

The most diverse, tech-savvy, anxious, and socially conscious generation to date is entering the legal profession. **What do judges need to know about Gen Z?**

BY KIMBERLY CARLTON BONNER



Members of Generation Z, also called “Gen Z” or “Zoomers,” will soon fill the halls of America’s courthouses as lawyers, jurors, and, eventually, judges. Born roughly between 1995 and 2012,¹ Generation Z is the 15th generation to experience life in the United States² and quite possibly the most important to date. Zoomers promise to be the most diverse, socially active, and digitally driven participants in our judicial system. Judges should understand how generational differences will impact their day-to-day interactions with Zoomers as lawyers, jurors, and colleagues.

GENERATIONAL THEORY

Researchers William Strauss and Neil Howe pioneered the study of what they deemed “peer personalities” and how each generation’s experiences of certain major events affect their values and behavior.³ Generally speaking, a generation is defined as the entire body of people born and living at about the same time and spans between 14 and 20 years.⁴

According to Strauss and Howe, as well as others who have studied the phenomenon, generational differences naturally develop based on the unique historical and cultural events that occur and the age of the individuals experiencing them.⁵ Although some of the dates vary slightly depending on the source, American researchers have identified the following generations since 1901:

- The “Greatest Generation,” born 1901–1924
- The “Silent Generation,” born 1925–1945
- “Baby Boomers,” born 1946–1964

- “Generation X,” born 1965–1980
- “Millennials,” born 1981–1994
- “Generation Z” or “Zoomers,” born 1995–2012⁶

Each of these eras produced what researchers refer to as “cohort identity” for the individuals of that generation.⁷ For example, members of the Silent Generation were book-marked between the Great Depression and World War II, while members of Generation X came of age during a resurgent consumer economy and the dawn of the digital age. Having these unique experiences at roughly the same age affects how one generation parents the next, which in turn produces another unique set of individuals with shared experiences.⁸

The Zoomer generation is smart, technologically savvy, and determined to change the world.⁹ In court, as in life, judges will be better able to communicate with this newest crop of young adults by understanding what motivates them and how they are different from older participants in the judicial process.

WHO IS GENERATION Z?

A survey by the VIA Institute on Character of more than 150,000 members of Generation Z asked what character traits they deem most important. Among the winners were “honesty,” “kindness,” and “fairness.”¹⁰ Zoomers are generally viewed, and wish to be viewed, as compassionate and open-minded.¹¹

This cohort group is also the most racially diverse to date, with 49 percent identifying as nonwhite.¹² As discussed below, they are less defined by gender and more concerned with actual accomplishment, rather than accolades.¹³

Applying Strauss and Howe’s theory that the shared collective experience of certain major events affects the peer personality of a generation, we should consider how life has unfolded so far for Gen Z. The oldest members of this group were in kindergarten during 9/11. Many experienced the effects of 2008’s Great Recession as children, watching their families struggle financially. They have never or rarely lived in a country that was not at war abroad or otherwise fighting a war on terror. As children or adolescents, they watched America elect its first African American president and a major party nominate a woman as its presidential candidate. Black Lives Matter, MeToo, and other social movements have occurred during their coming of age. They have never known any era but a digital one.

These shared experiences have produced a new crop of Americans who will soon reshape the practice of law and the judiciary as they enter into roles as advocates, judges, participants, and policymakers. But, before drawing conclusions about anyone roughly under the age of 26, it is important to note that generational assumptions are, by definition, broad and subject to criticism. Simply placing an entire group of people in a bucket based on a generational stereotype does a disservice to any industry attempting to prepare for or adapt to demographic change.¹⁴ Thus, labeling Millennials as lazy and entitled is just as erroneous as assuming every member of Gen Z is an ardent liberal.¹⁵ A trial judge should always be wary of such “generational hype.”¹⁶

With this caveat in mind, we can nonetheless make educated guesses about our younger lawyers, jurors, and, eventually, colleagues, and craft meth- ▶

ods to more effectively communicate with them.

Generation Z has been called “a worried generation,” reporting high rates of anxiety, depression, and loneliness.¹⁷ From 1991 to 2015, the percentage of youths reporting being “very happy” declined sharply.¹⁸ We have yet to experience the full aftereffects of the COVID-19 pandemic, in which already isolated young people became even more separated from each other as well as from society as a whole.

As compared to decades past, Zoomers engage in less risky behavior such as consuming alcohol or drugs. They are in no hurry to “grow up,” often postponing adult tasks such as obtaining a driver’s license.¹⁹ Many members of this generation were raised by Generation X, who, on balance, acted more as “co-pilots” than “helicopter” parents and gave their children space and independence.²⁰ As such, 88 percent of Generation Z reports being close with their families and many also report being included in family decision-making.²¹ Unlike the stereotypical “participation trophy” Millennial generation, Zoomers are relationally motivated, doing the right thing for its own sake and desiring not to let anyone down.²²

More so than any previous generation, Zoomers are less defined by static notions of gender or sexuality.²³ Their values are loftier than mere personal fulfillment; they care deeply about the world and the sustainability of the planet.²⁴ Their spirit of volunteerism and level of civic engagement are unrivaled.²⁵ For Gen Z, their big picture is indeed big.

