

Thirteenth Annual Judicial Symposium

Judging Emerging Issues in the Twenty-First Century

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 14–15, 2017
Loews Chicago 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, lawyers (as officers of the court) have an even keener interest in this.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) in 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 thirteen years, the NFJE has successfully produced a first-rate symposium, hosting nearly 1,400 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

Technology is changing how we live, work and communicate with one another. Drones, 3D printing, autonomous vehicles, robotics, the Internet of Things, and artificial intelligence are disrupting traditional ways of doing business in virtually all walks of life. Does a company subject itself to the jurisdiction of a state simply by having an internet presence? If not, what more should be required? Can, and should, personal jurisdiction be obtained over an individual through service via social media?

Technology is triggering the emergence of new legal issues or old issues in entirely new contexts, and is forcing all stakeholders in our justice system to learn and adapt. While the law has always had to change with the times, technology is forcing such a change at a more rapid pace than in the past. Those seeking redress in the courts are calling on judges to address new issues, some of which could be viewed simply as “new wine in old skins,” and some of which require an entirely new and fresh approach to how the issues are addressed. From state product liability and consumer fraud disputes to federal environmental, employment, and intellectual property statutes, entire fields of the law are now being disrupted by the impact of technology. Few acts of modern judging fall fully outside the scope of statutes. How should courts deal with subsequent technological innovation not contemplated by the legislature at the time a relevant statute was passed?

The task of judging these issues raises a host of questions that judges must sift through to—in Justice Marshall’s immortal words—“say what the law is.” The 2017 NFJE Symposium aims to help jurists address the challenges raised by technology. The symposium will help conceptualize the various approaches to these emerging issues and the dangers they present. Through panels blending the views of judges, academics, and lawyers alike, the Symposium will delve into technology’s impact on the development of the law, including the future of privacy and free speech and evolving notions of personal jurisdiction. The symposium will also include discussions of the latest Restatements being developed and land use issues in the twenty-first century. There will also be a lively debate on judicial ethics and social media.

The symposium will begin on Friday, July 14, 2017, with a presentation by Jeffrey M. Rosen, President and Chief Executive Officer of the National Constitution Center. The symposium will continue on Saturday, July 15, with panel discussions by state and appellate judges and renowned scholars on technology and statutory interpretation.

Please join us as we explore the effect of technology on the courts at the 2017 NFJE Symposium.



Shedule of Events

Friday, July 14

- 4:00–5:00 p.m. Registration
-
- 5:00–6:00 p.m. *The Future of Privacy and Free Speech in a Digital Age*
We live in a world where Google, Facebook, and Twitter have more power over privacy and free speech than any president or Supreme Court justice. In his keynote address, National Constitution Center President Jeffrey Rosen will ask how we should strike the balance between privacy and free speech in a digital age, guided by the question: What would Justice Louis Brandeis Do?
Jeffrey M. Rosen, *National Constitution Center, Philadelphia, PA*
-
- 6:00–7:30 p.m. Welcome Reception
-
- 7:30 p.m. Dinner on your own

Saturday, July 15

- 7:30–8:15 a.m. Continental Breakfast
-
- 8:15–8:30 a.m. *Welcome and Introductions*
J. Michael Weston, NFJE President
Steven M. Puiszis, 2017 Symposium Program Chair
-
- 8:30–9:30 a.m. *Technology's Impact on the Development of the Law*
The Internet of Things, artificial intelligence, big data, autonomous vehicles, robotics, drones, and genetic engineering are examples of disruptive technologies. We are on the cusp of a new industrial revolution driven by technology. Who can or should be liable when machines make life and death decisions on their own, or when mathematic algorithms use bad data or make the wrong decisions? Our panel will provide a glimpse into these types of issues spanned by technology that our courts will soon address.
Moderator | Kelly A. Williams, *Picadio Sneath Miller & Norton PC, Pittsburgh, PA*
Professor Mark A. Lemley, *Stanford Law School, Palo Alto, CA*
Professor William D. Henderson, *Indiana University Maurer School of Law, Bloomington, IN*
Professor Gary E. Marchant, *Sandra Day O'Connor College of Law, Arizona State University, Phoenix, AZ*
-
- 9:30–9:45 a.m. Break
-
- 9:45–10:45 a.m. *Personal Jurisdiction in the Twenty-First Century*
Will SCOTUS finally resolve the many applications and interpretations about the “Stream of Commerce”? After *Bauman*, *Walden*, and *International Shoe*, and with SCOTUS accepting two personal jurisdiction cases to be heard this term, the landscape of personal jurisdiction will be defined once again. Our distinguished panel will discuss leading opinions from state and federal courts shaping the law of personal jurisdiction.
Moderator | Michael B. King, *Carney Badley Spellman, PS, Seattle, WA*
Professor Lea Brilmayer, *Yale Law School, New Haven, CT*
The Honorable Natalie E. Hudson, *Minnesota Supreme Court, St. Paul, MN*
Brittany M. Schultz, *Ford Motor Company, Dearborn, MI*
-
- 10:45–11:45 a.m. *Restatement of the Law, or Advocacy for Change?*
The American Law Institute's Restatements—whether of the law of agency, contracts, liability insurance, property, torts, or other subjects—walk a fine line between following doctrine and revising it. A leading torts scholar who has occupied both the role of Restatement critic and Restatement Reporter will describe

