THE AMERICANS INNS OF COURT:
PREPARING OUR STUDENTS FOR ETHICAL PRACTICE

by

JORYN JENKINS*

The increasing incidence of uncivil, discourteous, combative, harassing, and outright unprofessional1 behavior, spawned by the "win at all costs," "take no prisoners," "scorched earth" approach which has recently become a driving force in the trial bar, now causes grave concern among the practicing members of both bench and bar, as well as among law professors.2 The Fifth Circuit Court of Appeals has declared this conduct "'Rambo tactics' that [bring] disrepute upon attorneys and the legal system."3 In other

---

1 In an analysis of the organized bar's attempts to rekindle the spirit of professionalism, Judith Maute explains that, according to the sociological definition: "a professional is one who is highly educated in complicated principles, uses a specialized language and has a technical mastery of complex procedures." Judith L. Maute, Balanced Lives In a Stressful Profession: An Impossible Dream?, 21 CAP. U. L. REV. 797, 800 (1992) (citations omitted). One should add that a legal professional is also civil to her peers, her clients, the court, and the public, and practices law with a sensitivity to the ethical issues intrinsic to any given situation, arising as it does out of the original meaning of the word "profession," which referred to the declaration or vow made by someone entering a religious order. See Peter F. Lake, Make Lawyers, Not Lethal Sheep, 42 J. LEGAL EDUC. 271, 272 (1992).

2 See, for example, Professor Maute's recent article examining the reputed "demise of professionalism," and her proposal to remedy the affliction. Maute, supra note 1, at 797. She suggests: "a major overhaul in the legal profession's conception of what constitutes effective representation, expectations of financial rewards, and the personal sacrifices one is expected to make as the price of success." Id. at 798.

3 Lawyers and the legal process have been criticized almost since the inception of the profession. See James P. White, Ethics Of Lawyering: Visions Which Must Be Achieved, 21 CAP. U. L. REV. 871 (1992). There is evidence, however, other than the increased occurrence of uncivil and unprofessional conduct, of a modern decline in the professionalism of the trial bar, as well as other problems in trial practice which detract from the public's perception of legal professionalism, more specifically increased competition, client complaints, and time demands. Id. at 871-72. How does the bar usually respond to these concerns? One legal educator complains: "The answer of many lawyers and lawyer organizations to these problems is to renew calls for 'professionalism.' Bar committees write reports about professionalism, often without defining it. Most of these efforts conclude in hopeful exhortations but weak proposals for change." Susan R. Martyn, Professionalism: Behind A Veil Of Ignorance, 24 U. TOL. L. REV. 189, 189 (1992) (footnotes omitted) (citing MARVIN E. ASPEN, FINAL REPORT OF THE COMMITTEE ON CIVILITY OF THE SEVENTH FEDERAL JUDICIAL CIRCUIT (1992)).

---

1 McLeod, Alexander, Powel & Appfel, P.C. v. Quarles, 894 F.2d 1482, 1486 (5th Cir. 1990). In McLeod, the trial court had entered a default judgment against the defendant for failure to respond to discovery requests. Id. at 1484. In upholding the district court's extreme sanction, the appellate court noted that the strategies of the defendant and his counsel in flouting discovery deadlines, and in otherwise attempting to delay the litigation, were "an all-too-common example" of "Rambo tactics," that failed to satisfy principles of professionalism and civility. Id. at 1486. The court "easily conclude[d]" that the dismissal penalty was appropriate. Id. at 1486.

Obviously, this is not a unique example of a court's criticism of such disreputable tactics, although courts do not usually impose sanctions of this dimension for such conduct. Awards of attorneys' fees and costs are the more common remedy. See, e.g., Construction Technology, Inc. v. Lockformer Co., 781 F. Supp 195, 200 (S.D.N.Y. 1990) in which the court remarked:
circles, this trial technique is (not always derogatorily) referred to as "hardball litigation." 4

Whatever the term used to describe them, such abusive tactics have been criticized for innumerable reasons, but most crucially because they both escalate the costs of litigation, to the detriment of the parties, as well as degrade the legal profession, causing "disrespect for lawyers and the judicial process." 5 It is the latter consequence that is most troubling.

Trial attorneys perceive this disrespect in the "lawyer jokes" repeated at cocktail parties, in the occasional opinion poll that reflects the low regard in which the public

[4] The defense tactics in this case were not those that one would expect to find if the defendants' sole objective was to obtain a prompt resolution of a close legal issue. Rather, the defendants engaged in a course of litigation strategy designed to delay and frustrate the plaintiff's attempt to secure a trial of this action. . . . [T]he defendants here subjected the plaintiff to excessive motion practice in which there were needless attempts to relitigate issues that previously had been decided. . . . In these circumstances, an award of attorneys' fees is appropriate. Id. at 200.

Some courts enact local rules to control specific types of unacceptable behavior. One court, for example, has established a special rule regulating discovery of high-ranking corporate or government officials because of its concern that "[o]ften the chief executive officer of the company may know nothing regarding the subject matter but is noticed or subpoenaed [for deposition] for harassment purposes," or to coerce settlement of the action. Rule 10, Standing Orders of the Court on Effective Discovery in Civil Cases, United States District Court for the Eastern District of New York. See Gregory D. Hanley & Jeffrey S. Kinsler, Protecting High-Ranking Corporate Officials From Unnecessary and Harassing Depositions, 40 FED. BAR NEWS & J. 296, 298 n.18 (June 1993).

"See, e.g., James R. Elkins, The Moral Labyrinth of Zealous Advocacy, 21 CAP. U. L. REV. 735, 738 (1992). Professor Elkins describes hardball tactics as those "by which we make life miserable for our colleagues in hopes of improving the odds of 'winning' the case." Id. Although he then defines such litigation strategies as "zealous advocacy which tests the moral limits of the . . . professional virtue we call zeal,\" it is apparent from the context that Elkins refers to tactics which are outside the pale of the acceptable: "abuse of the discovery process, harassment of truthful witnesses, damaging an opponent's case by delaying trial, using evidence that will confuse the jury." Id. at 738 n.8 (citing Charles W. Joiner, Our System of Justice and the Trial Advocate, 24 U. S. F. L REV. 1, 15-18 (1989)).

