

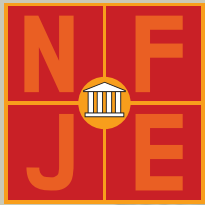
Second Annual Judicial Symposium

ESSENTIAL ELEMENTS OF JUSTICE:

Judicial Independence and Privilege Issues in the Modern Courtroom

Presented by

**NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE**



July 7–8, 2006

The Renaissance Hotel
Chicago, Illinois

There is no liberty if the power of
judging be not separated from the
legislative and executive powers.
Federalist No. 78 (Hamilton), quot
ing Montesquieu's Spirit of Laws,

Promoting Excellence; Affirming Justice

A strong, independent, responsive judiciary adhering to the rule of law is one of the hallmarks of a democratic society. Although every citizen has an interest in the maintenance of an effective judicial system, as an officer of the court, the lawyer's obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3), charitable foundation that provides judges with educational programs and other tools to continually enhance the rule of law and administration of justice.

In 2005, NFJE hosted its first Annual Judicial Symposium, *Justice and Science*, for 136 state appellate court judges from 39 states. The program received overwhelmingly favorable reviews from the attendees:

- “This is one of the best-organized and informative seminars that I have ever attended, keep up the good work.”
- “Thank you for providing us with the opportunity to get together and compare notes with judges from other states. It is all too rare these days in this era of deficits.”
- “The program and the entire experience were excellent, and I encourage the Foundation to continue this long into the future.”
- “It was a good program. It was balanced. Always keep the program balanced.”
- “I thought the program was well-planned and of high intellectual caliber.”
- “Bravo! Keep up the good tradition for which you have laid a sound foundation.”

At the heart of the American Justice System lie two components long enshrined in practice and in law: independent advocacy secured by the protection of client confidences and property interests, and the independent judgment of the judiciary. Today, popular politics and the “efficiencies” demanded by legislatures threaten both. Can access to the courts, and the political and economic liberties they protect, survive the political and financial fallout of today’s litigation?

The significance of the right to advocate on one’s own behalf before peers, even in favor of economic interests, and the close association of this right to judicial independence, is evident in the founding of the United States. We remember the Declaration of Independence criticized King George for cutting off trade, imposing taxes without consent, and depriving the citizenry of trial by jury. But the founders also complained that King George had obstructed the administration of justice by refusing to establish power in the judiciary and by making judges dependent upon his will alone.

If the loss of these fundamental liberties constitutes good ground for revolution, then surely we must be vigilant of their continued protection and application in our courts. The Second Annual Judicial Symposium, *Essential Elements of Justice*, will take a critical look at the issues of client privileges and judicial independence.

Client Privileges

The Symposium will survey current theories on the use and abuse of the attorney-client privilege, the role of the courts and procedure in protecting litigants’ property rights, and the use of protective orders and confidentiality agreements. Included in this discussion will be a debate of the resolution that confidentiality and privileges are essential to the administration of justice. Leading academics and skilled private counsel will headline the discussion and the debate.

Judicial Independence

As the Second Annual Judicial Symposium approaches, the judiciary is often in the news and too often in someone’s cross hairs. As experienced by the judges, the parties, and counsel, infringement upon judicial independence takes various forms. Noted scholars and legal authors and members of committees on judicial independence will address the history of judicial independence, how constraints on judges affect not only our courts but also the public, and how all of us can preserve and foster an independent judiciary.

