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Department of Justice

KEYNOTE ADDRESS OF

THE HON. RICHARD G. KLEINDIENST

ATTORNEY GENERAL OF THE UNITED STATES

AT THE

DEDICATION OF THE

DEAN ROSCOE POUND MEMORIAL LIBRARY

ROSCOE POUND - AMERICAN TRIAL LAWYERS

RESEARCH CENTER

CAMBRIDGE, MASSACHUSETTS

NOVEMBER 11, 1972

(Speech was delivered by Roger Cramton, Assistant Attorney General,
Office of Legal Counsel)

It is a privilege and honor for me to participate in this dedication of the Dean Roscoe Pound Memorial Library. The memorial is a most fitting tribute to Pound's scholarship and genius.

When I was a student at the Harvard Law School from 1947 to 1950, Pound was no longer teaching there, but I did meet him personally. Then as now, the name Roscoe Pound was legendary, and it always filled me with reverence and pride to be a product of the same law school in which he was both student and dean.

At about the age of 19 Roscoe Pound came to the Harvard Law School from Lincoln, Nebraska, a refugee from the field of botany, which he greatly favored. But those were the days when a boy did as his father told him. So when Pound's father said that his son should go to Harvard, that settled it. It is not surprising that in the short time Pound was at the Harvard Law School--merely one year from 1889 to 1890--he discovered that he belonged there. At the end of the year Dean Langdell wrote to Pound's father--a judge of a lower court in Nebraska--stating that his son had attained a grade

average of over 75. Unaware of the significance of this high grade under the law school's grading system, Judge Pound cautioned his son that if he could do no better, he might as well leave Harvard.

As it happened Pound moved on from the Harvard Law School in 1890, having been advised that he already knew enough law to pass the Nebraska bar. In those days the bar exam evidently posed no great ordeal. The story goes that young Pound was counselled to go to the County Bar Examiner with a box of good cigars. Apparently Pound's knowledge of cigars was even better than his legal education at that point--he was promptly found qualified to practice law.

Thus was he launched on a long and distinguished career that was to last almost 75 years--as attorney-at-law, public servant, law professor, and above all, legal philosopher in which role he won acclaim both at home and abroad as one of the most influential of his generation.

Pound first taught law at the University of Nebraska, where as early as 1903, at the age of only 33, he was appointed dean of its law school. Subsequently, after teaching elsewhere, Pound was called to the Harvard Law School, where he was dean of law from 1916 to 1936.

In 1954, when Pound was 84, his sister expressed the fond

hope that he would return to Nebraska, where "he might at last wish to be his age and retire." However, retirement was the furthest thing in Pound's mind. At 86, he began a five-volume work on American Jurisprudence, which he completed at 89. And his dedicated commitment to the needs of the law never flagged until 1964 when he died at the age of 94. When he was merely 70, he said:

"There is much more to be done to make our administration of justice what it should be in the twentieth century, and if for no other reason, I do not feel ripe for an obituary."

Pound may have left us in 1964, but his radiating influence lives on among generations of students, faculty members, judges, and lawyers everywhere. His books and papers will, as Solicitor General Griswold once said, "remain his monuments--more durable than bronze or granite."

Any attempt to review the many facets of Pound's varied legal talents, the range of his intellectual interests, or his achievements would be futile here. Suffice it to say that his was a scholarship and bent of mind that covered almost the entire spectrum of legal learning of his day.

Brief mention might be made, however, of several major themes that he frequently espoused in his striving to awaken and generate interest in enduring legal reforms at both

national and state levels. These were:

- his interest in what he called "sociological jurisprudence"
- the development of the general administration of justice
- the improvement of criminal justice in America
- the importance of an independent judiciary.

Sociological Jurisprudence--A word about it

One of Pound's more notable contributions involved an extension and elaboration of principles expressed by Oliver Wendell Holmes, Jr. in his work, The Common Law. "The life of the law," Holmes wrote, "has not been logic: It has been experience." By application of this principle, the courts have been able to develop legal doctrine designed to keep the law abreast of new social demands; to make it a living force responsive to the Nation's needs. This does not mean that judges may step beyond their interpretive function and become legislators. But as Justice Frankfurter described it, "Pound spelled it out, ...that law isn't something that exists as a closed system within itself, but draws its juices from life"; and that "law being a response to life had to concern itself with life."