"See, e.g., Geiserman v. MacDonald, 893 F.2d 787, 792 (5th Cir. 1990) (appellate court upheld order refusing to modify scheduling order, striking plaintiff's untimely designation of witnesses, and precluding expert testimony following plaintiff's flouting of discovery deadlines).

"See also The Supreme Court of Texas and the Court of Criminal Appeals: The Texas Lawyers' Creed — A Mandate for Professionalism, TEX. BAR. J. 1304 (1989) [hereinafter The Texas Creed]. The creed sets forth standards for the conduct of lawyers in the state courts of Texas. In their order adopting the creed, the Supreme Court of Texas and the Court of Criminal Appeals expressed their commitment to:

... eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

Order of the Supreme Court of Texas and the Court of Criminal Appeals, 52 TEX. BAR. J. at 1303 (1989)(emphasis added).

The Texas courts asserted that the rules are "primarily aspirational," and that compliance depends initially upon "understanding and voluntary compliance, and secondarily upon re-enforcement by peer pressure and public opin-
holds lawyers (and their ethics),\(^6\) and in the "lawyer-bashing" in which politicians nearly always engage these days.\(^7\) They see it in the continuing debate within the bar\(^8\) over the new courtesy codes\(^9\) for lawyers.\(^10\) And they observe this contempt, as well, on an increasing basis, during their \textit{voir dire} of prospective jurors, and even in conversation with their own clients.\(^11\)

The deterioration in the professionalism of trial practitioners has, obviously, not only had its impact upon the thinking of practitioners\(^12\) and of legal educators,\(^13\) but also...
upon that of both our enrolled law students and our prospective law students. The question then arises, is there any feasible and effective response to this problem that we, as law teachers, can make, other than to continue teaching courses in professional responsibility as we do?5

The answer is yes! The American Inn of Court movement is one constructive response to this "increasing stridency in advocacy," as the former Solicitor General of the United States, Kenneth Starr (who is an Inn member), once labeled it. It is also a uniquely cooperative effort by trial practitioners, judges, and legal educators.

The first American Inn of Court was organized in 1980 in Provo, Utah by Federal District Judge A. Sherman Christensen. Now, thirteen years later, the Inns of Court concept has evolved into a national movement, with the members of over two hundred Inns meeting regularly all across the United States, from Hawaii and California to New York, and from Maine to Florida.

the participants opined that law schools should focus included professionalism, ethics, and other value issues. Id. at 386-87. When asked how such supplemental training should be accomplished, a common recommendation was to provide training programs, which would involve academics, judges, practitioners, and bar examiners, and which would begin in law school and continue through graduation and into law practice. Id. A better description of the Inns of Court concept could hardly be devised. See discussion infra, in "How An Inn Works."
14 See "Back to the Future," the February 25, 1993 program of the Pinellas Inn of Court, which, in part through a student survey, in part through a new lawyer poll, and in part through an answer-and-question session at Stetson University College of Law, solicited information from new lawyers and law students regarding what could be done to better prepare them for the practice of law. Both groups reported that the qualities most required of the successful attorney were "integrity, honesty, and competence." Notably, however, "both [groups] had decidedly negative feelings about the profession which they were entering." Meeting minutes on file with the author. See also 101 Great AIC Programs, 7 THE BENCHER 8 (May 1993).

In her recent article, Ethics by the Pervasive Method, Deborah Rhode argued that law schools should teach professional responsibility, not only in a required course, but throughout the curricula, which would offer broader coverage, she urged, of ethical issues. Deborah L. Rhode, Ethics by the Pervasive Method, 42 J. LEG. ED. 31, 31 (1992). It would, of course, promote discussion of any professionalism and civility issues also implicated during debate over substance.

However, Professor Vickrey, in answering the question "[w]hat are we in law schools currently doing to promote professionalism and competence?" aside from requiring students to attend a course in professional responsibility, has astutely noted: "My experience in teaching professional responsibility is that most students already know the fundamental ethical principles that underlie the Model Rules of Professional Conduct. They do not, however, appreciate how these principles may apply in a professional setting or that a professional situation may create conflicts among these principles." Vickrey, supra note 7, at 823, 825. And one researcher reports that the law firm internship experiences of law students have served to acclimate those students to the acceptability of unprofessional conduct, thus throwing doubt on the efficacy of such professional responsibility programs, at least when offered by themselves while the student is employed as an intern during school. Lawrence K. Hellman, The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization, 4 GEO. J. LEGAL ETHICS 537, 539-40, 543-44 (1991).

16 At this writing, there are 220 American Inns of Court.
The core of all of this activity, the American Inns of Court Foundation, is located in Washington, D.C. Although the focus of the movement is the monthly Inn meeting itself, the Foundation conducts an annual meeting of representatives from each Inn, assists in the formation of and charters newly organized Inns, provides tax-exempt status, as well as liability insurance for each Inn, publishes newsletters to the general membership, as well as to the Inn executive committees, distributes information regarding programming, and works hand-in-hand with various regional coordinating councils of Inns, which also hold regular meetings and issue regional publications focusing on local issues.

The Young Lawyers Division of the American Bar Association has appointed an Inns of Court Committee, as have the Federal and National Bar Associations. The ABA Section of Litigation has designated a liaison to the Foundation. However, despite the recognition of the merit and effectiveness of the Inn concept, and despite the rapid growth of this burgeoning movement, and despite the intrinsic involvement of over one thousand law students and of nearly one hundred law schools affiliated with Inns across the country, many legal educators are unaware of the Inns’ existence, purpose, possibilities, and successes. Why should this ignorance be remedied?

A GROWING MOVEMENT

The American Inn concept is the direct result of a discussion that occurred in 1979 among the United States members of the Anglo-American Exchange of Lawyers and Judges, which included, among others, then-Chief Justice Warren E. Burger. After the first Inn was formed in 1980, the idea began to spread relatively slowly. One or two Inns were formed each year, until 1985. In May of that year, the American Inns of Court Foundation, a national organization created specifically to encourage the organization of new Inns and to administer the spread of the movement, was established.

