



2016 ANNUAL REPORT

Dear supporters of the Pound Civil Justice Institute:

As part of its mission to preserve and strengthen the U.S. civil justice system, Pound works to educate judges and to partner with law schools to further academic inquiry into issues pertaining to the civil justice system. Thanks to your support, we've made great advances in furthering the cause of civil justice in the past year, and have big plans for the year ahead.

- We held our **24th Judges Forum** in Los Angeles on July 23, 2016. The subject was *Who Will Write Your Rules—Your State Court or the Federal Judiciary?* The report of this Forum will be released in January 2017. Details inside.
- We held another in our series of successful **Academic Symposia** on September 23, 2016, titled *The Demise of the Grand Bargain: Compensation for Injured Workers in the 21st Century*. Rutgers Center for Risk and Responsibility and Northeastern University School of Law cosponsored. Details inside.
- In May 2016, the academic papers from Pound's 2015 Symposium with Emory Law, *The "War" on the Civil Justice System*, were published in a special edition of *Emory Law Journal*, Vol. 65 No. 6. This marked the first published research from a Pound-sponsored symposium in 10 years.
- We presented our second **Appellate Advocacy Award** to three lawyers who secured a landmark Pennsylvania decision in a workplace injury case. Details inside.
- The 6th Annual **Howard Twigg Memorial Lecture on Legal Professionalism** was delivered by Stephen B. Bright of Yale Law School and the Southern Center for Human Rights. He spoke on *Eliminating Bias in Jury Selection*, based on his 2015 U.S. Supreme Court case *Foster v. Chatman*, which received a rare 7-1 decision.
- Planning is under way for our **25th Judges Forum**, to be held in Boston on July 22, 2017. The Forum's title is *Jurisdiction: Defining State Courts' Authority* will examine the recent trend to limit the courts' powers to hear cases with multi-state or multi-national aspects. Details inside.
- We began planning a meeting of law professors from across the U.S. to brainstorm on how to enhance relations between the plaintiffs' bar and law students/law professors, to benefit a strong civil justice system.

- We host well-attended **Fellows receptions** at AAJ conventions. The highlight of the 2016 reception in Boca Raton was a well-deserved award to Justice Barbara Pariente of the Florida Supreme Court. The Fellows' reception in Los Angeles hosted more than 150 judges, Fellows and guests, and was enjoyed by all. We look forward to 2017 events in Austin, TX and Boston, MA. All Pound Fellows are invited to attend free of charge.
- Currently 20 AAJ state affiliates are Pound **Justice Association Members**, who directly support the viability and success of our Judges Forum program, which educates their state judges.
- We are very grateful to the 9 members of our top membership level—**Jury Guardian Law Firm** and **Jury Guardian Fellow**. Their generous support directly enhances Pound's excellent programming, allowing us to continue important work with judges and law schools.
- We continue to enjoy strong support among AAJ's leadership. The AAJ president, president-elect, and immediate past president all sit on Pound's Board as *ex officio* trustees, and all elected AAJ officers are Pound Fellows.
- Our membership and leadership ranks continue to expand, and reflect the youth, vitality and diversity of the trial bar. We have *ex officio* trustees representing AAJ's Minority Caucus, Women Trial Lawyer Caucus, New Lawyer Division, and LGBT Caucus. Many of our Fellows derive from these groups as well.

For these successes, we sincerely thank you, our Pound Fellow members, for your ongoing support of the Institute's work. We could not have accomplished all that we did this year without your membership donations and program contributions. Pound's Board of Trustees is looking forward to accomplishing much more this year. We hope you will be a part of the coming year's programs and successes.

Pound's continuing purpose is to support the U.S. civil justice system and to carry the message of the trial bar to the judiciary and law schools. We need the support of all lawyers who are concerned with the protection of the civil justice system and the individual rights and remedies it affords. With your continued help, we can keep growing and supporting the civil justice system in our unique way.

