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# LEARNING OUTSIDE THE FIRE: THE NEED FOR CIVILITY INSTRUCTION IN LAW SCHOOL

RAYMOND M. RIPPLE\*

## INTRODUCTION

The two decade-old debate over the American lawyer's uncivil behavior has culminated into a virtual firestorm of concern as the Twentieth Century comes to a close.<sup>1</sup> The topic has resulted in near countless speeches by judges, standards promulgated by jurisdictions and bar associations, as well as law review articles on the effects of lawyer incivility on the legal profession. The concern has not been without good reason. The general public always has had a slightly negative opinion of American lawyers. Hostility towards lawyers from those outside the profession is probably in part due to misunderstandings regarding our adversarial system of justice, and in part out of well-publicized acts of improper conduct by lawyers themselves. However, the recent concern over lawyer incivility is most troubling to members of the legal profession because members of their own profession are now suffering from its effects.

Civility is the act of treating other people with courtesy, dignity, and kindness. The lack of civility among lawyers is beginning to take its toll on the profession. Statistics reveal that many lawyers are pessimistic about the practice of law,<sup>2</sup> with many members of the American bar leaving the legal profession in greater numbers than ever before.<sup>3</sup> In order to combat incivility, members of the legal profession are attempting to raise an aware-

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1. Although civility has always been a concern in the legal profession, the modern concern over lawyer incivility can probably be attributed to the work of Chief Justice Warren E. Burger beginning in the early 1970s. See Warren E. Burger, C.J., *The Necessity for Civility*, 52 F.R.D. 211 (1971).

2. See Paula A. Franzese, *To Be The Change: Finding Higher Ground In The Law*, 50 ME. L. REV. 11, 13 (1998) (citing numerous articles discussing lawyers' disenchantment with their colleagues and profession).

3. See *id.* See generally Patrick J. Schiltz, *On Being A Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999) (giving a detailed description and reasoning for lawyer unhappiness in the United States).

ness to the problem of incivility and its effects on the practice of law.

A component of the civility problem is that many members of the legal profession are often confused as to what the term "civility" actually means. Civility is often confused with other terms such as ethics and professionalism,<sup>4</sup> yet the three terms are analytically distinct. Even though many lawyers might think they are acting civilly, it is often the case that the lawyer is only acting ethically. So how do we solve the confusion over what civility actually entails? This Note will later argue that in order to better define the term civility, and in turn solve the problem of incivility in the legal profession, those entities which address the problem of incivility should demand that the terms professionalism, ethics, and civility be regarded as functionally integrated.<sup>5</sup> The concepts must not just exist; they must coexist in order for civility to be attained.

The legal community already has initiated extensive efforts to battle the problem of incivility in the legal profession. Various jurisdictions have promulgated mandatory civility rules,<sup>6</sup> while others have adopted suggested measures for its practicing attorneys.<sup>7</sup> Bar associations have begun civility instruction through their continuing education classes, and some members of the civility movement believe that employers should provide civility instruction.

This Note will argue that the incivility fire raging in the American legal community would be most effectively extinguished from the outside. Just as a local community would cringe at the idea of sending an untrained firefighter to douse a raging house fire, the legal community should cringe at the idea of sending a budding lawyer, without the proper instruction from his law school, into a profession ablaze with uncivil behavior.

Part I of this Note will provide an overview of how the problem of incivility has negatively affected the legal profession. More specifically, it will address the ways lawyer incivility has impacted civil and criminal litigation, as well as the effects of inci-

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4. See Robert C. Josefsberg, *The Topic is Civility: You Got a Problem With That?*, 59 OR. ST. B. BULL. 19 (1999).

5. See *infra* Part III.C.

6. See, e.g., *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 287-88 (N.D. Tex. 1988) (en banc).

7. See, e.g., Boston Bar Ass'n Civility Standards for Civility Litigation, 38 BOSTON B. J. 11 (Sept./Oct. 1994); Aspirational Statement on Professionalism, Rules and Regulations for the Organization and Government of the State Bar of Georgia, GA. CT. R. & P. (West 1997).

vility on gender relations among lawyers of the practicing bar. Part II will discuss the various efforts the legal community has employed to attack the civility problem outside the law school. Part III will critique some of the present attempts law schools are undertaking to address the fire of lawyer incivility. Next, it will suggest an emphasis on civility in law school that not only adequately prepares rising lawyers for the fire of incivility present in the profession, but also provides them with the tool of confidence to tame the flames.

## I. THE IMPACT OF LAWYER INCIVILITY ON THE LEGAL PROFESSION

One of the reasons that lawyer incivility is such a hot topic on the lecture circuits and in law journals stems from the fact that the firestorm of incivility has at least partially engulfed every area of the legal profession. Before even attempting to address the methods the legal profession already utilizes in order to fight lawyer incivility, this Note must first provide an overview of the areas of the legal profession where the incivility fire is strongest.

### A. *Civil Litigation*

Perhaps no area of the legal profession is affected as negatively by the recent fire of incivility as that of civil litigation. Modern lawyers seem to be plagued by conflicting notions of what it actually means to be a zealous advocate within our adversary system of justice. On the one hand, litigators are trained and often encouraged to be aggressive advocates for their clients,<sup>8</sup> and on the other hand those same lawyers must abide by discovery rules governed by notions of disclosure and the release of potentially damaging information. While many lawyers are able to place their adversarial roles within proper limits, often lawyers in civil litigation simply do not have a good understanding of the type of conduct that crosses the line from aggressive advocacy to uncivil behavior.<sup>9</sup> The discovery process and lawyer rhetoric are two of the primary areas in civil litigation in which this role of the zealous advocate has evolved into uncivil behavior for some lawyers.

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8. See Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 *FORDHAM L. REV.* 809, 819 (1998).

9. See *id.* at 821 (“[P]artners believe that associates sometimes go too far in the direction of aggressiveness early in their careers; associates, some partners suggest, tend to think of the other side as ‘the enemy.’”).

## 1. The Discovery Process

Discovery in civil litigation, especially that controlled by the Federal Rules of Civil Procedure, rests on a theme of broad, full disclosure.<sup>10</sup> The process rests on the notion that if both parties are obliged to turn over their important information before trial, the parties will be in a better position to negotiate and hopefully settle the case. However, this theme of open discovery results in adversarial encounters between attorneys and their clients in the absence of judicial supervision. In recent years, attorneys have expressed concern and frustration over the increasing amount of uncivil behavior that occurs between opposing counsel during these encounters.<sup>11</sup> The aspect of discovery fostering the most incivility between opposing counsel is the deposition. The remaining uncivil behavior in discovery derives from misrepresentations by lawyers such as not responding to document requests, not returning phone calls, and scheduling discovery conferences so as to frustrate the other party.

