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“... *breach of any provision of this Agreement. . .*”

The proper remedy for breach of contract is contract damages, not indemnification for any resulting loss. In conjunction with the indemnification language, this language makes the lawyer responsible for losses in addition to those caused by the breach.

### Endnotes

1. The authors are indebted to Stuart Pattison, Senior Vice President of Endurance Specialty Holdings Ltd., who requested that they write the article to assist both his company’s insured law firms and his colleagues in understanding the implications of indemnity provisions in client engagements, to our partner Janis Meyer, and to John Barr, the former General Counsel of McGuire Woods LLP, for their invaluable comments. However, the views expressed are entirely our own.

2. See Claire Coe & Steven Vaughan, *Independence, Representation and Risk: An Empirical Exploration of the Management of Client Relationships by Large Law Firms* (2015), <https://www.sra.org.uk/sra/how-we-work/reports/independence-report.page>.

3. *Id.* at 72.

4. In preparing this article, the authors obtained examples of indemnity clauses from a diverse group of law firms. Because of the method used to gather this information, the authors do not know the identity of the requesting clients nor do they know which firms supplied information. Section D below discusses ways in which law firms may seek to respond to these provisions. However, in order to protect the identity of the firms that provided information to the authors, and the confidentiality of their respective clients’ confidential information, with one exception described under the heading ‘Negotiate OCGs,’ we do not include any specific details as to whether, when, or to what extent firms have been successful in pushing back against clients’ demands for agreement to these provisions.

5. Some of the other provisions we have reviewed are set out, in whole or part, with comments, in Appendix 1 attached hereto. Appendix 2 sets forth an analysis of some of the language frequently contained in these indemnification provisions

6. For the reasons explained in footnote 4, in order to protect the anonymity of the firms that provided information to the authors, and to protect their clients’ confidences, with one exception described under the heading ‘Negotiate OCGs,’ we do not discuss in any detail the degree to which firms actually either try to, or are successful in challenging these provisions.

7. See *alsosupra* notes 4 & 6.

## Cultural Evolution or Revolution? The Millennial’s Growing Impact on Professionalism and the Practice of Law

By Jan L. Jacobowitz, Katie M. Lachter, and Gabriella Morello

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The Millennial Generation will entirely recast the image of youth from downbeat and alienated to upbeat and engaged—with potentially seismic consequences for America.<sup>1</sup>

— Neil Howe and William Strauss

Although they are better educated, more techno-savvy, and quicker to adapt than those who have come before them, they refuse to blindly conform to traditional standards and time-honored institutions. Instead, they boldly ask, ‘Why?’<sup>2</sup>

— Eric Chester

Organizations that can’t—or won’t—customize training, career paths, incentives and work responsibilities need a wake-up call.<sup>3</sup>

— Carolyn A. Martin and Bruce Tulgan

## **I. Introduction**

Millennials, the children of the digital age, embody and embrace the forces of disruptive change sweeping the legal profession and our world. As technology radically transforms how lawyers practice law and do business, the distinctive attitudes and habits of the Millennial generation suggest that an equally profound change in who lawyers are, and how they carry themselves professionally, is in the offing—indeed, may be well under way. A cultural clash of the three generations now inhabiting the lawyer space—Baby Boomers, Gen Xers and Millennials—is a critical piece of the larger ongoing debate over the extent to which technological innovation will reinvent legal practice. But Baby Boomer concerns about whether they can cure what they perceive as the far-too-casual and flexible approach of many Millennial lawyers to their work (before they wreck the firm!), may be an academic issue. More likely, Millennials are never going to change who they are—they are here to change the world, after all. Meanwhile, however, Boomers, Gen Xers, and Millennials coexisting in the same firms must at least understand each others’ values and approaches to the business of law in order to get the work done and to effectively pass on professional skills and judgment to the next generation. Doing so will require a degree of cultural competence, among all three groups, not previously expected or required.

Millennials, the first generation of “digital natives,” will soon comprise 46 percent of the workforce.<sup>4</sup> Their distinct cultural values and significant influence in many areas of the work world are already apparent, and the legal profession is no exception. They are regarded by some members of the older generations—Baby Boomers and GenXers—as disrespectful revolutionaries, and by others as welcome “evolutionaries” whose insight and engagement are beneficial assets aiding the movement to adapt traditional management strategies to the digital world in which we all now reside.<sup>5</sup>

Although cultural values are often discussed in relation to different ethnicities or religions, cultural values may also be analyzed in terms of generational distinctions. In fact, the cultural lens through which individuals view the world differs with each generation based not only on individual experience, but also on the “group experience” of coming of age within a particular historical and social context. The differing group experiences give rise to the varying cultural values that ultimately characterize the so-called generation “gaps.”

