

Michigan Law Review

Volume 80 | Issue 4

1982

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Recommended Citation

J. C. Wallace, *Judicial Reform and the Pound Conference of 1976*, 80 MICH. L. REV. 592 (1982).

Available at: <https://repository.law.umich.edu/mlr/vol80/iss4/5>

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JUDICIAL REFORM AND THE POUND CONFERENCE OF 1976

*J. Clifford Wallace**

THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE. Edited by *A. Leo Levin* and *Russell R. Wheeler*. St. Paul, Minn.: West Publishing Co. 1979. Pp. 377. \$25.

From April 7 to April 9, 1976, judges, governmental officials, practicing attorneys, and legal scholars met in St. Paul, Minnesota, for the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice. The conference took its title from a paper presented by Roscoe Pound at the same location in 1906.¹ The keynote address, delivered by Chief Justice Warren E. Burger, focused on the need for "systematic anticipation" of the future (p. 24). The conferees then discussed two specific topics related to that theme: nonjudicial dispute resolution and speedier and less expensive procedures for judicial administration. Three years later the papers were bound together in the present volume. In addition to the papers presented in 1976, the volume includes an early report from the task force charged with selecting and implementing some of the recommendations made at the conference (p. 295). The foreword comments upon the significance and effectiveness of the conference from the advantageous perspective of three years' hindsight.

An evaluation of the book must begin with an evaluation of the conference. That requires consideration of the conference's objectives, the significance of those objectives, and the extent to which they have been achieved. To clarify those objectives, it may be helpful to observe first what the conference did not attempt to do.

The conference did not purport to provide a forum for the dissemination of novel ideas. Most of the presentations addressed problems previously identified. Often, the presentations were given by authors who had already published some of their criticisms and suggestions in readily accessible legal journals. Furthermore, the conference did not attempt to study comprehensively all of the problems associated with the administration of justice. Finally, de-

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1. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 *REP. A.B.A.* 395 (1906), reprinted at p. 337 app.

spite its title, the conference did not emphasize the causes of popular dissatisfaction. Indeed, there was no information presented from which one might assess popular (*i.e.*, public) dissatisfaction, a necessary precondition to identification of its causes. It focused instead on problems of procedure and administration well-known to many legal professionals but to few laymen. Some topics addressed included the abuse of discovery procedures, the overload in article III courts, and the increasing complexity of the law.

All this may suggest that the conference was inaptly titled and that any reference to Pound and his celebrated address was mere gimmickry. But that assessment would be unfair. The conference was no more inaptly titled than Pound's original paper. Although Pound enumerated what he perceived to be a number of sources of popular dissatisfaction with the administration of justice, *e.g.*, the necessarily mechanical operation of legal rules, popular impatience with restraint, and public ignorance of the real workings of the courts, he discussed them only as background for his central thesis. Conceding that he and his audience could do little to remedy many of the causes of popular dissatisfaction, he emphasized procedural and administrative problems that legislators and legal professionals could attack and perhaps resolve. Many of the conference papers, therefore, appropriately addressed problems, such as delay and expense in the administration of justice and concurrent jurisdiction in cases involving diversity of citizenship, that Pound had raised in 1906 but which continue to plague the judicial system.

The difficulties facing the administration of justice may be even greater today than they were in 1906. Some of the problems that Pound addressed have been exacerbated. Neither *Weeks v. United States*² nor *Mapp v. Ohio*³ had been decided when Pound stated that "the worst feature of American procedure is the lavish granting of new trials."⁴ New burdens have been imposed upon the judicial system. Legislation has created many new causes of action, some with express or implied rights of private action; constitutional protections have been similarly expanded. Few problems have gone away. The conference's attempt to draw attention to these problems, and their collective as well as individual impact, justifies the allusion to Pound.

Finally, and perhaps most importantly, the reference to Pound is

2. 232 U.S. 383 (1914).

3. 367 U.S. 643 (1961).

4. Pound, *supra* note 1, at 413, app. at p. 350.

justified by the conference's attempt to undertake the long view. It is difficult, in the face of present and specific challenges facing the administration of justice, to find and exert the energy to address future, broader problems that are developing, but less immediately pressing. Expediency demands that judicial administration address today's inequities and today's caseload. Nevertheless, failure to address the mounting pressure caused by organizational and procedural flaws in the system could eventually make the effective administration of justice impossible.

