



NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

Annual
Report

2011

OUR MISSION

To address important legal policy issues affecting the law and civil justice system by providing meaningful support and education to the judiciary, by publishing scholarly works and by engaging in other efforts to continually enhance and ensure judicial excellence and fairness for all engaged in the judicial process.



MESSAGE FROM THE PRESIDENT

Matthew Y. Biscan

Thomas More, Chancellor of England under Henry VIII and a hero of mine, once wrote that “[a]n absolutely new idea is one of the rarest things known to man.” The idea of judicial education is certainly not absolutely new, and given that the National Foundation for Judicial Excellence (NFJE) is now in its eighth year, “new” does not strictly apply to it either. Despite that, the “idea” of the NFJE remains new and intellectually refreshing. That so many bright and generous men and women of commerce and the law should come together, first to provide support and education for the appellate judges of the states, and second to do so in an unbiased and *pro bono* manner, remains a singular accomplishment.

In 2011 the NFJE held its Seventh Annual Judicial Symposium, *Applied Science and the Law: 21st Century Technology in the Courts* on July 15-16, 2011. One hundred twenty-nine judges from 35 states attended. Forty judges were first-time attendees; 89 had attended one or more past symposia; and seven had attended each program for the past six years. The judges overwhelmingly indicated they would attend another NFJE symposium and recommend the symposium to a colleague—and several of them asked to be registered for the 2012 symposium without knowing any details about the program.

NFJE will host that 2012 program in Chicago this summer. The Eighth Annual Judicial Symposium, *Class Actions and Aggregate Litigation: Lessons Learned, Challenges Ahead*, will be held on July 13–14, 2012. One hundred thirty-five judges had registered for the program within two weeks of its announcement and, indeed, before most judges had received the mailed brochure. With a list of speakers that reads like a “Who’s Who” of the bar and academia—including debates and presentations by several learned counsel from both the plaintiff’s and defense bars, the judges are in for yet another spectacular program.

Of course, it is expensive to put on such fine programming free of charge to the judiciary. But in this time of budgetary restraint for governments across the board, such offerings are particularly valuable to the courts. Hence, fundraising efforts remain at the forefront of NFJE activities. The development committee has continued to focus on NFJE’s core marketing strategies. The results of its efforts over the last year have been largely successful, if somewhat more difficult to obtain because of the state of the economy. As a result of these efforts, and as more fully described in this Annual Report, the NFJE received \$354,000 in contributions in 2011. This amount, as impressive as it seems, barely covers the NFJE’s annual expenses.

And so for 2012 our focus remains to raise money to support the mission. Our fundraising efforts start all over again. The revenue goals in our budget are ambitious—attainable, but ambitious. Our goal this year is to utilize the organizational and fundraising structures we have in place to broaden the base of support and ensure the NFJE’s financial future.

In a little more than eight years, the NFJE has grown from a “new idea” to a widely respected and highly acclaimed public service organization, recognized for the quality of its educational offerings and the evenhanded and reasonable manner in which it presents the state of the law.

The NFJE continues to be the leader in judicial education because it supports an independent and fully educated judiciary; one that is knowledgeable of the many legal theories, principles, and practices that abound in a legal system dependent upon the full and fair advocacy of competing parties and interests. Let me quote my hero Thomas More again: “I would uphold the law if for no other reason but to protect myself.” The NFJE will continue to present timely and comprehensive examinations of the burning legal issues of the day to support a fully and fairly informed and independent judiciary. And we will continue to be proud to do so.

HISTORY OF THE ORGANIZATION

Established in 2004, the NFJE is a 501(c)(3) charitable organization based in Chicago, dedicated to supporting an independent, well-informed judiciary in order to preserve excellence and fairness in the civil justice system. For each of the past seven years, the NFJE has successfully produced a first-rate annual symposium attracting hundreds of state appellate judges. The symposia have featured an array of nationally distinguished legal experts and scholars discussing the contemporary and complex legal issues relevant today in courtrooms across the country. The end result is the top-quality, tuition-free series of educational programs provided by the NFJE, which assist our nation's appellate judges to perform at their highest levels.

