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Can They Handle the Truth? Teaching Law Students Ethics During a Time of a Societal and Generational Divide

Michele N. Struffolino
Nova Southeastern University - Shepard Broad Law Center

ARTICLE

Michele N. Struffolino

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Abstract. Today's law students and aspiring law students will enter law school having been bombarded with the message that they, as members of the voting public, are victims of "The Big Lie." They likely also know that "The Big Lie" story consistently sent by politicians, activists, and others through all forms of informational outlets, including traditional and nontraditional media sources, has been found to be unsupported by facts. For legal educators, this is particularly concerning because many of those sending and supporting "The Big Lie" story are lawyers. Aspiring lawyers are left with the impression that zealous representation is relatively boundless and allows espousing false information to the public and in the judicial system to advocate for a client. Such a result is harmful to the public, the legal profession, and the individual lawyers. The good news is the generation of individuals who have recently entered law school and those who will be beginning a legal education over the next several years, now identified as belonging to "Gen Z," may be more likely to reject the image of lawyers created in the public eye and to embrace the opportunity to build a professional identity that values the truth and its role in achieving justice. The public perception of the lawyer's role formed through these well-publicized examples of lawyering are entirely inconsistent with the legal academy's recognition of the need for aspiring lawyers to build a professional identity that is consistent with their values and beliefs. Efforts to guide students to professional identity formation are essential to achieving self-satisfaction, wellness, and success in the legal profession; in turn, the result of these efforts will benefit the legal profession and the public. The dichotomy between the current public perception of a lawyer's

role and the goal of legal educators presents a challenge not just for the Professional Responsibility professor but also for the entire law school community. Recognizing and highlighting the traits associated with the Gen Z law student can allow legal educators to meet this challenge. Because one of the traits found to be associated with the Gen Z cohort, to which current and incoming law students will increasingly belong, is that its members value truthfulness, an opportunity exists to bridge the gap between what law students may expect to learn about ethics in law school and legal education's professional identity formation objectives. To answer the question posed in the title—whether current and future law students can handle the truth—this Article explores the meaning of the truth and the legal professional's and profession's role in the search for the truth, revealing a current inherent ambiguity in the definition of the truth. This Article then exposes the gap between the current public perception of a lawyer's obligation to be truthful and the goal of legal education in guiding law students toward a professional identity that values the truth. This is accomplished by using recent examples of lawyer dishonesty and the effects their actions have had on their careers, the legal system, and the public; and contrasting these examples with professional identify formation efforts within the legal education community. This is followed by exploring the characteristics and values associated with a new generation of law students that are relevant to efforts by legal educators to redirect the discussion regarding a lawyer's role, including the obligation, to tell the truth. Finally, this Article suggests ways in which legal education can exploit the characteristics and traits found common with this new generation of law students as they relate to values associated with truthfulness to accomplish professional identify formation goals. The Conclusion posits that the recent well-publicized examples of unethical lawyering may well present more of an opportunity than a challenge as legal educators work with a new generation of law students in professional identity formation.

Author. Professor of Law at Nova Southeastern University, Shepard Broad College of Law. Thank you to my talented research assistant, Reid Levin, for his assistance with research, ideas, and editing. A special thank you to Professor Joseph Hnylka, and Associate Dean and Professor Debra Vollweiler for their comments and honest input. Thank you to Nassar Jabour Jr. and Nicole Pantry for their unconditional support. A heartfelt

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I. INTRODUCTION

"*To say of what is that it is, or of what is not that it is not, is true.*"
Aristotle[1]

"*Truth is like the sun. You can shut it out for a time, but it ain't goin' away.*"
Elvis Presley[2]

Today's current and aspiring law students are bombarded with the message that they, as members of the voting public, are victims of "The Big Lie."[3] They likely know that The Big Lie, which politicians, activists, and others have consistently pushed through all forms of informational outlets—including traditional and nontraditional media—is unsupported by the facts.[4] For legal educators, this is particularly concerning because many of those supporting The Big Lie are lawyers.[5] Aspiring lawyers are left with the impression that zealous representation is relatively boundless and allows the spreading of false information to the public and the judicial system to advocate for clients.[6] Such a result harms the public, the legal profession, and individual lawyers.[7] The good news is that the generation entering law school may be more likely to reject the image of lawyers created in the public eye and embrace the opportunity to build a professional identity that values the truth and its role in achieving justice.[8]

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1. ARISTOTLE, METAPHYSICS 1011b25 (W.D. Ross trans., Oxford at the Clarendon Press 1924) (350 B.C.E.); *see also* Simon W. Blackburn, *Truth: Philosophy and Logic*, ENCYC. BRITANNICA, https://www.britannica.com/topic/truth-philosophy-and-logic [https://perma.cc/HC9R-8H42] (defining Aristotelian truth); Bradley Dowden & Norman Swartz, *Truth*, INTERNET ENCYC. OF PHIL., https://iep.utm.edu/truth/ [https://perma.cc/TJA4-J697] (elaborating on the theories of truth).

2. ELVIS PRESLEY & MIKE EVANS, ELVIS: INSPIRATIONS 16 (2007).

3. *See* Zachary B. Wolf, *The 5 Key Elements of Trump's Big Lie and How It Came to B*e, CNN: POLITICS, https://www.cnn.com/2021/05/19/politics/donald-trump-big-lie-explainer/index.html [https://perma.cc/GPP2-G5PB] (referring to Donald J. Trump's assertion that the 2020 presidential election was "stolen" from him and he, not President Biden, won the election); *see also* discussion *infra* Section III.A.

4. *See* discussion *infra* Section III.A.

5. *See* discussion *infra* Section III.A.

6. *See* discussion *infra* Section III.A.

7. *See* discussion *infra* Section III.A.

8. *See* discussion *infra* Part IV.

The impact of dishonesty and the importance of telling the truth are addressed well before law school.[9] It is troubling, however, that today's legal educators must discuss the fundamental responsibility of searching for and telling the truth.[10] Recent examples of lawyers behaving in ways that professional responsibility textbooks and professors find unethical are legion and pervade all forms of media.[11] Although the tactic to evade, confuse, or mislead the truth has always been used by some in the legal profession, these examples frame the public perception and the market expectations of legal professionals.[12] Accordingly, legal educators must act to undo the harm and adjust market expectations.[13]

The deteriorated public perception of the lawyer's role is entirely inconsistent with the need for aspiring lawyers to build a professional identity consistent with their values and beliefs. Efforts to guide students' professional identity formation are essential to achieving self-satisfaction, wellness, and success in the legal profession; in turn, the legal profession and the public will benefit. The dichotomy between the current public perception of the lawyer's role[14] and the goal of legal educators presents a challenge for professional responsibility professors and the law school community.[15] Recognizing and highlighting the traits associated with Gen Z law students allow legal educators to meet this challenge.

Because this cohort values truthfulness, an opportunity exists to bridge the gap between what law students expect to learn about legal ethics and the objectives of professional identity formation.[16] Although many law students expect that the required professional responsibility course will be a semester-long bar prep type course, preparing them to pass the Multistate Professional Responsibility Exam ("MPRE"),[17] the learning objectives of

9. *See* discussion *infra* Part V.

10. *See* Joy Kanwar, *When Truth Is Not Truth: Thoughts on Teaching in an Era of "Alternative Facts"*, 58 WASHBURN L.J. 717, 727–28 (2019) (emphasizing the role legal educators play in the ethics of future lawyers).

11. *See* discussion *infra* Section III.A.

12. *See* discussion *infra* Section III.A.

13. *See* discussion *infra* Part V.

14. *See* Kanwar, *supra* note 10, at 725–26 ("In a 2015 Gallup poll, 34% of those polled rated attorneys' honesty and ethical standards as 'low' or 'very low.'").

15. *See id.* at 727–28 (calling on the legal community to set the example for aspiring lawyers).

16. *See* discussion *infra* Part IV.

17. The MPRE is required in almost every jurisdiction (except Wisconsin and Puerto Rico) to be admitted to practice law. *See Jurisdictions Requiring the MPRE*, NAT'L CONF. OF BAR EXAM'RS,

many law schools and professional responsibility courses extend beyond achieving passing scores on the MPRE, striving to guide the exploration of ethical lawyering.[18] While many law schools have already begun guiding students toward developing a professional identity that incorporates the ethical and moral values of themselves and the legal profession,[19] recent changes to the American Bar Association ("ABA") Standard 303 make this objective mandatory.[20] Whether it is self-imposed or required, an opportunity exists for legal educators to focus on the importance of truth and its role in accomplishing the goals of students and the legal profession.

To answer the question posed in the title—whether current and future law students can handle the truth—it is necessary to explore the meaning of the truth and the role of the profession and its members in searching for it. As background, Part Two of this Article discusses truth's role in the legal profession from a historical perspective. This begins with a discussion of the evolution of professional responsibility and ethics in legal education and ends with an examination of how current rules address the obligation to be truthful in the practice of law, revealing an inherent ambiguity in the definition of truth.[21] Part Three of this Article exposes the gap between public perception of the lawyer's obligation to be truthful and the goal of legal education in guiding law students toward a professional identity that values the truth. This is accomplished by using recent examples of lawyers behaving dishonestly and their actions' effects on their careers, the legal system, and the public.[22] This is followed by defining professional identify formation and its importance to the legal profession and the public, exposing the difference.[23] Part Four of this Article explores the characteristics and values of the next generation of law students, particularly those traits relevant to legal educators' discussion of the role and obligation of honesty.[24] Part Five of this Article explores and suggests ways that legal education can exploit characteristics and traits of the new generation to form

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https://www.ncbex.org/exams/mpre/ [https://perma.cc/T3VR-MRW6] (providing background information about the MPRE).

18. *See* discussion *infra* Section III.B.
19. *See* discussion *infra* Section III.B.
20. *See* discussion *infra* Section III.B.
21. *See* discussion *infra* Part II.
22. *See* discussion *infra* Part III.
23. *See* discussion *infra* Part III.
24. *See* discussion *infra* Part IV.

professional identity goals, an effort that will improve public perception of lawyers.[25] Finally, the Article concludes by recognizing that recent examples of unethical lawyering present an opportunity for legal educators to assist in the formation of professional identity.[26]

II. TRUTH IN THE LEGAL PROFESSION

The next generation of law students is deeply divided along political and social lines, each holding a different perception of what is true.[27] Unfortunately, because lawyers have been at the forefront of the discourse, doubt has been cast on the lawyer's role, including the obligation to be truthful.[28] Examining this obligation from a historical perspective and tracking the evolution of the role of ethics and ethical rules in the legal profession provides insight into the obligation of honestly in today's legal profession. Unfortunately, the discussion offers little clarity, as the current American Model Rules of Professional Conduct give a vague but forgiving definition of "knowledge" regarding whether a fact[29] is true or false.[30]

A. A Historical Perspective

Defining truth and the ethical obligations to search for it have been debated for centuries. The lawyer's efforts to persuade others to adopt one

25. *See* discussion *infra* Part V.

26. *See* discussion *infra* Part V.

27. *See* Calvin Woodward, *Trump's 'Big Lie' Imperils Republicans Who Don't Embrace It*, ASSOCIATED PRESS (May 9, 2021), https://apnews.com/article/michael-pence-donald-trump-election-2020-government-and-politics-0c07947f9fd2b9911b3006f0fc128ffd [https://perma.cc/B9Z7-9PW8] (highlighting the animosity endured by Republicans who did not believe or support The Big Lie); Stephen Collinson, *Trump's Big Lie Is Changing the Face of American Politics*, CNN: POLITICS, https://www.cnn.com/2021/09/16/politics/trump-big-lie-gop-election/index.html [https://perma.cc/Y4NN-3GYF] (finding "36% of Americans don't think Biden legitimately got sufficient votes to win last November").

28. *See* discussion *infra* Section III.A.

29. A fact is "[a] circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error." *What Is Fact*, THE L. DICTIONARY, https://thelawdictionary.org/fact/ [https://perma.cc/NC3W-PYJR]; *see also Fact*, FINDLAW: LEGAL DICTIONARY, https://dictionary.findlaw.com/definition/fact.html [https://perma.cc/SY7V-WQWU] (defining a fact as "something that has actual existence" or "any of the circumstances of a case that exist or are alleged to exist in reality").

30. *See* discussion *infra* Section III.C.

version of the truth[31] requires rhetoric: "the ability to convince by means of speech."[32] A historical and philosophical perspective is also helpful in exploring rhetoric's role in defining truth.[33] Historically, rhetoric was critical when representing one's interests.[34] The ability to use rhetoric successfully "gave speakers the ability not only to 'speak and convince the masses,' but also to make the listeners their 'slaves.'"[35] Plato believed an ethical and proper use of rhetoric only existed if the speaker knew the truth of the matter presented.[36] It was not enough to merely believe that something was true.[37] Additionally, a discussion about truth should also include "the truth about justice."[38]

An honorable use of rhetoric exists if the orator has "studied and learned about the subject matter to be discussed."[39] To Plato, it is dishonorable to speak to please an audience without knowing the truth.[40] Further, the ethical speaker should understand the implications on justice—the knowledge of right and wrong.[41] Only by self-imposing an ethical definition of the truth, requiring both knowledge of the subject matter and its impact on justice, can the speaker be happy.[42] This definition fits cleanly into the current need for law students to develop a strong professional identity focused on wellness and satisfaction in the legal profession.[43]

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31. *See* Kenneth R. Berman, *The Relativity of Legal Ethics*, 47 LITIG. 53, 56 (2021) (exploring why ethics vary among legal systems).

32. At least one other author explores the role of rhetoric in defining truth through the lessons of Athenian philosophers. Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1084 (2020).

33. *See id.* (noting Athenian philosophers' role in exploring rhetoric).

34. *See id.* (acknowledging the importance of rhetoric to advance a citizen's political and social viewpoint in the Plato era).

35. *Id.* at 1085 (alterations adopted) (quoting PLATO, GORGIAS 28 (Walter Hamilton trans., rev. ed. 1971)).

36. *See id.* at 1086 (highlighting Plato's belief that a speaker needs to know truth to act ethical).

37. *Id.* at 1087.

38. *Id.* at 1086.

39. *Id.* at 1087.

40. *See id.* at 1088 (stating Plato believed speakers who spoke solely to please the audience should be condemned).

41. *See id.* ("[T]he good orator, who uses rhetoric when appropriate, is someone who has simply learnt about right and wrong.").

42. *See id.* at 1089 (highlighting Plato's belief that "happiness was connected to upright conduct").

43. *See* discussion *infra* Section III.B.

Some legal professionals take a different view, placing the obligation to the client above any concerns for justice or self-preservation.[44] When a lawyer takes a strict client-centered approach, "'doing good' often means 'doing good specifically for your client, not for the world at large, and certainly not for yourself.'"[45] This view is consistent with a strict client-centered and adversarial approach to fact-finding.

Unlike other common law countries that view lawyers' involvement in framing the facts as a form of witness tampering,[46] the United States' adversarial system recognizes the need for experienced legal professionals to communicate their version of the facts to the fact finder and assist their clients and witnesses in developing a consistent version of the facts.[47] In this system, achieving justice is accomplished when each side presents their version of the truth, which is tested through cross-examination in front of an impartial fact finder who determines which version is true.[48]

While the adversarial system's strength is its ability to reduce inconsistencies, thus creating "[c]oherence, clarity, and stability" in the rule of law, the lawyer's interests driven by market realties can create an incentive for the lawyer to "subvert" the search for truth.[49] The more complex or inconsistent the applicable law, the more need for legal assistance.[50] This need, coupled with the influential position lawyers hold in the justice system, can create opportunities for self-advancement.[51] Lawyers can potentially become "the deadliest enemies of the truth-eliciting rules."[52]

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44. *See* Stuart M. Israel, *The Truth Is Rarely Pure and Never Simple*, 67 PRAC. LAW. 35, 35 (2021) (declaring the fact that sometimes lawyers are obligated to withhold some truth).

45. *Id.* at 36 (quoting ALAN DERSHOWITZ, LETTERS TO A YOUNG LAWYER 41 (2001)).

46. *See* Berman, *supra* note 31, at 56 (revealing how most common-law countries would view America's preparation as witness tampering).

47. *See id.* at 56 (discussing America's desire to assist witness' inequalities); John O. McGinnis, *Lawyers as the Enemies of Truth*, 26 HARV. J.L. & PUB. POL'Y 231, 233 (2003) (elaborating on the consequences of complex rules on society).

48. *See* Berman, *supra* note 31, at 56 (listing the common law adversarial system's steps to reveal the truth).

