



# Harvard Law Record

America's Oldest Law School Newspaper

VOL. 23, NO. 11

CAMBRIDGE, MASS., THURSDAY, DECEMBER 6, 1956

TEN CENTS

## Alumni Committee Praised For Scholarship Donations

Three hundred ninety students at the Law School are receiving scholarships this year, Dean Erwin N. Griswold has announced. In his annual report to the Alumni Scholarship Committee, the Dean wrote that the total amount awarded in scholarships was \$175,106.72.

About 26.4 per cent of the undergraduate law students are receiving awards which average \$449, Dean Griswold reported. Last year's average grant was \$698, but with the adoption of the Financial Aid program, under which a combination loan and grant was substituted for a full tuition scholarship, the average value of a scholarship declined \$249.

Under the new program, over \$150,000 will be lent to over 300 students during the current academic year. This will bring the year's total financial aid outlay above the \$325,000 mark.

### Size of Grants

Eighty-one first year students received grants varying from \$400 to \$1,665. Forty-eight of these awards were \$800. About 16 per cent of the Class of 1959 is getting scholarship aid.

A total of 309 second and third year students won scholarships whose value ranged from \$100 to \$1,300. The median award was \$400. Only 17 upperclassmen received over \$500 in direct grants, although the total of loan and grant covered tuition for over two-thirds of the aid recipients.

Students who are receiving funds attended 164 colleges and represent 41 states. "It is clear," the Dean reported,

"that the scholarships have helped materially in maintaining the cosmopolitan character of the School."

Alumni generosity is responsible for the continued high total of funds available for scholarships and loans, Dean Griswold wrote. He gave special praise to the work of the six-year-old Alumni Scholarship Committee, which handles the fund raising program.

The Committee consists this year of 118 members. Seven men, who have endowed full tuition scholarships, are life members, and 111 earned membership for 1956-57 by contributing \$800 or more to the scholarship fund.

### Committee Dues No Higher

Despite the rise in tuition to \$1,000, Dean Griswold said that membership dues for the Scholarship Committee will remain at \$800. "Of course," the Dean wrote, "we will be glad to have gifts increased to \$1,000 wherever that is possible, but gifts of \$800 for scholarship purposes will be welcome and will provide full membership on the Scholarship Committee."

Henry L. F. Kreger, LL.B. '20 of Cleveland, served as chairman of the committee this year. He was assisted by Daniel James, LL.M. '31 of New York City, vice chairman, and two associate chairmen, John G. Buchanan, LL.B. '12 of Pittsburgh and William P. Palmer, LL.B. '20 of New York City.

## Composers, Critic At Forum Tonight

Arthur V. Berger, Associate Professor of Music at Brandeis University, will moderate tonight's Law School Forum on Modern Music. The program, scheduled to begin at 8 p.m. at the New Lecture Hall, will feature two American composers and a noted music critic.

The composers are Aaron Copland and Otto Luening. In 1945 Mr. Copland won the Pulitzer Prize in Music for his composition "Appalachian Spring." Mr. Luening, a member of the faculty of Columbia University, is best known for his experimental work with "tape-recorder music," which forsakes the usual methods of musical expression in favor of electronic devices. His experiments in this form have been hailed by some as progressive, and by others as a travesty of the musical arts.

The third speaker, Irving G. Fine, is a widely known music critic who is now Chairman of the School of Creative Arts at Brandeis University.

## PBH to Organize Vacation Car Pool

The Law School Committee of Phillips Brooks House reports that the PBH car pool will be organized again this year, beginning on Monday, December 10 and continuing through Tuesday, December 18. Richard J. Cravens, 3L of Whiting, Ind., chairman of the committee, requests all students who are interested in obtaining either rides or passengers during the Christmas vacation to leave their names at the PBH office at 23 Everett Street any weekday from 10 a.m. to noon, or from 1 p.m. to 5 p.m.

On Tuesday, December 11, the committee will hold an organizational meeting in Holmes Hall at 4:30 p.m.



Robert E. Keeton

## Teaching Fellows Sought for '57-'58

The Law School is now accepting applications from third year and graduate students and from recent alumni who seek appointments as teaching fellows for the academic year 1957-58, Professor Robert E. Keeton has announced.

Six openings will be available. Those chosen will assist Professor Keeton with the program of group work for first year students and in the preparation of the model trial, an important teaching device used annually to acquaint new students with courtroom procedure.

### Classified as Faculty

The fellows will be classified as members of the Law School faculty, and will be paid salaries comparable to those prevailing for attorneys of comparable experience and academic standing in large law offices of the Northeast. They will not be accepted as candidates for advanced degrees, but will be permitted to enroll in certain Law School courses.

A faculty committee under the chairmanship of Professor A. James Casner will have primary responsibility for choosing the new fellows. In making their selections they will seek a balance between alumni who have practiced for a year or two, and recent graduates who are in touch with current student thinking.

Interested persons may obtain further information from Professor Keeton at his office in Austin Hall.

## Three Teams Win Drafting Problems

The winning teams in the semi-finals of the Board of Student Advisers annual drafting competition for third year students have been announced by Maurice S. Binkow, 3L of Miami Beach, Fla., chairman of the competition.

The winning team in Problem Number One was composed of Wallace R. Barnes of Stewartstown, Pa.; John H. Carnahan of Leavenworth, Kans.; Leonard S. Goodman of Cambridge, and Curtis V. Titus of Washington, Conn. Their entry was judged by Warren C. Horton of the Chicago firm of Horton, Davis and McCaleb.