The impact of technology on this group cannot be overstated. They grew up in a digital world. It’s how they learn and also how they communicate.²⁶ Others may see the expectation

of “instant access” to information, however, as a “right not to be bored,” promoting a problematic stereotype.²⁷ Researchers have posited that Gen Z members have shorter attention spans due to technology “rewiring” their brains, and that their critical thinking and reasoning skills may be subpar because the standardized testing of the No Child Left Behind Act of 2001 valued reading proficiency over problem-solving.²⁸

The broad-brush presentation of Gen Z is that of a digitally driven, altruistic, and civic-minded age group. We must bear in mind that every individual is unique, and that economic, cultural, geographic, and religious factors play huge roles in every person’s values and behavior. For the same reason that every 20-year-old in 1969 was not wearing love beads and protesting the Vietnam War, we should not assume every Zoomer will fit a particular bill.²⁹ We can, however, know with certainty that they experienced many important social moments at roughly the same age, and that this will inform our perceptions of them as well as their perceptions of us, which in turn may help us improve how we communicate with each other.³⁰

GEN Z AS LAWYERS

By definition, lawyers must confront opposing views. The point of every mock trial and moot court competition is to require teams to switch sides in any given round and argue a contrary position. Is this well-entrenched skill set more difficult for Generation Z?

One author suggests that while there are positive attributes of Gen Z, such as valuing diversity, there are negatives, too, like anxiety and reluctance to grow up, that might affect their ability to fulfill traditional lawyer roles.³¹ The common demand, for

example, to have “safe spaces” on campus may reflect more than the need for a marginalized group to be able to gather and speak freely. It may reflect an unrealistic expectation that one can simply tune out opposing viewpoints by physically excluding them.³² This could, in turn, cause an inexperienced attorney to struggle with articulating responses when challenged on a point of law or equity. With Gen Z, we should be mindful that they, perhaps more so than prior crops of new attorneys, have even less experience conceding the flaws in their own positions.³³

At the same time, however, Gen Z is often heralded as the most open-minded of generations. As one Gen Z author puts it: “So far, older generations have deemed Generation Z the most tolerant and the most intolerant generation, so which is it?”³⁴ Some square these seemingly contradictory attributes by noting that while Gen Z-ers may be more broadly accepting of diversity, they “become less tolerant of opinions that aren’t their own.”³⁵ Nearly half of Gen Z, for instance, believes gay marriage is good for society (up from about one-quarter of Boomers); and Gen Z Republicans are more likely than their predecessors to believe Black people are treated less fairly.³⁶ But some Gen Z-ers also struggle to tolerate and participate in actual discourse with those whom they see as insufficiently “woke.”³⁷ In other words, Gen Z’s tolerance may only extend to those ideas that they view as tolerant, and not beyond. Or perhaps their perceived intolerance is simply a manifestation of what could be better categorized as an “oversensitivity” to those who disagree with them.³⁸ Regardless, Gen Z lawyers will undoubtedly carry a complex duality when it comes to their perceptions of others. Some attributes

are more clearly positives. Shrewd employers can capitalize on the best attributes of soon-to-be and new Gen Z lawyers. Since the advent of “work-life balance” during the Generation X era, firms can no longer rely on the business model that assumed working every Sunday was a perfunctory practice for a young associate to get ahead.³⁹ Young lawyers today also use their technical savvy to accomplish research more quickly and efficiently than their older peers, and they do so with an emphasis on job fulfillment, not optics.⁴⁰ They adapt quickly to navigating new technologies and software.⁴¹ The pivot to virtual court proceedings and client meetings during COVID-19, for example, highlighted the benefits of employing a “plugged-in” lawyer.⁴² This includes social media experience, which can boost a firm’s or business’s profile.⁴³ Gen Z uses social media and does so prolifically.⁴⁴

Business management increasingly recognizes that Gen Z seeks independence in the workplace.⁴⁵ Because of this, businesses, including law firms, should provide autonomy while also providing the safety of structure.⁴⁶ Another consequence is that the young lawyers we see in court will be more apt than previous generations to question cumbersome requirements that, to their mind, serve no purpose. Be prepared to explain your requirements and your rulings. We will soon no longer have the luxury of answering with “This is the way we’ve always done it.”

The Pew Research Center consistently finds Gen Z to be a diverse and progressive group on track to be the best-educated generation yet.⁴⁷ Data shows that Gen Z also expects the government, as opposed to private industry and individuals, to do more problem-solving.⁴⁸ And a Gen Z-er may not have the same views as older

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generations within her same party. For instance, “Gen Z Republicans are more likely than Republicans in older generations to say Blacks are treated less fairly[.]”⁴⁹ A majority of Gen Z-ers attribute climate change to human behavior.⁵⁰ About six in ten believe online profiles should include gender options other than male or female.⁵¹ And compared to other cohort groups, they are more likely to know someone using gender-neutral pronouns.⁵²

For judges, it may be new territory for an attorney to make an introduction in court by specifying their pronoun or other form of address. Be mindful that for the young attorney doing so, it is just as natural as saying “hello.”

If we accept that Generation Z is the most diverse, open-minded (at least in some ways), and socially conscious to date, it also portends a potential new era in litigation. Big-picture social change is often reflected in the litigation of its day. If we consider the decision in *Brown v. Board of Education*

as a product of the Civil Rights era, then we should consider a decision such as *Obergefell v. Hodges* as a call to arms for Gen Z to continue challenges to existing laws as part of their social agenda.⁵³ We may be on the dawn of a new era of social activism led by Gen Z lawyers.

This potential new breed of lawyer has led some to call for a shift in higher education. Today’s students are more motivated to make a difference. They value a culture of inclusion and activism.⁵⁴ However, this civic-mindedness is not without drawbacks.

Legal culture has traditionally taught that attorneys must be willing to represent a client whose values they do not share.⁵⁵ Christine Cerniglia, director of clinical and experiential education at Stetson University College of Law, shared with me in an interview that this expectation to segregate one’s duty to the law from one’s personal value system presents unique struggles for Gen Z students. They may wrestle with client representation decisions and potentially opt out of clinics based on instinctive apprehensions about the work to be done or a client’s perceived value system.⁵⁶

In this author’s view, this reluctance to engage with groups outside their own norms, though, deprives law students of valuable life lessons as well as critical-thinking and advocacy skills. This retreat to one’s personal echo chamber was likely exacerbated by the pandemic, which isolated students and denied them meaningful opportunities to engage in the types of debate and discourse that cannot be duplicated in a virtual or online environment.

