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LEGAL ETHICS FOR THE MILLENNIALS: AVOIDING THE COMPROMISE OF INTEGRITY

Helia Garrido Hull*

“In civilized life, law floats in a sea of ethics. . .”¹

I. INTRODUCTION

Lawyers operate within an explicit contract with the public as a whole to regulate social transactions and to secure justice.² As a result, members of the legal profession have historically enjoyed significant grants of public trust based on their commitment to social responsibility and their provision of professional service to clients and to the public as a whole.³ Unfortunately, some lawyers abuse this trust and harm vulnerable clients while tarnishing the image of the profession. Lawyers may run afoul of the public trust by violating rules aimed at protecting clients against neglect, misappropriation of funds, unauthorized practice of law, criminal activity, fraud, misrepresentation, fee assessments, unauthorized disclosure, conflicts of interests, and other matters.⁴ In recent years, crisis, scandal, public outrage, and diminished public confidence, have all become familiar associations with the legal profession.⁵ In 2010, lawyers were ranked seventeenth out of twenty-one professions in their level of overall honesty and ethics.⁶ Only 17% of individuals polled rated members of the legal profession as having very high or high honesty and ethical standards, and 35% rated members as having very low or low standards.⁷ This downward trend has led to considerable debate within the legal community regarding the root cause of unethical behavior. While the Darwinian culture that exists in many law firms is often identified as the reason many otherwise ethical individuals commit unethical behavior, the cause is likely not that simple—particularly for the current generation of law students getting ready to enter the legal field.

* Associate Professor of Law and Coordinator of Student Professionalism Enhancement Program, Barry University Dwayne O. Andreas School of Law; B.A. Providence College, J.D. Stetson University College of Law. The author would like to thank Mr. Carl Zahner, Director of the Florida Bar Henry Latimer Center for Professionalism and Mr. John Berry, Director of the Florida Bar Legal Division in Charge of Lawyer Regulation for their assistance in creating Barry Law School’s Student Professionalism Enhancement Program. Without their knowledge, passion and patience it would not have come to fruition. The author would also like to thank her husband, Eric V. Hull, for his never-ending love, support and encouragement.

¹ Chief Justice Earl Warren, Speech at the Louis Marshall Award Dinner of the Jewish Theological Seminary (Nov. 11, 1963).

² WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 21 (2007).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Jeffrey M. Jones, *Nurses Top Honesty and Ethics List for 11th Year*, GALLUP DAILY NEWS, Dec. 3, 2010, <http://www.gallup.com/poll/145043/Nurses-Top-Honesty-Ethics-List-11-Year.aspx>.

⁷ *Id.*

The legal landscape has changed, and young lawyers stand at the cross roads. Despite acknowledging that young lawyers lack sufficient ethics training to handle the myriad of ethical dilemmas they encounter, partners at law firms continue to place the burden on young lawyers to use intuition instead of providing necessary training.⁸ This leaves young attorneys to figure out for themselves the ethical duties they owe to clients, their firm and the profession.⁹ The ever mounting pressure to increase billable hours coupled with the complexity of legal issues places tremendous stress on new attorneys. From the start they must determine whether to subscribe to the “win at all costs” mentality prevalent within law firms or to adhere to a higher ethical standard expected by the public.¹⁰

Although young attorneys face many of the same ethical challenges faced by their older colleagues, they often lack the practice experience, maturity and training to fully appreciate the ethical dilemmas that arise. As a result, some young attorneys find themselves in untenable situations that quickly spiral out of control. For example, one 2003 graduate was recently disbarred after being found guilty of fifty-six counts of professional misconduct involving thirteen separate clients.¹¹ His demise began when he failed to comply with reporting requirements related to mandatory continuing legal education requirements.¹² His initial misstep led him to commit a series of more egregious violations that ultimately ended his legal career.¹³

An increasing number of attorneys are also violating rules of professionalism through their misuse of social media.¹⁴ An attorney in Missouri, only 4 years out of law school, had his license suspended when he sent a nude picture of the deceased party in a wrongful death action he was defending to a colleague along with disparaging comments.¹⁵ His law firm monitored email, identified the exchange, and reported him to the State Bar.¹⁶ Disciplinary counsel found that the attorney violated rules of conduct related to confidentiality

⁸ Josiah J. Puder, *Taking the Temperature of Ethics Among Today's Young Lawyers*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/publications/young_lawyer_home/young_lawyer_archive/yld tyl_dec 08_puder.html (last visited Oct. 1, 2011).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In re Disciplinary Proceedings Against Trudgeon*, 787 N.W.2d 795 (Wisc. 2009).