The purpose of the deposition in the discovery process is to permit a party to obtain facts and information from the opposing side. The use of depositions can be "the most powerful and productive device available during discovery,"<sup>12</sup> but uncivil behavior can erode their effectiveness. In fact, incivility is such a problem at depositions in some jurisdictions that many courts are using any remedy available to them, even civility codes, to punish uncivil attorneys.<sup>13</sup> The federal appellate courts have expressed great distaste and concern over this recent trend in lawyer conduct.<sup>14</sup> The Seventh Circuit organized a Committee on Civility, which compiled survey responses of over 1,500 lawyers and judges within its jurisdiction. The committee found that out of the attorneys who perceived civility to be a problem, ninety-four percent viewed depositions and the discovery process as the cata-

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10. See FED. R. CIV. P. 26.

11. See Paul V. Niemeyer, *Here We Go Again: Are the Federal Discovery Rules Really in Need of Amendment?*, 39 B.C. L. REV. 517, 522 (1998) (citing a study by the Federal Judicial Center which noted that one of the principal changes lawyers desired in the Federal Rules was the adoption of a code of civility).

12. A. Darby Dickerson, *The Law and Ethics of Civil Depositions*, 57 MD. L. REV. 273, 277 (1998).

13. See *Dondi Properties*, 121 F.R.D. at 284 (giving force to civility rules as methods of punishment for uncivil behavior by lawyers practicing within their district).

14. See Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit (1992), *reprinted in* 143 F.R.D. 441 (1992) [hereinafter Final Report]; Federal Bar Council Comm. on Second Circuit Courts, *A Report on the Conduct of Depositions*, 131 F.R.D. 613 (1990).

lyst for such incivility.<sup>15</sup> The states have also taken an interest in the incivility that occurs during depositions. For example, Texas recently adopted amendments to its Rules of Civil Procedure that are in part designed to curtail abuses during depositions.<sup>16</sup> By placing constraints on the length of depositions and the conduct of attorneys present at the depositions, the rules are designed to create an environment where uncivil behavior is less likely to arise.<sup>17</sup>

The fire of incivility in the discovery process is not limited to depositions. It is not uncommon for documents to be withheld and for candid interrogatory answers to be consciously avoided.<sup>18</sup> One lawyer commented, “[t]he norm is that one generally responds as narrowly as possible. You keep stonewalling and reply as narrowly as possible. You don’t volunteer anything in the hope that they’ll wear down.”<sup>19</sup> Incivility also occurs in more devious ways. In *Chevron Chemical Co. v. Deloitte & Touche*,<sup>20</sup> the Supreme Court of Wisconsin sanctioned Deloitte’s attorneys for obstructing discovery, misinforming opposing counsel about the availability of a witness, referring to imaginary evidence, and leveling unfounded accusations. In making its ruling, the court cited the Seventh Circuit’s Interim Report on Civility. “There is a perception both inside and outside the legal community that civility, candor, and professionalism are on the decline . . . and that . . . scorched-earth tactics are on the rise.”<sup>21</sup> Members of the bar also complain of incivility problems that are more basic than those faced by the Supreme Court of Wisconsin in *Chevron*. Attorneys are becoming increasingly frustrated over their colleagues’ lack of manners. Misconduct such as “scheduling discovery without consulting the other attorney, or canceling discovery at the last moment”<sup>22</sup> has become far too common an occurrence according to many members of the bar.

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15. See Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit (1992), reprinted in 143 F.R.D. 371, 378 (1992) [hereinafter Interim Report].

16. See TEX. R. CIV. P. 186-215. See also Alyson Nelson, Comments, *Deposition Conduct: Texas’s New Discovery Rules End Up Taking Another Jab at the Rambos of Litigation*, 30 TEX. TECH L. REV. 1471, 1473 (1999) (arguing that although the new rules were not created solely to curtail uncivil behavior, their promulgation will actually meet that goal along with its other intentions).

17. See Nelson, *supra* note 16, at 1493-94.

18. See Sarat, *supra* note 8, at 822.

19. *Id.*

20. 501 N.W.2d 15 (Wis. 1993).

21. *Id.* at 19-20.

22. Hon. Duane Benton, *Chief Justice’s Address to Members of the Missouri Bar*, 54 J. MO. B. 302 (1998).

## 2. Lawyer Rhetoric and Adversarial Excess

At the heart of civil litigation is the litigator's ability to use rhetoric and language as a means to effectuate and participate in dispute resolution. Lawyer rhetoric, as defined by this Note, is the language and communication lawyers use to advocate and persuade their client's position to the court and opposing parties. When used appropriately, rhetoric assists lawyers in their roles as advocates by enhancing the persuasiveness of their arguments.<sup>23</sup> However, in recent years the role of lawyer rhetoric in civil proceedings has been singed with the fires of incivility. The use of abusive rhetoric within the legal profession is occurring at an increasing rate,<sup>24</sup> with many lawyers using the adversarial system as an excuse to overreach and make personal attacks. *Ad hominem* attacks have infiltrated essentially every area of civil litigation, with both oral and written advocacy experiencing an increase in adversarial excess over the past few years. Additionally, the individuals personally involved in *ad hominem* attacks now include virtually every type of legal professional.<sup>25</sup>

The rise in abusive rhetoric and adversarial excess in civil litigation is best symbolized by the frequent use of the term "Rambo Litigator."<sup>26</sup> A "Rambo Litigator" extends the boundaries of adversarial representation and employs abusive tactics in order to achieve his goals. This "need to fight about everything" attitude towards litigation is turning lawyers on each other in the courtroom, and resulting in a lack of civility among the practicing bar.<sup>27</sup> The abuse of oral advocacy has not gone unnoticed by members of the profession.<sup>28</sup> In *Dondi Properties Corp. v. Commerce*

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23. See generally Joseph Tomain, *Symposium: The Art of Rhetoric*, 67 U. CIN. L. REV. 669 (1999) (introducing a symposium on lawyer rhetoric that debated the role of rhetoric in the legal profession).

