



NATIONAL FOUNDATION  
FOR JUDICIAL EXCELLENCE

# Annual Report

2016





## MESSAGE FROM THE PRESIDENT

*Peter J. Hersha*

I am pleased to report that the National Foundation for Judicial Excellence, now in its 12<sup>th</sup> year of service to the judiciary, is excelling at its mission and is in solid financial condition. We could do none of this without the strong and continuing support of our donors, and we work hard to always be good stewards of your dollars and trust.

We conducted another very successful Annual Judicial Symposium in Chicago in July 2015. Once again, registration exceeded capacity within two weeks. In fact, demand was so strong that we decided to admit more judges than planned. Attendees included a number of judges from their state's highest court, and 19 Chief or Presiding Judges/Justices.

In January of 2016 we introduced our first attempt at addressing another prong of our mission, to publish scholarly works, via the first issue of "Judicial Excellence," a newsletter for state court appellate judges. This newsletter is the brainchild and result of the efforts of NFJE Vice President Mike Weston and NFJE board member Dan Kohane. It is sent by email, and enables NFJE to provide education to even more judges than we can with the Symposium alone. The first issue of "Judicial Excellence" featured two articles: "But No One Argued That: Sua Sponte Decisions on Appeal," and "Appellate Scrutiny of Class Action Settlements." It was sent to 807 of the 1,200 or so state court appellate judges, and had a 40% open rate. If you are familiar with email metrics for newsletters, you know that a 40% open rate is very strong. We intend to send "Judicial Excellence" to every state court appellate judge as we obtain email addresses.

Financial results were again a success in 2015. We finished in the black and modestly added to net assets, all while serving more judges than planned at the Annual Judicial Symposium.

The Program Committee, under the leadership of NFJE board member Mary Massaron, has put together a great program for the 2016 Annual Judicial Symposium. The title is "When State Courts Disagree: Competing Approaches to State Law in the Appellate Courts," and it will take place in Chicago July 15-16, 2016. The Symposium will begin with a dynamic presentation by author Ross Guberman entitled "Secrets of the Great Opinion Writers." The panel discussions will include topics ranging from the permissibility of appellate judges gathering information from the Internet, to insurance fundamentals, to the propriety and limits of public policy in judicial decision making. A full description of this Symposium, and all past Symposia, is available at our website, [www.nfje.net](http://www.nfje.net).

NFJE was formed in 2004 through the vision of defense bar leader and Raleigh, NC lawyer Richard Boyette. Over the years, we have worked hard to bring Richard's vision to fruition by supporting "a strong, independent, responsive judiciary" through "educational programs and other tools that enable them to perform at their highest level." We work hard to ensure that our state court appellate judges are informed on *all* aspects of the issues of civil litigation we address so that they can effectively discharge their role in this great system of ours.

Thank you for your support of the National Foundation for Judicial Excellence. And if you are a state court appellate judge, thank you for attending our Symposia and please plan to attend this year and every year!

## 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 ten 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.**

## 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.





The election season is upon us with all that it brings. In my state of West Virginia, we are experimenting with non-partisan judicial elections for the first time. So far we aren't seeing much of a difference, although more candidates seem to be participating in the process, which is a positive development, unless you are an incumbent. And nationally, whether you are a Democrat or Republican, I venture to guess that like me, you probably consider this political season to be one of the most fascinating in memory; well, fascinating and troubling.

As a lawyer, I tend to focus on some of the legal issues that permeate our political discourse. The dispute that rages in Washington over the failure to vote on the President's nominee for the Supreme Court raises Constitutional questions regarding advice and consent and the Senate's role in that process. What is frustrating about the discussion is the lack of understanding about how the process works and the Constitutional foundation for the role of President in making the nomination and the Senate in providing advice and consent. As an educational foundation, the NFJE takes seriously the issue of public awareness of issues like these, but how do we reach out to the public to make sure that they understand the roll of both bodies?

Another important issue is the free speech issues that have flared on college campuses as a result of the "#chalking" phenomenon, which reminds us that political speech cannot be squelched in the name of safe spaces. The line between free speech and that which imposes potential harm goes back to Justice Holmes' line in *Schenk* about yelling fire in a crowded theater. President Obama noted – correctly – that today's' students probably need to grow thicker skins and understand that the path to development of a true philosophy is paved with an understanding of competing beliefs. It seems that we have forgotten that our college campuses are supposed to be places where students are to learn about different and competing ideas.

As jurists and lawyers, we have a responsibility to ensure that when issues of free speech or separation of powers are in the forefront of public discourse, that the rule of law be explained with clarity and precision. People need to understand the concepts of our laws and how they apply to the issues that are being discussed in the politics of the day. As an educational institution, the NFJE sees its roll to educate the judiciary on the important issues regarding civil justice. As jurists and lawyers, we have a responsibility to educate the public on the important issues of law that are relevant in our public discourse. The rule of law requires us to make sure that we do this.



## PROGRAM OVERVIEW: SYMPOSIUM

### Eleventh Annual Judicial Symposium July 17-18, 2015 Loews Chicago Hotel, Chicago

#### *The Vexation of Legislation: Judicial Analysis of Unclear, Incomplete, or Obsolete Statutes*

More than ever before, lawsuits call on judges to interpret the sometimes vague language found in statutes. Few acts of modern judging fall fully outside the scope of statutes. The 2015 Symposium aimed to help jurists wade through these often conflicting concerns and thereby improve judicial reasoning in real cases. Included were discussions of scenarios that have arisen in actual state Supreme Court cases and provided lively debate on different ways the tools of statutory interpretation can affect the outcome of those cases.

