# I'LL START WALKING YOUR WAY, YOU START WALKING MINE:[1] SOCIOLOGICAL PERSPECTIVES ON PROFESSIONAL IDENTITY DEVELOPMENT AND INFLUENCE OF GENERATIONAL DIFFERENCES

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I.  INTRODUCTION

This Essay examines the relationship between the generational divide that currently exists in law practice and how that divide can impact a novice attorney's development of a professional identity. It argues that instilling professionalism in law students and young lawyers requires that those individuals feel integrated into and connected with the legal community. Because most new lawyers are from Generation Y, or the Millennial generation,[2] they have different expectations about law practice than more experienced lawyers from Generation X, the Boomer generation, or the Silent generation. Some of these differences may manifest themselves as a lack of professionalism on the part of the younger generations. In order to effectively integrate new lawyers into the community, more seasoned lawyers may have to adapt to some of the characteristics of the new generation. By meeting in the middle, we may all learn something beneficial about ethics, professionalism, and having a gratifying life in the law.

This Essay begins with an examination of professionalism. Part II explores the attributes that have historically distinguished professions from other occupations and examines the relationship between those attributes and the admittedly elusive, but related, concept of professionalism. Part III identifies sociological perspectives on how novices become part of a group. Specifically, this Essay explores the concept of professional identity development with a focus on the influence of peer groups and the core elements of knowledge acquisition, involvement, and investment. Part IV examines generational differences that exist between current members of the legal community— specifically those differences that can give rise to real or perceived lapses in professionalism. Finally, Part V identifies some new initiatives in legal education and law practice that capitalize on sociological concepts of professional identity development and addresses potential sources of generational conflict. These initiatives incorporate certain components of socialization that effectively bridge the divide between conflicting generational expectations and the realization of professional identity development.

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2.  *See* RON ZEMKE ET AL., GENERATIONS AT WORK: MANAGING THE CLASH OF VETERANS, BOOMERS, XERS, AND NEXTERS IN YOUR WORKPLACE 127 (2000) ("[M]illennials [are] . . . the first graduating class of the new millennium.").

II.  A COMMUNITY OF PROFESSIONALS

Law has historically been considered among the "learned professions," including medicine and the clergy.[3] Professions are typically distinguished from other occupations on the basis of several overriding features:

> The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.[4]

In describing how professions differ from other occupations, one court explains:

> A profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by a qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation. These qualities

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3.    Edward D. Re, *Professionalism for the Legal Profession*, 11 FED. CIR. B.J. 683, 684 (2001–2002). Re notes that "[l]awyers have derived great pleasure and pride in being members of one of the historic and learned professions along with the clergy and medicine, which have been traditionally regarded as professions throughout the centuries." *Id.*; *see also* Bruce Beesley, *The Profession and Business of Law*, 16 NEV. LAW., Oct. 2008, at 4, 4 (noting that law has historically been considered a profession). Beesley notes the following:

> Historically, there were only three learned professions: theology, law and medicine. These professions were considered "callings," requiring specialized knowledge, long and intensive preparation in the skills and methods of the professions, and training in the underlying historic principles. The professions were tightly controlled through formal organizations or concerted opinion of the members. These factors operated to maintain high standards of achievement and conduct by members of the professions, whose primary purpose was to provide service to the public.

*Id.*

4.    AM. BAR ASS'N COMM'N ON PROFESSIONALISM, ". . . IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986), *reprinted in* 112 F.R.D. 243, 261 (1987) [hereinafter STANLEY COMMISSION REPORT] (quoting ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)); *see also* Anne Colby & William M. Sullivan, *Formation of Professionalism and Purpose: Perspectives from the Preparation for the Professions Program*, 5 U. ST. THOMAS L.J. 404, 405 (2008) ("[T]he defining characteristics of professions are generally agreed upon. Professions involve (at least) a commitment to serve the interests of clients and the welfare of society; bodies of specialized knowledge and skill; and procedures through which the professional community provides oversight of entry into the profession and quality in both practice and professional training." (citing Howard Gardner & Lee S. Shulman, *The Professions in America Today: Crucial but Fragile*, 134 DAEDALUS 13, 14 (2005))).

distinguish professionals from others whose limitations on conduct are largely prescribed only by general legal standards and sanctions, whether civil or criminal.[5]

The American Bar Association (ABA) Commission on Professionalism identifies four elements that distinguish a profession from other occupations.[6] Recognizing that lawyers enjoy special societal privileges, including the ability to control licensing, the ABA concludes that certain assumptions distinguish law as a profession from other occupations.[7] First, the "practice requires substantial intellectual training and the use of complex judgments."[8] Second, because "clients cannot adequately evaluate the quality of the service, they must" place their trust in lawyers.[9] Third, "the client's trust presupposes that the practitioner's self-interest is overbalanced by devotion to serving both the client's interest and the public good."[10] Fourth, lawyers are "self-regulating," requiring that the profession be "organized in such a way as to assure the public and the courts that its members are competent, do not violate their client's trust, and transcend their own self-interest."[11] Thus, advanced education and training, self-regulation and discipline under a formal code of performance, and fiduciary obligations to elevate the public good over the self-interest of the individual professional are overriding themes that distinguish members of a profession.[12]

These attributes of professional life are related to and dependent upon one another. The specialized skills that distinguish members of a profession require members of the profession to self-license and to self-regulate. The justification for self-regulation is tied to a distinctive skill set possessed by members in the profession—only individuals within the profession have the expertise to evaluate

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5. Lincoln Rochester Trust Co. v. Freeman (*In re* Estate of Freeman), 311 N.E.2d 480, 483 (N.Y. 1974) (citing POUND, *supra* note 4, 4–10).

6. *See* STANLEY COMMISSION REPORT, *supra* note 4, at 261–62.

7. *Id.* at 261.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 261–62.

12. *See* Chase Scientific Research, Inc. v. NIA Group, Inc., 749 N.E.2d 161, 166 (N.Y. 2001). In evaluating whether insurance agents and brokers are considered professional groups, the court notes the following:

The qualities shared by such [professional] groups guide us in defining the term "professional." In particular, those qualities include extensive formal learning and training, licensure and regulation indicating a qualification to practice, a code of conduct imposing standards beyond those accepted in the marketplace and a system of discipline for violation of those standards. Additionally, a professional relationship is one of trust and confidence, carrying with it a duty to counsel and advise clients.

*Id.* (internal citations omitted). The court concludes that brokers and agents are not professionals because they are not required to complete specialized training, are not bound by an enforceable standard of conduct, and are not required to provide guidance and advice based on a "special relationship of trust and confidence." *Id.* at 167 (citing Murphy v. Kuhn, 682 N.E.2d 972, 976 (N.Y. 1997)).

the conduct of other members.[13] This autonomy is justified by and dependent upon the profession's elevation of the public good over its own self-interest. The attributes of professional life coalesce to form a social contract relationship with the public. This social contract is based on trust, fidelity, and assurance, and it justifies the profession's authority to devise and enforce a code of conduct. The historical framework of the legal profession's social contract can be summarized as follows:

> Since the late 1800s, the peer-review professions in the United States, including the legal profession, have gradually worked out stable social contracts with the public in both custom and law. The public grants a profession autonomy to regulate itself through peer review, expecting the profession's members to control entry into and continued membership in the profession, to set standards for how individual professionals perform their work so that it serves the public good in the area of the profession's responsibility, and to foster the core values and ideals of the profession.

> In return, each member of the profession and the profession as a whole agree to meet certain correlative duties to the public: to maintain high standards of minimum competence and ethical conduct to serve the public purpose of the profession and to discipline those who fail to meet these standards; to promote the core values and ideals of the profession; and to restrain self-interest to some degree to serve the public purpose of the profession.[14]

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13.   GLEN E. RANDALL, UNDERSTANDING PROFESSIONAL SELF-REGULATION, http://www. oavt.org/self_regulation/docs/about_selfreg_randall.pdf. Randall explains this idea in the following way:
> One of the most persuasive arguments in favour of self-regulation is that an occupational group has evolved over time and developed a specialized body of knowledge which makes members of the group experts. Because the knowledge these members have is so specialized, it would be difficult and expensive[] for the government to determine and monitor standards of practice for the profession. It is therefore thought that members of a profession are in the best position to set standards and to evaluate whether they have been met.

*Id.*

14.   Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. 4, 4–5 (2008) (citing WILLIAM M. SULLIVAN, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA 3, 21 (2d ed. 2004)); *see also* MAGALI SARFATTI LARSON, THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS, at i (1977) (discussing the contours and dimensions of an ideal type of profession). In his sociological examination of professions, Larson identified three dimensions of the "ideal-type of profession." LARSON, *supra*, at i. First, there is a "cognitive dimension," which is "centered on the body of knowledge and techniques which the professionals apply in their work, and on the training necessary to master such knowledge and skills." *Id.* The second dimension is the "normative dimension," which "covers the service orientation of professionals, and their distinctive ethics, which justify the privilege of self-regulation granted them by society." *Id.* The third dimension is "evaluative" and "implicitly compares

A professional community can then be commonly understood to manifest three distinguishing qualities: (1) members of the community have acquired a distinctive skill set; (2) members regulate entry into and conduct within the community; and (3) members enjoy and are bound by a relationship of trust with the public based upon the commitment by professional members to elevate the public good over self-interest. [15] However, the corresponding term *professionalism*, presumed to articulate the embodiment of the professional's identity, is not easily defined. Indeed, scholars have openly struggled with a definition for *professionalism*. Some scholars have denied the existence of an adequate definition, concluding that lawyer professionalism is "'like pornography, hard to define, but easy to recognize.'"[16] Others point out that the difficulty in defining professionalism relates to its fluidity, arguing that the

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professions to other occupations, underscoring the professions' singular characteristics of autonomy and prestige." *Id.* Larson concludes that "[t]he distinctiveness of the professions appears to be founded on the combination of these general dimensions. These uncommon occupations tend to become 'real' communities, whose members share a relatively permanent affiliation, an identity, personal commitment, specific interests, and general loyalties." *Id.*

15. While these three qualities or attributes seem to identify and distinguish accurately the learned professions, scholars have identified additional ones applicable to the legal community. Charles E. McCallum notes the following seven attributes:

    (1)  "Dedication to serving clients before self"
    (2)  "Dedication to serving the public interest"
    (3)  "Honesty and integrity"
    (4)  "Dedication to excellence"
    (5)  "Practice in context"
    (6)  "A specialized body of knowledge and skills freely shared with other professionals"
    (7)  "Adherence to ethical rules and participation in self-regulation"

Charles E. McCallum, *Professionalism: It's No Joke*, BUS. L. TODAY, Jan./Feb. 2007, at 43, 45–46 (emphasis omitted). Timothy P. Terrell and James H. Wildman identify six values associated with the legal professional tradition:

    (1)  "An Ethic of Excellence"
    (2)  "An Ethic of Integrity: A Responsibility to Say No"
    (3)  "A Respect for the System and Rule of Law: A Responsibility To Say 'Why'"
    (4)  "A Respect for Other Lawyers and Their Work"
    (5)  "A Commitment to Accountability"
    (6)  "A Responsibility for Adequate Distribution of Legal Services"

Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 EMORY L.J. 403, 424–28 (1992) (emphasis omitted).

16. Peter A. Joy, *What We Talk About When We Talk About Professionalism: A Review of Lawyers' Ideals/Lawyers' Practices: Transformations in the American Legal Profession*, 7 GEO. J. LEGAL ETHICS 987, 997 (1994) (book review) (quoting *Professional Responsibility: Has the Rise of Megafirms Endangered Professionalism?*, A.B.A. J., Dec. 1989, at 38, 38 (editorial comment)). While Joy does not offer a comprehensive definition of *professionalism* in his review, he does take issue with any proposed definition's failure to incorporate the notion of promise and performance. *Id.* at 1009. Joy laments that "[p]rofessionalism has historically meant the subordination of financial reward to social responsibility. . . . [But the current professionalism debate fails to] focus on changing the structure of the legal profession to de-emphasize wealth accumulation." *Id.* at 1008–09. He concludes that "it is hard to take professionalism seriously without concluding that such structural changes may be the only ways to make the 'performance' of the legal profession come closer to its 'promise.'" *Id.* at 1009.

concept of "legal professionalism is . . . a moving target."[17] One scholar argues that "[t]he professionalism debate to date has been shallow because we have talked only about how we see ourselves. We have limited the contours of the discussion to how we relate to each other and how we can better serve paying clients."[18] Divergent attempts to define professionalism recognize the limitations of a confined or focused definition:

> Recent attempts to define the demands of legal professionalism have often been unsatisfactory because they reflect one of two extremes. One reduces professionalism to the level of professional etiquette—pleasantness, returning telephone calls, and the like—so that it appears to lack any real moral content at all. The other vehemently gives professionalism moral content, but reduces it to a single, politically biased value—helping the poor. Although both these approaches contain a kernel of truth, they are far too limited to be the basis for a sustained analysis of our professional heritage.[19]

When sociologists explore the relationship between the professions and other occupations, they often articulate an ideology of professionalism designed to defend the insular and independent professional environment. In her

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17. Terrell & Wildman, *supra* note 15, at 408; *see also* STANLEY COMMISSION REPORT, *supra* note 4, at 261 ("'Professionalism' is an elastic concept the meaning and application of which are hard to pin down. That is perhaps as it should be. The term has a rich, long-standing heritage, and any single definition runs the risk of being too confining."). Notwithstanding this challenge, Terrell and Wildman reject the notion that changes in law and the legal profession preclude any attempt to define professionalism or professional heritage. *See* Terrell & Wildman, *supra* note 15, at 408. Rather, an attempt to articulate values that embody professionalism must acknowledge and assimilate those changes:

> [T]he lawyer's special pledge is that he or she will help the legal system remain the centerpiece of our fragile sense of community, help it continue to function within our culture as the crucial mechanism for social cohesion and stability.
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> . . . Our heritage as lawyers—the "living faith" that links us with our predecessors, and that we must in turn teach to our successors—is the responsibility to recognize, honor, and enhance the rule of law in our society.

*Id.* at 423.

18. Richard C. Baldwin, *"Rethinking Professionalism"—And Then Living It!*, 41 EMORY L.J. 433, 433 (1992).

19. Terrell & Wildman, *supra* note 15, at 419. Leaning toward the latter extreme posited by Terrell and Wildman, Baldwin argues that equal access to justice is an essential, but overlooked, characteristic of professionalism:

> Law is pervasive in our society because of our cultural commitment to democratic values. Citizen access to and participation in government are hallmarks of a society with democratic aspirations, as is a citizen's ability to resolve important disputes and enforce legal rights. Thus, access to justice for all members of society is the most important substantive value carried by our professional heritage.

Baldwin, *supra* note 18, at 437.

examination of law and business students' acquisition of professional skills, Debra J. Schleef writes:

> A number of sociologists posit that professionalism itself is an ideology that serves the self-interest of lawyers or other professionals, rather than the interests of society or clients. These scholars view professional actors as making conscious efforts to perpetuate an ideology of expert knowledge that legitimates their privilege and professional dominance.[20]

Neil Hamilton explains:

> In the ideology of professionalism, the public grants members of an occupation control over their work because the particular tasks they perform are so different from those of most workers (and involve transcendent values like justice . . . or the growth of reason) that occupational control of work is essential.[21]

Similarly, in *Lawyers' Ideals/Lawyers' Practices*, Nelson and Trubek address the professional ideology of lawyers as "the body of thought and practices through which a profession (or its constituent groups) develops and promulgates ideas about the nature of its work and the identities of its practitioners."[22] Noting that "[t]he norms, traditions, and practices . . . allow lawyers to maintain jurisdiction over work [and] . . . become part of each lawyer's professional identity," they assert that professionalism "provide[s] [lawyers] a set of dispositions . . . to interpret their situations and orient their choices."[23] "Professionalism, in this sense, relates to the overall system of action of the legal profession in two senses. It reflects overall 'structural' conditions, and it contributes to the development of structural possibilities."[24]

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20. DEBRA J. SCHLEEF, MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS 5 (2006) (citing RICHARD L. ABEL, AMERICAN LAWYERS 226 (1989); ELIOT FREIDSON, PROFESSIONAL DOMINANCE: THE SOCIAL STRUCTURE OF MEDICAL CARE, at xi (1970); ELIOT FREIDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE, at xi–xii (1986); Eliot Freidson, *Professions and the Occupational Principle*, *in* THE PROFESSIONS AND THEIR PROSPECTS 19, 30 (Eliot Freidson ed., 1973)).

21. Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 471 (2008) (citing ELIOT FREIDSON, PROFESSIONALISM 17, 122–23 (2001)).

22. Robert L. Nelson & David M. Trubek, *Introduction* to LAWYERS' IDEALS/LAWYERS' PRACTICES 22 (Robert L. Nelson et al. eds., 1992).

23. *Id.* at 22–23.

