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Brenda D. Gibson

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THE INDELIBLE MARK OF PLAGIARISM: WHY IS IT SO DIFFICULT TO MAKE IT STOP?

Brenda D. Gibson

I. INTRODUCTION

In the past ten years since joining the legal writing academy, I have set about the task of educating our students regarding the perils of plagiarism. After all, this is law school and at the end of the “yellow brick road,” is the practice of law—one of society’s most esteemed and regulated professions. Each year, I have added more real-life examples of student transgressions to my Orientation, Writing Seminar, and 1L plagiarism presentations in the hope those presentations will educate and thereby deter students from plagiarizing, without much success. The anecdotal stories shared by my colleagues at other institutions and traffic on various listservs tell of similar experiences.

It would appear that our lectures are falling on deaf ears. Are we being too preachy, not convincing enough, or what? We may need to go deeper—do some reverse engineering and look at our audience. Undoubtedly, the world in which the students of today have grown up is a different world than that of their professors’ childhoods. I believe that these differences play a large role in the difficulties professors are experiencing in convincing students that proper attribution is a must; but I also think that these differences may also play a large role in crafting an effective solution to ameliorate (if not stamp out) plagiarism in higher education, particularly law school.¹

This article defines and takes a historical look at plagiarism,² discusses the uptick in its occurrence in higher education³ and potential reasons for it,⁴ and proposes possible solutions.⁵ It is my hope that this article can provide some practical instruction in the law school classroom to address this problem as it does not seem to be going away.

1. Much of this article’s research is based on studies done at the undergraduate level as there have not been a lot of studies done on plagiarism in law school.

2. *See infra* Part IIA.

3. *See infra* Part IIB.

4. *See infra* Part III.

5. *See infra* Part IV.

II. PLAGIARISM BACKGROUND—DEFINITION, HISTORY, AND INCREASE

Plagiarism, a prevalent form of academic dishonesty,⁶ has been defined as “taking the literary property of another, passing it off as one’s own without proper attribution, and reaping from its use any benefit from an academic institution.”⁷ Plagiarism is perceived as “fraudulent behavior that diminishes the intellectual property of the original author [while] reward[ing] [the] plagiarist[] for [his] work.”⁸ While the “official definitions” for the term may vary, what is consistent across them all is the portion of the definition that pertains to “using others’ work without credit.”⁹ Significantly, plagiarism may be both intentional and unintentional. While I often say that “plagiarism is not a specific intent offense,” many researchers use the delineation between intentional and unintentional in their discussion of the conduct. Researchers tend to think that the student who intentionally engages in deception often does not understand the consequences of his conduct, or he perceives cheating as commonplace and of minimal import.¹⁰ Conversely, while the student who unintentionally engages in academic dishonesty understands cheating to be a moderate to serious offense, he has inadequate knowledge about proper attribution so as to effectively avoid the behavior.¹¹ The perception of both students and professors is that unintentional plagiarism is the most prevalent form of plagiarism.¹²

“[Plagiarism] can occur in any number of areas, including the copying of art, music, lab work, computer programming, and technology.”¹³ In recent years, news stories show a proliferation of lawsuits regarding intellectual

6. Nicole Kashian et al., *Evaluation of an Instructional Activity to Reduce Plagiarism in the Communications Classroom*, 13 J. ACAD. ETHICS 239, 241 (2015). According to one study/abstract, American college students reported that they have plagiarized in some form—paraphrased or copied a source inappropriately to copying a source verbatim without any attribution—at a rate of more than 50%. Anecdotally, more than 70% of Saudi Arabian college students reported engaging in similar conduct. *Id.* This article will briefly touch on cultural differences in its discussion about the increase in plagiarism reports, but will not engage in an exhaustive discussion.

7. LEGAL WRITING INST., LAW SCHOOL PLAGIARISM V. PROPER ATTRIBUTION 2 (Mercer Univ. School of Law 2003). Note that the limitation to an academic institution here is only because this definition is speaking of plagiarism as a form of “academic dishonesty.”

8. Judith Gullifer & Graham A. Tyson, *Exploring University Students’ Perceptions of Plagiarism: A Focus Group Study*, 35 STUD. IN HIGHER EDUC. 463, 463 (2010).

9. Kashian et al., *supra* note 6, at 240.

10. *Id.* at 242. Note that many researchers discuss intentional plagiarism in terms of context, i.e., students intentionally plagiarizing because of assignment overload and poor time management. *Id.*

11. *Id.*

12. *Id.*

13. Nina C. Heckler & David R. Forde, *The Role of Cultural Values in Plagiarism in Higher Education*, 13 J. ACAD. ETHICS 61, 61 (2015).

property in the tech sector and music industry.¹⁴ Moreover, just last year during the GOP national convention, a discussion regarding whether Melania Trump's speech was a plagiarized copy of then-First Lady Michelle Obama's earlier speech was the focus of many conversations.¹⁵

Traditional (modern) constructs of plagiarism assume that "knowledge has a history" and ownership belongs to a specific person; to that end, "past authors must be acknowledged."¹⁶ Without proper acknowledgment, "it has been argued that one severs the ties between the creator of the work and the creation."¹⁷ However, in current society, values have shifted and this more traditional construct seems to be in conflict with "emergent" culture and its students.¹⁸ For example, today's emergent societal value systems esteem collaborative efforts over individual accomplishment; communal ownership over private property rights; merit as subjective and relational versus objective; and quickness of mind versus deliberate, revised outputs.¹⁹ These divergent values undoubtedly contribute to the conversation about why plagiarism is so prevalent in today's society.

Unquestionably, "incidents of students engaging in blatant or inadvertent copying of another's words" has been problematic for the last 200 years.²⁰ However, the medium through which one plagiarizes and the sociocultural expectations for academic integrity have changed, which has contributed to its rise in reported incidents.²¹ While many instinctively point to students being lazy and resistant to doing their own work, in truth, the problem is much more complex. Social scientists have studied the reasons for

14. See, e.g., *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018) (Pharell Williams and Robin Thicke's 2013 hit "Blurred Lines" found to have infringed on Marvin Gaye's copyright to "Got to Give it Up"); *Smartflash LLC v. Apple Inc.*, 621 F. Appx. 995 (Fed. Cir. 2015) (Apple ordered to pay a little-known company, Smartflash, \$532.9 million dollars for patent infringement); *Oracle Am., Inc. v. Google Inc.*, 750 F.3d 1339 (Fed. Cir. 2014) (copyright infringement suit between two technology industry giants over their "search engine operator's operating system for mobile devices"), *cert. denied*, 135 S. Ct. 2887 (2015).

15. Cooper Allen, *Was Melania Trump's speech plagiarized from Michelle Obama?*, USA TODAY (July 19, 2016, 12:12 p.m.), <https://www.usatoday.com/story/news/politics/onpolitics/2016/07/19/melania-trump-republican-convention-speech-plagiarism/87278088/>.

16. Gullifer & Tyson, *supra* note 8, at 463.

17. *Id.* (citing L. Stearns, *Copy Wrong: Plagiarism, Process, Property, and the Law*, 80(2) CALIF. L. REV. 513–53 (1992)).

18. Emma R. Gross, *Clashing Values: Contemporary Views about Cheating and Plagiarism Compared to Traditional Beliefs and Practices*, 132 UTAH J. EDUC. 435, 436 (2011).

19. *Id.* at 436–37. Gross includes a detailed chart that displays ten of the characteristics of the differences between traditional/modern and post-modern/emergent values. That chart is reproduced at Appendix A to this article.

20. Lea Calvert Evering & Gary Moorman, *Rethinking Plagiarism in the Digital Age*, 56 J. ADOLESCENT & ADULT LIT. 35, 37 (2012).

21. *Id.*

plagiarism for decades.²² Many of the studies tend to focus on individual student characteristics, which at first glance seems appropriate because plagiarism focuses on individual ownership by an author and individual acts of dishonesty by the plagiarist.²³ However, we cannot escape the fact that we no longer live in the same world in which we once lived. Technology has led to seismic shifts in how we live, teach, and learn, which many believe accounts for a lot of the generational and cultural differences thought to account for the increase in academic dishonesty, i.e., plagiarism.

