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Birth of the American Inns of Court

By
Judge J. Clifford Wallace*

A special history issue of “The Bench,” the magazine of the American Inns of Court, caught my attention. It indicated there was a celebration of the Inns’ 25th anniversary. In the lead piece entitled “*the Genesis*,” the author indicated that he was fascinated “to hear different accounts of the origin of the American Inns of Court.”¹ That there are different accounts may be true, but there were only two people present when the idea was first discussed: Chief Justice Warren Burger and I. I think it appropriate to tell what occurred.

It is true that the term “Inns of Court” had been used in the United States in a variety of ways prior to 1977. Phi Alpha Delta had a program instituted by then Circuit Judge Burger. There was also an “Inn of Court” program in San Diego, California, and I suspect there may have been other programs in the United States using the “Inn of Court” designation. The use of the term “Inn of Court” was an attractive title for what was, generally speaking, a lecture, and sometimes question and answer, approach to providing education in trial practice.

But the new model was to form a different concept. Capturing the idea of the English Inns of Court was its unique feature. As I saw it, the idea would provide “three possible benefits that can improve the level of advocacy: (1) unique educational opportunities in trial techniques, (2) self-policing, and (3) peer group involvement to motivate improvement and stimulate discussion.”² After observing the Inns in practice during the 1977 Anglo-American Legal Exchange and coming to the conclusion, as outlined above, of how the idea might benefit the trial courts in the United States, I decided that I would discuss the issue with Chief Justice Burger.

The opportunity presented itself as we were assembling for the day’s activities in London. A bus was parked in front of our hotel and some of us were

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1. Ralph L. Dewsnup, *the Genesis*, THE BENCHER (September/October 2004).

2. J. Clifford Wallace, *American Inns of Court: A Way to Improve Advocacy*, AMERICAN BAR ASSOCIATION JOURNAL, Mar. 1982, at 282.

on board waiting for the remaining members of our team. Chief Justice Burger, our team leader, and I were sitting together. It was then that I made my suggestion. The concept was, essentially, that we would adopt the core ideas of the English Inns of Court, but adapt them to fit American needs.³

Rather than the lecture/seminar approach often used in the United States, I preferred the collegial approach of the English Inns. The participation of Benchers, senior Inn members appointed for making important contributions to the life of the Inn or the practice of law, is the key. Benchers relate their experiences in legal practice to younger Inn members, passing on to the new generation of barristers the decorum, civility, and professionalism standards necessary for a properly functioning bar. When I explained the idea, Chief Justice Burger agreed, asked me to pursue the possibility, and to let him know the results.

Some renditions of this event have Chief Justice Burger raising the issue with me. Interestingly, none cite a source for this assertion. I point this out only for historical accuracy. One of my role models, Harold B. Lee, taught that there is no limit to the amount of good you can do if you do not care who gets the credit.

Most histories of the American Inns of Court jump from the Anglo-American Legal Exchange of 1977 to August 2, 1979, when the Chief Justice asked then President Dallin Oaks of Brigham Young University and then Dean Rex Lee of its law school to form the needed pilot program to test the concept—which later became American Inns of Court.⁴ What occurred between 1977 and 1979 was not only important to the successful formation of the entire concept, but it was also the period in which I was heavily involved, reporting to the Chief Justice directly or indirectly through his administrative assistant, Dr. Mark W. Cannon.⁵ Much of this history is contained in *The American Inns of Court—Reclaiming a Noble Profession*, compiled and edited by Professor Paul B. Pixton at the suggestion of the American Inns of Court Foundation.⁶ Because I allowed access to my files, that book contains much of the history I will describe.

The Chief Justice was keen that I look into the Phi Alpha Delta legal fraternity program, which he had inspired, as a possible model. As the Pixton

3. J. Clifford Wallace, *Inns of Court - A Proposal*, reprinted in PAUL B. PIXTON, *THE AMERICAN INNS OF COURT - RECLAIMING A NOBLE PROFESSION*, 21-22 (1997).

4. See letter from Warren E. Burger, Chief Justice of the United States, to Dallin H. Oaks, President, Brigham Young University, and Rex E. Lee, Dean, J. Reuben Clark Law School (Aug. 2, 1979) reprinted in Pixton, *supra* note 3, at 8-9.

5. See, e.g., letter from Mark W. Cannon, Administrative Assistant to the Chief Justice of the United States, to Judge J. Clifford Wallace, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit (Aug. 26, 1977) (on file with author); letter from J. Clifford Wallace to Mark W. Cannon (Sept. 7, 1977) (on file with author); letter from J. Clifford Wallace to Warren E. Burger, Chief Justice of the United States (Sept. 9, 1977) (on file with author).