the process through which Restatements are forged, and share his thoughts on their viability and value as a resource for state judiciaries.

Moderator | Mary Massaron, *Plunkett Cooney PC, Bloomfield Hills, MI*
Professor John C.P. Goldberg, *Harvard Law School, Cambridge, MA*

11:45 a.m.–1:00 p.m. Luncheon

1:00–2:00 p.m.

Issues with the Extraterritorial Application of State Consumer Protection Statutes

Each state has its own approach to consumer protection, balancing the goal of protecting consumers with the goal of building the local economy. But sometimes a consumer in one state sues a company in another state. So, whose law applies—the consumer’s state or the state where the company acted? Two state supreme courts have recently faced this issue. The panel will discuss these decisions from different perspectives, including statutory interpretation, choice of law, comity, and constitutional law.

Moderator | Scott Burnett Smith, *Bradley Arant Boult Cummings LLP, Huntsville, AL*
Linda T. Coberly, *Winston & Strawn LLP, Chicago, IL*

Shannon Smith, *Washington State Office of the Attorney General, Seattle, WA*

Professor Anthony J. Colangelo, *Southern Methodist University Dedman School of Law, Dallas, TX*

2:00–2:15 p.m.

Break

2:15–3:15 p.m.

Blogging and the Bench: The Ethics of Social Media Use by Judges and Judicial Employees

Despite the limitations and undesirable uses, when properly utilized, social media can serve as a positive tool for the dissemination of news and useful information. A growing number of attorneys, jurists, and judicial employees maintain blogs and use Facebook, Twitter, Instagram, Snapchat, and other social media to communicate and share their thoughts. But is it ethical and, if so, are there limitations? This presentation will explore the current use of social media by judges and judicial employees and the ethical implication of such.

Moderator | Mark A. Fahleson, *Rembolt Ludtke, Lincoln, NE*

Professor James J. Alfini, *Dean Emeritus South Texas College of Law, Houston, TX*

The Honorable Stephen Louis A. Dillard, *Georgia Court of Appeals, Atlanta, GA*

3:15–4:00 p.m.

Land Use Issues in the Twenty-first Century

The panel will explore limitations on the sovereign power of eminent domain under the “takings” clause of the Fifth Amendment. The discussion will range far and wide over this once arcane, but increasingly germane, field of law. It will, perhaps, touch on inverse condemnation; exactions; energy-related takings, such as pipeline easements and wind generation fields; and regulatory takings; as well as the futures of “economic development” takings and judicial takings.

Moderator | Lee Craig, *Butler Weihmuller Katz Craig LLP, Tampa, FL*

Mary Massaron, *Plunkett Cooney PC, Bloomfield Hills, MI*

Dwight H. Merriam, *Robinson & Cole LLP, Hartford, CT*

Dana Berliner, *Institute for Justice, Arlington, VA*

4:00–5:00 p.m.

Speaker Panel

Our speakers and audience participants will engage in a lively discussion of topics generated from the symposium sessions, addressing the competing approaches to state law.

Moderator | William F. Ray, *Watkins & Eager PLLC, Jackson, MS*

5:00 p.m.

Closing Remarks

J. Michael Weston, NFJE President

5:15–6:15 p.m.

Closing Reception

6:30 p.m.

Dinner on your own

Speakers



James J. Alfini is professor and dean emeritus at South Texas College of Law, where he teaches constitutional law, mediation theory and practice, professional responsibility, and related courses. He also serves as professor emeritus at Northern Illinois University College of Law, where he was dean from 1991 to 1997. He served on the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct. The Commission's work resulted in the 2007 Model Code of Judicial Conduct, adopted by the House of Delegates of the ABA.



