

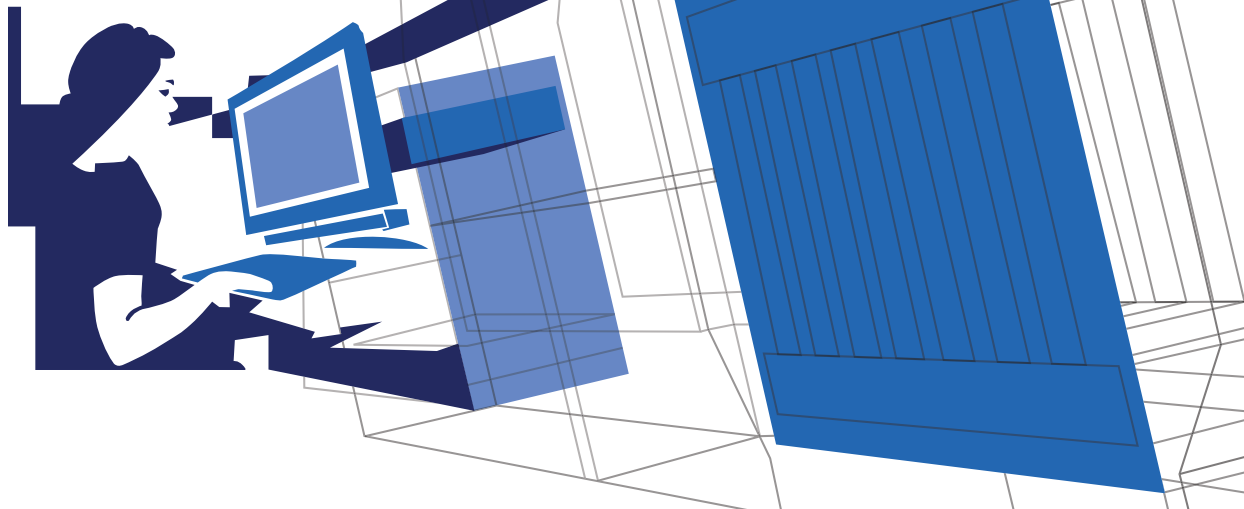
Third Annual Judicial Symposium

E-DISCOVERY AND SPOILIATION ON APPEAL: The Convergence of Law and Technology

Presented by

**NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE**

June 29–30, 2007
The Renaissance Hotel
Chicago, Illinois



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 inaugural symposium, *Justice and Science*, for 136 state appellate court judges from 39 states. It was followed by *Essential Elements of Justice: Judicial Independence and Client Privileges in the Modern Courtroom* in 2006. Once again, approximately 10 percent of state appellate court judges attended.

Judges' responses to both programs have been universally enthusiastic, and many expressed appreciation for the high caliber and balanced nature of the program. Comments included:

- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's Symposium.
- Thanks to everyone for a great program. This is my second year and I already look forward to next year's program.
- This is one of the best organized and informative seminars that I have ever attended. Keep up the good work.
- The program and the entire experience were excellent. I encourage the Foundation to continue this long into the future.
- The program was well planned and of high intellectual caliber.
- Bravo! Keep up the good tradition for which you have laid a sound foundation.
- Thank you for providing us with an opportunity to get together and compare notes with judges from other states. It is all too rare these days in the era of deficits.

The intersection of law and technology is impacting the Courts on a daily basis. From electronic filing to electronic evidence presentation, digital information has become not only prevalent in the courtroom but unavoidable.

And while application of digital information in the day-to-day administration of justice has become a utilitarian reality, it is the substantive collision of law and technology that presents the greatest challenge to modern legal theory. How does one reconcile the Common Law, taught still with cases based on millstones and railroads, with technological innovations such as nanotechnology and information stored on microscopic chips of glass?

Join the NFJE as we explore the challenges posed to the appellate courts by a case involving electronic discovery, the computer technology underlying it, and the current state of the law of spoliation.

E-DISCOVERY AND SPOILIATION ON APPEAL: The Convergence of Law and Technology

Schedule of Events

Friday, June 29

6:00 p.m. Registration and Cocktail Reception

7:30 p.m. Dinner On Your Own

Saturday, June 30

8:00 a.m. Registration and Continental Breakfast

8:30 a.m. Welcome and Introduction to the Program

8:45 a.m. The Hypothetical Case on Appeal: Facts and Procedural Posture

9:00 a.m. Emerging Issues in E-discovery: A Primer
John Jessen

10:15 a.m. Break

10:30 a.m. Addressing E-discovery Issues through Adjudication: Judicial Philosophy in Light of the
Convergence of Law and Technology
Professor Richard Marcus