ESSENTIAL ELEMENTS OF JUSTICE:

Judicial Independence and Client Privileges in the Modern Courtroom

Schedule of Events

Friday, July 7

6:00 p.m. Registration and Cocktail Reception

7:30 p.m. Dinner On Your Own

Saturday, July 8

8:00 a.m. Registration and Continental Breakfast

8:45 a.m. Welcome and Introduction to the Program

Review of Privilege Issues

9:00 a.m. Attorney-Client Privilege
Chilton Davis Varner

9:40 a.m. Protective Orders and Confidentiality: The Role of the Courts in
Safeguarding Property Rights
Theresa M. Gillis

10:20 a.m. Break

10:35 a.m. Moderated Debate
*Resolved: Confidentiality and privileges are essential to the administration of justice
and the resolution of disputes in the courts*
Professor Paul R. Rice
William A. Coates
Moderated by Matthew Y. Biscan

11:40 a.m. Breakout Discussions

12:30 p.m. Luncheon and Keynote Address
Professor Arthur R. Miller

The Renaissance Hotel Chicago, Illinois

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- 2:00 p.m. **Historical/Jurisprudential Review of Judicial Independence**
Professor Martin H. Redish
-
- 2:35 p.m. **How Limits on Judicial Independence Affect Litigants, the Courts and the Public**
D. Dudley Oldham
-
- 3:10 p.m. **Ways to Preserve and Foster Judicial Independence**
Hon. Thomas R. Phillips
-
- 3:45 p.m. **Break**
-
- 4:00 p.m. **Panel Discussion and Questions**
The independence of the courts and its interaction with the independence of the litigants - the role of judgment and independent advocacy
-
- 5:00 p.m. **Cocktail Reception**
-
- 7:00 p.m. **Dinner On Your Own**
-



Keynote Speaker



Arthur R. Miller is the Bruce Bromley Professor of Law at Harvard Law School, where he has taught since 1971. He earned his undergraduate degree from the University of Rochester and his law degree from Harvard Law School. Before joining the Harvard faculty, Professor Miller practiced law in New York City and taught at the University of Minnesota and the University of Michigan. Among lawyers he is nationally known for his work on court procedure, a subject on which he has authored or co-authored more than twenty-five books, copyright and unfair competition, and remedies. The general public, however, knows Professor Miller for his work in the field of the right of privacy, a subject on which he has written, testified, debated, and helped formulate legislation. His book *The Assault on Privacy: Computers, Data Banks, and Dossiers* (1971) has been extremely influential.

In recent years Professor Miller has taught courses on civil procedure, copyright, and complex litigation; recently he has co-taught a seminar on law, information and technology as well. He also carries on an active law practice, particularly in the federal appellate courts. Professor Miller has worked in the public interest in the fields of privacy, computers, copyright, and the courts. Among the responsible positions he has held are those of Commissioner on the United States Commission on New Technological Uses of Copyrighted Works, reporter for and member of the Advisory Committee on Civil Rules of the Judicial Conference of the United States, and Reporter for the American Law Institute's Project on Complex Litigation.

Professor Miller was host of the weekly television show *Miller's Court* for eight years; he also wrote a book of the same name. He continues to comment regularly on legal matters for Boston's WCVB-TV. Professor Miller has moderated numerous Socratic dialogues for several acclaimed PBS series, including *The Constitution: That Delicate Balance*, *Managing Our Miracles*, *Health Care in America*, and *The Presidency*; he won an Emmy award for *The Sovereign Self*. His broadcast *Before I Die* attracted considerable notice. Professor Miller has also conducted several programs in the British *Hypotheticals* series. For many years he was the legal editor of ABC's *Good Morning America*, and for several years he hosted a weekly program on the Courtroom Television Network and appeared frequently on other Court TV programs. Between 1987 and 1989 Professor Miller moderated the nationally syndicated issues program *Headlines on Trial*. He has also written occasional articles on law for various periodicals.

Speakers



Theresa M. Gillis is a partner at Jones Day in New York City. She has extensive litigation experience, primarily in the field of intellectual property including patents, trademarks, unfair competition, trade secrets and copyrights. Ms. Gillis has practiced in the federal courts in many jurisdictions and has argued appeals in several federal courts of appeals. In addition, her practice has entailed drafting and negotiating agreements, again relating primarily to intellectual property. Furthermore, Ms. Gillis has substantial experience counseling clients on intellectual property strategy and acquisitions. She is a member of the New York State courts, the U.S. Court of Appeals for the Second Circuit and the Federal Circuit, the U.S. District Courts for the Southern, Northern and Eastern Districts of New York and the United States Supreme Court. Ms. Gillis has served on the Board of Directors of the New York Intellectual Property Law Association. She is currently a member of the Steering Committee of DRI's Commercial Litigation Committee. Ms. Gillis has been an invited lecturer at bar association meetings, PLL, and the American Chemical Society on issues relating to intellectual property and antitrust topics. She is also a member of Georgetown University's Board of Regents and is a recipient of Georgetown's Paul Dean Award.