---

17 The typical Inn meeting is described infra, in “How An Inn Works.”
18 These were the statistics available at the time of submission of this article. The number of students currently involved does not, of course, reflect the number of students who have participated over the years.
19 The Aspen Report (which Susan Martyn criticizes for its “weak proposals,” Martyn, supra note 2, at 189) among other things, exhorted lawyers and judges to participate in an Inn, and admonished lawyers and judges, who practice in a region in which an Inn does not yet exist, to organize one, evidently in light of the Inn’s demonstrably beneficial effect on the professional practice of law. See MARVIN E. ASPEN, FINAL REPORT OF THE COMMITTEE ON CIVILITY OF THE SEVENTH FEDERAL JUDICIAL CIRCUIT 10 (1992). There is no Inn of Court, however, presently affiliated with the University of Toledo College of Law, at which Professor Martyn teaches.
The Foundation is governed by a nineteen-member board of trustees, comprised of a number of practicing trial attorneys and judges.\(^{20}\) It also includes three professors of law, one from Georgetown University Law Center in Washington, D.C.,\(^{21}\) one who teaches at the University of South Texas, and the last from Stetson University College of Law in Florida, as well as the dean of the John Marshall School of Law.\(^{22}\)

In 1985, the first annual meeting of the Inns was held. By the second annual meeting of the American Inns of Court in 1986, there were nineteen Inns; by 1987, there were thirty-one; by 1988, there were sixty-two; and the movement continues to mushroom. Thus, at this moment, there are over 12,000 judges, trial lawyers, law professors, and graduating law students participating in various Inns of Court. In addition, there are thousands of lawyers who have been involved and who are now alumni or emeriti. And finally, there are a great many practicing lawyers, as well as third-year law students, who are wait-listed for membership.

So what is this idea that’s caught fire in the legal community? Why is it that Inn members consider their Inns to be the forerunners in establishing higher standards of ethics? How do the Inns make the practice of law, not only more enjoyable, but more efficient as well, by eliminating the perceived need for costly and inefficient “Rambo tactics?”\(^{23}\) And what is it about the concept that ignites the enthusiasm of student and practitioner alike for practice?

**WHAT IS AN INN?**

"Everyone gripes about professional standards and advocacy skills, and here, by God, is something you can do about it .... I think this is the most important thing I can be involved in."

William B. Enright
Senior United States District Judge
Past Trustee of American Inns of Court

---

\(^{20}\) Former-Chief Justice Burger recently retired from the board.

\(^{21}\) Professor Sherman Cohn is also the president of the Foundation.

\(^{22}\) Dean Howard Markey chairs the board.

\(^{23}\) See, e.g., McLeod, Alexander, Powel & Apffel, P.C. v. Quarles, 894 F.2d 1482, 1486 (5th Cir. 1990).
The Inn idea was adapted to the American legal system following the visit of the Anglo-American Exchange of Lawyers and Judges to the traditional English Inns of Court in 1979. Although never utilized in the United States, the English Inn structure has long been the English method of training (and admitting to the profession) new "barristers." The trademarks of an English Inn are civility, integrity, and collegiality. The creators of the American Inn intended to emulate those qualities and to instill a sense of professional standards in Inn members by osmosis, *i.e.* through demonstration, rather than by fiat.25

The mission of the American Inns is to unite a cross-section of the bench and bar into an educational forum to encourage excellence, professionalism, and ethics in legal advocacy, as well as to promote fellowship of the bar, the bench, the educators, and the students of the law. The Inn concept is intended to perpetuate the most worthy traditions of the legal field.

The idea is simple — trial lawyers, legal educators, and judges experienced in litigation join together to impart their hard-learned lessons and varying viewpoints to their less-experienced counterparts. In the process, of course, they also educate each other, both in ethics and in substance, and remind each other of how to be their "best selves."26 By providing a medium wherein young lawyers and third-year law students learn side-by-side with the most accomplished judges, professors, and attorneys in their legal communities, the Inn, as a group that expects the best of its members, aids all in becoming more effective advocates, with keener ethical awareness.

*In a case decided prior to the inception of the American Inn of Court movement, the United States Supreme Court explained:* From the thirteenth century to this day, in England the profession itself has determined who should enter it. In the United States the courts exercise ultimate control. But while we have nothing comparable to the Inns of Court, with us too the profession itself, through appropriate committees, has long had a vital interest, as a sifting agency, in determining fitness, and above all the moral fitness, of those who are certified to be entrusted with the fate of clients.

Schware v. Board of Bar Examiners of The State of New Mexico, 353 U.S. 232, 248 (1957) (Board of Bar Examiners' denial of application to take examination for admission to practice law reversed; Supreme Court held that applicant's past membership in Communist Party, his prior arrest record, and his use of aliases could not be said to raise substantial doubts about his present good moral character, and refusal of right to qualify for practice of law constituted denial of due process).


While the American Inns do differ from their English prototypes in that they do not determine or regulate fitness to practice, the focus on engendering professionalism, civility, excellence, and ethical awareness in their members is identical.

Like Professor Rhode, promoting the concept of teaching professional ethics by the pervasive method (*see* Rhode, *supra* note 15), I contend that law practitioner participation in the Inns of Court movement also "makes sense and is not just, as Doonesbury once put it, 'trendy lip service to our better selves.'" Deborah Rhode, *Pervasive Ethics*, AALS PROF. RESP. SEC. NEWSL. May 17, 1993, at 3. The results prove the means, and an Inn participant demonstrates, in his or her *modus operandi*, the difference the Inn has made in his or her professional life.
After three years of academic study, most law school graduates still feel unprepared for practice. And how each fledgling attorney develops his or her own method of practice depends in large part on the conduct of those members of the profession with or against whom he or she practices. One of the keys of the Inn concept is the opportunity to provide the new practitioner with role models ("mentors") after whom to pattern his or her own conduct in practice. And the more seasoned attorneys, professors, and judges, in considering issues raised and questions posed by other Inn members, benefit as well.

Such an opportunity can be very reassuring to a soon-to-be or new practitioner. The Inn program provides the young attorney or law student with the opportunity to discuss and share with other, more experienced practitioners their strategies and trial tactics. Many have met other attorneys in this context whom they would not otherwise have encountered because, for example, they practice exclusively in another area of the law.