### Other Teams

Entries in Problem Number Two were considered by William L. Marbury, Jr., LL.B. '24, of the firm of Tiper and Marbury in Baltimore. Mr. Marbury awarded the decision to a team represented by Anthony C. Beilenson of Mt. Vernon, N. Y.; David M. Cohen of New Rochelle, N. Y.; Herbert Elish of New York City, and Robert O. Goldstein of Mt. Vernon, N. Y.

Members of the third winning team were Edwin H. Conger of Grand Rapids, Mich.; Sherman J. McLaughlin of Pittsburgh; Charles G. Schulz of Yonkers, N. Y., and Thomas G. Taylor of Smithfield, Ohio. Judging their draft was Hayden N. Smith of Winthrop, Stimson, Putnam and Robert of New York City.

## Haar Given Grant to Edit Volume on Urban Land Use

A foundation grant of \$7700 has been awarded to Professor Charles M. Haar, to finance the preparation of a volume of cases and other materials for use in the study of urban land planning.

The grant was made by Resources for the Future, Inc., a foundation established in 1952 under a Ford Foundation grant for work in the field of natural resources. Its grant is signed not only to provide funds for research assistance and travel, but also to subsidize publication of the book at a price within the reach of students.

"It is the aim of this study to produce an interpretive organization of case materials, now lacking, that will enable students of law and planning to analyze effectively the legal and administrative problems of allocating and developing the increasingly scarce resources of urban land in modern metropolitan areas," Professor Haar said.

Part of the grant, he stated, is intended to defray the expenses of field investigations and discussions with planners, administrators, and lawyers now engaged in land use controls.

### Long Preparation

Professor Haar teaches Property I, Real Estate Transactions, and Land Use Problems at the Law School, in addition to participating in a seminar on Conservation of Natural Resources at the Littauer School of Public Administration. He has been preparing case materials in the field of land use planning since he began teaching his seminar on that subject at the Law School in 1952. Many of the materials which will appear in this volume are already in use by his students in mimeographed form.

Among the subjects tentatively planned

## Writer Advocates Broader Privilege

Leonard Lyons, Broadway columnist for the *New York Post*, told the Keeton Club last week that a journalist, like an attorney, should be privileged to keep secret the sources of his information.

Mr. Lyons, who received his LL.B. from St. John's University College of Law in New York in 1928, came to Cambridge with Howard M. Holtzman, New York theatrical attorney, to judge a first year Ames argument for the Keeton Club.

At a dinner held before the argument, Mr. Lyons said that he had supported bills in the New York State Assembly and in Congress to extend to journalists the privileges now given attorneys. Both bills, he reported, were defeated.

## Hungarian Refugee Drive Underway at Law School

A drive to collect funds and clothing to be turned over to the International Rescue Committee and the Friends Service Committee for the assistance of Hungarian refugees in Austria will be conducted throughout the Law School today and tomorrow, according to Arthur L. Harper, 3L of Andover, chairman of the Law School Committee for Hungarian Friendship and Assistance. The committee will cooperate with the Dormitory Council and the Law School Committee of Phillips Brooks House in this effort.

### Collection Stations

Tables for the collection of contributions will be maintained in Austin, Harkness Commons and outside Langdell North and South. Mr. Harper stated that the committee's greatest problem is reaching student living out of the dormitories. A group has been designated by the Committee to telephone as many students as possible, Mr. Harper said. A large carton for the collection of clothing will be located at the north end of Harkness Commons.

Mr. Harper said that the International Rescue Committee, to which all the money which is collected will be given, has been



Charles M. Haar

to be covered, Professor Haar stated, are an introduction to the goals and assumptions of land use planning; judicial determinations of conflicting land uses in the law of nuisance; legislative districting of permissible land use through zoning; subdivision and street controls, and an introduction to regionalism; and government as a landowner through eminent domain.

Other topics include private controls over land use through covenants, conditions, defeasible estates, and easements; the role of the federal government in land use, and indirect restraints and inducements through credit and tax policies; and, finally, the role of the master plan in land use planning.

### Varied Education

Professor Haar was born in Antwerp, Belgium. He received his A.B. from New York University in 1940, and his M.A. from the University of Wisconsin in 1941. He entered the Law School that fall, but left shortly thereafter for a tour of duty in the Pacific as a Naval Intelligence Officer.

After his graduation from the Law School in 1948, Mr. Haar spent a year in England on a Sheldon Traveling Fellowship. He practiced in New York City for three years before returning here as an assistant professor. He was appointed Professor of Law last year.

engaged in raising an emergency fund to aid Hungarian refugees as they arrive in Austria. Among the administrative officers of this committee are Leo Cherne, Angier Biddle Duke, and Major General William J. Donovan.

### Distribution Method

Distribution of clothing collected at the Law School, according to Mr. Harper, will be effected by the Friends Service Committee. The Law School Committee for Hungarian Friendship and Assistance was formed last Friday. Other officers besides Mr. Harper are Daniel G. Partan, 2L of New York City, treasurer, and Donald Marcus, 2L of New York City, secretary.



Bailey Aldrich

was associated with the Boston firm of Choate, Hall and Stewart until his appointment to the Federal bench in 1954.

One of the better known trials over which he has presided was that of Leon J. Kamin, a former Harvard researcher charged with contempt of Congress. Judge Aldrich found Mr. Kamin not guilty of contempt in failing to answer questions before an investigating committee in 1954. The case was tried without a jury after a mistrial was declared when spectators' applause for Senator Joseph R. McCarthy (R., Wis.) interrupted the initial proceedings.

This program is the second in the current series of monthly addresses sponsored by the Student Bar Association.