Although their passion for change is admirable, Zoomers ultimately must develop the skills to work with others who have opposing views and to process and analyze these views. The immediate availability of informa- ►

tion made possible by technology has arguably resulted in a generation that simply has less experience engaging in deep thinking and reflection, both essential skills for lawyers. The influx of competing data, while providing instant gratification, also overloads our memories and makes reflection more difficult. Cerniglia notes that this effect, described in Nicholas Carr's 2011 book, *The Shallows: What the Internet Is Doing to Our Brains*,⁵⁷ is especially challenging for a new crop of attorneys as they navigate the traditional expectations of the legal profession with a potentially diminished skill set.⁵⁸

On balance, Cerniglia believes that Gen Z law students will grapple with individual versus professional values. "They are a fierce mechanism for holding people accountable," she says of Zoomers.⁵⁹ "They will call people out; they will challenge. They will demand equality."⁶⁰ However, she acknowledges that we don't yet know whether their passion for change will be matched by actual follow-through — that is, whether they have the work ethic and tenacity to do more than make demands.⁶¹

Others in higher education decry the "call-out" (referring to interpersonal confrontations) and "cancel culture" (the social and cultural rejection of individuals deemed "problematic") on college campuses populated by Gen Z students. Professors Mark Carl Rom and Kristina Mitchell wrote in 2021 that such behavior is a "professional hazard" and warned that it discourages difficult conversations in the classroom.⁶² Professors may end up on various watchlists for either being too "woke" or not "woke" enough.⁶³ They stress that professors have a duty to ensure that students can make politically controversial comments in class, even if it creates discomfort.

The social awareness and relative lack of materialistic motivations associated with Gen Z, then, may be counterbalanced by their perceived intolerance (or perhaps oversensitivity). For example, a 2018 election day study by Comparably showed that the political views of their coworkers affected the working relationships of Gen Z more than any age group.⁶⁴ "While today's youth are better behaved, they seem touchier and more prone to taking offense."⁶⁵ If we indeed have a "right not to be offended,"⁶⁶ then we must consider the chilling effect on free speech and frank discourse that results. "Students, who prioritize safety and aim to prevent real or imagined danger, are sacrificing the free speech tolerance of the past."⁶⁷ Thus, should Gen Z demand "safety" over uncomfortable conversations, they will undoubtedly find the legal profession fraught with danger.

Our adversarial system expects analysis, discourse, and reason. Even with trends toward restorative justice and collaborative processes, attorneys must be able to fully reflect on all aspects of an issue instead of overly focusing on their own views. Law schools should be prepared on multiple fronts to deliver a curriculum that will both engage and direct students. Traditional teaching methods are unavailing to a group that is more prone to challenge entrenched institutions, especially ones they see as rooted in inequality.⁶⁸ It is equally important to stress that becoming a lawyer takes diligent effort and the ability to consider opposing viewpoints. A generation ago, law schools may have previously taken for granted that their new crop of students would accept the legal profession's traditionalism; for Gen Z, this mindset may not be as intuitive, so it must be taught.

And just as law schools adapt and innovate in response to Generation Z, so, too, will the judicial system as a whole.

GEN Z AS JURORS

Gen Z jurors will be the youngest members of the venire. They have grown up in a world in which information is immediately accessible via smart phones or computers. They likely have never changed the ribbon on a typewriter, sorted through microfiche to do research, or perused a hardbound encyclopedia. They are baffled by pay phones and amused by first-generation video games that seem as modern to them as sticks and rocks.

Gen Z customarily receives and processes information quickly. We should expect that a juror of tomorrow will be less willing to be a "passive receptacle" of information and instead expect to be a more active participant.⁶⁹ Indeed, Gen Z-ers will expect regular, small "bites of information" that they can easily digest before they move on to the next bite.⁷⁰

The jury system may be able to respond to this desire for bite-sized information. The Seventh Circuit Bar Association's American Jury Project Commission has proposed the implementation of "interim statements" during jury trials.⁷¹ This process would allow attorneys to periodically summarize the evidence presented, providing small, digestible chunks of information.⁷² For the same reason, preliminary, substantive instructions at the beginning of a case may give Gen Z jurors a much-needed roadmap. Although tangential to this article, most standard jury instructions are in desperate need of a makeover to ensure the language is understandable. Research has shown "that juror comprehension of judicial instructions is alarmingly low."⁷³ If we accept that Gen Z is less willing than prior generations

to embrace institutions and traditions merely because they have existed for some time, then we should reasonably expect challenges to undecipherable jury instructions.

For the trial lawyer as well as the judge, effective communication with Gen Z jurors will entail catering to their visual learning styles and their aversion to traditional lecture.⁷⁴ Jurors who have “information on demand” deeply hard wired into their cognitive processes will prefer smaller chunks of evidence integrated with visual technology.⁷⁵ As judges, we can expect to see some lawyers struggle with using traditional trial tactics, while others embrace the change and engage more easily with the venire.

Many jurisdictions already permit jurors to ask questions and have processes in place to vet which questions are permitted under the applicable rules. This will likely be expanded as our juries become filled with more members of a generation used to immediate answers. For those of us who have recoiled in terror at the thought of jurors asking questions, we should brace ourselves for even more proposed innovations to increase juror participation.