¹² *Id.*

¹³ *Id.*

¹⁴ Steven Seidenberg, *Seduced: For Lawyers, the Appeal of Social Media Is Obvious. It's Also Dangerous*, ABA JOURNAL (Feb. 1, 2011, 5:20 AM), http://www.abajournal.com/magazine/article/seduced_for_lawyers_the_appeal_of_social_media_is_obvious_dangerous/; see also Tresa Baldas, *Lawyers' Ethical Stumbles Increase Online*, THE NATIONAL LAW JOURNAL, LAW.COM (May 11, 2010), <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202457938246>.

¹⁵ *In re: Steven R. Belcher*, MBE No. 56075 (Mo. Oct. 23, 2007), available at <http://www.courts.mo.gov/page.jsp?id=10240>.

¹⁶ *Id.*

of information, respect for the rights of third persons, and professional misconduct.¹⁷

In Texas, a prosecutor asked a trial judge for a continuance so she could attend a funeral.¹⁸ However, the prosecutor made the mistake of posting daily pictures of herself drinking and riding motorcycles to her Facebook page. The trial judge found the pictures, and denied the prosecutor's second request for a continuance.¹⁹ More importantly, the prosecutor likely tarnished her reputation with the court permanently.

In Florida, a criminal defense attorney used a courthouse blog to voice his frustrations with a particular judge who he believed was not giving counsel sufficient time to prepare for trial.²⁰ He wrote that she was an "evil, unfair witch" with an "ugly, condescending attitude" and suggested she was "seemingly mentally ill."²¹ The Florida Bar reprimanded the attorney and fined him with violating multiple ethics rules, including rules related to the qualification or integrity of a judge.²² The State Supreme Court refused to consider his argument that the speech was protected by the First Amendment.²³

In Illinois, an assistant public defender created a blog wherein she talked candidly about her clients and disclosed confidential information about their cases. Once discovered, she was terminated from her position and had her license suspended for 60 days.²⁴

A North Carolina judge was publicly reprimanded by the state's Judicial Standards Commission after he exchanged Facebook messages regarding a pending case with an attorney who appeared in the case.²⁵

An attorney in California was suspended from practice for 18 months after he failed to disclose during voir dire that he was an attorney.²⁶ After being impaneled on the jury, he posted comments about the trial on his blog.²⁷ He argued that because the jury instructions did not expressly ban blogging, he did nothing wrong.²⁸ The state bar disagreed.²⁹ The Bar found that "[b]y identifying in his . . . blog the specific crimes with which the defendant . . . had been charged; identifying by name the judge presiding over the trial; and identifying

¹⁷ *Id.*; see also Mo. SUP. CT. R. 4-8.4, available at <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/a51eedab3cdc362b86256ca6005211ec?OpenDocument>.

¹⁸ Baldas, *supra* note 14.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Seidenberg, *supra* note 14.

²⁶ *In re* Frank R. Wilson, 06-O-13019 (Aug. 28, 2008) available at <http://members.calbar.ca.gov/courtDocs/06-O-13019-1.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

the defendant in the trial by defendant's first name, Respondent failed to support the laws of the State of California."³⁰ He was fined \$14,000 dollars and lost his job.³¹

As each state bar works to clarify the ethical issues surrounding the use of technology in the legal environment, it is critical that younger attorneys are provided with sufficient training to understand the limits of such use. Experts anticipate that younger attorneys who grew up with Facebook and other social media will continue to violate rules of professionalism through their online activities because they have a "reduced sense of personal privacy."³²

Technology has also provided today's students with inventive ways to avoid required reading, and research, and new ways to avoid or expedite tedious tasks. This has encouraged students to cheat to get ahead.³³ Nationally, 75% of all high school students cheat, and most of those students are high achievers who otherwise do not need the added assistance.³⁴ In one survey of 14,000 undergraduate students, 66% of the students admitted to cheating on tests, homework and other assignments.³⁵ That trend has carried over to law schools. Today, cheating in law schools is increasing.³⁶ One New York law school, for example, decided to limit bathroom breaks for law students who were taking final exams after the school discovered that many students were using that time to text others for answers to exam questions.³⁷ In 2009 during final exams, a student at one Florida law school observed note cards sticking out of a fellow student's pocket after he returned from the bathroom. Although she knew the other student was using the cards to cheat on the exam, she elected not to "rat" out her classmate despite being obligated to do just that under the honor code she signed on the first day of school.³⁸

While it is easy to point a contemptuous finger at today's students, that becomes more difficult when one considers that lawyers and, occasionally, even

³⁰ *Id.*

³¹ John Schwartz, *A Legal Battle: Online Attitude Vs. Rules of Bar*, N.Y. TIMES, Sept. 12, 2009, at A1.