## Harvard Law Record

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Published weekly on Thursday for twelve weeks of each term by *The Harvard Law School Record Corporation*, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and Editorial Offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone, Kirkland 7-7600, extension 447.

Entered as second-class matter November 19, 1946, at the post office in Boston, Massachusetts, under the Act of March 3, 1879.

### Legal Opportunity

It is a truism that the wider choice a law student has concerning the area of law and in what capacity (government, private firm, arbitration, etc.) he contemplates practicing, the greater the possibility of his finding the field best suited to his talents and interests. Too often, however, the student enters his third year with only a vague conception of the established or newly developing fields of practice. His orientation is almost exclusively based on the geographical locale and stature of the particular firm he wishes to work for.

In an endeavor to expose the student to the growing opportunities and challenges of diverse spheres of practice, the RECORD will attempt to present periodically articles by qualified writers in their respective specialties. In the present issue, Professor Max Rheinstein discusses the various roles of the lawyer in the international field.

## Expanding Need Seen For Trained Lawyers In International Field

By MAX RHEINSTEIN

(Mr. Rheinstein is Max Pam Professor of Comparative Law at the University of Chicago Law School.)

American interests and activities transcend the boundaries of the nation. Individuals travel into foreign countries for business or pleasure; family ties extend across national boundaries; private assets are held abroad; residents of foreign countries may be called to succeed to the wealth of an American national, and vice versa. Business relations extend all over the globe. Foreign firms buy and sell in this country; American firms export their goods to foreign markets and import from abroad raw materials and manufactured products. Credit transactions and investments are made between nations; in recent decades numerous American firms have established foreign plants, sales agencies, or other branches. Shipping and air traffic connect the nations. Protection for patents, trade marks, and copyrights must be sought and obtained.

### Various Needs

In all these activities lawyers are needed as advisers, negotiators, draftsmen, arbitrators, and counsel. Legal problems also arise continually in the international activities of the government. They have been important in the traditional conduct of diplomatic and consular business and have multiplied as international governmental activities have increased in recent times. Intricate legal problems have, indeed, arisen in such activities as the formulation and implementation of the Marshall Plan, the Point Four Program, the activities of NATO and SEATO, offshore procurement, economic aid to foreign nations, the occupation of enemy territory during and after hostilities, the maintenance of military and naval bases in foreign countries, etc.

Finally, a new field has arisen for the international lawyer in the activities of those international agencies which, not belonging to any single nation, are charged with tasks of a specifically international character, such as the United Nations, the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Aviation Authority, the International Bank, the International Monetary Fund, the International Institute for the Unification of Private Law, the International Health Organization, and the International Food and Agricultural Organization.

In addition to these international agencies of recent origin, there also exist quite a few older ones with well-established traditions in important fields, such as the Universal Postal Union, the International Copyright Office, the International Bureau for the Protection of Industrial Property, the International Whaling Bureau, the International Bureau of Standard Weights and Measures, and the Pan American Union.

### Members of Delegations

In many of these organizations lawyers are among the members of the several national delegations to the governing bodies; in most of them lawyers are on the permanent staff as international civil servants, just as they are found in the governing bodies and in the permanent staffs of such non-governmental organizations as the International Chamber of Commerce or specialized international trade associations.

Even by foreign governments American lawyers are increasingly used not only in negotiations for American credits but quite generally before American legislative bodies, whose activities have come deeply to affect the interests of foreign nations.

The sphere of activities of the international lawyer is extensive and varied. The opportunity for trial work or judicial action is, of course, more limited than in the national field. Only one American at a time can be a member of the bench of the world's most illustrious tribunal, the International Court of Justice, and very few lawyers can satisfy the dream of pleading a case before it. The Nuremberg experiment of international criminal justice will, let us hope, not be repeated. If a case is to be tried before the court of a foreign country, the American party will regularly be represented by a lawyer of that country, but an American lawyer may have to instruct him or to act as his consultant.

### International Litigation

At almost all times we can find at work some international tribunal or claims commission. According to an estimate recently made by a committee of the American Bar Association, some fifty thousand cases have been decided by international tribunals during the last twenty-five years. Even more extensive is the work of those numerous unofficial arbitration boards in whose activities American lawyers are engaged as arbitrators or party representatives. But the great bulk of the international lawyer's work consists in giving advice, in negotiating, and, above all, in the exercise of the art of draftsmanship.

The work of the international lawyer is fascinating. It offers great rewards, intellectually and professionally. It also requires special skills and knowledge and, above all, the ability to deal with people whose general outlook may differ considerably from the American. Proficiency in for-

eign tongues is a precious asset. In many cases it will also be necessary for the American international lawyer that he has familiarized himself with the so-called civil law, that is, that legal system which constitutes the base of the laws of practically all countries of the world outside the United States and the British Commonwealth. The American lawyer can easily carry on a legal discourse with a lawyer from England, the mother country of the Anglo-American common law, or with a lawyer from any other country whose law is derived from the same source, such as Canada, Australia, India, Pakistan, or Burma.

But let our American lawyer try to carry on a legal discussion or negotiations with a lawyer from Mexico, Brazil, France, Germany, Egypt, Japan, the Union of South Africa, or the Soviet Union. Even if both parties are equally fluent in the use of the English language, they will find it difficult to understand each other. The concepts and mental processes used by one are not those of the other. At best, the parties will need much more time to understand each other than two common-law lawyers. Quite likely they may not reach an understanding at all; at worst, they may believe to have understood each other only to find out later that they have used the same words in different senses or have otherwise talked at cross-purposes.

