

# PAPERS OF THE POUND CIVIL JUSTICE INSTITUTE

## Reports of the Annual Forums for State Appellate Court Judges

(All Forum Reports or academic papers are available for download at [www.poundinstitute.org](http://www.poundinstitute.org).)

### 2020 • Dangerous Secrets: Confronting Confidentiality in Our Public Courts

Dustin Benham, Texas Tech University School of Law, *Foundational and Contemporary Court Secrecy Issues*

Sergio Campos, University of Miami School of Law, *Confidentiality in the Courts: Privacy Protection or Prior Restraint?*

### 2019 • Aggregate Litigation In State Courts: Preserving Vital Mechanisms (forthcoming)

D. Theodore Rave, University of Houston Law Center, *Federal Trends Affecting Aggregate Litigation in the State Courts*

Myriam Gilles, Cardozo Law School, Yeshiva University, *Rethinking Multijurisdictional Coordination of Complex Mass Torts*

### 2018 • State Court Protection Of Individual Constitutional Rights

Robert F. Williams, Rutgers Law School, *State Constitutional Protection of Civil Litigation*

Justin L. Long, Wayne State University School of Law, *State Constitutional Structures Affect Access to Civil Justice*

### 2017 • Jurisdiction: Defining State Courts' Authority

Simona Grossi, Loyola Law School, Los Angeles, *Personal Jurisdiction: Origins, Principles, and Practice*

Adam Steinman, The University of Alabama School of Law, *State Court Jurisdiction in the 21st Century*

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

Stephen B. Burbank, University of Pennsylvania Law School and Sean Farhang, University of California, Berkeley, School of Law, *Rulemaking and the Counterrevolution Against Federal Litigation: Discovery*

Stephen Subrin, Northeastern University School of Law and Thomas Main, University of Nevada, Las Vegas, Boyd College of Law, *Should State Courts Follow the Federal System in Court Rulemaking and Procedural Practice?*

### 2015 • Judicial Transparency and the Rule of Law

Judith Resnik, Yale Law School, *Contracting Transparency: Public Courts, Privatizing Processes, and Democratic Practices*

Nancy Marder, IIT Chicago-Kent College of Law, *Judicial Transparency in the Twenty-First Century*.

### 2014 • Forced Arbitration and the Fate of the 7th Amendment: The Core of America's Legal System at Stake?

Myriam Gilles, Cardozo Law School, Yeshiva University, *The Demise of Deterrence: Mandatory Arbitration and the "Litigation Reform" Movement*

Richard Frankel, Drexel University School of Law, *State Court Authority Regarding Forced Arbitration After Concepcion*

### 2013 • The War on the Judiciary: Can Independent Judging Survive?

Charles Geyh, Indiana University Maurer School of Law, *The Political Transformation of the American Judiciary*

Amanda Frost, American University, Washington College of Law, *Honoring Your Oath in Political Times*

### 2012 • Justice Isn't Free: The Court Funding Crisis and Its Remedies

John T. Broderick, University of New Hampshire School of Law, and Lawrence Friedman, New England School of Law, *State Courts and Public Justice: New Challenges, New Choices*

J. Clark Kelso, McGeorge School of Law, *Strategies for Responding to the Budget Crisis: From Leverage to Leadership*

### 2011 • The Jury Trial Implosion: The Decline of Trial by Jury and its Significance for Appellate Courts

Marc Galanter, University of Wisconsin Law School, and Angela Frozena, *The Continuing Decline of Civil Trials in American Courts*

Stephan Landsman, DePaul University College of Law, *The Impact of the Vanishing Jury Trial on Participatory Democracy*

Hon. William G. Young, Massachusetts District Court, *Federal Courts Nurturing Democracy*

### 2010 • Back to the Future: Pleading Again in the Age of Dickens?

A. Benjamin Spencer, Washington and Lee University School of Law, *Pleading in State Courts after Twombly and Iqbal*

Stephen B. Burbank, University of Pennsylvania Law School, *Pleading, Access to Justice, and the Distribution of Power*

### 2009 • Preemption: Will Traditional State Authority Survive?

Mary J. Davis, University of Kentucky College of Law, *Is the "Presumption against Preemption" Still Valid?*

Thomas O. McGarity, University of Texas School of Law, *When Does State Law Trigger Preemption Issues?*