This article evaluates current generations in cultural terms and suggests that developing cultural competence in bridging generational differences is a pathway not only to greater understanding, but also to establishing the unity required for the legal profession and professionalism to gracefully and harmoniously evolve in the digital age.

## II. Defining Culture & The Generations

Culture, the “software of the mind,”<sup>6</sup> enables our brain—the mind’s “hard drive”—to sort information, thereby attaching meaning to the world around us. In other words, culture is programming that is learned.<sup>7</sup> We are each influenced by the shared values, attitudes, and customs of the multiple cultures to which we belong, such as gender, nationality, religion, age, race, and sexual preference.<sup>8</sup> Ultimately, both collective cultural programming and our own personal experiences influence the cultural lenses through which we view and define the world.

The generation into which we are born is another variable that defines our cultural values. In fact, William Strauss and Neil Howe have identified eighteen distinct generations in the history of the United States and have analyzed and connected each generation’s core values to the historical context in which that generation came of age.

Moreover, there is no shortage of literature describing the predominant generations that currently comprise the legal profession—Baby Boomers, GenXers, and Millennials. A review of this literature reveals clear distinctions among the generations in terms of core values, which in turn influence each generation’s general approach to the work world and specifically, for our purposes, its expectations and approach to the legal profession.<sup>9</sup>

Baby Boomers, a population of approximately 76 million, comprise about two thirds of the workforce and were born from 1946 through 1964.<sup>10</sup> They came of age during a time of social upheaval—with watershed events including the Vietnam War and the Civil Rights Movement.<sup>11</sup> Baby Boomers are generally described as optimistic and hard working. They value teamwork as well as both personal growth and personal gratification, and they strive to stay “forever young.”<sup>12</sup> One commentator explains, “Their motto was ‘never trust anyone over 30,’ which they changed to ‘50 is the new 40’ and have now made into ‘life begins at 50.’”<sup>13</sup>

Baby Boomers have influenced the legal profession by striving for diversity and some flexibility in what was once primarily a white men's club. They have also institutionalized the billable hour, established origination credit, and expanded the size of the traditional law firm by creating global entities comprised of specialists.<sup>14</sup> Baby Boomers generally value long hours spent in the office and face-to-face meetings or phone calls with clients and colleagues.<sup>15</sup>

By contrast, GenXers are the smallest of these three generations, with a population of approximately 46 million, and were born from 1965 through 1979.<sup>16</sup> Significant events in GenXers' coming of age were the Watergate scandal, corporate downsizing, and dramatic change in family composition. Increased divorce rates and two working parents caused this generation to become the first characterized by latchkey kids.<sup>17</sup> Cultural values ascribed to GenXers include independence, cynicism, adaptability, and emphasis on work-life balance.

In a law firm setting, GenXers are described as comfortable with technology and valuing their own skills, but generally do not trust their employers.<sup>18</sup> They prefer to communicate by e-mail and voicemail and are said to be ready to take over the leadership positions, but they plan to make drastic changes to law firm culture, including implementing greater flexibility as well as compensation more reflective of results than time invested.<sup>19</sup>

The GenXers are followed by approximately 80 million Millennials—born between 1980 and 2000—the largest population ever to enter the workforce. They currently comprise about one third of the workforce, but are projected to constitute 46 percent of the workforce by 2020.<sup>20</sup> While the defining events of this generation remain subject to debate, the consensus at the moment appears to include 9/11, Columbine, the Iraq and Afghanistan wars, and the advent of the Internet and social media. It has been said that Millennials knew the verb “to click” before they were able to read.<sup>21</sup> Moreover, Millennials are the products of structured, highly scheduled childhoods with an abundance of coaching and parental influence.<sup>22</sup>

Millennials regard themselves as capable, confident, contributors, and change makers.<sup>23</sup> They are the most highly educated and diverse generation in the history of the United States. They value teamwork and collaboration, prioritize personal fulfillment over income, and seek career opportunities, mentoring, and feedback. They take work-life balance a step further than the GenXers, as Millennials seek to interweave fun and balance into the work environment.<sup>24</sup> They are enthusiastic and optimistic.<sup>25</sup>

In the context of a law firm, Millennials are often more casual than their senior colleagues. They prefer texting and instant messaging to other forms of communication.<sup>26</sup> They request constant feedback and mentoring along with the opportunity to work on meaningful assignments. They also seek maximum freedom and flexibility in the workplace.<sup>27</sup> One commentator suggests, “You can think of Xers as the people who will tear/are tearing down the entrenched institutions of the Boomers, while the Millennials will be the ones to rebuild from the rubble and return order to the resulting chaos.”<sup>28</sup>

