

Chief Desmond and Cornell

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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.¹ 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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¹ [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."² 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

² 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,³ 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!*

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