24. See Lydia P. Arnold, *Ad Hominem Attacks: Possible Solutions for a Growing Problem*, 8 GEO. J. LEGAL ETHICS 1075 (1995).

25. The attacks are affecting the lawyer's relations with judges, as well as other lawyers. See Interim Report, *supra* note 15, at 379 (reporting that 56% of judges surveyed mark relations among judges and attorneys as a problem source).

26. The term "Rambo Litigator" is made in reference to John Rambo, a movie hero played by Sylvester Stallone, who is willing to fight and act outside the law to achieve "justice" or his end goals. The references are numerous. A simple keyword search on Westlaw using "Rambo" produces over 400 documents. For a sampling, see, for example, Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 HOFSTRA L. REV. 561, 562 (1996); Craig Enoch, *Incivility in the Legal System? Maybe it's the Rules*, 47 SMU L. REV. 199, 203 (1994).

27. See Interim Report, *supra* note 15, at 390.

28. See *id.*

*Savings & Loan Association*,<sup>29</sup> judges of the United States District Court for the Northern District of Texas became so frustrated with the use of abusive tactics in their courtrooms that, sitting en banc, they created a code of civility for all litigators appearing in their district: "Those litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with the practices we expect of them."<sup>30</sup> Their code of civility has been followed in subsequent cases in the Northern District of Texas,<sup>31</sup> and has inspired other jurisdictions facing similar problems of incivility.<sup>32</sup>

The effects of incivility on civil litigation have not been limited only to oral advocacy, but have been noticed in written discourse as well.<sup>33</sup> Although often less publicized, incivility in legal writing has just as damaging an effect on the legal profession as its oral counterpart. Briefs and memos to the courts often contain hyperbole and register accusations against other counsel within their substantive arguments.<sup>34</sup> Also, judges commonly complain of misleading and less than truthful statements by attorneys in their written work submitted to the courts.<sup>35</sup> For example, at the Judicial Conference of the Second Judicial Circuit of the United States, part of the colloquy turned to the often ill-prepared briefs that arrive on the desks in their chambers. One judge commented:

I thought that I was being maybe officious, maybe being cantankerous when I had the sense that lawyers were not really fully and adequately prepared, didn't brief carefully and meticulously or maybe a little bit sloppy in citing cases for propositions that they just simply didn't stand for until I universally got from my law clerks the observations that they are appalled at some of the things that come in . . .

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29. 121 F.R.D. 284 (N.D. Tex. 1988).

30. *Id.* at 288.

31. *See, e.g.,* *Lelsz v. Kavanagh*, 137 F.R.D. 646 (N.D. Tex. 1991); *Springs Industries v. American Motorists Ins.*, 137 F.R.D. 238, 239 (N.D. Tex. 1991).

32. At least thirty-six state bar associations and supreme courts and sixty-nine local bar associations have adopted similar creeds or codes as compared to thirteen federal district courts and one federal circuit court. *See* Final Report, *supra* note 14.

33. *See* Kenneth F. Ripple, *Legal Writing in the New Millennium: Lessons from a Special Teacher and a Special Classroom*, 74 NOTRE DAME L. REV. 925, 930 (1999).

34. *See id.*; Bartlett H. McGuire, *Reflections of a Recovering Litigator: Adversarial Excess in Civil Proceedings*, 164 F.R.D. 283, 284-85 (1996).

35. *See* McGuire, *supra* note 34, at 284.



the great bulk of the material that's submitted. It's no help.<sup>36</sup>

Other judges and legal professionals at the conference agreed that adversarial excess of this nature is harming the atmosphere and productivity of their courts as well.<sup>37</sup>

### B. *Criminal Litigation*

Although the predominant effects of incivility have been registered in civil practice,<sup>38</sup> the impact of lawyer incivility on criminal litigation is also noteworthy. In the past few years there has been increased discussion about the deterioration in relations between the prosecution and defense counsel. Defense lawyers claim that prosecutors are "declaring war" on them by "seeking forfeiture of attorneys' fees, searching attorneys' offices, attempting to disqualify counsel, and even targeting and prosecuting defense lawyers."<sup>39</sup> In a speech on the decline of professionalism, former Chief Justice Warren E. Burger noted his frustration with what he called prosecutors "trying their cases" to television and newspaper reporters.<sup>40</sup> Incivility is also present on the other side of the criminal justice bar. Prosecutors are frustrated with the frequent allegations of serious ethical misconduct made against them by defense lawyers and are fearful the allegations have become a common part of the defense's approach to criminal litigation.<sup>41</sup> This breakdown of civility threatens to cause institutional damage to the criminal justice system and to the broader legal system.

### C. *Gender Incivility*

The fires of incivility not only burn brightest in certain areas of the law, but also tend to affect specific classes of lawyers in their daily practice more than others. The treatment of women lawyers in the United States has made tremendous advancements

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36. Judicial Conference of the Second Judicial Circuit of the United States, 160 F.R.D. 287, 330 (1994) (comments of Judge Dorsey).

37. See generally *id.*

38. Forty-eight percent of lawyers surveyed say incivility is most prevalent among civil practitioners, but only three percent say it is most prevalent among criminal lawyers. See Interim Report, *supra* note 15, at 380.

39. Vincent J. Marella, *End the War Between Prosecution and Defense*, CRIM. JUST., Summer 1995, at 34, 34.

40. See Chief Justice Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 952 (1995).

41. See Marella, *supra* note 39, at 34.

in the past 100 years.<sup>42</sup> However, despite the strides women have made in the modern workplace, there are still significant instances of gender bias towards women within the legal profession. As a result of these gender biases, women are often more likely to suffer from uncivil conduct by practicing attorneys than their male counterparts. Gender incivility, as considered by this Note, is less concerned with conduct considered to be sexual harassment, but more concerned with the everyday respect and professional behavior that members of the legal profession should demand of each other.

Although some incivility towards women is still present in the formal setting of the courtroom, the majority of gender-based incivility has receded "underground."<sup>43</sup> The informal settings of pretrial and chambers conferences, as well as passing interactions with other lawyers and colleagues, are breeding grounds for uncivil behavior.<sup>44</sup> Female lawyers often complain of comments by judges and opposing lawyers that are professionally and personally disparaging.<sup>45</sup> The use of first names, references to female attorneys by terms of endearment such as "honey," "sweetie," and "dear," as well as sexist remarks are examples.<sup>46</sup> Indeed, many of the comments are even more serious. One female attorney reported that a judge told her that she did not need to work because she could find a nice young doctor to marry.<sup>47</sup> Other female attorneys complain of male lawyers ridiculing them in front of their clients because they are female.<sup>48</sup> Regardless of the type of improper conduct, the incivility has a negative impact on the credibility of an equality-based legal system.