Conversely, the more experienced trial attorneys see the Inn as a means of returning what they have received from the profession, by permitting them to help train new lawyers.

Such mentor-mentee opportunities are otherwise in short supply. It is common knowledge that law firms today must compete for clients. Many concentrate more on

27 See Joryn Jenkins, *Everybody Needs A Mentor, Do You Know Where To Find Yours?* 18 No. 1 BARRISTER 26, 28 (Spring 1991). See also supra note 14. New lawyers reported that law schools do not prepare them for the practice of law. Meeting minutes on file with the author. See 101 Great JC Programs, supra note 14, at 8.

28 In studying and reporting on the disastrous effects that certain students' internship experiences in law firms during law school have had on their senses of professionalism and ethics, Professor Lawrence Hellman has pointed out:

The landmark work of Frances Zemans and Victor Rosenblum confirmed that what is learned in a law school course on professional responsibility does not dominate the process by which most lawyers seek to resolve questions of legal ethics when encountered in practice. One's general upbringing and the observation of and advice from other attorneys encountered in practice were found to be much more significant than law school instruction in this regard. And the more apprentice-like one's employment experiences, the greater the relative influence of other attorneys, as compared to law school, as the principal "socializer to professional responsibility."

Lawrence K. Hellman, supra note 15, at 539-40 (citing F. ZEMANS & V. ROSEBLUM, THE MAKING OF A PUBLIC PROFESSION 3-4, 171-78 (1981)). In short, there is little question that role modeling is one of the most puissant methods of instruction.

29 Judges have remarked that Inn meetings are the few occasions that they have the opportunity to confer about events or subjects that occur or arise in their courtrooms, which they do not have the time to discuss at regular meetings of the judiciary. At the latter meetings, they explain, they are too busy working on the jury calendar and scheduling trials. Jenkins, supra note 27, at 27.

30 Students and newly-admitted attorneys require mentors, not simply to aid them in handling the substantive aspects of their practice, but even more importantly, as at least one commentator has noted, to deliver: "... guidance in their struggle to understand the relation of law and justice. Many students puzzle over how to retain their ordinary moral sensibilities as they make their way into the legal profession." Elkins, supra note 4 at 736-37. It is through mentors that they best secure such counsel.

31 In LITIGATION, the magazine of the Section of Litigation of the American Bar Association, Louise A. LaMothe, section chair, recently bemoaned this trend, as well as its primary consequence:
the commercial aspects of the practice of law than on the need to instruct the newest members of the profession and of the firm, concomitantly encouraging these young associates to market themselves, and to "bill hours."32 Mentors for these bright-eyed practitioners are now hard to find.33 They, too, are busy "billing hours."34 For this reason especially, the Inn's stress on the practice of law as a profession, rather than as a business, has become critical to the younger attorneys who participate.

32 We are now in danger of becoming a "revolving door" profession — thousands of attorneys report that they are dissatisfied with their work. Women and minority lawyers in particular are leaving large law firm practice. ... I think that most junior lawyers leave law firms because no one is paying attention to their needs. They feel isolated. In short, they have missed out on the mentoring process.

Louise A. LaMothe, Where Have All the Mentors Gone?, 19 NO. 2 LITIGATION 1, 1 (Winter 1993).

Ms. LaMothe proceeds to explain what she means by "mentoring," i.e. "the complex relationship that a junior lawyer forms with one or more senior lawyers." Id.

The more senior lawyer gives feedback, guidance, and advice, perhaps unaware that his actions serve as lessons for the younger lawyer. The younger lawyer sees from the more senior how to behave in a host of situations — with judges, clients, opponents, peers, and staff. The younger lawyer has a role model — a guide for conduct in the myriad situations that will confront him in his professional life. Such relationships, while particularly important for young lawyers, can last long into middle age, the junior, though now experienced, lawyer still seeking advice and support from his more senior colleague. Indeed, it could be persuasively argued that no one ever succeeded without a mentor.

Id.

33 In Unhappy Lawyers, Mr. Ciotti explains:

As law firms are increasingly run like businesses, individual associates are increasingly viewed as profit centers — the more, the better. In big New York and Los Angeles firms... it is common for the ratio of associates to partners to be 3-1 or even higher, in contrast to the 1-1 ratio of most other areas. Because of this, associates have less contact with partners, less training, less supervision and, most importantly, less chance to make partner.

Ciotti, supra note 11.

34 Professor Maute has remarked: "Traditionally, new graduates received substantial on-the-job training. Mentors would train on both technical skills, and inculcate the new lawyer with the firm's outlook on professional values. Unfortunately, today many private firms shirk these traditional training responsibilities." Maute, supra note 1, at 804.

35 This problem is not of recent origin. Forty years ago, Roscoe Pound commented:

There are today undoubted and serious threats to the idea of a profession. One threat may be seen in the general and increasing bigness of things in which individual responsibility as a member of a profession is diminished or even lost, and economic pressure upon the lawyer may make the moneymaking aspect of the calling the primary or even the sole interest.

ROScoe POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 354 (1953).
HOW AN INN WORKS

"The Inns of Court programs are designed to demonstrate and encourage professionalism and ethical conduct on the part of the members of the Bench and Bar."

District Court Judge Frank Polozola

Each Inn represents a cross-section of forty to eighty members of a local legal community. Typically, three levels of legal experience are recognized within each Inn: masters, who customarily are judges, law professors, or trial attorneys with greater than twelve years of experience, and who are members of the Inn for life; barristers, who possess between three and twelve years of experience, and who retain active membership for an average of three years; and pupils, who have less than three years of experience, who include, in many Inns, third-year law students, and who participate for one year.

In most Inns, new members are inducted once a year through a process wherein current members nominate lawyers who would benefit from and contribute to the program. Most Inns also annually post an invitation for applications in the local bar newsletter. Law student members are generally chosen by faculty members affiliated with the Inn in question.

The members of each Inn are grouped into "pupillages." Generally speaking, each pupillage team consists of one judge, one or two masters, several barristers, and a number of pupils. Such an arrangement fosters the mentor relationship encouraged by the Inn program between judges and senior members of the bar, and those junior to them.