49. *See* McGinnis, *supra* note 47, at 232 (stating lawyers have an interest in holding back the whole truth). The less clear the rules of law, the more need for, and dependance upon, the legal professional.

50. *See id.* at 233 (emphasizing the more complex the rule, the more dependent clients will be on lawyers).

51. *Id.*

52. *Id.*

B. The Evolution of the Role of Ethics in the Legal Profession

Before analyzing the current ethical rules and responsibilities relevant to a lawyer's obligation to be truthful, it is helpful to remember the progression of lawyer regulation in this country. The current public perception of lawyers—furthered by recent publicized examples of the ability to subvert a search for the truth, often for pecuniary gain and notoriety—may not be too far from the public's perception of lawyers during pre-revolutionary times in this country.[53] As one author points out, "[n]ot a single lawyer came to Plymouth on the Mayflower."[54] Those most affected by the results shaped the law: "theologians, politicians, farmers, fisherm[e]n, and merchants."[55] In fact, the regulation of legal professionals at the time was focused on ways to disenfranchise the legal profession by prohibiting lawyers' ability to charge a fee for legal services or limiting the fees that lawyers could charge for offering legal assistance.[56] With the revolution came an increase in trade and business and, thus, the need for a more structured legal system with more trained and qualified legal professionals.[57] The focus of the legal professionals' regulation actually became keeping out unqualified and untrained lay persons and keeping in those with the knowledge and training to meet the needs of the new "propertied class."[58] Qualifications in some areas required years of clerkships before being admitted to practice and limited the number or class of individuals who could even obtain a clerkship.[59]

Legal education did not replace legal training as the primary qualification for entrance into the legal profession until the mid-to-late 1800s.[60] Because legal education was not required to practice law or to take the bar exam in the states that required passing the bar exam, almost anyone could practice

53. Richard B. Morris, *The Legal Profession in America on the Eve of the Revolution*, in POLITICAL SEPARATION AND LEGAL CONTINUITY 3, 4–11 (Harry W. Jones ed., 1976) [hereinafter Morris].

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Robert Stevens, *Democracy and the Legal Profession: Cautionary Notes*, 3 LEARNING & L. 12, 14 (1976).

law.[61] To address concerns regarding lawyers' qualifications, lawyer training was taken "out of law offices and placed . . . firmly inside the universities."[62] The ABA became focused on "raising standards" in the legal profession and by the mid-1900s completing law school was required for admission to the bar.[63]

In 1908, the ABA published the *Canons of Professional Ethics* (the "Canons").[64] These Canons provided a general guide for ethical behavior before young lawyers could go "astray" and could also serve as some basis to impose discipline for lawyer misconduct.[65] The Canons, however, proved to be too general to form the basis of any meaningful disciplinary regulation.[66] Based upon the need for enforceable rules that more clearly defined the lawyer's role and responsibilities,[67] the ABA adopted the Model Code of Professional Responsibility (the "Code") in 1969.[68] This Code also included "Canons," but these were just general statements that now served mainly as an outline for the chapters that followed.[69] The 1969 Code also included Ethical Considerations that were aspirational in nature, followed by the mandatory rules that would serve as a basis for discipline.[70]

In the 1970s, as a result of Watergate and the publicized examples of questionable lawyering, the ABA reacted by requiring all law schools to teach a course in legal ethics that would be mandatory for all law students.[71] This led to an increased examination of these existing rules by legal ethics

61. *Id.* at 15.

62. *Id.* at 14.

63. *Id.* at 16.

64. *See generally* CANONS OF PROF'L ETHICS (AM. BAR ASS'N 1908) ("Adopted on August 27, 1908").

65. Maura Strassberg, *Taking Ethics Seriously: Beyond Positivist Jurisprudence in Legal Ethics*, 80 IOWA L. REV. 901, 906–07 (1995).

66. *Id.* at 900–08

67. *Id.* at 908.

68. *Id.* 908 n.43.

69. THOMAS D. MORGAN ET AL., PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS 17 (13th abr. ed. 2018).

70. *Id.*

71. *Id.*; AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2021–2022, at 18 (2021) ("A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members . . . .").

professors and exposed their inadequacy.[72] What was needed was "law"; rules governing the legal profession that could be understood and enforced as opposed to aspirational ethics.[73]

Promulgated in 1983, the ABA Model Rules of Professional Conduct ("Model Rules") embodied a clear shift from ethics to the law.[74] The Model Rules consist of the rules followed by Comments: "The Rules define conduct which must or must not occur, indicate where a lawyer has non-sanctionable discretion to act within a specific scope of discretion, and are intended to be enforced by disciplinary sanctions."[75] The Comments were designed to provide guidance and clarification of the rules and examples in which the rule may or may not apply.[76] The Model Rules have since undergone several changes but remain the focus of law school Professional Responsibility courses and the main source of lawyer discipline as adopted by the states.[77] The current provisions related to "truthfulness" in the Model Rules of Professional Conduct, as adopted by various jurisdictions, are the focus of this Article. An examination of these rules exposes the difference between what is required by the rules and the aspirational ethical goals associated with personal and professional identity and the values of the legal profession.

C. *The Codification of Rules Requiring Truth in the Legal Profession*

The Preamble to the Model Rules articulates the goal of encouraging lawyers to aspire to the highest ethical behavior, but the Preamble is followed by a set of rules relating to the importance of the truth articulated in mostly negative terms. Although the rules are meant to set the floor at which lawyer conduct must either be at or above to avoid bar discipline, they are inconsistent with the values of the legal profession indicated in the Preamble.[78] The Preamble starts with a statement that appears consistent with Plato's definition of honorable rhetoric: "A lawyer as a member of the legal profession, is a representative of clients, an officer of the legal system,

72. MORGAN, *supra* note 69, at 17.
73. Strassberg, *supra* note 65, at 907.
74. *Id.* at 909.
75. *Id.*
76. *Id.* at 909–10.
77. MORGAN, *supra* note 69, at 18.
78. *See generally* MODEL RULES OF PROF'L CONDUCT pmbl. (AM. BAR ASS'N 2023).

and a public citizen having a special responsibility for the quality of justice."[79] In addition, lawyers are advised[80] to "demonstrate respect for the legal system,"[81] "seek . . . the administration of justice,"[82] and "further the public's . . . confidence in the . . . justice system."[83] The Preamble recognizes the impact of lawyer conduct and the great need for lawyers to aspire to the highest ethical ideals, as "[l]awyers play a vital role in the preservation of society."[84] The Preamble, however, is not the law, and lawyers generally cannot be sanctioned for violating the Preamble absent a violation of a rule. The specific lawyer obligations are left to the rules. The opposite of true is false, and most rules governing a lawyer's obligation to be truthful are stated in the negative.[85] This is consistent with the rules setting the floor for ethical behavior rather than encouraging the aspirations set out in the Preamble.[86]

1. Rule 8.4: Catchall Provisions

Model Rule 8.4 presents two avenues of discipline for lawyer conduct related to untruthfulness.[87] Rule 8.4(c) specifically prohibits an attorney from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation."[88] Rule 8.4(c) most explicitly refers to a lawyer's obligation to be truthful in the broadest sense as it applies to any conduct by an attorney, whether related to the practice of law or the attorney's own personal dealings.[89] In addition, Rule 8.4(c) does not limit its application to

79. *Id.* pmbl. ¶ 1.

80. *See id.* pmbl. ¶ 4–7 (using the term "should" when discussing a lawyer's general responsibilities).

81. *Id.* pmbl. ¶ 5.

82. *Id.* pmbl. ¶ 6.

83. *Id.*

84. *Id.* pmbl. ¶ 12–13.

85. *See id.* R. 8.4, 3.3, 4.1, 7.1 (stating what a lawyer must *not* do opposed to what a lawyer must do).

86. *See id.* pmbl. (prefacing the substantive model rules).

87. *Id.* R. 8.4.

88. *Id.* R. 8.4(c).

89. Interpretations indicating that this rule only applies to a lawyer's personal dealings, leaving it to other specific rules to govern actions performed in the practice of law, have been rejected. *See* D.C. BAR COMM. ON LEGAL ETHICS, Op. 323 (2004), https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-323 [**https://perma.cc/FX3U-4HHV]** (stating Rule 4.8(c) applies to lawyers in both a representational and nonrepresentational capacity); ROY D. SIMON, JR., SIMON'S NEW YORK RULES OF PROFESSIONAL CONDUCT ANNOTATED § 8.4(c)

situations in which the lawyer "knows" or acts "knowingly."[90] With little guidance or comment defining the prohibitions detailed in Rule 8.4(c), the terms "dishonesty, fraud, deceit, [and] misrepresentation" are left to their plain meaning or the substantive law.[91] In addition to 8.4(c), Rule 8.4(a) also governs untruthful conduct by incorporating into the definition of misconduct any action by an attorney that violates or is an attempt to violate any other rule.[92]

By incorporating a violation of any other rule into the definition of misconduct, Rule 8.4(a) provides an additional means of discipline for: the conduct governed by 8.4(c); other rules that expressly prohibit lawyers representing clients from making untruthful statements to others; and rules that require lawyers to report dishonest conduct of other lawyers.[93] As discussed below, however, unlike Rule 8.4(c), these specific rules addressing dishonesty[94] apply only when there is "knowledge" of untruthfulness, thereby creating an opportunity to avoid discipline for questionable behavior that may be at, or even just below, the floor set by the rules.[95]

2. MRPC 3.3: Candor Toward the Tribunal

Although Model Rule 3.1 requires lawyers to inform themselves of the facts involved in their client's case to avoid being disciplined for filing frivolous claims, Rule 3.3, which requires candor toward the tribunal, has no such inquiry requirement.[96] Rule 3.3 creates the appearance that a lawyer

(2022 ed.) ("A lawyer. . . shall not. . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

90. *See* MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (using the phrase "engage in" rather than language requiring personal knowledge).

91. *See id.* R. 1.0(d) (defining fraud as "conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive").

92. *Id.* R. 8.4(a).

93. *See id.* ("It is professional misconduct for a lawyer to[] violate or attempt to violate the Rules of Professional Conduct."); *see also* discussion *infra* Section II.C. (examining the terms like "knows" and "knowingly").

94. Excluded here is Model Rule 7.1, which prohibits false or misleading advertising but is not related to actions taken by a lawyer when acting in the lawyer's representational capacity. *See generally* MODEL RULES OF PROF'L CONDUCT R. 7.1.

95. *See* discussion *infra* Section II.C.5.

96. *Compare* MODEL RULES OF PROF'L CONDUCT R. 3.1 (prohibiting a lawyer from making frivolous claims without a basis in law or fact), *with* MODEL RULES OF PROF'L CONDUCT R. 3.3(a) (omitting any requirement for a lawyer to inquire into the facts and merely prohibiting when a lawyer "knowingly" lies).

can avoid discipline by remaining ignorant of the facts that may be unfavorable, for example, by not asking tough or even obvious questions.[97] This, along with the limiting language of Rule 3.3, creates a rule with limited enforcement capability. Rule 3.3 only prohibits lawyers from "knowingly . . . mak[ing] a false statement of fact," or "failing to correct a false statement of material fact or law previously made to the tribunal."[98] While the definition of a tribunal is broad,[99] the knowledge requirement creates ambiguity.[100] The comments and definitions offer little clarity.[101] Although the rule does not require an attorney to disclose all facts known by the attorney, the comments state that such disclosure may be needed to prevent misleading the tribunal.[102] In addition, the comments appear to include an obligation to inquire as to the truthfulness of facts before presenting them to a tribunal,[103] and the comments indicate that a failure to disclose a fact can be "equivalent to an affirmative misrepresentation."[104] As with other rules related to truth-seeking, the prohibition only applies when the lawyer knows a fact is false or that falsehood has been presented to the tribunal.[105] The lawyer is left to determine whether presenting or failing to present the fact or evidence is zealous advocacy or unethical behavior.

The first step to this determination is to look to the definition of the term knowing, or knowledge.[106] In doing so, the lawyer finds little clarity. The MRPC define this as "actual knowledge of the fact in question."[107] This presents a subjective assessment of the lawyer's state of mind.[108] This definition is then qualified by what appears to be an objective standard; the determination of actual knowledge "may be inferred from the

97. George M. Cohen, *The State of Lawyer Knowledge Under the Model Rules of Professional Conduct*, 3 AM. U. BUS. L. REV. 115, 120 (2014).

98. *See* MODEL RULES OF PROF'L CONDUCT R. 3.3; Cohen, *supra* note 97, at 121.

99. *See* MODEL RULES OF PROF'L CONDUCT R. 1.0(m) (defining tribunal to include any court, agency or other body with binding adjudicative authority and any related or ancillary proceeding).

100. *See* Cohen, *supra* note 97, at 120.

101. *See* discussion *infra* Section II.C.5.

102. MODEL RULES OF PROF'L CONDUCT R. 3.3 cmt. 2.

103. *Id.* R. 3.3 cmt. 3.

104. *Id.* R. 3.3 cmt. 2.

105. *See* discussion *infra* Section II.C.5.

106. *See* discussion *infra* Section II.C.5.

107. MODEL RULES OF PROF'L CONDUCT R. 1.0(f).

108. *Id.* R. 3.3 cmt. 3; Cohen, *supra* note 97, at 116.

circumstances."[109] The comments to Rule 3.3 offer further ambiguity that tips the decision in favor of nondisclosure by suggesting that, although a lawyer is prohibited from knowingly offering false evidence and required to take remedial measures—including disclosure of the falsehood to the tribunal if the lawyer's client or witness offers evidence the lawyer knows to be false—these prohibitions do not apply if the lawyer only "reasonably believes" the evidence is false.[110] When uncertain, the lawyer is advised to "resolve doubts about the veracity of the testimony of other evidence in favor of the client . . . ."[111] Similar ambiguity exists in other rules related to the obligation to be truthful.

3. Rule 4.1: Truthfulness in Statements to Others

While MRPC 3.3 only applies to matters pending before a tribunal, Rule 4.1 applies to any matter in which the lawyer is representing a client, including transactional matters.[112] The rule is, however, limited in applicability in three ways. First, it only applies to statements of facts made during the course of representing a client.[113] Second, it is limited to the presentation or failure to disclose "material facts" to a third person.[114] Finally, it only applies if the lawyer *knows* the statement is false or misleading.[115] Although a lawyer is expected to be "truthful" when dealing with others,[116] guidance on when there is a duty to disclose facts is inconsistent: A lawyer "generally has no affirmative duty to inform an opposing party of relevant facts" but can be disciplined for knowingly omitting facts that are the "equivalent of affirmative false statements." Again, however, this determination only applies if the attorney has "knowledge" that the statement is false or misleading.[117] Here, the attorney

109. MODEL RULES OF PROF'L CONDUCT R. 1.0(f).

110. *Id.* R. 3.3 cmt. 8. *See* Stuart M. Israel, *The Truth Is Rarely Pure and Never Simple*, 67 PRAC. LAW. 35, 35 (2021) ("[A] lawyer is obligated to the truth—within limits.").

111. MODEL RULES OF PROF'L CONDUCT R. 3.3 cmt. 8.

112. *Id.* R. 4.1.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* R. 4.1 cmt. 1.

117. *See generally* Rebecca Roiphe, *The Ethics of Willful Ignorance*, 24 GEO. J. LEGAL ETHICS 187, 189 (2011) (emphasizing the ambiguity behind what constitutes knowledge in these circumstances).

is again left with the ambiguous definition in Rule 1.0(f).[118] A more difficult analysis occurs if the lawyer is concerned about being disciplined for failure to report false or misleading statements by other attorneys.[119]

4. MRPC 8.3: Reporting Professional Misconduct

The Model Rules include a mandatory reporting obligation for lawyers who witness misconduct by another lawyer, such as making false or misleading statements or presenting false or misleading evidence.[120] This would appear to be consistent with protecting the self-governing profession. Reading Rule 8.3 and the catchall provision in Rule 8.4(a) together indicates if a lawyer *knows* that another lawyer *knowingly* made a false or misleading statement or otherwise *knowingly* violated the rules prohibiting making false or misleading statements to a tribunal or to third parties, and the conduct raises a "substantial question as the lawyer's honestly [or] trustworthiness," the lawyer is required to report the misconduct to the appropriate disciplinary authority.[121] It would appear that lying about anything would raise a substantial question of the other lawyer's honesty, but the comments use the impracticality of enforcing this rule[122] to seemingly dissuade lawyers from reporting others; the comments share that rules requiring lawyers to report any witnessed misconduct have been "unenforceable."[123] The comments attempt to clarify the applicability of the rule by stating that the rule "limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent."[124] While even one incident involving dishonesty may indicate "a pattern of misconduct,"[125] it is the "seriousness" of the offense that requires reporting.[126] Here again, however, the difficult determination of the seriousness of the falsehood need not be made unless the lawyer *knows* that another lawyer lied.[127] The

118. *Id.* R. 1.0(f). *See also* discussion *supra* Sections III.C.2, III.C.5.