³² Seidenberg, *supra*, note 14 (noting that Steven Giller, a legal ethics expert at New York University School of Law, expects the next generation of lawyers to run afoul of ethical rules as a result of their comfort with sharing information online).

³³ Regan McMahon, *Everybody Does It*, S.F. CHRONICLE, Sept. 9, 2007, at 18.

³⁴ *Id.*

³⁵ *Cheating In College Is Widespread—But Why?*, NATIONAL PUBLIC RADIO: TALK OF THE NATION (July 19, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=128624207>.

³⁶ Debra Cassens Weiss, *Reports of Law School Cheating Increase Along with Focus on Grades*, ABA JOURNAL (Dec. 4, 2009, 9:06 AM), http://www.abajournal.com/news/article/reports_of_law_school_cheating_increase_along_with_the_focus_on_grades.

³⁷ Glenn Coin, *Syracuse University law school cracks down on suspected cheaters*, THE POST-STANDARD, SYRACUSE.COM (May 12, 2009, 6:00 AM), http://www.syracuse.com/news/index.ssf/2009/05/su_law_school_cracks_down_on_s.html.

³⁸ Elie Mystal, *Is there an Epidemic of Cheating At Law Schools?*, ABOVE THE LAW (May 26, 2009, 11:43 AM), <http://abovethelaw.com/2009/05/is-there-an-epidemic-of-cheating-at-law-schools/>.

law schools model improper behavior to students. What should a law student think when he or she learns that the Vice President of the United States cheated in law school, or that a prominent law school falsified its admissions criteria to move up in the law school rankings?³⁹ What should students think when that law school publicly announces that it will hold those responsible for the violation accountable for their actions, but then fails to identify any wrongdoer?⁴⁰

The competitive nature of law school and the impact that good grades have on scholarship opportunities and jobs act to create strong incentives to cheat. But, that has always been true. The difference today is that students are more detached from the harm associated with ethical violations and therefore are more vulnerable to committing violations.⁴¹ Today's law students are also less likely to report incidences of cheating or other ethical violations despite being required to do so under most law school honor codes.⁴² Some students who cheat typically feel that their acts do not affect anyone else, while others cheat out of a sense of frustration for a school's reluctance to severely punish those students who are caught cheating.⁴³ Some students rationalize their behavior based on their belief that they will be disadvantaged if they do not cheat because others are doing so without penalty.⁴⁴ Others rationalize their cheating based on the heavy workload and unreasonable expectations placed on them to learn.⁴⁵ Unfortunately, these rationalizations have carried over into law school. Today, the stigma long associated with academic dishonesty is gone. As a result, cheating has become an accepted part of academic life for many students.

The epidemic of academic cheating is illustrative of the larger problem of declining ethics in the legal profession. When a student cheats, he commits three ethical violations at once.⁴⁶ He must conceal his improper actions, lie about what he has done, and then accept credit for a performance he did not earn.⁴⁷ These practices, if not addressed, will be carried into law practice and will place

³⁹ E.J. Dionne, Jr., *Biden Admits Plagiarism in School But Says It Was Not 'Malevolent'*, N.Y. TIMES, Sep. 18, 1987, at A1; John Spano, *Villanova Law School Admits Cheating on Admissions Statistics; Offers No Apology But Pledges Reform and Accountability*, LAW FORWARD (Feb. 7, 2011, 5:34 PM), <http://lawforward.legalzoom.com/legal-reform/villanova-law-school-admits-cheating-on-admissions-statistics-offers-no-apology-but-pledges-reform-and-accountability/>.

⁴⁰ Spano, *supra* note 39.

⁴¹ See *UCF Cheating incident sparks debate about academic dishonesty*, MIAMI HERALD, Dec. 5, 2010 (noting that students who received an unauthorized, stolen copy of the final exam through email believed that they did nothing wrong in using the exam to prepare for the final exam).

⁴² Mystal, *supra* note 38.

⁴³ *Cheating In College Is Widespread—But Why?*, *supra* note 35.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Carl Pickhardt, *Why adolescents cheat in school and what to do: When adolescents cheat in school they hurt themselves*, PSYCHOLOGY TODAY (June 27, 2009), <http://www.psychologytoday.com/blog/surviving-your-childs-adolescence/200906/why-adolescents-cheat-in-school-and-what-do>.

⁴⁷ *Id.*

young lawyers at increased risk of future disciplinary action. Perhaps more importantly, such behaviors place vulnerable clients at risk of serious harm.