Pound gave his views on this subject the name "sociological jurisprudence," because of its close relationship to other fields such

as sociology, economics, history, psychology, and the like. He called this interaction "team play with the other social sciences." Pound believed that law is merely one means of social control, and that if its purposes are to be effectively achieved, the lawmaker should try to study and accommodate other social controls and adapt the law to changing economic and social conditions.

The Administration of Justice

Another important area of Pound's concern and insight lay in the proper and effective administration of justice. In his address to the American Bar Association as early as 1906 on "The Causes of Popular Dissatisfaction with the Administration of Justice," Pound took to task those lawyers and judges who are content to adhere mechanically to stale and obsolete rules of judicial procedure and who are oblivious to their collective responsibility to improve procedures and eliminate uncertainty, delay and expense in litigation. He also deplored the tendency of putting courts into politics, which had the effect of destroying the traditional respect for the judiciary. About 30 years later, Pound's book Appellate Procedure in Civil Cases charted a course towards a more effective system of judicial review. Many of the reforms advocated by him were later embodied in the

rules and practice of federal courts of appeals.

Criminal Justice in America

In his monumental lectures of 1923 relating to Criminal Justice in America, Pound directed attention to the serious deficiencies in the machinery of criminal justice. He was struck by the way city, state and federal agencies of justice, acting quite independently, continually hindered or thwarted each other. Even federal enforcement officers of different bureaus clashed instead of cooperating. There was also often too intimate a connection of the prosecutor's office with politics, and grave abuses in the bail system, exploited by professional bondsmen. Things were little better in our judicial organization where it was common for one court to hamper another.

Pound was especially distressed by the haphazard and disparate sentencing practices and correctional efforts. By way of illustration, Professor Sheldon Glueck recalls a story that Pound told about a village justice of the peace who fancied himself a great jurist. He kept a mail-order catalogue between the calf-leather covers taken from an old law book. Once when an unlucky out-of-state victim was brought before him for violating the traffic law, the learned jurist put on his glasses, opened his mail-order book, cleared his throat, and

solemnly pronounced a sentence of \$14.98. When the unhappy defendant protested that he had never paid more than \$10 for speeding, the arresting officer whispered in his ear, "Y'd better shet up. Y're dern lucky Hizzoner put his finger on 'pants' instead of 'pi-anos'."

The light which Pound's lectures focused on the defects of criminal justice helped to bring about a more workable balance between the community's security and the rights of the individual. In this field, however, much of our apparatus and thinking needs considerable overhaul, now as then. But today we are making the effort as never before in our history.

An Independent Judiciary

After 60 years of practicing and teaching law, Pound in 1951 delivered a series of three lectures at Westminster College entitled "Justice According to Law." These lectures crystallized his views on that subject. In his final lecture, "Judicial Justice", in which he discussed the underlying basis for the doctrine of separation of powers inherent in our Constitution, Pound observed that "recent examples of totalitarian government show what the separation of powers was devised to save us from..."; and in those parts of the world where there was a movement towards absolute, dictatorial government, there inevitably followed a corresponding

disappearance of justice according to law. "The real foe of absolutism, Pound concluded, "is law" as interpreted and applied by an independent judiciary; and this has always been the cornerstone of our federal judiciary system.

In these lectures Pound also pointed out the advantages of "judicial" justice over other forms, legislative and executive: first, it combines the possibilities of certainty and flexibility; second, there are checks upon judges which are more effective than on legislative and executive officials; and third, judges will on the whole uphold the law against excitement and clamor. Although Pound recognized that the judicial process does not at all times conform to our ideal of it, the constant striving for the ideal, he felt, goes far toward realizing it.

Looking to the Future

On an occasion such as this commemorating Pound's contributions to justice under law, there is a tendency to look solely to the past. However, as Justice Cardozo once wrote:

"The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for tomorrow. It must have the principle of growth."