It has been noted by various researchers that “plagiarism and other forms of academic misconduct are in part supported by a culture that both encourages and facilitates the practice.”²⁴ In their article, “The Instructional Challenges of Student Plagiarism,” Ericka Lofstrom and Pauliina Kupila posited that the increase in plagiarism phenomena in academia “appears to have to do with the easy access to information via the Internet, students’ active use of the Internet, and their increasingly sophisticated IT [Internet technology] skills.”²⁵ Indeed, Anna Sutton and David Taylor credited the rise in instances of plagiarism in universities to “[a]n increase[ed] emphasis on developing students’ transferable skills, such as group work[] and IT.”²⁶ Significantly, plagiarism no longer requires the effort of transferring information from the source to note cards or other paper writing; now, a simple copy and paste command provides students with virtually instant access to verbatim language, which only confuses the lines of authorship. It cannot be ignored that surveyed estimates of cheating increased exponentially over the last five or six decades.²⁷ Perhaps this increase is due to students’ ease of acquiring and transferring the work of others to their own work.

22. See Michael Hammond’s survey of published estimates of cheating in Great Britain from 1941 to 2001. Michael Hammond, *Cyber-Plagiarism: Are FE Students Getting Away with Words?* (Paper presented at the Association of Northern Ireland Colleges, Ireland, June 17-19, 2002), <http://www.leeds.ad.uk/educol/documents/00002055.htm>; see also E.M. White, *Too Many Campuses Want to Sweep Student Plagiarism Under the Rug*, 24 CHRON. HIGHER EDUC. A44 (1993) (discussing evidence that student plagiarism is increasing in the United States).

23. Gullifer & Tyson, *supra* note 8, at 465.

24. Heckler & Forde, *supra* note 13, at 61.

25. Erika Löfsröm & Pauliina Kupila, *The Instructional Challenges of Student Plagiarism*, 11 J. ACAD. ETHICS 231, 232 (2013).

26. Anna Sutton & David Taylor, *Confusion about Collusion: Working Together and Academic Integrity*, 36 ASSESSMENT & EVALUATION IN HIGHER EDUC. 831, 831 (2011).

27. Pamela J. Boehm et al., *Promoting Academic Integrity in Higher Education*, 15 COMMUNITY C. ENTERPRISE 45, 46–47 (2009).

II. PLAGIARISM—A SIGN OF THE TIMES

A. Technology

We will discuss technology first since its “proliferation and sophistication” is most often cited as the “predominant and almost immutable force” in the increase of academic dishonesty.²⁸ Generally, technology, “specifically the Internet and the capability to virtually connect to multiple resources simultaneously,” is perceived as a vehicle for cheating, “whether in the form of buying papers from Internet sites . . . or receiving help on [various assignments].”²⁹ While undoubtedly the Internet may be used constructively to enhance learning, it appears that much research shows that its use is producing a generation of students who lack the ability to work independently. Because of the proliferation of technology, it is very well possible that students could graduate from college “without ever having written their own paper or struggled by themselves through a challenging assignment.”³⁰

Just as the printing press, calculator, and computer did previously, the Internet and IT are redefining traditional notions about information, authorship, and knowledge.³¹ In fact, most social science studies show that students are increasingly likely to engage in acts of plagiarism and unauthorized collaboration,³² perhaps because they consider them to be two of the least serious forms of cheating. Moreover, while “the number of students who self-report engaging in unauthorized collaboration has tripled, . . . more recent studies have found that students and faculty rate copying from the Internet without attribution as a less serious form of academic misconduct.”³³ These numbers definitely point to technology having a hand in changing the perceptions of what is permissible or ethical in the academy. Because of the increase in “information-sharing technology,” our students

28. See Tricia Bertram Gallant, *Twenty First Century Forces Shaping Academic Integrity*, 33 ASHE HIGHER EDUC. REP. 1, 65 (2008).

29. *Id.*; see also Heckler & Forde, *supra* note 13, at 63 (noting that “[a]n editor of *Ethics and Behavior’s* special issue on academic dishonesty pointed to the Internet explosion as facilitating new forms of academic dishonesty”; and suggesting that “copying original work from the Internet now may be surpassing conventional forms of copying”).

30. Gallant, *supra* note 28.

31. See *infra* in Part IIB that Millennials or Net Gens have a different view of the ownership of information, reasons for learning and acquiring knowledge.

32. See Gallant, *supra* note 28, at 68 (citing studies conducted by Brimble & Stevenson-Clarke 2006; Brown & Howell, 2001; Franklyn-Stokes & Newstead, 1995; Levy & Rakovski, 2006; McCabe, 2005b; McCabe & Trevino, 1996; Zelna & Bresciani, 1994). In their article, *The Role of Cultural Values in Plagiarism in Higher Education*, Heckler & Forde note that most students “did not perceive digital plagiarizing, copying from digital sources (i.e., Internet), as academic dishonesty.” Heckler & Forde, *supra* note 13, at 63.

33. Gallant, *supra* note 28, at 68.

have a sense of “‘collective intelligence’ and a ‘hacker ethic that rest[s] on openness, peer review, individual economy, and communal responsibility.’”³⁴ This “hacker ethic” directly conflicts with the traditional institutional ethic of individual effort and independent work, which accounts for, at least in part, the increase in reported incidences of academic misconduct.³⁵

It is important to note, however, that the use of the Internet itself is not academic dishonesty.

Moreover, as discussed below in Section IIB, technology supports the Millennial’s move from independent to collaborative work. As acknowledged in Chapter 6, “Twenty-First Century Forces Shaping Academic Integrity,” of the 2008 ASHE Higher Education Report, “Today’s college students are used to employing technology as a way to control their educational experiences—they are working together, forming their own student groups, and seeking out answers to their questions, that is, they are being active learners.”³⁶ In addition, “[t]he premise of Internet sites such as Wikipedia and technology such as Sharepoint . . . is that work, ideas, knowledge, and information will be shared among multiple parties.”³⁷

“[S]uch conflicting notions of information (personal versus communal property) and knowledge (independently versus collaboratively constructed)” certainly hint that perhaps academic integrity was more a social phenomenon than an individual character trait,³⁸ and perhaps its time has passed. So then is it fair to expect this generation of students, who for the first time have access to expertise that was previously only vested in a few privileged individuals, to know the dictates of its use? This brings about additional questions, posed by Tricia Bertram Gallant in her article, *Twenty-First Century Forces Shaping Academic Integrity*: will students truly believe that it is “unethical to collaborate on homework assignments or problems if knowledge is thought to be collaboratively constructed? If information is thought of as communal property, will students understand (or agree with) the requirements for

34. *Id.* (quoting SIVA VAIDHYANATHAN, *THE ANARCHIST IN THE LIBRARY: HOW THE CLASH BETWEEN FREEDOM AND CONTROL IS HACKING THE REAL WORLD AND CRASHING THE SYSTEM* 39 (2004)).

35. Gallant, *supra* note 28, at 68.

36. *Id.* at 70 (citing JAMES JOHNSON DUDERSTADT ET AL., *HIGHER EDUCATION IN THE DIGITAL AGE: TECHNOLOGY ISSUES AND STRATEGIES FOR AMERICAN COLLEGES AND UNIVERSITIES* (2002)). Active and experiential learning is strongly encouraged (indeed, required in ABA-accredited law schools) in most post-secondary educational environments. The problem is that our educational institutions are using traditional constructs that may not work well with the use of modern technology.

37. *Id.* at 69.

38. *Id.* at 69–70 (citing Tricia Bertram Gallant, *Reconsidering Academic Dishonesty: A Critical Examination of a Complex Organizational Problem* (2006) (unpublished Ph.D. dissertation, University of San Diego)).

citation and attribution?”³⁹ Is it fair to hold them to the constraints of previous generations, which is based on different technology?