Gen Z’s level of civic engagement may also make them unique as jurors. They believe in standing up for just causes and care deeply about fairness.⁷⁶ That may help the system, as they may be less apt than older jurors to dismiss jury service as an inconvenient waste of time.⁷⁷ Their open mindedness and compassion, however, may raise concerns for judges and lawyers who have been fully indoctrinated into the rule of law. Many standard jury instructions include an admonition to follow the law regardless of personal beliefs: “No juror has the right to violate rules we all share.”⁷⁸ Will this be a tougher sell

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to a generation that values integrity, tenacity, and kindness? Will they be less willing to “follow the law” if it conflicts with their personal values? Or, as noted by generational researchers, will this risk-averse, generally rule-following cohort group value stability and a well-defined chain of command over subjective factors?⁷⁹

The answer is unknown. But when we view Gen Z as a digitally connected, socially conscious, yet pragmatic

group,⁸⁰ we can reasonably argue that they are not less likely to respect the rule of law. A runaway jury is by no means an inevitable scenario for a Gen Z venire.

But what sort of case may summon their social-change instincts? We know that Gen Z is the most racially diverse in America and that its members are not defined by static concepts of gender or sexuality. They would rather make a difference than get a participation trophy.⁸¹

Imagine then, two trials with majority Gen Z jurors: one, a simple DUI case with the customary field-sobriety exercises, breath test, two officers testifying, and the defendant — a white male — remaining silent; the other, a Black defendant charged with obstruction of a police officer for refusing to disperse following a peaceful protest.

If the cases go before Gen Z juries — a generation known for its social- and race-consciousness⁸² — we may be quick to predict a “jury pardon” for the protester and a fast conviction on the drunk driver. If the case goes to a Baby Boomer jury — a generation less known for those attributes⁸³ — we may predict differently. These predictions may affect how lawyers use peremptory challenges. Indeed, in a few short decades, Generation Z will compose a large portion of the jury population.⁸⁴ Should this have implications for how attorneys conduct voir dire? Should it have implications for how to apply *Batson v. Kentucky*, which precludes the use of peremptory challenges to exclude jurors solely on the basis of race?

For decades, appellate courts and trial judges have struggled to perfect a voir dire system that produces a representative panel of one’s peers, free from systemic bias and discrimination. Despite a plethora of case ►

law and constantly varying processes meant to remedy bias in jury selection, research over several decades has consistently demonstrated that external factors and juror bias factor into decision-making. For instance, research shows that: American juries are still tainted by implicit bias and lack of diversity;⁸⁵ *Batson*'s prohibition on race-based peremptory challenges has merely driven the practice underground and spawned a veritable cottage industry of case law on the subject⁸⁶; attorneys are adept at identifying whether individual jurors possess racial biases⁸⁷; death-qualified jurors — those determined fit to serve in cases involving the death penalty — tend to be more conviction-prone from the onset⁸⁸; jurors tend to conflate pretrial publicity with actual evidence⁸⁹; jurors often fail to comprehend instructions, follow instructions, or report their confusion to the judge⁹⁰; and race, ethnicity, socioeconomic status, and gender identity of defendants can affect whether jurors are more or less likely to convict.⁹¹

The Gen Z juror may add another concern to this list of possible biases: the problem of the “Googling juror.”⁹² For a generation raised on information, Gen Z may see the relinquishment of their phones and an instruction to rely only on what they see and hear in court as tantamount to a strong-arm robbery. We know there are significant gaps in jurors' willingness and/or abilities to follow instructions.⁹³ For a juror of the digital age, this becomes even more concerning, since it seems cognitive changes to their brains cause digital-age jurors to rely on the internet as a sort of “memory partner.”⁹⁴ However, Gen Z juries are also more likely to be diverse, and more *diverse* juries appear to recall *more* of the evi-

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dence and can catch mistakes by other jurors about the evidence.⁹⁵

Their need for instantaneous knowledge, and their reliance on the internet for such knowledge, may make Gen Z-ers more reliant on technology and less able to deal with a long, tedious, trial process, where information is

unveiled one witness at a time, often with lengthy legal predicates.

Despite these challenges, however, our increasingly diverse society may positively affect juror decision-making.⁹⁶ Studies have shown that once people are part of a group, they are powerfully influenced by other group members. Diverse juries “deliberate longer and consider more information,”⁹⁷ and America's increasing diversity bodes well for the jury system as a whole.

We can also imagine that Gen Z's resistance to being labeled may affect the frequency with which lawyers are inclined to peremptorily strike Gen Z jurors. If Gen Z jurors are less likely to vote according to racial or other stereotypes because of this desire to avoid acting in a manner consistent with how they are perceived (e.g., white jurors supporting white defendants), a lawyer may have difficulty using jurors' specific characteristics, occupations, or life experiences as a means to determine which jurors to strike.

Ross Laguzza, a national expert in jury selection with 30 years' experience, shared in an interview with me that he believes, based on his professional experience, that results have consistently shown that a juror's age cohort does not make a difference in their decision-making.⁹⁸ Labels like “Millennials” and “Boomers,” he says, are more marketing than behavioral analysis when it comes to jury service.⁹⁹ Ultimately, Laguzza sees no direct relationship between age and decision-making.¹⁰⁰

Instead, Laguzza proffers that attorneys in *voir dire* must determine the *case-specific* attitudes of the juror to identify potential bias.¹⁰¹ Interestingly, the most obvious traits that trial attorneys rely upon to draw conclusions — such as age, race, occupation, and

gender — are unreliable in predicting juror behavior. “All the work I’ve done indicates it’s dangerous to draw conclusions based on demographics,” he says.¹⁰² “The characteristics that are easiest to see or determine in the courtroom are the least predictive.”¹⁰³ He notes that this same conversation has come and gone with Millennials and Generation X, and likely will do the same with Gen Z.¹⁰⁴

Laguzza predicts that Gen Z’s decision-making behaviors will continue, as the behaviors of generations before them, to be relative to the specific case and not their age. This is because a jury represents the social fabric in which a case is tried — contextual elements to which all of us, across all age categories, are exposed. Laguzza explains: “An older juror may share similar values typically associated with a younger generation. A younger juror may hold fast certain beliefs typically associated with older people. Placing too much weight on age alone distorts the underlying attitudes and values that are central to how a person actually views the world, and how a specific decision in a specific case is seen as aligning or contradicting that world view.”¹⁰⁵

Laguzza reminds attorneys that they are selling ideas in a jury trial — not products.¹⁰⁶ In his experience, attitudes, values, and beliefs that intersect the actual issues being tried are far more important topics in *voir dire* than a person’s age. Trial lawyers, then, should not assume all jurors under a certain age will line up according to a preset narrative. Instead, they must weigh all of the person’s information to analyze how their beliefs and values play into the specific trial issues.