6. See Pixton, *supra* note 3, at 18-42.

history indicates,⁷ I was not convinced that this model would capture the concept that I had earlier envisaged. While the program was excellent for what it was trying to do and had developed outstanding lecturers, it was not a vehicle that could, in my judgment, bring to the United States the basic conceptual design of the English Inn. As stated by Professor Pixton,

Nevertheless, the conversation with Judge J. Clifford Wallace may have helped further crystallize thoughts which were more than a decade old, and upon seeing in Wallace a federal judge who resonated enthusiastically to the idea, Burger urged him to explore the possibilities.⁸

In the months after I returned from England, I was busy investigating how the concept might be formalized. In so doing, I talked with and wrote letters to many friends, acquaintances, and others in the law field to present the new concept to them. I was surprised at the volume of negative responses. But, then again, this was a time of defensiveness. There was, in the minds of many, a perceived threat to the profession and to the curriculum independence of law schools.⁹ Why was that?

The Chief Justice had appointed a Judicial Conference of the United States committee, "The Committee to Consider Standards for Admission to Practice in the Federal Courts," or, as it later became known, the "Devitt Committee," named after its Chairman, Chief Judge Edward J. Devitt of the U.S. District Court of Minnesota. That committee focused on improving trial court advocacy. Law schools were concerned about recommendations on curriculum; bar associations were concerned about restrictions on the lawyer's ability to practice in the federal court; and judges were less than fully supportive. As a member of that committee, I was well aware of the opposition to its purposes.

Chief Justice Burger, still thinking along the lines of the Phi Alpha Delta legal fraternity Inns of Court program, sent a letter on July 27, 1977 asking Robert E. Redding to contact me about the new initiative.¹⁰ After studying that program, and while I thought it was helpful, I did not believe that it was a model capable of developing the small group, collegial concept, or one that could easily be implemented nationwide. By August 1977, having completed my discussions with judges, lawyers, law professors and others, and I was able to put my idea of the concept into writing in a brief statement entitled, "Inns of Court—A Proposal."¹¹

The proposal began with an assertion that the problem the Inns of Court would address was the inadequate performance of many lawyers in court.¹² The cause of the inadequacy was based on empirical research developed by the

7. *See id.* at 33, 38-39.

8. *Id.* at 20.

9. *See id.* at 32.

10. *See Pixton, supra* note 3, at 23.

11. *See id.* at 21-22.

12. *See id.* at 21.

Federal Judicial Center for the Devitt Committee,¹³ with which I agreed. The data demonstrated the cause to be lack of knowledge and failure to prepare to the best of ability.¹⁴ I added to these my observed causal connection: lack of experience, inability to communicate persuasively, negative personal habits, and lack of industry and dedication generally.¹⁵

These problems, it seemed to me, were best solved by an Inns of Court concept adapted specifically to address them, and these needs animated the idea I proposed: small collegial groups with continuous interaction to pass on skills, knowledge, dedication, civility, and the like, from seniors to juniors.¹⁶ The solution required that many small Inns be organized to meet local needs. The Proposal outlines how the Inns function to this day—it became the constitution of the American Inns of Court.

The Proposal was sent to all of the people with whom I had spoken, plus others. The commentators were then able to respond to a distinct, written proposal rather than merely responding to a concept. With few exceptions, the responses were positive.¹⁷ Earlier negative concerns were largely answered, as they saw the limited scope but vast potential of the idea. The lingering doubts came largely from those involved in other lawyer education programs, but clearly neither Chief Justice Burger nor I saw the Inns of Court program in my Proposal as one that would absorb existing programs.¹⁸ As I saw it, the American Inns of Court program could be successful and find its own place in the social organization of the bar so long as it fulfilled an important unmet need.

While responses to the Proposal were arriving, it was time to report to the Chief Justice, and I did so in my September 9, 1977 letter, which included a copy of the Proposal.¹⁹ During the time I had the assignment, I reported to the Chief Justice generally on the contacts I had made and the responses I had received.²⁰ Because the Chief Justice had specifically mentioned that I should look at the Phi Alpha Delta program, I reported that I had done so. I realized that he had been focusing on that program and I hoped that he would see the broader concept. I stated in my report: “This [Phi Alpha Delta] program, though commendable, appears to be essentially a continuing education of the bar, directed towards advocates. In addition, it is substantially limited in that it does

13. See ANTHONY PARTRIDGE & G. BERMANT, THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS: A REPORT TO THE COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS (Aug. 1978), *microformed on LLMC 95-303* (Law Library Microform Consortium).