D. Dudley Oldham is a senior partner in the Houston office of Fulbright & Jaworski LLP having joined the firm in 1966. His varied litigation practice consists of complex litigation primarily in the areas of energy, intellectual property commercial and business matters. Mr. Oldham has been lead counsel in many large, complex disputes in federal and state courts, both internationally and domestically. He is a Fellow of the American College of Trial Lawyers (ACTL) and a member of the American Board of Trial Advocates (ABOTA). A certified mediator and arbitrator, Mr. Oldham is also a member of the AAA Texas Large Complex Case Panel and CPR. He has served on the firm's Executive and Policy Committees for over 25 years. Mr. Oldham is the former Chairman of the firm's Litigation Management Committee. He is a former Chair of the American Bar Association's Standing Committee on Independence of the Judiciary and former Chair of the ABA Tort Trial and Insurance Practice Section (TIPS). Mr. Oldham has served as a member of the Board of Editors of several legal publications and as country correspondent for the *International Insurance Law Review*. He received his B.A. and J.D. from The University of Texas. Mr. Oldham was admitted in 1966 to practice law in Texas. He is also admitted to practice in the U.S. Supreme Court, all U.S. District Courts in Texas and in the U.S. Courts of Appeals for the Third, Fifth and Eleventh Circuits.



Thomas R. Phillips, Chief Justice of the Supreme Court of Texas from 1988–2004, is a partner in the Austin office of Baker Botts, LLP. A graduate of Baylor University and Harvard Law School, Mr. Phillips clerked for Justice Ruel C. Walker of the Supreme Court of Texas. He practiced law in the trial department of the Houston office of Baker & Botts until 1981, when he became a district judge in Harris County. After leaving the Supreme Court, Mr. Phillips was a distinguished visiting professor at South Texas College of Law and SMU Law School. Among his many awards, he has recently received the Harry L. Carrico Judicial Innovation Award from the National Center for State Courts, the First Annual Professionalism in Law Award from the Burton Awards for Legal Achievement and the Price Daniel Distinguished Public Service Award from Baylor University. Mr. Phillips was President of the Conference of Chief Justices in 1997–1998 and a member of the Carter-Baker Commission on Federal Election Reform in 2005, the Federal-State Jurisdiction Committee of the Judicial Conference of the United States from 1989–1996, and the American Bar Association's Commission on the 21st Century Judiciary from 2002–2003. He was an advisor to the American Law Institute Federal Judicial Code Project from 1996–2001 and a director of the American Judicature Society from 1989–1995 and 1999–2005.



Martin H. Redish, the Louis and Harriet Ancel Professor of Law and Public Policy at Northwestern University School of Law, is a nationally renowned authority on the subjects of federal jurisdiction, civil procedure, freedom of expression and constitutional law. He received his A.B. with highest honors in political science from the University of Pennsylvania and his J.D. magna cum laude from Harvard Law School. Described in a review of his book, *The Federal Courts in the Political Order*, as “without a doubt the foremost scholar on issues of federal court jurisdiction in this generation,” Professor Redish is the author or co-author of more than 70 articles and 15 books. He has been included on a list of the 100 most cited legal scholars of all time and has been recognized by the Institute for Scientific Information for being among the most highly cited researchers worldwide. Professor Redish has appeared as an expert witness before numerous congressional committees on such subjects as the constitutionality of tobacco advertising regulation, congressional power to control federal court jurisdiction, and the jurisdictional implications of bankruptcy court reform. He has served as special consultant to the United States Judicial Conference Subcommittee on Judicial Independence, and is frequently a speaker at symposia and conferences held for members of the federal judiciary. In addition, Professor Redish is special counsel to the law firm of Mayer, Brown, Rowe & Maw. He has made frequent appearances in the national media, including the Today Show, ABC and NBC National News, CNN, Court TV, CSPAN and National Public Radio.



