age, as the following two charts produced from data by the University of Texas at Austin illustrate. In the fall of 2016, more than 9 out of 10 survey respondents (91 percent) under age 35 said climate change is occurring, compared with 74 percent of those age 65 or older. The University of
In the same study, a majority of Millennial voters (63 percent) self-reported that their decision in the 2016 Presidential election would be influenced by energy issues, compared to 34 percent of voters age 65 and older. The study also found that the contrast between Millennials and Seniors is highlighted by their views on several other energy issues:

- 62% of Millennials support reducing the use of coal as an energy source, and only 28% of Seniors do.
- 52% of Millennials support a carbon tax, as opposed to 23% of senior citizens.
- 59% of individuals under 35 believe personal actions influence the environment, while 26% of individuals over 65 do.

Other research tells us that Millennials’ attitudes toward renewable energy are another key contributor to pro-environmental attitudes. Specifically, Millennials greatly favor renewable energy over fossil fuels. Eighty percent of Millennials say that the U.S. should switch to mostly clean or renewable energy by 2030. And under half of Millennials said that the U.S. should continue to develop fossil fuel resources. David Roberts, Millennials Love Clean Energy, Fear Climate Change, and Don’t Vote. This Campaign Wants to Change That., April 30th, 2016.

### Table: Millennials vs. Seniors in Energy Polls

<table>
<thead>
<tr>
<th>Issue</th>
<th>Millennials (&lt;35)</th>
<th>Seniors (65+)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Think climate change is occurring</td>
<td>74%</td>
<td>91%</td>
</tr>
<tr>
<td>Think personal actions can influence the environment</td>
<td>26%</td>
<td>59%</td>
</tr>
<tr>
<td>Supports imposing carbon tax</td>
<td>23%</td>
<td>52%</td>
</tr>
<tr>
<td>Supports decreasing the use of coal as an energy source</td>
<td>7%</td>
<td>28%</td>
</tr>
<tr>
<td>Likely to install solar panels in next 5 years</td>
<td>19%</td>
<td>62%</td>
</tr>
<tr>
<td>Likely to own a hybrid vehicle in next 5 years</td>
<td>18%</td>
<td>63%</td>
</tr>
<tr>
<td>Likely to use smart meter technology in next 5 years</td>
<td>33%</td>
<td>56%</td>
</tr>
<tr>
<td>Willing to purchase an alternative fuel or electric vehicle</td>
<td>22%</td>
<td>66%</td>
</tr>
<tr>
<td>Willing to carpool or take public transportation</td>
<td>20%</td>
<td>60%</td>
</tr>
</tbody>
</table>

**Figure: Climate change is occurring**

- 74% of Millennials (<35) in 2012 to 74% in 2016
- 91% of Seniors (65+) in 2012 to 91% in 2016

C. **Millennials Are More Supportive of Science Than Other Generations**

Today’s world of “fake news” and “alternative facts” is creating a distrust of information by the average citizen. According to a recent poll, only 39% of American adults are very confident they can differentiate between fake news and real news, leaving 61% who do not feel very confident in making the distinction. In the same study, 64% of
American adults said they think fabricated news causes significant confusion about political and social issues today. Michael Barthel, Amy Mitchell, and Jesse Holcomb, Many Americans Believe Fake News Is Sowing Confusion, Pew Research Center, December 2016. The public is no longer only the audience of the news, but is also the source of news – a shift in information consumption that raises source credibility questions. Our recent research finds this is creating an environment where average Americans see a disconnect between themselves and those who report information, such as fact and expert witnesses in a litigation context. Specifically, in cases with scientific experts, we are observing “expert cynicism,” with jurors perceiving that anyone can gin up the studies and support for the client they “endorse.”

Many issues in oil and gas litigation center around science. On scientific issues, Millennials are likely to be more positive toward the oil and gas industry than other generations. This is true not only of environmental litigation, but in other types of oil and gas litigation where the case can turn on whether scientific evidence is accepted, such as the precision with which geophysicists can reliably define stratas of gas formations far underground and the precision in which a deepwater drilling subcontractor can pinpoint the drill angle for a well in the Gulf miles below the ocean’s surface. As Figures 22 and 23 from our proprietary data illustrate, Millennials are more likely to completely trust scientific evidence and to believe that scientific studies contribute to our quality of life than their Gen X and Boomer counterparts.

### I Completely Trust Scientific Evidence

![Bar graph showing trust in scientific evidence by generation](image)

Source: Persuasion Strategies, National Juror Survey 2017; N = 420

*Figure 22. I Completely Trust Scientific Evidence.*

### Science and Scientific Studies Completely Contribute to the Overall Quality of American Life

![Bar graph showing contribution of scientific studies by generation](image)

Source: Persuasion Strategies, National Juror Survey 2017; N = 420

*Figure 23. Science and Scientific Studies Completely Contribute to the Overall Quality of American Life.*
IV. STRATEGIES FOR PERSUADING MILLENNIALS AND OTHER GENERATIONS IN OIL AND GAS LITIGATION TODAY

In this paper we have alluded to strategies for persuading fact finders in oil and gas cases today, including a “straight-talk” approach, showing a corporate culture of environmental concern, and particularly for Millennials, portraying an oil and gas company as non-hierarchical and more consensus-driven in operation.