14. *Id.*

15. See Pixton, *supra* note 3, at 21.

16. See *id.* at 21-22.

17. See *id.* at 24-26.

18. See *id.* at 30.

19. See *id.* at 32-33.

20. See, e.g., letters from J. Clifford Wallace, *supra* note 5.

not have a nationwide scope.”²¹ I then stated my recommendation: the investigation has been sufficient to take the next step, trying my collegial concept out.

“It would be my suggestion that a pilot [program] or two or three be established and if successful, that the program be proposed as a joint bar association-judiciary-law school effort. . . . I am still convinced that the prime success factor will be the magnetic effect of the best trial lawyers and all of the judges involved meeting in small groups with trial lawyers who wish to improve and law students who wish to become trial lawyers.”²²

Eventually this was the concept that was adopted. The Pixton history states: If the Phi Alpha Delta approach to implementation represented the extent of Burger’s thinking in mid- to late-1977, then Judge J. Clifford Wallace must clearly be given credit for conceiving it in larger terms. Moreover, although the Chief Justice had presumably discussed Judge Wallace’s proposal with Mark Cannon (and perhaps had even read the brief “think piece”), he may not have immediately comprehended Wallace’s shift in concept.²³

I subsequently expressed my concern in a letter to Mark Cannon that perhaps the Chief Justice feels the program should be a debating society to improve skills of lawyers while on their feet.²⁴ I compared that with the more expanded program that I had in mind. Mark Cannon responded that the Chief Justice would be open to my approach.²⁵

However, there was another hitch in launching the program. As indicated earlier, the Devitt Committee was proceeding with its investigation, and I was heavily involved with the Committee. On September 26, 1977, I suggested to Mark Cannon that it would be better to hold up launching the Inns of Court program until the Devitt Committee report was finalized.²⁶ As I saw it, this would provide two benefits: for one, the Devitt Committee investigation would be finalized and there would no longer be speculation about its recommendations, which had worked against advancing the Inns of Court proposal, and two, many of the findings of the Devitt Committee report could best be addressed by an Inns of Court program. The result was a long delay until March 1978, when the Devitt Committee report was filed.²⁷ However, the delay was, in my judgment, necessary for a successful project. The groundwork was laid. As Professor Pixton correctly summarized, “It seems apparent, then, that by late September 1977 Judge Wallace was advocating the establishment of a pilot program (or several) from which data could be gathered which would assist in evaluating the plausibility of implementing the ‘Inns of Court’ idea on a larger,

21. *Id.* at 33.

22. *Id.*

23. *Id.* at 38.

24. Letter from J. Clifford Wallace to Mark Cannon (Feb. 15, 1978) (on file with author).

25. *See* Pixton, *supra* note 3, at 39.

26. *Id.* at 35-36.

27. *Id.* at 36, fn. 37.

national scale.”²⁸

Between that time and the formation of the first Inn, I worked with the many individuals who were interested in the program. The plan was to continue to secure interest, especially from lawyer associations and law schools, until the Devitt Committee report was completed and a pilot Inn or Inns established.

Professor Pixton continues:

By the first of August 1979 the matter had apparently percolated enough, and the possibilities of Wallace’s proposal had become compelling enough, that when Chief Justice Burger found occasion to travel to Utah for other business he contacted Dallin Oaks and Rex Lee and extended to them the invitation to implement the “Inns of Court” concept, and to test its viability in a charter or pilot program sponsored by Brigham Young University’s J. Reuben Clark School of Law.²⁹

The day after the proposal’s pilot Inn was presented, the Chief Justice wrote to President Oaks and Dean Lee, indicating my connection with the program.³⁰ Because of this, I was involved with the initial planning of the first Inn of Court and worked closely with Judge A. Sherman Christensen on its development. From that point on, Judge Christensen took the leadership role in developing the pilot program, American Inn of Court I, as well as the expansion of the concept.³¹ By 1982, Judge Christensen and I thought it was time to “go national,” and I wrote an article for the American Bar Journal, which was published in March 1982.³²

My continuing involvement with the Inn program was primarily in working with Judge Christensen, keeping him advised of inquiries that had come to me from lawyers, judges, and law schools, discussing fairly frequently how the program was progressing, and working on impediments. But by then the program was launched, and I had no doubt about its success. There is no question of the program’s success as there are now over 400 American Inns of Court spread throughout the United States.