Looking back on the conference, it seems that it sought to provide some perspective on justice in the future and to stimulate the administrative, legislative, and academic processes that could (1) identify growing and potential problems and (2) create solutions that will foster the administration of justice. The significance of those objectives is reflected by the title of the book containing the conference papers. The title is not *The Pound Conference: Causes of Popular Dissatisfaction with the Administration of Justice* but *The Pound Conference: Perspectives on Justice in the Future*. Perhaps the conference's objectives were clarified during the preparations or during the conference itself. In any case, those objectives justify the conference's reference to Pound. Furthermore, provided that the conference was even modestly successful, the task undertaken justified any resources — human or financial — that it required.

Seventy-five years later, it is clear that Pound's paper has had a lasting and pervasive impact. Whether the Pound Conference, like its namesake's original essay, will be recognized as a significant start on planning for the future remains to be seen. The prognosis, while guarded, seems good.

To begin with, it is most important that many of the individuals associated with the conference have been, are, and probably will be in positions where they can thoughtfully consider future challenges, assist in effectively attacking underlying problems, and plan for improved judicial organization and procedures. Spearheading the conference was the Chief Justice of the United States. The president of the American Bar Association and certain state Chief Justices provided additional leadership. Conference participants included the Attorney General and Solicitor General of the United States, federal and state judges, legal scholars, and respected practicing attorneys. Two examples will highlight their potential influence. One of the conference participants, Griffin B. Bell, was named chairman of the follow-up task force. When he was later appointed Attorney General, he brought perspectives from the conference and his work on

the task force to his new position. Some of the recommendations made by the task force were initiated on a trial basis while he was Attorney General.⁵ Another conferee, Howell T. Heflin, then Chief Justice of the Alabama Supreme Court and now a United States Senator, serves on the Senate Judiciary Committee. In July 1981, Senator Heflin introduced S. 1530, entitled "A bill to establish a Federal Courts Study Commission and a Federal Courts Advisory Council on the Future of the Judiciary."⁶ If passed, it would establish a two-year study commission that would bring together all public and private studies. The commission would also help determine the future needs of courts and draft a blueprint for necessary changes. The bill also calls for the establishment of a permanent advisory council made up of representatives from each of the three branches of the federal government. The council would have continuing responsibility to recommend ways in which future judicial needs can be met. It seems probable that other conference participants will make similar contributions.

Nor can the conference's general educational value be minimized. Effective planning for the future can be accomplished only if decision-makers are informed and convinced of the need to allocate resources, and to do so now. The prestige of the conference's sponsors — the American Bar Association, the Conference of Chief Justices, and the Judicial Conference of the United States — should cause many to consider carefully its recommendations. The attention that the conference's proposals has attracted⁷ tends to continue the educational process. Legal scholars and others have responded in articles making specific suggestions for strengthening the organization and improving the procedures of judicial administration.⁸

Three former presidents of the American Bar Association, William T. Gossett, Bernard G. Segal, and Chesterfield Smith, who wrote the foreword to the book, made the following assessment of the conference's potential:

Our own great hope for the Pound Conference is that it will be remembered in the year 2000 not simply as a lively colloquium of experts but as the occasion when, under the strong leadership of the

5. See Bell, *The Pound Conference Follow-Up: A Response from the United States Department of Justice*, 76 F.R.D. 320 (1977).

6. S. 1530, 97th Cong., 1st Sess., 127 CONG. REC. S8749, 8751-52 (daily ed. July 29, 1981).

7. Erickson, *The Pound Conference Recommendations: A Blueprint for the Justice System in the Twenty-First Century*, 76 F.R.D. 277 (1977).

8. E.g., *New Directions in the Administration of Justice: Responses to the Pound Conference*, 64 A.B.A. J. 48 (1978).

Chief Justice, Twentieth Century law reform in the United States really got under way. [P. 15.]

The Chief Justice of the United States has not lessened his interest in this mission. On July 31, 1980, he requested that preliminary, exploratory thought be given to the problems that the judicial system will encounter in ten, fifteen, and twenty years and to identification of the questions that must be addressed to begin resolving them.⁹ To be successful, similar leadership will be needed from the other two branches of government as well as from the bar and interested citizens generally.

The conference was held in 1976; the book was published in 1979. In the interim, the conference has stimulated significant contributions toward planning for the future of the judiciary. A review assessing the short-term success of the conference must repeat much of what has already been said in the foreword to the book and the appended report of the task force. A review assessing the long-term success of the conference would be premature. What can be said at this point is that, six years after its conclusion, there is even greater reason to believe that the conference, and the book that disseminates its content and some of its enthusiasm, will have a long-term impact for good.

9. Wallace, *Working Paper — Future of the Judiciary*, — F.R.D. — (1982) (forthcoming).