The American Bar Association (“ABA”) does not specifically consider academic integrity or student ethics as part of the accreditation process. Yet, it requires schools to provide an educational program that prepares its students for the “effective and responsible participation in the legal profession.”⁴⁸ Thus, the responsibility for ensuring that future lawyers have a firm grounding in ethics falls to the law school, the state bar and law firms. Yet, in most instances, the approach has been reactive—giving lip service to ethics training and then holding lawyers accountable when they fail to properly navigate past an ethical land mine.

Instead of reacting to unethical behavior through disciplinary procedure, the legal community should seek to understand the unique perspectives of today’s law students, learn why they engage in unethical behaviors, provide sufficient education on the implications of such behavior in law practice, and then hold them accountable for their misdeeds. This article considers the need to provide additional training in ethics and professionalism, and argues that the current generation of law students are not receiving sufficient training under the current approach used in most law schools.

Section II briefly addresses key distinctions between members of the Millennial generation and members of other generations that are relevant to the practice of law, and argues that generational differences warrant greater emphasis on ethics training among law students. Section III considers the current practices related to ethics training at U.S law schools and argues that the existing training does not adequately prepare law students to handle the myriad of ethical challenges students typically encounter in the legal profession. Section IV offers recommendations for change.

II. THE MILLENNIALS: A VULNERABLE GENERATION

Each generation has been shaped by life experience in its formative years, and each brings a unique set of skills that present opportunities for and pose challenges to employers. Millennials have grown up in an age of war, housing crisis, financial meltdown, recession, declining moral values, global terrorism, overly protective parents, declining personal accountability, and in

⁴⁸ *Problems in Legal Education: Standard 301*, ABA 2011-2012 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter3.authcheckdam.pdf.

media culture that glamorizes unethical behavior.⁴⁹ They have also grown up with email, internet and immediate access to information.⁵⁰

For better or worse, their experiences have shaped who they are and how they respond to life's many challenges.⁵¹ Their experiences, expectations, and perspectives also make them uniquely vulnerable to disciplinary action in the future in the absence of a strong grounding in legal ethics and professionalism.

A. Overview of the Millennials

The Millennial generation includes the roughly fifty million people born between the late 1970s and early 2000s.⁵² Although similar to members of other generations in many ways, Millennials share unique traits that will shape their views and attitudes toward traditional law practice.⁵³ Millennials are history's first "always connected" generation.⁵⁴ Their use of the internet and cell phones far surpasses prior generations. Approximately 75% of Millennials have created a profile on a social networking site such as Facebook, MySpace, or LinkedIn.⁵⁵ Younger Millennials, aged 18-24, are much more likely (81%) to create an online profile. Those with college education are much more likely to create profiles.⁵⁶ About 20% of all Millennials have posted a video of themselves online, with younger Millennials more likely to post videos than older Millennials.⁵⁷ Most visit the site at least daily.⁵⁸

As a result of growing up in the internet age, the Millennials' view on confidentiality and privacy has been shaped by the instantaneous availability and dissemination of information.⁵⁹ Millennials value confidentiality and privacy less than other age groups, in part, because information flow is virtually instantaneous and they generally believe that knowledge is meant to be shared

⁴⁹ See PEW RESEARCH CENTER, MILLENNIALS, A PORTRAIT OF GENERATION NEXT: CONFIDENT, CONNECTED, OPEN TO CHANGE, 1-8 (2010), available at <http://pewsocialtrends.org/files/2010/10/millennials-confident-connected-open-to-change.pdf>

⁵⁰ ETHICS RESOURCE CENTER, SUPPLEMENTAL RESEARCH BRIEF, 2009 NATIONAL BUSINESS ETHICS SURVEY: MILLENNIALS, GEN X AND BABY BOOMERS WHO'S WORKING AT YOUR COMPANY AND WHAT DO THEY THINK ABOUT ETHICS, 1-2 (2010), available at <http://www.ethics.org/files/u5/Gen-Diff.pdf> [hereinafter ERC I].

⁵¹ PEW RESEARCH CENTER, *supra* note 49, at 1; see also Fernando Alfonso III, *Most Americans Say Moral Values in Decline*, HUFFINGTON POST (Mar. 23, 2011, 9:09 AM), http://huffingtonpost.com/2010/05/17/most-americans-say-moral_n_570408.html.

⁵² PEW RESEARCH CENTER, *supra* note 49, at 4.

⁵³ *Id.*

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 1, 28.

⁵⁶ *Id.* at 29.

⁵⁷ *Id.* at 30.

⁵⁸ *Id.* at 29.