B. Generational Influences⁴⁰

Much of the research on plagiarism focuses on the generation(s) of students who are being educated in our universities and law schools today—both the Millennials and Gen Z’ers (or alternatively Net Gens). Mary Ann Becker says in her article, *Net Gens Come to Law School*,

The youngest generation in the United States, “Net Gens,” born at the earliest in 1994, are currently receiving a bad rap from the media, teachers, and employers for being constantly connected to their smartphones and being overprotected by their parents. Net Gens are a tethered generation: they are tethered to technology, social media, and their parents.⁴¹

Becker goes on to point out four “cultural markers” that may explain the increase in academic dishonesty, i.e., plagiarism among this generation. First, “Net Gens are the first group of students to be a part of No Child Left Behind, a sweeping educational reform that mandated testing in public schools that had unintended consequences on students’ ability to write and think critically.”⁴² In addition, these students “have seen writers, athletes, and business men [(even the President)] ignoring ethics and rules to get ahead without suffering any negative consequences, which has created a lack of understanding of what constitutes cheating.”⁴³ Moreover, they “perceive education’s purpose to be a purely consumer transaction, a means meant only to get to the next step in life.”⁴⁴ “Finally,” Becker states (and as noted above in Section IIA, Technology), “Net Gens are the only generation to have grown

39. *Id.* at 70.

40. American generations have been moving through cycles that track to specific historical events—the Colonial cycle from 1584–1700; the Revolutionary cycle from 1701–1791; the Civil War cycle from 1792–1859; the Great Power cycle from 1860–1942; and the Millennial cycle (the current cycle) which began in 1943. Mary Ann Becker, *Understanding the Tethered Generation: Net Gens Come to Law School*, 53 DUQUESNE L. REV. 9, 12 (2015) (citing William Strauss & Neil Howe, *GENERATIONS: THE HISTORY OF AMERICA’S FUTURE 1584–2069* (1991)); Becker explains in her article that each of these cycles includes “four generational types that always occur in the same order:” 1) the idealist generation, which is dominant; (2) the reactive generation, which is recessive; (3) the civic generation, which is dominant; and (4) the adaptive generation, which is recessive. *Id.* at 12–13. “In the [present] Millennial Cycle, Baby Boomers are the idealist generation, Gen Xers are the reactive generation, Millennials are the civic generation, and, therefore, Net Gens will be the adaptive generation.” *Id.* at 13.

41. Becker, *supra* note 40, at 10.

42. *Id.* at 11.

43. *Id.*

44. *Id.* at 12.

up in a completely wired culture with constant access to social media,⁴⁵ which has impaired their ability to interact with, or seek advice from more experienced people, i.e., a “vertical” group.⁴⁶

In her article, *Clashing Values: Contemporary Views about Cheating and Plagiarism Compared to Traditional Beliefs and Practices*, Emma R. Gross states, “[Net Gens] have been ‘groomed to be successful, clever, and above all calculating.’⁴⁷ However, because they will be an “adaptive generation,” like members of an adaptive generation, they have been “overprotected and suffocated during a secular crises” and they will “mature[] into risk averse, conformist rising adults”; they will also be “indecisive midlife arbitrator-leaders during a spiritual awakening and maintain[] influence (but less respect) as sensitive elders.”⁴⁸ As children of a more dominant generation, they have been raised in an “intensively protective, even suffocating style of nurture.”⁴⁹

While the full effects of No Child Left Behind are not fully known, what research has shown is that Net Gens, who have been taught solely for the test, have great difficulty with critical reading and thinking skills. As Becker explains, these students have “poor forms of adaptive coping when in the presence of a challenge or the possibility of failure, a lack of intrinsic motivation, and an inability to abstractly process information.”⁵⁰ Significantly, there is a dearth in the area of writing at the high school level, which leads to problems with writing at the university and graduate (or professional) school level.⁵¹ Indeed, we know that “poor writing is indicative of a failure to think logically, clearly, and critically, which are essential skills for students” entering higher education and the workforce.⁵² Another unforeseen result of No Child Left Behind’s yearly testing is the culture that has been created amongst teachers and administration to “cheat” to meet certain local and national testing requirements.⁵³ This is a perfect segue to the

45. *Id.*

46. *See id.* at 18.

47. Gross, *supra* note 18, at 438 (quoting S.D. BLUM, MY WORD! PLAGIARISM AND COLLEGE CULTURE 102 (2009)).

48. Becker, *supra* note 40, at 16–17 (quoting WILLIAM STRAUSS & NEIL HOWE, GENERATIONS: THE HISTORY OF AMERICA’S FUTURE 1584–2069 (1991)).

49. *Id.* at 17.

50. *Id.* at 20–21 (citing Tenniel L. Trolan & Kristin S. Fouts, *No Child Left Behind: Implications for College Student Learning*, ABOUT CAMPUS, July–Aug. 2011, at 5).

51. Becker’s article notes that of the students writing in high school, 82% report that their writing assignments are only one paragraph in length. She states, “[s]tudents no longer do a long research paper requiring them to critically analyze texts because teachers no longer have the time to grade these papers.” *Id.* at 21.

52. *Id.* Becker acknowledges that law professors are seeing this trend in their entering students.

53. Compare Becker, *supra* note 40, at 22, with Barron Jones, *History Teacher Accused of Helping Students Cheat on Test*, RIO GRANDE SUN (June 22, 2017),

reason that Net Gens and Millennials do not have the same perception of cheating as previous generations.

Research also shows that “Millennials and Net Gens have a different understanding of what constitutes cheating.”⁵⁴ Because they have grown up using computers and the Internet as their primary tools for entertainment, communication, publication, and productivity, Millennials do not have the same perceptions about cheating that earlier generations have. It is second nature for them to download, copy, and paste. Only 32% of undergraduate students in a recent study “thought that ‘working with others on an assignment *when asked for individual work*’ was a serious offense.”⁵⁵ A survey conducted between 2002 and 2005 revealed that out of 50,000 students on fifty undergraduate campuses, 70% of them had cheated.⁵⁶ This tendency to minimize cheating is also seen in graduate school (and professional) programs.⁵⁷

1. Culture

The effect of “broad and sub-level” cultural influences cannot be ignored when discussing the rise of plagiarism. Citing social scientist David Callahan’s article, “The Cheating Culture,” Heckler and Forde note that America’s highly competitive environment measured against its economic inequality has resulted in “a society without a moral compass.”⁵⁸ Callahan noted a bevy of behaviors that are highlighted in Americans’ competitive environment:

http://www.riograndesun.com/news/education/history-teacher-accused-of-helping-students-cheat-on-test/article_3f66aa0a-5765-11e7-b57a-5b14401db09b.html (alluding teacher gave students answers to the end-of-course exam), and Alan Blinder, *Atlanta Educators Convicted in School Cheating Scandal*, N.Y. TIMES (Apr. 1, 2015), <https://www.nytimes.com/2015/04/02/us/verdict-reached-in-atlanta-school-testing-trial.html> (convicting Atlanta school teachers and administrators after “[i]nvestigators concluded that cheating had occurred in at least 44 schools and that the district had been troubled by ‘organized and systemic misconduct.’”).

54. Becker, *supra* note 40, at 22 (noting that many students involved in the Harvard cheating scandal did not think they were “really” cheating). The intersection between the Generational and Cultural factors cannot be ignored.

55. *Id.* at 22–23 (noting that 82% of the faculty thought that such an act was serious).

56. *Id.* at 23.

57. *See id.* Some studies show that business students cheat more than other graduate students, while other studies show that psychology students cheat more. Anna Sutton & David Taylor, *Confusion about Collusion: Working Together and Academic Integrity*, 36 ASSESSMENT & EDUC. IN HIGHER EDUC. 831, 832 (2011). Significantly, studies consistently show that psychology and law students plagiarize *less* than science and engineering students, perhaps because there are fewer certainties, making direct copying less beneficial. *Id.*

58. Heckler & Forde, *supra* note 13, at 63 (citing DAVID CALLAHAN, *THE CHEATING CULTURE: WHY MORE AMERICANS ARE DOING WRONG TO GET AHEAD* (2004)).