### 2008 • Summary Judgment on the Rise: Is Justice Falling?

Arthur R. Miller, New York University School of Law, *The Ascent of Summary Judgment and Its Consequences for State Courts and State Law*

Georgene M. Vairo, Loyola Law School, Los Angeles, *Defending against Summary Justice: The Role of the Appellate Courts*

### 2007 • The Least Dangerous but Most Vulnerable Branch: Judicial Independence and the Rights of Citizens

Penny J. White, University of Tennessee College of Law, *Judicial Independence in the Aftermath of Republican Party of Minnesota v. White*

Sherrilyn Ifill, University of Maryland School of Law, *Rebuilding and Strengthening Support for an Independent Judiciary*

**2006 • The Whole Truth? Experts, Evidence, and the Blindfolding of the Jury**

Joseph Sanders, University of Houston Law Center, *Daubert, Frye, and the States: Thoughts on the Choice of a Standard*  
 Nicole Waters, National Center for State Courts, *Standing Guard at the Jury's Gate: Daubert's Impact on the State Courts*

**2005 • The Rule(s) of Law: Electronic Discovery and the Challenge of Rulemaking in the State Courts**

Discussions include state court approaches to rule making, legislative encroachments into that judicial power, the impact of federal rules on state court rules, how state courts can and have adapted to the use of electronic information, whether there should be differences in handling the discovery of electronic information versus traditional files, and whether state courts should adopt new proposed federal rules on e-discovery.

**2004 • Still Coequal? State Courts, Legislatures, and the Separation of Powers**

Discussions include state court responses to legislative encroachment, deference state courts should give legislative findings, the relationship between state courts and legislatures, judicial approaches to separation of powers issues, the funding of the courts, the decline of lawyers in legislatures, the role of courts and judges in democracy, and how protecting judicial power can protect citizen rights.

**2003 • The Privatization of Justice? Mandatory Arbitration and the State Courts**

Discussions include the growing rise of binding arbitration clauses in contracts, preemption of state law via the Federal Arbitration Act (FAA), standards for judging the waiver of the right to trial by jury, the supposed national policy favoring arbitration, and resisting the FAA's encroachment on state law.

**2002 • State Courts and Federal Authority: A Threat to Judicial Independence?**

Discussions include efforts by federal and state courts to usurp the power of state court through removal, preemption, etc., the ability of state courts to handle class actions and other complex litigation, the constitutional authority of state courts, and the relationship between state courts and legislatures and federal courts.

**2001 • The Jury as Fact Finder and Community Presence in Civil Justice**

Discussions include the behavior and reliability of juries, empirical studies of juries, efforts to blindfold the jury, the history of the civil jury in Britain and America, the treatment of juries by appellate courts, how juries judge cases in comparison to other fact-finders, and possible future approaches to trial by jury in the United States.

**2000 • Open Courts with Sealed Files: Secrecy's Impact on American Justice**

Discussions include the effects of secrecy on the rights of individuals, the forms that secrecy takes in the courts, ethical issues affecting lawyers agreeing to secret settlements, the role of the news media in the debate over secrecy, the tension between confidentiality proponents and public access advocates, and the approaches taken by various judges when confronted with secrecy requests.

**1999 • Controversies Surrounding Discovery and Its Effect on the Courts**

Discussions include the existing empirical research on the operation of civil discovery; the contrast between the research findings and the myths about discovery that have circulated; and whether or not the recent changes to the federal courts' discovery rules advance the purpose of discovery.

**1998 • Assaults on the Judiciary: Attacking the "Great Bulwark of Public Liberty"**

Discussions include threats to judicial independence through politically motivated attacks on the courts and on individual judges as well as through legislative action to restrict the courts that may violate constitutional guarantees, and possible responses by judges, judicial institutions, the organized bar, and citizens.

**1997 • Scientific Evidence in the Courts: Concepts and Controversies**

Discussions include the background of the controversy over scientific evidence; issues, assumptions, and models in judging scientific disputes; and the applicability of the *Daubert* decision's "reliability threshold" under state law analogous to Rule 702 of the Federal Rules of Evidence.