Sincerely,

Ellen Relkin, President

THE POUND FORUM: EDUCATION FOR STATE APPELLATE JUDGES

The Institute's annual Forum for State Appellate Court Judges is the consumer bar's most effective outreach to the state judiciary, amidst a sea of comparable programs supported by corporate interests. All currently sitting state appellate judges are invited to this complimentary one-day educational conference. Judges attend the Forum as guests of the Institute, at no cost to themselves or their courts.

2017: Jurisdiction: Defining State Courts' Authority

Our 25th Judges Forum will be held in Boston on July 22, examining the recent trend to limit courts' powers to hear cases with multi-state or multi-national aspects.

In recent years citizens bringing civil actions have faced challenges to jurisdiction in cases which courts would have routinely retained a decade ago. For example, defendants are arguing, in some instances, that they can only be subject to jurisdiction in states where they are incorporated or have their principal place of business. Jurisdictional challenges pose immediate, concrete, practical, and potentially dispositive problems for citizens who seek redress, as they can disable litigants from even stating, let alone proving, their cases. This recent stumbling block for litigation is the latest phase of a decades-long trend of limiting access to civil justice, about which the state judiciary might justifiably be concerned. Judges who have not seen such cases already should expect to encounter them soon.

To date, 195 judges from 38 states have asked to attend the 2017 Forum, where nationally-recognized legal scholars will examine the increased use of jurisdiction challenges in litigation, and explore the question of when the Constitution does, and does not, limit state courts' authority over foreign individuals and corporations.

2016: Who Will Write Your Rules—Your State Court or the Federal Judiciary?

Pound's 24th Forum addressed the subject of rulemaking, with emphasis on recent changes to the Federal Rules of



Prof. Arthur Miller (NYU)

Civil Procedure and the question of the extent to which state courts should follow them. Receiving special emphasis was the Federal courts' recent decision to codify a "proportionality" requirement for discovery requests. The Forum was held on July 23, 2016 in Los Angeles, and was attended

by 105 judges from 38 states plus the District of Columbia. The judges heard presentations of papers on rule-making issues by Professors Steve Burbank (Penn.), Sean Farhang (Berkeley), Steve Subrin (Northeastern), and Thomas Main (UNLV). They enjoyed a luncheon address by Arthur Miller (NYU), who traced the evolution of the Federal rules through a series of ever-more restrictive decisions of the U.S. Supreme Court. The report of the Forum will be published in early 2017, and will be made available to all Pound Fellows, jurists, and law schools.

2015: Judicial Transparency and the Rule of Law

Pound's 2015 Judges Forum (held in Montreal, QC, on July 11) was attended by 172 judges from 39 states—the largest



Prof. Judith Resnik (Yale)

attendance in the Forum's 23-year history. Prominent academics reviewed the origins of the American tradition of public legal administration, described its erosion in recent decades, and explored how courts can recommit

themselves to judicial transparency in the twenty-first century. The 214-page final report of the 2015 Forum was published early in 2016, was distributed broadly to Fellows, judges and law schools, and is currently available at www.poundinstitute.org. Print copies are free to judges, courts, law schools, and Pound Fellows.

Responses from Attending Judges

Pound's Judges Forum is a vitally important counterbalance to corporate-supported judicial programs. Year after year, Pound receives high praise from state judges on the quality, benefit and importance of the Forum, such as ...

"The Pound Institute offers a great benefit not just to the judges in attendance here, today, but to all the people we serve."

"The best program I attend as a judge."

"Because the Forum unfailingly presents noted speakers and legal writers who are tops in their fields, judges in attendance are able to glean a great amount of knowledge and depth on a significant and timely subject in a very short period of time. Judges can have confidence they are not being exposed to a one-sided view of the issue."

"Consistently one of the best CLEs in the country."

Research and Recognition

 The papers from our 2015 academic symposium on *The “War” on the U.S. Civil Justice System* co-sponsored with Emory Law in Atlanta, GA, were published in a special issue of *Emory Law Journal* (Vol. 65, No. 6). The original research contained in the seven Symposium papers examines the ever-growing barriers in place for plaintiffs wishing to access the civil justice system for redress. Symposium papers and video of the proceedings are also available at www.poundinstitute.org.