- NFJE provides tuition-free judicial education programs.
- NFJE focuses specifically on education for the state appellate judiciary.
- NFJE is a recognized leader in the legal and judicial communities as a reliable source for providing balanced information in its programs.

NFJE is the only organization of its kind led by the Defense Bar.



“THOU SHALT NOT RATION JUSTICE”

Peter J. Hersha, Board of Directors, Development Chair

My title comes from words spoken by Judge Learned Hand in 1951. The full quote is, “If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.” Judge Hand’s words are truer today than when they were first spoken over 60 years ago.

The adjudication of civil disputes is every bit as important as the disposition of criminal matters. Yet the same state constitutions that contain guarantees for criminal defendants do not in most cases technically require courts to administer civil law at all.

- Imagine a world in which the struggle to balance already tight budgets causes civil adjudication to come to an end. That world exists today for the citizens of one judicial circuit in Georgia.
- Such a state of affairs would bring about the “unraveling of society” according to San Francisco Superior Court Presiding Judge Katherine Feinstein.

The work of the National Foundation for Judicial Excellence (NFJE) addresses an important aspect of the myriad challenges facing the American judiciary today. “Our purpose is to support a strong, independent, responsive judiciary by providing appellate judges with educational programs and other tools that enable them to perform at their highest level.”

This is a purpose that resonates with our diverse base of contributors. Corporations support NFJE because they recognize that their customers and business are affected by state judicial decisions every day. Therefore, investing in an organization that helps ensure that their cases on appeal in the state courts are heard by judges who are well-educated, in touch with current legal trends, and positioned to make fair and balanced rulings makes complete sense. Judicial decisions can affect the bottom-line on not just an individual case but on an issue that involves many cases.

Lawyers, law firms, and bar associations recognize that the work done by NFJE, which enhances the performance of the judiciary, is critical to their individual practices and the missions of their associations. Tricia Shields, President of the North Carolina Association of Defense Attorneys, says that her association views NFJE as uniquely positioned “to provide our judiciary with a solid and balanced education on the cutting-edge legal issues that they face.” Scott Kyroutac, President of Defense Trial Counsel of Indiana, says his association believes that NFJE “helps preserve our judicial system’s efficiency and integrity by providing impartial education and a forum to promote scholarly publications and civility.”

Nearly two years ago I had the opportunity to see Bryan Garner, author and advocate for excellent legal writing, speak at the sixth Annual NFJE Judicial Symposium. Mr. Garner, pointing to the vast body of work published every year by our state court appellate judges, observed that they shape much of the law that affects our lives and that their work will be reviewed and examined for years and generations to come. It is best if that legacy of work is clear, compelling, and well-informed.

I hope my thoughts convey why I am passionate about doing what I can to support the many hard-working men and women of the American judiciary. As Alexander Hamilton noted long ago, the judiciary is the weakest of the three branches of government because it controls neither sword nor purse. Today our judges need our support more than ever. This is a duty that belongs to me and to every other legal professional, as well as to every individual and corporation who depends on the legal system. Will you join me in supporting NFJE again this year?

PROGRAM OVERVIEW: SYMPOSIUM

7th Annual Judicial Symposium July 15-16, 2011 Swissôtel, Chicago

Applied Science and the Law: 21st Century Technology in the Courts

Moore's Law instructs that the pace of technology-driven change in our world will not relent, it will only accelerate. The 2011 symposium focused on practical and appellate considerations relating to the impact of technology in four discrete and important segments of our society: the role of social media and the law; the anatomy of data breaches; the interrelationship of electronic communications and employment; and the challenges that human genetic biomarker technologies present to traditional tort law concepts.