119. *See* MODEL RULES OF PROF'L CONDUCT R. 8.3 cmt. 3.

120. MODEL RULES OF PROF'L CONDUCT R. 8.3.

121. *Id.* R. 8.3(a).

122. *Id.* R. 8.3 cmt. 3.

123. *Id.*

124. *Id. See* discussion *infra* Section II.A. (explaining the importance of truth to the public image of the legal profession).

125. MODEL RULES OF PROF'L CONDUCT R. 8.3 cmt. 1.

126. MODEL RULES OF PROF'L CONDUCT R. 8.3 cmt. 3.

127. MODEL RULES OF PROF'L CONDUCT R. 8.3.

lawyer is, again, left with the vague definition of knowledge provided in Rule 1.0(f). The lack of clarity regarding when and how one will be determined to "know" or "act knowingly" can provide an incentive to ignore or dismiss troubling facts and worse, an incentive to remain ignorant of available facts.[128] Both the comments to the rule and the double knowledge elements in the rule provide little incentive to report, thus limiting its effectiveness in furthering the goal of a self-governing profession. As with other rules with a "knowledge" trigger, the result can prove harmful to the lawyer, the client, and the public.[129]

5. Rule 1.0(f): Defining "Knows" and "Knowingly"

Other than the broad prohibition against dishonesty provided in Rule 8.4(c), most ethical rules only explicitly prohibit dishonesty or require action if the lawyer "knows" the facts or evidence are false or attorney acts "knowingly."[130] Much has been written about the role these terms have in governing lawyer conduct; but little consensus is reached.[131] The one common denominator is that the lack of clarity does have an effect on the attorney, the client, and the public.

As stated above, the definition, which requires actual knowledge—a term indicating a subjective standard[132]—is qualified by the second part of the definition, which states whether the lawyer knows or acts knowingly "may be inferred from the circumstances."[133] This qualifying language indicates an objective standard—looking outside the lawyer's own state of mind.[134]

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128. *See* Roiphe, *supra* note 117, at 189 (discussing the willful ignorance of lawyers in the Enron scandal).

129. *See id.* at 196 (examining how a limited definition of knowledge enables lawyers to avoid reporting potential misconduct).

130. *See* discussion *supra* Section III.B.2–4.

131. *See* Cohen, *supra* note 97, at 119 (comparing interpretations of the willful blindness standard throughout thirty years of scholarly research); Roiphe, *supra* note 117, at 189–90 (discussing differences between the model rules and how courts and regulators have adhered to them).

132. Albert W. Alshuler, *Lawyers and Truth-Telling*, 26 HARV. J.L. & PUB. POL'Y 189, 190 (2003) (quoting an answer by a public defender responding to a student question: "The only rule is that I can't put my client on the stand when I *know* that I know he is lying. I've had many cases in which I knew my client was lying, but I've never had a case in which I *knew* that I knew he was lying.").

133. *See* MODEL RULES OF PROF'L CONDUCT R. 1.0(f) ("A person's knowledge may be inferred from circumstances.").

134. *See* Cohen, *supra* note 97, at 116 (suggesting disagreement between parts of the definition are commonly resolved by determining an objective standard exists).

The comments to Rule 1.0(f) provide no direction or advice to assist in understanding this dichotomy.[135] The message the rule itself sends may be inconsistent with the message intended. In accordance with this definition, a lawyer can avoid knowledge by remaining ignorant: "[A] lawyer could not hide by insisting that he did not know" of facts evidence shows he was aware of; however, a lawyer would not face discipline if he remained intentionally ignorant of the facts.[136] This raises a concern that the definition actually encourages dishonesty and discourages the search for the truth.

Action by the ABA to address this concern has been reactive, rather than proactive.[137] While substantive and procedural law and regulators may place a higher burden on lawyers to investigate in order to avoid liability for making false or misleading statements,[138] the Bar's actual knowledge standard may allow, or even provide an incentive for lawyers to remain willfully ignorant of facts in order avoid disciplinary action.[139] What little clarification of the knowledge standard provided by the ABA has been done in response to court, legislative, and regularity action in order to protect the Bar as a self-regulating body.[140]

Whether the lawyer makes up the facts to support the client's position or relies on false facts presented to the lawyer by the client or the witness, the difficulty lies in proving the same was done with knowledge. The attorney who makes up the facts on their own will likely only face discipline if reported by another attorney who "knows" that the attorney "knowingly" lied and the lie raises a "substantial question" about the lawyer's honesty.[141] In addition, reporting of one lawyer by another is unlikely unless a determination is made that the "facts suggest an intentional, perhaps even premeditated, effort" by the other attorney that "offends [the Bar's] collective sensibilities and which [the Bar] must vigorously endeavor to prevent."[142] Applying this test tilts the decision toward non-reporting.

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135. *See* MODEL RULES OF PROF'L CONDUCT R. 1.0 cmt. 1–10 (omitting a standard for determining the rule's applicability).

136. Roiphe, *supra* note 117, at 196.

137. *Id.* at 199.

138. *Id.* at 201–02.

139. *Id.* at 196.

140. *Id.* at 199.

141. *See* discussion *supra* Section III.C.4.

142. Conn. Bar Ass'n Pro. Ethics Comm., Informal Op. 2013-05 (2013), DUTY TO REPORT SUSPECTED PROFESSIONAL MISCONDUCT, https://www.ctbar.org/docs/default-

Applying the standard is likewise difficult when determining what action, if any, needs to be taken regarding disclosures by the lawyer's client or witness. Other than a false statement intentionally made up by the attorney, there is no clear obligation under the rules for attorneys to do more than rely on the facts as presented by their clients.[143] There is little incentive to dig deeper into suspicious or troubling facts.[144]

Some argue that this inherent void is necessary to preserve the attorney-client relationship: "[H]olding lawyers responsible for consciously avoiding certain facts will turn the lawyer and client into adversaries . . . clients would intentionally subvert attorneys' investigations . . . knowing that the lawyer is ethically required to find incriminating" evidence.[145] This view is used to justify the Bar's reluctance to add clarity or a further definition to the knowledge requirement.[146] It is, however, misleading in itself, as more harm can be caused by allowing attorneys to remain "willfully ignorant."[147]

First, the lawyer who relies on the ambiguity in the rules with an actual knowledge standard can face discipline for violating other ethical rules. As discussed above, even if a lawyer avoids discipline by claiming the lawyer did not to 'know" facts presented were false, the lawyer may still face discipline under Rule 8.4(c). In addition, an interpretation of the knowledge requirement, which allows the attorney to rely solely on the facts presented by the client, is entirely inconsistent with the obligation to provide competent representation: "Competent representation requires . . . thoroughness and preparation reasonably necessary for the representation."[148] The comments suggest this obligation includes a duty to inquire and analyze the facts relevant to the problem.[149] It is likewise unlikely that without knowing all relevant facts, a lawyer can comply with the requirement to reasonably consult with the client and keep the client

source/publications/ethics-opinions-informal-opinions/2013-opinions/informal-opinion-2013_05.pdf [**https://perma.cc/X5W3-HUD]**.

143. Cohen, *supra* note 97, at 125.

144. *Id.* at 125–26.

145. Roiphe, *supra* note 117, at 202–03 (discussing Professor David Luban's arguments against a willful ignorance prohibition in the ethical rules).

146. *Id.* at 201.

147. *Id.* at 204.

148. MODEL RULES OF PROF'L CONDUCT R. 1.1.

149. *Id.* R. 1.1 cmt. 5.

informed about the matter[150] or with the obligation to "render candid advice."[151] Even if the lawyer escapes liability under the ethical rules, the lawyer may be found liable of malpractice for breaching the duty to investigate facts that caused harm to others.[152]

Clients are likewise harmed by being deprived of an honest assessment of the matter provided by an attorney who is informed of all relevant facts, including those facts most detrimental to the client: "The incentive for the lawyers to blind themselves to unpleasant facts . . . distorts a lawyer's understanding of the case and cripples the ability to represent his client adequately."[153] It is "useful, arguably even essential," to have a lawyer who investigates and knows all the facts.[154] In addition, if a lawyer intentionally remains uniformed, this willful ignorance can be imputed to the client and leave the client vulnerable to liability for the lack of knowledge.[155]

Systemic harmful effects also arise from the lack of clarity regarding the knowledge requirement. The ethical rules as presented to the public are a symbol of the ideals and values of the profession and the judicial system.[156] Allowing lawyers to avoid unpleasant or unhelpful facts by claiming a lack of knowledge creates doubts about the sincerity of the message.[157] As one author states, the lack of clarity "allows the Bar to project concern for the public and third parties, without requiring lawyers to fulfill that function in reality."[158] This inconsistency is a result of the Bar's dedication to remaining a self-regulating profession while only reacting in the face of increased regulation of lawyers by courts, legislatures, and regulatory bodies in response to public pressure.[159] The inconsistency between the message the

150. *Id.* R. 1.4.

151. *Id.* R. 2.1.

152. Cohen, *supra* note 97, at 132.

153. Roiphe, *supra* note 117, at 204.

154. *Id.* at 205.

155. Cohen, *supra* note 97, at 141 (explaining imputation of lawyer's knowledge to the client under agency law). Substantive law in other areas can impute knowledge for remaining ignorant of available facts. For example, in property law, a client can be found to be on inquiry notice of a property issue even though neither the client nor the attorney has actual knowledge of an issue. *See* GEORGE LEFCOE, REAL ESTATE LAW AND BUSINESS: BROKERING, BUYING, SELLING, AND FINANCING REALTY 272–73 (2016).

156. Roiphe, *supra* note 117, at 212.

157. *Id.*

158. *Id.* at 199.

159. *Id.*

ethical rules are designed to send to the public and the reality of the force and effect of the rules casts doubt on the profession as a whole and diminishes the public's perception of the integrity of the legal system.[160]

The rules should further the expectations and aspirations as articulated in the Preamble to the rules.[161] Proponents of changes to the rules and definitions that would clearly prohibit lawyers from ignoring or failing to investigate suspicious facts believe that changes will accomplish this goal: "[B]y explicitly forbidding lawyers from blinding themselves from unpleasant facts . . . the rules would send a message that the role of the lawyer requires more than simply checking off boxes about the legality of facts. . . ."[162] One need not look any further than the aftermath of the 2020 Presidential election for examples of harm caused when attorneys rely on the inconsistency in the rules defining knowledge of relevant facts.

III. MIXED MESSAGES FOR LAW STUDENTS: THE CURRENT PUBLIC PERCEPTION CONFLICTS WITH IDEALS OF PROFESSIONAL IDENTITY FORMATION

Current and aspiring law students recently witnessed lawyers publicly push the boundaries of the ethical rules—in particular, the rules relating to a lawyer's obligation to be truthful. Using examples of lawyers who continued to assert to the public and in court that the election was stolen from their client without providing credible facts to support their claims despite facing court sanctions and disciplinary complaints, exposes the limited effectiveness of the rules in encouraging ethical lawyering. These examples of unethical lawyering are entirely inconsistent with legal education's articulated goal to guide students toward the formation of a professional identity that is consistent with their own personal values and beliefs and those the legal profession should embrace. The difference is

160. *Id.* at 212.

161. *See* discussion *supra* Section II.C.; MODEL RULES OF PROF'L CONDUCT pmbl. (describing the rules and responsibilities of an attorney).

162. Roiphe, *supra* note 117, at 212.

striking and will likely cause confusion to aspiring lawyers and create challenges for legal educators.

A. *The Perception of the Truth Caused by Lawyers Acting with an "Empty Head" but a "Pure Heart"*[163]

If today's lawyers who challenged the results of the 2020 presidential election by advancing the narrative of "The Big Lie" were held to Plato's standard of the truth, many would fail.[164] The lawyers' perpetuation of a narrative based on false and misleading facts regarding the 2020 election results is made without knowing the truth of the subject matter and without considering the truth about justice.[165] As of the writing of this Article, courts rejected numerous cases challenging the election results and seeking to undermine the trust in our system of democracy, partially because the lawyers involved violated their obligation to be truthful, to search for the truth, or to simply acknowledge the truth already established.[166] The rejection of these claims by federal and state judges demonstrates the importance the judiciary plays in safeguarding our democracy[167] regardless of political affiliation.[168]

It appears that lawyers bringing these claims were willing to rely on politics rather than civics, therefore misunderstanding the role of the judiciary, placing the interests of their client and their self-interest above those of the legal profession, and placing the system of democracy in peril.[169]

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163. King v. Whitmer, 556 F. Supp. 3d 680, 716 (E.D. Mich. 2021).

164. *See* discussion *supra* Section II.A.; Morris, *supra* note 53, at 4–11.

165. *See* discussion *supra* Section II.A.; Morris, *supra* note 53, at 4–11.

166. *See* Joyce Gist Lewis & Adam M. Sparks, *In Defense of the Foundation Stone: Deterring Post-Election Abuse of the Legal Process*, 55 GA. L. REV. 1649, 1653 (2021) (stating the cases to discard votes were dismissed as meritless and the "litigants and counsel must be held accountable for filing meritless claims to toss out millions (or even hundreds) or presumptively legal votes").

167. *Id.*

168. Raymond H. Brescia, *Lessons from the Present: Three Crises and Their Potential Impact on the Legal Profession*, 49 HOFSTRA L. REV. 607, 672 (2021) (discussing former President Trump's efforts to fill seats quickly with conservative judges so he would be able to challenge the election if he was unsuccessful, a plan that did to work for him).

169. *See* discussion *infra* Section II.A.; Morris, *supra* note 53, at 4–11; *see also* Lewis & Sparks, *supra* note 166, at 1653 (explaining why lawyers should look to rules and not politics); Brescia, *supra* note 168, at 672–73 (suggesting professional and institutional norms are integral to preserving democracy and asserting the importance of bolstering these norms (quoting Tim Wi, Opinion, *What Really Saved the Republic from Trump?*, N.Y. TIMES (Dec. 10, 2020),

In addition, some faced court sanctions and others faced or are facing disciplinary action based on the professional conduct rules for not being *truthful* to tribunals and the public.[170] Despite these claims being rejected in several courts and several attorneys facing threats of discipline and sanctions, lawyers[171] are still advancing the fable of "The Big Lie"[172] resulting in increased legislation that may limit access to voting.[173] The questions on every legal professional's mind should be "why?" and "what are we going to do about it?"[174]

If lawyers are supposed to "further the public's understanding of and confidence in the . . . justice system,"[175] how does lying, remaining willfully ignorant, failing to exercise any diligence to find the truth, or completely ignoring the truth accomplish this ideal? As recognized by several judges who dismissed many of these claims for lacking any credible factual evidence, the harm to the public is great.[176] Unfortunately, the lawyers do not appear to be deterred by the possibility, or even the reality, of facing discipline or court-imposed sanctions.[177]

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https://www.nytimes.com/2020/12/10/opinion/trump-constitution-norms.html [https://perma.cc/RBT5-GH76])).

170. *See In re* Giuliani, 146 N.Y.S.3d 266, 282–83 (N.Y. App. Div. 2021) (explaining consequences some face after lying); King v. Whitmer, 556 F. Supp. 3d 680, 734 (E.D. Mich. 2021) (describing sanctions imposed on Plaintiff's counsel); *see also* discussion *infra* Section III.A.2.

171. Brescia, *supra* note 168, at 664–65 (acknowledging Senators Josh Hawley and Ted Cruz are both lawyers who objected to the certification of the election).

172. Lewis & Sparks, *supra* note 166, at 1658–59.

173. *Id.* (acknowledging the legal work done to increase and protect voting rights prior to the election now faces the backlash of post-election legislation). "Notwithstanding the . . . dearth of competent evidence of systemic fraud or error in the 2020 presidential general election, the lesson learned by some legislators in Georgia and elsewhere is that safe and convenient access to absentee voting for all but a few populations is a threat to their political power." *Id.*

174. *See id.* at 1667 (describing the question of why litigants and counsel continued to file lawsuits despite repeatedly being denied the prayed for relief).

175. MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 6 ("[A] lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.").

