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THE
AMERICAN
INNS OF
COURT

A Q U I E T

C R U S A D E

ON THE FIRST DAY OF JUNE 1990, the nation's capital hosted a most impressive gathering. Those who attended carried no banners, wore no armor, and certainly brandished no weapons of war. Yet, with infectious enthusiasm they rallied to the call of a worthy cause. They had joined the movement Chief Judge Howard T. Markey has called "a quiet crusade to save the legal profession."

The occasion for this gathering was the Sixth Annual Meeting of the American Inns of Court (AIC). Dozens of state and federal judges, several law school deans and professors, and hundreds of attorneys



converged on Washington, D.C., to discuss the goals of the AIC movement—to promote excellence in legal advocacy by improving skills, ethics, civility, and professionalism. In this context, Inn members from across the nation addressed the great challenges confronting the legal profession today.

Among the many challenges addressed were: (1) the decline in integrity, collegiality, and even common courtesy in the courtroom,

important "bottom line," and (4) the decay in professionalism as vigorous representation rapidly gives way to the abusive tactics of a vicious litigating game in which winning has become everything.

The "quiet crusaders" were joined by retired Chief Justice Burger, retired Justice Powell, Associate Justices Brennan, O'Connor, and Kennedy, Solicitor General Kenneth Starr, and the presidents of the ABA (American Bar

(2) the dehumanizing effect of ruthless competition and increasing billable-hours requirements on young associates, (3) the pressure on firms to endorse "hardball" business practices to increase the all-

Opposite: A building marked by the winged pegasus, a symbol of ownership by the Inner Temple of the English Inns of Court.

The Holy Lamb and Flag is the symbol of the Middle Temple.

Left: O.C. Tanner's river home, birthplace of the American

Inns of Court.

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THOMAS H.
CUTLER

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*“One of
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— REX E. LEE



KARRAS

**The Right
Honorable, the
Lord Goff
of Chieveley
represented
the English
Inns at the
AIC meeting.**

Association), ATLA (Association of American Trial Lawyers), and ABOA (American Board of Trial Advocates)

That the movement can command the attention of such prominent members of the legal community is surprising, considering the first American Inn of Court was established only ten years ago in Provo, Utah. Since then, however, the movement has spread at an exponential rate to 36 states and the District of Columbia. There are now 124 Inns boasting a total membership of over 7,500. This membership includes nearly 600 state judges and one out of every four federal judges

Given such statistics it is understandable that former Solicitor General Rex E. Lee has called the AIC phenomenon “one of the most significant developments that has occurred in the legal profession in the last decade” (It is also understandable that as president of Brigham Young University and former dean of the BYU Law School, he would add with justifiable pride: “And it had its beginnings right here at the Law School!”)

To understand why the movement has enjoyed such success, we must first look at its rich historical heritage. The American Inns owe their conceptual inspiration to the venerable English Inns of Court in London. The four great Inns, the first of which was built in the late 1400s, were established as fraternal residences for the Royal Court’s entourage of practicing barristers. Characterized by a spirit of collegiality and candor, the Inns rapidly became the centers of legal thought, culture, and practice in England. Because of the free exchange in the Inns, the legal practice became more unified and standards of professional competence, etiquette, and ethics emerged.

Without schools of law (the universities of the time taught only classical Greek and Roman law), a system of “pupillage” developed in the Inns. The more inexperienced barristers observed firsthand the conduct and lifestyles of the “masters” of the bar and bench. In this way the high standards of professionalism so characteristic of English legal practice have been fostered and perpetuated from one generation to the next.

One of the English Inns’ most illustrious residents is the Right Honorable, the Lord Goff of Chieveley, a “Law Lord” of the English House of Lords. (He is a “Lord of Appeals in ordinary” but there is assuredly nothing ordinary about either his person or position—he is comparable in status to a U.S. Supreme Court Justice.) Lord Goff explains that although fewer Inn members still

live in the Inns, the Inns are still used today in essentially the same way they have been used for four centuries. Inn members continue to meet daily in the historic dining halls of the Inns to eat, socialize, and exchange ideas. With this continual association among their members, it is not surprising that the Inns continue to have a formidable unifying and tempering influence on the English legal profession. And, after four hundred years the Inns continue to be bastions of legal ethics, civility, and professionalism.

When Judge J. Clifford Wallace of the Ninth Federal Circuit toured England in 1977 as a member of a U.S. team assigned to examine the English legal system, he was understandably impressed with the Inns of Court. As they waited outside their hotel in London, he suggested to Chief Justice Burger that there might be some way to adapt the Inns of Court concept to American practice. The idea intrigued the chief justice, and he asked Judge Wallace to explore the possibility. After several months of such exploration, Judge Wallace recommended that a pilot program be initiated and sent the chief justice an outline explaining how he might proceed.