This mentor relationship is the key to the Inn concept. Many feel that the legal profession has plunged from an occupation in which its practitioners acquired a sensi-
tivity to matters involving ethics, as well as instruction on issues of substance, from their mentors (more experienced attorneys who serve as role models for the inexperienced, giving them feedback, guidance, and advice, and thus teaching them ethical and professional values), to a craft in which the billable hour has taken precedence. Almost no one has time anymore to both mentor his or her juniors and to also practice law (and make money). The result, it seems, unfortunately, is that few are willing to take responsibility for mentoring new lawyers. And these virgin attorneys therefore develop a level of tolerance for the unprofessional and unethical conduct of others and themselves.

A true mentor takes a personal interest in her associates, in part because the practice of law is not left in the office but is, instead, a way of life. For that reason, a mentor, for example, should take her “mentees” to lunch, caring about their personal well-being and exhibiting more than a barren business relationship with them.

It is the objective of each American Inn of Court to foster a return to the proven culture in which every new lawyer is paired in her practice with a working mentor, someone to whom that junior attorney can take any problem without embarrassment or unease. To be a master in an Inn, one need not be the perfect example to which the younger members, as well as those outside the Inn, aspire. While there may be some who fit that description, there are many more who, although masters of the substance of law, and as ethical and professional as they may be, are not mentors. And they should be. It is the goal of the Inns to remind attorneys that this is one of their responsibilities as members of the bar. And to encourage those who learn how to mentor in the Inn to take it home to their firms, to alter the cultures there to include this aspect of the practice in their relationships with their juniors, despite that most of those young lawyers are not (yet) members of an Inn of Court.

---

36 See, e.g., LaMothe, supra note 31, at 2.

37 Professor Hellman observed:

The “apprentice-like” training to which Zemans and Rosenblum referred is that traditionally offered by law firms, which enable (sometimes require) new associates to assist and observe more experienced members of the firm for a period of time before the new associate is entrusted with substantial independence and responsibility over a matter.... Today, however, economic pressures associated with the current high level of starting salaries in large law firms may be eroding the willingness and ability of such firms to offer this type of training.

Hellman, supra note 15, at 540 n.12.

38 In reporting on the destructive effects that student internships in law firms have on the students’ senses of professionalism and ethics, Professor Hellman remarked:

[M]any students are exposed to unprofessional conduct by attorneys that shocks them in terms of its frequency and seriousness. .... Many students, feeling quite vulnerable in terms of their future careers, tend quickly to develop an unfortunate level of tolerance for the unprofessional conduct of others, and that tolerance threatens even the students’ own devotion to some of the more important professional ideals that the law school are being asked to instill in their charges.

Id. at 543-44.

39 See LaMothe, supra note 31, at 1.
Inns normally congregate once a month, with a two-to-four hour evening meeting consisting of a wine and cheese gathering or a dinner, a role-playing demonstration by one of the pupillages, and a critique and discussion of the demonstration by the Inn as a whole. Each pupillage is responsible for conducting one demonstration for the Inn each year. The presentation customarily focuses on some facet of the litigation process or on a difficult ethical situation. The purpose is to teach, but to teach in a manner that “shows,” rather than “tells,” appealing to a variety of the senses, and therefore holding the attention of the members.

Attorneys often reveal litigation secrets during their demonstrations, which forces all of the Inn’s members to become more creative and industrious in their practices. And the role-playing demonstrations help all attorneys and students hone their advocacy skills by observing the community’s most seasoned attorneys at work.

Young litigators and students often see first-hand how judges’ viewpoints vary. For example, during the course of a demonstration, when asked to give an opinion, different judges will provide a variety of evidentiary rulings, especially if one is a state judge and another, federal. In fact, the judges sometimes surprise each other, and learn from each other when required to support these imaginary judgments.

The learning process flows, not only across, or down, but up as well. After having been in practice for so long, it is helpful for senior Inn members to observe a fresh approach from the younger members of the bar and from the law students, who raise issues to which a judge or senior trial attorney might have become inured, and which they therefore would not have noticed. The judiciary benefits because, having been apart from the actual practice of law, judges tend to forget the constraints faced by lawyers. The Inn reminds them of those problems, and, as a result, the judges remain more flexible.

Often, the pupillages also meet between Inn meetings, for breakfast or for lunch, to discuss current topics of legal interest in the local community, or to prepare for a program. Some lawyers find these meetings more productive because of their small size. They encourage more feedback and input from the younger members. Once the mentor relationship is established, a barrister or master will sometimes arrange for a pupil member of the pupillage to sit in on an actual trial, or at a particularly unusual hearing.

In fact, some Inns foster this relationship by encouraging the execution of “pupillage agreements,” in which the pupils identify areas of trial practice with which they would like to become more familiar, and the masters and barristers in their pupillages agree to

40 As one young barrister in Westport, Connecticut has remarked. See Jenkins, supra note 27, at 28.
41 Id. This comment was made by a barrister Inn member in Tampa, Florida.
42 Id.
aid them in doing so. These undertakings can take many forms. One pupil, as her "mentor project," wrote an article, with the advice and critique of her pupillage members, which was ultimately published in her state bar journal.43

The continuing legal education credit offered for most Inn programs is an added plus to participation in an American Inn. Most states mandate CLE of bar members, and it is the experience of the existing Inns that the state bar will accept proof of attendance at Inn demonstrations in satisfaction of those requirements.

PROGRAMMING

"The pupillage demonstrations often lead to heated debate in our Inn on questions of ethics. In fact, many of the demonstrations focus solely on ethical issues."

Peter Grilli, Master, Ferguson-White Inn
Chair, AICF Program Committee

It is the rare Inn program that consists of a simple, uni-dimensional, non-participatory speech. Preparation for most presentations requires both drafting of either a skit to illustrate the issue presented and/or hypotheticals for discussion, and also researching the law, so that the pupillage in charge is able to offer the applicable precedent, if any, to the Inn during the gathering's discussion.