[T]he “normalization” of behavior (everybody does it); valuing the economic bottom-line (worship of profit); instrumental attitudes (the ends justify the means); character issues (bad values); regulatory failures that cause temptation (you are not really going to get caught); cheating by the masses (from stealing music over the Internet to inflating insurance claims); learning early how to work the system to get ahead and lack of accountability and punishment for cheating in education and professional settings.⁵⁹

Notably, research shows that students place a “lower moral weight” on plagiarism versus other cheating behaviors (like cheating on an exam) and tend to rate failure to acknowledge sources as a “moderate concern.”⁶⁰ Becker quotes, “‘Ethics is defined as an individual’s personal beliefs about whether a behavior, action, or decision is right or wrong. Ethical behavior is defined as behavior that conforms to generally-accepted social norms.’”⁶¹ Currently, it is more acceptable in America to cheat—Millennials have seen “Wall Street executives walk away with . . . golden parachute[s], iconic athletes doping, and plagiarists getting book deals.”⁶² Beyond that is the constant positive reinforcement (many refer to it as “overpraise”) that is so prevalent in the lives of the Net Gens, i.e., everybody gets a trophy, and “good job” is muttered after every attempt, even a failed one.⁶³ The natural consequence of such “overpraise” is the inability of students to think their way through difficult situations.⁶⁴ Law professors are seeing more instances of students “crumbling” when faced with difficulties for the first time in law school.⁶⁵ “Cheating then becomes a natural coping mechanism . . . to avoid the harsh reality of failure.” Furthermore, this increases the likelihood that students will view their education as a commodity inasmuch as they no longer have to “earn grades and praise.”⁶⁶ Heckler and Forde suggest that until different cultural values replace those mentioned above, the cheating will continue.⁶⁷

59. *Id.*

60. Kashian et al., *supra* note 6, at 242.

61. Becker, *supra* note 40, at 26 (quoting Daniel Owunwanne et al., *Students’ Perceptions of Cheating and Plagiarism in Higher Institutions*, 7 J. C. TEACHING & LEARNING 59, 61 (2010)).

62. *Id.*

63. *See id.* at 27. In 2017, the Wake County School Board voted to stop using the valedictorian and salutatorian statuses and use more equitable superlatives, so that “no child is left behind.”

64. *Id.*

65. *See* Lori Gottlieb, *How to Land Your Kid in Therapy*, ATLANTIC MONTHLY (June 7, 2011), <http://www.theatlantic.com/magazine/archive/2011/07/how-to-land-your-kid-in-therahy/308555/>. Many law schools are now staffing Wellness Directors (licensed, trained psychologists) to deal with increased mental illnesses and anxieties that present under these stressful circumstances. Becker, *supra* note 36, at 28

66. Becker, *supra* note 40, at 28.

67. Heckler & Forde, *supra* note 13, at 63

It has increasingly become apparent that Millennials and Net Gens view their college education as a consumer transaction, and not the “means to intellectual growth and learning” like previous generations.⁶⁸ Grades are no longer seen as a reflection of how well information has been analyzed and synthesized; instead they are now viewed as an economic exchange for tuition.⁶⁹ While the increased cost of education undoubtedly has some part in this shift in attitude, it cannot alone explain students’ perceptions about the value of education and “how and why grades are earned.”⁷⁰

Indeed, Becker notes in her article that universities exacerbate the problem by treating students like consumers when they come to college—plying them with gourmet food service, luxury student accommodations, etc.—to maintain, or better yet, increase their enrollment.⁷¹ In short, to survive, universities are catering to their students in a way never seen before. Professors are increasingly cynical as anonymous faculty evaluations have become weapons in the possession of their students, who oftentimes are overly harsh on their more rigorous or demanding professors who do not “cater” to their whims and proclivities of entitlement.⁷² While those with job security are often able to “hold the line,” others, such as adjuncts and untenured faculty, are not so lucky.⁷³ Indeed, some professors admit to making their courses easier in the hope of garnering better student ratings.⁷⁴ It then follows that grade inflation is a reality for many universities that are faced with entitlement of today’s youth and the need to keep their enrollment steady.⁷⁵

Extreme parental oversight, also known as helicopter parent[ing], also contributes to the millennials’ skewed view of their education as little more than a consumer good.⁷⁶ In college, parents are increasingly seeking to be more involved in their children’s education.⁷⁷ This coddling by parents,

68. Becker, *supra* note 40, at 28.

69. *Id.* at 29.

70. *Id.*

71. *Id.*

72. *Id.* at 30. Notably, non-tenured and adjunct professors who lack job security (who tend to disproportionately be minorities, clinicians and legal writing faculty) are disproportionately impacted by student evaluations. See SEATTLE CTR. FOR EXCELLENCE IN TEACHING & LEARNING, RESEARCH REPORT ON RACE AND GENDER BIAS IN STUDENT EVALUATIONS OF TEACHING (Dr. Therese Huston, Director, compiler, 2005), http://sun.skidmore.union.edu/sunNET/ResourceFiles/Huston_Race_Gender_TeachingEvals.pdf.

73. Becker, *supra* note 40, at 30.

74. *Id.*

75. *Id.*

76. *Id.* at 31–32.

77. *Id.* at 32. This involvement is even more startling (and alarming) in law school, where the students have reached majority and the Family Educational Rights and Privacy Act (FERPA) forbids communication about the adult child. In a recent disciplinary matter at NCCU School of Law, in which I was involved, both student defendants brought along their parents

administrators, professors, etc. all work together to cause “achievement anxiety” in the Millennial student, which “further places the focus on grades instead of the learning process and the feeling of accomplishment that comes with learning.”⁷⁸ Without the connection between effort and result, plagiarism and academic dishonesty will continue to be a problem for Millennials and Net Gens.

2. *Confusion about Cheating*

Another sub-set of the Generational Influences is “confusion” about what cheating is. As Anna Sutton & David Taylor noted in their article, “Confusion about Collusion,” the traditional university approach to learning—the student learner as independent, predominantly using printed sources to gather and integrate information⁷⁹—has necessarily yielded to more group work through the use of IT.⁸⁰ Sutton and Taylor explain that “[i]ncreased group work leads to issues involving collusion when students are required to complete individual assessed coursework (ACW).”⁸¹ While collaboration—“defined as working together to share information or material that may be included in the final version of an assignment”⁸²—is permitted, collusion—“an unacceptable level of shared work in the final assignment”⁸³—is not. The lines between the two often become blurred and perpetuates confusion amongst students.⁸⁴ Moreover, collusion, which requires some degree of working with and understanding the material, appears to be a bit more acceptable to and accepted by today’s students.⁸⁵ To add to the confusion, oftentimes “institutions have a very specific and rigorous

as their advocates. Though neither parent said anything, their displeasure with the Disciplinary Committee and complainant faculty members was palpable. It was most disturbing when it became very clear that her adult child had committed the offense charged, but the mother sat stoically (still glaring at the faculty complainants and committee members) and subsequently “noticed appeal” for her adult child at the end of the proceedings.

78. *Id.* Becker further notes “this consumeristic attitude towards education” is also affecting law schools because students bring the same “pay for an A” attitude from their undergraduate institutions. *Id.* at 32–33.

79. Anna Sutton & David Taylor, *Confusion about Collusion: Working Together and Academic Integrity*, 36 ASSESSMENT & EDUC. IN HIGHER EDUC. 831, 831 (2011).

80. *Id.*

81. *Id.*

82. *Id.* at 832.

83. *Id.*

84. *Id.* (“Whilst students can usually give a good definition of plagiarism, they are often less clear on the specific actions that could be seen as academic misconduct, particularly those that involve working with others.” (citing S. Yeo, *First-Year University Science and Engineering Students’ Understanding of Plagiarism*, 26 HIGHER EDUC. RES. & DEV. 199, 202 (2007)).