In 1979, while Chief Justice Burger was visiting his long-time friend O. C. Tanner near Salt Lake City, Utah, he summoned Dallin H. Oaks (then president of Brigham Young University) and Rex E. Lee (then dean of the Brigham Young University Law School) to an informal meeting at Mr. Tanner’s river home. Foremost on the chief justice’s agenda was the establishment of an Inns of Court program. To test the concept’s viability, he proposed that a charter program be initiated in conjunction with BYU’s J. Reuben Clark Law School.

Recognizing the value of a system that could bring the wisdom and experience of the veterans of the bench and bar to students and young attorneys (and finding it difficult to refuse the chief justice of the United States!), Rex Lee accepted the proposal. Pledging the support of the school, Dean Lee recommended that A. Sherman Christensen, who had recently become Utah’s senior federal district judge, head the program.

Although in his 75th year, Judge Christensen accepted the challenge gallantly. As an adjunct professor of BYU, Judge Christensen had been closely involved with the Law School for several years. He had taught seminars in appellate and trial advocacy at the Law School and felt keenly the need for improved advocacy training in legal education.

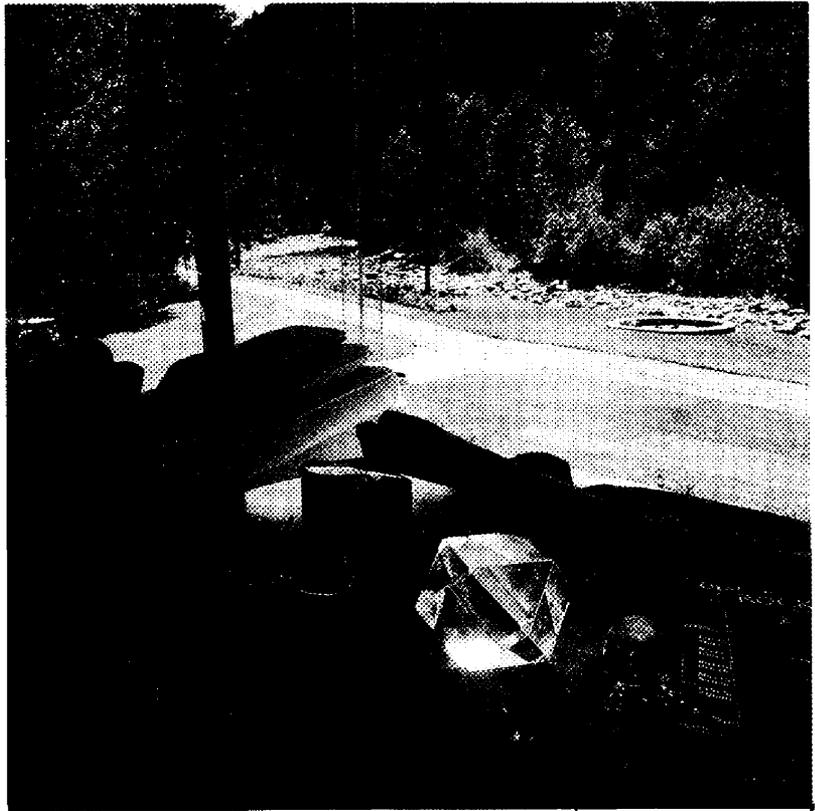
After accepting his mission from the chief justice, Judge Christensen promptly set about

his task with vision and enthusiasm. At his own expense, he flew to London to study the English Inns. After touring the four historic Inns and conversing with their members, he drafted the charter for the first American Inn and included the following as its general objectives:

[T]o unite a cross-section of the bar into a forum for the promotion of excellence in legal advocacy as a calling and as an individual capability; to promote fellowship of the bar, the bench and students of the law; to provide congenial, stimulating and cooperative interaction among students, lawyers and judges whose primary professional interests are in aspects of trial and appellate practice; to contribute to essential reforms and improvements in the training and performance of legal advocates; to facilitate the transition of law students and young lawyers into the operation of our court system; to extend relationships among students and lawyers to the sharing of experiences in law offices and courts through adaptation of the "pupillage" system of the English Inns; and to preserve, foster and adapt for contemporary need in the United States the genius and strengths of the common law and the English Inns of Court, "renewing and inspiring joy and zest in legal advocacy as a service worthy of constant effort and learning"

Having thus defined its worthy aspirations, Judge Christensen began the formidable task of creating a practical program that would embody the spirit of the English Inns. He proceeded by inviting "masters of the Bench" (judges, law professors, and veteran attorneys), barristers (moderately experienced attorneys), and pupils (third-year law students and inexperienced attorneys) to meet one evening per month during the scholastic year. He planned for Inn members to divide into "pupillage" teams responsible for preparing demonstrations of court proceedings. After the demonstrations, Inn meetings would be opened up for discussion, critique, refreshments, and socializing.