If this is true, then while Zoomers may process information differently, they may not be poised to cause a

seismic shift in jury verdicts. Even if eradicating jury bias entirely is unrealistic, when we view Generation Z in their roles as future lawyers, jurors, and judges, we can see the judicial process becoming more inclusive and more apt to be viewed favorably by participants.

In terms of communication, a generation so attuned to technology and expectant of clear instructions will benefit from web-based training and instruction on how to deliberate as a group. Traditionally, we expect jurors to simply show up fully capable of processing complex information and deliberating to a verdict seamlessly with a group of strangers.¹⁰⁷ In future decades, we can expect that jurors will want some form of prior training and strategies for working in a group.¹⁰⁸

For those of us who struggle with low juror turnout in our jurisdictions, Gen Z may be the remedy. One study showed a correlation between people who reported engaging in community-oriented service and people willing to serve on juries.¹⁰⁹ Generally, any history of volunteerism is associated with a greater willingness to serve. The study concluded that “willingness to serve is highest among those who feel a commitment to meeting other normative obligations and who are engaged in the community through other means.”¹¹⁰ Their dedication to the greater good and making the world a better place bodes well for Gen Z honoring their jury summons.

Studies demonstrate the domino effect of positive experiences with the judicial system. Jurors’ verdicts are influenced by their trust and confidence in the system.¹¹¹ Different groups report different perceptions of the legitimacy of legal authorities based on their prior experiences, and the level of that trust can be predictive of ver-

dicts. For instance, jurors with higher confidence levels in the system are more likely to find against defendants in criminal proceedings.¹¹²

In sum, a trial judge must view the Gen Z juror as they view themselves: a partner in a justice-seeking endeavor. These jurors must buy into the fairness and integrity of the system before they willingly comply with standard instructions they may not understand or agree with. They have specific means of processing information and will expect a certain level of participation. Generation Z jurors will be taking notes and asking questions. They will also be deliberating thoughtfully and expecting the process to be open, fair, and transparent. At their best, they will be hard-working, conscientious volunteers.

Just make sure you confiscate their phones and perhaps disable the courtroom Wi-Fi.

GEN Z AS JUDGES

We have a few years before the youngest crop of judges will emerge from Generation Z. As such, it is difficult to predict how our future colleagues will behave, or even interact with us. We do know, however, that they have very specific preferences in *how* they communicate.

Far from the feared “Zombie” generation of youths slouched behind their phones and unaware of people, Gen Z is actually fond of personal interaction.¹¹³ They prefer face-to-face communication and support brick-and-mortar stores.¹¹⁴

That said, when they communicate in writing, they overwhelmingly do so via text, not email. Likewise, voice mail is likely to go unheard.¹¹⁵ The abbreviated — that is to say, informal — forms of text messages preferred by Gen Z are often seen as unprofes- ►

sional by older generations. If you've ever rolled your eyes after reviewing a text exchange between litigants or even lawyers, be prepared for more of the same from your future colleagues. For some, Gen Z's "frequent and informal communication" may come as a surprise.¹¹⁶ A question emoji with a "Meeting 2day?" may soon be seen as an appropriate substitute for an email with the subject line "Are we meeting this afternoon?"

Just as with lawyers and jurors, I believe our future colleagues will be hesitant to simply buy into processes merely because they are institutionalized. They will also value diversity in hiring court personnel and in receiving judicial education that addresses fairness and ethics. They will care deeply about justice and how to achieve it. This may force us to reexamine how we do business. If the next generation wants nothing less than to change the world, then we can expect lawyers and judges to be front and center in that process.

The members of Generation Z are mostly the children of Generation X (born 1965–1980).¹¹⁷ Generation X were the original "latch-key kids," raised in the midst of the Iranian hostage crisis, the Challenger Explosion, and the onset of AIDS. Those of us in Generation X have been described as pragmatic, if a bit cynical, and as understanding "the game of life as it really gets played."¹¹⁸ According to researchers Corey Seemiller and Meghan Grace, it is no coincidence that our offspring, Generation Z, have developed as independent and pragmatic youths who report close relationships with their families.¹¹⁹ For the next generation of judges, this combination of pragmatism and social awareness can only enhance the profession.

It will be an interesting phenomenon to watch as Gen Z begins populating

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the judiciary. A job that has been characterized as "calling balls and strikes" may prove challenging for a new judge comfortable with shifting norms, fluid sensibilities, and a preference for fairness over process. Conversely, for a generation like Gen Z that took its time growing up and did not engage in risky behaviors,¹²⁰ the security of the law could be their safe space. How these generations strike a balance between their comfort with shifting norms and their preference for structure will permanently shape the judiciary.