Dana Berliner serves as senior vice president and litigation director at the Institute for Justice, where she oversees all of IJ's litigation, including in the areas of civil forfeiture, eminent domain, home searches, fines and fees for property code violations, and other systemic procedural due process problems. The focus of Dana's litigation has been property rights, particularly eminent domain. She served as co-counsel in *Kelo v. New London* from the trial court to the U.S. Supreme Court and was lead counsel on many other eminent domain and due process cases.



Lea Brilmayer is the Howard Holtzmann Professor of International Law at Yale Law School. She has also taught at the University of Michigan, the University of Chicago, the University of Texas, Harvard University, Columbia University, and New York University schools of law. Her main teaching interests include civil procedure, conflict of laws, and international law. She has written dozens of articles on those subjects, the leading casebook on conflict of laws, two books about interstate jurisdiction and two about international jurisprudence.



Linda T. Coberly is the chair of Winston & Strawn's Appellate & Critical Motions Practice and serves as managing partner of the firm's Chicago office. She focuses her practice on appeals and on critical motions that resolve complex disputes before trial. She has argued appeals in six federal circuits and in state supreme courts on both coasts and between, and she frequently represents parties and amici in certiorari proceedings before the U.S. Supreme Court, informed by her experience as a law clerk to Justice Stephen G. Breyer.



Anthony J. Colangelo is the Gerald J. Ford Research Fellow and Professor of Law at Southern Methodist University Dedman School of Law. His scholarly and teaching interests are in the fields of Conflict of Laws, Civil Procedure, U.S. Foreign Relations Law, and Private and Public International Law and Theory. His scholarship has appeared in leading general and specialty law journals and has been cited and quoted at the U.S. Court of Appeals and U.S. District Court levels, as well as in U.S. Military Commissions, regarding the scope and application of law abroad.



The Honorable Stephen Louis A. Dillard was appointed the 73rd judge of the Court of Appeals of Georgia on November 1, 2010, by Governor Sonny Perdue. Prior to his appointment, Judge Dillard was in private practice with James, Bates, Pope & Spivey in Macon, serving as chair of the firm's appellate practice group. On July 31, 2012, Judge Dillard was elected by his fellow Georgians to serve a full six-year term on the court (2013–2018). In 2015, he was elected to serve as the vice chief of the Court.



John C.P. Goldberg is the Eli Goldston Professor of Law at Harvard Law School. From 1995 to 2008 he taught at Vanderbilt Law School, where he also served as associate dean for research. He is the author or co-author of numerous articles on tort law, a co-author of a leading Torts casebook, and has taught Civil Procedure, Contracts, Criminal Law, Torts, and numerous upper-level courses. An associate reporter for the American Law Institute's Fourth Restatement of Property, Professor Goldberg also serves as an advisor to the Third Restatement of Torts.



William D. Henderson is a professor of law at the Indiana University Maurer School of Law, where his research focuses on empirical analysis of the legal industry and legal education. Professor Henderson has published numerous articles in leading academic journals and in outlets for practicing lawyers, including *American Lawyer*, the *ABA Journal*, and the *National Law Journal*. The *National Law Journal* named him one of the 100 Most Influential Lawyers in America and he was named the Most Influential Person in Legal Education by *National Jurist* magazine.



The Honorable Natalie E. Hudson was appointed to the Minnesota Supreme Court in 2015 by Governor Dayton and was later elected in 2016. She was previously a member of the Minnesota Court of Appeals and, prior to that appointment, she was employed with the Office of the Minnesota Attorney General. Justice Hudson is a member of the ABA, the Minnesota State Bar Association, the Ramsey County Bar Association, the Advisory Board of Minnesota Women Lawyers, the Minnesota Association of Black Lawyers, and the Minnesota Association of Black Women Lawyers.



Mark A. Lemley is a professor of law at Stanford Law School and the director of the Stanford Program in Law, Science and Technology. He teaches intellectual property, computer, and internet law, as well as patent and trademark law. His works have been cited in eleven U.S. Supreme Court opinions, and more than 14,000 times in books and law review articles. He has taught at the Federal Judicial Center, has testified before Congress, and has filed numerous amicus briefs before the U.S. and California Supreme Courts, and federal circuit courts of appeal.



Gary E. Marchant is the Professor of Emerging Technologies, Law & Ethics, and the Faculty Director of the Center for Law, Science & Innovation at the Sandra Day O'Connor College of Law, Arizona State University. He teaches courses in Law, Science & Technology; Genetics and the Law; Biotechnology; Science, Law and Policy; Health Care Technologies; and Big Data, Privacy, and Emerging Technologies. Professor Marchant formerly was a partner with Kirkland & Ellis and was the editor-in-chief of the *Harvard Journal of Law & Technology* and editor of the *Harvard Environmental Law Review*.