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42. In 1872, the Supreme Court of the United States ruled that a woman was not constitutionally entitled to practice law. See *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) ("The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life . . .").

43. Hon. Dorothy W. Nelson, *Introduction to the Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 731, 733 (1994).

44. According to the 1993 Final Report of the 9th Circuit Gender Bias Task Force, the incivility most often experienced by female practitioners occurred during informal meetings with opposing counsel. See Mary-Christine Sungaila, *Combating Bias Inside & Outside the Courtroom*, 5 PERSPECTIVES 12 (Summer 1996).

45. See Nelson, *supra* note 43, at 733.

46. See *id.*

47. See *A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts*, 72 N.D. L. REV. 1113, 1155 (1996).

48. See *id.*

Like other types of lawyer incivility, gender incivility has not gone unnoticed by members of the legal profession. Many court systems have created gender bias task forces to investigate gender incivility. Since New Jersey released the first report on gender bias in the legal profession in 1984, over forty state and federal court systems have reached the conclusion that gender incivility is a problem in the American judicial system.<sup>49</sup> The courts tend to agree that the unique problem with gender-biased incivility is that it damages the female's credibility as a lawyer and an advocate.<sup>50</sup>

## II. HOW THE PROFESSION HAS ALREADY BEGUN TO ADDRESS THE FIRE OF INCIVILITY

As has been mentioned when summarizing the areas of modern law practice that have been hit the hardest by incivility, the legal profession has noticed the behavioral trend of lawyer incivility. If one thing is certain in the fight against lawyer incivility, it is that the good majority of lawyers do not want their profession to be characterized by uncivil behavior.<sup>51</sup> As a result, courts and the practicing bar have increased their efforts over the past decade to address effectively the fire of lawyer incivility. But as is the case with many areas worthy of discussion in the legal profession, not all of those concerned with lawyer incivility agree on the same solution. The suggested remedies for lawyer incivility often depend on the type of legal professional solicited for answers. Members of the bench, senior members of the bar, younger members of the bar, and law students tend to provide and support different methods for extinguishing uncivil behavior among their colleagues. A summary of the professions' present efforts at change will illuminate their strengths and weaknesses, and in turn, lend credence to the law school's role as an enforcer of civility within the legal profession.

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49. See Marsha S. Stern, *Courting Justice: Addressing Gender Bias in the Judicial System*, ANN. SURV. AM. L. 1, 2-3 (1996). But see Deborah Graham, *Joining the Bias Battle*, 5 PERSPECTIVES 14 (Summer 1996) (noting that some federal judges disagreed with their Task Force Report and its methodology).

50. In making this finding, courts did not refute the psychological, social, and economic harms which incivility also causes, but focused more on the professional repercussions. See *id.* at 21.

51. The overwhelming majority of lawyers surveyed in civility studies are in favor of eradicating incivility at its source. What the best method is for change is another question. See, e.g., Interim Report, *supra* note 15.

### A. Civility Codes of Conduct

The movement towards civility codes in the legal profession evolved out of dissatisfaction with the ABA's Model Rules of Professional Conduct.<sup>52</sup> Although the Model Rules provided minimum enforceable ethical standards for lawyers, the Rules failed to provide what lawyers "ought to do." In other words, the Model Rules were not seen as aspirational in nature. As the decline in professional civility escalated within the legal community, committees on civility and professionalism gathered to determine what could be done to alleviate this problem. The ABA responded in 1986 by declaring that American lawyers should "'abide by higher standards.'"<sup>53</sup> Over the next few years, courts and bar associations took the ABA's declaration as a reason to investigate lawyer incivility within their jurisdictions. Their investigations resulted in aspirational civility codes for lawyers to abide while practicing in their midst.

The Committee on Civility of the Seventh Federal Judicial Circuit produced the most influential civility code. The Committee was formed in the fall of 1989 after Chief Judge William J. Bauer of the Court of Appeals for the Seventh Circuit expressed concern over the rise in uncivil behavior within the Seventh Circuit.<sup>54</sup> The goals of the Committee were first to determine if a civility problem did in fact exist, and if so, then to "recommend possible remedies."<sup>55</sup> The Committee conducted empirical research via a four-page survey that was distributed to federal judges within the Seventh Circuit, as well as to more than 1,500 lawyers practicing in Wisconsin, Illinois, and Indiana.<sup>56</sup> It was the first committee to make a Circuit-wide civility inquiry of such a nature.<sup>57</sup> The Committee produced two reports, an Interim Report and a Final Report, which conveyed the Committee's findings to the Chief Judge. The reports revealed "widespread dissatisfaction among judges and lawyers at the gradual changing of the practice of law from an occupation characterized by congenial professional relationships to one of abrasive confrontations."<sup>58</sup> The Committee concluded by making some final

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52. See Brenda Smith, Comment, *Civility Codes: The Newest Weapons in the 'Civil' War Over Proper Attorney Conduct Regulations Miss Their Mark*, 24 U. DAYTON L. REV. 151, 157-59 (1998) (detailing the movement towards civility codes).

53. *Id.* at 158 (quoting Professionalism Comm'n, Report to Board of Governors and House of Delegates of the ABA, 112 F.R.D. 243, 247 (1986)).

54. See Interim Report, *supra* note 15, at 374.

55. *Id.*

56. See *id.*

57. See *id.* at 375.

58. *Id.*

recommendations that included proposed standards of professional conduct for lawyers practicing within the Seventh Circuit.<sup>59</sup>

The Seventh Circuit's civility code acted as a precedent for other jurisdictions and bar associations that subsequently developed civility codes of their own. The standards developed by the Seventh Circuit are significant because they mark the first time that judges and lawyers came to a common understanding of how they should treat each other.<sup>60</sup> The hope is that the new standards will be passed along from generation to generation of attorneys who will promise to abide by the codes when they are sworn in to the bar. In short, the civility codes would provide supplemental guidelines regarding how lawyers should behave in their interactions with each other that are not covered in pre-existing ethical and professional rules. Yet, despite the role of civility codes in the fight against lawyer incivility, the practicing bar has not wholeheartedly accepted the codes. The concerns of lawyers and legal scholars over civility codes appear to lie in two distinct areas: enforcement and effectiveness.