 Our September 23, 2016 Symposium, titled *The Demise of the Grand Bargain: Compensation for Injured Workers in the 21st Century*, was co-sponsored with Northeastern University School of Law and the Rutgers Center for Risk and Responsibility. Academic papers were presented by Professors Alison Morantz and Robert Rabin of Stanford Law School, Adam Scales and



Robert Williams of Rutgers Law School, and Emily Spieler of Northeastern University School of Law. Attendees saw panel discussions on changing legal structure of workers’ com-

penensation, U.S.-based vs. other compensation systems, workplace injuries as a constitutional law issue, and alternative structures for addressing workplace injuries. The papers and video recordings of the panel discussions are available at www.poundinstitute.org, and the papers will be published in. 69 Rutgers U. L. Rev. (May 2017).

 In 2016 in Los Angeles we gave our **Appellate Advocacy Award** to Bob Daley, Scott Marshall, and Brent Rosenthal for their distinguished work that led to the Pennsylvania Supreme Court’s landmark decision in *Tooye v.*



AK Steel Corp., 81 A.3d 851 (Pa. 2013), in which the court held that that workers who

had been diagnosed with industrial disease beyond the period allowed for filing a worker compensation claim, and who thus were not eligible for statutory compensation benefits, should be permitted to file common-law suits against their former employers.

The Institute also made its first-ever award for Lifetime Achievement as an Appellate Advocate, “in support of injured individuals, families, consumers, and the public,” to Pound’s Past President Kathryn H. Clarke.

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Broad Support for Pound's Work

It is through the generous support of attorneys and state justice organizations that Pound is able to support a strong civil justice system through education of judges and academic research. Pound Fellows are the key to the Institute's broad reach. We appreciate the support of all Pound Fellows (see enclosed list), and are particularly grateful for our Jury Guardians and State Justice Association Members, listed below.

Jury Guardian Fellows & Law Firms

Ciresi Conlin, LLP
Minneapolis, Minnesota

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State Justice Association Members

Bayou Research Institute (LA)
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Connecticut Trial Lawyers Association
Delaware Trial Lawyers Association
D.C. Trial Lawyers Foundation
Florida Justice Association
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Kansas Legacy of Justice Foundation
Maryland Association for Justice
Michigan Association of Trial Attorneys
Minnesota Association for Justice
Nebraska Association of Trial Attorneys
New Hampshire Association for Justice
New Jersey Association for Justice
New York State Trial Lawyers Association
North Carolina Advocates for Justice
Ohio Association for Justice
Oregon Trial Lawyers Association
South Carolina Association for Justice
Washington State Association for Justice

Pound's History & Legacy

The Pound Civil Justice Institute is a national legal "think tank" created by pioneering members of the trial bar and dedicated to ensuring access to civil justice for ordinary citizens. The Institute strives to give lawyers, judges, legal educators, and the public a balanced view of the issues affecting the U.S. civil justice system.

The Institute was established in 1956 by a group of lawyers to honor and build upon the work of Roscoe Pound (1870–1964), Dean of the Harvard Law School from 1916 to 1936. Roscoe Pound is widely considered an expert on common law and the founder of sociological jurisprudence—an interdisciplinary approach to legal concepts in which the law is seen as a dynamic system influenced by social conditions and that, in turn, influences society as a whole.

Over its many years, the Institute has engaged in a variety of activities for the judiciary, legal practitioners, and the legal academic community, including: the Chief Justice Earl Warren Conferences; grants for academic research; academic symposia; multidisciplinary roundtable discussions; recognition of achievements of practitioners, law professors and students; lectures for practitioners on legal professionalism; publication of research, Forums and Symposia; cooperative publications on the U.S. legal system; and our continuing Forum for State Appellate Court Judges.



Every member of the bar who is in good standing and who supports a strong American civil justice system is invited to become a Pound Fellow. **Please share with your colleagues** the importance of Pound's work, and why they should support it. Membership levels start at \$15/month or \$200/year, and are tax-deductible to the fullest extent allowable by law. More information at www.poundinstitute.org.