176. *See* Lewis & Sparks, *supra* note 166, at 1664 (citing the dozens of lawsuits filed after the election, which sought that "millions of registered voters . . . be disenfranchised after submitting their ballots" based upon "slapdash affidavits, scientifically unsound assumptions, hysterical speculation, and the ghost of Hugo Chavez").

177. *See id.* at 1667 ("After multiple orders [by state and federal judges in Georgia] explaining that the law did not support the unprecedented relief sought, . . . the lawyers signing [later] pleadings could not credibly claim that they expected a different outcome when they filed the next suit."); *see also* O'Rourke v. Dominion Voting Sys. Inc., No. 20-CV-03747-NRN, 2021 WL 3400671, at *15 (D. Colo.

The reason may be to accomplish just the opposite of preserving the public's confidence in the justice system or to "play a vital role in the preservation of society."[178] It may be that, "in the eyes of the public, the existence of a lawsuit—even one that is destined to be summarily dismissed—makes it more likely than not that a legitimate dispute exists, and . . . a calculation of the professional and reputational risk to the lawyers . . . is low."[179] This phenomenon evidences a serious failure of our self-governing profession that can and should be addressed through disciplinary action and the judiciary.

1. False and Misleading Statements Trigger Extraordinary Disciplinary Action

Several lawyers challenging the 2020 presidential election's results faced the threat of disciplinary action and court sanctions as a result of perpetuation the theory of "The Big Lie."[180] The most astonishing example of the existing professional conduct rules' failure to deter lawyer misconduct is Rudolph Giuliani's continued defense of his actions in the aftermath of the 2020 presidential election, even after suffering serious and extraordinary disciplinary action taken against him in New York.[181] In June of 2021, the Appellate Division of the Supreme Court of the State of New York granted

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Aug. 3, 2021), *modified on reconsideration*, No. 20-CV-03747-NRN, 2021 WL 5548129 (D. Colo. Oct. 5, 2021), *and appeal dismissed*, No. 21-1394, 2021 WL 8317149 (10th Cir. Dec. 23, 2021) (awarding sanctions against Plaintiff's counsel for, among other reasons, including allegations and facts in their complaint that counsel should have known had already raised "serious, publicly reported doubts as to [their] validity").

178. MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 6, 13; *see also* discussion *supra* Section II.C.

179. Lewis & Sparks, *supra* note 166, at 1667–68.

180. *Id.* at 1668 (citing Jay Bookman, Commentary, *Trump Quits Court Battle but Recklessly Urges Followers to Fight*, GA. RECORDER (June 24, 2021), https://georgiarecorder.com/2021/06/24/bookman-trump-quits-court-battle-as-he-recklessly-urges-followers-to-fight [**https://perma.cc/8GX2-X79T]**). Trump quietly paid attorney's fees demanded by two Georgia counties rather than risk a day in court where attorneys would have to explain why it was not frivolous to claim that more than 10,000 dead people voted in Georgia and 66,000 underage children were illegally registered to vote without being able to name a single one. *Id.*

181. *See In re* Giuliani, 146 N.Y.S.3d 266, 284 (N.Y. App. Div. 2021) (explaining disciplinary action taken); Margaret Hartman, *So, What Is Rudy Giuliani Up to These Days?*, N.Y. MAG.: INTELLIGENCER (Aug. 16, 2022), https://nymag.com/intelligencer/article/rudy-giuliani-where-trump-former-attorney-today.html [https://perma.cc/J9PA-CAUK] (citing a radio interview where Giuliani stated that the bar should "give [him] an award" and that the action taken against him was to "shut me up . . . [t]hey want Giuliani quiet").

the Attorney Grievance Committee's motion to immediately suspend Giuliani from practicing law.[182] The grievance committee requested this extraordinary relief based on a provision in the New York Code Rules and Regulations, which allows for interim suspension of an attorney pending the further investigation when there is "uncontroverted evidence" of misconduct and the conduct is "immediately threatening to the public interest."[183] The court concluded the grievance committee's evidence supporting that Giuliani "communicated demonstrably false and misleading statements to courts, lawmakers[,] and the public at large in his capacity as lawyer for former President Donald J. Trump"[184] was uncontroverted because Giuliani was unable to provide proof to show otherwise.[185] Therefore, the court found Giuliani's actions violated the New York Professional Conduct Rules, which prohibit making false and misleading statements to a tribunal, to third parties, and to the public.[186]

After dismissing Giuliani's claims that the investigation violated his First Amendment rights,[187] the court addressed his defense that the statements were not knowingly false or misleading when they were made.[188] The court acknowledged both Rule 3.3 and Rule 4.1 of the New York Rules of Professional Conduct ("NYRPC") require the statements be made knowingly, and, interestingly, they adopted the view that even through the language of Rule 8.4(c) does not explicitly include the knowledge language, knowledge was a required element of Rule 8.4(c). The definition of knowledge under the NYRPC, as with the MRPC, includes both the subjective standard of "actual knowledge" and is similarly followed by the qualifying objective standard that knowledge may be "inferred from the

182. *In re Giuliani*, 146 N.Y.S.3d at 283.

183. *Id.* at 268 (citing N.Y. COMP. CODES R. & REGS. Tit. 22, § 1240.9(a) (2020)).

184. *Id.*

185. *Id.* at 272.

186. *See generally* N.Y. RULES OF PROF'L CONDUCT R. 3.3, 4.1, 8.4 (2020). These rules are essentially the same as the rules in the MRPC. *See* discussion *supra* Section II.C.2.; MODEL RULES OF PROF'L CONDUCT R. 3.3 (outlining similar rules).

187. *In re Giuliani*, 146 N.Y.S.3d at 270 ("While there are limits on the extent to which a lawyer's right of free speech may be circumscribed, these limits are not implicated by . . . knowing misconduct . . . .").

188. *Id.* at 270–71.

circumstances."[189] This court, however, had no difficulty finding the knowledge element had been met on each of the Committee's claims.

The court found the Committee presented "uncontroverted proof" that Giuliani violated Rule 4.1 and Rule 8.4(c) by knowingly making false and misleading statements to the public in radio and podcast programs and to lawmakers in various committee meetings.[190] The proof was uncontroverted because Giuliani failed to present any evidence challenging the Committee's detailed evidence of Giuliani's false and misleading statements regarding the election results in Pennsylvania, Georgia, and Arizona.[191] Unable to refute the false nature of any of these statements, Giuliani turned to an ignorance defense of not subjectively knowing the statements were false.[192] The court, looking to the surrounding circumstances, failed to accept subjective, willful ignorance as an excuse.[193] For example, when Giuliani could not refute the Committee's claims that his statements about the number of mail-in ballots Pennsylvania voters requested was patently false, Giuliani claimed he did not "know" he was providing incorrect numbers.[194] In rejecting this argument, the court stated, "Respondent claims that he relied on some unidentified member of his 'team' who 'inadvertently' took the information from the Pennsylvania website, which had the information mistakenly listed."[195] Not only did Giuliani fail to identify the team member or where that person found the incorrect data, the court pointed to the fact that the correct information the committee provided was available on the official Pennsylvania open data portal and was therefore available to Giuliani and his "team" at the time the statements were made.[196] Here, the surrounding circumstances appear to include a duty of diligence and do not allow remaining willfully ignorant.[197]

189. *Id.* at 271*; see also* discussion *supra* Section III.C.5.; George M. Cohen, *The State of Lawyer Knowledge Under the Model Rules of Professional Conduct*, 3 AM. U. BUS. L. REV. 115, 116 (2014).

190. *In re Giuliani*, 146 N.Y.S.3d at 272.

191. *Id.* at 275.

192. *Id.* at 270–71.

193. *Id.* at 275.

194. *Id.*

195. *Id.* at 272.

196. *Id.*

197. *Id.* at 271*; see also* discussion *supra* Section II.C.5.; Roiphe, *supra* note 117, at 204 (describing the need and effect of a rule against lawyers deliberately ignoring obvious facts).

The willful ignorance defense was unsuccessful in justifying the dissemination of other false and misleading statements regarding the 2020 presidential elections. For example, when Giuliani claimed he did not know his statements regarding the numbers of dead people who voted in Philadelphia were false,[198] the court pointed to an obvious blatant disparity in the numbers and his reliance on easily debunked, irrelevant sources when correct information was readily available: "[R]espondent fails to provide a scintilla of evidence for any of the varying and widely inconsistent numbers of dead people he factually represented voted in Philadelphia . . . ."[199] Likewise, his statements regarding the number of illegal alien voters in Arizona, at any time ranging from 40,000 to 250,000, supported a finding that the false and misleading statements were knowingly made: "On their face, these numerical claims are so wildly divergent and irreconcilable, that they all cannot be true at the same time. Some of the wild divergences were even stated . . . in the very same sentence."[200]

In addition, Giuliani failed to provide any credible evidence to support his statements challenging the results of the election in Georgia.[201] The court found Giuliani knowingly made false and misleading statements for an improper purpose, "casting doubt on the accuracy of the vote."[202] Although Giuliani claimed to be relying on "hundreds of pages of affidavits and declarations in [his] possession that documented gross irregularities," none of these documents were produced.[203] Despite Giuliani's claims that he did not know his statements were false, the court again looked to the surrounding circumstances. For example, the result of a hand count of ballots confirming the election results was available at the time Giuliani was relying on manipulation of the voting machines as proof of an inaccurate result; the Secretary of State's investigation concluding there were "zero . . underage voters" in the 2020 elections was available at the time Giuliani was claiming there were between 65,000 and 165,000 underage

198. *In re Giuliani*, 146 N.Y.S.3d at 275. At one point, Giuliani claimed over 8,000 dead people voted in Philadelphia; another time, he claimed 30,000 dead people voted in Philadelphia. *Id.* at 274. Giuliani, relying on a clearly unreliable blogger, also claimed "famous heavyweight boxer Joe Frazier" voted in 2020. *Id.* at 274–75.

199. *Id.* at 275.

200. *Id.* at 279.

201. *Id.* at 281–82.

202. *Id.* at 275.

203. *Id.*

voters in Georgia; and, at the time Giuliani was claiming 2,500 felons and "thousands" of dead people voted in Georgia, the results of the Secretary of State investigation of these issues was available and showed a "statistically irrelevant" number of possible felon voters and two "potential" dead voters.[204] In addition, claims that there were "suitcases" filled with illegal ballots under tables in Georgia based on select "snippets" of a video were easily debunked by watching the "entire video."[205]

Perhaps the strongest evidence supporting that many of these false statements and misrepresentations were knowingly made was the fact that Giuliani continued to make them to the public after receiving proof of their falsehood, such as when he was served with the grievance committee's detailed motion for interim and extraordinary relief in the disciplinary action.[206] For example, on two occasions Giuliani continued to claim that Joe Frazier was listed as a live voter in Georgia during his radio show *after* receiving the grievance committee's motion that provided "unequivocable evidence" that the statements were false.[207] Likewise, Giuliani continued to make false claims regarding the number of underage voters in Georgia and the number of illegal aliens that voted in Arizona *after* being served with the committee's motion.[208] All together, these actions support a finding that Giuliani knowingly made false and misleading statements to third parties (the public and lawmakers), violating Rules 4.1 and 8.4(c) as adopted in New York.

Giuliani was also found to have violated Rule 3.3 of the NYRPC by knowingly making false statements to the court in the United States District Court for the Middle District of Pennsylvania.[209] In *Donald J. Trump for President, Inc. v. Boockvar*,[210] after his client withdrew fraud claims by way of an amended complaint, Giuliani continued to argue in court that his client was pursuing fraud claims.[211] The court found that the

204. *Id.* at 276–77.

205. *Id.* at 278–79.

206. *Id.*

207. *Id.*

208. *Id.* at 279–80.

209. *Id.* at 272–74 (referencing Donald J. Trump for President, Inc. v. Boockvar).

210. Donald J. Trump for President, Inc. v. Boockvar, 502 F. Supp. 3d 899 (M.D. Pa.), *aff'd sub nom.* Donald J. Trump for President, Inc. v. Sec'y of Pa., 830 F. App'x 377 (3d Cir. 2020), *and appeal dismissed sub nom.* Signed v. PA, No. 20-3384, 2021 WL 807531 (3d Cir. Jan. 7, 2021).

211. *In re* Giuliani, 146 N.Y.S.3d at 273.

"mischaracterization of the case was not simply a passing mistake or inadvertent reference. Fraud was the crown of his personal argument . . . ."[212] When initially questioned about this by the judge in court—during a hearing audibly open to thousands of journalists and members of the public—Giuliani explicitly stated in his answer that his client was pursuing a fraud claim while the statement was obviously and immediately provably false on mere review of the pleadings.[213] It was only when presented with reality by way of the actual amended complaint and no way to refute that the fraud claims had been withdrawn that Giuliani relented and agreed there were no claims of fraud before the court.[214] Giuliani could not use his subjective mistake or ignorance as a shield; the court found that it was "indisputable that respondent had to be aware that there were no fraud claims in the case."[215] The misconduct was not only toward the tribunal. This misrepresentation also violated Rules 4.1 and 8.4(c) of the NYRPC because the audio of the hearing was open to the public and resulted in an appearance of an issue where none existed: "This resulted in respondent's arguments in support of fraud appearing to be seemingly unanswered on the record and misleading to the listening public. . . ."[216] It was the harm to the public that further justified the extraordinary interim relief of suspension granted by the court.[217]

Extraordinary disciplinary action was also supported by evidence of harm to the public. There must be a showing of an "immediate threat to the public interest" in addition to the uncontroverted evidence of misconduct in order to support interim suspension from the practice of law in New York.[218] The court considered several factors relevant to a finding of harm to the public interest including the continuing nature of the false and misleading statements, the seriousness of the offense, and the likelihood of a "substantial sanction" at the end of the formal proceedings.[219] The court

212. *Id.*

213. *Id.* at 273–74. Giuliani's own co-counsel agreed that there was no pending fraud claim. *Id.* at 273.

214. *Id.* at 273–74.

215. *Id.* at 274.

216. *Id.*

217. *See id.* at 274 ("These misstatements violate[d] RPC 4.1 because they were made to third parties consisting of over 3,700 members of the press and the public.").

218. *Id.* at 280.

219. *Id.* at 280–81.

rejected Giuliani's promise of future "self-restraint" to not publicly comment on the election because of the history of his continued non-restraint even after receiving the grievance committee's motion for interim suspension providing detailed proof that the statements were false and misleading.[220] In addition, the court stated the seriousness of the misconduct was great as Giuliani showed a "pattern of . . . offending conduct and behavior" including "persistent and pervasive dissemination" of the false statements on "multiple platforms, reaching countless members of the public."[221] These false statements were made to attack the legitimacy of the 2020 presidential election, with the intention of creating a lack of confidence in free and fair elections, striking at the heart of the democracy.[222] In addition, the fact that the false statements were made by an attorney damages the public's "confidence in the integrity" of legal professionals and "damages the profession's role as a crucial source of reliable information."[223] It follows that the court also found that based on the seriousness of the misconduct and the uncontroverted evidence of knowingly making false statements, there was a strong likelihood a significant sanction would be issued as a final order on the grievance committee's complaint.[224] This order is one in which an extraordinary form of discipline was necessary to prevent further harm to the public interest when just the threat of professional discipline under the rules was not a deterrent.

2. The Important Role of the Judiciary in Protecting the Integrity of the Legal System and the Public Interest from False and Misleading Statements

Relying on the subjective definition of knowledge in the ethical rules can create a false sense of security for attorneys who rely on it for protection from professional conduct challenges. This definition underestimates the important role of the judiciary in the search for the truth and justice. One

220. *Id.* at 281.

221. *Id.* at 282.

222. *Id.* at 283.