Chilton Davis Varner has more than 25 years of courtroom experience as a trial lawyer defending corporations in product liability, business torts, contract and other commercial disputes. She was identified by the *National Law Journal* as one of the country's top ten women litigators in December 2001. Ms. Varner is the senior partner in a product liability practice that was selected by *The American Lawyer* in January, 2004 as one of the top three in the country and by Chambers in 2005 as one of the top five. The 2005 *International Who's Who in Product Liability* judged her the leading product liability practitioner in Georgia. She has served as trial and appellate counsel for a number of the country's largest automotive, pharmaceutical and medical device manufacturers. Ms. Varner is experienced in mass tort litigation, class actions and MDL litigation, including the complex issues of discovery, attorney-client privilege and *Daubert* challenges to expert testimony that accompany such suits. She was appointed by Chief Justice Rehnquist to the Federal Civil Rules Advisory Committee in 2004, where she has participated in the Committee's recent drafting of amendments governing electronic discovery. Ms. Varner serves as a Regent of the American College of Trial Lawyers.

Debate Participants



Matthew Y. Biscan is a trial lawyer and member of Clisham, Satriana & Biscan, LLC in Denver, Colorado, having left a large firm to start his small firm in 2004. He represents individuals, businesses, medical and other professionals, healthcare institutions and insurers. Mr. Biscan's practice is largely devoted to the defense of commercial, insurance, tort, and professional liability litigation. In addition to his litigation practice, he provides legal advice on business transactions, risk management, and regulatory compliance. Mr. Biscan received his bachelor's degree from St. John's University and is a 1984 graduate of The George Washington University National Law Center. He is licensed to practice law in the states of Colorado, Minnesota, and New York. Mr. Biscan served as an intern to the Honorable Robert J. Yock of the United States Claims Court, and received both the Outstanding Achievement Award and the General Counsel's Commendation while employed by the United States General Accounting Office. He was listed in the fifth edition of the Heritage Foundation's *Annual Guide to Public Policy Experts* in the areas of Regulation and the Bureaucracy, Business and Labor, and Government and Public Affairs. Mr. Biscan regularly publishes scholarly articles and legal commentary, and speaks on a variety of substantive topics. He is the immediate past Secretary-Treasurer of DRI and is a member of the International Association of Defense Counsel and of the Federation of Defense and Corporate Counsel.



William A. Coates grew up in Columbia, South Carolina and graduated from the University of South Carolina and the University of South Carolina School of Law. After law school, he served as a Legislative Aide to United States Senator Strom Thurmond and as a Counsel to the U.S. Senate Judiciary Committee. From 1976 to 1980, Mr. Coates served as an Assistant United States Attorney for South Carolina and prosecuted cases throughout the state. He has been in the private practice of law in Greenville since 1980. As a founding member of Roe Cassidy Coates & Price, P.A., Mr. Coates has extensive litigation experience in both civil and criminal cases. Additionally, he routinely counsels clients faced with governmental and/or regulatory investigations in South Carolina and the Southeast.



