

See Past the  
Stereotypes

By Glenn Kuper  
and David E. Dukes

**J**ust because your venire includes millennials is no reason to panic. While having millennials serve on juries presents litigators with some challenges, it also offers some opportunities.

# The Millennial Invasion of Jury Pools

Stereotypes and negative assumptions run rampant about millennials. But the most important fact to realize is that millennials are quickly becoming the majority generation in American society. In 2016, the Pew Research Center

reported that the number of millennials (approximately 75.4 million) in the United States had surpassed the number of baby boomers (approximately 74.9 million). As millennials become established—buying homes, becoming gainfully employed, setting down roots—they are answering the call and showing up for jury duty more often.

For litigators, this means that the shared attitudes and experiences of millennials must be considered to understand how they will perceive your case. In this article, we will first explore what defines the millennial generation, what motivates them, and what common values they share. We will then take a look at conducting effective voir dire when venires include millennials, and

how to make judgment calls on whether to accept or strike potential millennial jurors. Finally, we will look at persuasive techniques that counsel can use during trial to influence millennials' decision making and play to their strengths.

## Who Are Millennials?

A blurb from an article published by *The Atlantic* good-humoredly asks, "We can all agree millennials are the worst. But what is a millennial?" The definition of a millennial differs depending on the source. Generally, millennials include those born between the early 1980s and the early 2000s. For example, the Pew Research Center views those born from 1981 to 1997 as belonging to the millennial generation. The U.S.

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Census Bureau includes those born from 1982 to 2000.

### Millennials: The Demographic Data

It is impossible to describe an entire generation, a group of over seventy-five million people born over a span of approximately twenty years, in a single article. And truth be told, millennials are a very diverse group of individuals, and it would be a mistake simply to buy into stereotypes and overlook individual characteristics. However, millennials share certain unifying experiences. This generation lived through the transition to a new millennium at a young age. They have experienced ever-increasing access to technology throughout their lifetime. This group has lived very little of their lives without the internet, and many don't even remember the squealing connection made by dial-up internet modems. They were the first generation raised with computers, both in the home and in their schools, and they have embraced technology and social media as a result.

As of 2015, millennials, approximately age eighteen to thirty-five, were the largest age group in the workforce. They are highly educated but also highly in debt with student loans. Many had their first attempt at gainful employment stifled by the Great Recession, and they continue to feel these effects into middle adulthood. This may be at least partly why 15 percent of millennials age 25–35 still live with their parents, compared with 10 percent of Gen Xers, the generation that immediately preceded the millennials, when they were the same age.

Millennials are also racially and ethnically diverse, compared with their predecessors. Forty-four percent of millennials are racial minorities. Three of ten are first- or second-generation Americans, and one of six are multilingual.

### Motivating Millennials: Values and Perspectives

Each generation is markedly different from other generations in its professional, social, and spiritual experiences and worldview. It is no surprise, then, that millennials are different from past generations in the way that they interact in the world and in what makes them tick.

As with every generation, there are positive and negative attributes generally asso-

ciated with millennials. Called the “me, me, me” generation by *Time* magazine, millennials often get a bad rap. This is the generation that was told by their parents that they could be anything they wanted to be. Because of this, millennials are often seen as having an increased sense of self-importance: they believe themselves to be unique, the argument goes, so they are perceived as being more needy and entitled.

Millennials are also considered to take less personal responsibility, which is a big change coming into the jury pool in comparison with previous generations. Millennials were raised with close parental involvement and supervision (think “helicopter parents”). And when parents do it all, learning personal responsibility doesn't come easily. Add to that that they grew up in the safety age, during which seatbelts and helmets were the norm. Millennials were raised generally to hold other people and entities responsible for their safety, rather than take responsibility for their own (*i.e.*, they expect cars to stop for them, expect companies to be held responsible for injuries to a millennial that happens on a company's property, etc.).

Millennials are seen as impatient. They've grown up in a world where technology is king and where information is at their fingertips 24/7. They expect information to be delivered quickly, efficiently, and in an interesting way. That includes in trial. This use of technology will not be considered “too slick,” but rather, accepted as the norm. As one millennial explained, “Smartphones and the internet have given us the ability to constantly occupy ourselves. It's made us impatient. It's destroying our ability to focus. And it's giving us an addiction to perpetual stimulation and an allergy to boredom.”