223. *Id.*

224. *See id.* ("[E]spousing false factual information to large segments of the public as a means of discrediting the rights of legitimate voters is so immediately harmful to [democracy] . . . [it] warrants interim suspension from the practice of law.").

example of this is the relief granted to defendants in *King v. Whitmer*.[225] Attorney Sidney Powell, among many of plaintiffs' counsel, was found to have pursued claims meant to "deceiv[e] a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated."[226] Powell and others now face monetary and other sanctions and were referred to their respective state disciplinary authorities for "investigation and possible suspension or disbarment."[227]

In *King*, after the dismissal of all plaintiffs' claims, defendants filed a motion for sanctions and disciplinary action including disbarment and referral of the plaintiffs' attorneys to the state disciplinary bodies.[228] The Court exercised its powers under statutory law,[229] its inherent powers,[230] and its discretion pursuant to FRCP Rule 11 to grant the defendants' requests.[231] The judge in *King* viewed the purpose of these powers to allow judges to sanction attorneys in order to deter the use of the judicial system for improper means; here "continuing to abuse the judicial system to publicize their narrative."[232] Unlike the disciplinary rules prohibiting false and misleading statements to the public and to the court, the powers available to judges have a clear objective standard[233] requiring more of attorneys than simply relying on facts that they personally believe to be true.[234] Rule 11, for example, requires attorneys to certify that the factual contentions in the pleadings have evidentiary support "formed after an inquiry reasonable under the circumstances."[235] Under these rules, there is a duty of reasonable inquiry before making factual allegations.[236]

225. King v. Whitmer, 556 F. Supp. 3d 680, 735 (E.D. Mich. 2021).
226. *Id.* at 688.
227. *Id.* at 734.
228. *Id.*
229. *Id.* at 693 (relying on 28 U.S.C. § 1927).
230. *Id.*
231. *Id.*
232. *Id.* at 734.
233. *Id.* at 696.
234. *See* discussion *supra* Part II.
235. *King*, 556 F. Supp. 3d at 697 (quoting FED. R. CIV. P. 11(b)).
236. *See* FED. R. CIV. P. 11(b) (discussing an attorney's duty of "inquiry reasonable under the circumstances").

While the basis for awarding sanctions in *King* is based on the lack of both a legal[237] and a factual basis for the underlying claims, the focus for the purposes of this Article is on the attorneys' obligation to state the truth and to not mislead or make false statements to the public and the court. Relevant here is that the judge in *King* concluded the factual contentions in the pleadings lacked any credible evidentiary support at the time they were made and would not likely ever lead to any credible evidentiary support.[238] In defense of submitting affidavits found to include false and misleading statements, Powell and others argued they "genuinely believed" the facts alleged and that the affidavits were submitted in good faith because the affiants genuinely believed the facts in the affidavits to be true.[239] The court rejected this subjective definition of the knowledge: "An 'empty head' but a 'pure heart' does not justify lodging patently unsupported factual assertions."[240] Relying on an objective standard, the court focused only on the face of the factual allegations and found no "reasonable attorney would accept the assertions . . . as fact . . . or as support for factual allegations . . . ."[241] In addition, there was information readily available to Powell and others that provided proof that the facts as alleged were false.[242] For example, to counter the allegation in plaintiffs' affidavit that "hundreds of thousands of illegal votes" were counted in the Michigan election, defendants' counsel provided evidence of data available in official records at the time plaintiffs' affidavit was submitted that showed the allegations made in their affidavit were false.[243] Other affidavits were submitted alleging facts that even if true did not support claims asserted. For example,

237. In *King*, for example, the plaintiffs alleged facts that even if true would not have violated the Michigan law, indicating the counsel did not even research or know the Michigan law, or worse, just recited these facts for the improper purpose of pursing their narrative. *See King*, 556 F. Supp. 3d at 691 (explaining the lower court's complaint that the Plaintiffs failed to show how the state law violations amounted to violations of the Constitution's Elections and Electors Clauses, and no case law supported Plaintiff's position).

238. *Id.* at 732.

239. *Id.* at 716.

240. *Id.*

241. *Id.*

242. *Id.* at 724–25.

243. *Id.* In addition to wildly inaccurate statistics regarding the voter turnout in various precincts (one reported in the affidavit to be 781.9% when the official records showed an average of 77.8%), the facts in the affidavit were used and debunked in a prior case before submission to the *King* court as fact. *Id.* at 695.

in support of an allegation of double voting, proof of this alleged fraud was an affiant who stated that a large number of people who voted in-person also requested absentee ballots— however, applicable law allows a person who requests an absentee ballot to later decide to vote in person;[244] an affiant who witnessed seeing plastic bags did not support the allegation that the bags contained unsecured ballots;[245] an affiant who observed staff members working on scanned ballots that needed to be manually corrected did not support an allegation that they were changing votes from Trump to Biden, and counsel did not even inquire if the affiant actually saw any votes being changed.[246]

Finally, in response to Powell's claims that she made allegations in the pleadings based on her own opinion of what occurred and not as fact, the court reminded her of her own statements in another court action and rejected her excuse: "[It] is not acceptable to support a lawsuit with opinions, which counsel herself claims no reasonable person would accept as fact and which were 'inexact,' 'exaggerat[ed],' and 'hyperbole.'"[247]

The law in this case, whether supported by statute, court rule, or the court's inherent power to protect the integrity of the judicial system, warranted sanctions for, among other reasons, alleging false or misleading facts to further an improper motive. Here, Powell and others presented facts they knew or should have known were false because they were motived by their own bias and political beliefs to ensure their "preferred political candidate remained in the presidential seat despite the decision of the nation's voters to unseat him."[248] Clear evidence of this improper motive was seen in an obvious display of dishonesty; for example, counsel failed to acknowledge and correct pleadings that falsely stated an expert witness's credentials and then lied about it when they learned of the error.[249] This demonstrated the intention of Powell and others to mislead the court and the public into believing their expert was "something that he was not."[250]

244. *Id.* at 717–18.

245. *Id.* at 719.

246. *Id.* at 721.

247. *Id.* at 727.

248. *Id.* at 728.

249. *Id.* at 729–30. Despite evidence questioning the lack of the expert's credentials as pled by plaintiffs' counsel being submitted with defendant's motion for sanctions, all plaintiffs' counsel denied anyone suggesting to them an issue with the expert's credentials.

250. *Id.* at 731.

In addition to ordering plaintiffs' attorneys to pay defendants' fees and costs and issuing other sanctions,[251] the court ordered that a copy of the decision be sent to both the Michigan Grievance Committee and the disciplinary authority in each state in which each of plaintiffs' counsel were admitted to practice for investigation and "possible suspension or disbarment."[252] The result of these referrals remains to be seen; however, one would expect the same willful ignorance defenses to be advanced with varying results.

Giuliani, Powell, and others chose a path Plato warned would be unethical: speaking based upon what one subjectively believes or wants to be true without regard for the actual truth of the matter based on study of the facts.[253] Here the motive was that their preferred candidate should be president. The attorneys falsified, manipulated, and ignored true facts in order to accomplish their goal without considering the truth about justice and the harm caused to the legal profession, the public, and the democracy.

It remains to be seen if the court-ordered sanctions and disciplinary actions against those pursing "The Big Lie" will deter future misconduct. The judge in *King* was doubtful because, despite knowledge of losses by attorneys pursuing challenges to the results of the 2020 presidential election in several state and federal courts, the plaintiffs' lawyers in this case stated they would "file the same complaints again."[254]

Now that some indication of why the misconduct occurred has been identified, ways to deter and limit the harm caused and rehabilitate the ideals of ethical lawyering and professionalism can be explored. Legal education's focus on professional identity and wellness may just be timed perfectly to coincide with a generation of law students who are likely to view ethics and values as a priority in their personal and professional lives.[255]

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251. All except for one defendant, Davis, whose motion for sanctions was dismissed.

252. *King*, 556 F. Supp. 3d at 734. As of the writing of this Article, Powell faces disciplinary action in Texas. *See* Alison Durkee, *Sidney Powell to Face Texas State Bar Investigation—Potentially Leading to Her Disbarment*, FORBES (Aug. 26, 2021), https://www.forbes.com/sites/alisondurkee/2021/08/26/sidney-powell-to-face-texas-state-bar-investigation-potentially-leading-to-her-disbarment/?sh=25f471141f99 [https://perma.cc/7XGC-WPSF] (reporting the Michigan Attorney General's filed complaint "could potentially result in [Powell] being sanctioned or disbarred").

253. *See* discussion *supra* Section II.A.

254. *King*, 556 F. Supp. 3d at 731.

255. *See* discussion *infra* Part IV.

B. *Professional Identity Formation Based on Values Takes Center Stage in Legal Education*

It appears ironic that while the public continues to be saturated with examples of lawyers ignoring the importance of the truth, legal educators are focused on highlighting the importance of values such as truthfulness to lawyer wellness, satisfaction, and success to the legal profession.[256] This conflict can pose a challenge for legal education. This is in addition to the challenge for the Professional Responsibility professor caused by the dichotomy between the course objectives focusing on professionalism and professional identity formation, and the law students' expectation of learning how to pass the MPRE.[257] For many law students, the required Professional Responsibility course is valuable for two reasons: first, it allows them to check this required course off their list, and second, it helps them prepare for the MPRE.[258] This challenge remains even after three decades of research and scholarship that confirms the need for law schools to guide students in forming their professional identity—a goal that benefits the legal profession and the public, and also enhances individual lawyer wellbeing and satisfaction.[259] This goal should be the focus of legal ethics teaching, mentoring, and modeling from day one of law school; not just one of several objectives in a two or three credit Professional Responsibility course taken after the first year of law school.[260] In fact, a recent amendment to the ABA Standard 303 now requires this along with the existing required Professional Responsibility course.[261]

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256. *See* discussion *infra* Section III.B.1.

257. Bryant G. Garth, *The Elusive "High Road" for Lawyers: Teaching Professional Responsibility in a Shifting Context*, 14 U. ST. THOMAS L.J. 305, 305 (2018). This is also the author's perception from teaching Professional Responsibility.

258. *See id.* at 305–06 (citing AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCH. & LEGAL PROFESSION: NARROWING THE GAP 207–22 (1992)).

259. *See* discussion *infra* Section III.B.1.

260. *See* discussion *infra* Part V.

261. *See* Memorandum from Scott Bales & William Adams to Interested Persons and Entities (Mar. 1, 2021), on file at: https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20210301-notice-and-comment-standards-303-and-508-rules-2-and-13.pdf [https://perma.cc/K3UY-PWMQ] (proposing a requirement for law schools to provide substantial opportunities for students to develop a professional identity) [hereinafter Bales & Adams Memorandum].

3. Professional Identity Formation Defined and Explained

The realization that law schools needed to focus on more than just doctrine began over three decades ago with the publication of the ABA's "MacCrate Report."[262] This report documented the need for law schools to focus on essential lawyering skills and values in order for the pedagogy to align more with what lawyers actually do.[263] The report identified several skills necessary for success in the changing legal profession and also mentioned the need to focus on the values that are "essential qualities of lawyers."[264] These values include "striving to promote justice, fairness, and morality" and "striving to improve the profession."[265] More specifically related to professional identity is the need to encourage students to develop professionally and to obtain employment where the student can "effectively pursue his or her personal and professional goals."[266] Guiding law students to develop a professional identity that aligns the values of the legal profession with their own personal values serves the interest of the person, the profession, and the public.[267] Although the report began a decades-long discussion regarding the values and characteristics related to success in the legal profession and the need to develop professionalism and a professional identity, critics of the report point to its failure to focus on the "values" needed as opposed to the specific "skills" required for success in the legal profession.[268] However, the report did begin the shift to an emphasis on legal ethics and professional responsibility.

Based on the criticized lack of focus regarding the values portion of the MacCrate Report, others sought to provide the detail needed to effectuate a

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262. AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCH. & LEGAL PROFESSION: NARROWING THE GAP (1992) [hereinafter THE MACCRATE REPORT].

263. *Id.* at 123; Gerald J. Clark, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 27 SUFFOLK U.L. REV. 1153, 1153 (1993).

264. Garth, *supra* note 257, at 305.

265. *Id.* at 307.

266. *Id.* at 307; THE MACCRATE REPORT, *supra* note 262, at 207–22; Clark, *supra* note 263, at 1156.

267. *See* Garth, *supra* note 257, at 305–06 (discussing an alignment of personal and professional values through "socializ[ing] students into the high road of professionalism values"); THE MACCRATE REPORT, *supra* note 262, at 207–22; Clark, *supra* note 263, at 1156 ("The report emphasizes the necessity of enhanced instruction as a part of the achievement of its goal of improving the profession and enhancing service to the public.").

268. Garth, *supra* note 257, at 306.

change to the role of professional responsibility and legal ethics in legal education.[269] The Carnegie Report in 2007, along with the publication of "Best Practices for Legal Education," argued that failure to prepare law students for the moral and ethical challenges they would face in the practice of law ignores lawyers' "ideals, ethical values, and sense of self."[270] The harm caused by this failure could be documented by the increased rates of substance abuse and mental health issues within the legal profession.[271]

The Carnegie Report resulted in the academy shifting away from a strict client- centered or "hired gun" approach to teaching legal ethics[272] and toward guiding students in developing their own code of professional ethics consistent with their personal morals and values.[273] This was a shift back to early times when lawyers built their professional identity through apprenticeship training, during which their own values and morals could be tested and realigned with the ethical dilemmas that often occur in the practice of law.[274] The Carnegie Report itself identifies the need for professional identity formation as the "third apprenticeship."[275]

This "third apprenticeship" represents the need to guide students in their "socialization into the profession and its values."[276] In accordance with the Carnegie Report, professional identity formation incudes exploring concepts of "morality and character" along with professionalism and teaching the rules[277] because the rules alone are not sufficient to accomplish

269. *See id.*

270. Benjamin V. Madison, III & Larry O. Natt Gantt, II, *Morals and Mentors: What the First American Law Schools Can Teach Us About Developing Law Students' Professional Identity*, 31 REGENT U.L. REV. 161, 161–62 (2019) (citing ROY T. STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007)) [hereinafter Madison & Gantt].

271. *Id.* at 162.

272. *Id.* at 201.

273. Mary Walsh Fitzpatrick & Rosemary Queenan, *Professional Identity Formation, Leadership and Exploration of Self*, 89 UKMC L. REV. 539, 539–40 (2021) [hereinafter Fitzpatrick & Queenan].

274. *See* Madison & Gantt, *supra* note 270, at 167–68 (describing the pre-nineteenth century method of exclusive apprenticeship training for law students).

275. Garth, *supra* note 257, at 309; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter THE CARNEGIE REPORT].

276. *Id.*

277. Fitzpatrick & Queenan, *supra* note 273, at 542.

this task. More is needed because the rules are "intended to be a 'code of legal standards, not ethics.'"[278]

Although the legal profession's focus was shifting to the importance of professionalism, defined as "the ability to act in a professional manner," professional identity formation in legal education extends beyond how others may view one's conduct to the realm of self-reflection and self-realization.[279] It aligns one's own morals and values with obligations of the legal profession.[280] "Professional identity formation indicates 'an ongoing self-reflective process involving habits of thinking, feeling, and acting and a lifelong commitment to continued progress toward technical excellence and the aspirational goals of the legal profession.'"[281]

Since the publication of the Carnegie Report, professional identity formation has become a focus in legal education with additional scholarship and studies providing even more support for its need. In 2011, Marjorie Shultz and Sheldon Zedeck published the results of their work on "Predicting Lawyer Effectiveness."[282] In this report, Shultz and Zedeck listed twenty-six factors associated with lawyer effectiveness.[283] Among these effectiveness factors, several were related to individual personality traits including: honesty and integrity; practical judgment; stress management; self-evaluation; and self-development.[284] The role of self-evaluation is critical to professional identity formation as it allows students to identify their own values and align them to those of the legal profession.[285] This alignment allows students to avoid the personal ethical

278. Madison & Gantt, *supra* note 270, at 163 (quoting GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 109 (3d ed. 1994)).

279. Fitzpatrick & Queenan, *supra* note 273, at 541.

280. *Id.* at 540.

281. Fitzpatrick & Queenan, *supra* note 273, at 541 (quoting Neil W. Hamilton et al., *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. ST. THOMAS L.J. 11, 14 (2012)); *see also* MOLLY COOKE ET AL., EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY 109 (2010) (discussing qualities desired by legal employers in judging new hires).

282. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 621 (2011).

283. *Id.* at 630.

284. *Id.* at 630; *see also* Michele N. Struffolino, *Lessons Learned from the Ignored, Silenced, and Interrupted: The Time Is Right for Women to Take the Lead and Model Essential Lawyering Skills*, 89 UMKC L. REV.325, 347–50 (2020).

285. Fitzpatrick & Queenan, *supra* note 273, at 544.

crises associated with a valueless, client-centered approach and also allows students to "develop a deeper appreciation for their obligations to serve clients, the profession, and their communities."[286] Professional identity formation is not only key to a student's success and satisfaction in the legal profession, it is essential to legal employers in the hiring process.[287]

Because of poor employment numbers for law school graduates a decade ago, legal education had to align the skills taught in law school with those legal employers desired in new hires. The Institute for Advancement of the Legal System's *Foundations for Practice* study sought to identify "the gap between the skillset lawyers want in new graduates and the skillset lawyers believe new graduates have."[288] The study concluded that legal employers want "the whole lawyer"; in addition to possessing legal skills and professional competencies, legal employers were looking for "character."[289] Character includes those traits associated with "trustworthiness, conscientiousness, sociability, and common sense."[290] The study concluded that possessing these characteristics was more important when hiring new lawyers than the possession of legal skills.[291] The importance of professional identity formation in legal education has extended to the legal profession as a whole with the ABA now requiring law schools to prepare students personally and professionally to enter the legal profession.[292]

2. Efforts for ABA Recognition of the Importance of Professional

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286. *Id.* at 543.