Before drawing any broad conclusions about the future of the courts with Gen Z involved or even in charge, we should be mindful of the limitations of generational theory. For example, generational theory appears to have grossly underestimated Gen Z's social and political agendas.¹²¹ We

should be mindful that our assumptions and predictions have yet to be borne out in documented behaviors inside the legal profession. Being wary of "generational hype" will help us communicate with Gen Z by avoiding perpetuating stereotypes, even as we recognize differences in attitudes and motivations.¹²²

CONCLUSION

Generation Z will bring a new social consciousness to the practice of law, jury service, and, eventually, judicial office. Understanding how they most effectively learn, communicate, and process information will foster a more efficient and, ultimately, more fair judicial system. We can expect Generation Z to precipitate jury innovations, reliance on technology, and much-needed diversity to the judicial process. The jury system in particular will benefit from the service of these individuals. They will be respectful of the overarching tenets of justice and their preference for order may suggest they are particularly able to follow rules and structure.¹²³ As a group of more diverse jurors, they will make more informed decisions. That said, Gen Z-ers will not be willing to act as silent information receptacles, and they will demand a more interactive role.¹²⁴

As judges, we can take concrete measures to improve our working relationships with Gen Z as lawyers, jurors, and colleagues:

1. Educate ourselves on technology, such as digital evidence presentation and electronic submission of documents and orders. We can no longer ignore the internet or cling to traditions such as all-paper systems.
2. Set clear, but not rigid, expectations as to the manner of communication that we expect, as well as the

degree of formality required.

3. Be patient when a Gen Z attorney or colleague exhibits disagreement, but insist on continuing the discourse.
4. Recognize that generational stereotyping may be influencing our assessment of a particular individual.
5. Leverage their vantage point and consider making institutional changes or implementing new initiatives, such as juror education, to meet changing demands.

We don't yet have enough empirical data on how Generation Z will behave as lawyers, jurors, or judges. But the data we do have suggests that the legal profession will be shifting dramatically as they enter the workforce and the judiciary. It is up to us to make room for them and offer the guidance we can — they are, after all, the future of our profession. And they offer much reason for optimism.



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¹ Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RESEARCH CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/>.

² See WILLIAM STRAUSS & NEIL HOWE, *GENERATIONS: THE HISTORY OF AMERICA'S FUTURE, 1584 TO 2069*, at 31 (1991) (referring to the generation immediately preceding Millennials as the "13th Generation" because "it is the thirteenth to know the American nation and flag[]").

³ *Id.* at 32–33.

⁴ See *id.* at 32 fig.1-1.

⁵ Strauss and Howe's work includes a deep and fascinating theory that peer personalities recur in predictable patterns that develop in sync with alternating, predictable, patterns in American history. The details of this hypothesis, however, are beyond the scope of this article.

⁶ See Dimock, *supra* note 1.

⁷ See STRAUSS & HOWE, *supra* note 2, at 434–35 (defining a "cohort generation" as "a cohort-group sharing an age location in history and therefore a common peer personality[]"). See generally COREY SEEMILLER & MEGHAN GRACE, *GENERATION Z: A CENTURY IN THE MAKING* (2019).

⁸ See STRAUSS & HOWE, *supra* note 2, at 434–35.

⁹ SEEMILLER & GRACE, *supra* note 7, at 28.

¹⁰ *Id.* at 29.

¹¹ *Id.*

¹² *Id.* at 30.

¹³ See Kristen A. Foltz, *Why Generation Z Isn't the Feared 'Zombie' Generation*, ABA J. (July 8, 2020), <https://www.abajournal.com/voice/article/generation-z-they-are-not-the-zombies-you-fear>; Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know About Gen Z So Far*, PEW RESEARCH CTR. (May 14, 2020), <https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/>; SEEMILLER & GRACE, *supra* note 7, at 33.

¹⁴ See JESSICA KRIEGLER, *UNFAIRLY LABELED: HOW YOUR WORKPLACE CAN BENEFIT FROM DITCHING GENERATIONAL STEREOTYPES 20–26* (2016).

¹⁵ Jessica Kriegel cites studies indicating that this need to categorize and label is simply a function of how our brains gather and assimilate data. Such implicit bias is a well-studied phenomenon

and lends itself well to studies of age-related bias. See generally *id.*

¹⁶ See *id.* at 88–93.

¹⁷ SEEMILLER & GRACE, *supra* note 7, at 149–50.

¹⁸ Jean M. Twenge, *The Sad State of Happiness in the United States and the Role of Digital Media*, WORLD HAPPINESS REP. (Mar. 20, 2019), <https://worldhappiness.report/ed/2019/the-sad-state-of-happiness-in-the-united-states-and-the-role-of-digital-media/>.

¹⁹ See Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 38 (2018).

²⁰ SEEMILLER & GRACE, *supra* note 7, at 106–107; Graham, *supra* note 19, at 44–45.

²¹ SEEMILLER & GRACE, *supra* note 7, at 106.

²² *Id.* at 32–33.

²³ Parker & Igielnik, *supra* note 13.

²⁴ SEEMILLER & GRACE, *supra* note 7, at 297–302.

²⁵ *Id.* at 278–80.

²⁶ *Id.* at 56–57.

²⁷ See James F. Holderman & S. Ann Walls, *As Generations X, Y, and Z Determine the Jury's Verdict, What is the Judge's Role?*, 58 DEPAUL L. REV. 343, 349 (2009).

²⁸ See Graham, *supra* note 19, at 58–59.

²⁹ Jessica Kriegel notes that such stereotypes are often belied by empirical research. See *supra* note 15 and accompanying text.

³⁰ See Strauss & Howe, *supra* note 2, at 445–46.

³¹ See generally Graham, *supra* note 19.

³² *Id.* at 46–48.

³³ See *id.*

³⁴ Jasmine Andrea, *Are We the Most Tolerant or Intolerant Generation in History?*, AMADOR VALLEY TODAY (Nov. 19, 2020), <https://www.amadorvalleytoday.org/9884/news/are-we-the-most-tolerant-or-intolerant-generation-in-history/>.

³⁵ *Id.*

³⁶ Parker & Igielnik, *supra* note 13.

³⁷ Mark Carl Rom & Kristina Mitchell, *Teaching Politics in a Call-Out and Cancel Culture*, 54 PS: POL. SCI. & POL. 610, 610 (2021).