⁵⁹ ERC I, *supra* note 50, at 9.

not owned.⁶⁰ As a result, Millennials are less likely to appreciate breaches of privacy than other age groups.⁶¹ They are more likely to see nothing wrong with retaining copies of confidential documents.⁶² They are also more likely to believe that blogging or tweeting a negative message about their company is acceptable.⁶³

Millennials are the first generation to not list either work ethic or values/morals as a distinguishing character of their generation.⁶⁴ Approximately 75% agree that other generations have superior work ethics.⁶⁵ Most agree that older adults are more moral and have greater respect for others.⁶⁶ This matches a larger society view of Millennials. Regardless of age, about two-thirds or more of the public believes that, compared with the younger generation, older Americans have better moral values, have a better work ethic and are more respectful of others.⁶⁷ These characteristics have important implications for legal practice. Millennials have been characterized as having very short attention spans and are easily distracted from tasks.⁶⁸ Many typically demand immediate feedback and recognition for their work.⁶⁹ About one-third are not satisfied with their income and desire to have more to live the life they want to lead.⁷⁰ Further, along with Generation X-ers, who also believe hard work is about work product rather than hours worked, Millennials are more likely than Boomers to find it acceptable to miss work due to illness even when they are not sick.⁷¹ Millennials are also mobile. They typically do not envision staying at one firm forever.⁷²

Like older adults, Millennials believe that there are absolute standards of right and wrong that apply to everyone.⁷³ They share a common desire for strong, effective leadership and believe in the importance of respect and fairness in the workplace.⁷⁴ More than one-fifth admit that helping people who are in need is one of the most important things in their life.⁷⁵

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 11.

⁶³ *Id.*

⁶⁴ PEW RESEARCH CENTER, *supra* note 49, at 6.

⁶⁵ *Id.* at 6.

⁶⁶ *Id.* at 3, 6.

⁶⁷ *Id.* at 15.

⁶⁸ ERC I, *supra* note 50, at 2.

⁶⁹ *Id.*

⁷⁰ PEW RESEARCH CENTER, *supra* note 49, at 20.

⁷¹ ERC I, *supra* note 50, at 11.

⁷² *Id.*

⁷³ PEW RESEARCH CENTER, *supra* note 49, at 102.

⁷⁴ ERC I, *supra* note 50, at 3.

⁷⁵ PEW RESEARCH CENTER, *supra* note 49, at 2, 18.

B. Millennials in the workplace: The need for enhanced legal ethics training

In a recent national survey of ethics, researchers found that the strength of ethical culture in the workplace is declining while pressure to commit misconduct is increasing.⁷⁶ Nearly 60% of government employees reported observing some form of misconduct committed in the prior twelve month period, and researchers predict that approximately 90% will observe misconduct in the future.⁷⁷ Younger employees are more likely to observe misconduct in the workplace than older employees.⁷⁸ Because of this, younger employees are more likely to develop a negative impression of their company's ethical culture than older colleagues.⁷⁹ Younger workers are less likely to report observed misconduct.⁸⁰ When confronted with an ethical conflict, they have fewer resources to draw upon given their limited life and work experiences.⁸¹

In view of the differences, Millennials face special challenges in the workplace. Law schools represent an ideal place to help shape students who are developing professional ethics standards by providing support, guidance and accountability in a safe environment. Millennials need training to help identify and appropriately address ethical issues that they will encounter.⁸² Law Schools are uniquely suited to provide the in-depth ethics training required to help students develop a sound moral compass to help them successfully navigate through difficult ethical and professionalism issues.

III. INTEGRATING ETHICS AND PROFESSIONALISM INTO THE LAW SCHOOL CURRICULUM

In exchange for a monopoly on the ability to practice law, the legal profession is charged with disciplining its own members for the benefit of the public welfare.⁸³ The ABA has established model rules of professional conduct that establish minimum standards for legal ethics and professional responsibility. As of 2011, every state except California had adopted the Model Rules of Professional Conduct.⁸⁴

⁷⁶ ETHICS RESOURCE CENTER, NATIONAL GOVERNMENT ETHICS SURVEY, AN INSIDE VIEW OF PUBLIC SECTOR ETHICS, IV (2007), available at http://www.ethics.org/files/u5/The_National_Government_Ethics_Survey.pdf [hereinafter ERC II], (describing government workplaces).

⁷⁷ *Id.*

⁷⁸ ERC I, *supra* note 50, at 6.

⁷⁹ *Id.* at 9.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 14.

⁸³ SULLIVAN ET AL., *supra* note 3, at 21.

⁸⁴ *Alphabetical List of States Adopting Model Rules*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html (last visited Oct. 2, 2011).