24. *Id.* at 23. Addressing the source of professional ideals, Nelson and Trubek continue:
    We see professional ideals partly as formed within the workplace and partly as designed, consciously or unconsciously, by lawyers for the promotion of their economic, power, and status goals. Thus lawyers' "ideals" carry within themselves heavy traces of

Thus, lawyer professionalism is, in part, an obligation of the social contract that lawyers have forged with the public.[25] Professionalism is also a manifestation of unique values, practices, and expectations, particularly those values, practices, and expectations relating to civility, competence, diligence, candor, and advocacy. Indeed, as examined in the context of medical professionals, one author explains that "[p]rofessionalism is the moral understanding among professionals that gives concrete reality to this social contract."[26] "An attitude or approach to work, it has to do both with the way work is conducted and the underlying values and traditions associated with the profession that shape the professional's approach to work."[27] Put another way, professionalism includes "the important elements of an ethical professional identity into which each peer-review profession should socialize students and practicing professionals."[28]

*Professionalism* as used herein will be considered conformity with the expectations of peers or "voluntary conformity with legally unenforceable standards,"[29] as well as conformity with the rules of ethics. Expectations may be based upon ethical or professional obligations set forth in professional responsibility codes and oaths or more informal expectations that arise from commonly held notions of acceptable behavior within the practice. New lawyers must learn what these expectations are and must learn to adapt to them as they enter the community of professionals.[30] "Socialization toward professionalism becomes a synthesis of knowledge about facts and about behavioral expectations

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what we have called "structure." But they also can be seen as sets of dispositions that have a logic partially independent of the structures that produced them.

*Id.*

25.  *See* Hamilton, *supra* note 21, at 472 ("'Professionalism,' as used herein, describes the important elements of an ethical professional identity into which each peer-review profession should socialize students and practicing professionals. These elements of an ethical professional identity capture the correlative duties of the profession's social contract for both the individual professional and the relevant professional peer-review groups.").

26.  William M. Sullivan, *Medicine Under Threat: Professionalism and Professional Identity*, 162 CANADIAN MED. ASS'N J. 673, 673 (2000), *available at* http://www.cmaj.ca/cgi/reprint/162/5/673. Sullivan further explains the relationship between professionalism and the social contract: "It is based on mutual trust. In exchange for a grant of authority to control key aspects of their market and working conditions through licensing and credentialling, professionals are expected to maintain high standards of competence and moral responsibility." *Id.*

27.  John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 330 (2008) (citing Terrell & Wildman, *supra* note 15, at 403–04).

28.  Hamilton, *supra* note 21, at 472.

29.  Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 275 (1995).

30.  *See* JOHN C. WEIDMAN ET AL., SOCIALIZATION OF GRADUATE AND PROFESSIONAL STUDENTS IN HIGHER EDUCATION 49 (2001) ("Professionalism . . . is not merely a matter of externally recognized accomplishment but also involves the internal acceptance of a value system indicative of the newly accepted role.").

of the role 'into a coherent and consistent behavioral pattern' commonly associated with members of that field or profession."[31]

III. PROFESSIONAL IDENTITY AND MEMBERSHIP IN THE COMMUNITY

Sociologists explain that "[a]cquiring a professional identity involves learning not only the knowledge and skills required to perform a particular job task, but also the attitudes, values, norms, language, and perspectives necessary to interpret experiences, interact with others, prioritize activities and determine appropriate behaviour." [32] As one commentator notes, "Professional norms determine how a legal system operates in practice. . . . American lawyers' norms come from laws of lawyering, traditions of the bar, ethical principles, economics, and socialization by law schools."[33]

Indeed, ethical and professional conventions exist because of the group. "Ethics is something we do with others, something we do *for* others, something we do because we are in the world with others."[34] Socialization begins in law school, but it necessarily continues as the novice attorney enters practice and is exposed to new problems and to a wider group of professional peers:

> Professional work is inherently complex, requiring wise judgment under conditions of uncertainty, and its knowledge base is always evolving. For these reasons, formal education can make only a start in preparing students for high quality professional work. Developing and maintaining the necessary expertise requires the capacity to learn from

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31. *Id.* (quoting JAMES A. KNIGHT, MEDICAL STUDENT: DOCTOR IN THE MAKING 4 (1973)).

32. Laura W. Perna & Cynthia Hudgins, The Graduate Assistantship: Facilitator of Graduate Students' Professional Socialization 3 (Nov. 2, 1996) (unpublished manuscript, on file with the Education Resources Information Center), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/d7/92.pdf.

33. Liwen Mah, Comment, *The Legal Profession Faces New Faces: How Lawyers' Professional Norms Should Change to Serve a Changing American Population*, 93 CAL. L. REV. 1721, 1725 (2005) (citing DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS, at xlii–liii (Robert C. Clark et al. eds., 3d ed. 2001); Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 558–59 (1973)).

34. James R. Elkins, *Lawyer Ethics: A Pedagogical Mosaic*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117, 152–53 (2000). Elkins rejects what he characterizes as a commonly held assumption that legal ethics has only a moral individualistic quality. *Id.* at 220–21. Rather, he argues that legal ethics, like other traditional legal constructs, is inextricably linked to broader societal concerns:

> The law provides a language to describe, interpret, and give meaning to a web of connectedness between person and public. Ethical discourse, like law, is another way of articulating the relational web of personal and public, individual and community. Ethics is the moral web created by human beings as they produce a sustainable ecology of everyday life. Ethics, like law, links persons and actions to social consequences and helps us evaluate the harm that follows from choices, decisions, and actions made with too little regard for others.

*Id.* at 220.

one's own and others' experience, not only immediately after entry to the profession, but also throughout one's career.[35]

The relationship between members of the community, their varied "normative realms,"[36] and the development of an ethical and professional culture is recursive: "Over time, each legal community develops its own culture or 'common law' of ethics, which comprises 'the entire ensemble of understandings that lawyers observe in their dealings with one another, with clients, and with the courts.'"[37] The relationship among lawyers, young and old, at any given time, will not only impact the ability of a new member of the community to develop a professional identity but may influence the contours of that identity as well.[38]

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35. Colby & Sullivan, *supra* note 4, at 411.
36. Geoffrey C. Hazard, Jr., *Law, Ethics and Mystery*, 82 U. DET. MERCY L. REV. 509, 509 (2005). "For almost as long as mankind has been self-conscious about how a person should act, it has been recognized that we respond to several different guides to conduct." *Id.* Hazard identifies various normative realms that govern behavior, including personal, communal, and institutional. *Id.* at 510. Thus, the normative realm of ethics and professionalism for lawyers is not exclusive in governing their behavior. Indeed, "[t]he various normative realms in which all of us must live are not functionally separable. On the contrary, they coexist in complex interaction, like the components of our physical world." *Id.* at 512.
37. Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 718 (1998) (quoting MARY ANN GLENDON, A NATION UNDER LAWYERS 78 (1994)).
38. *See* Thomas D. Eisele, *Avalon Ethics*, 67 NOTRE DAME L. REV. 1287, 1289 (1992) (book review). In his book review of THOMAS L. SHAFFER WITH MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION (Stanley Hauerwas & Alasdair MacIntyre eds., 1991), Eisele identifies the fundamental premise of the book as the following: "[W]e all are members of a culture, or various cultures, and we learn our ethics there, in the culture(s) we inhabit and from which we come." Eisele, *supra*, at 1289. Eisele concludes two implications from that basic premise: First, law and ethics must be studied "anthropologically," consistent with the study of other practices or cultures. *Id.* Second, because lawyers belong to other communities and cultures, an adequate investigation of law and legal ethics must include an examination of other nonlegal cultures. *Id.* Eisele criticizes as incomplete an essential argument in the text that "'[w]e learn in the community what virtue is and how to practice it: We learn as we are part of the community.'" *Id.* at 1305–06 (quoting SHAFFER WITH SHAFFER, *supra*, at 84). Instead, while acknowledging that novices learn in the communities into which they are initiated, Eisele argues that "we also remake those communities and reshape them, either by pursuing further or by rejecting some of the possibilities that those communities offer us for acceptance." *Id.* at 1306. Thus, novices may reshape the culture of the group into which they are initiated. Recognizing the implication of this assertion, Eisele concludes:
    Does our immigrancy ever end, ever stop? I do not think so. In this I find a different emphasis than the one stated and struck in Shaffer's *American Lawyers and Their Communities*. Any ethos of belonging must necessarily imply its counterpart: An ethos of questing or journeying, of leaving the place where one has come from and finding a new place to belong. It is not clear to me either how this transition is managed or how we are to understand the tensions between the old and new cultures or communities. Yet it is in our ability to go through both processes—finding and losing, celebrating and mourning— while remaining human, or finding our humanity, in which I place my hope.
*Id.* at 1316.

In terms of the professional socialization process, peer groups, both formal and informal, have a significant influence on new and soon to be new lawyers. In the context of professional socialization, sociologists Weidman, Twale, and Stein note that socialization is the "'process by which persons acquire the knowledge, skills, and dispositions that make them more or less effective members of their society.' . . . Socialization [is also] a subconscious process whereby persons internalize behavioral norms and standards and form a sense of identity and commitment to a professional field."[39]

Weidman et al. propose a nonlinear socialization model for graduate students that consists of four stages: anticipatory, formal, informal, and personal.[40] The "anticipatory stage" covers the "preparatory and recruitment phases."[41] During this stage, the "individual becomes aware of the behavioral, attitudinal, and cognitive expectations held for a role incumbent."[42] The "formal stage" is characterized by "formal instruction."[43] "As an apprentice, the novice also observes the activities of role incumbents and older students and is able to learn about normative role expectations and how they are carried out, opportunities that are not generally available to the public."[44] During the "informal stage" of professional socialization, novices learn, largely from peers, about the informal role expectations.[45] "Through adept communication and immersion in the new culture, students receive behavioral clues . . . [and] observe acceptable behavior . . . . While some of this information comes from faculty, students tend to develop their own peer culture and social and emotional support system among classmates."[46] During the "personal stage," "'individuals and social roles, personalities and social structures become fused' and the role is internalized. Students form a professional identity and reconcile the dysfunction and incongruity between their previous self-image and their new professional image . . . ."[47]

In addition to the four stages of socialization, Weidman et al. identify three core elements.[48] The first element, "knowledge acquisition," refers to the following:

39. WEIDMAN ET AL., *supra* note 30, at 4, 6 (quoting Orville G. Brim, Jr., *Socialization Through the Life Cycle*, *in* SOCIALIZATION AFTER CHILDHOOD: TWO ESSAYS 3, 3 (1966)).

40. *Id.* at 11–15.

41. *Id.* at 12.

42. *Id.*

43. *Id.* at 12–13.

44. *Id.* at 13.

45. *Id.* at 14.

46. *Id.* (citing Ann Q. Staton & Ann L. Darling, *Socialization of Teaching Assistants*, *in* TEACHING ASSISTANT TRAINING IN THE 1990s, at 15, 17–18 (Jody D. Nyquist et al. eds., 1989)).

47. *Id.* (quoting Russell Thornton & Peter M. Nardi, *The Dynamics of Role Acquisition*, 80 AM. J. SOC. 870, 880 (1975)). The authors explain that "[o]ne of the most important outcomes of professional socialization is an evolving professional identity." *Id.* at 16.

48. *Id.* at 15–19.

> First, novices must acquire sufficient cognitive knowledge and skills for effective professional role performance. Second, novices must acquire affective knowledge such as awareness of normative expectations associated with the professional role being sought, a realistic assessment of personal ability to perform the demands of professional roles successfully, and awareness of the confidence others have in the novice's capacity to practice professional roles successfully.[49]

"Investment" and "involvement" are two additional elements of professional socialization.[50] Investment "depends to a great extent on the neophyte student's goals, level of commitment to those goals, commitment to the program and discipline being studied, level of investment given to the program in terms of money, time, and psychic energy, and personal pride in previous accomplishments and future expectations."[51] Involvement implicates "[s]ocial participation," which is "the action by which novices acquire and internalize an occupational identity, develop an interest in a profession's problems, and take pride in perfecting technical skills."[52] Students are involved with professors, mentors, and older students.[53] Through this process, they gain insight into "professional ideology, motives, and attitudes" by "actively extract[ing] clues to their behavior and continually evaluat[ing] themselves in the context of peers, faculty mentors, program expectations, and personal goals."[54]

In examining professional socialization, Weidman et al. note the collaborative impact of students, faculty, and practitioners on the development of professional identity:

> "[S]ocialization is not merely the transfer from one group to another in a static social structure . . . ." Socialization is "a product of gradual accumulation of experiences of certain people, particularly those with

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49. *Id.* at 16 (citing Elizabeth Leahy Stein, Socialization at a Protestant Seminary 80 (Mar. 15, 1992) (unpublished Ph.D. dissertation, University of Pittsburgh), http://proquest.umi.com/pqdweb?did=747178231&sid=1&Fmt=2&clientId=67505&RQT=309&VName=PQD).

50. *Id.* at 16–17.

51. *Id.* at 17. "To invest in a role is to commit something of personal value such as time, alternative career choices, self-esteem, social status, or reputation to some aspect of a professional role or preparation for it." *Id.*

52. *Id.* at 18 (citing Howard S. Becker & James W. Carper, *The Development of Identification with an Occupation*, 61 AM. J. SOC. 289, 289 (1956)).

53. *Id.*

54. *Id.*

whom we stand in primary relations, and significant others who are actually involved in the cultivation of abilities, values and outlook."[55]

Weidman et al. present the following table to illustrate the core elements and collaborative approach to professional socialization:[56]

**Core Elements and the Collaborative Approach to Professional Socialization**

| | Core Elements | | | Collaborative Engagement |
|---|---|---|---|---|
| Stages | Knowledge Acquisition | Investment | Involvement | Nature of Identity and Commitment |
| Anticipatory | Simulations, Web sites, CD-ROMs, videos of institutions or profession. | Matriculation, financial investment, tolerance of diversity, inclusiveness. | Shadowing professionals, preprofessional experiences, insider versus outsider, self-assessment. | Evaluate mental models of the profession, identify with the professional role. |
| Formal | Transformative projects, learning communities, incorporate technology in the curriculum, adaptive evaluation strategies, new instructional delivery methods, distance learning courses, new learning paradigms. | Team learning; clear, realistic guidelines. | Shared vision; cohort groups; experiential activities; collaborative communities of faculty, students, and practitioners; reflective journals; mastery learning. | Conference presentations, professional development, joint research projects, acceptance of ideologies, professional community of learners, mutual evaluations, professional collaboration, advancing the profession through research. |
| Informal | Studenthood role, academic interactions, role learning, cyber competence, cyber receptivity. | Mutual sharing, group maturity, embrace diversity in class, faculty/student bonding, sociocultural activity, social interactions, collaborative dialogue, study groups. | Collaborative communities of faculty, students, and practitioners; group cohesiveness. | Professional interaction, practitioner interaction, appreciate diverse colleagues, networking, role identification, self-reflection. |
| Personal | Listserv, Internet, chat rooms, bulletin boards, personal mastery, personal vision, faculty and students become familiar with new technologies that affect teaching and learning. | Formal mentoring, sponsorship. | Formal mentoring by faculty and practitioners, clerkships, field experiences, practica, internships, assistantships, role identification. | Internalize professional role, connectedness to professionals, independent thinking, self-evaluation, ethical practice, role transformation. |

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55. *Id.* at 35 (quoting SHULAMIT REINHARZ, ON BECOMING A SOCIAL SCIENTIST 374 (1979); Tamotsu Shibutani, *Reference Groups as Perspectives, in* SYMBOLIC INTERACTION: A READER IN SOCIAL PSYCHOLOGY 159, 168 (Jerome G. Manis & Bernard N. Meltzer eds., 1967)).

56. *Id.* at 29 tbl.2 (citing Thornton & Nardi, *supra* note 47).

While presented as stages, the Weidman et al. model is distinctly nonlinear.[57] This nonlinear model differed from prior, linear socialization models that suggested that students' socialization was uniform and sequential.[58] In the new model, the authors suggest five communities that impact the collaborative socialization process: (1) "prospective students"; (2) the "university"; (3) "personal communities"; (4) "novice professional practitioners"; and (5) "professional communities."[59] These communities and their impact do not have rigid boundaries or sequential confines; rather, they are interactive and are dependent to a degree on one another.[60] The authors note that "[p]rofessional identity and commitment are not achieved at some finite level but continue to evolve. Socialization is dynamic and ongoing, without a definite beginning or end."[61] In identifying the stages of professional socialization and the peer group influences of each stage, the authors provide the following illustration[62]:

**FIGURE 4**
**Conceptualizing Graduate and Professional**
**Student Socialization**
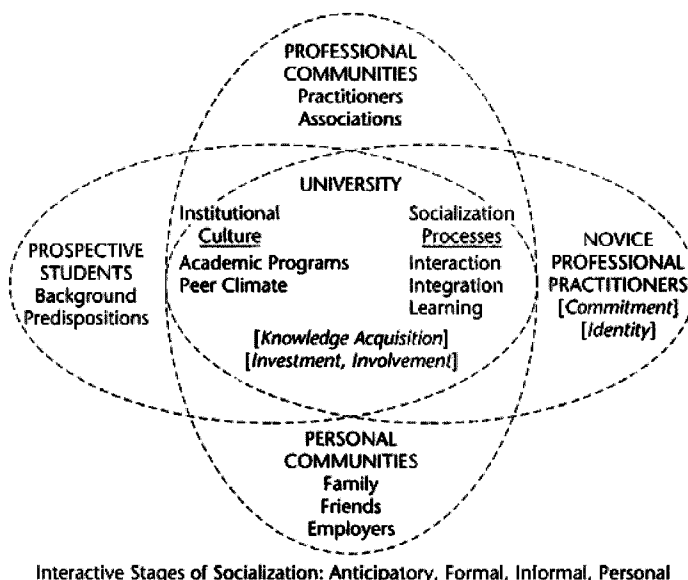


Interactive Stages of Socialization: Anticipatory, Formal, Informal, Personal

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57.  *See id.* at 26–29.