One of the most popular programs (usually presented during an Inn's first three years in existence) is "What Jurors Think." This is a presentation, rather than a demonstration, that utilizes real jurors, who have recently served in actual trials, in order to afford Inn members a look into their minds and perceptions. The members of the pupillage team responsible for the program prepare the questions and research issues that are relevant to trial attorneys, including the impact of voir dire, jury selection, opening statements, attorney appearance and attitude, judicial partiality, witness appearance, interaction between counsel, counsel's manner of making objections, jury instructions, and deliberation.

The questions are then posed of the juror panel, before the congregated Inn, with specific reference to the trials in which they have already participated. Their responses are generally both shocking and informative, ranging from the juror who advises the assemblage that asking the same question three times on cross examination is unnecessary and insulting, because she got the point the first time, to the juror who complains that it took him three times in court before he began to understand the jury instructions.

"How To Handle The Lying Client" requires the preparation of a skit in which the client confidentially informs the attorney of one set of facts, and then later testifies to another. The program commences with opening remarks providing pointers on how to handle the lying client. The demonstration then proceeds, after which the Inn splits into pupillage groups. The teams discuss the initial problem, as well as different hypotheticals assigned by the pupillage responsible for the program, which are variations on the original theme presented (i.e. the false testimony occurs at deposition, at civil trial, or at criminal trial).

In particular, the groups discuss the lawyer's obligation of candor to the court and the manner and circumstances in which the lawyer may terminate representation, if at all. Finally, the Inn congregates for a full (and sometimes heated) discussion of the (sometimes differing) conclusions reached by each pupillage group and review of the applicable precedent in that locale.

Another renowned program is "What The Bench Thinks Of The Bar And What The Bar Thinks Of The Bench." In this program, rather than a skit, the pupillage groups meet separately and list six complaints by the bench of the bar, and by the bar of the bench. After the Inn is reconvened, the teams share the lists and a panel of three judges and three trial attorneys discuss the problem areas identified by the groups and suggest means for resolving them.

Few of the criticisms are indigenous to a particular area: the judiciary typically complains that trial lawyers are unprepared, not punctual, and fail to cancel hearings on motions to compel until the last moment. The lawyers, on the other hand, complain that judges are unprepared, and not punctual.

An unusual program is entitled the "Impaired Judge & Impaired Lawyer." It has been presented both at various local Inns, as well as at the 1991 ABA annual meeting by the Young Lawyers Division Inns of Court Committee. The demonstration concerns the ethical and practical dilemmas arising out of attorney or judicial impairment.44

In the first scenario, an obviously impaired judge presides at trial. His rulings are consistently in favor of the defendant. However, his reasoning is more and more irrational. The plaintiff's attorney asks the defendant's counsel to join in a motion for

44 The issue of the addicted lawyer is not novel, but substance abuse matters arise most often in the disciplinary context. See, e.g., In re Adams, 737 S.W.2d 714 (Mo. 1987) (in which an attorney disbarred for mishandling client funds unsuccessfully defended on the basis of his cocaine addiction). But see In re Johnson, 322 N.W.2d 616 (Minn. 1982) (in which the alcoholic and drug-addicted attorney was not disbarred because he was undergoing rehabilitation and the public was not threatened). In re Walker, 254 N.W.2d 452 (S.D. 1977) (in which the attorney was found to be a recovered alcoholic, and to have demonstrated his fitness to continue in the practice of law).
mistrial but the defendant's counsel, not wishing to harm her client, refuses. Plaintiff's counsel then moves for a recusal and is sharply rebuked by the judge.

In the second scenario, a client contacts a junior partner in a large firm to complain that a senior partner, whose drinking problem, while well-known to the members of the firm, is kept a close secret, has failed to communicate a settlement offer which would have saved the client a great deal of money. The junior partner seeks the advice of another senior partner in the firm and the two wrestle with the dilemma of continuing to protect the impaired partner in the face of obvious malpractice.

Other demonstrative sketches can obviously be devised, as well. A panel of experts in the field of attorney and judicial impairment should then lead a discussion of the issues presented.45

Thus, one can easily observe that the variety of programs possible at Inn meetings is limited only by the imagination of the participants. The thrust of every program, however, is the discussion of the higher ethical issue. Can the defense attorney ethically take advantage of the impaired judge's impaired rulings? Doesn't such action impair justice? Can he, owing loyalty to his client, do anything else? What is the lawyer's role? Is it to win at any price? Is it to protect the client's legitimate (by whose definition?) interests while encouraging dispute resolution? What is the appropriate resolution of the officer of the court versus legal advocate dichotomy? Of course, the answers are not the key; it is the discussion of the issues which is crucial. And these discussions occur month after month after month in Inns across the country. And, in the process, all Inn members grow.

PEGASUS TRUST SCHOLARS

The Pegasus Trust Program, announced by Lord Goff of Chieveley, an English law lord of the House of Lords, at the Sixth Annual Meeting of the American Inns of Court three years ago, enables five young American lawyers to work with solicitors and barristers in London for three months during the summer. Conversely, five English barristers are invited to spend three months working in sponsoring law firms all over the United States. The program is funded, in part, by a foundation established by the Inner Temple, one of the four English Inns of Court. The scholars are flown to England and back, courtesy of British Airways.

45 According to Professor Maute, the National Bar Council alleges that at least fifty to sixty percent of all client complaints are directly related to alcohol or drug abuse. Maute, supra note 1, at 813 (citing Donna L. Spilis, ABA COMMISSION ON IMPAIRED ATTORNEYS, OVERVIEW OF ASSISTANCE PROGRAMS 2 (1991)). Needless to say, substance abuse now receives a great deal of attention from the organized bar. While numerous state bar associations have developed programs to assist impaired lawyers, however, none of these programs addresses the practical and ethical dilemmas confronted by the unimpaired lawyers dealing with the disadvantaged counsel or court.
For two months, the American attorneys work at the law offices of Linklaters & Paines, a leading city firm of solicitors, where they are exposed to a wide variety of legal projects and introduced to the rudiments of the English legal system. During their last month, they labor in the chambers of an English barrister, observing courtroom advocacy at its best. Each scholar receives a stipend, courtesy of Linklaters & Paines, to cover room, board, and living expenses. They are accommodated in student lodgings in the heart of London.