**Number of judges in attendance: 133**

**Number of states represented: 37**

#### *Program Highlights*

- **Thoughts on “Reading Law”** presented by Bryan A. Garner, *LawProse, Inc.*
- **The Interplay of Text and Purpose** presented by Associate Justice Goodwin Liu, *California Supreme Court*; Associate Professor Jeffrey Pojanowski, *Notre Dame School of Law*, and Former Justice Philip Talmadge, *Washington Supreme Court*
- **Legislative Silence and the Dance Between the Legislature and the Judiciary** presented by Justice Jeffrey S. Boyd, *Texas Supreme Court*; Professor Carlos Gonzalez, *Rutgers Law School*, and Judge Michael F. Gadola, *Michigan Court of Appeals*
- **The Void for Vagueness Doctrine and Rules of Constitutional Avoidance** presented by Thomas H. Dupree, Jr., *Gibson Dunn & Crutcher*; John M. Thomas, *Dykema*, and Professor Margaret Lemos, *Duke University Law School*
- **Update on United States Supreme Court Decisions** presented by Professor Kenji Yoshino, *New York University School of Law*
- **Deference to Administrative Agencies in Construing Statutes** presented by Professor Thomas W. Merrill, *Columbia University School of Law*





- *"NFJE always has top notch faculty!"*
- *"Excellent presentations of difficult issues"*



- *"This program is much better than the very biased Plaintiff's group"*
- *"Terrific faculty—best NFJE Symposium I've ever attended"*
- *"As relevant a judicial education program as I have ever attended"*

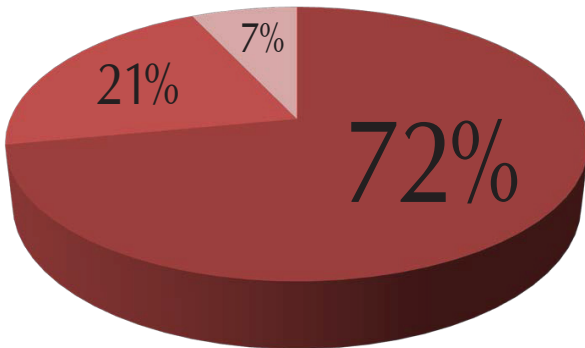


## FINANCIAL OVERVIEW

In 2015, the NFJE raised over \$396,000 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.

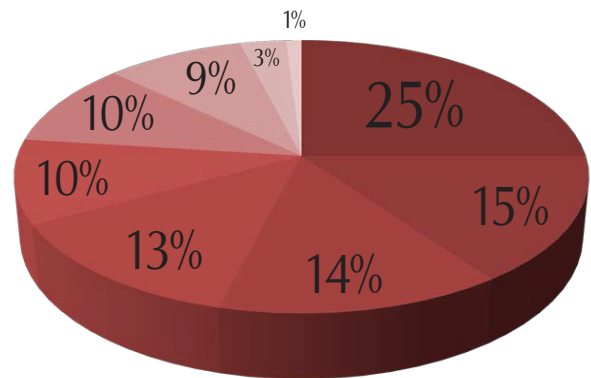
Expenses for 2015 accurately reflect the NFJE mission—education of the judiciary. The annual symposium remains the largest expense for the NFJE at seventy-two (72%) percent. Management and General Expenses reflect the operating costs. Fundraising expenses reflect the printing of materials, professional fees and travel costs related to fundraising.

### 2015 Expenses



Program Services: 72%  
Management & General: 21%  
Fundraising: 7%

### 2015 Revenue



DRI Dues Renewal Checkoff: 25%  
Corporations: 15%  
Individuals: 14%  
Auction and Raffle: 13%  
State and Local Defense Organizations: 10%  
Affiliate Services: 10%  
Law Firms: 9%  
Professional Organizations: 3%  
John R. Kouris Endowment Fund: 1%





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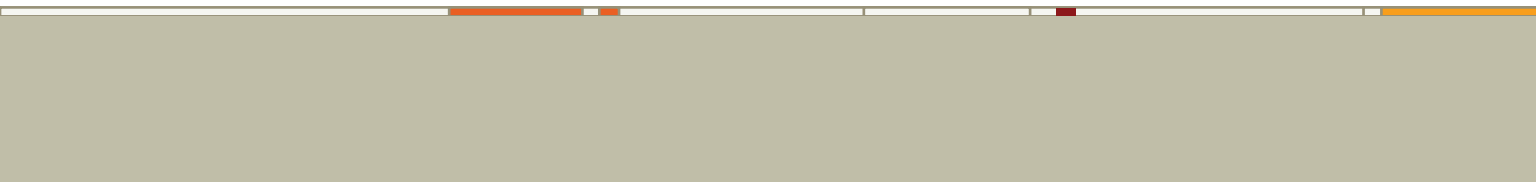
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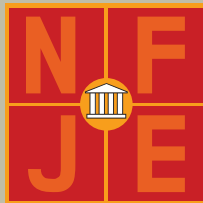
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*\*Denotes donors making donations 5 or more years.*







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