287. *See Foundations for Practice*, IAALS, https://iaals.du.edu/projects/foundations-practice [https://perma.cc/L8FY-NZGB] (discussing the need for new lawyers to be trained through empirical methods designed to prepare them for the workforce).

288. INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1 (2016), https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/X49T-E7UZ].

289. Struffolino, *supra* note 284, at 344.

290. *Id.*

291. *Id.*

292. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022–2023, at 18 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf [https://perma.cc/6Q4H-ZA8W].

Identity Formation Prove Successful

Honesty, trustworthiness, and integrity are obviously valued traits in any profession; this is especially true for lawyers. These traits should align with the values of the legal profession and the clients served.[293] The evolving scholarship over the past few decades placed the need for this alignment at the forefront of the discussion in the academy. Again, taking a reactive stance rather than a proactive stance, the ABA stepped in to explore if and how it should be involved in the discourse; finally taking action to require law schools to do what many had been doing for years – include professional identity formation as part of the curriculum.[294] In early 2021, the Council of the Section of Legal Education and Admissions to the Bar published for comment a proposed revision to Standard 303 that included a requirement that law schools "provide substantial opportunities to students for . . . the development of professional identity."[295] This was the result of the council's charge to, and the recommendation of, the Lawyer Wellbeing and Professionalism Working Group.[296] It was also no doubt due to the efforts of many, including the Holloran Center for Professional Development, which has led efforts to educate educators on the importance of guiding law students in professional identity formation and to explore ways that law schools could "most effectively foster the ethical professional formation of each student."[297]

After receiving several comments, in May of 2021, the Council again published for comment the revision to the standard as originally proposed

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293. Fitzpatrick & Queenan, *supra* note 273, at 544.

294. *See* AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022–2023, at 18 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf [https://perma.cc/3DQ8-MPB2] (providing Standard 303(c) which states: "[a] law school shall provide education to law students on bias, cross-cultural competency, and racism . . .").

295. Bales & Adams Memorandum, *supra* note 261.

296. Memorandum from Standards Comm. of the Section of Legal Education and Admissions to the Bar, to Council of the Section of Legal Education and Admissions to the Bar (Feb. 3, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/feb21/4-feb-21-council-memo-std303-and-508.pdf [https://perma.cc/XGQ9-HXXU].

297. *About the Center*, UNIV. ST. THOMAS: HOLLORAN CTR., https://www.stthomas.edu/hollorancenter/about/ [https://perma.cc/FN9P-VUA7] (last visited Dec. 19, 2021).

by the working group and approved by the Council in February.[298] The May notice also included a new proposed Interpretation to Standard 303-5 defining professional identity, which was drafted in response to the comments received after the March notice:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities during each year of law school and in a variety of courses and co-curricular and professional development activities.[299]

Many comments were again received with only a few specifically addressing the addition of professional identity formation to Standard 303.[300] Whether the current proposal is added to the Standard remains to be seen as of the writing of this Article, but what is clear is that the pendulum appears to have swung back from the client-centered only, "hired gun" approach in legal ethics to a focus on assisting students in developing an identity more in line with the "lawyer statesman."[301]

Here lies the challenge for Professional Responsibility professors and law schools in general. Current and first-year law students have begun pursuing their legal professional careers after witnessing many lawyers acting with only their clients' interests or worse, their own personal interests as the objective, and giving little, if any, regard to the values and interests of the legal profession, the public, or the democracy.[302] Whether law schools are

298. Bales & Adams Memorandum, *supra* note 261.

299. *Id.* It is important to note that the proposed change to the Interpretation was partially a result of the comments from the Holloran Center. *See supra* note 296 (explaining the Holloran Center's involvement in providing language defining professional identity in Interpretation 303-5).

300. *Notices of Proposed Standards Changes and Responses to Proposed Standards Changes: Notice and Comment*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/ [https://perma.cc/EB9R-MEXL] (last visited Feb. 8, 2022).

301. Madison & Gantt, *supra* note 270.

302. *See* discussion *supra* Section III.A (arguing attorneys that disputed the 2020 presidential election results "were willing to rely on politics rather than civics[,] . . . placing the interests of their client and their self-interest above those of the legal profession").

required to demonstrate that they provide professional identity development opportunities to their students for accreditation purposes, or the institution decides to do so as part of their mission, changes to the curriculum need to include more than changes to the Professional Responsibility two or three credit course. Curricular and programmatic changes take considerable effort whenever made. Now, however, the task is even more challenging because new law students are coming in with little if any understanding of the current values and goals of the legal profession. The starting point to aligning one's own values with that of the legal profession must come sooner than the second or third year of law school to undo the damage done by publicized examples of lawyers acting wrongfully or even lying to perpetuate a lie. The good news is that current and aspiring law students are likely part of a generation that values the truth and often makes decisions consistent with their values and beliefs.

IV. GENERATION Z: THE NEW COHORT OF LAW STUDENTS AND THE SEARCH FOR THE TRUTH

As stated by many educators when they face a challenge, every problem creates a teaching moment. This is true now as the legal profession looks to legal education to guide law students toward building a strong professional identity during a time of political and social division. Fortunately, current law students and those who will fill the law school classrooms over the next several years may be part a generation that sees the value in knowing the truth of the matter and the importance of considering the truth about justice.[303]

A. *Defining Gen Z*

Legal educators and law professors can benefit from knowing more about the population of the law students seated in their classrooms and can take advantage of this knowledge to overcome obstacles to teaching legal ethics and encouraging professional identity formation. Information regarding

303. *See* discussion *infra* Section IV.A.1. (stating Gen Z is the most diverse generational cohort to date, and as such, is committed to advancing social and economic change in the interest of justice).

current and new law students may be obtained through the work done by researchers, one in particular being the Pew Research Center.[304] Work done by the Pew Research Center includes identifying "generational cohorts" and examining their attitudes and views regarding current political, social, and economic issues, likely formed as a result of the experienced world events.[305] Although it is hard if not impossible to define a typical law student, the average age of a law student appears to be between twenty-two and twenty-four years old.[306] This places these students into a generational cohort defined as "Generation Z."[307] This generation began with those individuals born after 1996, the year deemed to mark the end of the millennial cohort.[308] Thus, many students beginning law school now are likely part of the Generation Z cohort and their numbers will continue to increase over time.[309] This cohort has also been named post-millennials, iGen, and Homelanders,[310] with members of one international management consulting firm identifying them as "True Gen."[311] Each of these titles correspond to traits associated with the new generation.[312]

304. Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/ [https://perma.cc/A3J8-AWS6].

305. *Id.*

306. Gregory Yang, *How Age Affects Your Law School Application*, TIPPING THE SCALES (Apr. 3, 2019), https://tippingthescales.com/2019/04/how-age-affects-your-law-school-application/ [https://perma.cc/2C67-H37Z].

307. Dimock, *supra* note 304.

308. *Id.* Depending on the sources, the Gen Z cohort includes those born in a span of years between 1995–2015, with most beginning in 1997. *Compare* Tracy Francis & Fernanda Hoefel, *"True Gen": Generation Z and Its Implications for Companies*, MCKINSEY & CO. (Nov. 12, 2018), https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/true-gen-generation-z-and-its-implications-for-companies [https://perma.cc/ZD52-A5R6] (describing Gen Z as those born between 1995–2010), *with* Isabel LoDuca, *Why Gen Z Voices Matter in Making Business Sustainable*, GREENBIZ (Oct. 19, 2020), https://www.greenbiz.com/article/why-gen-z-voices-matter-making-business-sustainable [https://perma.cc/Q9VQ-NUFD] (describing Gen Z as those born between 1996–2015).

309. Dimock, *supra* note 304.

310. *Id.*

311. *See* Francis & Hoefel, *supra* note 308 (introducing "True Gen" as youths comfortable with themselves and authentic).

312. *See* discussion *infra* Section IV.A.1. ("Their progressive attitudes regarding social issues such as racial and LGBTQ inequalities and climate change tend to have them lean left politically, and unlike prior generations, they are less likely to become more conservative as they get older.").

1. Common Traits Associated with Gen Z

The decision to define a new generational cohort was sparked by the realization that the political, economic and social experiences of millennials differed from those born after 1996; those with little, if any, memory of the 9/11 attacks and who grew up at a time in which "constant connectivity and on-demand entertainment" were assumed and not just something to which they had to adapt.[313] Just as political, economic, and social events affect the attitudes and values of any generational cohort, exploring these attitudes and values provides important information to stakeholders in political, economic, and social institutions.[314] For legal education, this information is key not just for its relevance to attaining educational and professional objectives, but also in terms of economic survival.[315] The students in this cohort are consumers of the service that law schools provide. Law schools therefore need to attract and retain these students who, as a cohort, recognize the serious economic undertaking law school entails and that the decision to pursue legal education often results in a substantial and lengthy financial obligation.[316]

The recognized attitudes, traits, and values associated with Gen Z are relatively consistent in political, economic, social, and educational realms. Being recognized as the most diverse generational cohort in Unites States history is common to many.[317] For a generation that is approximately one-third of the United States population[318] only a slight majority are of non-

313. Dimock, *supra* note 304.

314. *Id.*

315. Francis & Hoefel, *supra* note 308 ("Coupled with technological advances, this generational shift is transforming the consumer landscape in a way that cuts across all socioeconomic brackets and extends beyond Gen Z, permeating the whole demographic pyramid"); Isabel LoDuca, *Why Gen Z Voices Matter in Making Business Sustainable*, GREENBIZ (Oct. 19, 2020), https://www.greenbiz.com/article/why-gen-z-voices-matter-making-business-sustainable [https://perma.cc/Q9VQ-NUFD] (describing Gen Z's "unique purchasing values"); Ashley Stahl, *How Gen-Z Is Bringing a Fresh Perspective to the World of Work*, FORBES (May 4, 2021, 9:00 AM), https://www.forbes.com/sites/ashleystahl/2021/05/04/how-gen-z-is-bringing-a-fresh-perspective-to-the-world-of-work/ [https://perma.cc/5QHP-UVZS] (discussing Gen Z's "values-driven approach to their careers and job prospects").

316. *See* Robert Minarcin, *OK Boomer—The Approaching DiZruption of Legal Education by Generation Z*, 39 QUINNIPIAC L. REV. 29, 54–55 (2020) (asserting Gen Z students often consider the financial aspects of attending college but elect to do so regardless for career advancement).

317. Dimock, *supra* note 304.

318. Minarcin, *supra* note 316, at 43.

Hispanic, white ethnicity.[319] It is no surprise that they are found to highly value and support diversity, equality, and social justice efforts.[320]

Taking clues from how various institutions have used these identified traits to predict how this generation will affect their operations and chances of success can assist legal educators in understanding how legal education can advance goals of professional development and, more specifically, combat the public perception of lawyers as dishonest professionals who will do anything to advance their client's goals. The main traits associated with this generation permeate all findings and provide hope for the future of the legal profession. Relevant here is that the research indicates this cohort values honesty, the truth, and they demand transparency.

a. Gen Z Votes

The members of Gen Z that have reached voting age have done so after being raised in a time of great political polarization and division.[321] They have been inundated by negativity in messages across all media platforms.[322] Their progressive attitudes regarding social issues such as racial and LGBTQ inequalities and climate change tend to have them lean left politically, and unlike prior generations, they are less likely to become more conservative as they get older.[323] They are pro-government, meaning they are more likely to look to the government to solve societal problems.[324] They are not, however, passive or silent in pursuing their ideals; they are active and even combative in efforts to encourage government to come up with concrete, transparent, and workable policies to solve these problems.[325] They believe

319. Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know About Gen Z So Far*, PEW RSCH. CTR. (May 14, 2020), https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/ [https://perma.cc/C8B5-7Q5R]. About one-quarter of this cohort are Hispanic.

320. *Id.*

321. Minarcin, *supra* note 316, at 43 (citing Geoffrey A. Talmon, *Generation Z: What's Next?*, 29 MED. SCI. EDUC. 9, 9 (2019)).

322. *See* Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 42–43 (2018) (describing various media platforms, including traditional news media and social media, that transmit anxiety-inducing messages).

323. Parker & Igielnik, *supra* note 319.

324. *See id.* (referring to Gen Z as "progressive and pro-government").

325. *See id.* (stating even Gen Z Republicans desire "an increased role by government in solving problems").

in science[326] and want honesty.[327] They strongly believe in use of dialogue and are willing to listen to others in the search for the truth.[328] However, they will forgive mistakes if corrected.[329] This picture of Gen Z has led both major political parties to recognize the need to reevaluate platforms and policies in light of this growing and powerful electorate, with the Republican party at risk of alienating this group absent a shift to more inclusive policies.[330]

b. Gen Z as Consumers

Just as Gen Z highly values transparency and honesty when evaluating political issues, these same values are recognized as pivotal in efforts by businesses to reach these consumers.[331] Gen Z'ers are the fastest growing consumer group.[332] They consider purchasing a matter of ethical concern, and are more likely to be guided in purchasing based on the causes or ethical concerns associated with a business.[333] They expect the values of the business to align with the values of their generation: honesty and transparency.[334] This is why the results of one survey led to identifying this generation as "True Gen."[335] The survey revealed four common behaviors all motivated by their dedication to the "search for the truth": their respect for individual expression and identity; their active participation to support a

326. *See id.* ("[T]he youngest Republicans stand out in their views on . . . causes of climate change . . . . And the youngest Republicans are less likely than their older counterparts to attribute the earth's warming temperatures to natural patterns, as opposed to human activity.").

327. Francis & Hoefel, *supra* note 308.

328. *Id.*

329. *See id.* (claiming Gen Z is forgiving when brands and companies make mistakes, provided those entities acknowledge them).

330. *See* Laura Barrón-López, *The Rise of Gen Z Could Foretell the Fall of Trumpism*, POLITICO (Oct. 16, 2020, 3:16 PM), https://www.politico.com/news/2020/10/11/gen-z-fall-trumpism-gop-realignment-424171 [https://perma.cc/WY2C-9ET4] ("Gen Z's beliefs in diversity, equality and social justice are likely to guide them for decades, pushing the Republican party to either embrace a more inclusive, possibly libertarian message built around social and economic freedoms or lose with increasing regularity.").

331. Francis & Hoefel, *supra* note 308.

332. *Id.*

333. Kristen Hicks, *The Kids Are Alright: Reaching Gen Z with Cause Marketing*, VELOCITIZE (Mar. 25, 2020), https://velocitize.com/2020/03/25/the-kids-are-alright-reaching-gen-z-with-cause-marketing/ [https://perma.cc/E5QQ-LBEU].

334. *See id.* (enumerating authenticity as the first rule of "cause marketing").

335. Francis & Hoefel, *supra* note 308.

cause; their use of dialogue as a means to solve problems; and their realistic and logical approach to problem solving.[336] Businesses are therefore advised to "choose a cause" when branding, whether it be addressing climate change or supporting equity and inclusion efforts, and to be honest, sincere, consistent, and transparent in efforts related to the cause.[337]

While honesty and transparency are essential to the brand purchased, this generation is also concerned with the cost. They are a generation that was in line to enter adulthood during a time of economic growth and prosperity; however, COVID-19 greatly impacted this generation financially.[338] Many either lost opportunities or witnessed family members suffer financial harm during this crisis.[339] This further supports findings that this generation is more financially conservative, having experienced the COVID-19 crisis and having witnessed the impact of the recession in the early 2000's on their family while growing up.[340] Honesty and transparency are therefore also essential when providing the details of the product or services being consumed.[341] This generation views consumption as purchasing "access rather than possession"[342] and will be concerned with the overall value of the purchase to their long as well as short term goals.

2. Gen Z in the Law School Classroom

As Gen Z began to enter the law school classroom, legal educators were tasked with recognizing the unique, or not-so-unique, characteristics of these aspiring lawyers and with adjusting both marketing strategies and teaching techniques to attract these individuals and guide them into their legal careers.[343]Scholars and educators were able to rely on work done by

336. *Id.*

337. *See id.* ("[C]onsumers increasingly expect brands to 'take a stand.' The point is not to have a politically correct position on a broad range of topics. It is to choose the specific topics (or causes) that make sense for a brand and its consumers and to have something clear to say about those particular issues.").