A. Reactive Discipline Measures are Ineffective:

Each state bar association also has mechanisms for enforcing the rules of professionalism through disciplinary procedures. Too often, however, lawyers first come to fully appreciate the requirements of the rules only when they are charged with violating them. This reactive approach is inefficient because it is expensive and often fails to correct the harm caused to the client. Suspending a lawyer's license to practice law, for instance, does not always make whole the client who has suffered a legal wrong at the hands of the lawyer subject to suspension proceedings. Moreover, the process of lawyer discipline is very expensive. In the process of disciplining lawyers, substantial resources are exhausted. For example, in 2010, the Washington Bar's Lawyer Discipline System spent \$4,572,179 on lawyer discipline.⁸⁵ Approximately 35% of that state's Bar License Fees were spent on disciplinary procedures.⁸⁶ In return, it received \$49,192 of the total costs that were assessed to the disciplined parties.⁸⁷ In 2008, the Florida Bar used \$9.5 million (45%) of the \$21 million in dues and fees it collected from its members on lawyer discipline.⁸⁸ That year, the Bar investigated 9,063 complaints, or one complaint for every nine bar members.⁸⁹

B. Continuing Legal Education is Insufficient:

Although in most states attorneys are required to complete continuing legal education training after law school, the focus of that training is primarily directed to general practice areas. States across the nation place very little emphasis on ethics and/or professionalism training. As the chart below demonstrates, on average, states require attorneys to complete slightly more than 12 hours of general practice training annually, but less than 2 hours of ethics or professionalism training.⁹⁰ Five states do not require attorneys to complete any continuing education training.⁹¹

⁸⁵ WASHINGTON STATE BAR ASSOC., 2010 LAWYER DISCIPLINE SYSTEM ANNUAL REPORT 13 (2010), available at http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/Discipline/2010%20Lawyer%20Discipline%20System%20Annual%20Report.ashx.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ David Ball, *The cost of discipline*, DAILY RECORD (Feb. 25, 2008), available at http://www.jaxdailyrecord.com/showstory.php?Story_id=49505.

⁸⁹ *Id.*

⁹⁰ The chart was created by the author using data obtained from state requirements for CLE credits.

⁹¹ Connecticut, Maryland, Massachusetts, Michigan, and South Dakota currently do not require attorneys admitted to practice in that state to complete continuing legal education programs.

Comparison of Mandatory Annual Hourly General Continuing Education Course Requirements With Mandatory Annual Hourly Continuing Legal Ethics /Professionalism Education Course Requirements by State.*							
G= General Requirements							
E/P= Legal Ethics/Professionalism							
Alabama	G: 12 E/P: 1	Indiana	G: 12 E/P: 1	Nebraska	G: 10 E/P: 2	South Carolina	G:14 E/P:2
Alaska	G: 0 E/P: 3	Iowa	G: 15 E/P: 1	Nevada	G: 12 E/P: 2	South Dakota	Not Required
Arizona	G: 15 E/P: 3	Kansas	G: 12 E/P: 2	New Hamp.	G: 12 E/P: 2	Tennessee	G:15 E/P:3
Arkansas	G: 12 E/P: 1	Kentucky	G: 12.5 E/P: 2	New Jersey	G: 12 E/P: 2	Texas	G:15 E/P:3
Cal.	G: 8.33 E/P: 1.33	Louisiana	G: 12.5 E/P: 2	New Mexico	G: 12 E/P: 2	Utah	G:12 E/P:1.5
Colorado	G: 15 E/P: 2.33	Maine	G: 11 E/P: 1	New York	G: 16 E/P: 3***	Vermont	G: 10 E/P:1
Conn.	Not Req'd	Maryland	Not Required **	North Carolina	G: 12 E/P: 2	Virginia	G: 12 E/P: 2
Delaware	G: 12 E/P: 2	Mass.	Not Required	North Dakota	G: 15 E/P: 1	Wash.	G: 15 E/P: 2
Florida	G: 10 E/P: 1.66	Michigan	Not Required	Ohio	G: 12 E/P: 1	West Virginia	G: 12 E/P: 1.5
Georgia	G: 12 E/P: 1	Minnesota	G: 15 E/P: 1	Okla.	G: 12 E/P: 1	Wisconsin	G: 15 E/P: 1.5
Hawaii	G:0 E/P: 3	Mississippi	G: 12 E/P: 1	Oregon	G: 15 E/P: 6	Wyoming	G: 15 E/P: 1
Idaho	G: 10 E/P: 0.66	Missouri	G: 15 E/P: 1	Penn.	G: 12 E/P: 1	Avg: G: 12.12 E/P: 1.8	
Illinois	G: 10 E/P: 2	Montana	G: 15 E/P: 1.66	Rhode Island	G: 10 E/P: 2		
* Some states report in multi-year periods. Numbers reflect average per year for each category.							
** Maryland does require new attorneys to attend a one day seminar on legal ethics.							
*** New Attorneys (less than 2 years) are required to take more ethics credits.							