### Differing Concepts

The reason lies in the fact that the conceptual framework and the methods of legal thought are different in the civil law countries, whose legal system originated upon the continent of Europe and now constitutes varying combinations of rules, methods, and concepts developed in ancient Rome, with medieval customs and modern ideas of the Enlightenment, nineteenth-century rationalism, and twentieth-century technology and policy. While in the solution of practical cases common law and civil law often reach the same results, the mental ways in which these results are reached are different—so different, indeed, that it is not easy for a lawyer trained in a legal system of one family to understand one trained in the other.

To make the American lawyer aware of these differences and give him an introduction into the fascinating world of the civil law, law schools are offering courses or seminars in comparative law.

For a long time American international legal practice was concentrated in a comparatively small number of law firms in Washington, New York and a few other seaports. As business firms of inland regions have begun more extensively to deal directly with foreign suppliers and customers, international legal business has tended to be less centralized. With the development of the St. Lawrence Seaway, international practice of law will expand considerably even into the Middle West.

## NACCA— Rumor and Reflection

By THOMAS F. LAMBERT, Jr.

Mr. Lambert, who received his B.C.L. in Jurisprudence from Oxford in 1939, was Dean of the John B. Stetson College of Law, DeLand, Florida, from 1940 to 1942. After acting as Trial Counsel at the Nuremberg trials, he was Professor of Law at Boston University from 1946 until 1955, when he resigned to succeed Dean Roscoe Pound as Editor-in-Chief of the NACCA Law Journal.

It is a genuine pleasure to venture an account of the history, aspirations and professional targets of NACCA. Since an editor has been aptly defined as a "man who approaches all questions with an open mouth," finding it easier to abstain than be moderate in the length of his discourse, it will be difficult for the writer to be concise, and this account will have to resemble a stratocruiser glimpse of NACCA rather than a detailed documentation of the organization and its activities. First, as to its name, NACCA, a barbarously unmagnificent-sounding one, admittedly. It stands for "National Association of Claimants' Compensation Attorneys." It is confessedly an unvarnished bar association of plaintiffs' lawyers, organized to improve the administration of justice by representing and furthering the interests of injured persons. It is as partisan and devoted in conducting the cause of the injured victims of our mechanized world, no more so and no less, as the commendable and closely associated group of defense lawyers who capably represent habitual defendants and the insurance industry of America. NACCA does not wish to have either its zeal or vigilance in representing injured persons left in doubt. Its mission could be indicated good-humoredly and without, I hope, excessive piety as an organization to comfort the afflicted and to afflict the comfortable.

On the threshold I would say to young law students that it is imperative early in their legal studies to fix in their souls some images of magnificence, and to be alert to the hazard that in the moral erosions of the market place and the dilemmas of actual practice, all too often the "world's slow stain" can get them. The reassurance may, therefore, be timely that a lawyer can put his powers to the full at the personal injury bar, and without glossing or poeticizing the raw realities involved in litigating the claims of those who have been victimized by accident, he can find self-fulfill-

ment without irony, disdain, quiet desperation or bitterness. He can even earn his way into the surtax brackets and enjoy creature comforts in amplitude and yet make himself, if he is so minded, into a civilized man. The point that needs accenting is that this kind of enriched professional life can be achieved in personal injury practice, and the only awful kind of aging, the slow desertion of ideals, can be avoided. It is good to be able to record that, on both sides of the counsel table, the young personal injury lawyer will find men of accomplishment, cultivation, high and unimpaired principle—men of new ideas and old valor. Certainly the writer has found a trove of these qualities among the rank and file, editors and officers of NACCA and, everywhere in it, has felt the vivid presence of a heart.

### Formation of NACCA

In view of its phenomenal growth in the short space of ten years, a word should be said about the formation of NACCA, bearing in mind that the history of anything is like oat soup, going too far back to find something good. In August, 1946, a national conference of state industrial accident (workmen's compensation) commissions was held in Portland, Oregon. Many of the large insurance companies and employers' groups were represented at the meeting. Among the lawyers present specializing in representing compensation claimants were Messrs. Samuel B. Horowitz of the Boston Bar and Ben Marcus of the Detroit Bar. Their discussions confirmed the incontestable, that in tens of thousands of litigated compensation cases the insurers were invariably represented by able counsel, doctors and investigators and that in almost half the cases the injured claimant stood alone, without representation, confronting formidable and skillful opponents. There was an obvious and urgent need for claimant or plaintiff representation if the advantages



Thomas F. Lambert, Jr.

of the adversary system of justice were not to be lost or renounced.

### Balancing the Adversary System

If habitual defendants (railroads, corporate units, municipalities, and public utilities) are represented by skilled and experienced counsel, if insurance company interests are efficiently represented in the Insurance Section of the American Bar Association, if defense specialists had their own trade journals, seminars and institutes to continue admirably their post-admission professional education, if, in short, the defense side was properly organized to the hilt, why shouldn't plaintiffs' lawyers organize and concert their scattered and hence squandered strength? Why not "beef up" our received adversary system and convert the soliloquy into a more balanced debate? There were patent lawyers, trade mark lawyers, lawyers trained in building, unbuilding and remodeling corporations, lawyers spending their lives in reducing the pain that comes from paying taxes, wills and estate lawyers, insurance company lawyers—all organized to the nines—but where was the organization to represent the 9,000,000 people injured seriously enough every year to become statistics? There wasn't any: the defendants' bar had the field to themselves in lunar isolation.