Millennials, of course, have many positive attributes, as well. For example, they tend to put more of an emphasis on being happy than on making money, and they place a high importance on jobs that allow for work–life balance. They often seek a broader purpose in work and want to feel that they are “making a difference.” For this reason, they are drawn to employment that involves charitable or social aspects.

Millennials also have high expectations for “doing the right thing.” They expect companies to be socially minded, and to

incorporate those values into their business practices. They expect openness and transparency as the norm. In addition, they won't accept tradition as an excuse for avoiding change within a company. They expect companies to be proactive in improving the workplace for employees. For these reasons, they tend not to give corporations the “benefit of the doubt” when

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found to have potentially done wrong. A very telling finding is that 84 percent of millennials surveyed agreed that corporations should take every precaution for safety, “no matter how impractical or costly,” with 63 percent agreeing strongly. This desire to “do the right thing” can have implications for the justice system. According to DHM Research, 81 percent of millennials believe jury nullification is acceptable. They put the value of “doing right” over the law, even if it is part of a trial.

In that same vein, millennials tend to have more diverse employment experiences. In the United States, they have seen little gains in salary when compared with members of the previous cohort, Generation X. As *Fortune* magazine reported in the February 19, 2018, issue: “Meanwhile,

Generation X saw a 54 percent pay increase from the Baby Boomer generation before it.” They see having multiple jobs or “job hopping” throughout their career as the norm rather than the exception, which might explain the lack of salary advancements. Millennials also do not necessarily aspire to “partner” or managerial-level positions to the extent that previous gener-

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ations did. They resist the idea of “punching the time clock” and put a greater emphasis on achieving happiness and fulfillment than putting in their forty hours. There is little desire to be a “company man” and to work for one organization throughout their career. In fact, a recent study by LinkedIn found that the average millennial has had twice as many jobs in the first ten years after college than those in previous generations. These experiences lead to a broader understanding and awareness of what a good or bad employer would look like, leading them to scrutinize company practices more thoroughly than previous generations.

Finally, millennials tend to distrust hierarchical systems such as government, political, and religious institutions. They value their individuality, and therefore, they buck those systems that attempt to impose top-down beliefs and blind acceptance. Millennials have come to expect to be actively involved in their education and learning experiences, and they will not simply accept an idea because it has been conveyed to them by an authority figure.

### **Voir Dire Strategies for Identifying Potentially Problematic Millennial Jurors**

You have millennials in your jury pool: it's *not* time to panic! It is important, though, to take advantage of every opportunity to learn the things about millennial jurors that provide insight into their beliefs, attitudes, and biases, as well as things

that will identify their potential leadership skills during deliberations. For this reason, when attorney voir dire is available, it is important to get them talking. Sometimes general questions to the venire will prompt answers by self-confident millennials with strongly held views, but in some cases, you will need to ask specific jurors questions about their experiences, beliefs, or attitudes. You will also want to watch closely the body language of millennials and assess their leadership abilities.

### **General Questions to the Venire Designed to Identify Millennials with Strong Biases**

It is typical to ask general questions during voir dire designed to identify jurors with strong, problematic biases or unrealistic views. In a pharmaceutical case, for example, the defense attorney might ask the venire questions such as, (1) “Who believes that drugs should be 100 percent safe?”; (2) “Who believes that the drug label should include anything and everything learned about the safety of the drug during clinical trials, as opposed to a summary of the most important safety information?”; (3) “Who believes that all studies on a drug have to be completed before it is marketed?”; and (4) “Who believes that pharmaceutical companies routinely put profits before safety?” While such questions may prompt some with anti-pharma or anti-big business sentiment to raise their hands, more often than not, you will have to prompt individual jurors with questions, which can be even as simple as whether the juror agrees with the sentiment just expressed by a more vocal juror who volunteered an answer.

### **Specific Questions for Identifying Individual Millennials with Strong Biases**

When you have specific concerns about particular jurors based on their juror questionnaire or other available information, you may want to ask a specific question or a question based on something that you know about a juror, including questions about his or her prior work experience and attitudes that might have been influenced by it. For example, jurors who work as primary caretakers of other seriously injured or ill patients or family members may very strongly identify with and have great sympathy for an injured plaintiff. Moreover,

watching a family member go through a tragic illness or experience the effects of medical malpractice could significantly affect any juror's attitude, including, and perhaps especially, millennials, so it is important to be prepared to identify millennials whose views have been strongly shaped by a family tragedy.