58.  *See id.* at 25–26 ("The linear configuration depicts a process whereby program faculty admit students, socialize them in some prescribed fashion, and graduate them after a specific program of study has been completed.").

59.  *Id.* at 37 fig.4.

60.  *Id.* at 39.

61.  *Id.* at 40.

62.  *Id.* at 37 fig.4.

The authors explain that "[t]he ellipses in [the illustration] have broken lines to represent the permeable, shifting boundaries among the various conceptual elements." [63] While the elements themselves have "analytically distinct characteristics, they are not independent but rather dependent upon one another to varying degrees." [64] In short, the illustration represents a "dynamic framework . . . . [It] represents an interactive rather than a solely causal model."[65]

Others have examined the importance of communities or social networks on professional identity development in other contexts. In her study of doctoral students, Vicki (Baker) Sweitzer reviewed the work of other social network scholars in "explor[ing] the possibility that individuals' social networks may serve as identity construction mechanisms."[66] Sweitzer's study examines "how the friendship, advice, and developmental support provided by peers, faculty, family, friends, and business associates facilitated doctoral students' early professional identity development in the first year of a business doctoral program"[67] and concludes that, contrary to prior studies,[68] social networks beyond the institutional setting may be most important in influencing professional identity development.[69]

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63.  *Id.* at 39.

64.  *Id.*

65.  *Id.*

66.  Vicki (Baker) Sweitzer, *Towards a Theory of Doctoral Student Professional Identity Development: A Developmental Networks Approach*, 80 J. HIGHER EDUC. 1, 5 (2009) (citing Herminia Ibarra et al., *Zooming In and Out: Connecting Individuals and Collectivities at the Frontiers of Organizational Network Research*, 16 ORG. SCI. 359, 362 (2005)).

67.  *Id.* at 6.

68.  Sweitzer notes that most prior studies concluded that the influence of program-level socialization networks, such as "faculty–student mentoring relationships," are most important in formative doctoral student professional identity development. *Id.* at 28 (citing VINCENT TINTO, LEAVING COLLEGE: RETHINKING THE CAUSES AND CURES OF STUDENT ATTRITION 206 (2d ed. 1993); WEIDMAN ET AL., *supra* note 30, at 50). In contrast, Sweitzer states the following:

>   The models I propose in this paper not only account for the influence of external communities beginning in year one, but the models are a first attempt at moving beyond *within* academic community relationships only by proposing that students' developmental networks and the experiences that occur within those networks may be more important than program-level socialization.

*Id.*

69.  *Id.* ("[F]aculty relationships are important, but near sole reliance on faculty relationships fails to acknowledge that students rely on a myriad of relationships and those relationships may be just as important, if not more important, than faculty or advanced students in the academic program."). This finding is consistent with the findings of others. For example, in examining the role of faculty in the professional identity development of physical therapy students, Bonnie Teschendorf and Maureen Nemshick conclude the following:

>   In the academic experience, the faculty is trusted to "carry the student" for a time. By this phrase, the participants meant to provide information, expertise, and guidance, and then gradually encourage the student to assume a more independent role. . . . Students should become more independent over time as they acquire a deeper understanding of the profession and gain skills. In this research, the faculty members

In fact, the Carnegie Report notes that the role of communities or social networks is implicit in the characterization of the essential apprenticeships inherent in professional education.[70] Insofar as "[t]he signature pedagogies of each professional field all have to confront a common task: preparing students for the complex demands of professional work—to think, to perform, and to conduct themselves like professionals," "three apprenticeships" emerge.[71] The first apprenticeship is "intellectual," focusing on knowledge and "is most at home in the university context because it embodies that institution's great investment in quality of analytical reasoning, argument, and research."[72] The second apprenticeship "is to the forms of expert practice shared by competent practitioners"[73] and can take place within the institution "in simulated practice situations" or outside the institution "in actual clinical experience."[74] The third apprenticeship, labeled "identity and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible."[75] Observing that "[p]rofessions are communities committed to maintaining . . . positive moral identities"[76] and that "[p]rofessional education is . . . ethical education in the deep and broad sense,"[77] the Carnegie Report concludes that "[t]he moral development of professionals requires a holistic approach to the educational experience that can grasp its formative effects as a whole."[78] In short, the importance of peer groups and a practice-based initiation is crucial to professional identity development.

Patrick Schiltz notes the importance of community and peer groups with regard to professional identity development for law students and young lawyers. He argues that professional identity formation has little to do with knowledge of

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were viewed as acceptable "torchbearers" for the values and activities of the profession. Students would later be expected to assume such activities themselves.

Bonnie Teschendorf & Maureen Nemshick, *Faculty Roles in Professional Socialization*, 15 J. PHYSICAL THERAPY EDUC. 1, 10 (2001), *available at* http://findarticles.com/p/articles/mi_qa3969/is_200104/ai_n8935867/?tag=content;col1.

70. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS 26–27 (2007). This book is a report on the results of The Carnegie Foundation's "comparative study of professional education." *Id.* at v.

71. *Id.* at 27.

72. *Id.* at 28.

73. *Id.*

74. *Id.*

75. *Id.* The Carnegie Report also provides the following:

[The third apprenticeship's] lessons are . . . ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires.

*Id.*

76. *Id.* at 31.

77. *Id.* at 30.

78. *Id.* at 31.

and attention to the ethical rules.[79] Rather, he maintains that intuition[80] molded by mentoring is essential to the identification and solidification of ethical behavior by the novice.[81] He asserts that an ethical (and professional) practice is determined not by rules but by the culture of a community.[82] Lawyers must experience a sense of "integration" to some force to become and remain ethical.[83] Schiltz rejects the notion that lawyers are heavily influenced by the tradition of law as an institution.[84] Instead, he argues that anchoring to peers is the essential influence in the moral and ethical development of the lawyer: "[T]he anchoring that most matters is horizontal—that is, outward to those people about whom the lawyer cares—rather than vertical—that is, backward to a history or tradition."[85]

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79. *See* Schiltz, *supra* note 37, at 713. Schiltz concedes that the rules are important insofar as they influence "the conduct . . . and . . . values of the profession." *Id.* However, he asserts that they are largely irrelevant because so much of lawyering activity "is done in private," and therefore infractions may be unenforceable. *Id.* at 714. Further, the rules are insufficient because they set forth minimum standards of conduct, rather than "define ethical behavior." *Id.* at 715. "Complying with the rules of professional conduct no more makes an attorney ethical than complying with the criminal law makes a person moral. It simply means that the attorney or the person is not a law breaker. Behaving ethically requires something more than compliance with rules . . . ." *Id.*

80. Recognizing that "[t]he moral fabric of an attorney is stitched out of the dozens—hundreds—of decisions that she makes each day," Schiltz argues that the busy lawyer makes decisions each day "almost instinctively," with little time to reflect on the ethical or moral implications of her actions. *Id.* at 719. "What she does will not reflect the quality of her mind as much as it will reflect the quality of her character; it will not reflect discernment as much as it will reflect habit." *Id.* at 719–20.

81. *See id.* at 731–32.

82. *Id.* at 713. Schiltz provides the following foundation for his position:
     [T]he culture of a legal community does not reflect "big" decisions that members of the community make about "big" problems, as much as it reflects the dozens of ordinary, mundane decisions that every attorney makes—and makes intuitively—every day. And finally, the intuition that guides these decisions is in large part a product of the mentoring received by the attorney. In sum, conduct is influenced by culture, culture by intuition, and intuition by mentoring.
*Id.*

83. *Id.* at 732. Integration can be to an internal or external force. *Id.* Internal integration suggests that an individual responds to an internal sense of right and wrong or "uses the same moral compass in all aspects of her life." *Id.* External integration can be vertical or horizontal. *Id.* at 734. Vertical integration views history and tradition as external sources for ethical behavior. *Id.* Horizontal integration, by contrast, is anchoring to peers. *Id.* at 735.

84. *Id.* at 734–35 ("I doubt that this type of vertical anchoring to the past is common among attorneys today. In addition, it is a rare lawyer who is inspired to do much of anything—much less anything that takes great courage—by devotion to something as abstract, remote, and bloodless as 'the well-being of the law.'").

85. *Id.* at 735. Schiltz concludes that horizontal integration influences ethical behavior because it reinforces a sense of community. *See id.* Lawyers who are integrated to their peers are more accountable because their participation in the peer group decreases a "sense of anonymity." *Id.* Integration or anchoring to a peer group enhances the community and therefore "increases the costs of unethical" behavior because such behavior reflects on the group as a whole. *Id.* at 736. Finally, the connection to the community associated with peer group integration increases the likelihood of ethical and professional behavior because it enhances a sense of ownership in the profession: "[A]

New lawyers will therefore experience some form of integration with and anchoring to other lawyers practicing in the community, including the varied communities posited by Weidman et al.[86] This integration will influence how the lawyer practices law and how she adapts to the ethical and professional expectations of her peers. There is also an individual component to professional socialization, as the novice relies upon and is guided by internal influences. In his article likening the practice of the law to the mastery of a craft, Brett G. Scharffs writes, "How does a craftsperson learn her craft? She does so slowly, patiently, and ideally at the knee of a master craftsperson."[87] Noting the role of theory, practice, repetition, and mimicry, Scharffs posits that, while the novice learns in part by imitating the master, mastering a craft requires more than mere copying.[88] Indeed, "'it is in the breaking away from the established order of things that our personality finds expression, and an original turn is given to work. You use tradition and are guided by precedent, but are not bounded by it.'"[89]

Thus, when a novice enters a new community, she will adapt her behavior in large part to conform to the expectations of the group. Some aspects of her indoctrination will occur prior to law school, while others will occur in the formal educational setting. Her professional identity development will not be complete in the formal educational setting, but it will continue as she enters practice and is exposed to experienced peers.[90] Her expectations and the

lawyer may spend his entire life working in his professional community, so he should work to make the community as honorable as possible." *Id.*

86. *See* WEIDMAN ET AL., *supra* note 30, at 37 (noting the following communities applicable to professional identity development: prospective students, the university, personal communities, novice professional practitioners, and professional communities).

87. Brett G. Scharffs, *Law as Craft*, 54 VAND. L. REV. 2245, 2334 (2001). Regrettably, Scharffs concludes as follows:

> In today's legal environment, one reason the ideals of apprenticeship are under siege is because in order to compete for the best law school graduates, starting salaries of first-year associates are very high. Given the high degree of mobility of lawyers, firms are less willing to take a long-term view of the young attorney's development, and are more likely to expect young lawyers to be revenue generators immediately. This leaves no room for apprenticeship, and may contribute to widespread associate dissatisfaction.

*Id.* at 2337 (citing Patricia M. Schnegg, *An Embarrassment of Riches*, L.A. LAW., May 2000, at 11, 11).

88. *Id.* at 2343 ("Learning a skill is not a mechanical activity but an emotional as well as intellectual and physical process." (internal quotation marks omitted)).

89. *Id.* (citing FRED MILLER, THE TRAINING OF A CRAFTSMAN 28–29 (New York, Truslove & Comba 1898)).

90. "For more than a century after the nation's founding, peer pressure and accepted customs of legal practice, rather than written rules or written codes of conduct, served as the dominant influences shaping lawyers' conduct." Peter A. Joy, *Making Ethics Opinions Meaningful: Toward More Effective Regulation of Lawyers' Conduct*, 15 GEO. J. LEGAL ETHICS 313, 321 (2002). Joy acknowledges that "[p]rior to the American Revolution, lawyers in the colonies often studied at the Inns of Court in London, where initiates to the legal profession joined a close-knit group with common eating rooms and common goals." *Id.* n.23. Others have recognized the difficulty associated with providing law students an adequate foundation in professional identity development,

expectations of her fellow novices will, in turn, influence the expectations of the group as a whole.[91] Acknowledging the sociological theory of professional identity formation, legal educators should carefully examine opportunities for knowledge acquisition, investment, and involvement, and they should carefully consider the impact of relevant communities and social networks.

But, as has been true in the professional landscape since its beginning, there is a generational span in law practice. As many scholars have explained, each generation has its unique characteristics and expectations,[92] and those unique qualities have an impact on the professional norms of the group. For example, changing demographics in the population of lawyers has had a significant historical influence on professional norms.[93] Women, for example, have changed many professional expectations.[94]

As Robert MacCrate explains, when women initially entered the professional community, they "accepted the legal environment as they found it."[95] Over time, their approach changed:

> [As] they grew in number and significance within the profession, . . . they enlisted their male contemporaries in confronting together the realities faced by their generation. The result has been a further conflict between traditional legal culture and life circumstances faced by the new generation of lawyers now entering the profession.[96]

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largely because the development is so dependent on association with peer groups. For example, Stephen Gillers has addressed whether the foundation of professional responsibility instruction is art or theory. *See* Stephen Gillers, *Legal Ethics: Art or Theory?*, 58 N.Y.U. ANN. SURV. AM. L. 49, 50 (2001). He acknowledges that "[t]he lifeblood of the law governing lawyers is what works best to respond to the empirical expectations of lawyers and clients while also protecting the values of the justice system." *Id.* at 54. However, because "[d]ealing with clients, judges, adversaries, and co-workers in a practice environment . . . emphasizes the importance of rules that work in the world practicing lawyers actually inhabit," he concludes that "[l]egal ethics cannot have a theory . . . . It is about experience." *Id.*

    91. *See* Eisele, *supra* note 38, at 1306.

    92. *See, e.g.,* WILLIAM STRAUSS & NEIL HOWE, GENERATIONS: THE HISTORY OF AMERICA'S FUTURE, 1584 TO 2069, at 8 (1991) (theorizing that each American generation has sequentially recurring characteristics); Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 119, 120–22 (2003) (citing STRAUSS & HOWE, *supra*, at 48; ZEMKE ET AL., *supra* note 2, at 64) (discussing the defining events of each generation).

    93. *See* Robert MacCrate, *What Women Are Teaching a Male-Dominated Profession*, 57 FORDHAM L. REV. 989, 990–91 (1989).

    94. *See id.*

    95. *Id.* at 993. *See generally* Minna J. Kotkin, *Professionalism, Gender and the Public Interest: The Advocacy of Protection*, 8 ST. THOMAS L. REV. 157, 173 (1995) ("Values of care and connection need not disadvantage women in the practice of law. They can be incorporated into an 'advocacy of protection' that can help change professional norms.").

    96. MacCrate, *supra* note 93, at 993–94.

The increasing ethnic diversification of the legal community has also changed certain professional expectations.[97] Carrie Menkel-Meadow observes the following:

> The dramatic changes in the demographics and social and economic organization of the legal profession have led to change at two levels— actual change (represented in different work policies at the official level and work-style changes at the behavioral level), and more theoretical, proposed changes in the suggestions for innovations that have come from new entrants to the profession, clients and others who seek to adapt to a changing world.[98]

Thus, even the changing demographic of the American client has modified expectations regarding professional behavior.[99] Because "[e]thical dispositions and habits in professional identity from this perspective are not only learned, they are also learned by 'engaging in action with other people' over time,"[100] an examination of the current demographic, with a focus on differences relating to the expectations of various generations in law practice, may inform the success of innovations in professional identity development.

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97. *See* Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering,* 44 CASE W. RES. L. REV. 621, 637 (1994); Andrew Bruck & Andrew Canter, Note, *Supply, Demand, and the Changing Economics of Large Law Firms,* 60 STAN. L. REV. 2087, 2098 (2008). Liwen Mah argues that professional norms are influenced by two competing attitudes: "First, the profession sees nobility in its cause, believing that the 'practice of law "in the spirit of a public service" can and ought to be the hallmark of the legal profession.' . . . Second, the profession sees value in its own perpetuation, economically, politically, and socially." Mah, *supra* note 33, at 1725. (citing STANLEY COMMISSION REPORT, *supra* note 4, at 261). Mah notes that Latino and Asian lawyers' perceptions of law and the role of the lawyer vis-à-vis the client is in tension with certain traditional professional norms such as "client autonomy." *Id.* at 1754. Mah argues that the legal profession has a duty to accommodate cultural norms:
> By recognizing different cultural norms, professionals can better serve clients without diminishing the importance of either American law or other cultures. Lawyers can minimize or prevent many conflicts by building closer, longer-term relationships with Latinos and Asians and by becoming involved in those populations' cultures to foster trust before crises arise. By encouraging cultural sensitivity to diverse worldviews, the bar can also promote meaningful client autonomy and consideration of clients' interests in the context of their society.
*Id.* at 1772.
98. Menkel-Meadow, *supra* note 97, at 637.
99. *See generally* Quintin Johnstone, *An Overview of the Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects,* 26 QUINNIPIAC L. REV. 737, 790–96 (2008) (examining how the values of the legal profession will change in response to changing service needs and changes in sectors of representation); Mah, *supra* note 33, at 1763–72 (asserting that the legal profession should reform to meet the needs and expectations of minority clients).
100. Charles R. Foster, *Identity and Integrity in Clergy Formation,* 5 U. ST. THOMAS L.J. 457, 467 (2008).