The English barristers work their three months in the United States at the law offices of five trial firms in five different American cities, which law firms change from year to year. They are paid at law clerk salaries, and the firms are expected to help them locate a residence for the summer.

To qualify, an American lawyer must have been in practice between one and five years, and must currently be a pupil or a barrister of a chartered American Inn of Court, or an alumnus of such an Inn, who has completed at least two years in one of those categories.

PUBLICATIONS

The Foundation puts out a variety of publications, through the joint efforts of its publications committee, which consists of Inn volunteers and a publications consultant, and its in-house staff. The publications staff is responsible for the content and production of all publications (except THE BENCHER, which is supervised by THE BENCHER subcommittee, and THE PROGRAMMING MANUAL, which is overseen by the programming committee). Upon the request of staff, however, the committee provides input with respect to the form, content, and edition of various supporting manuals and other materials provided to individual members of the member Inns, like THE OFFICERS MANUAL, which is circulated to all Inn officers.

The committee proposes new publications, as the need is ascertained. The committee suggested production of THE ADMINISTRATOR'S MANUAL, which was recently completed and furnished to all Inn administrators, THE MONTHLY UPDATE, which is now published monthly to Inn executive committee members, regarding national issues, and administrative and programming material, and the NATIONAL HANDBOOK & MEMBERSHIP DIRECTORY, which is published annually to all Inn members, except pupils.

The publications committee also plays a role in the preparation of materials for the unin-initiated. Originally, this was effected solely by staff, through the HOW TO CREATE AN AMERICAN INN OF COURT MANUAL. Now, however, that function has evolved to include articles publicizing the concept, to both attorneys, like that published in THE
FEDERAL BAR NEWS & JOURNAL in June 1989,\textsuperscript{46} that published in BARRISTER (the magazine of the Young Lawyers Section of the ABA) in Spring 1991,\textsuperscript{47} and that printed in the LOUISIANA BAR JOURNAL in June 1992,\textsuperscript{48} as well as to non-lawyers, such as that included in FLORIDA TODAY magazine on December 30, 1991,\textsuperscript{49} and that reproduced in the PINELLAS COUNTY REVIEW on September 15, 1992.\textsuperscript{50}

The Bencher is the Foundation's newsletter, currently published five times annually to the individual members of each Inn of Court. It is usually sixteen pages, although it has been as long as twenty. (Given a recently increased number of columns, the length is likely to increase as well.) The fundamental format of The Bencher now consists of the following eight columns:

1. The Administrator's Column;\textsuperscript{51}
2. The English Inns;\textsuperscript{52}
3. Ethics;\textsuperscript{53}
4. The Lawyer's Image;\textsuperscript{54}
5. Local Inn News;\textsuperscript{55}
6. The President's Column;
7. Profiles in Professionalism;\textsuperscript{56} and
8. 101 (Or More) Great Programming Ideas.\textsuperscript{57}

Also included in every Bencher is intelligence culled by staff from the regional councils, pertinent material offered by ABOTA and comparable organizations (seminar informa-

\textsuperscript{46} Hon. B. Paul Cotter, Jr.,\textit{American Inns Of Court: A Renaissance In The Legal Profession}, 36 FED. BAR NEWS & J. 232 (June 1989).
\textsuperscript{47} See supra note 27.
\textsuperscript{49} Scott Solomon,\textit{Attorneys seek to shine tarnished image}, FLORIDA TODAY, Dec. 30, 1991, at 1A.
\textsuperscript{50} John L. Dunbar,\textit{There's no room left at the Pinellas Inn}, 40 PINELLAS COUNTY REV., Sept. 15, 1992, at 1.
\textsuperscript{51} This column, prepared by Foundation staff, targets the Inn of Court administrator, whose responsibility it is to ensure that the Inn runs smoothly in all respects. The column serves as a focal point for new ideas related to Inn administration.
\textsuperscript{52} This column, authored by an Inn member, focuses upon the traditions and history of the English Inns of Court, serving to familiarize American Inn members with the heritage intrinsic to the British mentoring system, which is the model for that of the American Inns.
\textsuperscript{53} This is a substantive column, written by an Inn member, which concentrates on current issues relative to legal ethics.
\textsuperscript{54} This is a fairly new column, produced by a volunteer public relations consultant, which is intended to sensitize Inn of Court members to issues that impact upon the attorneys' image in lay eyes.
\textsuperscript{55} This article, collated and authored by an Inn member, enables Inns to share significant new among themselves, and reminds each individual Inn member that he or she is also part of a national movement.
\textsuperscript{56} Each issue, this column, written by the staff, focuses on an Inn member of exceptional leadership character, whether local, regional, or national in nature.
\textsuperscript{57} This column, authored by an Inn member, permits Inns to share the newest and the best in programming ideas with each other.
tion, for example), or by individual Inns (like an educational trip to London, for example). Also included, of course, is information on upcoming Foundation events, and any other news of note regarding Inn members. Staff assumes responsibility for all feature articles, and the editor-in-chief, an Inn member, is responsible for any editorials.

REGIONAL COUNCILS

In 1989, there were seven Inns in Florida. Members of the two in Tampa decided that a regional council should be organized in order to encourage further formation of Florida Inns, and to trade administrative strategies and ideas among the existing Inns. Therefore, at their first annual meeting, the Coordinating Council of Florida Inns was formed of the executive officers of each existing Florida Inn. They agreed to convene semi-annually thereafter.

The first meeting of the council was held during the mid-year meeting of The Florida Bar in January 1990. Members of every Florida Inn, as well as lawyers and judges who were interested in forming new Inns, were present at the business meeting. The council meeting was followed by two sample demonstrations, dinner, and a speaker (then Chief Judge Markey of the Federal Circuit Court of Appeals, who chairs the board of trustees of the Foundation). Over seventy trial lawyers and judges attended the general meeting.

The council, like other regional groups, also meets at the annual meeting of the American Inns of Court Foundation.