Civility codes were originally intended to be aspirational in nature. They were recommendations of the type of behavior that is appropriate in lawyers' interactions with other legal professionals. "Adherence to the Standards by the bench and the bar would be voluntary . . . . [A] breach of the standards could not be used as a basis for litigation or for sanctions or penalties."<sup>61</sup> This approach, aspirational in focus, was intended because civility studies revealed that lawyers saw the creation of more penalties and sanctions as counterproductive in the search for civility.<sup>62</sup> However, despite the aspirational intentions of the civility movement, critics of civility codes are quick to point out that the courts have steadily utilized the codes as a means to punish uncivil behavior.<sup>63</sup> The Seventh Circuit,<sup>64</sup> other federal courts,<sup>65</sup> and some state courts<sup>66</sup> have employed both the Seventh Circuit Civility Standards and their own respective civility

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59. See *id.* at 377.

60. See Hon. Marvin E. Aspen, *A Response to the Civility Naysayers*, 28 STETSON L. REV. 253, 256 (1998).

61. Interim Report, *supra* note 15, at 415.

62. See *id.*

63. See Smith, *supra* note 52, at 170-71.

64. See, e.g., *In re Maurice*, 69 F.3d 830, 832 (7th Cir. 1995).

65. See, e.g., *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n.*, 121 F.R.D. 284 (N.D. Tex. 1988); *Lelsz v. Kavanagh*, 137 F.R.D. 646 (N.D. Tex. 1991); *FDIC v. Cheng*, 832 F. Supp. 181 (N.D. Tex. 1993); *Horner v. Rowan Cos., Inc.*, 153 F.R.D. 597, 603 (S.D. Tex. 1994); *McLeod, Alexander, Powell & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1486-87 (5th Cir. 1990).

codes in order to enforce civil behavior among the attorneys practicing in front of them. Critics of civility codes are concerned with the enforcement of aspirational, voluntary civility codes because of the confusion that arises when a civility code and an already preexisting ethical or procedural rule overlap.<sup>67</sup> As civility codes develop, they may have different requirements than those for ethical rules. Are attorneys expected to abide by the ethical rule or the aspirational, but enforceable, civility code?

Critics of civility codes also find their effectiveness to be problematic.<sup>68</sup> If the codes are intended to be educational in nature, their success most likely relies on the practicing bar's receptiveness to their teaching. Normally, one might expect legal minds to be open to the reception of new knowledge, but the civility codes face a unique difficulty in teaching the practicing bar about the benefits of civility. The difficulty is rooted in the nature of uncivil behavior—that the incivility fire seems to be sparked and spread by behavioral peer pressure. Simply, uncivil behavior tends to breed more uncivil behavior. Lawyers who are unreceptive to the civility standards will continue to influence and produce incivility in other members of the bar. In order to be effective, the civility codes would thus have to fulfill two difficult tasks: (1) change the behavior of the elder lawyers of the bar who create the work environments in which other, younger lawyers practice, and (2) convince the younger lawyers already practicing law that the incivility of their mentor elders is unproductive.<sup>69</sup> These tasks do not comfort those who are pessimistic about the effectiveness of civility codes.

### B. *The American Inns of Court*

Members of the legal profession have also addressed lawyer incivility by adopting an American version of the traditional English apprenticeship system.<sup>70</sup> The American Inns of Court developed in the late 1970s while the United States and England

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66. See, e.g., *Chevron Chem. Co. v. Deloitte & Touche*, 501 N.W.2d 15 (Wis. 1993); *Warrilow v. Norrell*, 791 S.W.2d 515, 531 n.3 (Tex. Ct. App. 1989); *Florida Bar v. Poplack*, 599 So. 2d 116, 118-19 (Fla. 1992).

67. See Smith, *supra* note 52, at 174.

68. See Mark Neal Aaronson, *Be Just to One Another: Preliminary Thoughts on Civility, Moral Character, and Professionalism*, 8 ST. THOMAS L. REV. 113, 114 (1995).

69. See *id.* at 116 (describing how practicing attorneys tend to yield "far more readily to pressures from clients, finances and time than to exhortations to be respectful").

70. The American Inns of Court Foundation provides a detailed description of its activities and purpose on its official web site. See *The American Inns of Court*, available at <http://www.innsofcourt.org>.

were participating in the Anglo-American exchange of lawyers and judges.<sup>71</sup> The idea was to bring legal professionals together in order to foster higher ideals of ethics, civility, and professionalism among local bars. In 1980, a pilot Inn program was founded in Salt Lake City/Provo, Utah. Now, nearly twenty years later, the American Inns of Court Foundation consists of more than 300 Inns made up of 20,000 members in 49 states and the District of Columbia.<sup>72</sup>

Membership within the American Inns is composed of four categories: Masters of the Bench, which consists of judges, experienced lawyers, and law professors; Barristers, which consists of lawyers with some experience but who do not meet the minimum requirements for Masters of the Bench; Associates, which consists of lawyers who do not meet the minimum requirement for Barristers; and Pupils, which consists of third-year law students.<sup>73</sup> The membership is divided into "pupillage teams" for each Inn, with each team consisting of members from each category.<sup>74</sup> The organization pattern allows older, more experienced attorneys and judges to mentor the younger attorneys on issues such as civility. After three years of academic study in law school, most law school graduates still feel unprepared for the practice of law. The mission of the American Inns is to help imprint a sense of civility and professionalism upon new members of the bar.<sup>75</sup>

The American Inns of Court certainly play a vital role in the civility movement. The opportunity for young members of the profession to learn and be influenced by learned members is an invaluable one. Nevertheless, despite their value as a staunch proponent of the civility movement, the Inns do have some limitations. Like aspirational civility codes, the Inns' success as a solution for the civility movement depends on how receptive attorneys are to the idea. Also, those who decide to spend their free time as a member of an Inn are most likely the same attorneys who would have acted as civil members of the legal profession anyway. Thus, the Inns are likely to do little to affect the uncivil behavior of the "Rambo Litigator."

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71. *See id.*

72. *See* Grace Wilson, *Inns Aim to Teach*, 67 J. KAN. B. ASS'N. 14 (1998).