Given the declining view of the profession and the enormous costs associated with disciplining its own, there is a critical need for increased ethics training in law school. It is imperative that each student develop a firm understanding of the responsibilities he or she owes to the profession, the public,

the courts, and the bar prior to entering the legal field.⁹² Without this, schools fail in their obligation to produce graduates capable of engaging in the responsible practice of law required by the ABA.

C. Proactive Education: Mentor, Monitor and Make Accountable:

To address declining public confidence in the legal profession, in 2008 the American Bar Association recommended that law schools incorporate ethics evaluation into its accreditation standards to ensure that graduates receive the training required for the ethical practice of law.⁹³ In 2009, the National Organization of Bar Council (“NOBC”) recommended that law schools take greater effort to promote professional traits in students, including competence, knowledge, skill, honesty, trustworthiness, reliability, respect for legal obligations, responsibility, civility in dealings with others, personal integrity, and empathy. The NOBC recommended that, “law schools should do more to incorporate ethics, professionalism and the development of a professional identity into all aspects of academic life.”⁹⁴ The goal should be to help students develop a professional identity that incorporates “a commitment to and respect for the administration of justice, the institutions of the law, and public service in general.”⁹⁵ The NOBC called for major changes to the existing format of ethics training in law school and recommended that law schools track student behavior, provide remediation to students with observed and demonstrated problems, and hold students accountable for their behavior in the law school environment.⁹⁶ This approach will allow graduates to adequately and competently address ethics and professionalism issues in practice and avoid disciplinary procedures in the future.⁹⁷

To date, few schools have answered this call for change. Of 198 laws schools reviewed, 148 (75%) list no particularized ethics or professionalism training that is offered to students other than the traditional one semester course in professional responsibility.⁹⁸ Of those that identify additional training, most offer it as part of a CLE program, integrate it into the school’s student orientation program, or incorporate it into part of a program run by career services. Only 25

⁹² NAT’L ORG. OF BAR COUNSEL, LAW SCHOOL PROFESSIONALISM INITIATIVE REPORT (2009).

⁹³ AMERICAN BAR ASSOCIATION, OUTCOME MEASURES COMMITTEE REPORT 2 (2008), available at <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>.

⁹⁴ NAT’L ORG. OF BAR COUNSEL, *supra* note 92, at 1 (describing itself as “a professional association of agencies and lawyers engaged in lawyer discipline and regulation through the enforcement of legal ethics rules”).

⁹⁵ *Id.* at 2.

⁹⁶ *Id.* at 3.

⁹⁷ *Id.* at 6.

⁹⁸ This data was obtained by reviewing publically available resources on websites for 198 law schools reviewed.

law schools currently have dedicated centers or programs specifically charged with advancing ethics and professionalism in law school. While these programs provide valuable additional training to students, most of their focus is directed to education through symposia, classroom modeling, and mentorship from practitioners. These efforts may not go far enough to address the unique problems posed by a generation that has matriculated through an educational system that has failed to hold students accountable for their misdeeds. To adequately address the ethical crisis that has tarnished the image of the legal community, additional steps must be taken.

IV. RECOMMENDATIONS

A. Law Schools Must Hold Students Accountable:

Perhaps nowhere is the need for change to ethics training more evident than with the Millennial generation now matriculating through law school. They bring new ideas and new assumptions to the traditionally conservative practice of law, but they are also uniquely vulnerable to disciplinary proceedings. One Florida law school has taken the lead in using direct intervention within the safety of the law school setting to prepare students for the challenges they face in practice.

In the Fall of 2009, Barry University School of Law initiated a program utilizing direct intervention. Barry's Student Professionalism Enhancement Program ("SPEP") is the first of its kind in Florida and potentially the first in the country.⁹⁹ Created in collaboration with the Florida Bar's Lawyer Regulation Division and the Henry Latimer Center for Professionalism, Barry's SPEP seeks to address professionalism issues that materialize amongst law students *before* those students become practicing lawyers. The SPEP uses the educational forum to rehabilitate students who exhibit behaviors or attitudes that render them likely to be subject to discipline by the Florida Bar as practicing lawyers if their behavior is not corrected or their attitude altered. Barry Law School recognizes that admitting a problem exists is necessary to crafting a meaningful solution, and has taken the lead in Florida in the hopes that its program will foster more respect and trust from the public for the legal profession.

Conceptually, the SPEP program is designed around the idea of a moral compass, of professionalism in the context of attitude in addition to conduct. The program attempts to foster a dialogue among students and professors, wherein the students ask the crucial question, "Why am I doing this?" Students are encouraged to view their actions through the lens of professional identity, by considering not only the skills they have or the results they obtain, but how they interact with others and build their reputation. In the process, students assume

⁹⁹ A copy of the program is on file with the author who is the professor who both teaches and coordinates the Student Professionalism Enhancement Program at Barry University School of Law.

control over their own successes. This approach constantly reminds students that the practice of law is a privilege and that they will, and should be, judged by others in the course of their careers.