### **Watch as Well as Listen**

It is important to identify millennials who are, for whatever reason, angry at the world for what has happened to them in life and looking to take out their frustration on others. Angry jurors do not always reveal their hostility in questionnaires, but they sometimes do so in their body language, dress, tone, and reaction to things said by the judge and other jurors. A general disrespect for decorum or dismissiveness of others can sometimes be a sign of an angry or generally frustrated juror who could be problematic.

### **Identify Millennials with Advocacy and Leadership Skills**

An articulate millennial with the ability to organize and focus a discussion among a diverse group has the potential to lead during deliberations and may require more focused attention during voir dire than a millennial who seems quiet, deferential, and largely disengaged. Again, the way to assess the millennial's ability to lead is to get that millennial talking on a topic about which he or she feels passionately.

### **Strike Strategies Relating to Millennials**

In this section, we explore considerations when developing a strike strategy for millennials and how to make the most of the strikes that you have.

### **Prepare Thoroughly for Motions to Strike for Cause**

For jurors with demonstrably strong biases against your client's case, it is obviously best to develop a strategy to negotiate their dismissal for cause or to persuade the trial judge to strike them for cause. Sometimes, a juror's answers to questions on a jury questionnaire can be enough to lay the foundation for a for-cause strike. In some jurisdictions, however, the trial judge will give opposing counsel an opportunity to

“rehabilitate” a juror who demonstrates bias in a written or oral answer, or the judge may even try to rehabilitate the juror him- or herself. To maximize your chances of getting biased millennials stricken for cause, research the law to understand what standard must be met in that jurisdiction, and do your research on how the particular trial judge interprets the standard. Without a command of both, you are handicapped in making what may be one or more critical motions to strike for cause.

### Prioritize Peremptory Strikes Use

Not all biased millennial jurors are created equal. A biased millennial who is likely to be a “follower” or “filler” on the jury is obviously not nearly as dangerous as a biased and articulate, self-confident leader with consensus-building skills who might end up as foreperson of the jury, or as an intellectual leader of some faction on it. In considering a biased millennial’s ability to be influential in deliberations, consider how the prospective juror will likely fit into the overall dynamics of the jury as a whole. If the biased millennial is highly articulate and self-confident, but he or she is socially awkward, disrespectful of older jurors, and unlikely to connect on a personal level with others, then he or she may not be quite as dangerous as a millennial with a warm personality and strong relationship-building skills.

Although this advice to identify warm personalities and strong relationship-building skills applies to all prospective jurors, it may be even more important for millennial jurors, because these attributes might override older jurors’ tendency not to defer to a millennial or anyone younger as a matter of course. Therefore, it is important to prioritize your potential strikes to account for the juror’s potential to influence others who are likely to serve on this particular jury. In other words, group dynamics matter, and you should consider them carefully in trying to decide whether and how to use your precious preemptory strikes.

### So There’s a Millennial on Your Jury: Now What?

Now that we’ve explored who the millennials are, their demographic makeup, and how to identify positive millennial jurors

for your client’s cause during voir dire, we turn to techniques for persuading the millennial juror. Luckily, although millennial characteristics are distinguishable from other generations, the tried-and-true techniques for persuading jurors do not greatly differ for millennials. And given their enhanced abilities to multitask and their willingness to learn and understand new technologies, millennial jurors can be seen as defense-friendly assets where the defense hinges on understanding complex medical or technical scientific facts.

Regardless of whether the stereotypes perpetuated in the popular media hold true, as lawyers, it is important to check the negative or dismissive attitudes that may be felt toward millennial jurors. Instead, lawyers must strive to understand, accept, and embrace the characteristics and values that make millennials unique to create compelling presentations that resonate and persuade millennial jurors. As with all jurors, the keys to persuading millen-

nial jurors fall into three categories: we must help millennial jurors understand, believe, and remember our important facts and arguments.

### Help Them Understand

Millennials make up one of the most highly educated generations to date. “Four-in-ten millennial workers ages 25 to 29 had at least a bachelor’s degree in 2016,” according to a Pew Research Center analysis of the 2016 Current Population Survey Annual Social and Economic Supplement from IPUMS. Niki Graf, *Today’s Young Workers Are More Likely Than Ever to Have a Bachelor’s Degree*, [Pewresearch.org](http://Pewresearch.org) (May 16, 2017). That compares with 32 percent of Generation X workers and smaller shares of the baby boom and silent generations when they were in the same age range. Additionally, due to changes in education theory and teaching techniques, schools have encouraged active participation in learning from millennials, either through group,

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education-based settings, or through individualized internet research. Thus, they respond better to being taught, rather than told, what to think.