**1996 • Possible State Court Responses to American Law Institute's Proposed Restatement of Products Liability**

Discussions include the workings of the American Law Institute's (ALI) restatement process; a look at provisions of the proposed restatement on products liability and academic responses to them; the relationship of its proposals to the law of negligence and warranty; and possible judicial responses to suggestions that the ALI's recommendations be adopted by the state courts.

**1995 • Preserving Access to Justice: Effects on State Courts of the Proposed Long Range Plan for Federal Courts**

Discussions include the constitutionality of the federal courts' plan to shift caseloads to state courts without adequate funding support, as well as the impact on access to justice of the proposed plan.

**1993 • Preserving the Independence of the Judiciary**

Discussions include the impact on judicial independence of judicial selection processes and resources available to the judiciary.

**1992 • Protecting Individual Rights: The Role of State Constitutionalism**

Discussions include the renewal of state constitutionalism on the issues of privacy, search and seizure, and speech, among others. Also discussed was the role of the trial bar and academics in this renewal.

**Law Reviews from Academic Symposia**

2019 • **Class Actions, Mass Torts, and MDLs: The Next 50 Years**, *Lewis & Clark Law Review*, Vol. 24, No. 2

2017 • **The Jury Trial and Remedy Guarantees: Fundamental Rights or Paper Tigers?** *Oregon Law Review*, Vol. 96, No. 2

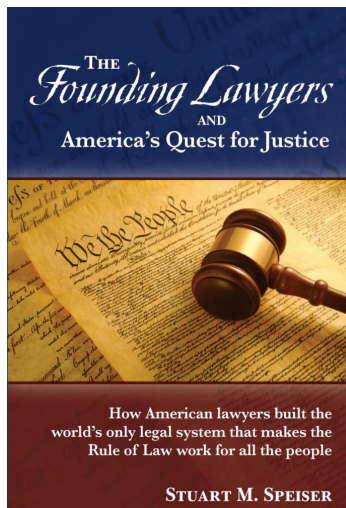
2016 • **The Demise of the Grand Bargain: Compensation for Injured Workers in the 21st Century**, *Rutgers University Law Review*, Vol. 69, No. 3

2015 • **The "War" on the U.S. Civil Justice System**, *Emory Law Journal*, Vol. 65, No. 6

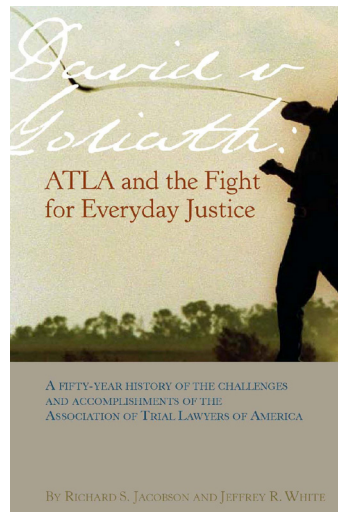
2005 • **Medical Malpractice**, *Vanderbilt Law Review*, Vol. 59, No. 4

2002 • **Mandatory Arbitration**, *Law and Contemporary Problems*, Vol. 67, No. 1 & 2, Duke University School of Law

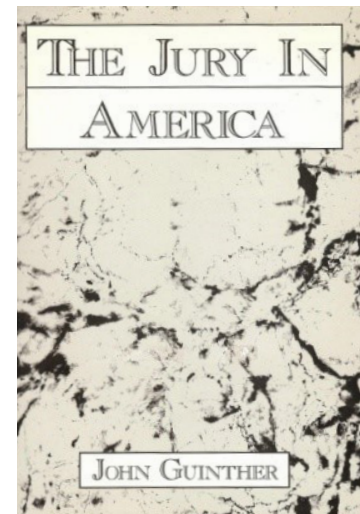
## Books distributed by the Pound Civil Justice Institute



*The Founding Lawyers and  
America's Quest for Justice*  
by Stuart M. Speiser (2010)



*David v. Goliath: ATLA and the  
Fight for Everyday Justice*  
by Richard S. Jacobson &  
Jeffrey R. White (2004)  
(Free viewing and downloading at  
[www.poundinstitute.org](http://www.poundinstitute.org).)



*The Jury In America*  
by John Guinther (1988)

## Reports of Roundtable Discussions

### 1993 • Justice Denied: Underfunding of the Courts

Report on the 1993 Roundtable, examining the issues surrounding the current funding crisis in American courts, including the role of the government and public perception of the justice system, and the effects of increased crime and drug reform efforts. Moderated by Chief Justice Rosemary Barkett of the Florida Supreme Court.