Victor Hugo wrote: “There is one thing stronger than all of the armies of the world: an idea whose time has come.”³³ The American Inns of Court was an idea whose time had come. But perhaps we have not yet witnessed the ultimate potential of the idea.

During the last three decades I have voluntarily assisted in the improvement of legal systems on every continent. That experience has extended

28. *Id.* at 36.

29. *Id.* at 42.

30. See letter from Chief Justice Warren E. Burger, *supra* note 4.

31. See Pixton, *supra* note 3, at 53-62.

32. Wallace, *supra* note 2.

33. Translations differ, the probable origin is “*On résiste à l’invasion des armées; on ne résiste pas à l’invasion des idées.*” VICTOR HUGO, L’HISTOIRE D’UN CRIME, “Conclusion-La Chute,” chap. 10.

to over fifty countries, plus contact with many more through international conferences. I have concluded that well-trained, effective, independent lawyers are indispensable to the development of the rule of law and the independence of the judiciary.

The rule of law – so vital for a fair, just, and democratic society – is enhanced by effective advocacy. It is through proper lawyer involvement that judges are best prepared to develop and adhere to a constant, just, and stable law that rules the conduct of people.

When lawyers are independent and strong enough to speak out in defense of a judiciary, there is a far better chance that the judiciary will be more independent. Lawyers as a group are in a better position than judges to defend the independence of the judges and lawyers.

Thus, the question is before all countries today: is there a way to develop well-trained, effective, and independent lawyers within the bounds of proper advocacy and decorum? Can a program be established to provide necessary experience to lawyers to accomplish this vital role?

The enormous success of the American Inns of Court leads me to believe that this model could, and should, be introduced in other countries. The idea of the more experienced practitioners and judges teaching advocacy skills to beginning and junior lawyers (and perhaps law students) could easily be adapted to meet the specific norms and needs of any legal culture.

One objection might be that most countries generally follow civil law traditions, while the Inns of Court were born in a common law country. But my experience has been that in this area of teaching courtroom skills, the methods are fairly generic. Minor differences in application can be easily accomplished as the teaching model for the Inns of Court program is adapted to the local legal culture. The key to success is the same: judges and veteran lawyers passing on their experience to those who are new to the profession.

Is there a need? My international experience has led me to conclude that in very few countries is there a successful emphasis on learning skills of advocacy and decorum. While some countries require a post-law education, or a year-long, legal practice course, the vast majority send lawyers straight from the classroom into practice. An Inns of Court model, adapted to take into consideration the particular uniqueness of the legal culture, could provide the type of training that is often regrettably absent in legal education. The international expansion of the Inns of Court model could have a beneficial effect on the quality of advocacy worldwide.

How would it work? The success of the American Inns of Court can be attributed to the active participation of judges and senior lawyers who are interested in helping the profession. That is, these individuals are generous enough with their time to pass on skills and knowledge, thus returning to the profession in some measure the benefits that they have received. So the first step would be to engage those dedicated leaders who possess the necessary

experience to pass on these skills to the next professional generation.

Second, a structure needs to be created. There are various models, all generally following the English Inn. However, some flexibility to meet needs is necessary. Information about various models can be secured from the American Inns of Court Foundation.³⁴

Third, designers should have in mind the importance of one-to-one teaching, which has proven to be the best teaching method. Thus, limiting membership in particular Inns is important. Thirty to forty members, made up of one-third judges and senior lawyers, and two-thirds junior or new lawyers (or law students), seems to be about right. Periodically, the two-thirds group will rotate out of the Inn as new candidates are invited to join. If the need is greater, an additional Inn is established.

Fourth, a pilot Inn of Court would be established to try out the teaching model. After it has proven successful, it can be replicated by other interested groups in the country.

In the long-term, I hope that each American Inn of Court will have a sister Inn of Court in another country, not unlike the City-to-City program developed over the last sixty years. This could provide a wide range of benefits that would enrich both Inns.

This essay was written to show how judges and lawyers in the United States adopted a principle found in England to develop a successful educational and mentorship for American lawyers. Documenting the United States's experience shows how the project was developed in one country, and offers some guidance for how similar programs might be developed in others. I urge that the American Inns of Court model, and its core mission to improve legal advocacy and lawyer performance, be adapted in other countries to strengthen the advocacy role of lawyers internationally.

34. American Inns of Court, 1229 King Street, Second Floor, Alexandria, Virginia 22314. Online at <http://www.innsofcourt.org>.