85. Sutton & Taylor, *supra* note 79, at 832.

definition of plagiarism,” but are far “less clear about what constitutes collusion and delineates the boundary between what is acceptable (collaboration) and not acceptable (collusion).”⁸⁶

Because collaboration is such an important skill in the modern workplace and most graduate-level and professional jobs expect successful applicants to have acquired and demonstrate this ability, professors must find a way to better educate students about the difference between permissible collaboration and impermissible collusion, and establish better boundaries between the two. Because students commonly engage in collaborative learning, either informally or formally, such action is imperative.⁸⁷

Finally, the effect that technology, specifically social media, has had on the Millennials and Net Gens must be discussed. Because of their prolific use of social media, including Facebook, Twitter, and blogs, these students are the first generation to be insulated by their horizontal peer group, which means that they are more likely to seek advice from an unreliable source—each other.⁸⁸ Millennials and Net Gens have continued, non-stop connection to their peers, some of whom they have never personally met,⁸⁹ and which contributes to some of the shifting attitudes (and confusion) about academic dishonesty and plagiarism. Instead of interacting vertically with someone who has more information or experience, which would provide clarity in many instances, today’s youth prefer to interact with others who “continually reinforce[] their own sensibility and belief system.”⁹⁰ They communicate almost exclusively with their peers through text to the demise of actually talking, and post virtually everything about their lives on social media because they are so trusting of this platform, ignoring the far-reaching ramifications of inappropriate posting(s) on a public forum.⁹¹ Author Mark Bauerlein has

86. *Id.*

87. *Id.* at 833. Additionally, consider a recent incident in which I was involved at NCCU. Student 1 shared his work with a colleague for feedback/review, but that paper was forwarded by that colleague to Student 2, who copied the paper with a few non-substantive edits (almost a 100% SafeAssign match) and turned it in as her own. Student 2 insisted that she did nothing improper intentionally, but admitted that she might have been typing in another paper when she was working on her paper. Students were cautioned against sharing their work, but only J.D.s were specifically excluded from reviewing the papers.

88. *See* Becker, *supra* note 40, at 33. An example of this horizontal peer relationship: a few years ago, as faculty advisors for NCCU’s Law Review, a colleague and I were confronted with a possible academic dishonesty issue that focused around one of our top students confiding some personally sensitive information to a peer instead of one of us. We were flummoxed as to why the student would have shared that information with a peer, who really could not assist the student, and not us.

89. *Id.* at 34. Many students use group chat during class in law school to relay the answers to professors’ questions when their classmates are not prepared or cannot answer the question(s).

90. *Id.* at 34.

91. *Id.* at 34–35.

noted that “[m]aturity comes, in part, through vertical modeling, relations with older people such as teachers, employers, ministers, aunts and uncles, and older siblings, along with parents, who impart adult outlooks and interests.”⁹² With these vertical relationships falling prey to the horizontal peer groups, Net Gens and Millennials may be limited in problem solving skills and may make mistakes that can severely limit their professional opportunities, i.e., engaging in academic dishonesty and plagiarism.⁹³

III. THE REMEDY

After discussing the genesis and nature of the problem, it is necessary to discuss a remedy. It would be unwise to continue to discuss the perils of plagiarism on the academy and, indeed, society as a whole, without discussing a solution. Indeed, as with many complex problems, the remed(ies) for plagiarism are necessarily equally complex.⁹⁴ Putting the puzzle pieces together is extremely difficult with so many factors to consider; however, it is critical to do so. All of the factors discussed above must be considered in crafting an effective solution to what has become an unsightly mark on academic institutions and, as a result, society today.

What is immediately apparent is that the academy must stop ignoring the problem of academic dishonesty (or more saliently, plagiarism) and directly address this issue. In fact, several researchers cited in this article noted that an institution or professor’s failure to address plagiarism and hold students accountable for it often results in corruption (real or perceived) on an institutional and classroom level.⁹⁵ However, professors see themselves as educators, not police officers or enforcers, which may account for the lack of attention given to plagiarism outside of warnings not to do it.⁹⁶ To solve the problem, professors must stretch themselves beyond what they may have done in the past. As Gross noted in her article, it is incumbent upon educators

92. MARK BAUERLEIN, *THE DUMBEST GENERATION: HOW THE DIGITAL AGE STUPEFIES YOUNG AMERICANS AND JEOPARDIZES OUR FUTURE (OR, DON’T TRUST ANYONE UNDER 30)* 136 (2008).

93. See Becker, *supra* note 40, at 35–36.

94. See Kashian et al., *supra* note 6, at 243 (noting “there is not a singular solution to reducing plagiarism in the classroom,” but proactive and reactive methods are required).

95. In one study, the most common justification for plagiarism given by students was placed squarely with the faculty. Heckler & Forde, *supra* note 9, at 67. The students cited faculty’s failure to explain the assignment clearly, faculty’s expectations being too high, or faculty’s inability to catch them (either because of faculty’s large workload or lack of computer literacy). *Id.* Additionally, our Millennial and Net Gen students, though generally less judgmental than previous generations, seem to hold their professors to a higher standard when it comes to ferreting out academic dishonesty and doing something about it. And I am not sure that I disagree.

96. Kashian et al., *supra* note 6, at 241 (citing R.M. Howard, *Don’t Police Plagiarism: Just Teach*, EDUC. DIG. 2002, at 46–49).

to find “more varied and challenging solutions to teaching values like truthfulness.”⁹⁷

First, based on all of the foregoing, clearly it would be folly to ignore that times and students are changing. Thomas Mmodana Ringer,⁹⁸ an esteemed professor at North Carolina Central University School of law, would often say, ““Reason is the soul of the law. If reason changes, so too must the law.””⁹⁹ Well, the times and the students have changed; now, the academy must do so as well.

A. Proactive and Reactive Approach: Inquiry and Technology

Neither the proactive¹⁰⁰ nor a reactive¹⁰¹ approach alone will sufficiently address the pervasive problem of plagiarism.¹⁰² On both the reactive and proactive side of things, professors must be more transparent—they must be transparent in educating our students about how to properly cite, paraphrase, and quote materials *and* about the policies and penalties for failure to do so. As Lea Calvert Evering & Gary Moorman noted in their article, *Rethinking Plagiarism in the Digital Age*, “it is time to allow students into the ‘academic club,’” exposing them to the secrets of writing in academia, explaining why we write and what the rewards are, and encouraging them to want to write about their major interests.”¹⁰³ In the context of law school, where students are studying to become attorneys, leaders, and gatekeepers to the justice system, it is even more important to be transparent about the necessity of honesty and candor in the profession; the lack of either can cost an attorney his license and the attorney’s client his life. While that’s on the outer edge of the penalties for dishonesty, law professors owe a duty of candor to their students.

97. Gross, *supra* note 18, at 440.

98. Iris W. Gilchrist, *A History of the School of Law*, N.C. CENT. U., <http://web.nccu.edu/shepardlibrary/pdfs/centennial/Law.pdf> (NCCU Emeritus Professor of Law, who finished number one in his class at Morehouse College, who served as interim Dean of the law school, and who taught Civil Procedure, Evidence, Trial Practice, among other courses. Telephone Interview with Thomas Mmodana Ringer, NCCU Emeritus Professor of Law (Feb. 20, 2019)).

99. *Rogers v. Tennessee*, 532 U.S. 451, 474 (2001) (Scalia, J., dissenting) (This quote seems to have been a paraphrase of Sir Edward Coke, noted English barrister, judge, and politician who is considered to be the greatest jurist of the Elizabethan and Jacobean eras, 2 E. Coke, *Institutes of the Laws of England* (“the reason of the law ceasing, the law itself ceases.”)).

100. “Proactive” approaches include educating students about proper attribution or citation. Kashian et al., *supra* note 6, at 243.

101. “Reactive” approaches include informing the students that their assignments would be submitted to a plagiarism detection program and making them aware of their school’s policies and penalties for plagiarism. Kashian et al., *supra* note 6, at 243.

102. See Kashian et al., *supra* note 6, at 243.

103. Evering & Moorman, *supra* note 20, at 39.

The academy cannot, however, ignore the problem that academics have with defining the problem for themselves. As noted in Part II of this article, determining the exact thresholds of plagiarism, which is quite subjective, is but one problem in addressing plagiarism.¹⁰⁴ While academic codes can be helpful in addressing plagiarism, those codes tend to be like a moving target and oftentimes give little guidance as to just what plagiarism is. Moreover, many times professors do not know institutional policies and/or definitions concerning plagiarism.¹⁰⁵ Accordingly, more must be done to strengthen best practices and academic codes to provide better guides for students and professors.¹⁰⁶

Once professors have done so, they can begin to properly instruct or inform their students about the problem. Notably, professors cannot just inform them; they must also allow their students to actively participate in that process. That means that professors should show the students the honor code (not just make a blanket reference in the syllabus) and fully educate their students about plagiarism.¹⁰⁷ It has been noted that “[merely] supplying students with a definition of what constituted plagiarism did not aid their ability to identify honest and dishonest writing.”¹⁰⁸ Indeed, “[t]heory and research in psychology show that a thorough understanding of an individual’s view of an issue or problem is an essential requirement for successful change of that person’s attitudes or behaviors.”¹⁰⁹ Professors must tap into their students’ digital literacy and tie it to their own academic understanding of what is ownership of sources and references, so that the students can better understand and professors can better connect the dots for this current generation. This will require some creativity.