Paul R. Rice, L.L.M. (Yale Law School), J.D. (West Virginia University), B.B.A. (Marshall University) has been a Professor of Law at American University, Washington College of Law for 35 years. He has taught courses on evidence, civil procedure, and criminal procedure. Professor Rice previously taught at the University of Connecticut School of Law and the University of Mississippi School of Law. He has written over one hundred law review, journal and newspaper articles on various topics of procedure and evidence law. Professor Rice has written two treatises on the attorney-client privilege, *Attorney-Client Privilege in the United States* (Thompson West 2d ed. 1999) and *Attorney-Client Privilege: State Law* (Rice Publishing 2005). He authored *Managing Complex Litigation: A Practical Guide to the Use of Special Masters* (Am. Bar Foundation 1983) with Judge Wayne Brazil and Professor Geoffrey Hazard. This book was based on his experiences in managing the pretrial process in the AT&T divestiture action in the 1970's and 80's. Currently Professor Rice is working on a new book *Evidence Principles: 150 Things you were Never Taught, Forgot, or Never Understood* (Lexis 2006). His books have incorporated not only his thirty-five years of teaching experience, but they have also drawn on his work as a special master in a number of large complex multi-district cases, experience as a litigation consultant to many law firms, work as a criminal defense attorney and prosecutor in Connecticut, activities as a Director of the Prosecution Program of the Criminal Litigation Clinic at the Washington College of Law, and ongoing work as Director of the Evidence Project at the Washington College of Law. Professor Rice has written a regular column on attorney-client privilege for the American Corporate Counsel Association magazine, *ACCADocket*, and has been a regular contributor to the *Legal Times*. He frequently lectures to law firms, corporations, and government agencies, and has made numerous presentations at judicial conferences and bar association meetings.

It's Happening in Chicago

Anyone who has visited Chicago in July knows that there is no better month to come to the city. The weather is ideal, the city's beautiful lakefront is a flurry of activity and there are myriad cultural, entertainment, and dining offerings.

Located at the edge of "The Loop," The Renaissance Hotel is in the heart of the city, overlooking the Chicago River. It is a short walk to Grant Park where the Taste of Chicago will take place from June 30–July 9. A cab ride or a trip on the "L" brings you to the U.S. Cellular Field where the World Champion Chicago White Sox will play the Boston Red Sox from July 7–9. Other nearby attractions include: Millennium Park, Michigan Avenue, Navy Pier, Sears Tower, the Art Institute of Chicago, the Theatre District, and Museum Campus with the Field Museum of Natural History, Shedd Aquarium, and Adler Planetarium.



Registration

To register, please fax this form to 312.795.0748 or call 312.698.6280.

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Street _____ Suite _____

City _____ State _____ Zip Code _____

Business Telephone _____ Fax _____ E-mail _____

Other Information

At the conclusion of the afternoon session, our panel will address today's challenges to judicial independence. If you have topics you would like discussed by the panel, please list as many as three below:

- 1) _____
- 2) _____
- 3) _____

Were you designated to attend by another judge?

- Yes No

If yes, please indicate by what judge you were designated.

Will a spouse or guest be traveling with you?

- Yes No

If yes, please indicate his/her name.

Hotel Information

Unless indicated as a special note, a deluxe room will be booked in your name for the nights of Friday, July 7 and Saturday, July 8, 2006. If you would like to extend your stay at your own expense please indicate below and you will be contacted with additional information.

Please indicate your preferences:

- King Bed Two Queen Beds
 Smoking Non-Smoking

Special Requests _____

The Renaissance Chicago Hotel

One West Wacker Drive

Chicago, IL 60601

Phone: 312.372.7200

Fax: 312.372.0093

www.renaissancechicagodowntown.com

Travel Information

Once NFJE receives your completed registration form, you will be sent an e-mail confirmation that will include instructions to make your travel arrangements. When making your travel arrangements, please plan to arrive by 5:00 p.m., Friday, July 7 and depart on Sunday, July 9.

If you must cancel your attendance, please do so at least three weeks prior to the event so a judge on the waiting list can attend.

The Annual Judicial Symposium is a tuition-free program for state appellate court judges.

Transportation and hotel accommodations are provided at NFJE's expense.



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www.nfje.net

Would not abolishing the attorney
client privilege for indigents who
had court-appointed counsel vio-
late both the Sixth and Fourteenth
Amendments? *Masse v. Georgia*
101 U.S. 264 (1871) (D. ...)