

*Seventh Annual Judicial Symposium*

# APPLIED SCIENCE AND THE LAW:

21st Century Technology in the Courts

*Presented by*

NATIONAL FOUNDATION  
FOR JUDICIAL EXCELLENCE

July 15–16, 2011  
Swissôtel Chicago  
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 enhance the rule of law and administration of justice.

For six years, the NFJE has successfully produced a first-rate symposium hosting nearly 400 appellate court judges from 44 states.

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

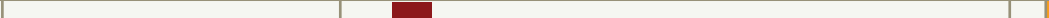
- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's symposium.
- Thanks to everyone for a great program. I already look forward to next year's program.
- This is one of the best organized and informative 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.



## This Year's Symposium

**G**ordon E. Moore, the cofounder of Intel, in a 1965 paper predicted that the number of transistors stored in an integrated circuit would double roughly every two years. Nearly 50 years later Moore's prediction, now known as Moore's Law, has proven to be surprisingly accurate. Our technology and ability to process information has evaded past limitations and continues to grow exponentially. The 2011 NFJE Symposium focuses 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. An expert will explore how technology is changing the way judges read and suggest new strategies for writing more clearly and persuasively.

Moore's Law instructs that the pace of technology-driven change in our world will not relent, it will only accelerate. Please join judicial colleagues from across the country in an informed discussion about adapting our laws and judicial processes in response to the increasing pace of technological change.



# APPLIED SCIENCE AND THE LAW:

## 21st Century Technology in the Courts

### Schedule of Events

#### Friday, July 15

4:00 – 5:30 p.m. Registration

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5:30 – 6:30 p.m. ***Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World***  
Speaker: Robert Dubose, *Alexander Dubose and Townsend, LLC*  
*Mr. Dubose is the author of the book, Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World (Texas Lawyer Books 2010). He will explore how technology is changing the way judges read and suggest new strategies for writing more clearly and persuasively.*

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6:30 – 7:30 p.m. Welcome Reception

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7:30 p.m. Dinner on your own

#### Saturday, July 16

7:30 – 8:15 a.m. Continental Breakfast

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8:15 – 8:30 a.m. **Welcome and Introductions**  
Christopher W. Tompkins, NFJE President  
J. Michael Weston, 2011 Symposium Program Chair

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8:30 – 9:30 a.m. ***Understanding the Role of Social Media in the Law***  
Speakers: Marisa Trasatti, *Semmes, Bowen & Semmes*  
Thomas R. Burke, *Davis Wright Tremaine LLP*  
*This program will begin with an interactive, real-time discussion and demonstration of the various forms of social media, from Facebook to LinkedIn to Twitter and beyond, followed by a presentation on various legal issues that are reaching the appellate courts as a result of the cascading influence of social media.*

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9:30 – 9:45 a.m. Break

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9:45 – 10:45 a.m. ***Anatomy of Data Breaches: The Technology of How They Happen and the Legal Response***  
Speakers: Michele A. Whitham, *Foley Hoag LLP*  
Christopher Day, *Terremark Worldwide, Inc.*  
*This program combines the expertise of a data-security authority and a data-security litigator to provide insight into how data breaches occur and an overview of the rapidly changing landscape of legal issues faced by the courts in adjudicating data-breach cases.*