Based on the study conducted in a Communications classroom to assess an instructional activity designed to improve students’ understanding of plagiarism, the authors/researchers noted that “when instructors prioritize academic honesty in their classrooms, train students on how to integrate others’ works, cite sources appropriately, and use plagiarism detection software, students are less likely to plagiarize.”¹¹⁰ The study supports the use of additional instruction to assist the students in applying the definition to real

104. See Ronald W. Belter & Athena du Pré, *A Strategy to Reduce Plagiarism in an Undergraduate Course*, 36(4) *TEACHING PSYCHOL.* 257, 258 (2009).

105. See Kashian et al, *supra* note 6, at 252.

106. *Id.*

107. It may be argued that students entering a graduate or professional program already know the dictates of proper attribution and the possible penalties. However, as education on the subject may be varied, it would be best to still incorporate a proactive (teaching/education) piece into the graduate school curriculum to ensure uniform instruction on the subject.

108. Kashian et al, *supra* note 6, at 240 (citing J.L. Hale, *Plagiarism in Classroom Settings*, 4 *COMM. RES. REP.* 66, 66–70 (1987)).

109. *Id.*

110. *Id.* at 239.

life situations.¹¹¹ Further, that instruction should be premised on “inquiry-based learning,”¹¹² so that students can develop some “ownership of their learning.”¹¹³ Inquiry-based learning allows the student to ask questions as they develop a better understanding of just what plagiarism is, and how it affects society and the world in which they live.¹¹⁴ Through this process, students immerse themselves in the learning process and develop a sense of ownership in that process.

Additionally, as noted by Calvert and Moorman in their article, professors should use technology to enhance their instruction, and not shy away from its use.¹¹⁵ “Doing so not only enhances our instruction, it also ‘mak[es] learning more relevant and purposeful and greatly reduc[es] the need or desire to plagiarize,’”¹¹⁶ the two authors suggest. They suggest substituting multimedia presentations, blogs, wikis, or other multimedia tools to create projects that require the synthesis of the materials students have read or learned.¹¹⁷ Significantly, the authors note that “[t]his would . . . allow the instructor to emphasize that plagiarism doesn’t apply just to the unauthorized use of written words but to images, videos, and music as well.”

Professors must be further studied about how they instruct their students about plagiarism. Because student motivations to plagiarize are varied, professors cannot glibly approach a solution to this problem. It is not only

111. *Id.*

112. Evering & Moorman, *supra* note 20, at 39. Inquiry-based learning is a type of active learning that starts by posing questions, problems or scenarios—rather than simply presenting established facts or portraying a smooth path to knowledge. Christi Alper, *Embracing Inquiry-Based Instruction*, EDUTOPIA (Aug. 17, 2018), <https://www.edutopia.org/article/embracing-inquiry-based-instruction>.

113. *Id.* Remember, Millennials do not have this characteristic. This must be taught. See Gross, *supra* note 18 (discussing the disengagement between personal and communal ownership).

114. *What is Inquiry Based Learning?*, TEACHNOLOGY, <http://www.teach-nology.com/currenttrends/inquiry/> (last visited Feb. 5, 2019) (“Questioning and finding answers is an extremely important factor of inquiry based learning as it aids you in effectively generating knowledge. In the end, inquiry-based learning is basically teaching the students to have a greater understanding of the world they work, communicate, learn, and live in.”).

115. Evering & Moorman, *supra* note 20, at 39 (Information about poor use/integration of technology in the classroom). While some professors do not like the use of technology in the classroom, we must accept that Millennials have been using some form of technology all of their lives and incorporate this very familiar part of their lives (technology) into the familiar part of ours (the classroom).

116. *Id.* at 39 (citing Kathy Lehman, *Stemming the Tide of Plagiarism: One Educator’s View*, 29 LIBR. MEDIA CONNECTION 44–46 (2010); Paris Strom & Robert Strom, *Cheating in Middle and High School*, 71 EDUC. FORUM 104–116 (2007)).

117. Evering & Moorman, *supra* note 20, at 39–40. At NCCU School of Law, several professors have ventured into using technology to complement instruction. For example, traditional clickers, as well as polling software and online programs, like Kahoot, are used to give students instant feedback and give professors formative feedback.

important to reduce the students' motivation to cheat, it is imperative to also increase the "moral weight of plagiarism."¹¹⁸ In the study conducted in the Communications classroom, the authors noted that the instruction about the university's plagiarism policy worked best when instruction pointed to moral and social aspects of plagiarism, giving the students specific examples to show how seriously the university takes plagiarism and how plagiarizing affects the identity of the offending student (not just focusing on the fact that it is wrong).¹¹⁹

Significantly, research tends to show that if professors are going to use plagiarism detection software, they should tell students beforehand, so the students are aware of the risks involved. Indeed, the plagiarism detection software should be a part of the proactive instructional portion of the solution to the plagiarism problem.¹²⁰ In the study conducted in the Communication classroom, researchers discovered that students who were informed that plagiarism detection software would be used without any further instruction, did not show much of a decrease in plagiarism.¹²¹ Another article concurs, noting that such software falls short without more, as students cannot address the underlying reasons for why plagiarism occurred.¹²² Indeed, in that article, Evering and Moorman posit, "Asking students who strive to abide by honor and academic integrity codes to submit a paper to an online detection service is a presumption of guilt."¹²³ It's "like putting a Band-Aid on a bruise," they warn.¹²⁴ Research seems to bear out that a more integrative approach to solving the problem—instruction that includes the use of proactive instruction alongside the use of the reactive tool of plagiarism software—is the most effective model to address plagiarism.¹²⁵

B. Developing an Effective Plagiarism Instruction Model

Building on the discussion in Part III, Section A above, the discussion below turns to how best to construct an effective plagiarism instruction model, which includes an examination of effective honor codes, "best practices"

118. Kashian et al., *supra* note 6, at 243.

119. *See id.* ("[plagiarizing] students may be viewed as dishonest and unskilled writers, whereas if students do not plagiarize and use proper citations and references, then they will most likely be viewed as honest and skilled writers[.]").

120. *Id.*

121. *Id.*

122. *See* Evering & Moorman, *supra* note 20, at 38.

123. *Id.*

124. *Id.*

125. *See* Belter & du Pre', *supra* note 104, at 257–61 ("Plagiarism prevention requires educating students about academic integrity as well as detecting plagiarism so that educators can impose appropriate consequences."); *see also* Evering & Moorman, *supra* note 16, at 39.

memoranda for faculty and staff, instructional videos, integrated exercises, and plagiarism software.¹²⁶

1. *A More Effective Honor Code or Definition of Plagiarism*

Historically, honor codes (like their legislative law “cousins”) have been styled broadly¹²⁷ to encompass a plethora of offenses that could fall within the ambit of academic dishonesty. The problem with this approach is that it prevented students, faculty, and administrators alike from having a clear definition of plagiarism. This lack of a clear definition, in turn, resulted in a lack of clarity in instruction about, identification of, and punishment for plagiarism.

For example, in some school honor codes, the word “plagiarism” may have been used, but not specifically defined.¹²⁸ In addition, certain behaviors that would constitute plagiarism may have been described in other codes, but the term “plagiarism” was never explicitly used.¹²⁹ Still others may have defined the term, but gave very little guidance as to the application of it and everyone was left to their own interpretation of plagiarism.¹³⁰ The better practice is to include a definition of plagiarism and some examples of how the definition would be applied in the context of claims of academic dishonesty. Increasingly, institutions of higher learning are more carefully crafting their codes to comport with current best practices.¹³¹

Research shows that many institutions presently have a comprehensive repository of information on their websites which include honor codes that contain specific references and definitions of plagiarism, along with examples

126. Professors Ronald W. Belter & Athena du Pre’ developed an online academic integrity module aimed at reducing the occurrence of plagiarism in a written assignment for a university course. The two subsequently evaluated the effectiveness of that module and reported their finding in an article. Belter & du Pre’, *supra* note 104, at 257–61.