73. *See supra* notes 70-71, and the accompanying web site.

74. *See id.*

75. The Inns' dedication to civility is clearly set forth in one of the goals of their mission statement. "To shape a culture of excellence in American jurisprudence by promoting a national commitment to civility, ethics, advocacy skills . . . and by transmitting these values from one generation to the next." *Id.*

### C. *Law Firm Mentoring*

Members of the legal profession have also encouraged law firms to play a vital role in the civility movement by promoting civility through their own mentoring and training programs. In fact, the Seventh Circuit reported in its Interim Report that the second preference for change among those surveyed was law firm training programs.<sup>76</sup> If law firms were to contribute to the solution of lawyer incivility, there is no doubt that their efforts would be effective. However, expecting law firms to be the catalyst for change in the civility movement would likely be as effective an answer as expecting kindling to extinguish a fire.

The lack of training and mentoring of associates is blamed for a significant portion of the lawyer incivility and unhappiness that exists in the legal profession.<sup>77</sup> The increasingly high demands placed on partners and senior members of America's law firms have affected negatively the law firm's role as educator and mentor of its associates. Elder members of the profession, or a firm, are less available to mentor and train younger lawyers because of their own pressures to bill long hours and produce clients. The result is that young associates are now often expected to produce work product and results with little, if any, guidance. The words of a young associate express a common sentiment among new lawyers: "[T]he amount of responsibility that I was expected to undertake without the necessary mentoring to make me an effective litigator was completely disproportionate . . . ."<sup>78</sup> It is these high demands, placed on both partners and associates, that is partly to blame for the rise in lawyer incivility. Senior lawyers are uncivil because of the tremendous pressure placed upon them to create revenues, and junior lawyers are uncivil because of the pressures placed upon them to produce billable hours without the requisite knowledge and guidance.

Why would the legal profession want to entrust extinguishing the fire of incivility to this type of an environment? Maybe because the legal profession was not always this way. Before the age of mega-firms, lawyers not only had the opportunity, but they

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76. See Interim Report, *supra* note 15, at 412 (noting that "the inclusion of civility education in public and private law firms' training programs is highly desirable") (emphasis added).

77. Mentoring in law firms, especially large law firms, is extremely low and when existent often inadequately meets the needs of young lawyers. See Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, The Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 744-45 (1998).

78. Debra Baker, *Cash-and-Carry Associates*, A.B.A. J., May 1999, at 40, 41.



had the desire to train new members of their profession.<sup>79</sup> However, with the modern pressures of practicing law facing today's law firms, entrusting them with the responsibility to extinguish lawyer incivility does not seem to be the most sensible option.

### III. THE ROLE OF THE LAW SCHOOL

Law school is the budding lawyer's introduction to the legal profession. As described by Robert MacCrate in his report to the ABA entitled *Legal Education and Professional Development*, law school truly is a "unifying experience" for future lawyers.<sup>80</sup> As the introduction to the legal profession, the law school has the unique role of forming skills and behavior patterns in students at a point when future lawyers are highly impressionable.<sup>81</sup> It is a role that has the responsibility of conveying both substantive legal knowledge, as well as the practical legal skills needed by the student in order to employ this knowledge. This is not a simple task. As the legal profession becomes more specialized and continues to grow as a practicing bar, the law school's role as an educator must evolve as well. Despite this difficulty, law schools need to embrace this role, and in many instances have felt compelled to rise to the challenge.<sup>82</sup> This Note argues that the legal profession needs law schools to rise to yet another challenge—the spread of lawyer civility.

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79. Legal education was once entrusted to practicing lawyers via apprenticeship programs. Now that the practice of law is more of a business, lawyers are more entrusted with their own training via law schools and mega-firms after graduation. See generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

80. See A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM* 105 (1992) [hereinafter MACCRATE REPORT]. "What law schools require of their students in educational performance can significantly affect the stage of professional development reached by graduates when they seek admission to the bar." *Id.*

81. See *id.* at 106.

82. Law schools increased their emphasis on ethics within their curriculums in the 1970s after concern began to rise over lawyer ethics. See, e.g., Smith, *supra* note 52. Many law schools have begun to incorporate clinical experience as the demand for "practical" legal training early in a lawyer's career has increased. See Kevin R. Johnson and Amagda Perez, *Clinical Education and the U.C. Davis Immigration Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1424 (1998). Also, some law schools are beginning to focus on mediation, negotiation, and alternative dispute resolution instruction as a part of their students' legal education. See Beryl Blaustone, *Training the Modern Lawyer: Incorporating the Study of Mediation into Required Law School Courses*, 21 Sw. U. L. REV. 1317 (1992).

From its inception, the civility movement has called upon law schools to be a catalyst for change. In 1983, at the dedication of Notre Dame Law School's London Law Centre, Chief Justice Warren E. Burger called upon American law schools to strengthen the importance of civility in their teaching.<sup>83</sup> Also, in 1992, the Seventh Circuit's Committee on Civility noted that law school training was the most frequently selected method by lawyers and judges as a solution to lawyer incivility.<sup>84</sup> Some law schools have already begun to incorporate civility training within their curriculums, and are encouraging other schools to join them.<sup>85</sup>

Even though the profession is interested in having law schools facilitate the civility movement, no clear recommendations were provided as to how that role should be accomplished. In fact, a plethora of concerns surrounded the law schools' role in conveying civility to their students. One concern is still prevalent today: How should it be taught?<sup>86</sup> Does it require a course of its own, or is a pervasive method of teaching civility sufficient to convey the message?<sup>87</sup> How is it any different from a mandatory ethics course? Shouldn't we be allocating our time to more substantive coursework?<sup>88</sup>

Despite the relevance of these concerns, there are feasible ways to incorporate civility instruction into the law school experience. The following sections will first critique some present law school approaches to the teaching of civility, and then suggest more feasible methods for law schools to convey a sense of civility to their students.

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83. See Warren E. Burger, C.J., *Remarks of Warren E. Burger, Chief Justice of the United States at the Dedication of Notre Dame London Law Centre: The Role of the Lawyer Today*, 59 NOTRE DAME L. REV. 1 (1983). "[S]tandards of civility and decorum are as imperative at the negotiating table as in the courtroom. This too must begin in the law schools . . . I regret to say that civility is in short supply in our courtroom, and its importance is far too little mentioned in law schools." *Id.* at 3.