IV.  GENERATIONAL CHARACTERISTICS AND THE GREAT DIVIDE

In today's snapshot, new lawyers come primarily from the Millennial generation,[101] while experienced lawyers are typically members of the Silent Generation, the Baby Boomer Generation, and Generation X. These generations have increasingly different expectations about professional life and the working environment.[102] In some instances, these differing expectations can result in a disconnect with regard to professionalism. In other cases, they may result in the modification of professional norms. Because "[t]he profession's social contract with society—the principles of professionalism—must be renewed by each professional generation,"[103] it is important to understand how different expectations, motivations, and values can give rise to perceived lapses in professionalism and the incomplete development of a professional identity.

### A.  Understanding the Generations

#### 1.  The "Silent" Generation—Born 1920–1945

According to one report, "[n]early 16 million Americans age 55 and over are either working or seeking work, representing about 21 percent of the workforce."[104] The Silent Generation, also called "Traditionalists,"[105] grew up during the depression and were children of the heroes of World War II.[106] Silents value conformity and discipline.[107] This generation has generally had stable, predictable career paths, working loyally and diligently for a limited number of employers.[108]

#### 2.  The "Boomer" Generation—Born 1946–1963

"Baby Boomers make up the largest population of today's workers—at 76 million strong. Employees within this category account for 52 percent of the

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101. *See* ZEMKE ET AL., *supra* note 2, at 127 ("Millennials [are] . . . the first graduating class of the new millennium.").

102. *See* Nancy Peppard & Mike Long, *Shift Happens*, OR. ST. B. BULL., July 1999, at 33, 34–35.

103. Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 128 (2007).

104. Bob Nelson, *Tips and Techniques to Bridge the Generation Gaps*, HEALTHCARE REGISTRATION, Jan. 2007, at 3, 3.

105. ZEMKE ET AL., *supra* note 2, at 30.

106. *See* STRAUSS & HOWE, *supra* note 92, at 284.

107. *See* ZEMKE ET AL., *supra* note 2, at 38–39.

108. *See* Nelson, *supra* note 104, at 4 ("Employees who fall into this group generally have had predictable career paths, working hard for one or two companies and moving up the ladder of success. They are characterized by their dedication to their employer and, as a group, are considered to be non-risk takers and conformers.").

workforce and account for most mid-level and upper-management positions."[109] Boomers are unique with respect to the size of the generation, which will make a significant economic impact on the United States in terms of healthcare and Social Security.[110] Boomers were the first generation to be raised with television, and they came of age during the Vietnam War and the protest to the draft.[111] They have been referred to as the "Sandwich Generation" because of the fact that their parents are living longer and, in some cases, requiring care, while their children are seeking better and more advanced degrees.[112]

As employees, Boomers have been described as individualistic and hardworking. "It is a generation that likes to win, to be in charge, and to make an impact. Having grown up in post-war prosperity, Boomers were the focus of society—and, as a result, they can be extremely self-indulgent."[113] On the other hand, because many Boomers have elected to remain in the workforce beyond the age of sixty-five, they also seek a work–family balance.[114]

### 3.    "Generation X"—Born 1964–1981

In their book, *Generations: The History of America's Future, 1584 to 2069*, William Strauss and Neil Howe point to the cultural influences that shaped the "Generation X,"[115] including an increase in divorce and in mothers working outside the home, a disaffection and distrust of leadership, the emergence of new computer technology, and the end of the Cold War.[116] "There are 40 million-plus Gen-X employees, accounting for 26 percent of the workforce."[117] They are technologically sophisticated,[118] resourceful, independent, and self-directed.[119] They tend to be selective in seeking employment, demanding an environment

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109. *Id.*

110. Janet Stidman Eveleth, *Baby Boomers Retire*, MD. B.J., Jan./Feb. 2009, at 4, 5.

111. *See id.* at 6.

112. Darrell R. VanDeusen & Meg Gallucci, *It's a Drag Getting Old—Boomer Retirement Impact on Employment Law*, MD. B.J., Jan./Feb. 2009, at 18, 19 ("[B]oomers have been called the 'sandwich generation' as they struggle to care for aging parents and raise children. But the boomer's children will face those same challenges, and there are going to be a whole lot more aging boomers for whom care will be needed.").

113. Nelson, *supra* note 104, at 4.

114. *See id.* at 4–5.

115. STRAUSS & HOWE, *supra* note 92, at 317 (referring to Generation X as the "Thirteenth Generation" or "13ers").

116. *See id.* at 324–34; ZEMKE ET AL., *supra* note 2, at 98–102.

117. Nelson, *supra* note 104, at 5.

118. ZEMKE ET AL., *supra* note 2, at 102. Many of the most successful companies today were founded by individuals in the Generation X cohort, including Google, Yahoo!, MySpace, Dell, and YouTube.

119. *See, e.g., At A Glance: Employee Groups by Generation*, 16 HEALTHCARE REGISTRATION 7 (2007) (noting that Generation X employees tend to be "[r]esourceful; [t]ech-savvy; [s]elective in terms of seeking opportunities that allow them to enjoy working will friends; selective in terms of seeking opportunities based on the expectation that work will be purposeful; and [s]keptical of institutions").

that allows them to work with friends and that they find meaningful.[120] They entered the workforce "at a time of [corporate] downsizing," and they tend to be "skeptical of authority."[121] Xers are motivated by training, particularly training that involves technology. They generally appreciate the opportunity to work and interact with management.[122] They like to have fun[123] and are similarly motivated by an egalitarian environment.[124]

### 4.    The "Millennials" ("Generation Y")—Born 1981–1995

Perhaps the most defining characteristic of the Millennial Generation is its reliance on electronic, digital communication. In their book, *Connecting to the Net.Generation: What Higher Education Professionals Need to Know About Today's Students*, Reynol Junco and Jeanna Mastrodicasa surveyed 7,705 American college students and found the following: 97.3% own a computer; 94.1% own a cell phone; 75.5% use instant messaging; 15% of instant messaging users are logged on twenty-four hours a day, seven days a week; 33.7% use web sites as their primary source of news; 44.4% read blogs and 28% have their own blog; and 68.5% have a Facebook account.[125]

This generation has been characterized as needing immediate feedback to illustrate the value of their contributions.[126] "They are willing to take on new

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120. *Id.*

121. Nelson, *supra* note 104, at 5.

122. *See* Nelson, *supra* note 104, at 5. Nelson notes the incentive opportunity offered by Siemens Nixdorf Information Systems, which "formed a team of . . . young, talented employees— all under 40—to advise the company's management on breakthrough technologies, competitive forces, and demographic trends. Being named to this team is a highly valued honor." *Id.*

123. *Id.*

124. *See* McGaugh, *supra* note 92, at 130. With regard to egalitarianism, McGaugh notes the following:

  Because Xers perceive a much more level playing field than Boomers and Silents did before them, Xers are much more likely to communicate with teachers and supervisors in a way that is considered challenging or confrontational. In particular, Xers are very comfortable making suggestions to and questioning those further up in a hierarchical structure. They are very *un*comfortable with heavy-handed supervision that lays down rules or gives instructions but gives little or no explanation for them.

*Id.*

125. REYNOL JUNCO & JEANNA MASTRODICASA, CONNECTING TO THE NET.GENERATION: WHAT HIGHER EDUCATION PROFESSIONALS NEED TO KNOW ABOUT *TODAY'S* STUDENTS 67, 70– 80 (2007).

126. *See* Nelson, *supra* note 104, at 5. This phenomena is directly related to the reality of both the Xer and Millennial experience:

  The fast paced, omnipresent access to data, entertainment, and entertaining data that technology created also shaped Gen X Y students into expert multitaskers who tend to block out information not seen as immediately relevant. For them, information is perceived as a readily available commodity often only keystrokes away. The immediacy of information for Gen X Y students is a drastic contrast to members of previous generations, who experienced information as difficult to acquire.

challenges" but are unwilling to sacrifice other meaningful aspects of their lives, including time with friends and family.[127] They need to be excited about what they are doing each day and are happy to work from home.[128] They are not interested in paying their dues, and they need more than monetary remuneration to be satisfied in their careers.[129]

> B.  *Generational   Differences   and   Effect   on   Professional   Identity Formation: The Ebb and Flow of Conventional Expectations Regarding Professionalism*

Against the backdrop of some common characteristics of the generations, there are several areas where these differences may give rise to perceived or real lapses in professionalism. Lapses can relate to informal expectations of professionalism, such as civility and respect, or to more formal obligations, such as competence and diligence. Expectations about the working environment, including the work–life balance of law practice, the accessibility of information, and the hierarchies and loyalties associated with a legal career, are common sources of misunderstanding.

> 1.  *Work–Life Balance*

One clear source of conflict between generations regarding how they approach the practice of law is the expectation different groups bring to the practice environment regarding work–life balance. As noted, Baby Boomers are accustomed to working hard and paying their dues.[130] They do not expect immediate gratification or reward. In contrast, Millennials expect their work to

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Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775, 781–82 (2008) (citing McGaugh, *supra* note 92, at 127–28).

127. Nelson, *supra* note 104, at 5; *see* Jill Schachner Chanen, *The Great Divide: Partners and Associates Are at Odds Over Opposing Approaches to Work, Play and the Practice of Law*, A.B.A. J., May 2006, at 45, 48, *available at* http://www.abajournal.com/magazine/the_great_divide. Chanen explains that Millennials have different priorities than older workers: "Many do not see partnership as the reward that it once was thought to be. Instead, they are more focused on work-life balance and getting the most of their law firm experience before possibly moving on to another opportunity." *Id.*

128. Nelson, *supra* note 104, at 5; *see* Chanen, *supra* note 127 (noting that Millennials' familiarity with technology makes "it possible to thoroughly review a file as easily from home or from Starbucks as from the office or a dirty warehouse").

129. *See* PETER SHEAHAN, GENERATION Y: THRIVING AND SURVIVING WITH GENERATION Y AT WORK 28–36 (2005).

130. *See* Ellen M. Hunt, *Values vs. Rules: The Goal of Ethics Education, in* CORPORATE COMPLIANCE AND ETHICS INSTITUTE 2009, at 345, 352 (PLI Corporate Law & Practice, Course Handbook Series No. B-1731, 2009) (characterizing the Boomer education experience by the following rules: "memorize the rules and you won't get into trouble; color within the lines; work hard and you'll get ahead; work first, play later; [and] it's all about doing the right thing because it's, you know, the right thing").

be consistently meaningful and rewarding, as well as financially lucrative.[131] As noted by Deborah Rhode, the realities of law practice are significantly different from the expectations fostered by the media.[132] The divide between expectation and reality is particularly wide for new lawyers:

> The sheer drudgery of many legal matters, particularly in large firms, exacts a heavy price. It is not surprising that recent graduates from the most prestigious schools, although working in the most prestigious firms, express the greatest dissatisfaction with their careers; they expected more from their credentials.
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> . . . .
>
> . . . In a profession in which half the talent pool is now female and most men, as well as women, want a balanced life, employers can ill afford policies that prevent it. Today's generation of lawyers grew up expecting fulfillment in both work and family, and are increasingly unhappy about settling for less.[133]

Newer, younger lawyers demand a more balanced work schedule, and they are not willing to settle for less.[134] Indeed, while money motivates Millennials to work,[135] most are not willing to sacrifice their personal lives for additional compensation. "Many young lawyers say they are not willing to sign their lives over to their law firm, no matter how much they are paid. Instead, they want the time to pursue other interests and build lives of their own."[136] Boomers find this

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131. *See* JEAN M. TWENGE, GENERATION ME: WHY TODAY'S YOUNG AMERICANS ARE MORE CONFIDENT, ASSERTIVE, ENTITLED—AND MORE MISERABLE THAN EVER BEFORE 79–80 (2006).

132. *See* Deborah L. Rhode, *Foreword: Personal Satisfaction in Professional Practice*, 58 SYRACUSE L. REV. 217, 223 (2008). Rhode notes:
> One cluster of problems involves the substance of legal practice and the gap between expectations and realities. Individuals often choose law as a career with little knowledge of what lawyers actually do. Law in prime time media offers some combination of wealth, power, drama, or heroic opportunities. Law in real time is something else, particularly for those at the bottom of the pecking order.

*Id.* (citing K. CHARLES CANNON, THE ULTIMATE GUIDE TO YOUR LEGAL CAREER 4, 9 (2007); Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1, 11–12 (2007)).

133. *Id.* at 223–24, 228.

134. *See* Nelson, *supra* note 104, at 5.

135. *See* TWENGE, *supra* note 131, at 79. Money motivates in large part because Millennials have a great deal of debt to repay for their educations. According to the Law School Admission Council, "the average law school debt is about $100,000. For those who borrowed only federally guaranteed student loans, the average debt is just over $55,000." LAW SCHOOL ADMISSION COUNCIL, FINANCIAL AID FOR LAW SCHOOL: A PRELIMINARY GUIDE (2009), *available at* http://www.lsac.org/pdfs/finaidweb.pdf.

136. Chanen, *supra* note 127, at 46.

work ethic insufficient and unprofessional.[137] In fact, "modern law firms are characterized by cross-generational conflicts over time norms. Older lawyers often see younger lawyers as 'slackers' who 'want the gravy and none of the grief.'"[138]

The differing attitude over the amount of time associates should devote to practice is further complicated by associates' expectations about salary. New lawyers' salaries are increasingly high,[139] and that is "diluting the value of partnership."[140] In addressing the divide between expectations of time and remuneration in law practice, Jill Schachener Chanen reports the following:

> [An associate in a large Chicago law firm] long ago fingered the high salaries as part of the reason that so many more senior lawyers were decrying his generation. "So many lawyers have practiced for 20 years and didn't start hitting their financial stride until year eight," he says. Now, associates in large firms are starting with salaries into the six figures, and he speculates that senior lawyers view this as wrong.[141]

It is noteworthy, however, that Generation X employees and, indeed, some Boomer lawyers, are beginning to reexamine common time norms associated with law practice.[142] This may be attributable to a variety of factors, including the increased presence of women in law practice and changing roles and expectations of men with regard to childrearing.[143] For male attorneys, "[t]his generational shift may also be due, in part, to a new image of fatherhood that has arisen in recent decades. . . . The idea of the father as the breadwinner is still alive and well, but the idea of the father who is also a nurturer is on the rise."[144] Further, male attorneys today are more likely to be married to women who work outside the home, which likely results in more responsibility at home.[145]

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137. In the context of professionalism, these concerns go beyond mere informal expectations about conventional behavior at work. They can be perceived as falling short of more formal professional responsibilities, including competence and diligence. *See* Joan C. Williams, *The Politics of Time in the Legal Profession*, 4 U. ST. THOMAS L.J. 379, 394–97 (2007).

138. *Id.* at 396 (citing CYNTHIA FUCHS EPSTEIN ET AL., THE PART-TIME PARADOX 60 (1999)).

139. *Id.* at 397 (citing Eric Young, *Bay Area Law Firms Hike Starting Pay in Salary War*, S.F. BUS. TIMES, May 4, 2007, *available at* http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2007/04/30/daily49.html). The economic downturn may be changing this phenomenon. *See* Steven T. Taylor, *Starting Salaries are Frozen in Buyers' Market; Merit-Based Pay Gaining Traction*, OF COUNSEL, Dec. 2008, at 1, 1 ("For the first time in awhile, first-year associate salaries didn't increase last year, and they're not likely to jump up in 2009 . . . .").

140. Chanen, *supra* note 127, at 47.

141. *Id.*

142. *See* Williams, *supra* note 137, at 396.

143. *See id.* at 395–97.

144. *Id.* at 395.

145. *Id.* at 395–96. Williams notes how the increased pressure to participate in activities outside the work environment is more conventionally expected in women attorneys. *See id.* Males

For female attorneys, the conflict over time and familial responsibilities has been evident for years.[146] Females who make partner are less likely to have families.[147] In terms of generational conflict, younger lawyers are more likely than their predecessors to assume that they can have a career and a family:

> While older generations of women felt they could not "have it all," younger generations of women are challenging this idea. . . . [One study revealed,] "[t]here is a lot of tension." One senior female attorney commented: "You can't have it all. I couldn't have it all. I made my choice. You have to make your choice."[148]

Thus, there is a disconnect resulting from the inconsistent expectations about work–life balance brought to law practice by lawyers from different generations. While Boomers may characterize Generation X and Millennial lawyers as "slackers" and therefore unprofessional, younger lawyers are indeed demanding different working conditions. And, younger lawyers are willing to vote with their feet to acquire more flexible working conditions. As noted by one lawyer in an *American Bar Association Journal* article, "'[Millennial associates] really have bought into this work-life balance phenomenon that is pervading all industries. So they are not willing to work as late, be on call, work weekends. That is the mentality . . . .'"[149]

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who now succumb to that pressure and make nonwork related priorities are subject to some derision in firms. *Id.* One law firm consultant stated the following:

> [Law firms] sort of expect the women and the people of color to disappoint them, but they were shocked to find out that the young men did not want to make partner either. In fact, the young men were less interested in becoming partners than the young women. The young men are saying "we don't want to be like them," and the partners don't get that. What the partners characterize as a gender problem is more accurately described as a generational problem.