127. Rebecca Moore Howard, *Plagiarism, Authorships, and the Academic Death Penalty*, 57 C. ENG. 788, 789 (1995) (noting that the broad sweeping generalizations and definitions found in some honor codes leave professors little flexibility in dealing with plagiarism).

128. See Academic Integrity, DUKE LAW (last visited Feb. 6, 2019), <https://law.duke.edu/students/pdf/AcademicIntegrity.pdf>.

129. *Id.*

130. See *The Instrument of Student Judicial Governance*, U. N.C. CHAPEL HILL 5 (July 25, 2017), <https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>

(defining academic dishonesty based upon plagiarism as follows: “Plagiarism in the form of deliberate or reckless representation of another’s words, thoughts, or ideas as one’s own without attribution in connection with submission of academic work, whether graded or otherwise.”).

131. See Sharon P. Turner & Phyllis L. Beemsterboer, *Elements of an Effective Honor Code*, 67 J. DENTAL MED. 1122, 1124–25 (2003) (discussing the shift away from old *in loco parentis* disciplinary codes to honor codes).

and interactive exercises for students to complete.¹³² Going along with the idea of including students in the “plagiarism conversation,” some of the institutions have included a discussion of the “community standard.”¹³³ In that section, the institutions seek to address the social and moral value to avoiding plagiarism.¹³⁴ For example, Duke University’s School of Law’s honor code calls for a higher standard over and above the honor code, but beckons the students to understand that the law school is “a community of scholars and learners, committed to the principles of honesty, trustworthiness, fairness, and respect for others,” and as such, the students share in the responsibility to promote a climate of integrity in academic and non-academic endeavors.¹³⁵ Such a provision prevails upon a student’s moral motivation to act honestly as discussed in Kashian’s article, *Evaluation of an Instructional Activity to Reduce Plagiarism in the Communication Classroom*.¹³⁶

In their article, *Enhancing Academic Integrity: Formulating Effective Honor Codes*, Sharon P. Turner and Phyllis L. Beemsterboer listed the following elements that were essential to an effective honor code:

1. a statement of values endorsed and upheld by the code, generally honesty and integrity in all academic endeavors;
2. a list of enumerated violations, usually with a disclaimer that the behaviors fit into a general class and that not every potential violation is enumerated;
3. a list of sanctions for violation of a code premise;
4. a description of the governing judiciary group charged with overseeing any proceedings for violators including its selection process and qualifications;
5. a description of the process to be followed should a report of a violation be made to the governing group;
6. a statement of confidentiality of the process and outcomes;
7. a provision for recording proceedings;
8. a provision for a written decision within a specified period; and

132. See links to examples *infra* Appendix B.

133. DUKE LAW, *supra* note 128, at 2.

134. *Id.*

135. *Id.*

136. Kashian et al., *supra* note 6, at 241–42.

9. a provision for appeal to an additional body if the outcome is adverse to the accused.¹³⁷

In no particular order, in Appendix B below, there are listed a few Honor Codes that struck me as effective models based upon the items listed by Turner and Beemsterboer in their article. This list is by no means meant to be exhaustive; it is meant to serve as a reference point. See Appendix B (links to Sample Honor Codes) below.

2. *A Best Practices Memorandum for Faculty and Staff*

Next, an effective student-centered plagiarism education model would include a Best Practices Memorandum or Information for Faculty and Staff.¹³⁸ Such information would reiterate that plagiarism is nuanced and may occur in a number of different settings. It would describe the avenues of redress in instances, spelling out the flexibility in addressing the issue of plagiarism but providing guidance so faculty and staff could make informed decisions about how best to respond in instances of plagiarism. Such a document should include the processes used by the Disciplinary Committee of a university, school, or department. Additionally, it should include applicable provisions of the Student Handbook or Code. This document would be an “internal document” and disseminated only to faculty and staff.

While it appears that most institutions rely on a Student Handbook or Code, it would be much more practical to have an informal document distributed to the faculty and staff (or placed on a common drive) for their easy reference. One would be surprised how often issues of academic dishonesty (including plagiarism) first come to the attention of staff people, who need to determine how best to advise an inquiring student or take steps to report such issues but lack knowledge of the process for reporting, resolving, or assisting students in resolving these matters. A Best Practices Memorandum or Information would eliminate this problem.

3. *Instructional Videos*

Because today’s students are so visual, some type of video should be used to further illustrate the perils of plagiarism. YouTube has a number of excellently executed videos that speak to plagiarism in such a way that

137. Turner & Beemsterboer, *supra* note 131, at 1125.

138. On its “Best Practices for Plagiarism” page, Kent University specifically notes that faculty should look at Institutional Guidelines and make sure they are clear and that faculty follows them.

students of every age can engage the subject and learn while doing so.¹³⁹ In fact, most universities have interactive materials on their websites specifically instructing students about plagiarism and providing interactive exercises (as noted below in Section IV.B.4 below). Appendix C contains the links to several other instructional videos (some of which may also include integrated exercises).

4. *Integrated Exercises*

As discussed in the previous section, a carefully designed exercise would be needed to further assist students in understanding just what plagiarism is and how best to avoid plagiarism. This exercise should be something that could be used regardless of subject area, and in the event that the citation style is different, readily adaptable. My research revealed a plethora of information regarding designing and sequencing assignments to decrease plagiarism. In addition, many of the institutions' websites included self-contained modules (exercises) for students to test their knowledge of plagiarism after watching instructional videos. Notably, the Legal Writing Institute¹⁴⁰ has a Plagiarism handbook, which includes exercises that I have personally used during some of my early plagiarism presentations and is available on its website and in PDF format. Links to several of these modules (which includes exercises) are located in Appendix D.

5. *Electronic Plagiarism Detection Software*

There are a number of electronic plagiarism detection programs being utilized. These programs are made so that the user can determine if there are any plagiarized portions of a particular document. They vary in the comprehensiveness of the database used in assessing the document to be examined and functionality—i.e., some allow the full upload of documents to be checked, while others require the user to cut and paste the document, or portions thereof, that are being checked.¹⁴¹ Some are accessible to students, others are accessible only to professors, and still others are accessible to

139. I made such a video in 2010, which was written and produced by my then research assistant Petal Munroe Reddick and several student actors. A link to the video follows: *About Plagiarism*, <https://www.youtube.com/watch?v=4Ou6mGRC5iw&feature=youtu.be>.

140. The Legal Writing Institute (LWI) is a non-profit corporation, which was founded in 1984 to promote the exchange of information and ideas about legal writing and is a great resource for skills instruction generally.

141. See *Plagiarism Freeware Software Review*, W. VA. U. 12–13, <http://it.wvup.edu/PlagiarismChecker.pdf> (last visited Feb. 6, 2019); Asim M. El Tahir Ali et al., *Overview of Plagiarism Detection Tools*, VSB-TECHNICAL U. OSTRAVA (2011), <http://ceur-ws.org/Vol-706/poster22.pdf>.

both.¹⁴² New detection tools are being developed all the time. I have listed some of those detection tools in Appendix E below, sorting them into free versus fee-based categories. Though the detection tools are not ranked, I have noted a few that were reported on various site or in articles as not being particularly helpful.

IV. CONCLUSION

It is easy to come away from this article with a feeling of hopelessness for a “lost” generation. However, today’s youth have many positive traits, which can be uniquely channeled to override many of the negative (real and/or perceived). Millennials and Net Gens have “the ability to be uniquely creative based on their ability to use and adapt the Internet;”¹⁴³ they are extremely “sympathetic towards their classmates as a result of their horizontal peer groups”¹⁴⁴; and they are very accepting of differences.¹⁴⁵ Indeed, all is not lost, as noted by Don Tapscott in his book, *Grown Up Digital: How the Net Generation is Changing Your World*, “[Today’s youth] are smarter, quicker, and more tolerant of diversity than their predecessors. They care strongly about justice and the problems faced by their society and are typically engaged in some kind of civic activity at school, at work, or in their communities.”¹⁴⁶ So they are not a lost generation. If they are anything like the last adaptive generation, the Silent Generation,¹⁴⁷ they will grow into a “sensitive” older generation that will bring about seismic social change.