³⁸ See Samuel J. Abrams, op-ed, *Young Americans Are Too Sensitive About Speech*, AEI (Nov. 23, 2020), <https://www.aei.org/op-eds/young-americans-are-too-sensitive-about-speech/> ("The data clearly show that Gen Zers are more

sensitive to words and have a more encompassing definition of discrimination.").

³⁹ Foltz, *supra* note 13.

⁴⁰ See Seemiller & Grace, *supra* note 7, at 85–86 (noting that Generation Z has observed "that all the money and material items in the world wouldn't be fulfilling without happiness and meaningful experiences[]").

⁴¹ See Monica Anderson & Jingjing Jiang, *Teens, Social Media and Technology 2018*, PEW RESEARCH CTR. (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>.

⁴² See THE IMPACTS OF THE COVID-19 PANDEMIC ON STATE & LOCAL COURTS STUDY 2021 (Thomson Reuters Inst. 2021), https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/white-papers/covid-court-report_final.pdf.

⁴³ Foltz, *supra* note 13 ("[G]en Z is plugged into social media even more than millennials. In fact, those in this generation may even be able to help law firms with advertising on social media or other mediums that older attorneys may not use regularly[]").

⁴⁴ See Twenge, *supra* note 18.

⁴⁵ Deep Patel, *8 Ways Generation Z Will Differ From Millennials in the Workplace*, FORBES (Sept. 21, 2017), <https://www.forbes.com/sites/deepapatel/2017/09/21/8-ways-generation-z-will-differ-from-millennials-in-the-workplace/?sh=6b825a5e76e5>.

⁴⁶ See generally Malinvisa Sakdiyakorn et al., *Understanding Generation Z Through Collective Consciousness: Impacts for Hospitality Work and Employment*, 94 INT'L J. HOSP. MGMT. 102822, 8 (2021) ("Hospitality companies should consider job design that values [Gen Z's] autonomy, freedom and achievement, while also making sure they feel safe and protected.").

⁴⁷ Parker & Igielnik, *supra* note 13.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Alec Tyson et al., *Gen Z, Millennials Stand Out for Climate Change Activism, Social Media Engagement With Issue*, PEW RESEARCH CTR. (May 26, 2021), <https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-out-for-climate-change-activism-social-media-engagement-with-issue/>.

⁵¹ Parker & Igielnik, *supra* note 13.