*Id.* at 396 (alteration in original) (citing Interview with M.J. Tocci, Principal of Trial Run Inc., in Pittsburg, PA. (May 2007)).

146. *See id.* at 396–97.

147. *Id.* at 396 (citing Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 144 (2004)). Similarly, Williams asserts that "women lawyers are much less likely than men to have children." Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 FORDHAM L. REV. 2221, 2228 (2002).

148. Williams, *supra* note 137, at 396–97 (quoting EPSTEIN ET AL., *supra* note 138, at 66). Again, this notion is related not only to "soft" professionalism considerations, such as adherence to a dedicated work ethic, but to the perception.

149. Chanen, *supra* note 127, at 48. The lawyer admitted that she often commiserated with colleagues, noting that they had not behaved the way younger associates do when they were on partner track. *Id.* "She offers numerous anecdotes, such as the associates who ask whether work can wait until Monday so they do not have to give up weekend plans, or those who refuse to work with certain partners or who use their BlackBerries to pretend they've left the office already." *Id.* But, while this lawyer admits that the behavior of younger associates "leaves her shaking her head," she acknowledges their concerns over balance, admitting, "'It's not a bad thing.' . . . 'I honestly can see both sides of the argument.'" *Id.*

The value of the Boomer generation regarding long hours at the office and "paying your dues" could be characterized as an informal convention of professionalism, but this value also reflects the perception that such sacrifices are required to maintain an effective practice that comports with minimum ethical standards.[150] These perceptions may be beginning to change as a result of the expectations of the younger generation. This is true in the medical profession, with restrictions on the amount of hours medical residents can work.[151]

Changes are taking place in the legal field as well, with new associates self-selecting firms that manifest a more balanced work–life atmosphere. Young lawyers may forgo a healthy paycheck for better working conditions.[152] One University of Minnesota lawyer took a pay cut when she elected to move to a more contemporary firm, reasoning, "'Lots of firms say, 'Oh, we're 150 years old' . . . and they do things like they did 150 years ago. That's not attractive to me. I want to do good work, not just slog through for years till I get my Persian rug and my 50-gallon fish tank.'"[153] Indeed, the business community has learned that "flexible work arrangements make good business sense."[154] Flexible work arrangements are also appealing to clients, who are interested primarily in maximizing profitability and efficiency: "[A]s a senior partner related . . . : 'I have found that clients, being very bottom-line oriented, quickly grasped that they would rather have 80% of an attorney that they knew and trusted, than

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150. *See* Inst. of Mgmt. & Admin., Inc., *What's Wrong in Our Firms: Why Won't More Lawyers Balance Their Lives?*, 95–5 PARTNER'S REP. 1 (1995) ("[I]t is obvious that in some practice areas both partners and associates have a far more difficult time meeting their professional responsibilities on part-time schedules."). The increasing number of lawyers who work in part-time positions suggest that it is possible to maintain an effective, ethical practice on a part-time basis.

151. *See* Elissa Fuchs, *Five Years Later, Resident Hours Limits Still Debated*, AAMC REPORTER, July 2007, http://www.aamc.org/newsroom/reporter/july07/residents.htm. In June 2002, the Accreditation Council for Graduate Medical Education (ACGME) instituted a new policy to limit medical resident duty hours to eighty hours per week. *Id.* The *AAMC Reporter*, a publication of the Association of American Medical Colleges, stated the following:

In addition to the regulation including the 80-hour workweek, residents received one day off per week, a 10-hour break between shifts, and the "24 plus six-hour" rule for continuous on-site duty, which limited clinical time to 24 consecutive hours, with six additional hours slotted for transfer of patient care and participation in didactic activities such as lectures. The regulations were intended to improve patient care, resident well-being, and the educational environment.

*Id.* In evaluating that decision five years later, the AAMC reported that the regulations have been met with mixed results. *Id.* While some report that residents are happier with the restrictions on workload, the *AAMC Reporter* notes that they "worr[y] about their patients" and the impact of "'handoffs,' when the physician treating a particular patient passes on this responsibility to another doctor once he or she has reached the duty hour limit." *Id.* (internal quotation marks omitted). The article concludes, "To date, the notion of whether the regulations are paying real dividends—be it through patient care, decreased resident fatigue, or other metrics—is . . . inconclusive." *Id.*

152. Nadira A. Hira, *Attracting the Twentysomething Worker*, FORTUNE MAG., May 2007, *available at* http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033934/index.htm.

153. *Id.*

154. Williams, *supra* note 147, at 2229.

100% of an attorney that knows neither them nor their deals.'"[155] Thus, educational and practice initiatives that acknowledge the differing expectations that younger lawyers bring to the practice of law may overcome a potential obstacle to professional identity formation for novice attorneys.[156]

### 2. Accessibility of Information and "Just in Time" Learning

Millennials and Xers grew up in the information age and have been accustomed to and reliant upon advanced technology their entire lives.[157] The manner in which they communicate has been largely electronic, and some have criticized the Millennial generation for their lack of face-to-face social skills.[158] One employment consultant acknowledged, "Millennials are highly skilled in new technology and social networking, which many baby boomers and Generation Xers sometimes find hard to understand."[159] This, coupled with the multi tasking capabilities of the younger generations, may be viewed by Silents or Boomers as disrespectful or a lack of professionalism.[160]

Moreover, the immediacy of information available to younger generations has created a community characterized as "just in time" learners:

> Because Xers have managed more information at every stage of their lives than any generation before them, they have developed the new skill of quickly sorting information into three categories before they ever let it sink in to their memories: (1) information needed now, (2) information definitely needed later, and (3) information that can be

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155. *Id.* (citing JOAN WILLIAMS & CYNTHIA THOMAS CALVERT, THE PROJECT FOR ATTORNEY RETENTION, BALANCED HOURS: EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS 11 (2001), *available at* http://www.pardc.org/Publications/BalancedHours1st.pdf.).

156. *See* Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 281 (2009). Recognizing the generation gap between law students and lawyers and the work–life balance expectation of the Millennial generation, McClellan recommends that seasoned lawyers avoid overwhelming law students and new attorneys. *Id.* at 278. "Students' lack of attention to detail proved to be the number one complaint of [surveyed] supervising judges and attorneys . . . to determine how to prepare our clinical and externship students better for practice." *Id.* at 279 (citing Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLINICAL L. REV. 105, 116 (2007)).

157. *See* Linda Green Pierce, *X Lawyers Mark New Spot*, OR. ST. B. BULL., June 2001, at 33, 33 ("Unlike boomers, who learned technology as it was invented, Xers grew up with computers.").

158. *See* TWENGE, *supra* note 131, at 39 (noting that older workers characterize younger workers as "too blunt").

159. Tom Gimbel, *Managing Millennials: Learning How to Work Optimally with the Newest Generation of Lawyers Will Drive Success for Forward-Thinking Law Firms*, LEGAL MGMT., Oct./Nov. 2007, at 20, 24.

160. *See* Pierce, *supra* note 157, at 33 ("[Xers'] short attention span, which may arguably limit focus, enhances the ability to do multiple tasks.").

found later if needed. This has given rise to the distinction between "just in case" learning and "just in time" learning.[161]

The difficulty with just in time learning in education and practice is that it is difficult to convey the importance of concepts to novices who do not understand its immediate relevance. Younger generation law students and lawyers "need to understand the 'just in time' value of everything they learn if they are expected to retain it."[162] This can be frustrating to older generations, who perceive the just in time aspect as an indication of apathy.[163]

### 3. Hierarchy, Participation, and Loyalty

Both the Millennial and Xer generation have been characterized as having a lack of regard for authority[164] and with an unrealistic sense of entitlement with regard to participation.[165] In law practice, this can translate to Boomers (and some senior Xer lawyers) as unprofessional.[166] In *Shift Happens*, Nancy Peppard and Mike Long write:

> Like their generational peers, Xer lawyers want to be challenged and stimulated at work, to be reasonably compensated for the work they do—*and* to have time to be participatory parents and to have a personal life. The[y] want to be provided opportunities for professional growth in the present, not the future. They want mentoring and feedback on the work they do. They want to feel valued. Many also want the opportunity to contribute to the development of firm policies and to participate in firm management.
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> Xer associates entering firms with these expectations chafe Silent and Boomer law firm partners. Their expectations are perceived by these partners as attitudes of entitlement. These partners are angered by Xer

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161. McGaugh, *supra* note 92, at 127; *see also* Pierce, *supra* note 157, at 33 ("[Xers] process information differently. The spurts of immediate information provided by computers and television has created a generation accustomed to getting information and education quickly and in sound bites.").

162. McGaugh, *supra* note 92, at 128.

163. *See id.*

164. *See* TWENGE, *supra* note 131, at 28.

165. *See* Peppard & Long, *supra* note 102, at 35. Millennials, in particular, have been criticized for needing excessive and immediate feedback. *See* TWENGE, *supra* note 131, at 39.

166. *See* McClellan, *supra* note 156, at 265–66. McClellan explains:

[Millennials] find safety in numbers, want constant contact with the supervisor and others, and do not like to critique each other's work. Boomer and Gen Xer managers, who value independent work, see the Millennials as wanting hand-holding. Some of these managers often fought conformity and thrive on being given a minimum amount of direction.

*Id.*

refusals or reluctance to accept the traditional assumption that associates must accept years of paying their dues and deferring gratification in exchange for a partnership opportunity.[167]

The Millennial generation's lack of regard for hierarchy can be linked to the social and political events that influenced them.[168] This was a generation of children who were told that their opinions (on just about everything) mattered.[169] Thus, they are accustomed to voicing those opinions and believe that their contributions should be valued, irrespective of their relative lack of experience.[170] The authoritative figures that influenced their development were publicly disparaged, leading them to conclude that these figures were likely as capable as more senior members of society.[171] One generational scholar notes that Millennials have a "'sense of entitlement'" and are not deferential, assuming an equality with more seasoned peers irrespective of experience.[172]

In addition to the lack of regard for hierarchy, Millennials have been characterized as collaborative to a degree deemed dependent by senior lawyers.[173] "'This is a generation that has grown up in a structured, collaborative learning environment and has a team-building mentality' .... '[O]ne of the things that is difficult for law firms is that this generation is seen as needing to be hand-held.'" [174] In addition to criticizing Millennials' need for excessive feedback, older workers complain about Millennials' assumptions about appropriate communication:

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167. Peppard & Long, *supra* note 102, at 34–35.

168. *See* McGaugh, *supra* note 92, at 120 ("Each generation is shaped by the historical events that took place during its members' critical development stages." (citing STRAUSS & HOWE, *supra* note 92, at 48)).

169. TWENGE, *supra* note 131, at 72.

170. *See* Gimbel, *supra* note 159, at 24. In addition to believing their opinions should be valued, Millennials tend to demand a great deal of feedback. *Id.* ("Millennials thrive on constructive communication, particularly feedback. As a generation of driven perfectionists, millennials want to ensure their work is done correctly, as well as receive praise.").

171. *See* TWENGE, *supra* note 131, at 145 (explaining that Millennials' "views of politicians have been shaped by Iran Contra, the Clinton-Lewinsky scandal, and the futile search for weapons of mass destruction in Iraq").

172. *Id.* at 29 (wryly observing that the following message has been communicated to Millennials throughout their lifetimes: "We are all equals here. I might have a Ph.D. and years of experience, but that doesn't mean I know any more than you"); *see also* McGaugh, *supra* note 92, at 130 (noting that Millennials see their elders as being on equal ground with themselves). McGaugh explains the following:

Xers do not see people in positions of authority as fundamentally different from themselves. To use the Xers' own politically correct jargon, those in authority may be "differently abled" by having skills and education that the Xers do not yet have themselves, but this does not necessarily make those in authority inherently more intelligent, moral, or valuable.

McGaugh, *supra* note 92, at 130.

173. Melody Finnemore, *Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business*, OR. ST. B. BULL., Nov. 2005, at 9, 9–10.

174. *Id.*

Some older business managers complain that young people today are too blunt. These managers say that young employees ask for instant feedback that's straightforward and uncomplicated, and give it in return. Some managers are surprised at young people's willingness to critique the performance of older people—it's a combination of the eroding respect for authority and the compulsive honesty of the younger generation.[175]

Further, the lack of regard for hierarchy translates to diminished loyalty to employers. The 2000 *Emerging Legal Workforce Study* reports the following:

[M]ore than half (56%) of all attorneys in law firms report they are most likely to change jobs within the next two years, and almost a third (32%) will do so within the next 12 months. In dramatic contrast, the 1999 general Workforce Survey found that just one-third (33%) of the total workforce said they will look for work with a different employer within two years.

Moreover, the study debunked the myth that being a lawyer is a lifelong career, as just two in three (67%) attorneys say they intend to remain in the legal profession for their entire career.[176]

Millennials "view a job as a means to an end [and] employment as a contract, meaning loyalty has little relevance; they are not afraid to leave for another job."[177] "[F]or this generation there isn't a career ladder. There's a career lattice. They can move laterally, stop and start, their career is more fluid."[178]

A flexible working week, the opportunity to do work that makes a difference, the absence of organisational loyalty and an unwillingness to put up with "corporate slavery" are trends that are here to stay—people want a *life* and Generation Y are calling for it the loudest. When they don't get it, they talk with their feet, and this is the reason management

175. TWENGE, *supra* note 131, at 39 (concluding that "managers are surprised at young people's willingness to critique the performance of older people—it's a combination of the eroding respect for authority and the compulsive honesty of the younger generation").

176. Gregory J. Mazares, *Associate Retention for Law Firms: What Are Your Lawyers Saying About You?*, 29 CAP. U. L. REV. 903, 906 (2002).

177. Robert Wendover, *Meet Your New Boss . . . A Gen Xer!*, COMPENSATION & BENEFITS FOR L. OFF., Feb. 2009, at 1, 13 (concluding that "[t]he days of staying with the same employer year after year is lost on [the Millennials]").

178. Diane Thielfoldt & Devon Scheef, *Generation X and the Millennials: What You Need to Know About Mentoring the New Generations*, A.B.A. L. PRAC. MGMT. SEC., Aug. 2004, http://www.abanet.org/lpm/lpt/articles/mgt08044.html.

and retention of Generation Y are two of the biggest issues facing business today.[179]

This is clearly in direct conflict with Boomers' life views that with experience comes respect, and loyalty to employers correlates to long-term success.[180]

Different expectations about the working environment can lead to clashes in the workplace and specifically to accusations by older lawyers about the lack of professionalism of younger lawyers. Work–life balance concerns are legitimate, but client needs have to be met. No one really likes a hierarchy,[181] but hierarchies are a reality of law practice. Professional identity development strategies in legal education and practice should illustrate these realities to younger lawyers while taking into account their expectations about law practice.[182]

## V. INNOVATIONS IN INTEGRATION

If a degree of loyalty is something the profession values, what should we do as educators and lawyers to help novices incorporate this concept into their professional identity? If egalitarian participation in all matters of law practice is unrealistic given existing hierarchies, how does the profession instill in novices a regard for authority? How do experienced lawyers and law faculty take into account the younger generation's predisposition for work–life balance while helping them to accept the demands of a challenging legal practice?[183]

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179. SHEAHAN, *supra* note 129, at ix.

180. *See* Peppard & Long, *supra* note 102, at 35.

181. Well, perhaps those at the top of the hierarchy appreciate its value.

182. *See, e.g.*, Sylvia Cardona, *Because I Said So*, 72 TEX. B.J. 298, 298 (2009) ("[W]e are all taking part in a 'new-age experiment: four generations working side by side yet often speaking a different language.' This view begs the question: Can there be a middle ground or common language between the generations? . . . [W]e [might] approach the topic by thinking about the issues from other generations' points of view." (internal quotation marks omitted)).

183. Many scholars have called for reform in professionalism instruction in legal education and in practice. *See, e.g.*, Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555, 563–64 (2007) (calling for additional opportunities for law students to "form connections with lawyers"); Nancy J. Moore, *The Usefulness of Ethical Codes*, 1989 ANN. SURV. AM. L. 7, 18 (analyzing whether new ethics codes adequately address ethical and professional behavior). Moore concludes that "an intense educational effort" is required:

> This effort should be aimed, first, at ensuring that lawyers understand their *legal* obligations (whether derived from tort, contract, or agency law, or from the enforceable rules of professional conduct) and, second, at developing an awareness of the importance of ethical principles and moral reasoning in resolving the myriad of problems that arise in the daily practice of law. This effort will necessarily begin in the law schools, but should not be limited either to a separate course in Professional Responsibility or to undergraduate legal education. It must extend not only to continuing legal education programs, but also to the law firms themselves, perhaps in the creation of law firm ethics committees and other means of institutionalizing ethics into the very framework of legal practice.