### An Exciting Beginning

After such self-examination and reflection, with a galvanic blend of insight and resolve the two plaintiffs' lawyers in that Portland hotel room called nine others into the room. After additional deliberation, the eleven agreed to form a plaintiffs-lawyers' bar asso-

ciation in the field of workmen's compensation claims. They voted to assess themselves one dollar each and agreed to induce other plaintiffs' lawyers in their respective states to attend their next annual meeting. These pioneers of NACCA were neither complacent nor cynical about the enterprise they were launching. But they were filled with a fighting ardor to improve the administration of justice for the millions who are injured annually in this mechanized age of steam, oil, electricity and now atomic energy. And they were eager to pit their newly created organization against the clamorous needs that had called it into life. We may believe that it is good for the profession that they were not dismayed or agghast at the dimensions of the task they had set for themselves. This Portland meeting was the acorn, the original seed of NACCA, now grown ten years later into a quite sturdy oak. See 10 NACCA Law Journal 17-43, "NACCA and Its Objectives."

None of the original founders of NACCA had the prophetic gift to foresee that within a mere ten years, because of its durable values and the urgent need for it, NACCA would grow into its present size and stature. It has a present membership of nearly 6,000, including many of the pre-eminent leaders and acetal lawyers of the personal injury bar. Originally open only to attorneys representing workmen's compensation claimants, membership has now been enlarged to include lawyers specializing in the fields of admiralty, railroad and tort practice. It is, after all, as catastrophic to lose a leg or sight in a ship, train or automobile as in a factory.

### NACCA Law Journal Founded

The growth of NACCA was sparked by the establishment in May, 1948, of the NACCA Law Journal. The Journal is the chief vehicle by which NACCA conducts its educational and professional program. From a first printing of 1,600 copies, circulation has been expanded to about 10,000 copies, bound in hard covers (as Dr. Johnson would approve: "You read it in a book? Yes, man, but was it a book with stiff covers?"), and is found in nearly all law school, court, commission, law office and other legal libraries in the country. Membership dues in NACCA are \$20.00 a year, for which members receive two volumes of the Journal each year, in May and November, in addition to the right to participate and vote in conventions and other NACCA meetings. Membership in NACCA is not, of course, a condition of receiving the Journal, and we have about 1,100 subscribers (nonmembers) who receive the Journal, many

of them, we are happy to say, eminent defense lawyers and representatives of claim offices of insurance companies.

In addition to the national organization, with home office and headquarters in Boston, Massachusetts, NACCA has some 44 state branches and affiliates, each with autonomous powers, many of which publish their own journals or bulletins.

### Dean Pound Becomes Editor-in-Chief

A memorable event in the chronicles of NACCA was the appointment of Dean Roscoe Pound in July, 1953, as Editor-in-Chief of the NACCA Law Journal. See the Editorial, 12 NACCA Law Journal 19-20, for a full account of this event of signal importance. Formerly Dean of the Harvard Law School and a world-renowned jurist with a reputation of Promethean proportions, Dean Pound's appointment represented a splendid merger of a great man with a great mission. Dean Pound brought to the editorship of the Journal his massive learning, X-ray insight into the crucial issues of the personal injury field, and the authority of his commanding reputation. Volumes 13, 14, 15 and a substantial part of 16 are a repository of Dean Pound's acute and comprehensive views as to the problems of personal injury law. Under Dean Pound's aegis, the Journal, already widely cited by various state courts of last resort, was cited by the Supreme Court of the United States, and the incidence of its citation by state courts was markedly increased. When Dean Pound reached the age of 85, he laid down his editorial burdens, becoming Editor-in-Chief Emeritus. When Justice Oliver W. Holmes, Jr., resigned from the Supreme Court of the United States, an eminent publicist compared the event to "an army resting, its powder gone, but with all flags flying." In Dean Pound's case, however, there is still, as all who know him would expect, tremendous fire power beneath his flags. He has not struck his colors in the unsleeping cause of justice, and he continues to advise our home office staff in the conduct of NACCA's program.

### The Pound-NACCA Foundation

To express and memorialize the unrivaled esteem in which Dean Pound is held by the entire NACCA community and to celebrate his great gifts and abiding contributions to progress in the area of personal injury law, there was recently established the Roscoe Pound-NACCA Foundation, "to the end that the legal work, library, and contributions to the science of law by Roscoe Pound, Dean Emeritus of the Harvard Law School and

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(Continued from page two)

Editor-in-Chief Emeritus of the NACCA Law Journal, and one of the world's great scholars, be perpetuated and honored." May he continue to flourish through the years and forward his life's purpose of enlarging the dominion of justice in the governance of the affairs of men.

#### NACCA's Aims

With these details of history, organization and the Journal in mind, concretizing the matter, what are the significant objectives of NACCA and how does it discharge those aims? The aims of NACCA may be conveniently and shortly listed as follows: (1) To maintain a program of self-education; (2) To aid in promoting safety measures for accident prevention; (3) To insure the preservation of the jury system in civil trials; (4) To achieve fair compensation and the adequate award for accident victims; (5) To work for a modernized and progressive development of personal injury law, in keeping with the best common-law tradition of a dynamic law adapting itself to changing needs.