11:00 a.m. Addressing E-discovery Issues through Rules Changes: Federal and State Approaches
Thomas Allman

11:45 a.m. Spoliation: Truth or Consequences
Gregory P. Joseph

12:30 p.m. Luncheon and Keynote Address
The Logical Construct of Appellate Arguments and Opinions
Professor Douglas Lind

The Renaissance Hotel Chicago, Illinois

- 2:00 p.m. **Counsel for Appellant and Appellee Offer Pre-argument Perspective**
Michael B. King
John Bredehoft
-
- 2:30 p.m. **Mock Oral Argument: An Appeal from a Sanctions Dismissal for
E-Discovery Violations**
Michael B. King
John Bredehoft
-
- 3:30 p.m. **Mock Judges Conference**
-
- 4:00 p.m. **Break**
-
- 4:15 p.m. **Panel Discussion**
All Presenters
-
- 5:00 p.m. **Cocktail Reception**
-
- 6:30 p.m. **Dinner on Your Own**



Keynote Speaker



Professor Douglas Lind is chair of the Department of Philosophy at the University of Idaho, and a faculty member at The National Judicial College, Reno, Nevada. Previously, he practiced law for a number of years, specializing in environmental law, as an assistant attorney general for the State of Missouri and in private practice in Philadelphia, Pennsylvania. Professor Lind received his B.A., *magna cum laude*, from the University of Minnesota, his J.D. from Washington University, St. Louis, and his Ph.D. from the University of Pennsylvania. At the University of Idaho, Professor Lind teaches the subjects of philosophy of law, logic, ethical theory, environmental philosophy, and the philosophy of Ludwig Wittgenstein. He regularly teaches courses on logic, legal reasoning, and judicial decision-making at The National Judicial College, through state judicial institutes and bar associations, and internationally. His recent publications include: “Azdak, The Rascal Judge,” *Canadian Journal of Law and Jurisprudence* (1999); “Logic, Intuition, and the Positivist Legacy of H.L.A. Hart,” *SMU Law Review* (1999); and “Constitutional Adjudication as a Craft-Bound Excellence,” in Dennis Patterson, ed., *Wittgenstein and Law* (2004). The second edition of his book, *Logic and Legal Reasoning*, will be published later this year by The National Judicial College Press.

Speakers



Thomas Allman is Senior Counsel to Mayer Brown Rowe & Maw in Chicago, having served as Senior Vice President, General Counsel and Chief Compliance Officer of BASF Corporation from 1993 to 2004. While at BASF, he initiated a corporate compliance program and, on behalf of the General Counsel community, helped advocate amendments to the Federal Rules of Civil Procedure to achieve e-discovery reform. He currently co-chairs the E-Discovery Committee of the Lawyers for Civil Justice, serves on the Steering Committee of the Sedona Conference® (publishers of the Sedona Principles and the Sedona Guidelines), chairs the Sedona Subgroup on E-Mail Management and writes and speaks widely on e-discovery, corporate compliance and information management. Mr. Allman is active in ARMA, AIIM, ACC and the ABA. He received his J.D. from Yale Law School. His most recent publications include “Defining Culpability: The Search for A Limited Safe Harbor in Electronic Discovery,” 2006 Fed. Cts. L. Rev. 7 (2006), “The Impact of the Proposed Federal E-Discovery Rules,” 12 Rich. J. L. & Tech. 13 (Spring, 2006); and “Fostering a Compliance Culture: The Role of the Sedona Guidelines,” ARMA Information Management Journal (March/April, 2005).



John Jessen founded EED, Inc. in 1987 with the vision that a group of specialists combining technical and legal expertise would be needed to address the growing number of electronic evidence issues facing the legal profession. To meet the needs of his clients, Mr. Jessen hired a diverse team of experts, from trial lawyers to software engineers, creating the first—and now largest—company in the industry. At EED, Inc., Mr. Jessen directs the consulting activities and

develops litigation, mediation and electronic data retention strategies for clients. He has contributed to more than 20 legal journals and publications, serves on eight professional boards and organizations, and has spoken at more than 130 conferences and forums on electronic evidence, including guest lectures at Harvard Law and the University of Washington Law School. Mr. Jessen regularly delivers courses to law firms and federal judges on the latest technology and policies related to electronic discovery. Mr. Jessen is a member of a diverse range of industry groups, including the National Association of Certified Fraud Examiners, the National Computer Security Association (NCSA) and the Association for Information and Image Management (AIIM). He earned his bachelor's degree in finance from the University of Washington and completed the Executive Management Program at Harvard Business School.