338. Parker & Igielnik, *supra* note 319.

339. *Id.*

340. NETWORK OF EXEC. WOMEN, WELCOME TO GENERATION Z 11 (Deloitte 2020), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/consumer-business/welcome-to-gen-z.pdf [https://perma.cc/7S9J-ZTJM].

341. Francis & Hoefel, *supra* note 308.

342. *Id.*

343. Graham, *supra* note 322, at 70 (describing the preferences and desires of Gen Z students). *See* Minarcin, *supra* note 316, at 67–68 (discussing the teaching areas necessary to properly prepare Gen

others to begin this task. The traits and characteristics considered relevant and important to social, political, and business institutions are also pertinent and applicable to legal education.[344] What we learn from the Pew Research Center and others is that members of this generational cohort are more likely to seek higher education.[345]

They have even been labeled as being "on track to be the best-educated generation yet."[346] This presents both opportunity and challenge for legal education.

The opportunity is obvious. As a cohort on track to be the best-educated generation, there will likely be more qualified individuals in the applicant pool. However, attracting these individuals requires acknowledging who they are as consumers.[347] They will likely choose a law school that is diverse and whose brand is consistent with the causes and beliefs important to them.[348] However, at the same time, they are likely to be very concerned about the cost of the education offered.[349] They are likely to view their law school tuition and related debt obligation to be a means of gaining access to the legal profession.[350] It is therefore important that they see their choice as a means to attain the goal of being successful in their chosen career.[351] They want honesty and transparency when purchasing, making it imperative that law schools are aware of what these aspiring professionals want and are ready to provide them with accurate data and concrete examples showing that the goals of the institution and the consumer are aligned.[352] Once a law school is chosen, both the opportunities and challenges continue as they enter the classroom.

Z law students for law practice); *see also* discussion *infra* Part V (providing suggestions for reframing legal education consistent with Gen Z's learning objectives).

344. *See* Minarcin, *supra* note 316, at 71–72 (suggesting improvements in teaching skills applicable to both law school and other business settings).

345. Parker & Igielnik, *supra* note 319.

346. *See id.* (attributing better education levels to changes in immigration patterns and the fact that these individuals are more likely to have a college-educated parent than preceding generations).

347. *See* discussion *supra* Section IV.A.1.

348. *See* discussion *supra* Section IV.A.

349. *See* discussion *supra* Section IV.A.1.

350. *See* discussion *supra* Section IV.A.1.

351. *See* Francis & Hoefel, *supra* note 308 ("For Gen Z . . . consumption means having access . . . .").

352. *See* discussion *supra* Section IV.A.

This generational cohort is associated with some traits any law professor would hope to see in students. The members of Gen Z are hardworking with "grit" and a "desire to win."[353] They are more likely to accept constructive criticism and direction as they have grown up in a time when not "everyone gets a trophy."[354] They have been described as "loyal, compassionate, thoughtful, open-minded, responsible, and determined."[355] They make up a generation that will be more receptive to and active in efforts to guide them to professional identity development because they are more likely to be self-directed learners and to possess "a driving motivation to map out [their] own futures."[356] They come to law school, however, having experienced events that lead them to view the world as a "scary place";[357] this is one challenge legal educators must be prepared to address.[358]

This generational cohort witnessed social and political events that likely led it to be anxious and fearful of the world.[359] Its members grew up experiencing school shootings, violence, bullying, the effects of overseas wars, and increased political and social division.[360] All of these events and issues being the focus of intensified, constant media coverage led to a phenomenon labeled "catastrophizing."[361] Students from this cohort are more likely, therefore, to enter law school with significant mental health and

353. Minarcin, *supra* note 316, at 44 (quoting Alexa Poulin, *What Makes Gen Z Click: 5 Defining Differences Between Gen Z and Millennials*, CARNEGIE DARTLET (May 1, 2019), https://www.carnegiehighered.com/blog/what-makes-gen-z-click-5-defining-differences-between-gen-z-and-millennials/ [https://perma.cc/NVV9-2XMA]).

354. *Id.*

355. *Id.*

356. *Id.* at 45.

357. *See id.* at 44 (describing the outlook Generation Z has on the world (quoting Jodie Eckleberry-Hunt, David Lick & Ronald Hunt, *Is Medical Education Ready for Generation Z?*, 4 J. GRAD. MED. EDUC. 378, 378 (2018))).

358. *See* Graham, *supra* note 322, at 42 (emphasizing the effect of terrorism and social media on Generation Z).

359. *See id.* at 42–43 (stating the "24/7 media" has caused Generation Z to become more anxious and fearful).

360. *Id.* at 42–44. (citing Graham C.L. Davey, *The Psychological Effects of TV News*, PSYCHOL. TODAY, https://www.psychologytoday.com/us/blog/why-we-worry/201206/the-psychological-effects-tv-news [https://perma.cc/DVV2-TRRL]); Minarcin, *supra* note 316, at 43–44.

361. Graham, *supra* note 322, at 43–44.

wellness issues, often the result of anxiety.[362] The impact of this stress and anxiety on the ability to learn is great: "They stretch our attention span, affect our perception, skew our filtering process toward negative and fear-inducing stimuli, weaken our memory, and obstruct our higher level cognition."[363] Unfortunately, the law school experience only exacerbates the stress and anxiety, leading to increased substance abuse and other wellness issues.[364] These challenges are important to recognize for curricular and pedagogical reasons; however, particularly relevant to this discussion is the need to address how this generation's recent experiences associated with "The Big Lie" may affect efforts to accomplish professionalism and professional identity goals. It may be time to use the simple definition of truth and the opportunities this new generation of law students present as a means to improve the legal profession.

V. THE CURRENT OPPORTUNITY TO REFRAME THE ROLE OF THE TRUTH IN THE LEGAL PROFESSION

Now more than ever, law schools have the opportunity to reframe the legal profession's role in the search for the truth. Current, well-publicized events centered on the distortions of the truth provide an opportunity to explore and discuss realities of the role of an attorney, a role which involves both the needs to state the truth about the facts and to argue for justice.[365] A discussion about defining the role of an attorney is essential to building a strong and positive professional identity.[366] The legal academy's dedication to encouraging a professional identity formation that goes beyond defining the lawyer's role as being solely client-centered and the new generation of law students create an opportunity to redirect the discourse. While this opportunity is especially relevant to the Professional Responsibility professor, it is or should be an essential component of the law school curriculum from day one.[367]

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362. *See id.* at 39 (addressing the mental and emotional health issues that increase through the law school experience).

363. *Id.* at 43.

364. *Id.*

365. Webb, *supra* note 32, at 1111.

366. *Id.*

367. *Id.*; *see also* Kanwar, *supra* note 10, at 727 ("[T]he educational landscape . . .offers opportunities to grapple with these issues early so that law students have a foundation and framework to understand how to use facts ethically and persuasively.").

Gen Z students are coming into law school with a distorted perception of the role of a lawyer. As "digital laborers"[368] they have been saturated with media stories perpetuating "The Big Lie." They value the truth and transparency and are therefore not likely to be misled by stories not based on fact.[369] The concern, however, is that because many of those individuals providing false information or ignoring known facts are lawyers, these students may start law school with only a client-centered view of the role of a lawyer not limited by basic ethical principles—including those as fundamental as the obligation to tell the truth. This creates a personal conflict from the beginning; students may believe they need to reconcile this role with their own personal values regarding what is right and wrong; or worse, that they need to ignore their own personal values.[370] This is particularly concerning for Gen Z law students, as they are entering law school already viewing the world as a scary place[371] and are a generation identified as being at high risk for depression and anxiety.[372] By addressing this challenge early and often in the law school curriculum, both inside and outside the classroom, this generation of law students will likely appreciate clarity and an explanation of the objective and will be more receptive to engaging in discussions about the lawyer's role as it relates to their own personal values, the needs of the client, and in furthering public interest.

A. *Modeling the Truth and Transparency in Branding and Marketing*

Law schools should model honesty and transparency in all points of contact with students and prospective students. The brand of the law school should reflect the image of the "'lawyer statesman' or the 'citizen lawyer,'"[373] an image of one dedicated to furthering not just the interests of individual clients but clients in need and furthering the interests of the

368. Graham, *supra* note 322, at 57 (quoting Kathy Evans, *Are Digital Natives Really Just Digital Labourers? Teens Turning Off Social Media*, AGE, https://www.theage.com.au/national/victoria/are-digital-natives-really-just-digital-labourers-teens-turning-off-social-media-20160419-goa0or.html [https://perma.cc/QH35-6B3E]).

369. *See* discussion *supra* Section IV.A.

370. *See* Webb, *supra* note 32, at 1101 (describing the negative implications of a disconnect between a sense of justice and the actual practice of law); *see also* discussion *infra* Section V.A.3.

371. *See* discussion *supra* Section IV.A.

372. Graham, *supra* note 322, at 55.

373. Madison & Gantt, *supra* note 270, at 169 (quoting John T. Baker, *Citizen Lawyers—The Past, Present, and Future of the Legal Profession*, 38 COLO. LAW., Sept. 2009, at 99–100).

community and justice.[374] The law school itself should live up to this image by encouraging diversity and inclusion in recruitment of students, faculty, and staff, reflecting a value important to the Gen Z student.[375]

Law schools must not only be transparent and clear about the costs and the related financial obligations their students are about to incur they must be honest and transparent about how the expense and related debt will assist the students gain access to the legal professions. "They are, in sum, customers with a 'give me what I need, tell me why I need it, at the lowest price, in the shortest time for the most significant payoff attitude.'"[376] If this message is heard by legal educators, it follows that law schools need to consistently provide clarity and transparency through the law school experience.

B. *Modeling the Truth and Transparency in Programmatic and Curricular Matters*

Curricular and programmatic planning should provide opportunities for law students to explore the ethics of lawyering from day one and throughout the law school experience. This objective and its means should be articulated clearly and consistently to students. Gen Z students entering law school should be able to explore what it means to be an attorney in every point of contact from orientation to first-year classes, to upper-level classes, to extensive experiential learning opportunities, and, of course, in the Professional Responsibility classroom. One consensus among those dedicated to the goal of professional identity formation is that a one-, two-, or three-credit Professional Responsibility class offered in the second or third year of law school is drastically insufficient to successfully guide students toward an ethical and satisfying professional identity.[377] Law school programmatic efforts and curricular decisions should be made with professional identity formation as a goal, and the reasons for these efforts should be transparent and consistently articulated to law students so that they know what to expect: that their law school experience will entail more

374. *See supra* Section IV.A; Madison & Gantt, *supra* note 270, at 171.

375. *See* discussion *supra* Section IV.A.

376. Minarcin, *supra* note 316, at 70 (quoting Jeffrey Selingo, *The New Generation of Students: How Colleges Can Recruit, Teach, and Serve Gen Z*, CHRON. HIGHER EDUC. 27, 10–23 (2018)).

377. *See* Webb, *supra* note 32, at 1130 (explaining the importance of professional responsibility courses to divulge legal realism).

than just learning the "black letter law" and will include exploring their personal values.[378]

The Holloran Center for Ethical Leadership is at the forefront of addressing this objective with Co-Director Neil Hamilton proposing that having an ongoing discussion about the value of the legal profession leads "those engaged in the discussion to grow in their 'moral insight.'"[379] Specific professional values law schools identify when defining the institutional objective of professional identity formation include those directly relevant to the truth, such as honor, integrity, fair play, truthfulness, and candor.[380] There is no better place to start encouraging these values than at the beginning.

Gen Z law students are coming to law school questioning the efficacy of the lawyer's role in society. Law schools should embrace this discussion rather than shy away from it.[381] As stated by one proponent of engaging in the discussion of the role of ethics early and often in legal education, it is not too late to assist student law students in developing a moral and ethical identity: "Unlike one's intelligence quotient, a person's moral development continues well into middle age, and probably even later."[382] In addition, ignoring highly publicized current events in an effort to remain neutral[383] is like ignoring the elephant in the room. Gen Z students want acknowledgement that the professionalism issues exist, and they are going to want to know where the law school stands on the issues. Gen Z students are known for their ability to listen to different points of view,[384] which creates an atmosphere ripe for discussion. Ignoring the issue or waiting until the second or third year of law school to discuss the lawyer's role may reinforce the impression that the recent examples of lawyers lying or

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378. Kanwar, *supra* note 10, at 727.

379. Madison & Gantt, *supra* note 270, at 196 (citing Neil W. Hamilton, *The Qualities of the Professional Lawyer*, *in* ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER 1, 12 (Paul A. Haskins ed., 2013)).

380. *Id.* at 199–200 (citing Larry O. Natt Gantt, II & Benjamin V. Madison, III, *Teaching Knowledge, Skills, and Values of Professional Identity Formation*, *in* BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 252, 253–55 (Deborah Maranville et al. eds., 2015)).

381. *See id.* at 164 (commenting law schools today should integrate ethical formation into their curriculum similar to law schools of the nineteenth century).

382. *Id.*

383. *Id.* at 164–65.

384. *See* discussion *supra* Section IV.A.

misleading the public are acceptable or of little consequence—potentially leading students to believe it a role they may need to embrace. This message and its implications will be hard to reverse later on.[385]

Beginning this discussion about the lawyer's role and its place in the legal system early on, even starting with orientation, capitalizes on a time when law students are typically the most compassionate about the importance of the truth and justice in the legal system. This is because there appears to be a "six week period" at the start of the first year of law school "when students are 'excited about the ideology of fighting for justice' and are open to discussion of how they can promote that."[386]

Gen Z students prefer using real life examples in the learning process, and the recent examples of lawyers distorting the truth in representations made to courts and to the public can be used to explore their own beliefs and values, how they relate to the challenges they may face, and the professional identity they hope to achieve. This discussion can enhance existing excitement and compassion for their chosen profession, and it is one that can be maintained and enhanced if it continues throughout their legal education.[387] Several law schools now offer programs focused on professional identity formation that span the entire three (or four) years of law school, often working with law school career and professional development professionals to encourage growth opportunities outside the classroom.[388] Creating a one-credit course is another way law schools have embraced the opportunity to guide a continued discussion with Gen Z students.[389]

Because Gen Z students are entrepreneurial and learn best by having real life experiences,[390] law schools should provide maximum opportunities to

385. *See* Webb, *supra* note 32, at 1127 (suggesting students, like all individuals, learn subconsciously about hidden messages and even when proven to be false or different later, may hang on to their original impressions).

386. *Id.* at 1133–34 (quoting Danny DeWalt, *Practical Lessons Learned While Building a Required Course for Professional Identity Formation*, 14 U. ST. THOMAS L.J. 433, 434 (2018)).

387. *Id.* at 1134.

388. *See Law School Professional Development Initiatives in the First Year*, UNIV. ST. THOMAS: HOLLORAN CTR., https://www.stthomas.edu/hollorancenter/learningoutcomesandprofessionaldevelopment/professionaldevelopmentdatabase [https://perma.cc/E7NN-Q5XK] (showcasing sixty-two first-year law school professional development initiatives).

389. Graham, *supra* note 322, at 92.

390. Minarcin, *supra* note 316, at 45.

participate in clinical and externship programs, beyond the ABA mandate of six experiential learning credits.[391] These opportunities are excellent avenues for students to experience the ethical challenges lawyers face and to guide students toward embracing the values of honesty and integrity in the legal profession. Law schools should not leave this discussion to courses or programs outside of the traditional doctrinal courses; it should be part of the discussion in all courses, especially the first-year courses.[392]

C. *Modeling the Truth and Transparency in the Classroom*

Every classroom should be open and transparent regarding the discussion on the lawyer's role in the search for the truth and justice, especially in the first-year classes when students are introduced to legal analysis.[393] This is not an easy skill to teach or learn: Law school students "experience a high cognitive load . . . working at high levels of Bloom's Taxonomy; they are asked not only to understand and retain content, but to learn and apply new analytical skills, and then to apply both the content and the skills to new factual scenarios."[394]

Because Gen Z students have short attention spans and learn best from practical, real-life experience, the Socratic method and the case method still used in most first-year classes may well lead to confusion and conflict about the role of an attorney.[395] Critics of the Socratic method, and there are many,[396] posit that its continued use has lost its effectiveness in leading students to understanding the search for the truth; "[t]he method Socrates

391. *Id.* at 69.