- 52 *Id.*
- 53 SEEMILLER & GRACE, *supra* note 7, at 283–84.
- 54 Tiffany D. Atkins, #ForTheCulture: Generation Z and the Future of Legal Education, 26 MICH. J. RACE & L. 115, 115 (2021).
- 55 See, e.g., Stephen Jones, *A Lawyer's Ethical Duty to Represent the Unpopular Client*, 1 CHAPMAN L. REV. 105 (1998).
- 56 Interview with Christine Cerniglia, director of clinical and experiential education, Stetson University College of Law (notes on file with author).
- 57 NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* (2011).
- 58 Interview with Christine Cerniglia, director of clinical and experiential education, Stetson University College of Law (notes on file with author).
- 59 *Id.*
- 60 *Id.*
- 61 *Id.*
- 62 Rom & Mitchell, *supra* note 37, at 610 (2021).
- 63 *Id.* at 610, 613. E.g., PROFESSOR WATCHLIST, <https://www.professorwatchlist.org/> (“The mission of Professor Watchlist is to expose and document college professors who discriminate against conservative students and advance leftist propaganda in the classroom.”).
- 64 *Election Day Study: Generation Z Least Tolerant of Their Coworkers' Political Views*, COMPARABLY (Nov. 5, 2018), <https://www.comparably.com/blog/generation-z-least-tolerant-coworkers-politics/>.
- 65 Ben Cohen, *Generation Z: The Intolerant Ones*, JAMES B. MARTIN CTR. FOR ACAD. RENEWAL (July 27, 2018), <https://www.jamesgmartin.center/2018/07/generation-z-the-intolerant-ones/>.
- 66 *Id.*
- 67 *Id.*
- 68 See Atkins, *supra* note 54, at 156 (“Fifty-nine percent [of Gen Z college students] said that if their university did not speak up on racial inequality, this silence would change their perception of the school.”).
- 69 Holderman & Walls, *supra* note 27, at 343.
- 70 *Id.* at 354.
- 71 *Seventh Circuit American Jury Project: Final Report 14* (2008), available at <https://www.uscourts.gov/file/document/seventh-circuit-american-jury-project-final-report>.
- 72 Holderman & Walls, *supra* note 27, at 354.
- 73 Tarika Daftary-Kapur et al., *Jury Decision-Making Biases and Methods to Counter Them*, 15 L. & CRIMINOLOGICAL PSYCHOL. 133, 134 (2010).
- 74 Rachel Moss et al., *Teaching Generation Z: A Biting Blizzard or a Breath of Fresh Air?*, TIMES HIGHER EDUC. (Aug. 29, 2019), <https://www.timeshigher-education.com/features/teaching-generation-z-biting-blizzard-or-breath-fresh-air>.
- 75 See Holderman & Walls, *supra* note 27, at 355 (discussing the value of visual media in engaging jurors from Generation X and Y).
- 76 SEEMILLER & GRACE, *supra* note 7, at 279.
- 77 See generally Marc A. Musick et al., *Much Obligated: Volunteering, Normative Activities, and Willingness to Serve on Juries*, 40 LAW & SOC. INQUIRY 433 (2015).
- 78 E.g., Florida Standard Jury Instructions in Criminal Cases, 3.13.
- 79 See Michael Stone, *Gen-Z: They Crave Stability and Trust, So Give it to Them*, FORBES (May 18, 2021), <https://www.forbes.com/sites/michael-stone/2021/05/18/gen-z-they-crave-stability-and-trust-so-give-it-to-them/?sh=527bce60594a>.
- 80 See SEEMILLER & GRACE, *supra* note 7, at 37 (“Generation Z students . . . are pragmatic[.]”).
- 81 *Id.* at 33.
- 82 See *id.* at 251–53.
- 83 See Kim Parker, Nikki Graf, & Ruth Igielnik, *Generation Z Looks a Lot Like Millennials on Key Social and Political Issues*, PEW RESEARCH CTR. (Jan. 17, 2019), <https://www.pewresearch.org/social-trends/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues/>.
- 84 See William H. Frey, *Now, More Than Half of Americans Are Millennials or Younger*, BROOKINGS (July 30, 2020), <https://www.brookings.edu/blog/the-avenue/2020/07/30/now-more-than-half-of-americans-are-millennials-or-younger/>.
- 85 See Russ K. E. Espinoza et al., *The Impact of Ethnicity, Immigration Status and Socioeconomic Status on Juror Decision Making*, 13 J. ETHNICITY IN CRIM. JUST. 197 (2014); Victoria Springer & Camille B. Lalasz, *Death-Qualified Jurors and the Assumption of Innocence: A Cognitive Dissonance Perspective on Conviction-Prone Verdicts*, 51 SOC. SCI. J. 287 (2013).
- 86 See, e.g., Andrew G. Gordon, *Beyond Batson v. Kentucky: A Proposed Ethical Rule Prohibiting Racial Discrimination in Jury Selection*, 62 FORDHAM L. REV. 685 (1993). Additionally, as noted by Justice Marshall in his concurring opinion, judges are “ill equipped to second-guess” a purportedly neutral reason offered by the party exercising the peremptory challenge. *Batson v. Kentucky*, 476 U.S. 79, 106 (1986) (Marshall, J., concurring). See generally BRIAN H. BORNSTEIN & EDIE GREENE, *THE JURY UNDER FIRE* (2017); Mike Morrison, Amanda DeVaul-Fetters, & Bertram Gawronski, *Stacking the Jury: Legal Professionals' Peremptory Challenges Reflect Jurors' Levels of Implicit Racial Bias*, 42 PERSONALITY & SOC. PSYCHOL. BULL. 1129 (2016).
- 88 Springer & Lalasz, *supra* note 85, at 291.
- 89 See generally Christine L. Ruva & Elizabeth M. Hudak, *Pretrial Publicity and Juror Age Affect Mock-Juror Decision Making*, 19 PSYCHOL., CRIME & L. 179 (2011); Christine L. Ruva & Christina C. Guenther, *Keep Your Bias to Yourself*, 41 LAW & HUM. BEHAV. 478 (2017).
- 90 See generally JOEL D. LIEBERMAN & DANIEL A. KRAUSS, *JURY PSYCHOLOGY: SOCIAL ASPECTS OF TRIAL PROCESSES* (2009); DENNIS J. DEVINE, *JURY DECISION MAKING: THE STATE OF THE SCIENCE* (2012).
- 91 See, e.g., Espinoza et al., *supra* note 85.
- 92 Oscar Battell-Wallace, *No Search Results in Fairness: Addressing Jurors' Independent Research in the 21st Century*, 49 VICTORIA U. WELLINGTON L. REV. 83, 84 (2018).
- 93 LIEBERMAN & KRAUSS, *supra* note 90, at 129–49; see also Mauricio J. Alvarez, Monica K. Miller & Brian H. Bornstein, “It Will Be Your Duty. . .” *The Psychology of Criminal Jury Instructions*, in *ADVANCES IN PSYCHOLOGY AND LAW* 119 (Monica K. Miller & Brian H. Bornstein eds. 2016).
- 94 Battell-Wallace, *supra* note 92, at 91.
- 95 See DEVINE, *supra* note 90, at 44 (“[L]arger juries are more likely to contain a minority representative, spend a little more time deliberating, and may yield better recall of case facts among their members.”).
- 96 See generally, Connie S. Ringger, *Attitudinal Predictors of Juror Decisions on Gender and Sexual Minority Defendants*, 68 J. HOMOSEXUALITY 2047 (2020).
- 97 Sara Gordon, *All Together Now: Using Principles of Group Dynamics to Train Better Jurors*, 48 IND. L. REV. 415, 439 (2015).
- 98 Interview with Ross Laguzza, R&D Strategic Solutions (notes on file with author).
- 99 *Id.*
- 100 *Id.*
- 101 *Id.*
- 102 *Id.*
- 103 *Id.*
- 104 *Id.*
- 105 *Id.*
- 106 *Id.*
- 107 See generally Gordon, *supra* note 97; Morrison, DeVaul-Fetters, & Gawronski, *supra* note 87.
- 108 See *id.* at 448–59 for jury training proposals.
- 109 See generally Musick et al., *supra* note 77.
- 110 *Id.* at 456.
- 111 Ringger, *supra* note 96, at 2055 (2021).
- 112 See *id.* at 2067.
- 113 Foltz, *supra* note 13.
- 114 See SEEMILLER & GRACE, *supra* note 7, at 90–91 (“[A] substantially higher number of [Generation Z] prefer to shop at an actual store than online.”).
- 115 See *id.* at 62 (“We, like many others working with Generation Z, have become frustrated when . . . we would call them only to reach a voicemail inbox that was not setup or was completely full.”).
- 116 *Id.*
- 117 *Id.* at 8.
- 118 STRAUSS & HOWE, *supra* note 2, at 320.
- 119 SEEMILLER & GRACE, *supra* note 7, at 106.
- 120 *Id.* at 37 (“Generation Z students are not risk takers[.]”).
- 121 They predicted this cohort group would have “smallish, ameliorative agendas.” They did, however, predict with startling accuracy a “Crisis of 2020.”
- 122 KRIEGL, *supra* note 14, at 88–93.
- 123 See generally SEEMILLER & GRACE, *supra* note 7.
- 124 See Holderman & Walls, *supra* note 27, at 343.