Gregory P. Joseph is a Fellow of the American College of Trial Lawyers and former Chair of the 60,000-member Section of Litigation of the American Bar Association. By appointment of Chief Justice William Rehnquist, he served on the Advisory Committee on the Federal Rules of Evidence from 1993–99. He also served as Chair of the New York State Courts' Committee of Lawyers to Enhance the Jury Process, by appointment of New York Chief Judge Judith Kaye. In 2001–02, he served as Co-Chair of the Third Circuit Task Force on Selection of Class Counsel by appointment of Chief Judge Edward R. Becker. He formerly chaired the Litigation Department at Fried, Frank, Harris, Shriver & Jacobson in New York. Mr. Joseph is the author of several books, including *Modern Visual Evidence; Sanctions: The Federal Law of Litigation Abuse* (3d ed. 2000), which is cited in the Advisory Committee Notes to the Federal Rules of Civil Procedure; and *Civil RICO: A Definitive Guide* (2d ed. 2000). He is a member of the Editorial Board of *Moore's Federal Practice* (3d ed.). He practices with Gregory P. Joseph Law Offices LLC, a 10-lawyer litigation firm in New York City.



Professor Richard Marcus holds the Horace O. Coil Chair in Litigation at the University of California's Hastings College of the Law. Before joining the Hastings faculty, he taught for eight years at the University of Illinois, and before that was a litigator for several years in San Francisco, becoming a partner in his firm. Since 1996, he has been Special Reporter to the U.S. Judicial Conference's Advisory Committee on Civil Rules, dealing with discovery matters. In that capacity, he participated in the drafting of the Federal Rule amendments for E-Discovery that went into effect on December 1, 2006. He is co-author of leading casebooks on Civil Procedure and Complex Litigation, as well as being the author of the discovery volumes of the Federal Practice & Procedure treatise ("Wright & Miller"). He has written widely on all aspects of discovery practice.

Mock Argument Counsel



Michael B. King practices with the Talmadge Law Group in Seattle, Washington. A full-time appellate litigator who has made over 85 arguments to full merits panels, Michael has successfully represented clients before the Alaska, California and Washington Supreme Courts, the Ninth and Eleventh Circuit Courts of Appeals, and all divisions of the Washington State Court of Appeals. He has chaired DRI's Appellate Advocacy Committee, is the Program Chair for the ABA's Council of Appellate Lawyers, and has organized and spoken at appellate CLEs around the country. He is a founding member and past President of the Washington Appellate Lawyers Association, was named a "Best Lawyer in America" for appellate law in 2007, and has been named a "Super Lawyer" in appellate law by Washington Law & Politics magazine for the last six years. Michael graduated *magna cum laude* from University of Washington School of Law in 1984, and received his A.B. in Government from Harvard College in 1979.



John Bredehoft practices law in the Norfolk, Virginia office of Kaufman & Canoles, P.C. He is a member of DRI's Appellate Advocacy Committee, a long-time instructor at the Virginia Supreme Court's course on Professionalism for Law Students, and currently serves as the Chairman of the Virginia Bar Association Section on Labor Relations and Employment Law. A frequent speaker before Bar and other groups, his presentations have run the gamut from witness-coaching to whistle-blowing and from supersedeas bonds to cyber-terrorism. A business counselor as well as an experienced appellate advocate, he has even been known to try cases when the occasion demands. He has been recognized by numerous publications including *Chambers USA* and *The Best Lawyers in America*. John is an honors graduate of Harvard Law School and received his A.B., *magna cum laude*, in history from Harvard College.

It's Happening in Chicago

There is no place more captivating than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity and there are myriad cultural, sporting, 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. The hotel is a short walk to Millennium Park, home of the unique Chicago landmark, "the bean," and just an "L" ride away from historic Wrigley Field where the Chicago Cubs play. Other nearby attractions include: 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.
If you have questions, call 312.698.6280.

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Business Address

Street _____ Suite _____

City _____ State _____ Zip Code _____

Business Telephone _____ Fax _____ E-mail* _____

* Please provide an e-mail address as confirmation and course materials are sent via e-mail.

Will a spouse or guest be traveling with you?

Yes

No

If yes, please indicate his/her name.

If yes, will your guest attend the keynote luncheon?

Yes

No

Hotel and Travel Arrangements

Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions to make your hotel and travel reservations.

NFJE will cover the cost of a deluxe room for Friday, June 29 and Saturday, June 30, 2007 and transportation (flight, train, ground). When making your travel arrangements, please plan to arrive by 5:00 p.m., Friday, June 29th. *If you would like to extend your stay, you are welcome to do so at your own expense.*

The Renaissance Chicago Hotel
One West Wacker Drive
Chicago, IL 60601
Phone: 312.372.7200
Fax: 312.372.0093
www.renaissancechicagodowntown.com

Cancellations

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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