Since the inception of Florida's coordinating council, three more annual meetings have been held and the number of Inns organized in Florida has tripled, to twenty-one. THE FLORIDA BAR JOURNAL includes a Florida Inns of Court Column, which publishes articles on the council's annual meeting, on successful programs, on the unique experiences of Florida's smaller Inns, and on issues involving both ethics and professional trial practice. The council has considered (often hotly contested) questions relevant to the ethical and professional practice of law in Florida, such as whether Florida Inns should be involved with affording *pro bono* representation, whether Inns should solicit referrals for membership from The Florida Bar grievance committees, and how

---

In 1992, a group of Florida attorneys (the Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida) petitioned the Florida Supreme Court to modify its disciplinary rules to include a quantitative requirement to its earlier recommendation of voluntary *pro bono* legal services. See Talbot D'Alembre, *Calling The Role of Lawyers: Providing Service To All*, 21 CAP. U. L. REV. 861, 867 (1992). Although the Florida court has yet to require that lawyers render *pro bono* assistance, it approved the commission's recommendations: consequently, attorneys should now perform at least twenty hours of *pro bono* legal aid annually, with their compliance monitored (rather than enforced) by the chief judge of each circuit court. *Id.* at 867-68. Although this is a voluntary program, there is one mandatory feature. Lawyers must report to The Florida Bar every year whether or not they have complied. *Id.* at 867.
Inns can institute a uniform process for obtaining continuing legal education credit from The Florida Bar for their members?

Similar councils have also been organized in California, in New Jersey, and in the Washington, D.C metropolitan area.

THE INNS' COMMITMENT TO HIGHER ETHICAL STANDARDS

"I do not think it too strong a point to say that we are engaging in a 'quiet crusade' — a crusade literally to save our profession, or as much of it as we can."

Dean Howard T. Markey, John Marshall School of Law Chair, American Inns of Court Foundation, formerly Chief Judge U.S. Court of Appeals, Federal Circuit

Not only is the Inn concept committed to improving advocacy skills, it is dedicated to heightening ethical standards in all segments of the legal profession. The pupillage demonstrations often lead to heated debate on questions of ethics. Many of the demonstrations focus solely on issues involving the ethical practice of law. The programs remind experienced attorneys of, and enlighten new practitioners about the need for professionalism; they inculcate an ethical awareness. They instill in many the determination to live up to the standards expected by the judiciary, a strong sense of duty as an officer of the court, and an appreciation of the fact that each alone is responsible for the actions he or she takes, no matter whether a partner instructs him or her to pursue a specific course of action, or a client requests that he or she do so.

The Inn concept is not without its critics. The chief complaint of the participants appears to be that the pupil tenure is too abbreviated. Some argue that extending membership would not only increase pupils' educational opportunities, but would also promote continuity, and that pupils need two years to understand the philosophy of the Inn concept and to become comfortable enough to begin communicating actively.

Of course, the barristers also complain that their three-year memberships are insufficient, primarily on the grounds that longer terms would augment their instruction, as well.

99 As the American Bar Association Commission on Professionalism has pointed out: [T]he sensitizing of law students about ethical issues is not only the responsibility of law schools. Often, law students' first exposure to the world of practicing lawyers comes when they clerk for law firms at the end of their first year in law school and thereafter. If what they see in these firms is inconsistent with the ideals taught in law school, the best academic effort may be for naught. The education process is an "ongoing" one for which all segments of the profession, not just the law schools, must take responsibility.

COMMISSION ON PROFESSIONALISM, supra note 12, at 19.
It would seem that nothing short of permanent membership will be completely satisfactory to both barristers and pupils. The drawback, of course, is that such expansion of those terms would decrease the number of opportunities available to prospective members. It is for this reason that the number of Inns across the country is expanding on an exponential basis; when “there’s no room at the Inn,” all it takes is a few committed trial attorneys, law professors, and judges to establish another.

THE INVOLVEMENT OF LAW SCHOOLS

One of the most successful means of organizing an Inn of Court is through the auspices of local law schools. Just under half of the existing Inns are affiliated with law schools, which supply law student pupils, and, quite often, both materials and a meeting place, as well. And although most Inns are established by masters (including judges and professors), one Inn was organized initially wholly by law students.60

The interest of those law schools already associated with Inns is obvious: one of the keys to the Inn concept is the opportunity to provide the infant trial lawyer and the graduating law school senior with a role model after whom to pattern his or her own conduct in practice. By encouraging their students’ involvement in the Inns of Court, the school affords them the opportunity to interact with practicing lawyers who can be mentors to them, as well as to assimilate, integrate, and employ ethical concepts in practice early in their professional lives. And this goal is one of the most crucial to the law teaching profession today.61

Just over half of American law schools, ninety-five, are currently associated with Inns, several with more than one. For example, Georgetown University Law Center places its senior law students in six different Inns of Court in the District of Columbia; George Washington University National Law Center sponsors student memberships in another three D.C. area Inns; and Stetson University College of Law is affiliated with the Franklin Inn of Court in Columbus, Ohio is affiliated with Capital University Law & Graduate Center. 

60 See LaMothe, supra note 31, at 1. Obviously, if so important to the practicing bar, then providing mentors should be equally, if not more important to law teachers. And it is. See MACCRATE REPORT, supra note 13. By supporting the institution and administration of American Inns of Court, law teachers aid in the re-establishment of a tradition of mentoring, rather than leaving it to the law firms and the bar associations, as some have recommended. See, e.g., Maute, supra note 1, at 817-18. Professor Maute advocates:

Law firms should re-embrace the tradition of mentoring by senior lawyers who help socialize junior lawyers into the profession and teach them what constitutes competent ethical practice. Rather than leaving the mentoring match to chance, which often left untended women and minorities, firms should institutionalize mentor programs with deliberate attention to the values, work habits and skills that are taught.

61 Id. While there can be no doubt that this advice is apt, law schools should do more than simply exhort the organization of mentoring programs. “[W]e need to participate in fulfilling the professional duty to society.” Vickrey, supra note 7, at 828. We should be involved in mentoring, as well, in the only way possible, through the American Inns of Court.
eight separate Inns in the Tampa Bay area, in Florida. Shouldn't the law school at which you teach be involved in this mushrooming crusade? Shouldn't the law school at which you teach organize an Inn? You can obtain information on organizing and chartering an American Inn of Court from:

The American Inn of Court Foundation
127 South Peyton Street
Suite 201
Alexandria, VA 22314
(703) 684-3590.