10:45 – 11:00 a.m.	<b>Break</b>
11:00 – 12:00 p.m.	<b>Keynote</b> Speaker: Ben Mezrich <i>Acclaimed author of The Accidental Billionaires: The Founding of Facebook, the book that led to the award-winning film The Social Network.</i>
12:00 – 1:15 p.m.	<b>Luncheon and Meet and Greet</b> Join us for lunch where you will have the opportunity to meet Ben Mezrich and have a copy of your book signed. (Please note: no books will be available for purchase at the symposium.)
1:15 – 2:45 p.m.	<b>Employers' Right to Access Employees' Electronic Communications vs. Employee Privacy Interests</b> Speakers: Deborah Whitworth, <i>Lebel &amp; Harriman, LLP</i> Kent L. Richland, <i>Greines, Martin, Stein &amp; Richland, LLP</i> Lewis Maltby, <i>National Workrights Institute</i> <i>During this presentation speakers will discuss the impact of the U.S. Supreme Court's City of Ontario v. Quon decision on privacy issues and the questions the decision left unanswered. Speakers will also identify legal and practical questions in employee privacy rights, including participating in social networking sites both in and beyond the workplace.</i>
2:45 – 3:00 p.m.	<b>Break</b>
3:00 – 4:15 p.m.	<b>Understanding Tort Law Impacts Created by Scientific Advances of Human Bio-Monitoring and Genetic Biomarkers</b> Speakers: Gary E. Marchant, <i>Arizona State University</i> Bernard Taylor Sr., <i>Alston &amp; Bird, LLP</i> <i>Bio-monitoring is a scientific technique that assesses human exposures to natural and synthetic chemicals. Speakers will address current bio-monitoring science and emerging theories of legal causation and injury, including whether to compel such testing and ultimate admissibility, dispositive motions, emerging causes of action, and strategies for a jury trial involving bio-monitoring evidence.</i>
4:15 – 5:00 p.m.	<b>Speaker Panel</b> Moderator: Dan D. Kohane, <i>Hurwitz &amp; Fine PC</i> Speakers: Marisa Trasatti, Thomas R. Burke, Michele A. Whitham, Christopher Day, Deborah Whitworth, Kent L. Richland, Lewis Maltby, Gary E. Marchant, Bernard Taylor, Sr.
5:00 p.m.	<b>Closing Remarks</b> Christopher W. Tompkins, NFJE President
5:00 – 6:30 p.m.	<b>Closing Reception</b>
6:30 p.m.	<b>Dinner on your own</b>

## Keynote Speaker



**Ben Mezrich** is the author of 11 books, including the wildly successful *Bringing Down the House: The Inside Story of Six M.I.T. Students Who Took Vegas for Millions*, which spent 63 weeks on the *New York Times* Best Seller List, and sold over 2 million copies in 12 languages. His latest book, *The Accidental Billionaires: The Founding of Facebook, A Tale of Sex, Money, Genius and Betrayal*, was released in July 2009.

Mr. Mezrich has created his own highly addictive genre of nonfiction, chronicling the amazing stories of young geniuses making tons of money on the edge of impossibility, ethics and morality.

While writing these true stories, he has been afforded access to worlds seldom talked about. During his research for *Bringing Down the House*, he taped \$250,000 to his body and smuggled it through airport security with some of the most notorious card-counters in the world, getting to taste the lifestyle of the Las Vegas high roller upon arrival.

In addition to optioning *The Accidental Billionaires*, which became the film *The Social Network*, Sony Pictures produced Mr. Mezrich's *Bringing Down the House*, transformed to film under the title *21*. Both of Mr. Mezrich's other *New York Times* Bestsellers, *Ugly Americans* and *Rigged*, have been optioned for the big screen, by 2929 and Summit respectively.

Mr. Mezrich has appeared often on TV, including a stint on Court TV with a series titled "*High Stakes with Ben Mezrich*." The show utilized his unique contacts to explore the culture of young, highly educated millionaires and their clandestine hobbies. Mr. Mezrich also hosted the *World Series of Blackjack* for GSN and has several scripted and non-scripted TV projects in the works.

## Speakers



**Thomas R. Burke** is a partner in Davis Wright Tremaine LLP's San Francisco office. Mr. Burke has more than two decades of experience in media law matters. In 2010, he coauthored a First Amendment media amici brief filed with the U.S. Supreme Court in *Snyder v. Phelps*, No. 09-751 (U.S. Mar. 2, 2011), and represented the media in expedited proceedings in *Hollingsworth v. Perry*, 558 U.S. \_\_\_\_ (2010), supporting the broadcast of court trial proceedings in a federal constitutional challenge to California's ban on same-sex marriage. As part of his diverse practice, Mr. Burke also serves as production legal counsel to the television program *Mad Men*.