Number of judges in attendance: 129

Number of states represented: 35

Program Highlights

- *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* presented by Robert Dubose, *Alexander Dubose and Townsend LLC*. Mr. Dubose's presentation was based on his book of the same title. He explored how technology is changing the way judges read and suggested new strategies for writing more clearly and persuasively
- *Understanding the Role of Social Media in the Law* presented by Marisa Trasatti, *Semmes Bowen & Semmes* and Michele D. Hotten, *Maryland Court of Special Appeals*
- *Anatomy of Data Breaches: The Technology of How They Happen and the Legal Response* presented by Michele A. Whitham, *Foley Hoag LLP* and Christopher Day, *Terremark Worldwide, Inc.*
- *Employers' Right to Access Employees' Electronic Communications vs. Employee Privacy Interests* presented by Deborah Whitworth, *Lebel & Harriman LLP*, Kent L. Richland, *Greines Martin Stein & Richland LLP* and Lewis Maltby, *National Workrights Institute*
- *Understanding Tort Law Impacts Created by Scientific Advances of Human Bio-Monitoring and Genetic Biomarkers* presented by Gary E. Marchant, *Arizona State University* and Bernard Taylor, Sr., *Alston & Bird LLP*



"One of the best programs I've attended regarding presenters and especially content. Excellent."



"A fine collection of experts who knew and could express their material."

"Nice diverse group of presenters."



"Excellent—presented information on what is ahead in litigation in this fast moving field."



"Dubose gave a very informative speech. It forced me to reflect on my own reading habits as well as anticipate the upcoming changes in briefing."

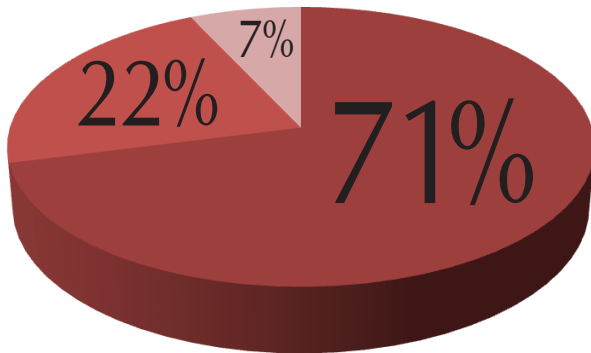


FINANCIAL OVERVIEW

In 2011, the NFJE raised over \$354,000 with the generous support of individual attorneys, law firms, corporations, State and Local Defense Organizations, professional organizations, DRI dues renewal check off and foundations. The John R. Kouris Endowment Fund was created in the spring of 2008. This fund directly supports keynote speaker honorarium for each annual symposium.

Expenses for 2011 accurately reflect the NFJE mission—education of the judiciary. The annual symposium remains the largest expense for the NFJE at seventy-one (71%) percent. Management and General Expenses reflect the operating costs. Fundraising expenses reflect the printing of materials, professional fees and travel costs related to fundraising.

2011 Expenses

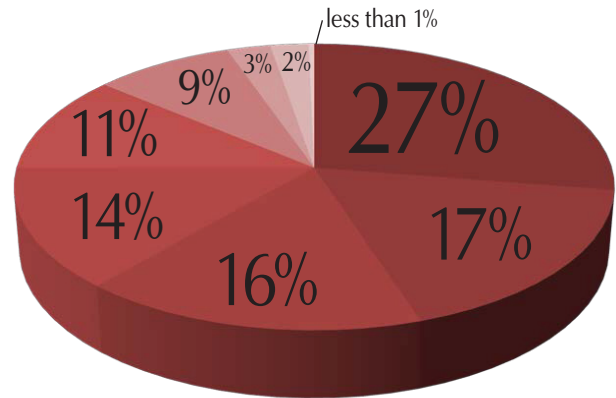


Program Services: 71%

Management & General: 22%

Fundraising: 7%

2011 Revenue



DRI Dues Renewal Checkoff: 27%

Individuals: 17%

Law Firms: 16%

Corporations: 14%

Auction and Raffle: 11%

State and Local Defense Organizations: 9%

Professional Organizations: 3%

Annual Judicial Symposium Hotel Commission: 2%

John R. Kouris Endowment Fund: less than 1%

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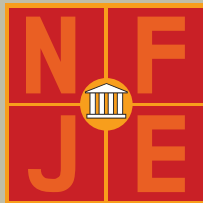
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The NFJE would also like to thank the 3,975 individuals who contributed \$25 through the DRI Dues Renewal Checkoff; as well as the 12 individuals who donated less than \$100 through private donations.



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