### III. Cultural Competence as a Collaborative Tool

So how do we address these clashing generational cultural values?<sup>29</sup> Identifying the distinctions among generational values is certainly the first step. However, additional analysis is required to understand how cultural values influence our perception of our surroundings. These perceptions cause implicit biases of which we are unaware despite their influence on our behavior.<sup>30</sup> In other words, we all have “immediate, automatic associations that tumble out before we have time to think.”<sup>31</sup>

Malcolm Gladwell explains, “The giant computer that is our unconscious silently crunches all the data it can from the experiences we’ve had, the people we’ve met, the lessons we’ve learned, the books we’ve read, the movies we’ve seen, and so on, and it forms an opinion.”<sup>32</sup> Consequently, a Baby Boomer’s basic knowledge of various distinctions between his generation and the Millennial generation will likely not prevent the Baby Boomer from “automatically” forming a negative opinion about a Millennial’s view that it is not necessary to spend long hours in the office.

Thus, to gain a productive understanding of cultural differences so as to more effectively communicate and collaborate, *cultural awareness* and *cultural competence* must be added to the mix. Cultural awareness lays the foundation for cultural competence; it requires learning and becoming sensitive to the characteristics of another culture without ascribing judgment.<sup>33</sup> Raymonde Carroll’s explanation is insightful:

Very plainly, I see cultural awareness as a means of perceiving as ‘normal’ things, which initially seem ‘bizarre’ or strange among people of a culture different from one’s own. To manage this, I must imagine a universe in which the ‘shocking’ act can take place and seem ‘normal’ and can take on meaning without ever being noticed. In other words, I must try to enter, for an instant, the cultural imagination of another.<sup>34</sup>

Cultural competence, on the other hand, involves the employment of this non-judgmental awareness along with added knowledge and the skills necessary to develop “the ability to accurately understand and adapt behavior to cultural difference and commonality.”<sup>35</sup> Stated another way, attitude, knowledge, and interpersonal communication skills are often described as the required components of cultural competence. An open-minded attitude, acquired knowledge about differing cultural values, and the infusion of self-awareness and empathy into one’s interpersonal communication skills all contribute to cultural competence.<sup>36</sup>

Thus, without cultural competence, misunderstandings occur among differing cultures, which include the various generations. For example, differing values about the ideal work environment, methods for completing work assignments, and the priority of traditional career advancement may cause misunderstandings despite a shared value of producing a high quality work product. Differing definitions of professionalism result in conduct that is offensive to one generation being unnoticed by another generation. The following representative dialogue is based upon Baby Boomer Rodney G. Snow’s personal experiences working with Millennial lawyers and provides a terrific example:

*BB: So, I heard you took off wakeboarding last Friday, during business hours.*

*M: Oh, [Partner X] said he'd take us on his boat. It was so fun.*

*BB: You do realize the rest of us were working?*

*M: Would you like us to invite you next time? Maybe you could bring your boat.*

*BB: Next time? Who said there was going to be a next time? And my boat is a Saturday boat.*

*M: It's the perfect way to create camaraderie among the associates. Plus, a little fun together is good for business. Rod, why do you still have a rolodex on your credenza?*

*BB: There are names in there from before you were born, and Outlook can get complicated and does not always work. By the way, will you stop by my office later so I can tell you where we are meeting our expert in the morning?*

*M: Why don't you just email the address to me; or better yet, send me a text?*

*BB: You do realize that I barely learned how to log on to LinkedIn, don't you? And on that subject, will you help me with something (handing Millennial a magazine on laptop computers). How much horse power do I need?*

*MP: Well, that depends; what do you intend to use it for primarily?*

*BB: Well, work mainly, iTunes, you know. . . . You people are always making things so complicated. Look at all these options!*

*M: Did you have a chance to read that research memo I gave you yesterday? I want to know what you think of it. I'd really like to talk to you about this case I found that may change our trial strategy.*

*BB: Back when I was working at the EPA, I was assigned to the task force that drafted the regulations requiring production of unleaded gas . . . and Chrysler and GM sued. . . .*

*M: Uh-huh (listening politely to a story she's heard before).*

*BB: So, I noticed you left work at 3:30 yesterday. Did you have an appointment outside the office?*

*M: Oh, I was on my way to watch my husband play volleyball. And after that I went with some YLD friends to a yoga class.*

*BB: Oh really? How much does that pay?*

*M: Don't worry, I get in my billable hours. Why are you partners so. . .*

*BB: Work-oriented?*

*M: We know how to get things done efficiently.*

*BB: There's no substitute for attention to detail and experience. Millennials want to run the firm the moment they walk through the door.*

*M: Boomers expect me to be at the office 24/7.*

*BB: 12-6 might be respectable. Millennials think they can get their work done from home or a beach in Hawaii.*

*M: It's called balance and an identity outside the office.*

*BB: You mean more time for texting and Facebook? We understand the importance of face time with clients. You have taken us from face-lifts to Facebook!<sup>37</sup>*