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There are, in fact, many remarkable initiatives that address not only the core elements of professional identity development, including knowledge acquisition, investment, and involvement, but that also relate in many ways to the developments in professionalism expectations attributable to the changing demographic profile of law students and lawyers. Because lawyers will learn the conventions of professionalism through exposure to their peers prior to law school, in law school, and beyond, efforts that recognize different and conflicting values in multigenerational communications will be most beneficial. Also, initiatives that take into account younger generations' egalitarian approach to work, particularly by enabling the novice to communicate personal values, are more likely to be effective. The following initiatives are highlighted largely because of their emphasis on connecting members of generations in the context of professionalism instruction. These initiatives also speak to the core elements of professional identity development suggested by sociologists.[184]

### A. Legal Education Initiatives

#### 1. Mentoring in Law School

One particularly promising initiative in legal education is the development of formal mentoring programs for law students. As Julie A. Oseid notes, "[e]very lawyer should be on a lifetime journey to embrace professionalism, and mentoring is one way to help lawyers develop professionalism."[185] Mentoring initiatives are particularly valuable because they bring together the novice and the practicing attorney, and they provide the novice an opportunity to explore issues of professionalism informally.[186] They also provide a compelling "real life" dimension to professionalism by taking instruction out of the classroom and into the practice environment.[187] Ursula Weigold explains that "[a]lthough exposure to law practice may not be efficient in transmitting doctrinal rules, it is more effective than classroom instruction for teaching the standards and values

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*Id.* at 18–20. It is within these categories—legal education as well as law practice—that effective educational initiatives will be explored below.

184. *See generally* WEIDMAN ET AL., *supra* note 30, at 16 (describing the core elements of professional identity development as "knowledge acquisition, investment, and involvement").

185. Julie A. Oseid, *When Big Brother is Watching [Out for] You: Mentoring Lawyers, Choosing a Mentor, and Sharing Ten Virtues from My Mentor*, 59 S.C. L. REV. 393, 399 (2008) (citing Antonio "Tony" Alvarado, *A Radical Proposal for Lifetime Professionalism*, 37 ST. MARY'S L.J. 1053, 1087–88 (2006)). Oseid observes, "The four benefits of mentoring include career mentoring to enhance the protégé's advancement in the organization, psychosocial mentoring to enhance the protégé's sense of competence and identity, role modeling, and professionalism mentoring. Lawyer mentors provide all four benefits." *Id.* at 399–400.

186. *Id.* at 400 (citing Chenise S. Kanemoto, Bushido *in the Courtroom: A Case for Virtue-Oriented Lawyering*, 57 S.C. L. REV. 357, 383 (2005)).

187. *See* Ursula H. Weigold, *The Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students*, 33 PEPP. L. REV. 677, 695 (2006).

of the legal profession."[188] Attorney "mentors can have a profound effect on the ethical development of law students by influencing the formation of character at a critical stage of their education and by helping them to integrate their own moral values into their professional lives."[189] Mentors provide socialization for law students "by exposing them to the moral and ethical dimensions of law practice and allowing them to observe the standards of experienced attorneys."[190] Because "[r]egular contact with attorney-mentors serves to initiate novices into the culture and language of the profession, and the values and beliefs of practitioners"[191] and in all likelihood provides an opportunity for interaction between generations, mentoring in law school is an effective professional identity development initiative.

The Mentoring Program sponsored by the Georgia Chief Justice's Commission on Professionalism is a notable example.[192] In this program, Georgia lawyers serve as mentors for students at the five Georgia law schools, including Emory, Georgia State, John Marshall, Mercer, and the University of Georgia.[193] The goal of the program "is to provide experienced practitioners as mentors for law students to better assure that, as graduates, they will be equipped to deal with the realities of the practice of law, and to understand ethics and professionalism more fully." [194] "The program provides students contact throughout their law school careers with practicing lawyers and the opportunity to address issues of current concern to the profession and to learn the things they need to know to practice law which they may not learn in the academic setting."[195]

The University of St. Thomas Law School has created a formal Mentor Externship Program that received the distinguished American Bar Association's E. Smythe Gambrell Professionalism Award (Gambrell Award) in 2005.[196] The program is focused on professionalism and has three primary objectives.[197] The first objective is "[t]o foster professionalism for students and mentors."[198] The second objective is "[t]o provide students with an experiential window through which to view the professional world and exposure to the diverse spectrum of

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188. *Id.*
189. *Id.* at 696 (citing Schiltz, *supra* note 37, at 732–33).
190. *Id.*
191. *Id.*
192. *See generally* State Bar of Georgia-Mentoring, http://www.gabar.org/related_organizations/chief_justices_commission_on_professionalism/mentoring/ (last visited Oct. 30, 2009) (describing Georgia's Mandatory Transition Into Law Practice Program (the Mentoring Program)).
193. *Id.*
194. *Id.*
195. *Id.*
196. American Bar Association Center for Professional Responsibility, Gambrell Professionalism Award Winners, http://www.abanet.org/cpr/awards/prevwinners.html (last visited Oct. 30, 2009).
197. Hamilton & Brabbit, *supra* note 103, at 123.
198. *Id.*

work that lawyers and judges do."[199] Finally, the externship program is designed "[t]o create opportunities for students to engage in conversations with mentors, full- and part-time faculty, and peers about professionalism, the practice of law, and what they are observing and learning through their mentor experience."[200] "The environment provides a 'real world' framework for each student to test his or her understanding and expectations of professionalism in a way the traditional classroom or lecture cannot capture."[201]

At Vermont Law School, the General Practice Program (GPP) received the 2007 Gambrell Award.[202] The GPP is a "certificate program that integrates substantive law, professional skills and professional responsibility using a simulated-based methodology."[203] Members of the law faculty as well as local attorney mentors facilitate the GPP.[204] The GPP "provide[s] an alternative to the traditional law school curriculum by allowing students to create a sense of professional self while still in law school. . . . By putting professionalism issues front and center, the program communicates to students that issues of professional conduct deserve study and reflection."[205]

The Florida Bar Association's Standing Committee on Professionalism has created an e-mentoring program "to assist future lawyers while they are still in law school, and allow the students to obtain practical advice and a realistic view of what the practice of law entails."[206] Mentors in the program must have been Florida Bar Members in good standing with the bar association for seven years and must have a genuine interest in the program.[207] Recognizing that "today's students need the advice of working lawyers who have on the job experience . . . e-mentoring has the advantage of transcending geographic boundaries and time constraints."[208] The program is voluntary, but "[t]he Center for Professionalism helps to facilitate the relationship by sending monthly discussion prompts to the mentors and proteges, such as articles that discuss something that happened in a case or something that is happening in the legislature that will affect the profession."[209] "The goal [of the program] . . . is to provide a safety net for young lawyers before they leave law school, before they pass the bar, and before

199. *Id.*
200. *Id.*
201. American Bar Association Center for Professional Responsibility, *supra* note 196.
202. *Id.*
203. *Id.*
204. *Id.*
205. *Id.*
206. NMR&S Center on Professionalism at the University of South Carolina School of Law, Initiatives & Awards – Mentoring Programs, http://professionalism.law.sc.edu/barinitiatives.php?id=10 (last visited Sept. 30, 2009) (discussing Mark D. Killian, *E-mentoring Is a Way to Connect with the Future*, FLA. B. NEWS, Jan. 1, 2005, at 27, 27).
207. Killian, *supra* note 206, at 27.
208. *Id.*
209. *Id.*

they take on the responsibility of representing the interests of clients in Florida."[210]

In Washington, D.C., the Hispanic Bar Association (HBA) has an innovative mentoring program for law students.[211] Together with local law firm Arnold & Porter, the HBA has created a mentoring program for Hispanic law students.[212] This initiative pairs members of the bar association or members of law firms with local Latino law students.[213]

The value of mentoring in professionalism instruction has been widely documented. Mentoring relationships provide students opportunities for knowledge acquisition, investment, and involvement. Moreover, mentorship programs in legal education put students, who are likely from a younger generation, together with seasoned lawyers, who are likely from an older generation, and therefore create cross generational peer experiences that likely assist young law students in professional identity development. Indeed, "[a] well designed formal mentor program that successfully combines the talents and skills of a mentor with a strong seminar component can foster ... principles [of professionalism] for the newest generation as well as older ones."[214]

### 2. Humanizing Legal Education Movement

Another new initiative in legal education is the humanizing movement.[215] The movement arose out of the observations of many law faculty that law students and lawyers are unhappy and unbalanced[216] and that much of the source of lawyer dissatisfaction begins in law school.[217] Specifically, scholars argue that

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210. *Id.*

211. *See* Hispanic Bar Association of D.C., http://www.hbadc.org/student/mentoring_programs (last visited Oct. 30, 2009).

212. *See id.*

213. *Id.*

214. Hamilton & Brabbit, *supra* note 103, at 128–29 (observing further that "[l]aw schools and state supreme courts can also require all law students or newly admitted lawyers to participate, thus avoiding the 'preaching to the choir' problem of many existing professionalism efforts").

215. *See* Florida State University College of Law, Humanizing Law School, http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html (last visited Oct. 30, 2009) ("Humanizing legal education is an initiative shared by legal educators seeking to maximize the overall health, well being and career satisfaction of law students and lawyers.").

216. *See, e.g.,* Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers,* 10 J.L. & HEALTH 1, 2 (1995–1996) (observing that elevated levels of psychological distress in lawyers begins in law school); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism,* 46 AM. U. L. REV. 1337, 1375 (1997) ("Law students consistently report more anxiety than the general population."); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction,* 48 J. LEGAL EDUC. 524, 525 (1998) ("A number of empirical studies have shown that men and women lawyers suffer from alarmingly high rates of alcohol abuse and many forms of psychological distress.").

217. *See, e.g.,* Iijima, *supra* note 216, at 525–26 (observing that law students experience increasing levels of dysfunction throughout their law school experience); Ruth Ann McKinney,

the law school experience strips students of their core values and therefore contributes not only to unhappiness but also to a lack of professionalism.[218]

Scholars point to "a growing body of literature substantiating law student and lawyer malaise—work addiction, substance addiction, depression, general dissatisfaction, and ill health. The problem begins in law school . . . ."[219] As the leading voice of the humanizing movement, Lawrence Krieger describes what he perceives to be a problem in legal education:

> There is a lot of talk about "professionalism" in law schools and the legal profession today, with little evidence of positive impact. Students continue to turn away from public service careers, and there is no suggestion of a diminution of hyper-aggressive litigation tactics. One crucial reason that our rhetoric fails is that it is contradicted by the competitive, outcome-oriented institutional values one typically finds dominating law schools and the highly visible and commercialized segments of the profession. It is reasonable that law students and young lawyers "tune out" the noble but dissonant messages about professionalism, but the regrettable result is that many of them fail to really comprehend the foundations of their future working life.[220]

Hence, the humanizing movement is focused on "the way[] legal education is conducted, the impact those choices may have on the attitudes, values, health and well being of law students, and the possible relationship between each of those matters and the problems experienced by our graduates in the

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*Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229, 229 (2002) ("It is no secret that law school is a breeding ground for depression, anxiety, and other stress-related illnesses."); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 875 (1999) (discussing elevated levels of depression in law students). *But see* James J. White, *Maiming the Cubs*, 32 OHIO N.U. L. REV. 287, 303 (2006) ("Assuming for the sake of the argument that law school causes anxiety and depression in students, I am not persuaded either that that anxiety and its associated psychological ills persist after law school or that they can be prevented by even Herculean efforts at making law school more humane. Until better data come forward, I will continue the traditional law teacher's reign of pillage and abuse.").

218. *See, e.g.*, Susan Grover, *Personal Integration and Outsider Status as Factors in Law Student Well-Being*, 47 WASHBURN L.J. 419, 426–30 (2008) (asserting that law students relinquish spirituality, collegiality and the capacity for intimacy, personal ethics, work ethic, and perspective to succeed in school). Members of groups historically excluded from law school feel the effects of this process more deeply. *Id.* at 432 ("Because they often come to law school with barriers not shared with their insider counterparts, outsiders are the canaries in the coal mine. They experience law school's problems earlier and more deeply than the mainstream. The outsider must manage the challenges inherent in 'not belonging' at the same time she manages law school's generally felt challenges, both benign and destructive.").

219. *Id.* at 421.

220. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 425 (2005).

profession." [221] The humanizing movement should appeal to younger generations' sense of balance between work and life commitments.[222] To the extent that the movement is focused, in part, on the professional identity development of law students and integrates notions of mentoring and collaboration,[223] it should also appeal to the egalitarian predisposition of younger generations.[224]

### 3. Emotional Intelligence in Legal Education

Another interesting innovation in legal education related to professionalism instruction is the application of emotional intelligence theory.[225]

> Emotional intelligence is most usefully characterized as a series of competencies or abilities involving emotions. They include self-awareness of emotions, awareness of the emotions of others, empathetic understanding of those emotions, and the ability to use this awareness to self-regulate the actor's own behavior and influence the behavior of others.[226]

John E. Montgomery articulates three aspects of professionalism: "competency, respect for others, and a commitment to improve the justice system." [227] He reasons that the components of emotional intelligence are applicable to all aspects of professionalism and should be addressed in legal

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221. Florida State University College of Law, *supra* note 215.

222. *See* TWENGE, *supra* note 131, at 216–21 (describing younger generations' employment expectations regarding salary and job flexibility).

223. *See* Florida State University College of Law, *supra* note 215.

224. *See* McGaugh, *supra* note 92, at 130.

225. *See generally* Montgomery, *supra* note 27, at 325–27 (arguing that incorporating emotional intelligence concepts into legal education can increase skills and professionalism in law students).

226. *Id.* at 342 (citing DANIEL GOLEMAN ET AL., PRIMAL LEADERSHIP 39 (2002)). Montgomery explains:

> Self-awareness involves the ability to "[read] one's own emotions and [recognize] their impact" and to use that self-awareness to guide decisions. Self-regulation involves "keeping disruptive emotions and impulses under control . . . displaying honesty and . . . trustworthiness," and the ability to take initiatives and be flexible in adapting to situations involving others. The awareness of others' emotions includes empathy or understanding another's perspective and a service orientation, which motivates actions to meet the needs of other individuals or organizations. Influencing the behavior of others, or relationship management, involves the ability to communicate to and motivate or lead others with a persuasive vision, influencing through use of persuasive tactics, resolving conflict, cultivating relationships, and motivating change.

*Id.* at 342–43 (alterations in original).

227. *Id.* at 347.

education. [228] He argues that the incorporation of emotional intelligence competencies into legal education can help students' professional identity development: "It can increase competency in important skills, strengthen respect for others, and facilitate awareness of the profession's public obligations. Emotional intelligence, coupled with increased opportunities for skills instruction, pro bono, and public interest programs, should strengthen an ethos of professionalism in law students."[229]

### 4.  Innovations to Professional Responsibility Instruction

There is a wealth of scholarship that addresses innovations in professional responsibility instruction.[230] Part of the debate about how to teach professional responsibility relates to conceptualizing what the course should aspire to teach:

> The literature on teaching legal ethics includes a healthy debate about precisely what law schools should be trying to achieve—e.g., whether the principal goal is to develop students' familiarity with a body of knowledge about the law and legal processes relating to lawyer regulation, to develop their ability to recognize and resolve ethical dilemmas when they arise, or to influence their commitment to ethical and professional norms.[231]

For purposes of this Essay, all of those objectives are related to professional identity formation.

Another aspect addressed by the literature relates to the "status" of the course vis-à-vis other doctrinal subjects and the impact of that status on the ability to teach effectively the material.[232] Stephen Gillers observes that "legal ethics, by whatever name, is the Cinderella of the law school curriculum. It is mostly tolerated, rarely loved."[233] Notwithstanding this observation, a course in professional responsibility is required in ABA accredited law schools,[234] and many scholars have argued for more pervasive coverage. [235] Indeed,

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228. *See id.* at 343 ("Emotional intelligence, unlike IQ which varies little through life, can be learned.").

229. *Id.* at 352.

230. *See* Bruce A. Green, *Teaching Lawyers Ethics*, 51 ST. LOUIS U. L.J. 1091, 1091 (2007) ("[T]here is ever-growing academic and professional literature concerning how legal ethics is taught . . . .").

231. *Id.* at 1092–93.

232. *See* Stephen Gillers, *"Eat Your Spinach?,"* 51 ST. LOUIS U. L.J. 1215, 1218–19 (2007).

233. *Id.* at 1218.

234. ABA STANDARDS FOR APPROVAL OF LAW SCH. § 302(a)(5) (2009) ("A law school shall require that each student receive substantial instruction in: . . . the history, goals, structure, values, rules and responsibilities of the legal profession and its members.").