84. See Interim Report, *supra* note 15, at 411 (the Committee recommended that its Interim Report be distributed and discussed in all law schools within their jurisdiction).

85. See William I. Weston, *Changing Paradigms in a New Law School*, PROF. LAW., Aug. 1997, at 24 (describing The Florida Coastal School of Law's approach to civility training).

86. See Interim Report, *supra* note 15, at 411.

87. See *id.* at 411-12.

88. See *id.* at 411.

### A. *Current Law School Attempts at Civility Instruction*

Some law schools have made attempts at incorporating civility instruction into their curriculums. The method of instruction varies depending on the institution, but the methods all seem to have the same goal in mind—to raise students' awareness of the need for civility in the practice of law. A common method of conveying the value of civility is through pervasive instruction. Pervasive instruction incorporates issues of civility into substantive classes, with the belief that students will better appreciate civility issues if they are attached to their substantive legal learning. Another method of teaching civility is through separate courses that focus only on civility issues.<sup>89</sup>

The Florida Coastal School of Law, a new law school in Jacksonville, Florida, incorporates both methods of civility instruction into its new curriculum.<sup>90</sup> The curriculum is designed to give students the ability "to explore behavioral issues as they apply to their substantive classes and as they relate to the community and those whom they will ultimately serve."<sup>91</sup> The founders of the school hope that a greater emphasis on civility and professionalism will give their students a greater appreciation for civil behavior when they graduate.

Long-established law schools have also made efforts to incorporate civility instruction into their curriculums.<sup>92</sup> Many law professors take the opportunity to utilize the pervasive method of teaching to discuss civility issues in their substantive courses. Some courses, such as Legal Writing, Trial Advocacy, Civil Procedure, and Evidence involve subject matter that is highly conducive to civility instruction. In addition to incorporating civility instruction into substantive law courses, some schools have sponsored symposia dedicated to the need for increased civility in the legal profession.<sup>93</sup> Also, clinical programs, such as legal aid and externships, are often used to provide practical situations in which civility issues might arise.

Despite the present efforts of law schools to encourage civility among their students, the efforts are not without their problems in effectiveness and implementation. First, the imple-

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89. See Weston, *supra* note 85, at 25.

90. See *id.*

91. *Id.*

92. See Donna C. Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 RUTGERS L. REV. 889, 895 (1999) (discussing the efforts of Rutgers School of Law-Newark, Rutgers School of Law-Camden, and Seton Hall University School of Law to incorporate civility training into the education of first year law students).

93. See *id.* at 895.

mentation of a course solely on civility would be difficult for most law schools. The scholarship demands placed on law professors already negatively influence the number of courses they teach and their availability to students. The addition of another course would only increase those pressures. Second, not all law students are necessarily reached by teaching civility pervasively. Some students do not get involved in clinical programs while in law school. Other students, such as those interested in business or transactional law, might never take any litigation-oriented courses that are more conducive to discussions of civility. Third, law students might have difficulty accepting that there is a serious civility problem. Since incivility is mostly a product of the pressures of the profession,<sup>94</sup> law students might be indifferent to formal civility instruction. Fourth, if civility instruction were to come by way of a separate class, it might absorb class time from other, more substantive courses.

These difficulties do not mean, however, that current attempts by law schools to convey the importance of civility to their students have been futile. Proponents of the law school civility movement openly acknowledge the difficulty of achieving their goals, and the current attempts to incorporate civility training in law schools are valiant efforts to meet those goals. The following two sections merely intend to provide more feasible approaches to law school civility instruction.

### B. *Create a Civil Atmosphere in the Law School*

Law schools can begin to attack the problem of lawyer incivility by creating a civil atmosphere within the law school. A civil atmosphere can be created in law schools by encouraging civil relations among the members of the law school community. If members of the community treat the law, and those within the profession, in a positive manner, the school has already begun to make significant strides towards encouraging civility.

#### 1. Law Professors' Treatment of the Study of Law

Most often, it is the case that law professors provide law students with their first impressions of their new profession. In many instances, the viewpoints and beliefs of a law professor will leave an indelible mark on the mind of a law student; whether that mark is positive or negative is left in part to the way the student's professor approaches particular legal issues. Law professors who treat the law with disdain and cynicism will often

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94. See generally Schiltz, *supra* note 3, and accompanying text.

inculcate pessimistic views of the law among their students. On the other hand, those law professors who convey positive messages about the practice of law can help to create optimistic, respectful views of the law among their students.

Law professors need to convey to their law students that the incivility that pervades modern American life is not welcome in the legal profession. However, many professors spend class time criticizing judges, courts, and members of the practicing bar. The difficulties arise when the professors express their criticisms in an uncivil manner. When law professors treat distinguished colleagues and members of the profession with disdain, they risk misinforming their students that uncivil behavior is appropriate. As one law professor explained, "[i]f our students see us expressing [uncivil] ideas in class, in the newspapers, and in law reviews, it may occur to them that it is entirely appropriate to behave similarly across the deposition table or at a settlement conference."<sup>95</sup> Simply put, uncivil behavior begets uncivil behavior.

Law professors can convey a positive image of the law in a number of ways. First, law professors can refer to members of the legal profession that have made a difference.<sup>96</sup> For every uncivil, money-hungry lawyer that exists in the United States, there is a civil, hard-working lawyer who is positively impacting the lives of others. Second, law professors can acknowledge the benefits of our legal system. Many professors spend class time criticizing particular areas of the law without conveying to their students that the *greater majority* of the time, the law actually works. By reflecting a positive outlook on the law, professors can instill a respect for the legal profession in their students during their formative years of legal study. The greater respect the student has for the profession, the less likely he or she is to taint it with uncivil conduct.

Also, law schools can help ensure that their professors treat the law in a positive manner by focusing on the type of attorney they employ as a professor. Senior attorneys who contribute to law school teaching as guest lecturers or adjunct professors, as well as full-time professors with significant practice experience, are more likely to be able to contribute to the civility training of a law student. Because of their law practice experience, these types of professors would have a good understanding of what it takes to

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95. Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 382 (1997).

96. See Schiltz, *supra* note 77, at 780 (providing a number of thoughts on how law professors can positively affect their students).

practice law in a civil manner. When evaluating candidates for faculty positions, law schools could consider the lawyer's commitment to public service<sup>97</sup> and whether he or she actually practiced in a civil manner when determining who is selected for employment.