In this regard, defense teams can gain an advantage over plaintiffs by using experts who are prepared to walk through the steps taken to reach a scientific conclusion, rather than just stating the conclu-

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sion without any support. Using dynamic experts, who are willing to use visuals to engage attention and highlight their points, will strike stronger notes with millennial jurors. Take the time during witness preparation of experts to create a step-by-step approach to explaining complex medical or technological facts and processes. Combining thoughtful explanations with compelling visuals will not only hold the attention of your millennial juror, but they will also give the juror fodder for use in arguing for your client during jury deliberations.

Where appropriate, brainstorm ways to illustrate visually the points upon which your defense depends. This means doing more than simply using PowerPoint slides containing an abundance of text, which, in reality, serves as a crutch for the lawyers rather than as a true visual aid for the jury. Rather, defense teams should identify interesting, yet simple, metaphors to drive their points home. For example, a graphic depicting a puzzle with a missing piece can be used to explain and argue that the plain-

tiffs have failed to bring the evidence necessary to prove their case.

#### **Help Them Believe**

Connected to the learning aspect discussed above, being taught how experts reached their conclusions will also generate credibility for defense witnesses with millennial jurors, as opposed to being lectured by experts who present a conclusion with a “because I said so and I’m the expert” reasoning. Jurors of every age seek the closest thing to the truth possible during a trial, and millennial jurors are no exception. The same techniques described in the previous section to promote a juror’s understanding of your defense facts and themes can also be useful in securing juror belief for your defense.

Using compelling visuals will again be crucial to gaining millennial jurors’ belief in your defense. Growing up in the age of crowdsourcing and checking reviews on Yelp before deciding where to eat, millennials are used to being engaged in decision-making processes. Thus, where lawyers can engage millennial jurors in the process, the lawyers will be better able to persuade those jurors to believe their defense. And using compelling visuals to draw millennial jurors in will increase the believability of defense themes. This is not unique to millennials; jury studies have found that visuals in general increase all jurors’ level of engagement with the case, thereby motivating jurors to decide a case more accurately. But millennials in particular seek engagement with material. So, using visuals will meet their expectations. Using visuals in conjunction with memorable catch phrases, when you can, will also help build credibility for your defense and diminish the stance taken by plaintiffs.

#### **Help Them Remember**

Although there has been a hefty amount of buzz in the media about the dwindling attention span in society—and in millennials specifically—memory for jurors overall continues to be a challenge that trial lawyers face in getting their messages across. Studies show that jurors immediately forget as much as two-thirds of the facts that are presented to them. In this regard, having millennial jurors on the jury can be a benefit because memory also degrades as

people age. Lawyers should keep in mind that the millennial juror, even with an alleged diminished attention span, may have an advantage remembering facts from the trial.

Also, focusing on a diminished attention span misses the point because attention spans are heavily context dependent. Thus, when information is presented in an engaging and novel way, attention will remain rapt. With millennial jurors particularly, where defense teams can shine will be in smoothly presenting information with the aid of compelling visuals.

Relying on technology isn’t the only way to create effective visuals. Over time, even visuals that rely on technology such as PowerPoint presentations can become boring. Using boards and large graphics to involve your expert witnesses in teaching away from the witness stand is another method of garnering attention and interest from jurors. Additionally, when it is allowed, it is always advisable to encourage jurors to take notes, and if some jurors appear to be avid note takers, to adjust your presentation accordingly to ensure that they have the time to write down the information that you most want them to recall.

#### **Conclusion**

The rising influence of millennials on juries presents litigators with both challenges and opportunities. For all that has been written about them, in most respects, millennials are not terribly different from older generations at a similar time in their lives. The differences that do exist have often been exaggerated and overhyped.

It is true that millennials have been shaped by the rapid pace of technological change over the past few decades, to the extent that increased comfort with technology is one of the few defining generational traits for which there is solid evidence. It is also true that millennials have lower levels of trust in other individuals. However, companies that find themselves as civil defendants should be happy to know that millennials have as much faith in business as anyone. Litigators who can embrace technology and take advantage of business’s relative good will among millennials can set themselves up for success. The fact is there is no reason to fear millennials, as jurors or otherwise.