235. *See, e.g.*, Gillers, *supra* note 232, at 1220 (asserting that legal ethics is the most important law school class); Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 31–

notwithstanding the Cinderella observation, Gillers explains why the legal ethics course is the most important in the law school curriculum.[236] While recognizing that "nearly everyone thinks that his or her class is the most important," Gillers argues that "[l]egal ethics is the only class in the law school curriculum whose content is relevant to the daily professional life of all graduates who practice law . . . . [A]ll lawyers 'practice' legal ethics just by going to work." [237] Similarly, Deborah Rhode explains, "In law, professional responsibility considerations figure in all substantive areas. Treating these considerations as they emerge in conventional classroom analysis can make clear that they are crucial constituents of practice and can expose students to a broad range of faculty perspectives."[238]

Related to the focus on pervasive ethics instruction is the need for context in the curriculum:

> A contextual perspective to legal ethics as distinguished from a survey course in ethics recognizes that any one legal ethics course needs to concentrate on a limited number of contexts, rather than across the full spectrum of legal practice. Therefore, honoring a contextualized perspective to ethics instruction demands that there be several specialized courses that address ethics across a range of profession practice areas.[239]

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32 (1992) (arguing that legal ethics should be taught as a separate course and as a component of other courses).

236. Gillers, *supra* note 232, at 1220.

237. *Id.*

238. Rhode, *supra* note 235, at 50. Rhode also notes that there are limitations inherent in a single course in ethics instruction, including content and timing limitations. *Id.* at 56 ("Nor is a single required course likely to achieve even the more modest goals of sharpening moral perceptions, assisting moral analysis, and reinforcing moral commitments."). Rhode concludes, "Yet if we are truly committed to inspiring professional responsibility during professional training, it is not enough to change the curriculum. We also need to change our institutions and our relationships within them." *Id.* at 55; *see also* Stephen Wizner, *Is Learning to "Think Like a Lawyer" Enough?*, 17 YALE L. & POL'Y REV. 583, 591 (1998) ("Law schools, and particularly law teachers, have a 'moral responsibility' to democratize our legal culture."). Wizner supports the pervasive method of professionalism instruction advanced by Rhode and argues that professionalism instruction requires an element of "'critical legal realism,'" identifying social justice issues for students. Wizner, *supra*, at 592. Wizner concludes that "[c]linical programs and courses must be fully integrated into the mainstream curriculum. Law schools must commit—intellectually and financially—to teaching, research, writing, and practice aimed at exposing and addressing issues of social justice." *Id.* Focusing on ethics and professionalism instruction throughout the law school experience is consistent with the sociological perspective on professional identity formation discussed above. *See supra* notes 32–100 and accompanying text.

239. Robert Granfield & Thomas Koenig, *"It's Hard to Be a Human Being and a Lawyer":Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 522 (2003) (citing Bruce A. Green, *Less is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357, 359 (1998)). Granfield and Koenig assert:

Anita Bernstein recommends a "pitfalls" approach to teaching professional responsibility, focusing professionalism instruction on the "perils and defeats" awaiting new lawyers:[240]

> A pitfalls pedagogy gives law students the vantage point from which to see any topic of professional responsibility both as a quick prod for a lawyer and in all its depth. By talking about problems for lawyers as sources of strategy and strength, and commending vigor in response to a setback, the pedagogy combats a tendency toward anxiety and unhappiness that wafts through law schools.[241]

Nathan M. Crystal recommends that students and new lawyers develop a "'philosophy of lawyering'" to help guide them in the discretionary decisions of professional judgment.[242] Crystal observes that "[e]ssential to the development

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       Neophyte lawyers generally come into direct contact with the messy world of legal practice complete with clients, corporate entities, other miscellaneous interested communities, families, governmental regulations and regulators, colleagues and partners, opposing counsel, and a host of other assorted players, without the conceptual tools necessary to design their own moral compass. By presenting cases as abstract, decontextualized encounters with faceless clients, law school does a poor job of preparing its graduates for the moral ambiguities that they will encounter.
*Id.*
      240. Anita Bernstein, *Pitfalls Ahead: A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479, 479 (2009).
      241. *Id.* at 517. This approach might be even more effective in a clinical or practice setting. In examining nursing and medical education, Colby and Sullivan observed that a practice-based teaching model that integrates the second and third apprenticeships of professional instruction effectively fosters the development of professional identity. *See* Colby & Sullivan, *supra* note 4, at 421 ("[F]or professions in which clinical teaching and learning are central, professional responsibility and identity are *enacted* in the course of clinical practice rather than learned in the abstract."). Pitfalls experienced in practice-based settings can provide strong messages for professional identity development. *See id.* (revealing that medical and nursing students identify mistakes in a clinical setting as the most memorable learning experiences). Colby and Sullivan note the real and powerful recognition of professional pitfalls and the realization of responsibility for the fate of others:
           This kind of reaction signals a critical turning point in the development of ethical professional identity—the shift from the perspective of a student to that of an emerging professional. When the third apprenticeship is well integrated with the second, this transition is often triggered by the gut-level realization that as a professional you are responsible for other people's fates. It is hard to fully experience this sense of personal responsibility unless, in fact, other people *really are* relying on your professional skill at some point during your training, and becoming acutely aware of one's responsibility for others' welfare is an especially vivid way to help students make this transition.
*Id.*
      242. Nathan M. Crystal, *Using the Concept of "A Philosophy of Lawyering" in Teaching Professional Responsibility*, 51 ST. LOUIS U. L.J. 1235, 1235–36 (2007). Crystal explains that a philosophy of lawyering operates at "three interrelated levels: the practice level, the personal level, and the professional or institutional level." *Id.* at 1235. The personal level requires lawyers to examine the relationship between their personal and professional commitments as they evaluate

of a philosophy of lawyering is the exercise of sound professional judgment in making decisions," and therefore, "it is important that traditional courses on professional responsibility find ways of incorporating development of professional judgment into their fabric."[243]

Elizabeth Chambliss posits a sociological approach to professional responsibility instruction.[244] Chambliss's approach consists of three components: a theoretical framework, a focus on comparative analysis, and an empirical framework. [245] The theoretical framework asks students to examine the relationship between knowledge and power and illuminates the legal profession's monopoly on all aspects of the profession.[246] "The comparative framework has several dimensions: comparisons between American lawyers in different historical periods, comparisons between American lawyers and lawyers in other countries, and comparisons between the legal profession and other occupations and professions."[247] The empirical component grounds the study of professional regulation "in a robust empirical context."[248] Chambliss observes that "on the whole law schools still exhibit little *institutional* commitment to research and teaching on the profession. As a result, most students graduate with only the sketchiest information about the norms and conditions of law practice and the many challenges that they will face."[249] Chambliss asserts that the "sociological approach is designed to begin to address this 'ethical failure' by the legal academy."[250]

Gillers explains his approach to professionalism instruction: "I approach professional responsibility issues from the bottom up. Every client, every case, every matter is a story. Concepts don't hire lawyers. People with problems do."[251] Gillers examines issues of professional responsibility with students at an intuitive level, allowing them to identify and discuss their reactions to client

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ethical dilemmas. *Id.* at 1236. The practice level is focused on those ethical issues that arise in the representation of clients. *Id.* at 1235. The institutional level takes a holistic view:

> [A]t the *professional level* lawyers must decide the extent of their involvement in and position on issues facing the profession as a whole rather than the lawyer individually. At the professional level, lawyers face two varieties of issues—issues of professional involvement and issues of professional structure. The amount of time that a lawyer decides to devote to pro bono activities and the nature of that commitment is an issue of professional involvement. The lawyer's position with regard to how the profession should respond to the clearly demonstrated need for greater delivery of legal services is an issue of professional structure.

*Id.* at 1236.
    243. *Id.* at 1247.
    244. Elizabeth Chambliss, *Professional Responsibility: Lawyers, A Case Study*, 69 FORDHAM L. REV. 817, 822 (2000).
    245. *Id.* at 854.
    246. *Id.* at 822–50.
    247. *Id.* at 854.
    248. *Id.*
    249. *Id.* at 855.
    250. *Id.*
    251. Gillers, *supra* note 232, at 1221.

problems.[252] He notes that "intuition offers valuable information" and that while "[i]ntuition may not be enough to support a conclusion, . . . it has pedagogical value."[253] This type of approach to professionalism instruction, which supports, encourages, and nurtures students' reactions to the ethical and professional dilemmas they will face in practice, undoubtedly appeals to participation expectations of members of Generations X and Y.

A final illustrative initiative in professional responsibility instruction has been employed at Mercer University Law School, where first year students take a course on professionalism that focuses on the legal profession.[254] It is distinct from, but related to, the required upper-level legal ethics course in that it is "less about what lawyers should do and more about who they should *become* as professionals. In other words, the course is about the formation of professional identity."[255] The course makes professionalism meaningful to new law students by exploring precisely what professionalism means,[256] why it matters,[257] and by identifying the myriad challenges to professional behavior students will face when in practice.[258] The course also makes the significant connection between professionalism and personal fulfillment in law practice.[259] Students are encouraged to "find healthy professional identities" by reflecting on "what their life in the law can and should be" and by making connections with seasoned members of the profession.[260] To the latter end, the course contains a mentoring

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252. *Id.*

253. *Id.* at 1221–22.

254. Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 662–63 (2009).

255. *Id.* at 663 ("The course seeks to equip students with the information they need to choose what kind of lawyer they will become and inspire them to make choices that will enable them best to serve their clients, fulfill their public responsibilities, and find deep meaning in their work.").

256. *Id.* at 665–70. In making the concept of professionalism meaningful to students, the course asks students to reflect on qualities of professionalism exhibited by physicians, based upon students' familiarity with those qualities. *See id.* at 666 ("Few students have engaged the services of a lawyer, but almost all will have been treated by doctors."). The course also provides a sophisticated exploration of the concept of civility in the context of professionalism, making this seemingly unimportant component meaningful to students. *See id.* at 669 ("[Civility] is the one that many students will find the most difficult to appreciate, and it is one that is not part of the definition of professionalism for other professions; for example, doctors do not operate on patients while another doctor tries to slap the scalpel away.").

257. *Id.* at 670–73.

258. *Id.* at 673–79.

259. *Id.* at 688–92 ("[This component] should leave the students not just with an understanding of professionalism and a resolve to abide by its principles but also with an understanding that their own happiness as lawyers is linked to professionalism and to the development of a professional identity that includes a commitment to professionalism.").

260. *Id.* at 692 (explaining that students are required to prepare personal essays on why they chose a career in law and what they hope to accomplish). Such a pedagogical technique, which provides opportunities for knowledge acquisition, investment, and involvement, has much promise. Muriel J. Bebeau, a professor of dentistry, recommends that an ethics education designed to foster professional identity development should "[b]egin by focusing on the individual's conception of a professional identity and its congruence with personal, societal, and professional expectations set by the profession itself." Muriel J. Bebeau, *Promoting Ethical Development and Professionalism:*

component, pairing each student with a member of the William Augustus Bootle American Inn of Court.[261] During the meetings, the students collect an oral history of the mentor.[262] The students are then required to prepare an essay on the mentor.[263] "[T]he interviews and the essay help the students feel connected to their chosen profession in ways that classes and guest speakers cannot."[264]

Each of these approaches should appeal to the sensibilities of younger generations. These innovations provide opportunities for investment, involvement, and participation, and make the study of legal ethics more immediately meaningful to just in time learners.

### 5. White Coat Ceremonies

One sparsely studied but promising innovation to legal education is the white coat ceremony, which is typical of medical education.[265] A white coat ceremony is a symbolic welcoming of new students that is designed to "establish a psychological contract" and "emphasize[] the importance of compassionate care for the patient as well as scientific proficiency."[266] Because "students are welcomed by their deans, the president of the hospital, or other respected leaders who represent the value system of the school and the new profession the students are about to enter,"[267] the ceremony is designed to symbolize entry into the field.[268] During the ceremony, participants typically take an oath, "which represents the public acknowledgment by the students of the responsibilities of

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*Insights from Educational Research in the Professions*, 5 U. ST. THOMAS L.J. 366, 388 (2008). Bebeau explains:

> Students are seldom encouraged during the course of professional education to reflect on the initial commitment to professionalism . . . . This is not only a missed opportunity, but reinforces the kind of cynicism that develops as students realize the complexity of professional practice and the difficulty of living up to the ideals with which they began their educational journey.

*Id.* at 389. The type of reflective essay in the Mercer program comports with Bebeau's recommendation that "carefully crafted educational experiences can ask a student to reflect on what it means to become a professional and to explore how the profession's value system and one's own are congruent." *Id.* at 388.

261. Longan, *supra* note 254, at 696.
262. *Id.*
263. *Id.*
264. *Id.* at 697.
265. *See, e.g.*, The Arnold P. Gold Foundation, White Coat Ceremony, http://humanism-in-medicine.org (follow "Ceremonies/Rituals" hyperlink; then follow "White Coat Ceremony" hyperlink) (last visited Oct. 30, 2009) ("Currently, a White Coat Ceremony or similar rite of passage takes place at more than 90% of schools of medicine and osteopathy in the United States, as well as at all four medical schools in Israel.").
266. *Id.* The Arnold P. Gold Foundation initiated the white coat ceremony in 1993 at Columbia University College of Physicians & Surgeons, and it currently provides grants to institutions for white coat ceremonies. *Id.*
267. *Id.*
268. *Id.*

the profession and their willingness to assume such obligations in the presence of family, friends, and faculty."[269] "White coat ceremonies emphasize attention to values—the values of family and friends in the audience, the values of the medical school and the medical profession, and the entering students' commitment to the values, obligations and responsibilities of the medical profession."[270]

Legal education typically lacks this form of symbolic entry into the profession. As one scholar laments:

> [M]edical students are taught to practice medicine while law students are taught to study law. . . . This is emphasized by a White Coat Ceremony during orientation, which welcomes medical students into the profession by literally having them put on the clothing of the doctor. By contrast, many law students graduate without ever having met or help represent an individual in need of legal services.[271]

While some have criticized the effectiveness of the white coat ceremony,[272] one author reports that "[m]ore than a dozen law schools have adopted a similar ceremony, including an oath."[273] For example, students at Texas Tech University School of Law participate in a professionalism ceremony where they dress in business attire and take an oath similar to the oath taken upon bar admission.[274] To the extent that "[s]tudents and faculty generally see these ceremonies as 'uplifting and meaningful,'"[275] application of the white coat ceremony to legal education appears to facilitate the formative development of a professional identity for just in time learners.

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269. *Id.*

270. Bari Burke, *If Medical Schools Can Do It, Why Can't We?*, MONT. LAW., Aug. 2007, at 28, 28.

271. Jennifer S. Bard, *What We in Law Can Learn from Our Colleagues in Medicine About Teaching Students How to Practice Their Chosen Profession*, 36 J.L. MED. & ETHICS 841, 842–43 (2008) (citing Burke, *supra* note 270, at 28–29).

272. *See* Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 42 (2008) ("Critics, however, question whether such ceremonies are 'the best vehicle through which to encourage compassionate and humble caregiving,' and instead suggest that medical students be encouraged to participate in community service such as working at free clinics, domestic violence shelters, drug treatment programs, and other such programs where they can aid underserved populations." (quoting Delese Wear, *On White Coats and Professional Development: The Formal and the Hidden Curricula*, 129 ANNALS INTERNAL MED. 734, 734–35 (1998))).

273. Burke, *supra* note 270, at 28.

274. Bard, *supra* note 271, at 843.

275. Gerdy, *supra* note 272, at 42 (quoting William T. Branch Jr., *Deconstructing the White Coat*, 129 ANNALS INTERNAL MED. 740, 740 (1998)).

## B.  Law Practice Initiatives

### 1.  Diversity

There have been many exciting initiatives directed toward diversity in law practice.[276] One striking example of breadth and creativity comes from the New York City Law Department, which has instituted a variety of practices aimed at an array of diversity issues.[277] Activties include annual receptions, sponsored lectures and presentations, and focus group sessions to consider diversity issues. [278] The department cosponsored a diversity course with the Anti-Defamation League titled "A Workplace of Difference." [279] "The course examine[d] both the seen and the hidden aspects of diversity, in order to foster understanding of and appreciation [for] what each person brings to the workplace." [280] The department also sponsored a course on understanding generational differences. [281] Ongoing efforts related to diversity include the creation of a diversity retention and recruitment committee,[282] the establishment of a formal survey of the department to measure satisfaction as related to diversity efforts,[283] and the initiation of diversity training.[284]

All of these initiatives relate to the younger generation's desire for enhanced participation. Moreover, work–life balance concerns are addressed by the exploration of part-time, work-at-home, and maternity policies, [285] and the development of attorney and staff quality-of-life committees.[286] A transfer policy designed to address specific concerns of diverse attorneys addresses the loyalty

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276. *See, e.g.*, Muriel Goode-Trufant, *Beyond Diversity 2009: The Next Generation*, in BEYOND DIVERSITY 2009: THE NEXT GENERATION 56–57 (PLI Corporate Law & Practice, Course Handbook Series No. B-1722, 2009) (discussing recent diversity projects instituted in the New York City Law Department). Kathleen J. Wu notes:

> One of the most promising developments I've seen recently is the trend toward firms hiring chief diversity officers to oversee their diversity and inclusion efforts. . . .
>
> Likewise, many firms have begun women's initiative committees. These groups provide mentoring, networking, and marketing opportunities for women lawyers, as well as devising and implementing policies to help lawyers (male *and* female) better juggle their competing work/family priorities.

Kathleen J. Wu, *Diversity is a Journey, Not a Destination*, 71 TEX. B.J. 142, 143 (2008).

277. Goode-Trufant, *supra* note 276, at 56–57.

278. *Id.*

279. *Id.* at 57.