## 2. Law Professors' Relations with Law Students

Law professors not only need to convey civility in their approach to the law, but also in their relationships with law students. As mentioned in the preceding section, law professors have the unique role of being the first members of the legal profession to interact with law students on a professional basis. By dealing with their students in a civil manner, law professors can foster a desire for civility in their students when they become members of the practicing bar. Conversely, if law professors relate to their students in an uncivil manner, they might create the misconception that uncivil behavior among professionals is acceptable.

There are a number of ways in which law schools can improve the civility of the law professor/student relationship. First, law schools can discourage their professors from using the Socratic Method as a means of intimidation.<sup>98</sup> Even though the terror of the Socratic Method is a fear of the past in many law school classes,<sup>99</sup> some professors still use their teaching as an opportunity to intimidate students. The Socratic Method is not intimidating and abusive *per se*. When used properly, a Socratic classroom provides law students with the opportunity to present ideas to groups, defend those ideas, and propose solutions to legal problems. But despite its advantages, the Socratic Method loses its validation as a learning tool when it creates an uncivil and disrespectful classroom atmosphere. Second, law schools can encourage law professors to maintain "open door" policies with their students. The law professor who immediately leaves after class for the seclusion of an office fails to convey a sense of respect for a student's professional development. By not being available to students, professors lose the opportunity to provide much desired mentoring and role modeling.<sup>100</sup> If a law student

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97. See Kara Anne Nagorney, *A Noble Profession? A Discussion of Civility Among Lawyers*, 12 *Geo. J. Legal Ethics* 815, 825 (1999).

98. See Elizabeth Garrett, *The Role of the Socratic Method in Modern Law Schools*, 1 *Green Bag* 2d 199, 204 (1998).

99. Based on the author's and his classmates' law school experiences.

100. However, it should be noted that the blame for not being available to students should not be entirely shouldered by the law professors. The increasing overemphasis placed on professors to publish, and the decreased

never has the ability to seek professional advice during his or her professional development, the law student might feel less inclined to provide advice to younger colleagues when he or she becomes a lawyer.

### 3. Law Students' Relations with Other Law Students

Law schools must also encourage civil behavior among their students in order to foster a civil atmosphere within the law school community. While everyone seems to hear the stories about students stealing exams and tearing pages out of books, the percentage of law students who actually witness this type of behavior is small. Nevertheless, law students are widely known for their competitive nature. In many ways, competition is expected among law students. However, the pressures to make law review and land the most prestigious job, coupled with the difficulty of the schoolwork, often create a breeding ground for incivility.

Law schools can foster civility among their students in a number of ways. First, law schools can discourage the warning signs of law student incivility. The school and its professors should make it known to students that rude behavior and success at the expense of others is not acceptable. Schools can utilize their honor codes to reinforce the concept that civil and professional behavior is expected out of law students as a part of the tradition of the school and the legal profession. Second, law schools can encourage civil student relationships by providing students with opportunities for social interaction. If law students learn that developing healthy relationships with their classmates makes law school more enjoyable, the students might realize that having civil relationships with other members of the bar will make lawyering more enjoyable as well. By creating a generally civil atmosphere, law schools can assure the profession that their students' competitive natures will not manifest into uncivil behavior when they begin practicing law.

#### C. *Teach Students that Civility is a Part of Ethics*

Law schools can also promote civility among their students by demanding that the legal profession cease viewing civility and ethics as separate concepts. Since the beginning of the civility crisis, the legal profession has had difficulty distinguishing civility

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emphasis on their quality of teaching in order to survive in academia is significantly to blame as well. The law schools, and not just the professors, have a role to play in the success of student/professor relations. See Schiltz, *supra* note 77, at 751-52.

from ethics.<sup>101</sup> Technically, civility is understood as manners, based on courtesy, dignity, and kindness, while ethics is based more on moral obligations. However, even though their literal definitions are analytically distinct, the terms are less distinguishable when pragmatically applied to a lawyer's conduct.

Incivility among lawyers should be considered unethical. However, some members of the legal profession (those not in favor of the civility movement in particular) view civility as an entirely separate obligation of a lawyer. The critics believe that an uncivil lawyer can still be ethical and, conversely, that a civil lawyer can still be unethical. While there is no question that a civil lawyer can still maintain an unethical practice, this Note urges the academy to convey to its students that being an ethical lawyer is only achieved by functionally integrating civility and ethics in their practice. Law students can be encouraged to realize that the effects of incivility on clients and the broader legal system should not be characterized as still deriving from an ethical legal practice. There is nothing ethical about representing a client in an uncivil manner. There is nothing ethical about uncivil behavior that deteriorates the quality of life of other lawyers, not to mention the efficiency and effectiveness of the legal system.

Law schools could incorporate civility instruction into their curriculums through preexisting ethics courses with relative ease. By including civility training in ethics instruction, law students would learn to appreciate civil behavior as a necessary component of legal ethics. Since ethics or professional responsibility courses are required courses in law schools, almost every law student would then be exposed to civility training before reaching the incivility fires of the profession. Law students do not want to practice in an uncivil profession. By informing them of the fire ahead of time, and providing their classmates with the knowledge to battle the flames, law schools would be empowering their students to better the profession one class at a time.

#### CONCLUSION

A fire requires three elements in order to exist: heat, oxygen, and a fuel source.<sup>102</sup> Thus, it is a fundamental fire-fighting tactic to extinguish a fire by eliminating one of its three requisite elements.<sup>103</sup> With these principles in mind, this Note has argued that the legal profession ought to attack the fire of lawyer incivil-

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101. See Josefsberg, *supra* note 4, at 19.

102. See ESSENTIALS OF FIRE FIGHTING 8-9 (International Fire Service Training Association ed., 1983).

103. See *id.* at 16.



ity at the profession's source: the law school. By providing civility instruction in law school, the profession can begin eliminating the incivility fire's fuel source in lawyers who are willing to act uncivilly. Law schools have the unique ability to instill respect for civility within law students at an impressionable stage of their professional development. By creating an academic atmosphere where both the law and its students are treated civilly, law schools can teach students the benefits of working in a civil environment. Also, by accepting civility as a component of ethical conduct, students will come to understand how civility is necessarily intertwined with one's obligations to clients and the legal system. Fighting the fire of incivility will be difficult, but including civility instruction in law school will at least bring the profession one step closer to extinguishing the flames.