Students are referred to the SPEP as part of disciplinary actions authorized by the Barry Law Student Conduct Code. Participation in the SPEP is one of several punishments that can be levied for various kinds of inappropriate behavior, and is administered at the discretion of the Dean of Students. Once referred to the program, students attend a mandatory class every week for 6 weeks, 2 hours per week, taught by a professor who is also the coordinator of the program. If a student is disciplined and placed in the SPEP during their last semester, they will not be released for graduation, and will have to take the class before they can be certified and sit for the Bar.

During each class, the group discusses an area of concern, such as stress management or candor with others and with the court. Each student is encouraged to provide input about the topic, their personal experiences with it, and its relationship to the practice of law. Interactive learning tools like videos and role-playing are used whenever possible to promote participation by the students. Generally, conversations had within and information gleaned from the SPEP classes remain confidential to encourage candor and honesty (except in the event that mental health or substance abuse issues are discovered, in which case the student would be referred to counseling).

As part of the rollout of the SPEP in the Fall semester of 2009, a mock class was assembled to help hone the curriculum for the program. Student leaders from the Law School volunteered to attend the SPEP classes and provide detailed feedback about their experiences. This allowed Barry Law School to test the program with real students to assess how they receive information, what types of learning tools are most likely to grab their attention, and what kinds of issues might arise in future sessions. Through the implementation of this program, Barry Law hopes to create an environment of institutional integrity reflected in all who attend the Law School, and to reduce overall the number of attorneys needing intervention during their professional careers.

B. Teach Ethics and Professionalism Across the Curriculum:

At most law schools, a student's sole exposure to rules of professionalism come in the form of a one semester course in professional responsibility. The course is most often offered in the second or third year, after students have a firm grounding in the foundational courses. Students recognize that the rules are important to know for passing the Multistate Professional Responsibility Exam, but it is unclear how much else is taken from the course. Divorced from the substantive courses, the course stands alone with little integration. As a result, students often fail to understand that the rules do not represent yet another finite collection of information to remember, but rather permeate every aspect of legal practice. Schools should revise curriculum to provide a comprehensive curriculum in ethics and professionalism.

To best serve students, schools need to integrate legal ethics lessons into courses throughout the curriculum. Instead of focusing on whether an attorney has a right to take a particular action, faculty members should also strive to explain why the attorney should or should not take a particular action. By modeling professional behavior in and out of the classroom, and consistently incorporating lessons on ethics and professionalism, schools stand the greatest chance of helping to adequately prepare students for the myriad of challenges they will face in practice.

C. Incorporate Relevant Skills into Training Programs:

Schools must start from the premise that Millennials are unique in very important ways. Although they will face many of the same ethical issues older attorneys face, their experiences, attitudes and actions make them particularly vulnerable to certain types of ethical violations.

Ethics training for the Millennials should focus on the importance of maintaining client confidentiality. There is perhaps no greater protection afforded to clients than their attorney's ability to hold their communications in confidence. Schools must recognize that Millennials view the dissemination of information differently and work to ensure that students appreciate the trust placed in them to keep private information out of the public domain.

Schools must also place greater emphasis on the proper use of the internet, information sharing, and the use of social media. Millennials are uniquely vulnerable in this area. Students must understand the critical requirement of separating their social life from their client's case. Emphasis must be placed on the duty owed to the client, to the court and to the profession to uphold the sanctity of the law above all else.

V. CONCLUSION

To restore the public trust in the legal profession, the legal community must work collaboratively to build a strong ethical culture that rewards those individuals who help build that culture through action and punishes those individuals who act to destroy it. Law schools are uniquely positioned to help students develop a strong understanding and appreciation for the role of ethics in the profession. Law schools must do a better job of identifying students with inadequate moral and ethical compasses and intervene to help them avoid the compromise of integrity that will lead them down a slippery slope toward discipline or disbarment.¹⁰⁰ Law schools must make training in ethics and

¹⁰⁰ KENNETH L. JORGENSEN, INTEGRITY: THAT INITIAL COMPROMISE, MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY 1-3 (March 2004), available at <http://lprb.mncourts.gov/articles/Articles/Integrity-%C2%A0%20That%20Initial%20Compromise.pdf> (discussing how lawyers who make an initial

professionalism an equal component in the process of developing the next generation for lawyers.

ethical mistake without facing consequence often continue the behavior until it is too late to protect themselves from discipline or disbarment).