#### **IV. Why Strive for Cultural Competence?**

Law firms are aware that there is a generational divide, and that it profoundly affects the practice of law as they know it. Firms have not, however, “made the Millennial shift,” according to Indiana University law professor William Henderson.<sup>38</sup> Senior management in law firms has not yet demonstrated a willingness to ease up on the institutional structures that stifle and thwart Millennials, such as face time, long work hours, and a lack of flexibility. Firms are worried about the problem, but “most are tinkering in the margins.”<sup>39</sup> We identify below four issues that define the struggle between the generations, although we do not intend this to be a comprehensive list. Rather, we seek to open up the discourse as to why it is in law firms’ interest to focus on cultural competence now, rather than simply stand by and wait for the next generations to assume control.

##### ***A. Difficulty Managing the MySpace Generation***

An oft-heard refrain from more senior lawyers in firms is that it requires a lot of extra work to manage Millennials, and that senior lawyers do not have the extra time to devote to it.<sup>40</sup> The clear implication is that these senior attorneys long for the idealized associates of years past, who were always at their desks, respected authority, and aimed to please their senior colleagues. Millennials, by contrast, are viewed by older lawyers as entitled, unable to solve problems without having their hands held, desirous of making money without working hard for it, and in need of constant praise.<sup>41</sup>

Part of the challenge for law firm managers is that most firms do not reward supervising others. Those who devote time to supervision may be diminishing their own billable hours, the now-standard metric (along with origination credit) for determining a partner’s compensation. Spending time managing a high-maintenance generation, therefore, is not viewed favorably by more senior attorneys. The alternative—partners avoiding management responsibility—also has obvious drawbacks: partners doing more of the work themselves, at higher billing rates, may lead to client discontent. And the junior associates will not receive the training they need.

Compounding the problem, billing pressures have diminished the once-routine opportunities for younger lawyers to shadow senior lawyers by attending depositions and court appearances. Many clients will not pay the high rates for multiple lawyers to attend a meeting or hearing, and law firms often do not encourage young lawyers to observe more experienced lawyers at their work when the time cannot be billed. But there are few better teaching opportunities than observing a lawyer at trial or negotiating a deal.

If senior attorneys succumb to frustrations with the younger generation and simply do the work themselves, it might be easier and faster in the short term, but it leaves an entire generation of lawyers without the tools to handle the next stage of their careers.

### *B. Unhappy Employees*

Millennials' notions of when and where work can be done are vastly different from the in-person culture of the Baby Boomers, who may perceive Millennials' desire to work more efficiently as a challenge to authority and workplace practices. Some Baby Boomers may also feel resentful that they worked as hard as they did without challenging whether the long hours were truly necessary, only to be faced with a new generation that rebels against the notion that work has to be hard. On the other hand, Millennials' personal and work lives are increasingly blurred thanks to e-mail and cell phones. Because they are often thinking about work when not physically in the office, and because they prize work-life balance and are comfortable with technology, it makes more sense to many Millennials to work remotely.

A recent article entitled "4 Things Associates Hate About Their Jobs" places long hours at the top of the list, particularly when demands on their time are sprung on them at the last minute. (Lack of feedback, opaque paths to partnership, and excessive negativity round out the list).<sup>42</sup> The desire for greater flexibility is not limited to associates. Nontraditional law firms are popping up and offering experienced partners with high-end practices benefits that traditional firms historically have not—personal control over work hours, rate flexibility, and a collaborative work environment, to name a few.<sup>43</sup> Notably, men have begun to seek the kind of work-life balance previously sought by women with children, so that they can spend more time with their families. And Millennials—men and women alike—want to have successful careers, but also insist on carving out time for other pursuits.

Ultimately, a firm with unhappy attorneys will experience high turnover. These firms will also inevitably lose some of their most talented lawyers, who will leave in search of more progressive work environments. Assuming that a goal of most (if not all) law firms is to hire and retain the best attorneys possible, simply ignoring the desires and needs of a new generation is counter-productive.

### *C. Lack of Succession Planning*

Baby Boomers will leave behind a huge gap if they fail to focus on the leadership development of Millennials. As noted above, by 2020 nearly half (46 percent) of all US workers will be Millennials.<sup>44</sup> "The sheer volume of Millennials, combined with the relative lack of GenXers and the increasing retirement of Baby Boomers, means that employers will be facing leadership gaps. And they will be looking to Mil-

lennials to fill those gaps.” Millennials will also be stepping into leadership roles earlier in their careers than predecessor generations did<sup>45</sup>—and if the current trends continue, they will be significantly unprepared for those responsibilities, not to mention potentially unwilling to assume them.

