

## Tribute to Chief Judge Charles S. Desmond

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### Recommended Citation

John Van Voorhis, *Tribute to Chief Judge Charles S. Desmond*, 52 Cornell L. Rev. 351 (1967)

Available at: <http://scholarship.law.cornell.edu/clr/vol52/iss3/1>

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# CORNELL LAW QUARTERLY

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VOLUME 52

WINTER II 1967

NUMBER 3

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## A TRIBUTE TO CHIEF JUDGE CHARLES S. DESMOND

### *CHIEF JUDGE DESMOND AND THE NEW YORK COURT OF APPEALS*

*John Van Voorhis†*

It is with delight that I take advantage of this opportunity to say a few words about my former Chief and colleague Charles S. Desmond upon the occasion of his retirement after twenty-six full years on the New York State Court of Appeals. A quarter century of judicial life has convinced him, if he were not convinced already, to beware of praise and to shun hyperbole. The honor and power which have come to him as Chief Judge of the Court of Appeals and of the State of New York, which his talents, energy and skill would have won for him in almost any field of endeavor, have never threatened his sense of values, nor impaired his warmth or insight toward his fellow mortals. His sprightliness, competitive spirit, perceptiveness of the thoughts and feelings of others, and his contagious geniality spring not alone from an enormous reservoir of vitality, but equally from a rare sense of proportion regarding his relationship to the world and the people who are in it, and their relationships to one another and to him.

This is not the occasion to undertake an enumeration or evaluation of his contributions to the jurisprudence of New York State or the nation. He has exerted an influence second to none on the development of the law of this State during the past twenty-six years. He has exceeded other judges not only in length of service—more years than any other judge who has sat upon the New York Court of Appeals—but also in his influence from the very start. Judge Irving Lehman used to say that when you

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† Associate Judge, New York Court of Appeals.

added up the score, Judge Desmond was more often right than anyone else—except Judge Lehman, of course, since they were often on the same side. The impress of his vigorous, informed and readable opinions will be felt and his words discussed in this state and elsewhere for as long as a deliberative system exists for the administration of justice. *Woods v. Lancet*,<sup>1</sup> *Kilberg v. Northeast Airlines, Inc.*,<sup>2</sup> *Greenberg v. Lorenz*,<sup>3</sup> *Goldberg v. Kollsman Instrument Corp.*,<sup>4</sup> *People v. Huntley*,<sup>5</sup> and hundreds of other stars in his crown, the trenchant and forthright law review articles which have constantly come from his pen, his lectures and teaching in nearly a dozen law schools (especially the course taught by him at the Cornell Law School), his effective work in court administration and reform—including Chairmanship of the Judicial Conference and the Administrative Board—will for decades be the subject of discussion and action in legal and governmental circles. His participation in professional, social, cultural, religious, and general educational activities has won for him a list of honorary degrees that is almost as long as Winston Churchill's.

It need hardly be said that Chief Judge Desmond is a vivid personality. He exhibits undiminished the flair brought from County Cork in Ireland by his grandfather, who, following an altercation with his boss on the railroad, declared that never again would he work for anybody else and never did. With distinctions galore, the Chief Judge is not content to ride on his own momentum but feels that at every step he must win his way all over again. He reminds one of the anecdote of William Pickney, of American Revolutionary fame, who at the same age of three score and ten was asked why he worked so hard. The reply was snapped back: "I am the best lawyer in the United States and intend to remain so." If Charles Desmond should choose to resume the practice of law,<sup>6</sup> then if he does not become the best lawyer in the United States there will be little margin of safety for his adversaries. G. K. Chesterton once wrote of his brother Cecil that anyone who had learned to argue with Cecil Chesterton need fear an argument with nobody else. I can safely speak for all of our colleagues in saying that this is the way we all feel about our brother Desmond. Be they right or wrong, our ideas have been tested by fire in the ordeal of judicial conference by the redoubtable and indefatigable Chief. Whether this be called ordeal by fire or ordeal by battle, it has been in-

<sup>1</sup> 303 N.Y. 349, 102 N.E.2d 691 (1951).

<sup>2</sup> 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961).

<sup>3</sup> 9 N.Y.2d 195, 173 N.E.2d 773, 213 N.Y.S.2d 39 (1961).

<sup>4</sup> 12 N.Y.2d 432, 191 N.E.2d 81, 240 N.Y.S.2d 592 (1963).

<sup>5</sup> 15 N.Y.2d 72, 204 N.E.2d 179, 255 N.Y.S.2d 838 (1965).

<sup>6</sup> He has since announced that he will.

valuable. Every prevailing or dissenting opinion, with Desmond, Ch. J., in accord or in opposition, has been written better, with a clearer understanding of the issues, the record, and the decisional or statutory law, because of his participation, his vigorous thought, and his well informed mind. Rarely have practical knowledge of people and events been combined with philosophic reasoning and book learning to so large a degree. These, as with anyone, are not always consistent, as the complexities of life tend to outrun legal, philosophic, and moral categories. Their impact on his mind has been inexpressibly productive.

When the conflicts in thought and experience that go into the fashioning of the law are over, when we have striven in conference mightily—often as mightily as the lawyers in argument on the other side of the bench—we unfailingly (as the Bard said) eat and drink as friends. No acerbities, to my certain knowledge, have ever been carried into our personal lives, and for this the sophistication and good will of our retiring Chief are in no minor part responsible. Competent as an executive as well as an intellectual, it has been a pleasure to sit under him as Chief both in court and in conference. He is making no lugubrious departure in obedience to the age limit in the Constitution. Instead, he moves on to the New York State Constitutional Convention as the only delegate to be elected with Democratic and Republican endorsement. After that, there will be more worlds to conquer.