#### The Educational Program

Our main instrument for self-education is, again, the NACCA Law Journal. Our home office staff read all the decisions relating to personal injury (workmen's compensation, railroad, admiralty and tort cases) published in the fertile West Publishing Company National Reporter System. It is estimated that two out of every three cases in the appellate reports involve personal injury claims. The case output is prodigious, and for the plaintiffs' lawyer who wants to keep abreast of current trends in tort law in other states, it is a wolverine of a job. The task resembles that of an ant seeking to cross the Rockies. The Journal staff seek to do a large part of this massive labor for our membership. The important cases are selected, digested, written up and commented on. In this way the leading cases and current trends are reported twice a year, in the May and November issues of the Journal. Parenthetically, judicial prose normally is undistinguished, has the texture of old oatmeal, and recalls the admonition of the old barrister to his young nephew, "Unless you can eat a ton of sawdust without butter, you'll never make a lawyer." Additionally, each issue of the Journal: (1) reviews sixty-odd leading law reviews and comments on important case notes or articles of interest to its readers; (2) prints articles by leading scholars and personal injury practitioners bearing on, e.g., trial tactics, forensic medicine, the use of demonstrative evidence, or other subjects of importance; (3) lists verdicts and awards exceeding \$50,000; and (4) publishes other matters of professional interest to our readers.

#### Cinderella of the Curriculum

Of prime importance in our educational program is the subject of forensic medicine, medical-legal learning, which is the cinderella of the usual law school curriculum. Probably six out of 10 questions in an ordinary damage suit are medical and not legal. A passenger while walking on an airline ramp falls suffering slight injury as a result of the dangerous defective condition of the ramp. So far, so good. But a short time later, there is the onset of symptoms of dreaded multiple sclerosis. Did the traumatic impact with the defective ramp cause the multiple sclerosis? Was the relationship between the two causal or merely sequential? The conventional torts course, including the one conducted for some years by the writer, is not much help on that. It is a medical not a strictly legal problem. Straight-line thinking with a honed mind, unaided by specialist training in medical-legal, will not get you home on that representative problem. The typical plaintiff's lawyer handling such a case will in all probability be up against an experienced and able insurance company lawyer who is well up on his "medical-legal." The plaintiff's lawyer, though chock-full of black letter, barrister law on liability, will be out-manuevered on his medical feet, and, with his morale in shreds, have the unenviable task of explaining to his client how, with "good liability," the case turned to ashes.

#### Bearing Down on Medical-Legal

NACCA tries to fill the gap in our professional training as to such important "roast beef" subjects. The transcripts of NACCA convention and medical-legal institute proceedings provide a real motherlode of material relating to forensic medicine and demonstrative evidence. I know of no other comparable single source for such singularly important materials and discussions. For instance at the 1956 Los Angeles NACCA Convention, papers and panel discussions by eminent doctors and lawyers were presented on such subjects

as: peripheral vascular surgery; diabetes mellitus; chest injuries; glaucoma; peptic ulcer; multiple sclerosis and other demyelinating entities of the nervous system; the relation of a single act of trauma to the subsequent development of malignancy; the arthritides, including the neuromuscular dystrophies; etc. The NACCA transcripts of convention proceedings are truly cornucopias of medical-legal information, valuable enough both to lock in a vault and to give the widest circulation of them to the profession.

#### Accident Prevention

In view of considerations of space, mention will be made of only a few of our most recent activities in the field of accident prevention: at our regional and national meetings, we have presented papers and symposia by engineers, doctors and lawyers on such topics as "Making Automobiles Safer," "The Duty of a Products Supplier to Warn," "The Cornell Automotive Crash Injury Research Project," "Head Injuries and Their Prevention." See the instructive article by NACCA Editor Harold A. Katz, "Liability of Automobile Manufacturers for Unsafe Design of Passenger Cars," 69 Harv. L. Rev. 863. On November 20, 1956, enterprising NACCA of Connecticut held an Institute on Scientific Accident Prevention, Investigation and Evaluation. NACCA is thus robustly interested in the prophylactic purposes as well as the reparation function of personal injury law.

#### Preservation of the Jury Trial System

Critics point out that in certain metropolitan area the trial dockets are very congested in automobile negligence cases and that there is a delay of three or four years in reaching cases for trial. And justice delayed is justice denied. The jury trial system is said to be the bottleneck. We are urged to eliminate the civil jury, to replace it with judge-trials or entrust motor vehicle litigation to some kind of an administrative agency modeled on the workmen's compensation commissions. NACCA believes there should be long, hard, consecutive thinking before we administer euthanasia to our received jury system. Of course the intolerable congestion of the negligence docket must be reduced; true it is that justice delayed is justice denied; but to say that in order to speed up automobile litigation we must slay the civil jury is to slip on one's premise and sprawl on one's conclusion; it is a frequently exposed non sequitur. It is using the guillotine to cure the toothache.

It is not enough that justice be done. Sometimes it is important that it appear to be done. It is easier for people to see themselves reflected in the cross-sectional jury than in the judge or the administrative board. The jury comes to the deciding job reflecting the earthy viewpoint of the common man. It is better fitted to allocate losses in terms of the community's notion of fair play than the single judge. Judges, however well motivated, come to the decisional process conditioned by fragmentary experience and the insulations of professional study and experience. The jury, on the other hand, springs from the side of society itself. If the civil jury were replaced by judge-trials, additional clamor may arise for popularly elected, short term judges. Many responsible citizens would not regard this as an unmixed blessing.

If automobile cases are given to administrative boards and treated like industrial accidents under Workmen's Compensation—liability without fault of motorist or victim with limited medical care and scheduled disability allowances—this will be a retreat in flight from rationalization. There is a class of people in our society known as "compensation paupers." Why add to it? Compensation benefits lag behind and do not fluctuate with the rising cost of living; statutory schedules are ravaged by inflation and their increase is vigorously resisted and grudgingly made, never enough to catch up with the spiraling cost of living. But verdicts and settlements in automobile tort cases stay within hailing distance of the cost of living and tend to vary with it.