280. *Id.*

281. *Id.* ("Understanding each generation's realities enables one to craft approaches and find common ground.").

282. *Id.* at 61 (discussing committee activities, including receptions and speakers, that bring diverse attorneys together in informal settings).

283. *Id.*

284. *Id.* at 61–62.

285. *Id.* at 63.

286. *Id.* at 62.

issue by promoting retention of a unique population.[287] Finally, the department created a formal mentoring program that, while applicable to all attorneys in the department, is "beneficial to diverse attorneys who might have a harder time finding an informal mentor in those divisions where few senior attorneys are diverse."[288]

### 2.  Mentoring in Law Firms

Historically, legal education was based on a system of apprenticeship.[289] "Older lawyers would help younger lawyers learn what it meant to be a professional through examples and one-on-one instruction."[290] Thus, one value of the apprenticeship model of legal education was that each new lawyer had some form of a mentor. Modern law firms, however, have become increasingly large and business-oriented, such that new lawyers lack an appropriate level of mentorship necessary to make an effective transition to a fully professional law practice.[291] As one author observes:

> To navigate the complexities inherent in developing as a lawyer and succeeding in a particular law firm, an associate needs support, guidance, and a human connection with the firm's leadership. When firms were smaller and partners faced fewer economic and billable hour pressures, mentoring relationships formed naturally. Senior lawyers took younger lawyers under their wing, gave them advice and encouragement, and allowed them to watch how experienced lawyers handled court appearances, meetings with opposing counsel, and client interactions. These relationships helped an associate feel that the firm was supporting her, and was "on her side" in her pursuit of success. Support like this breeds loyalty to the firm and makes the journey through the early years of law practice, with all its challenges and insecurities, infinitely more enjoyable.[292]

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287. *Id.*

288. *Id.* at 63. In addition to the formal mentoring program, the department created office awards and opportunities for promotion and leadership. *Id.* at 62–63.

289. Longan, *supra* note 254, at 660 ("Traditionally, education about the values and ideals of the legal profession came, like intellectual and skills training once did, from actual apprenticeship." (citing Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117, 136 (2001))).

290. *Id.* at 660–61 (citing Sullivan & Podgor, *supra* note 289, at 136).

291. *Id.* at 661.

292. Marian Lee, *Today's Economic Pressures Work Against Natural Mentoring*, COMPLETE LAW., Mar. 2, 2009, http://www.thecompletelawyer.com/ (follow "Focus On" hyperlink; then follow "March 2009" hyperlink under "Archives").

While some mentoring takes place in law firms, as it should,[293] there have been many developments within bar associations to increase mentoring opportunities for new lawyers.[294]

The Indianapolis Bar Association received the 2007 Gambrell Award for its professionalism initiative.[295] Many aspects of the program foster professional identity development for law students and new lawyers.[296] For example, there is a Bar Leader Series, which is a leadership development program available to lawyers in their first three to ten years of practice.[297] The program also features an Applied Professionalism Course for New Attorneys, "which is a semi-annual full-day program geared to attorneys in their first three years of practice."[298] There is a program for third year law students entitled "'Surviving and Thriving in the Practice of Law.'"[299] Other features of the program include a Professionalism Award, designed "to honor excellence in the Indianapolis Bar Association," as well as a "Lawyers Care Project, which has sent more than 200 care packages to members of the Indiana National Guard serving in the Middle East."[300] According to the American Bar Association's description of the program:

> The goal of the Initiative is to reduce image or perception-related barriers that may a) prevent some practitioners from rendering a high quality of service in the practice of law, b) prevent the public from obtaining legal advice, and c) create distance in some attorney-client relationships. All of the activities listed above stress honesty, integrity, and service, which are the benchmarks of professionalism.[301]

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293. *See, e.g.,* Stephen J. Friedman, *Convocation on the Face of the Profession: Judicial Institute on Professionalism in the Law,* 28 PACE L. REV. 1, 14 (2007) ("Size and money are not the basic problems confronting the legal profession today. It is the failure to recognize that the preservation and transmission of the values that have made this profession such a remarkable institution in American life cannot be accomplished without a conscious effort. It takes careful thought, effort and resources. That effort is not primarily the job of the organized bar, but of the leaders of American law firms."); *see also* Martin Cole, *Mentors, Supervisors and Professional Responsibility,* BENCH & B. MINN., July 2007, at 14, 14 ("Mentoring young lawyers is certainly one of the best ways to establish and maintain a culture of ethical conduct within a firm or entity as the rule seems to envision.").

294. *See* American Bar Association Center for Professional Responsibility, *supra* note 196 (recognizing and awarding programs, some of which have created new mentoring opportunities for new lawyers).

295. *Id.* (awarding the 2007 Gambrell Award to the Indianapolis Bar Association for its professionalism initiative that it launched in 2002).

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

The South Carolina Supreme Court has established a Lawyer Mentoring Pilot Program.[302] Recognizing that "[t]he first years of a lawyer's practice are a critical time for the formation of professional habits, practices, and character,"[303] the program assigns an experienced mentor from the bar association to every new attorney.[304] This program is designed to address the inconsistency of the traditional apprenticeship model: "the nature and quality of these experiences vary widely[, and therefore, a] uniform mandatory mentoring program offers the promise of a more thorough, universal, and meaningful mentoring experience."[305]

The South Carolina mentoring program has been thoughtfully developed, and it contains a uniform mentoring plan.[306] The plan outlines five primary concepts for the lawyer and mentor to consider, including the following: "Introduction to Bar and Legal System Participants";[307] "General Professional Values, Behavior, and Education";[308] "Avoiding Common Ethical/Civil Liability Problems";[309] "Caring for One's Self and Handling Personal Issues";[310] and "Relationships with Clients and Other Parties."[311] The program also attempted to facilitate communication between lawyers and mentors by providing sample introductory letters, and to facilitate communication between mentors and the evaluators of the program by providing evaluation forms for the mentors to fill out.[312] The South Carolina Supreme Court has ordered a second pilot program that will continue through December 31, 2011.[313]

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302. Order of the South Carolina Supreme Court, South Carolina Lawyer Mentoring Pilot Program (Sept. 14, 2006), *available at* http://www.sccourts.org/bar/pilotmentoringprogram.htm.
303. *Id.*
304. *Id.*
305. *Id.*
306. *See id.*
307. *Id.* (suggesting a variety of activities for the lawyer and mentor, including attendance at a bar association meeting, a tour of the court, and introductions of the mentee to various members of the legal community).
308. *Id.* (noting that discussions should cover the practical application of the Lawyer's Oath, the importance of continuing legal education, and a discussion of the "customs, unwritten rules and other expectations of etiquette and behavior among lawyers and judges in the community").
309. *Id.* (noting that discussions should emphasize the common reasons that grievances are filed and should identify the variety of resources available to lawyers).
310. *Id.* (noting that discussions should cover balance in law practice, interoffice politics, and management of long-term debt).
311. *Id.* (noting that discussions should cover how to interact with prospective clients, clients, other parties, and opposing counsel).
312. *Id.*
313. Order of the South Carolina Supreme Court, Lawyer Mentoring Second Pilot Program (July 23, 2009), *available at* http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo= 2009-07-23-01.

The Ohio State Bar Association has another noteworthy professionalism initiative that includes mentoring.[314] The objective of the program is to "elevate the competence, professionalism, and success of Ohio lawyers through positive mentoring relationships."[315] The Lawyer to Lawyer Mentoring Program "links experienced, ethical and professional attorneys with new lawyers who have recently been admitted to practice."[316] Under the program, new lawyers and mentors create a mentoring plan.[317] They then "meet in person six times during the course of a year to discuss topics they select from a mentoring plan."[318] Furthermore, under the program, new lawyers receive required CLE new lawyer training credit, and mentors receive CLE credit for their participation.[319]

Young Lawyers Divisions of local bar associations have also made great strides in professionalism instruction across generations. For example, the Young Lawyers Division of the American Bar Association has introduced website resources to advance mentoring in the legal profession.[320] The website provides resources for mentors and mentees.[321] In a press release for the site, Young Lawyers Division Chair Lizz Acee noted that "'[m]entoring bridges the knowledge gap between what is taught in law schools and the practical, real-world skills that only other lawyers can teach.'"[322]

The Young Lawyers Division of the Hawaii Bar Association has made a similar effort in professionalism instruction.[323] As noted by a commentator on the Young Lawyers Division of the Hawaii Bar Association, "[t]he YLD also promotes the assimilation of young lawyers into the profession through programs focusing on their professional development."[324] The Hawaii Bar Association's Young Lawyers Division sponsors many professionalism activities for novice

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314. *See* The Supreme Court of Ohio & the Ohio Judicial System, Lawyer to Lawyer Mentoring Program, http://www.supremecourt.ohio.gov/AttySvcs/mentoring/ (last visited Oct. 30, 2009).

315. The Supreme Court of Ohio & the Ohio Judicial System, Lawyer to Lawyer Mentoring Program History and Objective, http://www.supremecourt.ohio.gov/AttySvcs/mentoring/history.asp (last visited Oct. 30, 2009).

316. Rick Adamczak, *Lots of Help Available for Lawyers Who Are Just Starting Their Careers*, DAILY COURT REP., http://www.dailycourt.com/articles.php/4411 (last visited Oct. 30, 2009).

317. COMM'N ON PROFESSIONALISM, THE SUPREME COURT OF OHIO, LAWYER TO LAWYER MENTORING PROGRAM IMPLEMENTATION PLAN 16, http://www.supremecourt.ohio.gov/attysvcs/mentoring/pdf/implementation_plan.pdf (last visited Oct. 30, 2009).

318. Adamczak, *supra* note 316.

319. *Id.*

320. *See* American Bar Association Young Lawyers Division, Mentorship Project Home, http://www.abanet.org/mentoring/ (last visited Oct. 30, 2009).

321. *Id.*

322. News Release, American Bar Association, American Bar Association Introduces Mentoring Resource to Help Career Advancement of Lawyers (Mar. 17, 2009), http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=575.

323. *See* Jodi L. Kimura, *Perspectives: What Is the YLD?*, HAW. B.J., June 2002, at 4, 4.

324. *Id.*

attorneys, including a seminar series entitled "Playing the Game."[325] The series "provides practical pointers such as Finding and Sustaining Balance as a Young Lawyer; Tips From Judges for Young Practitioners; What Your Partners Expect From You; Civility in the Practice of Law; Financial Planning for the Young Lawyer; and the Rules of Professional Conduct Regarding Solicitation."[326]

### 3. Work–Life Balance Initiatives

As noted above, younger generations have a more relaxed attitude than their senior partner/Boomer peers about the proper work–life balance in law practice.[327] This relaxed expectation may be perceived as unprofessional in an informal sense, as, for example, related to a deficient work ethic, but it can also justify concerns related to more formal ethical expectations. Associates have noted that "'[w]orking long hours adversely affects [their] ability to think critically and creatively.'"[328] Noting the adverse effect of working many hours, Geoffrey C. Hazard warns that working such hours can impair attorneys' abilities to do "serious mental work."[329]

Recognizing that "[l]eaders in the profession need to do more to insure that ethics does in fact pay, and to provide rewards and recognition for firms that meet best practice standards on issues involving ethics compliance, pro bono service, and balanced lives,"[330] some firms have pursued work–life balance initiatives.[331] Firms are exploring many initiatives, including reduced pay scales for reduced billable hour requirements[332] and expanded maternal and paternal leave policies.[333] "A harbinger of changing times might well be [a] brief filed by the hard-driving white-shoe firm of Weil Gotshal & Manges of New York, asking a judge to reschedule hearings set for Dec. 18, 19, 20 and 27 of last

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325. *Id.*

326. *Id.*

327. *See supra* Part IV.B.1.

328. Susan Saab Fortney, *I Don't Have Time to be Ethical: Addressing the Effects of Billable Hour Pressure*, 39 IDAHO L. REV. 305, 311 (2003) (discussing the responses of respondents to a survey regarding the effects of the billable hour requirement). Fortney notes the relationship between the pressure to bill excessive hours and ethical lapses: "Rather than attempting to compete with 'heavy-handed' billers who engage in questionable billing practices, ethical associates may voluntarily leave practice or be penalized when firm management makes compensation and retention decisions on the basis of billable hours." *Id.* at 310.

329. *See* Geoffrey C. Hazard, *Ethics*, NAT'L L.J., Feb. 17, 1992, at 19, 20.

330. Deborah Rhode, *Profits and Professionalism*, 33 FORDHAM URB. L.J. 49, 74–75 (2005).

331. *See* Lisa Belkin, *Who's Cuddly Now? Law Firms*, N.Y. TIMES, Jan. 24, 2008, at G1 (discussing recent initiatives that encourage work–life balance at law firms).

332. *See* Stephanie Francis Ward, *Such a Deal: Does Perkins Coie Have the Best Time-Money Solution?*, A.B.A. J., Oct. 2007, at 29, 29 (noting that Seattle-based law firm Perkins-Coie offered new associates the opportunity to bill less than the annual 2000 hourly billable obligation, but in exchange for the reduced requirement, the associate is not eligible for a bonus associated with the higher billable requirement).

333. *See* Belkin, *supra* note 331.

year."[334] The lawyers asked the court to reschedule the dates because they were "'smack in the middle of our children's winter breaks, which are sometimes the only times to be with our children.'"[335] The argument was successful, and the court rescheduled the hearings.[336]

### 4. American Inns of Court

The American Inns of Court represents another initiative of the practicing bar that facilitates the professional identity development of new lawyers.[337] "The Mission of the American Inns of Court is to foster excellence in professionalism, ethics, civility, and legal skills."[338] The Inns "are designed to improve the skills, professionalism and ethics of the bench and bar. . . . American Inns of Court help lawyers to become more effective advocates and counselors with a keener ethical awareness. Members learn side-by-side with the most experienced judges and attorneys in their community."[339] The American Inns of Court developed out of discussions between lawyers and judges, including Chief Justice Warren E. Burger.[340] The first Inn was "founded in 1980 in the Provo/Salt Lake City area of Utah.[341]

> In 1983, Chief Justice Burger created a committee of the Judicial Conference of the United States to explore whether the American Inn concept was of value to the administration of justice and, if so, whether there should be a national organization to promote, establish and assist American Inns, and promote the goals of legal excellence, civility, professionalism and ethics on a national level.[342]

Approved by the committee and the Judicial Conference, the American Inns of Court Foundation was formally organized in 1985.[343]

American Inns of Court currently "involve more than 25,000 state, federal and administrative law judges, attorneys, legal scholars and law students."[344] There are different membership categories within each Inn, including "Masters

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334. *Id.*

335. *Id.*

336. *Id.*

337. *See* American Inns of Court, General Information, http://www.innsofcourt.org/Content/Default.aspx?Id=2 (last visited Oct. 30, 2009).

338. American Inns of Court, General Information: Mission and Goals, http://www.innsofcourt.org/Content/Default.aspx?Id=151 (last visited Oct. 30, 2009).

339. American Inns of Court, *supra* note 337.

340. American Inns of Court, General Information: History, http://www.innsofcourt.org/Content/Default.aspx?Id=24 (last visited Oct. 30, 2009).

341. *Id.*

342. *Id.*

343. *Id.*

344. American Inns of Court, *supra* note 337.

of the Bench—judges, experienced lawyers, and law professors; Barristers— lawyers with some experience who do not meet the minimum requirements for Masters; Associates—lawyers who do not meet the minimum requirement for Barristers; and Pupils—law students."[345] The membership of an Inn is organized into "pupillage teams," consisting of members from each category.[346] Pupillage teams meet regularly and plan an annual program for the Inn.[347]

> This allows the less-experienced attorneys to become more effective advocates and counselors by learning from the more-experienced attorneys and judges. In addition, each less-experienced member is assigned to a more-experienced attorney or judge who acts as a mentor and encourages conversations about the practice of law.[348]

As an organization committed to bridging the gap between new and seasoned lawyers and judges with a focus on professionalism,[349] this organization represents an innovative and effective initiative to promote professional identity development of students and novice attorneys.

## VI. CONCLUSION

Lawyers, as a community of professionals, have a social contract with society, and because of this contract, they must adhere to certain professional norms. These norms may be formal, such as the rules of ethics that guide and direct lawyers' behavior, or informal, such as the informal expectations lawyers share about how to conduct a practice and to communicate with other members of the profession. The manifestation of a lawyer's understanding of and commitment to professional expectations comprises the lawyer's professional identity. This identity is formed during the education and indoctrination process, which begins prior to and extends beyond law school. Sociologists confirm that there are several nonlinear stages of professional identity development, including anticipatory, formal, informal, and personal. Moreover, there are several facets of professional identity development, including knowledge acquisition, investment, and involvement. Finally, the importance of reference groups at each stage and within each facet of development must be considered.

Recognizing the importance of the novice's exposure to reference groups, it is important to consider generational differences between novice and seasoned attorneys. While certain differences may impede efforts to assist professional identity development, there are several promising developments in legal education and practice that effectively bridge the gap between generations. Thus,

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345. *Id.*
346. *Id.*
347. *Id.*
348. *Id.*
349. *Id.*

there is much promise in newly developed efforts to assist novice attorneys' professional identity development.