We recommend implementing the following additional strategies when representing an oil and gas client in the courtroom:

A. Identify and Eliminate Jurors Most Biased Against the Oil and Gas Industry

This paper identifies four predictors of anti-industry bias: general anti-corporate bias, political affiliation, generational cohort identification, and environmental concern. With the predominance of social media usage today, a considerable amount of information can be gleaned about prospective jurors outside of the voir dire process in a courtroom. Attitudes that correlate with anti-industry bias can be identified through social media and factored in when considering peremptory strikes, always mindful of the ethical guidelines for social media research as set out in ABA Formal Opinion 466 April 23, 2014.

B. Embrace the ‘Dominant Narratives’ Jurors Hold About the Oil and Gas Industry

On November 8, 2017, Persuasion Strategies’ consultants authored an article in Law360 entitled “Jury Persuasion in an Alt-Fact World” in which we defined a ‘dominant narrative’ as a story we tell ourselves to explain phenomena we encounter in the world. These powerful stories shape our perceptions of reality and govern our responses. For example, if we think Whole Foods is too expensive, we will discount or ignore examples where Whole Foods is actually cheaper than other grocery stores. As we noted in the Law360 article, the belief that corporations are profit-hungry monsters that will take any action, ethical or unethical, to increase profits is a dominant narrative. Instead of trying to fight against the established perception, whether accurate or inaccurate, litigators can accept and use the dominant narrative to disrupt a juror’s expectations in a positive way. By harnessing the strength of the perception that corporations prioritize profits, the lawyer can persuasively demonstrate that seeking a profit motivated an ethical and legal action rather than an unethical or illegal action.

This paper illuminates several dominant narratives often present in oil and gas litigation, such as oil and gas companies are likely to lie for economic gain. The core point in this dominant narrative is that oil and gas companies are motivated by profit. When this motivation is embraced in litigation it increases persuasiveness because it taps into jurors’ perception of reality. Take for example a reverse discrimination case in which a male executive claims he was wrongfully terminated for supporting female employees who were terminated by the same company. On its face, the plaintiff’s claims of five terminated females in a time span concurrent with his termination is compelling. However, when evidence is introduced that the defendant, an alternative energy company facing declining commodity prices that observed a marked decrease in the profitability of the subdivision run by the terminated executive, jurors are presented with a profit motive for the termination and more likely to find that the termination was non-discriminatory.

C. Make Expert Witness Testimony Accessible for Today’s Science-Suspicious Jurors

Also described in the aforementioned Law360 article is the fact that rejection of science is a dominant narrative receiving significant attention in the legal industry and beyond. Public perception on the whole is that science is no longer trustworthy. Litigants rely heavily on science and scientific evidence as they put forth experts to support their position. Jurors are asked to determine the credibility of the experts, their methods, and their conclusions and to decide on the objectivity of that evidence. The dominant narrative rejecting science is a powerful influence on perceptions in a case.

As noted in this paper, Millennials are more accepting of science than other generations. Recognizing that juries today are comprised of a mix of generational cohorts, it is important to tailor scientific presentation and expert testimony to both science-friendly and science-skeptic jurors. In the authors’ experience, science-skeptic jurors have a tendency to shut down when presented with statistical evidence, but they respond more favorably to examples and anecdotes. In short, the use of anecdotes can help motivate these jurors to work to process scientific evidence.

Illustrating with an example of our own, approximately one year ago the lead author was helping to prepare an expert toxicologist to testify on behalf of a defendant oil and gas company in a legacy environmental case. Her testimony supported the defense remediation plan that leaving some chemicals in the ground at certain levels would still be a safe solution for the site in question. She had excellent data and charts, but her presentation was technical. During a break in the preparation the consultant asked the expert: If the defense remediation plan was put in place, would the expert herself feel comfortable living there? The expert affirmatively stated that not only would she be comfortable, she would have no concern having her young grandchildren play in the ground in her backyard. These
anecdotes were worked into her direct examination. After the jury returned a defense verdict, the jurors were interviewed and they unanimously noted that this toxicologist, who they referred to as “the lady who would live there” was the most influential witness.

D. Leverage Authoritarian Attitudes Without Alienating Non-Authoritarians

As described in the Law360 article referenced in the prior two sections, authoritarianism is a psychological habit of respecting authority, the rules, and the party with higher social prestige. As noted previously in this paper, Millennials are more liberal and consensus-driven than other generations, yet they have some authoritarian traits such as following a supervisor’s direction despite disagreement with the directive. The key to approaching any argument from an authoritarian perspective is to find the higher order principle that is at play. Taking a personal injury case in which an oilfield worker is seriously burned when a pre-work protocol was not implemented, authoritarian jurors are likely to lean toward the company and distrust the individual for not following protocol. Non-authoritarians will look for reasons why the protocol was not followed and they might tend toward finding flaw with the protocol itself. To persuade the non-authoritarians, reframe the argument. The protocol is in place not for this particular injured worker in this case, but to protect all workers on every job site, regardless of the particular work conditions. What is at stake is safety for the highest number of people in all possible conditions. The higher order principle is safety for everyone. Framing the argument this way also addresses Millennial jurors in particular because it invokes the concept that safety is a collaborative effort.