But first, professors must find a way to explain to them “what older generations will expect from them in the practice of law and to prepare them to meet those expectations.”¹⁴⁸ We cannot afford to fail in this great undertaking. Hopefully, the practical tips set out in the last section of this article and included in the appendices will help in conceptualizing a model to assist in that regard. Such a model, which would include the well-drafted honor code, “best practice” information for faculty and staff, instructional videos, integrated classroom exercises, etc., would work in tandem with the generational traits (good and bad) to achieve a result beneficial to the academy

142. *See id.*

143. Becker, *supra* note 40, at 37.

144. *Id.*

145. *Id.*

146. *Id.* (quoting DON TAPSCOTT, *GROWN UP DIGITAL: HOW THE NET GENERATION IS CHANGING YOUR WORLD* 6 (2009)).

147. The Silent Generation is one of the personality types discussed in the Becker article. She noted that the last Silent Generation was born between 1925 and 1942 and this generation was characterized in its youth as “be[ing] . . . withdrawn, cautious, unimaginative, indifferent, unadventurous—and silent.” Becker, *supra* note 40, at 17 (quoting WILLIAM STRAUSS & NEIL HOWE, *GENERATIONS: THE HISTORY OF AMERICA’S FUTURE 1584–2069* 84 (1991)).

148. *See* Becker, *supra* note 40, at 38.

and this most honorable profession. After all, the Net Gens and Millennials, as well as society as a whole, are depending on us.

**Appendix A: Characteristics of the Differences between
Traditional/Modern and Post-Modern/Emergent Values¹⁴⁹**

Traditional/Modern	Post Modern/Emergent
1. objective merit	Merit as subjective and relational
2. universal application of grading standards	Situational application of grading standards
3. adherence to exegetically derived standards and rules	Opportunism, expedience and self as authority
4. detached/ professional application of Standards	Engaged, involved application of standards, expectations
5. individual accomplishment highest regard	Communal/collaborative effort highest regard
6. private property/ownership requiring attribution of credit	Anything published, especially over the Internet, regarded as community property not requiring attribution of credit
7. deliberative, revised, peer reviewed output highest value	Quickness of mind; ability to use information quickly and effectively higher value
8. integrity as product of adherence to absolute, abstract, and immutable rules	Integrity as product of relationship, compassion, responsiveness—gained from the respect of others
9. failure/mistakes seen as learning Opportunities	Failure/mistakes not acceptable
10. formal spoken and written English as norm	Reading and writing as expression of creativity and individual imagination

149. Gross, *supra* note 18, at 436.

Appendix B: Links to Examples of More Effective Honor Codes

Law School Codes

Harvard School of Law

<https://hls.harvard.edu/content/uploads/2018/09/2018-2019-Harvard-Law-School-Handbook-of-Academic-Policies.pdf>

Duke School of Law

<https://www.law.duke.edu/students/studentaffairs/integrity.pdf>

University of Washington School of Law

<https://www.law.washington.edu/students/academics/honorcode.aspx>

Wake Forest University School of Law

<http://studentlife.law.wfu.edu/files/honorcode.pdf>

Undergraduate/Graduate School Codes

Davidson College

<https://www.davidson.edu/about/distinctly-davidson/honor-code>

N.C. State University

<https://policies.ncsu.edu/policy/pol-11-35-01/>

University of Virginia

<http://honor.virginia.edu/academic-fraud>

Appendix C: Instructional Videos

Academic Integrity: Plagiarism

<https://www.bing.com/videos/search?q=plagiarism+videos+for+college+students&view=detail&mid=0DB62237E4933EDC20E60DB62237E4933EDC20E6&FORM=VIRE>

How to Avoid Plagiarism: Tips for Students

<https://www.bing.com/videos/search?q=plagiarism+videos+for+college+students&view=detail&mid=9726F7789D740E1213F59726F7789D740E1213F5&FORM=VIRE>

What is Plagiarism and How to Avoid it

<https://www.youtube.com/watch?v=Pmab92ghG0M>

What is Plagiarism: Video Lecture

<https://www.coursera.org/learn/advanced-writing/lecture/kFAOb/what-is-plagiarism-video-lecture>

Teaching about Plagiarism (contains a wide assortment of videos)

<http://www.plagiarism.org/teaching-about-plagiarism>

Appendix D: Integrated Modules**Avoiding Plagiarism: Hamilton College**

<http://www.hamilton.edu/writing/style/plagiarism/plagiarism.html>

1

Avoiding Plagiarism: Purdue University Online Writing Lab (OWL)

<http://owl.english.purdue.edu/owl/resource/589/01/>

CALI: Plagiarism Lesson

<https://www.cali.org/blog/2009/08/04/plagiarism-punctuationgrammar-lessons-great-first-assignments-new-students>

How to Recognize Plagiarism Tutorials and Tests (Indiana University)

<https://www.indiana.edu/~academy/firstPrinciples/>

Penn State School of Law: Tutorials and Exercises Regarding Plagiarism (includes CALI lesson and LWI plagiarism exercises, as well as other Penn State resources)

<https://pennstatelaw.psu.edu/current-students/online-legal-writing-center/use-authority-and-attribution/tutorials-and-exercises>

University of Alaska Anchorage Academic Integrity Tutorial

https://aie-ids.uaa.alaska.edu/integrityquiz/story_html5.html

University of Michigan's Best Practices for the Responsible Use of Sources

<http://www.beyondplagiarism.sweetland.lsa.umich.edu/for-students/finding-sources/getting-started/>

University of Albany Plagiarism 101

<https://library.albany.edu/infolit/plagiarism1>

**Appendix E: Electronic Plagiarism Detection Software
Plagiarism Checkers that are Effective for Student and/or Faculty Use**Freeware

Academic Plagiarism (1 document per day, 500-word limit, and limited functionality and reporting for free version/otherwise tiered fee schedule)

<https://academicplagiarism.com/>

Dustball (University of Maryland Plagiarism Checker)

<http://www.dustball.com/cs/plagiarism.checker/>

DupliChecker

<http://www.duplichecker.com/>

Plagiarisma.net (3 versions: Web version (un-registered and registered) and Installed version)

<http://plagiarisma.net/>

Plagium (free quick search for infrequent use, but fee based for more regular use)

<http://www.plagium.com/en/plagiarismchecker>

Plagtracker (premium account is fee based)

<http://www.plagtracker.com/>

Fee Based

Glatt Plagiarism Software (consists of Glatt Plagiarism Teaching Program and Glatt Plagiarism Screening Program (for faculty) and Glatt Plagiarism Self-Detection Program (for student use))

<http://www.plagiarism.com/>

Grammarly

<https://www.grammarly.com/>

Turnitin (faculty use only/not distributed to students)

<http://turnitin.com/>

Safeassign (faculty use only/available on LEXISNEXIS platform)

<http://www.blackboard.com/safeassign/index.html>

Writecheck.com* (made to check against the Turnitin.com database, which is used by faculty)

<http://en.writecheck.com/>

Systems Not Recommended¹⁵⁰

1. **PaperRater:** System offers a wide range of features and additions, like grammar and spellcheck, but is flawed. It does not consistently identify documents with plagiarism.
2. **Teaching Assistant:** This plagiarism service is very weak and inaccurate. The program is also littered with adware that can harm your computer.
3. **DocCop:** While this plagiarism checker is of reasonable quality, the interface is cumbersome. After creating an account, the user needs to remember a 10-character password to use the system Peer Compare. Finally, this checker charges \$2.50 per 1,000 words if you want to use the plagiarism checker.
4. **PlagiarismChecker.com:** The results of this checker are very limited and some of the results are not in English. Significantly, you must copy and paste information to have it checked, and it also does not consistently catch plagiarism.

150. *Plagiarism Freeware Software Review*, W. VA. U. 12–13 <http://it.wvup.edu/PlagiarismChecker.pdf> (last visited Feb. 6, 2019).