**Christopher Day** is senior vice president of Secure Information Services with Terremark Worldwide, Inc. He joined Terremark in December 2005. Mr. Day is responsible for global information security services provided to Terremark customers both in the commercial and government sectors. He has led numerous consulting projects in the areas of security audit, vulnerability assessment, computer forensics and secure-systems design. Mr. Day has also been involved with various security incidents dealing with system intrusions, theft of intellectual property, harassment and fraud, including serving as a testifying expert witness.





**Robert Dubose** is a partner with the appellate law firm of Alexander Dubose & Townsend LLP in the firm's Houston office. Since 1998 he has been an adjunct professor with the University of Houston Law Center where he teaches Appellate Advocacy. He is the author of the book, *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* (Texas Lawyer Books 2010), and a coauthor of the article, "A National Strategy for Creating Favorable Precedent," published in the November 2010 issue of the DRI magazine, *For The Defense*. Mr. Dubose is a frequent speaker and writer on advocacy and legal writing.



**Dan D. Kohane**, is a partner in the Buffalo, New York, law firm of Hurwitz & Fine, P.C. where he heads the firm's Insurance Coverage and Extra Contractual Liability, Class Action and ADR practice groups. An Adjunct Professor of Insurance Law at his alma mater, the University at Buffalo Law School, he received his B.A. from the SUNY at New Paltz.

Mr. Kohane has previously served as President of Federation of Defense & Corporate Counsel (FDCC), and a member of the Board of Directors for DRI and Lawyers for Civil Justice. He also served as chair of DRI's Technology Committee and program chair of the DRI 2010 Insurance Coverage and Practice Symposium.



**Lewis Maltby** is president of the National Workrights Institute, formerly the ACLU's national employment rights office. He has testified before Congress numerous times regarding employment rights issues, participated in litigation before the Supreme Court, and helped enact over 50 state laws expanding human rights at work. His book, *Can They Do That? Retaking Our Fundamental Rights in the Workplace*, was published by Portfolio, the dedicated business book imprint within Penguin Group USA, in 2010.



**Gary E. Marchant** is the Lincoln Professor of Emerging Technologies, Law and Ethics of the Sandra Day O'Connor College of Law at Arizona State University. He is also a professor of Life Sciences and the executive director of the Arizona State University Center for Law, Science and Innovation. Professor Marchant has a Ph.D. in Genetics from the University of British Columbia, a Masters of Public Policy from the Kennedy School of Government and a JD from Harvard Law School. Before joining the Arizona State University faculty in 1999, he was a partner in the Washington, D.C., office of the law firm Kirkland & Ellis LLP.



**Kent L. Richland** is a founding partner of Greines, Martin, Stein & Richland LLP, one of California's largest firms specializing in civil appeals. He is a past president of the California Academy of Appellate Lawyers and a fellow of the American Academy of Appellate Lawyers. Mr. Richland has briefed and argued hundreds of appeal, achieving unanimous victories in the U.S. Supreme Court in *Marshall v. Marshall*, 547 U.S. 293 (2006), and *City of Ontario v. Quon*, 560 U.S. \_\_\_\_ (2010). In January 2011, he again argued before the high court in *Stern v. Marshall*, No. 10-179.



**Bernard Taylor Sr.** is a partner of Alston & Bird LLP in the firm's Atlanta office, a former chair of the firm's Management Committee and current cochair of the firm's Products Liability Group. He concentrates his practice in complex disputes, including commercial litigation, product liability and pharmaceutical and toxic tort lawsuits. Mr. Taylor is a fellow of the American College of Trial Lawyers. He received his JD degree from Vanderbilt University School of Law, where he was the recipient of the Bennett Douglas-Bell Memorial Prize in Legal Ethics, and his BA from Wayne State University.