E. Expand the Concept of “Tribe” for Jurors in Oil and Gas Litigation

Tribalism refers to the concept that the social groups jurors identify with are a powerful influence on attitudes, opinions, and decision making. Also noted in the Law360 article, families, religious, social, volunteer, athletic organizations, and ethnic groups give individuals a sense of value and community. Before jurors ask themselves, “What do I think about this attorney’s argument,” they implicitly ask, “How will my agreement or disagreement with this argument impact my identification with my tribe(s)”? As discussed previously, social media is a good window into the tribes most likely to influence a particular juror. In the Law360 article we shared an example of a case involving an oil and gas company, where one potential juror “liked” the page for Mother Earth News and stated on social media, “I feel we should keep the oil companies honest.” These insights signaled that the juror might be high-risk to an oil and gas defendant. But beyond identifying the tribes with which a prospective juror is most likely to identify, it is also strategic to motivate jurors to identify with a high-level social group or social norm. In oil and gas litigation, with jurors holding many negative opinions, triggering higher-level group affiliation for Millennials is an essential strategy.

An example we have previously written about involves a scenario in which computer programmers are identified as being high-risk in a case in which a computer programmer is claimed to have violated a noncompete agreement. Unable to exclude all of the computer programmers from a jury, consider expanding the tribe from computer programmers to professionals who value written agreements, transcending the social identity of the higher-risk group in favor of a lower-risk group with potentially different central values.

It is important to begin the process of transforming tribal or group-affiliated perception early. We recommend doing so in voir dire. The following example of a voir dire question was used by the defense in a Co2 royalty case, illustrating how the concept of a tribe of people disadvantaged by an oil and gas company can be expanded to create identification with a tribe of consumers who benefit from comparison shopping

“This case is about the fair value of a product – Co2. And it doesn’t take an oil and gas background to understand the fair value of a product. Many of us comparison shop. We check the price of a lawn chair at Target and Walmart to make sure she’s getting a fair price. Who here has ever comparison shopped before?

The “comparison prices” my client used were even more consumer-focused. The “prices” they comparison shopped were actually prices negotiated by royalty owners – and some of the royalty owners in this case – with other Co2 producers. It would be like Costco customers negotiating with Costco on milk prices and then Walmart using that negotiated customer price...”

F. Embrace Visual Persuasion

Visuals are accepted as a key aspect of case presentation, but the nature of the presentation matters. The norm for litigators – sporadic displays of graphics or other visual materials to emphasize key points – is not as effective as an immersive approach. In 2010 and 2011, Persuasion Strategies conducted an experiment comprised of 1,375 mock jurors in which participants watched two summary arguments in a products liability case. The defense presentation
either contained no graphics, flip charts, static graphics, animated graphics, or an immersive blend of static and animated graphics that were displayed continuously throughout the argument. There were minimal differences between the first four presentation methods, but the immersive technique was almost always significantly more effective than any other. Theory suggests that the advantage of immersive visual presentations is two-fold: they hold more of a juror’s working attention and lead to higher engagement, and they avoid cognitively disruptive requests to shift one’s attention from auditory to visual information. Ken Broda-Bahm, Show, Don’t Just Tell: Part 1, Continuity (Persuasion Strategies Visual Persuasion Study), Persuasive Litigator, July 14, 2011.

Our research demonstrates that jurors exposed to the immersive visual presentation were significantly more likely to remember alternative damage amounts suggested by the defense and perceive the attorney giving the argument as more prepared than jurors who were in the no-graphics or non-immersive conditions. Mock jurors also said that the imagery used was more important in the immersive condition than in the flip chart or no-graphics conditions. Ken Broda-Bahm, Show, Don’t Just Tell: Part 2, Comprehension (Persuasion Strategies Visual Persuasion Study), Persuasive Litigator, July 18, 2011; Ken Broda-Bahm, Show, Don’t Just Tell: Part 3, Comparison (Persuasion Strategies Visual Persuasion Study), Persuasive Litigator, July 21, 2011. While we did not find that visual presentation style was a significant predictor of verdict, our findings do support the conclusion that immersive visual presentations can give litigators some noteworthy advantages. Ken Broda-Bahm, Show, Don’t Just Tell: Part 5, Caution (Persuasion Strategies Visual Persuasion Study), Persuasive Litigator, July 28, 2011.

V. CONCLUSION

Despite a few attitudinal improvements in some areas, we have documented a consistent data trend of negative juror perceptions regarding the oil and gas industry over the past 15 years. Combined with juror skepticism of information, experts, and science given today’s landscape of “fake news” and “alt facts,” litigators have a heightened persuasion burden. Combine this with evidence that Millennials have even more negative attitudes toward the oil and gas industry and unique persuasion needs, it is clear that strategies for capturing the attention, hearts and minds of jurors today requires unique effort. This paper touches on several strategies to help in this persuasive effort.