#### Reducing Delay and Retaining the Jury

Methods are available to cut down on calendar congestion without evisceration of the jury system: the pilot project of the federal court for the Southern District of New York has proved very effective; Chief Justice Vanderbilt has virtually eliminated delay in negligence cases in New Jersey; invigorated use of the auditor and pre-trial systems is now being tried out in Massachusetts. It is important to distinguish between monuments and ruins and not to abandon jury trial in the drive to do away with avoidable delay. The prediction here is that the anvil of jury trial will outlast the hammers of its critics. The intractable personal injury problem today, more acute

even than delay in trial or settlement, is the age-old quest for a financially responsible defendant. Inroads will be made on that problem and on reducing court congestion without hurling the jury system into outer darkness. Jury trial (with acknowledgment and apologies to Mr. Thurber) should be more abundant not moribundant.

#### The Adequate Award

The most striking development in the area of personal injury law in the last decade or so has been the increase in the size of jury verdicts. This is a matter on which the facts need to be separated from the political war whoops and on which it is unwise to be positive in the Ambrose Bierce sense of the term, "wrong in a loud tone of voice." Certainly jury verdicts have increased in modern times. The basis of our economy shifted from the ox plough and the cave to the industrial revolution, from that to the age of electricity and now to the atomic era. Why should we have gaslight verdicts in the atomic age? In 1896 an Indiana court held a verdict of \$1,100 adequate for the loss of a right leg to a seven-year-old girl. In 1911 the Arkansas Supreme Court ordered a remittitur of \$5,000 from a \$10,000 verdict for the loss of both legs. In 1892 a thirty-year-old stevedore suffered a comminuted fracture of his leg necessitating amputation below the knee, and the trial judge allowed him \$500 for his suffering and \$1,786 for his loss of earning capacity, commenting stoically with inverted otherworldliness, "His disability is for life, but for life only." Who was it who said, "never put off for tomorrow what should have been done in the 1860's"? The increase in jury awards was long overdue. Insurance company lawyers who invoke with remembered relish these outmoded, man-with-the-hoe holdings on the low value of life and limb, discounting the integrity and the dignity of human personality, and the Readers Digest and other inspired sources who inveigh against the trend toward adequacy in awards would not think of using the horse-drawn surrey or kerosene lamp, much less of lighting their cigars by rubbing two sticks together.

#### Why the Increasing Size of Jury Verdicts?

The reasons for the notable increase in jury awards (and judge awards, be it noted, as in Federal Tort Claims Act cases) are readily understandable. It is largely due to decreased purchasing power of the inflation-gutted dollar, which having become a fifty-cent piece is shrivelling in the direction of a quarter. As a strong Florida judge recently put it, "the day when a verdict of \$10,000 for a negligently destroyed human life, although that of a mere baby, would be regarded as excessive has gone glimmering. In the good old days bacon was 5 cents per pound. A good hat could be had for 50 cents, a good pair of shoes for 75 cents and a good suit of clothes for \$6. Verdicts usually respond to the value of current commodities, wages or other well recognized symbols of value. There is no suggestion that the jury . . . were not schooled in the speed a dollar would be consumed in the open market . . ." As somebody shrewdly said, "What this country needs is a good 5¢ anything."

With the reduced value of the dollar, of course, has come a marked increase in the daily earning power of most people. Most people today are drawing higher wages than their opposite numbers did in equivalent jobs in the 1920's. When you come to assess impaired earning capacity and loss of earnings,

(Continued on page four)

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(Continued from page three)  
past, present and future, that properly augments the amount.

#### Compensation for Pain and Suffering

There has also been, as Dean Prosser has pointed out, a broadening in some degree of the recoverable items of damage, a judicial toleration of a legitimate liberality on the part of the jury in dealing with such terrifying intangibles as disfigurement, excruciating pain and suffering (living with the "secret wolf of deafness," the nagging pain of a cracked skull, the psychic injury and phantom pain that are the gruesome companions of amputations, the destruction of sexual powers, the loss of paternity, the sleepless agony of traumatic arthritis) and all the other serious sequelae of severe and disabling injuries. How can the adequacy of any award be rationally determined unless measured against the extent and permanence of the injuries and their toll on and economic consequences to the individual victim? As you read the stream of advance sheets from automobile and railway accidents and the infinite variety of death-dealing instruments of modern life, in sober truth, you "feel brushed by the wing of madness" itself. The cult for the glorification of the zero in accident awards bear a heavy onus in assailing the adequacy of awards in the staggering and devastating toll of modern accidents.

Thus, while American life has its smiling aspects, it has its catalogue of horrors, too, which the National Safety Council properly and periodically unrolls to us with Medea-like intensity. While the average human being seems to be an incurable optimist, believing that he has a pretty good chance of winning the Irish Sweepstakes but not the slightest chance of being hurt in an automobile accident, Dean Pound, the Safety Council and informed students know better. It is the jury, drawn from the country, from the side of society, as suggested above, which is best fitted to measure in a money judgment the price of rent, bread, nursing care, medical and hospital bills, loss of earnings and distraction from pain, and "liability with disability."

#### Plaintiffs' Bar Better Trained

A last reason for the increasing size of jury verdicts is that the plaintiff's bar has become better trained and educated. With the advent of the emphasis on demonstrative evidence (blackboard techniques, the use of diagrams, X-rays, colored photographs and the like); attendance at medical-legal institutes, with enlarged knowledge of anatomy, and trauma and disease of the portion of the body involved, and increased skill in examining and cross-examining doctors as to the diagnosis and prognosis of the case; yes, if pardonable mention of it may be made, with the entry of NACCA and its programs and facilities on the scene; plaintiffs' lawyers have become better trained, with less of the old stumble, fumble and fall; and this, it is ventured, is another factor in the legitimate rise in the size of jury verdicts. We recall the storied comment of a venerable attorney who confessed, "when I was young, I lost a lot of cases I should have won; and when I was old, I won a lot I should have lost: so by and large justice was done." That lawyer, we believe, belonged to a disappearing, if not vanished, tribe.