Before the first meeting of American Inn of Court I, Rex Lee and Judge Christensen made a friendly wager about its attendance. Dean Lee cautioned Judge Christensen not to get his hopes up, as they could not expect full attendance at a voluntary meeting of an experimental program. The judge in turn assured Dean Lee that all those that had said they would come to the meeting, would come. Each pledged a greater personal contribution to the AIC cause if he lost. Judge Christensen won that wager—and the AIC movement was



all the richer. As an indication of his dedicated efforts and irrepressible enthusiasm, the AIC's first meeting had perfect attendance.

Ralph Dewsnup, an alumnus of the BYU Law School, remembers that he had been out of law school only three years when Judge Christensen asked him to be a charter member of AIC I. Mr. Dewsnup was later appointed to the national Ad Hoc Committee on the AIC in 1983 and now, besides his successful practice in Salt Lake City, Utah, serves as secretary to the AICF Board of Trustees, trustee, and editor of the AICF newsletter. From his continuous experience with the AIC since its inception, he offers insight into the program's practical success.

Mr. Dewsnup attributes the AIC's success to several important factors. First, the program works. He explains that many concerns, especially ethical ones, can only be improved when they are talked about. The Inns provide effective forums for discussions on professionalism and ethics.

Second, *all* participants in the Inns benefit from the "collective wisdom of their colleagues." Of course, law students and inexperienced trial lawyers benefit from the close association and tutelage of the "masters" of the bar and bench. But, the masters themselves also profit from their colleagues' feedback and from the fresh insight of young

The interior of
O. C. Tanner's
river home
in Woodland,
Utah. Chief
Justice Burger
dedicated the
home as a
historic site
in 1988.

*"If the
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That would
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—CHIEF JUDGE

HOWARD T. MARKEY

attorneys and law students experiencing legal processes for the first time. Mr. Dewsnup describes this exchange as having a "leavening" effect on the entire profession.

Third, the informality of the AIC interaction encourages free exchange of ideas in a nonthreatening environment. He points out that "no one's actual life fortune or liberty is at stake when the pupillage teams present their simulations of trial or appellate proceedings." Since the Inn members meet in an attitude of detachment and learning, new ideas or techniques can be advanced and poor practices can be deliberately exposed to generate response and discussion.

As a tribute to Judge Christensen's practical insight, the program that he chartered a decade ago at the BYU Law School in Provo is still being used with only minor adjustments in the 124 Inns now organized across the nation. As a further tribute to Judge Christensen's valiant efforts in pioneering the AIC, and as a formal acknowledgement of the significance of the AIC movement, this year the American Bar Association awarded Judge Christensen its highest honor, the ABA Medal Award. The award holds special significance for Judge Christensen, who, speaking of the AIC movement, confides: "It is very close to my heart." In receiving the award, Judge Christensen joins company with Warren

Burger, Lewis Powell, and several past presidents of the ABA.

Although Judge Christensen never dreamed the movement would reach its present proportions, he always hoped that something significant would come of it. In the first three years only three new Inns were formed. With no funding and no official federal support, the future of the American Inns seemed uncertain.

But Judge Christensen's hope and diligence finally paid off. In 1983 Chief Justice Burger organized a national ad hoc committee to explore the utility and potential of the American Inns of Court. In 1985, on the committee's recommendation, the American Inns of Court Foundation was established for the movement's promotion.

Professor Sherman L. Cohn of the Georgetown Center of Law, one of the most valiant crusaders in the AIC cause, was elected president of the foundation. Michael Daigneault, executive director of the AICF, explains that just as Judge Christensen is responsible for founding the AIC program, Professor Cohn deserves credit for "telling the world" about it. Mr. Daigneault recalls that when he became involved in the AIC as Professor Cohn's administrative assistant there were still only twelve AIC chapters, and two cardboard box files contained the entire movement's records. There was still no money, no staff, and no AICF office. But, with a ten thousand dollar donation from ABOTA during the first year, and a substantial commitment of his own resources, Professor Cohn began, in his own words, to simply "spread the gospel."

Under the influence of Professor Cohn's enthusiasm (one has to spend but a moment with Professor Cohn to experience the inspiring effect of his energy and sincerity), the AIC "gospel" has now found converts in nearly every state in the Union. In the five years of Professor Cohn's leadership, the number of Inns across the nation has increased more than ten-fold. And, as the movement's phenomenal growth continues, its significance and permanence in the American legal community seem assured.

As the number of Inns continues to more than double every two years, proper management of the growth itself has become a great challenge. There are waiting lists to get into many of the Inns. People on waiting lists are encouraged to start their own Inns (a task that is easier than it appears, according to several who have done so). But scarce judicial resources, especially federal judges, must somehow be shared equitably with new Inns.