### 1991 • Safety of the Blood Supply

Report on the Spring 1991 Roundtable, written by Robert E. Stein, a Washington, DC, attorney and an adjunct professor at Georgetown University Law Center. The report covers topics such as testing for the presence of HIV and litigation involving blood products and blood banks.

### 1990 • Injury Prevention in America

Report on the 1990 Roundtables, written by Anne Grant, lawyer and former editor of *Everyday Law* and *TRIAL* magazines. Topics include "Farm Safety in America," "Industrial Safety: Preventing Injuries in the Workplace," and "Industrial Diseases in America."

### 1988-89 • Health Care and the Law III

Report on the 1988–1989 Roundtables, written by health policy specialist Michael E. Carbine. Topics include "Drugs, Medical Devices and Risk: Recommendations for an Ongoing Dialogue," "Health Care Providers and the New Questions of Life and Death," and "Medical Providers and the New Era of Assessment and Accountability."

### 1988 • Health Care and the Law

Report on the 1988 Roundtables, written by health policy specialist Michael E. Carbine. Topics include "Hospitals and AIDS: The Legal Issues," "Medicine, Liability and the Law: Expanding the Dialogue," and "Developing Flexible Dispute Resolution Mechanisms for the Health Care Field."

### 1988 • Health Care and the Law II—Pound Fellows Forum

Report on the 1988 Pound Fellows Forum, "Patients, Doctors, Lawyers and Juries," written by John Guinther, award-winning author of *The Jury in America*. The Forum was held at the Association of Trial Lawyers Annual Convention in Kansas City and was moderated by Professor Arthur Miller of Harvard Law School.

## Reports of the Chief Justice Earl Warren Conferences on Advocacy

1989 • Medical Quality and the Law

1986 • The American Civil Jury

1985 • Dispute Resolution Devices in a Democratic Society

1984 • Product Safety in America

1983 • The Courts: Separation of Powers

1982 • Ethics and Government

1981 • Church, State, and Politics

1980 • The Penalty of Death

1979 • The Courts: The Pendulum of Federalism

1978 • Ethics and Advocacy

1977 • The American Jury System

1976 • Trial Advocacy as a Specialty

1975 • The Powers of the Presidency

1974 • Privacy in a Free Society

1973 • The First Amendment and the News Media

1972 • A Program for Prison Reform

## Research Monographs

### Demystifying Punitive Damages in Products Liability Cases: A Survey of a Quarter Century of Trial Verdicts.

This landmark study, written by Professor Michael Rustad of Suffolk University Law School with a grant from the Pound Foundation, traces the pattern of punitive damages awards in U.S. products cases. It tracks all traceable punitive damages verdicts in products liability litigation for a quarter century and provides empirical data on the relationship between amounts awarded and those actually received.

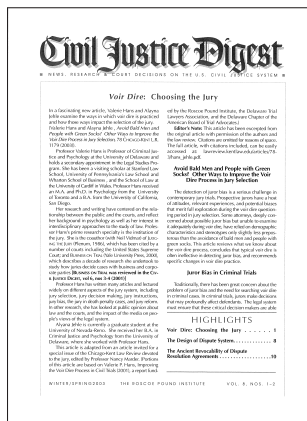
### The Pound Connective Tissue Injury Research Project: Final Report, by Valerie P. Hans, Ph.D.

Each year, automobile accidents account for a substantial number of deaths and other personal injuries nationwide. Lawsuits over injuries suffered in auto accidents constitute the most frequent type of tort case in the state courts. The Pound Institute supported a series of research studies on the public's views of whiplash and other types of soft tissue and connective tissue injuries within the context of civil lawsuits. The 2007 final report presents and integrates key research findings and identifies some of their implications for trial practice.

The American Lawyer's Code of Conduct. Available at [www.poundinstitute.org](http://www.poundinstitute.org).

## Pound's Civil Justice Digest

A quarterly newsletter on current and emerging legal trends. Distributed 1994-2003 to judges, law school professors, and attorneys. Back issues available at [www.poundinstitute.org](http://www.poundinstitute.org).



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