#### Progressive Development of the Common Law

NACCA believes in the integrity of doctrine and the stability of legal principles and rules. As Dean Pound has compellingly put it, in one of his great, seminal sentences, "The law must be stable and yet it cannot stand still." This defines the responsibility of our profession, lawyers and judges, for adjusting the need for stability with the necessity of change. Professor Warren A. Seavey has contributed well and truly to the resolution of this problem by teaching us that *stare decisis* is a principle, not a rule, and that it is relative to the specific field in which it is used. It has more weight in some fields, such as taxation, titles, wills and estates and the construction and effect of commercial documents, than in others. It has less claim and relevance in the field of torts.

In torts our judges should "sit not like the figure on the silver coin, ever looking backward." In torts the quest for justice is as important as the quest for certainty, and the common law embodies, it does not embalm, that quest for justice. To paraphrase a splendid statement of Professor Freund's, "The common law should not be read like a last will and testament, lest indeed it become one." In the history of the developing common law, you do not find cultural calcification: it has been a stream and not a stagnant pool. That is why the contention is made that *stare decisis* does not mean stagnation or stick-in-the-mud in the field of torts. In that field the law has always been "working itself pure." At times its growth is imperceptible, like the coral reef, inching along from case to case, but at other times in one stroke a court, responsive to new needs and changing ideas of justice and to the demands of valor no less than to those of caution, has overturned a century of restrictive precedent.

What we are trying to say is simply this: *stare decisis* does not mean building a wall of fire around an unjust rule; nor does it mean that the common law is powerless to purge itself of exposed error; and while, other things being equal, existing rules should be followed, when justice and social feasibility unite to re-

quire the extension of an existing principle to novel facts or the creation of a new interest, the fact that an early decision would prevent the change should not be a bar. "The earth belongs in usufruct to the living."

#### Some Pockets of Immunity

It is a tribute to the social responsibility of our judges and juries that by and large the development of tort law has been progressive; old errors have been recognized, reviewed and revised without reluctance, with constructive conservatism, not Gothic narrowness; and the rules have been adjusted to current needs. There are still, however, restrictive rules and pockets of immunity which, we may safely predict, are on the way out, e.g., the immunity in tort of the state and its subdivisions, the tort immunity of charitable institutions; denial of liability in some states for prenatal harm; rejection of the attractive nuisance doctrine in others; host-guest statutes; the unjust doctrine of contributory negligence instead of the superior comparative negligence doctrine. But the general trend has been toward an expansion of tort liability in the interest of the general security. As Dean Prosser sums it up, the order of the day for habitual defendants is "fire and fall back." Our judges have not regarded the common law as the lady from Indiana, getting her first view of the Coliseum, regarded that scenic wonder: "It's perfect. Don't let them change a thing."

#### Tort Reform a Task of the Courts

It will not do to say, "Let the legislature do it." This is an abdication of judicial responsibility and prerogative—the molding and shaping of our common law. As the late Justice Jackson incisively reminded us, the law of torts is almost exclusively judge-made law; statutes have had very little to do with it. If there is one judicial function which vests in judges appropriate power, it is to apply established principles to novel fact situations. Or to create new interest: *Palsey v. Freeman*; *Ashby v. White*; *Moses v. Macferlan*; *Lumley v. Gye*; *Hill v. Argonne Co.*—and a thick-et of other examples that could be cited. If you set the common law, like man, against the stars, you see both immemorial age and ever-renewing youth, and you come to see that even equilibrium is dynamic.

#### Conclusion

There are many other things I wanted to say about NACCA and its aims which have gone unmentioned. But the reader will not be inconsolable because of that, for he doubtless feels at this stage like the man who ate a pair of shoes and was asked what it was like. "The best part was the holes," he replied. Bear in mind that in this article, NACCA has been viewed through a partisan and for that reason perhaps tinted lens. The astronomers have long taught us that the angle of observation has a good deal to do with the properties of the thing observed. Partisanship can both narrow and even bring about a total eclipse of the field of vision. Since that is presumably applicable also to the critics of NACCA, we return full circle, as we began, that the responsibility for the total view is a nondelegable one of the reader. Perhaps there was something to be gained from hearing about NACCA from one associated with it, recalling a college theme written by the late Robert Benchley, "The Alaska Fisheries Dispute As Seen Through the Eyes of a Fish," presumably a partisan piscatorial presentation.

If you young law students decide to enter the field of personal injury practice with both its heartbeats of humanity and all its abrasions and anointments of the spirit, and pursue it with energy and dedication, hewing to the enlightened line, both sides of the counsel table can promise you a full life and one "rich beyond the dreams of avarice."

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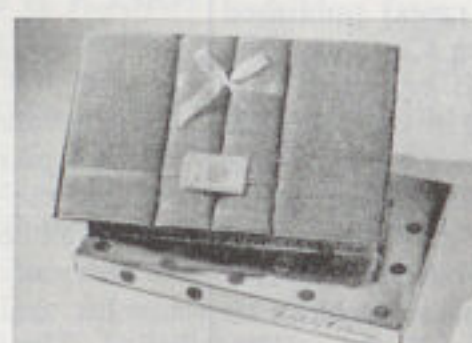
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