392. *See* Webb, *supra* note 32, at 1082 (asserting that critical thinking and experiential learning are crucial for first-year law students); *see also* Madison & Gantt, *supra* note 270, at 193 (stating the best practices to legal education includes first-year professionalism courses).

393. *See* Kanwar, *supra* note 10, at 728 (explaining how first-year law students are generally naïve regarding ethical issues, which means teaching professionalism at this stage is crucial).

394. Webb, *supra* note 32, at 1104.

395. *See id.* (acknowledging first-year courses "pose[] significant challenges to [first-year law students'] information processing abilities" (citing Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 309–10 (2008))).

396. *See id.* at 1111 (critiquing the Socratic method for its tendency to suggest an "absolute, truthful law exists" and claiming the Socratic method encourages students to disregard professionalism in their careers); *see also* Madison & Gantt, *supra* note 270, at 188 (listing the Socratic method's flaws, including a failure to provide fundamental principles in favor of concentrating on legal rules and presenting them in a fragmented structure).

used to teach his own students had specific characteristics: a goal (seeking truth), a process (question-and-answer), *and a source (the student's own soul).*"[397] Today, the Socratic method's primary focus is to teach the skill of legal analysis rather than being a method for finding an answer based on what the student views as fair or just.[398] This can create an impression that the student's own "values, conscience, or morality" have no role in the process.[399] Students may "internalize the idea that legal truth exists and is discoverable, but that the role of lawyers is not to speak that truth; instead, a lawyer's role is to identify arguments on either side . . . disregarding the actual truth of the matter."[400] Unfortunately, the Socratic method may unintentionally send a message that only reinforces this view.[401]

The traditional case book method utilized in many first-year classes can likewise send a misleading message about the role of the facts and an attorneys' role in the search for the truth. The Carnegie Report indicates that relying on "highly redacted" cases in textbooks may give the "misleading impression that facts are typically easy to 'discover,' rather than resulting from complex processes of interpretation that are shaped by pressures of litigation."[402] Such a message minimizes the importance of facts, again creating an impression of the lawyer's role consistent with the current publicized examples of lawyers stating false facts or intentionally ignoring known facts.[403]

Although there are many critics of these traditional teaching methods, they are still valuable tools, especially when used along with others more directly targeting the strengths of the Gen Z law student. Being transparent about the goals of these teaching methods will minimize confusion for the

397. Webb, *supra* note 32, at 1090 (emphasis added).

398. *See* Madison & Gantt, *supra* note 270, at 185 (stating law schools in the Gilded Age moved away from the teaching civic duty and shifted towards teaching how to achieve the goals of large corporations).

399. *See id.* at 189 (contrasting historical influences that emphasized morality in the study of law with the contemporary focus on legal analysis).

400. Webb, *supra* note 32, at 1101.

401. *See* discussion *supra* Section V.C (outlining criticisms of the Socratic method, including its tendency to suggest a single correct answer exists for every legal problem).

402. Webb, *supra* note 32, at 1103 (quoting THE CARNEGIE REPORT, *supra* note 274, at 4–5).

403. *See* discussion *supra* Section III.A (discussing attorneys' perpetuations of false and misleading facts related to the 2020 presidential election).

Gen Z law student.[404] By clearly explaining the goal of the Socratic method, for example, that it is a legal analytical skill and not a means to deflect the truth, students can embrace it without a conflict with their own beliefs or clouding their professional development.[405]

It is not just the pedagogy used in the classroom that can maximize opportunities to guide Gen Z law students to a clear understanding of the role of an attorney. As stated above, Gen Z students value experience[406] and they desire professors who are "knowledgeable and passionate."[407] To gain the trust of the Gen Z law student, it is essential for institutions to acquire experienced professors who are excited about the law. Hiring professors with the requisite knowledge and specialized skills in their respective subject matters—and particularly those who are able to share personal experiences with ethical and professional identity challenges they may have faced in the past—will allow for a continued discussion of the attorney's role and efforts toward professional identity formation.[408]

Law school professors should model the values identified as essential to the legal profession: honesty and integrity.[409] Educators that model character and professionalism can also act as mentors during the path to developing an ethically strong professional identity.[410]

Gen Z students value using "face-to-face" contact and dialogue to address issues.[411] The classroom can therefore present an excellent

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404. *See* Webb, *supra* note 32, at 1083 (stating the first step of successful implementation of the Socratic method is to outline its pedagogical goals).

405. *See id.* at 1101 (explaining how the Socratic method's "hidden lesson" causes "tension between students' ideas of what the law is and their ideas of what they must say the law is to server their clients").

406. *See* Minarcin, *supra* note 316, at 50 (discussing Gen Z's preference for "flexible and adaptive educational options").

407. Minarcin, *supra* note 316, at 49 (quoting COREY SEEMILLER & MEGHAN GRACE, GENERATION Z GOES TO COLLEGE 186 (2016)).

408. Minarcin, *supra* note 316, at 68 (articulating how Generation Z students value practical experience).

409. *See* Madison & Gantt, *supra* note 270, at 205 (describing the importance of role-models as a way to "inspire students towards civic-mindedness"); *see also* discussion *supra* Section III.B (defining and explaining professional identity formation).

410. *See* Madison & Gantt, *supra* note 270, at 205 (asserting that mentors who tell good stories are especially impactful to law students).

411. *See* Minarcin, *supra* note 316, at 48–49 (examining a study which showed "eighty-three percent of Generation Z prefer face-to-face communication" (citing SEEMILLER & GRACE, *supra* note 406, at 61)).

opportunity for students to openly discuss these values and how they can be incorporated into the students' professional identities. By introducing this discussion from day one and continuing it into the first-year classrooms, the students can arrive to their Professional Responsibility class ready and willing to discuss ethical lawyering, as well as the Model Rules of Professional Conduct.

D. *Modeling Truth and Transparency in the Professional Responsibility Classroom*

The Professional Responsibility course remains an appropriate environment to have a rich discussion about the role of the attorney—one that includes recognizing the Model Rules of Professional Conduct as the law, and ethics as the aspiration. If law schools embrace professional identity formation objectives from the start, students will not be surprised that the Professional Responsibility course is not just a bar review course for the MPRE.[412] In this course, recent examples of lawyers acting just at or below the Model Rules related to truthfulness—to attain an unjust goal—can be used as specific avenues for students to explore their personal values and where those values will fit into their professional identities.[413]

Class discussion in the Professional Responsibility course should include exploring historical and philosophical approaches to ethical lawyering.[414] Gen Z students will likely appreciate exploring the role of lawyers from a historical approach. As a generation that is values-driven and more actively pursues causes that align with their beliefs, Gen Z students are likely to embrace the efforts of attorneys who were active in the American Revolution, and who helped to shape the current system of justice in this nation.[415] Likewise, as a generation that values the truth, a philosophical

412. *See* discussion *supra* Section III.B (explaining challenges that Professional Responsibility professors face, including students' misconceptions that Professional Responsibility courses will teach them how to pass the MPRE) .

413. *See* discussion *supra* Section III.B.2 (noting first-year law students are exposed to publicized examples of lawyers acting poorly and unethically).

414. Madison & Gantt, *supra* note 270, at 205 (advocating for the use of history and philosophy in all law courses to define the lawyer's role).

415. *See id.* ("[L]aw schools should expose students to powerful lawyer exemplars, both current and throughout history, who model commitment to the common good. Encouraging students to gather and reflect on these stories of prominent lawyers and judges 'can encourage the students to see the way they can contribute to society through their work as a lawyer.'" (quoting Gantt, II & Madison, III, *supra* note 379, at 269)).

approach to defining the truth and exploring its role in the legal profession can also be an effective method of exploring ethical lawyering.[416] When faced with a dilemma regarding the truth, these aspiring lawyers may be better prepared to make decisions that are both legal under the professional conduct rules and also acceptable to their moral and ethical codes.

To alleviate confusion or frustration related to a lack of transparency in the rules,[417] Giuliani and Powell's actions can be used to exemplify the limits of the Model Rules of Professional Conduct, both in their effectiveness to regulate lawyer behavior and the harms that can arise to one's person, the legal profession, and the public.[418] First, Gen Z students expect the government to be active in solving problems, and they value clear, concrete policies and rules.[419] They will not find these characteristics in the Model Rules governing truthfulness.[420] Gen Z students also want to learn using real work experiences and examples.[421] Accordingly, Giuliani and Powell's actions provide recent, real-world examples that expose a flaw in the definition: "when a lawyer knows a fact or knowingly misrepresents or ignores available facts."[422] Students can explore whether this rule provides an appearance of a defense or a loophole to allow attorneys to remain willfully ignorant while advancing a client's goals when, as with Giuliani and

416. *See* Madison & Gantt, *supra* note 270, at 205 (advocating for Aristotelian ethics as a tool in legal education); *see also* discussion *supra* Section II.A (asserting historical and philosophical approaches, similar to those Aristotle employed, are valuable in legal education).

417. *See* discussion *supra* Section II.C (analyzing ambiguities found within the ABA Model Rules of Professional Conduct).

418. *See* discussion *supra* Section II.C (examining the evolution of the ABA Model Rules of Professional Conduct and their weaknesses, including those pertaining to candor to the general public).

419. *See* Barrón-López, *supra* note 330 (defining policy issues Gen Z members deem important, such as climate change, systematic racism, gun violence, and economic inequality, and stating Gen Z voters seek political candidates that take active roles in alleviating these issues); *see also* discussion *supra* Section IV.A.1.a (discussing Gen Z's progressive political affiliations and referring to Gen Z as "pro-government").

420. *See* discussion *supra* Section II.C (critiquing ambiguities and vagueness in the Model Rules, especially in those related to candor towards the tribunal and truthfulness in statements to others).

421. *See* discussion *supra* Section V.B (arguing Gen Z students prefer real life experiences in their learning processes and stating legal education should include exposure to professional identity issues).

422. *See* discussion *supra* Section III.A.1 (reviewing the New York Rules of Professional Conduct and the ABA Model Rules of Professional Conduct and their requirements for subjective and objective standards for "knowingly" making a statement that is false or misleading).

Powell, that defense failed in the courts, and likely will continue to fail in further disciplinary proceedings.[423]

Second, as a generational cohort that is known to take action to advance their beliefs, Gen Z students will likely be receptive to a discussion[424] about how the rules can be changed or amended to provide clarity, and possibly to include a specific duty to investigate suspicious facts. Gen Z students look to dialogue as a means to solve problems and prefer face-to-face interaction;[425] therefore, they open up the chance to have a meaningful class discussion about whether the rules need to more explicitly require a duty to inquire about questionable facts or to prohibit remaining willfully ignorant.[426]

In addition, professional identity and wellness issues can be explored through these examples. Opening up this discussion is imperative with Gen Z students; this cohort's life experiences have already led to increased anxiety and emotional issues.[427] Professional identity scholars identify the values of the legal profession as honesty, integrity, candor, and truthfulness[428], which are significantly aligned with the traits identified through Gen Z research.[429] Discussion questions could directly relate to the well-publicized examples: Would students be willing to risk their careers and

423. *See* discussion *supra* Section III.A (summarizing Giuliani's court proceedings and noting his willful ignorance defense likely failed because he failed to provide any evidence challenging the Committee's finding that he objectively and knowingly made false statements).

424. *See* discussion *supra* Section IV.A.1 (predicting Gen Z's traits will include a receptiveness to advance legal professionalism and to combat generalized distrust of attorneys).

425. *See* discussion *supra* Section V.B (explaining Gen Z's preferences for face-to-face interaction and for open dialogues to solve problems).

426. *See* discussion *supra* Section II.C (providing an overview of the ABA Model Rules of Professional Conduct; more specifically, the lack of any explicit duty to investigate questionable facts or to prohibit attorneys from remaining willfully ignorant).

427. *See* discussion *supra* Section IV.A.2 (explaining social and political events that have collectively affected Gen Z students, including school shootings, violence, widespread bullying, and overseas wars).

428. Madison & Gantt, *supra* note 270, at 199–200 (listing the normative values of the legal profession (citing Gantt, II & Madison, III, *supra* note 379, at 257–60)); *see also* discussion *supra* Sections III.B (recognizing common values of the legal profession, including honesty, trustworthiness, and integrity). *See generally Holloran Research on Professional Formation*, UNIV. ST. THOMAS: HOLLORAN CTR., https://www.stthomas.edu/hollorancenter/holloranresearchonprofessionalformation/ [https://perma.cc/6CGR-CQHC] (providing articles related to professional development and qualities of the profession).

429. *See* discussion *supra* Section IV.A.2 (explaining data that aligns Gen Z's personality traits with aspects of professionalism).

livelihoods by relying on vague rules to advance a client's goals? Putting aside the harm caused to one's profession, would such actions be consistent with the student's own values and beliefs? Would taking such an approach negatively affect the student's well-being or sense of self?

Additionally, these students directly experienced the effect lawyers perpetuating "The Big Lie" had on the public's view of the legal profession.[430] Students can explore ways to redirect that image. For example, students can discuss what bar disciplines or other sanctions are appropriate for such behaviors, and whether the sanctions will have an effect on the public perception of the lawyer's role.[431] Further, students can explore ABA methods to intervene.[432] More relevant for the students, they can explore what law schools can actively do to communicate and support the values of the legal profession, especially as it pertains to efforts to redirect the public perception.[433]

Finally, for Gen Z students that view social issues globally and progressively,[434] these examples provide an opportunity to explore the effects certain lawyers' lies have on the public and society at large.[435] The media saturated this cohort with messages about the state of our justice system and democracy.[436] They are, however, a cohort that is passionate

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430. *See* discussion *supra* Section III.A ("[T]he fable of 'The Big Lie' is still being advanced by lawyers . . . . [T]he harm to the public is great.").

431. *See* discussion *supra* Section III.A.1 (discussing the court sanctions against Giuliani, Powell, and others).

432. *See* discussion *supra* Section II.B (claiming ABA is being reactive rather than proactive on lawyer regulation).

433. *See* discussion *supra* Section IV.A (evaluating traits of Gen Z and law schools' efforts to promote professional identity formation).

434. *See* discussion *supra* Section IV.1.a (defining Gen Z as politically progressive and concerned with global issues, such as climate change).

435. *See* discussion *supra* Section III.A (providing detailed accounts of legal actions taken against Giuliani and Powell for perpetuating falsities related to the 2020 presidential election); *see also In re* Giuliani, 146 N.Y.S.3d 266, 283 (N.Y. App. Div. 2021) ("The seriousness of respondent's uncontroverted misconduct cannot be overstated. This country is being torn apart by continued attacks on the legitimacy of the 2020 election . . . . When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession[] . . . ."); *see also* King v. Whitmer, 556 F. Supp. 3d 680, 688 (E.D. Mich. 2021) ("Specifically, attorneys have an obligation to the judiciary, their profession, and the public . . . . And this case was never about fraud—it was about undermining the [p]eople's faith in our democracy and debasing the judicial process to do so." (emphasis omitted)).

436. *See* discussion *supra* Section III.A (explaining statements made in the media that the 2020 presidential election was fraudulent were false and misleading); *see also* discussion *supra* Section IV.A.2

about equality and social justice issues.[437] The power of "The Big Lie" perpetuated by lawyers and the effect it has had and may continue to have on our justice system and our democracy is an issue ripe for exploration. How far does the lawyer's role extend beyond being client-centered?

The "grit,"[438] loyalty, and willingness to take action[439] of Gen Z students presents a prime opportunity for deep and difficult discussions about the effects their decisions as attorneys can have on the legal profession, the public, and their own well-being.

VI. CONCLUSION

Every problem creates a learning opportunity; in the future, thanks may be in order to those attorneys who provided excellent examples in reframing the role of the attorney personally, professionally, and publicly. The time is right to explore with the new generation of law students the harm caused by adopting only a "client-centered" view of the attorney's role, the ambiguity in the rules, and the importance of professional identity formation. The specific and recent examples of lawyers ignoring or flouting the basic ethical obligation to tell the truth, and other rules governing the legal profession, open the door to an important discussion about professional identity formation. This discussion can and should be had from day one of law school, enhanced in the Professional Responsibility classrooms, and supported throughout the law school curriculum.

(discussing the intense and constant media coverage on political and social events that has existed for the entirety of Gen Z students' lives).

437. *See* discussion *supra* Section IV.A.1.a (stating Gen Z is driven to facilitate social and economic change, including those related to racial and LGBTQ inequalities).

438. *See* discussion *supra* Section IV.2 (characterizing Gen Z as hardworking and gritty).

439. *See* discussion *supra* Section IV.A.1.a (defining Gen Z as a cohort motivated by social change).