## CHIEF JUDGE DESMOND AND CORNELL

*Gray Thoron†*

Approximately ten years ago, the Cornell Law Faculty, acting on the classic advice of that master advocate John W. Davis, decided to explore the possibility of inducing an outstanding judge to try his hand at sharing the teaching responsibility for a new one-semester course which would help train senior law students in the art of advocacy.<sup>1</sup> The Faculty's overwhelming first choice, should he prove receptive to our invitation, was Charles Stewart Desmond, the senior associate judge on the New York Court of Appeals, and subsequently its distinguished Chief Judge.

The course which we envisioned would be built around a series of practical problems, some arising at the trial and others at the appellate level. Judge Desmond, we hoped, would assume responsibility for the appellate advocacy portion of the course. Knowing that we could not expect the Judge to get to Ithaca during the weeks when the Court of Appeals was in session, we proposed that he be given a collaborator with whom to share responsibility for the work of the course. The Judge would come to Ithaca one day a week, whenever the Court of Appeals was not in session, to handle the appellate portion of the course. His collaborator would concentrate the trial advocacy problems into the period when the Judge would be unavailable. Thus there would be no undue interruption in the work of the course while the Court of Appeals was in session.

Pursuant to this faculty mandate, it was my function to approach Judge Desmond and see if he was interested. To our delight, he found our proposal an appealing one. He accepted with alacrity.

The Judge's course, now called Trial and Appellate Advocacy, was an instantaneous success, and has been given eleven times. Although the required assignments—covering research, writing, drafting, and oral exercises—are extremely demanding in the time required for student preparation, the course has been consistently over-subscribed. The Judge has worked with three different trial advocacy collaborators from our faculty—my colleagues Norman Penney and Ernest N. Warren, and myself.

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† Professor of Law, Cornell Law School.

<sup>1</sup> [A] discourse on the argument of an appeal would come with superior force from a Judge who is in his judicial person the target and trier of the argument than from a random archer like myself. . . . [S]upposing fishes had a gift of speech, who would listen to a fisherman's weary discourse on fly-casting, the shape and color of the fly, . . . and all the other tiresome stuff that fisherman talk about, if the fish himself could be induced to give his views on the most effective methods of approach. For after all it is the fish that the angler is after . . . .  
Davis, "The Argument of an Appeal," 26 A.B.A.J. 895 (1940).

Judge Desmond's class discussions on the various aspects of appellate advocacy are supplemented by practical problems of various types, generally utilizing a number of actual cases which have reached the Court of Appeals. One assignment involves a written analysis of a pair of Court of Appeals briefs, each student being assigned a different case in order to evaluate the advocacy techniques actually used by counsel. Another involves assigning students a Court of Appeals record, with a different case for each pair of students. They conduct research for their case, prepare appropriate briefs, and argue before a bench over which Judge Desmond of course presides. Students have to run the customary gauntlet of lively questioning during their oral presentation. Each argument is followed by a critique by the members of the bench. The briefs and arguments are consistently of thoroughly professional quality, and well above the average which one typically finds in most courts in actual practice.

Judge Desmond does not limit his course to the point of view of the "fish," but also brings in a number of highly skilled "fishermen."<sup>2</sup> Among the leaders of the trial bar whom the Judge has brought to Ithaca to meet with this class have been Paxton Blair, Ralph M. Carson, Thurgood Marshall, Milton Pollack, Frank G. Raichle, Harris B. Steinberg, and Edward Bennett Williams. The incisive dialogue between fish and fishermen of this caliber provides a uniquely effective and stimulating teaching vehicle.

Judge Desmond would not have continued commuting to Ithaca for a full decade—especially after assuming the additional administrative burdens of the Chief Judgeship—if he had not so thoroughly enjoyed his teaching and his continuing relationship with the Cornell Law School. When adverse weather on occasion grounded his plane, he cheerfully travelled to and from Ithaca by car, no matter how treacherous the driving conditions. I cannot remember his not being here for a single scheduled class throughout his ten years of teaching. He always displayed a special interest in his students as individuals, a trait which contributed significantly to his effectiveness as a teacher and to the universal popularity of his demanding problem course.

For me, the opportunity to work closely with Judge Desmond in this exciting teaching venture has provided special dividends, not only of penetrating professional insights, but, equally important, of close friendship of a delightful companion and superb human being. Judge Desmond possesses a rare combination of charm, wit, enthusiasm, and zest for life. He can perhaps be best described as belonging in that rare company of

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<sup>2</sup> See note 1, *supra*.

those who remain, no matter how inexorably the calendar rolls on, perpetually young in spirit.

It is indeed appropriate that this issue of the Cornell Law Quarterly give special recognition to our esteemed and beloved colleague, Visiting Professor Charles Stewart Desmond,<sup>3</sup> on the occasion of his retirement as Chief Judge of the State of New York. His decade of loyal, devoted, and dedicated teaching, and his interest in and friendship for the Cornell Law School and its students, have added an important dimension to our program of legal education. His work here has earned him the deep appreciation and affectionate regard of every student who has ever had the privilege of studying under him.

On behalf of all Cornellians—students, faculty, and alumni: *Ave, sed non vale!*

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<sup>3</sup> From 1957 to 1959, Judge Desmond held an appointment as Lecturer in Law. Since 1960 he has held the rank of Visiting Professor.