**Marisa Trasatti** is a principal with Semmes, Bowen & Semmes in Baltimore. Ms. Trasatti's practice focuses on civil litigation with an emphasis on drug and medical device, toxic tort and professional liability matters. Before joining Semmes in 2004, she served as a judicial intern for The Honorable Lawrence R. Daniels, Circuit Court for Baltimore County. After graduating from law school, she worked at boutique local defense firms where she gained significant trial experience in medical malpractice, insurance defense and product liability cases.

Ms. Trasatti is an active member of DRI, serving on its Public Policy Committee. She also serves on the board of directors of the Maryland Defense Counsel, Inc.



**Michele A. Whitham** is a partner of Foley Hoag LLP in Boston. From 2001 through 2008, she served as the firm's comanaging partner. Ms. Whitham is a litigator specializing in "bet your company" cases arising from the bad acts of employees. Since 2005, she has focused her practice on data privacy and security, handling matters ranging from employee cyber theft to cyber incursions by competitors. Most recently, she has been named counsel for the Advanced Cyber Security Center, a consortium of cross-sector

businesses, academic institutions and regulatory agencies sponsored by MITRE Corporation and located in Bedford, Massachusetts, dedicated to developing the expertise necessary to fend off sophisticated, malicious cyber attacks.



**Deborah Whitworth** is managing director of Human Resources Consulting with Lebel & Harriman LLP in Falmouth, Maine. She consults with various organizations across Northern New England.

A member of the Society for Human Resources Management (SHRM) for over 25 years, Ms. Whitworth is currently president of the Human Resources Association of Southern Maine.

She served as president of the Board for Connections for Kids for 10 years and was a charter member of the Board of the SHRM Maine State Council, an affiliate of the national Society for Human Resource Management.



## Swissôtel Chicago: It's Happening in Chicago

There is no place more exciting than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity and there is an abundance of cultural, sporting, entertainment and dining offerings.

Located at the confluence of the Chicago River and Lake Michigan, the Swissôtel Chicago offers fabulous panoramic views of the city's lakefront. It is close to many Chicago attractions, including Navy Pier, Millennium Park and The Magnificent Mile.

Other nearby attractions include Willis Tower, the Art Institute of Chicago, the Theatre District and the Museum Campus featuring the Field Museum of Natural History, the John G. Shedd Aquarium and the Adler Planetarium.

## Registration

### To register:

**Phone** 312.698.6280

**Fax** 312.795.0748

**Online** [www.nfje.net](http://www.nfje.net)

## Contact Information

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_

Preferred Name \_\_\_\_\_ Title \_\_\_\_\_

Court \_\_\_\_\_

Street \_\_\_\_\_ Suite \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_ Fax \_\_\_\_\_ 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 luncheon?  Yes  No

## Hotel and Travel Arrangements

This program has limited attendance. Registration is on a first-come, first-served basis. Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions about making your hotel and travel reservations. If you do not receive an email confirmation within 48 hours, you will need to contact NFJE directly. Please be advised that you will need to secure your hotel reservations on or before June 15, 2011.

NFJE will pay for the cost of a classic room for the nights of Friday, July 15 and Saturday, July 16, 2011, as well as transportation (air, rail, ground) costs not to exceed \$500. When making your travel arrangements, please plan to arrive by 3:00 p.m., Friday, July 15. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

**Swissôtel Chicago**  
333 East Wacker Drive  
Chicago, IL 60601  
Phone: 312.565.0565  
Fax: 312.565.0540  
[www.swissotel.com/chicago](http://www.swissotel.com/chicago)

## 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 may attend. All cancellations must be received in writing via fax (312.795.0748) or email ([tpetrich@nfje.net](mailto:tpetrich@nfje.net)).*

**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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