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And as it becomes more difficult for the national office to meet the specific needs of individual Inns, regional administrative organizations must be developed. Naturally, increasing demand on administrative funds parallels such growth

Still, both local and national AIC officers face such challenges with vigor. Sustained by the promise of success, the "quiet crusaders" press forward in their rallying cause. As a result, they have already begun to see the fruits of their labors. Several state and federal judges have reported improvements in civility and professionalism since the American Inns have been established in their jurisdictions.

However, Chief Judge Markey of the Court of Appeals for the Federal Circuit, chairman of the AICF Board of Trustees, cautions, "We don't have time to worry about what immediate impact we are having on the profession. That will come. It's bound to come. It must come. But it is going to take time—a lot of time. The profession didn't get to where it is today overnight, and its problems aren't going to be solved overnight." Yet, he remains committed to what he, himself, has termed the "quiet crusade to save the legal profession." "It is quiet," he explains, "because we are not screaming and hollering and carrying banners in the streets or 'policing' the profession. But," as he makes emphatically clear, "it is a crusade."

Though it has impressive historic beginnings, practical efficacy, and has been pushed along by the heroic efforts of many people, the movement seems fueled by something more fundamental. Michael Daigneault attributes the AIC's remarkable growth to "a tremendous need in the legal profession" for what the Inns have to offer.

In a sense, the success of the AIC movement itself could be seen as a sad commentary on the plight of the profession. The fact that an organization devoted to restoring legal ethics, civility, and professionalism would elicit such widespread response seems to suggest just how great the profession's need really is. On the other hand, as Mr. Daigneault observes, "the profession must be given a lot of credit. It is responding enthusiastically to the message of the AIC."

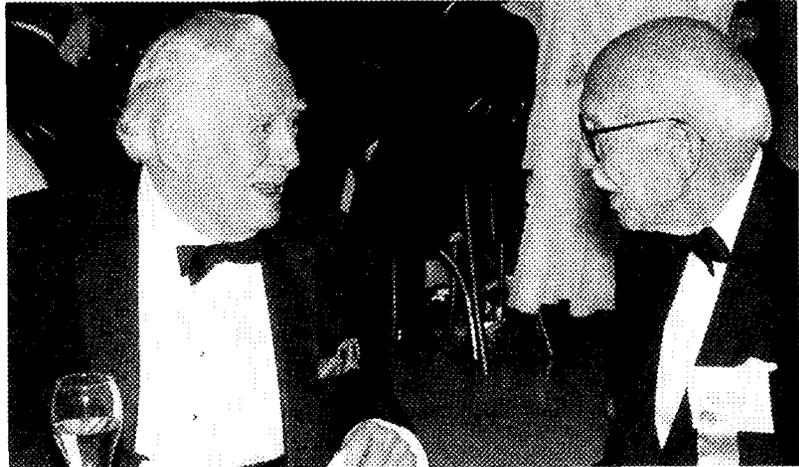
Professor Cohn views the legal profession's plight with a great sense of urgency. Noting the decline in ethics and professionalism—and the corresponding decline in public opinion about the profession—he fears that the profession could lose its privileges as an independent bar. (He hastens to add that if the profession does not reverse its decline, it

will *deserve* to lose them.) Without the freedom to vigorously advocate and challenge matters before the courts, he fears that the underpinnings of the rule of law itself will be threatened. Still, Professor Cohn adds optimistically that "the AIC is trying to change all that—to preserve the independence of the bar and to earn the respect of the American people again."

Chief Judge Markey shares both Professor Cohn's concern and optimism. "The secret to American justice," he explains, "lies in its independent courts supported by an independent bar." Noting that independence is



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lost by irresponsibility, he says, "If the profession itself does not uphold higher standards, they will be imposed—imposed by the legislature—by rules and regulations. . . . That would be fatal."

Nevertheless, with unshaken conviction the chief judge maintains: "I believe the day will come in the United States when no lawyer will think of entering a courtroom to try a case or, indeed, will think of negotiating a contract, who is not a member of an American Inn of Court. Not by law, not by rule, not by force—but solely by choice."

The story of the Inns of Court movement is an inspiring one. Perhaps what makes it most inspiring is that it is about people—legal practitioners who still care enough about their profession to self-sacrifice for its improvement and preservation. For a profession with an ever-growing army of quiet crusaders, perhaps there is still hope.

For more information about the American Inns of Court, contact Michael G. Daigneault, Executive Director, American Inns of Court Foundation, 1225 Eye Street, N.W., Suite 300, Washington, D.C. 20005, phone (202) 682-1613

Top right: Michael Daigneault, executive director of the AIC Foundation. Above: Chief Justice Warren Burger, retired, and Judge A. Sherman Christensen socialize at the AIC's gala dinner in the Great Hall of the Supreme Court. Opposite: Professor Sherman L. Cohn gave the "State of the AIC" address at the opening of their annual meeting.