“Some law firms could crumble after this generation because they don’t have a lot to sell to the next generation,” according to Professor Henderson.<sup>46</sup> Due to the 2009 recession and greater than ever student loan debt, Millennials were forced to take jobs they did not want just to pay the bills. According to a recent SBR Consulting survey, 70 percent of them are planning to change jobs once the economy improves.<sup>47</sup> “This potential exodus of Millennials from their current jobs combined with Baby Boomer retirements could put organizations at risk at a time when many are only now finally making it solidly back into the black.”

#### *D. Missed Opportunity to Maximize Associate Performance*

Finally, while this generation undoubtedly creates perceived difficulties for older generations, they also possess unique competencies and perspectives.<sup>48</sup> Millennials are the most diverse generation to date, racially, ethnically, and socially. They tend to be optimistic and achievement-oriented. They are also the most educated generation in history.<sup>49</sup> It is not such a leap of logic to think that a law firm might learn something from a young, energetic, tech-savvy new lawyer. Firms that refuse to reconsider the old ways from time to time deny themselves the opportunity to harness the strength of their junior workforce.

### **V. Tools to Develop Cultural Competence**

Now that we have addressed the development of the culture gap in law firms and the problems arising from it, we offer some thoughts on how law firms can begin to address these issues. Far from being revolutionary, our ideas require going back to basics: trying to understand the other person’s perspective, communicating clearly and effectively, and making an overt commitment to bridging the gap.

#### *A. Understand Motivations*

One of the problems plaguing law firm management is that Millennials are not as driven as their predecessors by the traditional incentives of hefty bonuses and promotion to partnership. Many have joined their current firms for the experience, but do not necessarily intend to stay long term. And as a group, they “would give up money for time.”<sup>50</sup>

Law firms might consider tapping into Millennials’ focus on personal satisfaction, collaboration and personal fulfillment, rather than assuming income will be sufficient to drive them.<sup>51</sup> “Simply involving associates in a given type of work isn’t necessarily enough to get the best possible work out of them, experts say.”<sup>52</sup> Instead, law firms should try to give associates “a sense of ownership over their work” so that they are “more encouraged to work for the best result of the team.”<sup>53</sup>

On the flip side, Millennials’ expectations of flexibility may need management from their more senior colleagues. In a business driven by billable hours, flexibility is not always possible. Young associates need to be taught that “clients are why [they] exist, and that involves [M]illennials choosing to change their behavior to serve them, if necessary.”<sup>54</sup>

Some firms are exploring programs that facilitate these goals by encouraging partners and associates to communicate more openly without the pressure of judgment. For example, Hogan Lovells' *Project Redefine* program focuses on "straight talk," starting conversations, and empowering all attorneys to "act like owners." The program provides an anonymous attorney evaluation form where both associates and partners can evaluate each other on a number of important and non-measurable qualities (e.g., ability to lead, working effectively with others, and promoting information exchange and collaboration) prior to training programs that help develop those same skills and drive change. This provides associates and partners with an opportunity to express themselves in a candid forum and constructively work on the interpersonal areas that need improvement.

Similarly, Pillsbury Winthrop Shaw Pittman LLP provides an evaluation through an internal "special benchmark system to include associates in self-evaluation and goal-setting."<sup>55</sup> This process takes advantage of the Millennials' drive to share and obtain feedback and supports a more creative firm environment focused on associate development and involvement.

### *B. Effectively Use Technology*

We live in an age where messages can be transmitted through a variety of means and devices. Often, however, Millennials, GenXers, and Baby Boomers prefer different means of communication. Understanding the drawbacks and benefits of the particular technologies and being open to accepting newer forms of communication, depending on the circumstances, is key to bridging the divide.

Many Baby Boomers and GenX partners expect their associates to be available, on demand, for in-person meetings. This is not simply a matter of wanting the associates to put in "face time," as many of them assume. There is a value to having lawyers physically in the office. Impromptu strategy sessions, or wandering down the hall and striking up a conversation with a colleague, can be productive both for client work and professional development. It also builds relationships within the office. Millennials, raised in an era where connecting with family or friends is available at the click of a button or instruction to Siri, value the efficiency of technology and often find face-to-face meetings to be unnecessary. The reality is that the "best" form of communication may depend on the circumstances.

For example, in the conversation described above between Baby Boomer Rodney G. Snow and a Millennial associate, Snow asked his associate to meet so that the partner could "tell [him] where [they] are meeting [their] expert in the morning." A quick e-mail may have been much more efficient. Being summoned to a partner's office "unnecessarily" may frustrate an associate. However, a partner may also experience frustration when he cannot easily get in touch with his associate. Thus, for partners to adjust to associates' working remotely, associates may need to demonstrate and ensure their responsiveness.