This may therefore be an appropriate time to take stock and inquire how the administration of justice may be further improved

and strengthened.

The High Cost of Litigation and Litigation Delays

Although Pound deplored the high cost of justice and undue delays in litigation about 70 years ago, these deficiencies in our administration of justice are on the whole still with us.

Merely minor progress has been made in reducing litigation costs, chiefly through such procedures as smaller juries, condensed transcripts on appeal, typed rather than printed briefs in some cases, and the use of pre-trial commissioners to pass on documentary and other evidence. But the problem of litigation costs calls for improvement at almost every stage of the process--a challenge to all of us.

Delay in litigation is delay in justice itself. Litigation delays have been cut partly through increases in judicial manpower, more flexible reassignment of judges, and streamlined methods in bringing cases to trial. But as Chief Justice Warren Burger has stated, "more money and more judges alone are not the primary solution". What is required, in his opinion, is the application of modern record keeping and systems planning for handling the movement of cases.

There are other proposals designed both to lower litigation costs as well as delays. One would expand the jurisdiction of the

small claims courts. Another would provide that landlord-tenant claims, consumer-type grievances and related matters shall be decided by a commissioner or arbitrator appointed by the court.

Regardless of the tack that is taken, we must be daring enough to replace rigid, self-defeating procedures which merely encourage delay.

Adequate Representation of the Poor and other Persons

One of the nation's overriding concerns is to establish more effective procedures to assure adequate legal representation to the poor, to minority groups, welfare recipients, consumers and other persons who are unable to pay for legal services. Ours is a nation where justice should not be rationed or denied for lack of adequate legal representation.

Legal aid, public defenders, neighborhood legal services, civil rights organizations and others have made considerable headway in providing a more meaningful measure of representation for such disadvantaged litigants. Government attorneys are now making their own contribution on a more systematic basis. Many law firms provide opportunity and encouragement to younger members of the firm to volunteer for community service. Recently the D. C. Bar

Association took steps to require private practitioners admitted to the District Bar to devote some of their time and talent to needy persons other than paying clients.

Unfortunately, today there are millions of persons in ghettos, slum and rural areas and elsewhere of very modest means who fall just short of being in the "poor" category so as to qualify for legal aid, yet lack funds to hire a lawyer. Such persons are frequently the prey of unscrupulous rackets and consumer frauds, and thus have a real need for legal services.

What are some of the ways by which to provide a broader range of low-cost or free legal services for this large group of individuals?

One approach might be to extend techniques which presently utilize the law school as a base of legal assistance operations. The Community Legal Assistance Office at Cambridge, which draws on students from the Harvard Law School, might be cited as one example, of which there are others elsewhere, notably in law schools situated in the District of Columbia and other metropolitan centers.

In some areas, the work can also be effectively handled under community auspices. For example, in East Harlem, New York, the Community Law Offices, initiated as a special project of the city's

Legal Aid Society, represents a community project with as many as 270 participating volunteer attorneys from law firms and corporate law departments. They handle criminal matters, welfare, landlord-tenant cases, group representation projects, and many other matters.

A growing number of states have authorized, either by statute or rule of court, third-year law students to represent individuals in routine cases, under supervision of experienced attorneys. These programs are providing legal assistance to many indigent persons while at the same time they are enriching the training of law students.

Other arrangements are now under consideration which may broaden the availability of lawyers to many persons of moderate means. Arrangements for employing counsel for members of a group are being tried out in some states. In the future we can also expect a trend of prepayment for legal services and advice, as is now so common for medical assistance.

At the federal level, the Office of Economic Opportunity sponsors a program giving poor people the professional counsel they need in a broad range of civil legal remedies. President Nixon has proposed that this be further improved with an independent National Legal Services Corporation with a board of directors composed of disinterested citizens.

These are merely a few of many ideas in ferment throughout the Nation to promote equal justice under law, and at the same time provide courtroom exposure for advanced law students.

In this respect it is obvious that Pound's views on team play with the other social sciences are today being vindicated and applied in the actual operation of the law and in the teaching of it.

With Pound's spirit and ideals to spur us on, we can maintain and enhance our faith in the continued progress of the law.