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## Chief Judge Desmond and Legal Education

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## CHIEF JUDGE DESMOND AND LEGAL EDUCATION

I AM glad that I have been asked to join in this honor to Chief Judge Charles S. Desmond. It affords an opportunity to acknowledge the contribution which he has made to legal education and thus to recognize this aspect of his career.

His interest in the education of lawyers is of long standing. In the first issue of the Villanova Law Review, published about ten years ago, he gave his views on the teaching of law.<sup>1</sup> In his characteristic manner, he presented an affirmative and constructive appraisal. He praised the raising of academic standards by the law schools, the inclusion of new subjects in the curriculum, the increase in the number of full-time instructors, and the good sense of concentrating on fundamentals of law and legal method within the limited time available.

On the other hand, he expressed doubt regarding the tendency of law professors to stress in their teaching the flaws in every judicial holding, thereby encouraging a process that "too easily deteriorates into a habit and compulsion of opposition." While noting that analytical methods of teaching serve a valuable function in developing the legal mind, Judge Desmond raises valid issues. May dialectical and critical methods be carried too far and applied too fully in the law school program to the exclusion of more affirmative and constructive considerations of the law? Are these methods related to the traditional reputation of the lawyer among laymen as a quibbler and a no man?

He said also that he sensed "a vague rivalry between the professors and the practitioners." Some teachers, he observed, view the lawyer as a "mere toiler" and some lawyers regard the typical professor as "a star-gazer who never finds his way down from the astronomical observatory." In this connection, he approved of the increase in the use of full-time teachers, but he expressed the opinion that too little place is "found for teaching by experienced, up-to-date practitioners. None of the schools exclude them. Almost every law school catalogue lists some lawyer-teachers. But the effort to bring competent practitioners into the classroom, not as occasional visitors but as essential members of carefully chosen faculties, is something I have failed to find."

Finally, he suggested to the law schools that they should not ignore the fact that their students must pass the bar examinations, though he affirmed the idea that bar examinations "need not be a goal or even a guide" for legal education.

In other discussions, he has commented on the curricula of the law schools.<sup>2</sup> He has stressed three modifications: first, training in the elements of advocacy beyond the present programs in moot court and legal aid; second, increased attention to the field of criminal practice, including legal aid services;<sup>3</sup> and

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1. Desmond, *Idea of a Law School*, 1 Vill. L. Rev. 5 (1956).

2. Desmond, *What the Courts Expect of Bar Examiners*, 33 Bar Exam. 38 (1964).

3. In an address in 1964 at the annual meeting of the Tennessee Bar Association, Judge Desmond stated that the law schools "must stop pointing the graduates at the two admired goals of corporation law practice and clerkships to appellate judges . . . . The right to counsel, fair trial and due process are meaningless unless the good young lawyers take

third, instruction in a new field for lawyers, the profession of court administrator, involving new programs for administering the courts.

Lawyers, he has said, must improve the efficiency of the courts or "it will be done for us by others."<sup>4</sup>

These new and growing areas of legal education have prompted him to support the addition of a fourth year of law school, "with problem courses and direct action training in the common branches of law practice."<sup>5</sup>

In other observations, he has urged greater financial support for law schools from members of the bar and has suggested that this might lead to "more post graduate education" and "more training of lawyers in specialities" under the auspices of the law schools.<sup>6</sup>

He has also made these comments concerning the number of law graduates who fail the bar examinations:

I think bar examinations need a lot of examination and appraisal. I have never been able to understand how it can be that the graduates of the very best law schools . . . in New York . . . are lucky if 70 per cent . . . on the average pass the New York Bar Examination the first time . . . . If a man goes to a good college and is a high standing student at a distinguished law school and takes the New York Bar Examination and flunks it, I do not know what we have proven . . . . To make it almost worse, almost everybody who takes the bar examination, I talk about New York, and flunks it, keeps on taking it and ultimately passes it. Now what are we proving?

I hope with a few other people—with the assistance, I hope, of the American Bar Association—to persuade some great American foundation to make a study such as I think has never been made in this country of the whole subject of bar examinations. I mean to probe it to the bottom to see whether there is validity in our system of bar examinations, whether we need bar examinations, and if so, whether they are fulfilling their proper purpose.<sup>7</sup>

Judge Desmond has shown by deed, as well as by word, his commitment to the improvement of legal education and his belief in the ideas which he has expressed. He has served on the advisory council of the Law School of the University of Notre Dame, taken an active role in the Seminar for Appellate Judges, which is conducted so successfully each summer by the Law School of New York University, presented individual lectures at many law schools, and actively taught law since 1957 as a member of the faculty of the Cornell Law School.

In 1960, the Deans' Advisory Group to the New York Judicial Conference

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on the uneasy task of criminal practice." N.Y. Times, June 12, 1964, p. 37, col. 2. In this connection he has suggested that "Criminal law practice has been down-graded in this country . . . in the law schools themselves . . . ." Desmond, *What the Courts Expect of Bar Examiners*, 33 Bar Exam. 38, 42 (1964).

4. 17 Cornell L. Forum 3 (1965).

5. N.Y. Times, June 12, 1964, p. 37, col. 2.

6. Desmond, "Musings," 54 L. Library J. 29, 33 (1961).

7. *Id.* at 33-34.

was organized at his suggestion. He presided at the first meeting which was attended by the deans of the ten law schools in New York State as well as by representatives of the Judicial Conference. At this meeting, Judge Desmond advocated that the resources of the law schools be enlisted in the task of improving judicial administration. Discussions were held concerning integration of the bar, uniformity of standards in disciplinary proceedings, reduction in costs on appeal, and procedural revisions.<sup>8</sup>

Probably his greatest single contribution to legal education has been the teaching of the course in Trial and Appellate Advocacy at the Cornell Law School. Judge Desmond undertook this unique program at the invitation of Dean Gray Thoron in 1956. He and a full-time member of the law faculty have presented the course during one semester of each academic year since that time.

Through the years, Professors Norman Penney, Ernest N. Warren, and now Gray Thoron, have joined Judge Desmond in this work. Representative practical problems arising in trial and appellate practice are considered and instruction is offered in the techniques of research and preparation for trial and appeal, including the writing of briefs and the presentation of oral arguments. Leading members of the profession are asked to serve as guest lecturers on areas of specialization. The program, limited to twenty students each year, has been highly successful and has put into practice a number of the educational ideas which Judge Desmond has advocated.

The New York Times once quoted Judge Desmond as saying that he finds time "around the edges" of his busy life to teach the seminar at Cornell.<sup>9</sup> By the end of each year, the time and energy which he consumes in this endeavor, even though "around the edges," are substantial. But those who observe and benefit by this actual demonstration of the doctrine of practicing what one preaches, carry away a higher regard for the legal profession and the men who lead it.

RAY FORRESTER, *Dean*  
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8. 13 Cornell L. Forum 1 (1960).

9. N.Y. Times, April 15, 1965, p. 26, col. 1.