Firms also might consider whether text messaging has a place in law practice. Notably, texting has become the most popular mobile function across *all* generations since 2007.<sup>56</sup> As Ryan Jenkins explains, phone calls can often be unproductive. Text messaging is less intrusive and is also quick and convenient. The informality of a text sent to a partner may create the wrong impression if the partner is not accustomed to it (or does not have a phone that can support it!), so firms may want to consider a texting policy so that colleagues' expectations are consistent.

### *C. Commit to Bridging the Generational Divide*

Law firm management ultimately decides what kind of culture it wants to promote within the firm. If the managing partners are serious about addressing the issues raised by the generational and cultural gaps, making their expectations known to all of the firm's employees should be beneficial.

Using training programs as a means of unifying and centering the conversation on improving the firm and client satisfaction can have numerous advantages. Training programs can be stimulating grounds for change. Training builds morale and camaraderie among legal teams and causes individuals to feel empowered. Indeed, revamping firm orientation can be "another guidance opportunity for minimizing millennial associate attrition rates," by improving an associate's understanding of the firm culture and having him or her feel a part of its development.<sup>57</sup>

To facilitate communication between partners and associates from different generations, some firms have opted for training that allows for criticism and change to be managed in a constructive forum. At Bryan Cave, for example, Millennial associates are asked to attend a "business academy" to brainstorm ways to better serve clients, giving the law firm an opportunity to highlight traits that it expects its associates to embody and a means by which the associate can develop required skills.<sup>58</sup>

Acknowledging the generational divide and initiating training designed to accomplish workplace integration sends a uniform message of commitment, thereby allowing each generation to exercise its strengths and values, while respecting those around them.

## **VI. Conclusion**

Ultimately, what is professional in one generation's eyes may be disrespectful in the view of another generation. By gaining awareness and understanding of the distinct cultural lenses at play, a common ground may be reached for developing a new culture that crosses generations in defining the contemporary professional, successful lawyer.

The legal profession has its own culture that emphasizes integrity, professionalism, and respect for both the rule of law and the individual.<sup>59</sup> These core values have found a home in a variety of settings throughout the history of the United States. The legal profession has adjusted to each new generation and to society-defining historical events, such as the industrial revolution. It now must adapt to the digital age and a new, digitally native generation.

As the bridge between the two, the GenXer's role in resolving the issues at hand should not be underestimated. GenXers have the respect of and rapport with both their Baby Boomer and Millennial colleagues. GenXers also have an acute appreciation for the advantages technology can impart, and are conscious of the significant benefits of establishing a work-life balance culture. The GenXer's perspective may serve to spark the communication and the shift-in-thinking when broaching these generational work place issues. In fact, GenXers may be able to motivate all their colleagues to be more open-minded about the personal growth available.

While change creates uncertainty and discomfort, it also provides opportunity. The legal profession is at a crossroads. It has the opportunity to embrace the digital age and its Millennial generation so that the profession may collaboratively evolve while maintaining its core values, rather than suffer the disruption of what will otherwise likely become a Millennial revolution.

The only way to make sense out of change is to plunge into it, move with it, and join the dance.

—Alan Watts<sup>60</sup>

## Endnotes

1. NEIL HOWE & WILLIAM STRAUS, *MILLENNIALS RISING: THE NEXT GENERATION* 4 (Random House 2000).
2. ERIC CHESTER, *EMPLOYING GENERATION WHY—UNDERSTANDING, MANAGING AND MOTIVATING YOUR NEW WORK FORCE* (ChesPress 2002).
3. BRUCE TULGAN & CAROLYN A. MARTIN PH.D., *MANAGING GENERATION Y: GLOBAL CITIZENS BORN IN THE LATE SEVENTIES AND EARLY EIGHTIES* (HRD Press, Inc. 2001).
4. Jessica Brack, *Maximizing Millennials in the Work Place*, UNC EXECUTIVE DEVELOPMENT (2012), available at <http://www.kenan-flagler.unc.edu/executive-development/custom-programs/~media/DF1C11C056874DDA8097271A1ED48662.ashx>.
5. LEE CARAHER, *MILLENNIALS & MANAGEMENT*, 4, 8, 177-78 (Bibliomotion Inc. 2014).
6. GEERT HOFSTEDE, ET AL., *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* 5 (McGraw-Hill, 3d ed. 2010).
7. *Id.* (Geert Hofstede explains, “exactly where the borders lie between nature and culture, and between culture and personality is a matter of discussion among social scientists.” For example, the ability to experience emotion is part of the basic human “operating system,” but culture provides the ingredients that contribute to the manifestations of various emotions. On the other hand, a “unique set of mental programs” derived from heredity constitute what we refer to as personality. Our personalities then continue to develop and are modified by “the influence of collective programming (culture) *as well as* by unique personal experiences.”).
8. *Id.* at 17-18.
9. A detailed analysis of each generation is beyond the scope of this article, which instead attempts to highlight the predominant elements from the current literature. Note also that the perimeters within which each generation was born vary slightly depending upon the author, but all of the literature generally designates the same approximate time periods.
10. CARAHER, *supra* note 5, at 9.
11. Michael Moore, *Generational Conflict in the Legal Profession*, 83 WIS. LAW. 21, 21-22 (2010).
12. JAMIE NOTTER & MADDIE GRANT, *WHEN MILLENNIALS TAKE OVER* 26 (Ideapress 2015); Jamie Notter, *Generational Diversity in the Workplace*, THE MULTICULTURAL ADVANTAGE, <http://www.multiculturaladvantage.com/recruit/group/mature/Generational-Diversity-in-Workplace.asp> (last visited May 17, 2016).
13. Moore, *supra* note 11, at 22.
14. Sindhu Sundar, *5 Ways Baby Boomers Changed BigLaw*, LAW360 (Nov. 6, 2015, 7:24 PM)<http://www.law360.com/articles/723766/5-ways-baby-boomers-changed-biglaw>.

15. Natasha Jaroscak, *Successfully Managing the Multi-Generational Law Firm*, THOMPSON REUTERS (2015), <http://legalsolutions.thomsonreuters.com/law-products/news-views/managing-partners/managing-generational-law-firms>.

16. CARAHER, *supra* note 5, at 4 & 9.

17. Moore, *supra* note 11, at 22; Notter, *Generational Diversity in the Workplace*, *supra* note 12.

18. Moore, *supra* note 11, at 22.

19. Jaroscak, *supra* note 15.

20. Brack, *supra* note 4.

21. Notter, *Generational Diversity in the Workplace*, *supra* note 12.

22. Moore, *supra* note 11, at 22.

23. CARAHER, *supra* note 5, at 26.

24. Notter, *Generational Diversity in the Workplace*, *supra* note 12.

25. *Id.*; Moore, *supra* note 11, at 22.

26. Brack, *supra* note 4; CARAHER, *supra* note 5, at 38.

27. CARAHER, *supra* note 5, at 38.

28. Anne K. Halsall, *What are the differences between Generation X and Millennial Generation?*, QUORA (May 3, 2011), <https://www.quora.com/What-are-the-differences-between-Generation-X-and-Millennial-Generation>.

29. It is also interesting to consider that all of these generational differences are occurring within the context of yet another subculture—the legal profession. Susan Daicoff has researched and developed a personality profile for lawyers, which includes the following:

a) A drive to achieve, evidenced by an achievement orientation;

b) Dominance, aggression, competitiveness, and masculinity;

c) Emphasis on rights and obligations over emotions, interpersonal harmony, and relationships;

d) Materialistic, pragmatic values over altruistic goals; and

e) Higher than normal psychological distress.

See SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF* (Am. Psychological Ass'n 2004) (internal citations omitted). Query whether these traits, which are consistent with the legal academy's traditional emphasis on teaching analytical thinking rather than interpersonal skills and empathy, may create even greater difficulties for collaboration among the generations, or turn Millennials (who esteem balance, relationships, and cooperation over these characters) off from practicing law altogether.

30. CLOTAIRE RAPAILLE, *THE CULTURE CODE: AN INGENIOUS WAY TO UNDERSTAND WHY PEOPLE AROUND THE WORLD LIVE AND BUY AS THEY DO*, 14, 27 (Crown Business, Reprint ed. 2007); MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* (Back Bay Books, 1st ed. 2007).

31. GLADWELL, *supra* note 30, at 85.

32. *Id.*

33. See Jan L. Jacobowitz, *A Rose By Any Other Name? Enhancing Professionalism Through Cultural Competency*, FAWL J. (Spring 2009), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1509647](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1509647).

34. RAYMONDE CARROLL, *CULTURAL MISUNDERSTANDINGS: THE FRENCH-AMERICAN EXPERIENCE 2* (Univ. of Chicago Press 1990).

35. Travis Adams, *Cultural Competency: A Necessary Skill for the 21st Century Attorney*, 4 LA RAZA L.J. 2, 6 (2012), available at <http://open.wmitchell.edu/lawraza/vol14/iss1/2>.

36. RONALD B. ADLER, ET AL., *INTERPLAY: THE PROCESS OF INTERPERSONAL COMMUNICATION 48-49* (Oxford Univ. Press, Inc., 12th ed. 2012) (internal citations omitted).

37. Rodney G. Snow, *Baby Boomers Meet Millennials in the Legal Workplace: From Face-lift to Facebook*, UTAH STATE BAR, Nov. 7, 2011, available at: <https://www.utahbar.org/utah-bar-journal/article/baby-boomers-meet-millennials-in-the-legal-workplace-from-face-lift-to-facebook/>.

38. Debra Cassens Weiss, *Is there a generational divide in BigLaw? Only 3% of managing partners are from Gen X*, A.B.A. J., Nov. 5, 2015, available at: [http://www.abajournal.com/news/article/is\\_there\\_a\\_generational\\_divide\\_in\\_biglaw\\_only\\_3\\_of\\_managing\\_partners\\_are\\_fr?utm\\_source=feedburner&utm\\_medium=](http://www.abajournal.com/news/article/is_there_a_generational_divide_in_biglaw_only_3_of_managing_partners_are_fr?utm_source=feedburner&utm_medium=)

39. *Id.*

40. Lauren Stiller Rikleen, *Millennials: What Other Generations Say About You*, 39 ABA LAW PRACTICE MAGAZINE (2013).

41. *Id.*

42. Caroline Simson, *4 Things Associates Hate About Their Jobs*, LAW360 (Oct. 29, 2015), <http://www.law360.com/articles/720033/4-things-associates-hate-about-their-jobs>.

43. Andrew Strickler, *BigLaw Facing Talent Drain As Men Flee For Flexibility*, LAW360 (Aug. 28, 2015), <http://www.law360.com/articles/696609/biglaw-facing-talent-drain-as-men-flee-for-flexibility> (This phenomenon is the result of GenXers striving for greater work-life balance and flexibility.).

44. Brack, *supra* note 4, at 1.

45. Rikleen, *supra* note 40.

46. Weiss, *supra* note 38.

47. Brack, *supra* note 4, at 2.

48. *Id.* at 1.

49. *Id.*

50. Susan A. Berson, *Bridging this generation gap takes time, talking*, A.B.A. J., Jan. 1, 2015, available at [http://www.abajournal.com/magazine/article/managing\\_millennials](http://www.abajournal.com/magazine/article/managing_millennials).

51. *Id.* (Millennials “are less motivated by money than by keeping their personal time.”).

52. Jacob Batchelor, *How to Get the Most Out of Your Associates*, LAW360 (Aug. 13, 2015), available at [http://www.law360.com/energy/articles/689770?nl\\_pk=a0f121c2-36ac-4488-86a0-8f4544ca87a7&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=ene](http://www.law360.com/energy/articles/689770?nl_pk=a0f121c2-36ac-4488-86a0-8f4544ca87a7&utm_source=newsletter&utm_medium=email&utm_campaign=ene)

53. *Id.*

54. *Id.*

55. *Id.*

56. Ryan Jenkins, *5 Reasons Millennials Aren't Answering Your Phone Call*, INC.COM (Nov.17, 2015), [http://www.inc.com/ryan-jenkins/5-reasons-millennials-aren-t-answering-your-phone-call.html?cid=sf01002&sr\\_share=facebook](http://www.inc.com/ryan-jenkins/5-reasons-millennials-aren-t-answering-your-phone-call.html?cid=sf01002&sr_share=facebook).

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58. Weiss, *supra* note 38.

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## The Law Faculty's Ethical Failures Regarding Student-Edited Law Reviews

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### I. Introduction

While a number of scholars—including Judge Richard Posner—have been critical of student-edited law reviews in the last twenty years,<sup>1</sup> they have missed the central reason why no other discipline in the United States has chosen to put its most influential scholarly journals under the control of apprentices.<sup>2</sup> Namely, it is unethical for a peer-review profession to put apprentices in charge of important professional decision-making without reasonable pro-active supervision by members of the profession who have the appropriate degrees and are fully credentialed. Perhaps the best illustration of the ethical problems of student-edited law reviews can be found in an analogy to the medical profession. Consider the following: would it be ethical for the medical profession to place major decisions regarding which medical scholarship gets published in the most important journals in the hands of fourth-semester (or fifth-semester) medical students? Ask yourself whether you, personally, want medical educators to place publication decisions affecting the advancement of our medical knowledge in the hands of medical students who have completed only three semesters of basic courses (and usually have very limited experience in the actual professional work).

Although there has been an increase in peer-edited and -refereed law journals over recent years, the large majority of law journals are student-edited.<sup>3</sup> In terms of impact, the most influential journals are almost exclusively student-edited.<sup>4</sup> This paper analyzes the ethical failures of law faculties that have led to this singular exception among all disciplines in the world where students control decisions in the major journals regarding which scholarship advances knowledge in a discipline.<sup>5</sup> The paper argues that reform will only happen if all the other faculties in the university refuse to be complicit in the ethical failures of law faculty. Note that the ethical failures discussed here are on the part of the law faculty, not the law student editors. In every peer-review profession, it is the responsibility of the properly credentialed, experienced members to provide reasonable pro-active supervision over the work of apprentices.