Mary Massaron is a partner of Plunkett Cooney PC in Bloomfield Hills, Michigan, and is a past president of DRI. She is president of the Lawyers for Civil Justice and chairs its Class Action Reform Committee. She is a fellow in the American Academy of Appellate Lawyers, a member of the American Law Institute, and has served as chair of the ABA Council of Appellate Lawyers, a division of the Appellate Judges Conference, the ABA TIPS Appellate Advocacy Committee, and the Appellate Practice Section of the state Bar of Michigan.



Dwight H. Merriam, of the law firm Robinson & Cole LLP, has taught Land Use Law at Vermont Law School, UConn Law School, and Quinnipiac Law School. He is a fellow, and past president, of the American Institute of Certified Planners. He is a past chair of the ABA Section of State and Local Government Law. Mr. Merriam's publications include more than 200 articles and 10 books. He is co-editor of the leading treatise, *Rathkopf's Zoning and Planning Law*, and lead author of the casebook *Planning and Control of Land Development*.



Steven M. Puiszis is a partner with Hinshaw & Culbertson LLP in Chicago and serves as the firm's deputy general counsel. He is a member of the firm's Lawyers for the Professions Practice Group. Steve chairs the DRI Center for Law and Public Policy, and formerly served on the DRI Board of Directors and as the chair of the DRI Judicial Task Force. He was the editor of DRI's whitepaper, *Without Fear or Favor in 2011—A New Decade of Challenges to Judicial Independence and Accountability*, and was one of the authors of the *Economics of Justice*.



Jeffrey M. Rosen is president and CEO of the National Constitution Center, professor of law at the George Washington University Law School, contributing editor of the *Atlantic*, and a nonresident senior fellow at the Brookings Institution. His new book, *Louis D. Brandeis: American Prophet*, was published on June 1, 2016, the 100th anniversary of Brandeis's Supreme Court confirmation. The *Chicago Tribune* named him one of the ten best magazine journalists in America, and the *Los Angeles Times* called him the nation's most widely read and influential legal commentator.



Brittany M. Schultz is an attorney in Ford's Office of the General Counsel. Brittany joined Ford after a successful career as a partner and trial lawyer at the Dykema law firm in Bloomfield Hills, Michigan. She has tried and arbitrated numerous product liability, tort, and other commercial cases to verdict on behalf of corporations, including automotive manufacturers. Brittany graduated from the University of Michigan-Ann Arbor in 1997 with a degree in Psychology. She attended the Wayne State University law School achieving her law degree in 2001.



Shannon Smith is a senior assistant attorney general and chief of the Consumer Protection Division of the Washington State Attorney General's Office. Her responsibilities include managing the division's litigation, enforcement, consumer services, and outreach and education activities. In addition to enforcing consumer protection laws, the division is responsible for administering the state's Lemon Law Program and Manufactured Housing Program. Shannon joined the Consumer Protection Division in 2005 and was named division chief in 2012. She has been with the Washington Attorney General's Office since 1989.



J. Michael Weston is a founding member of Lederer Weston Craig PLC, in Des Moines and Cedar Rapids, Iowa. Mike is the president of the NFJE. He is a past president of DRI, a fellow of the American College of Trial Lawyers, a member of the FDCC, the IADC, the ADTA, ABOTA, and a fellow of the Iowa Academy of Trial Lawyers. He practices primarily in the areas of commercial litigation, product liability, toxic torts, bad faith, and insurance coverage and defense.



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Registration

To register:

Phone 312.698.6230

Fax 312.795.0748

Online www.nfje.net

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Street (Business) _____ Suite _____

City _____ State _____ Zip Code _____

Telephone (Business) _____ Fax _____ E-mail (required) _____

Will a spouse or guest be traveling with you? Yes No If yes, please indicate his/her name _____

Luncheon I will attend Spouse/guest will attend

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. Please note: If you do not receive an email confirmation within 48 hours, you will need to contact the NFJE directly. Please be advised you will need to secure your hotel reservations on or before June 14, 2017.

NFJE will pay for the cost of a standard room for the nights of Friday, July 14 and Saturday, July 15, as well as transportation costs (air, rail, ground) not to exceed \$500. When making your travel arrangements, please plan to arrive by 3:00 p.m., Friday, July 14. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

Loews Chicago Hotel
455 North Park Drive
Chicago, Illinois 60611
Phone: 312.840.6600
www.loewshotels.com/chicago-downtown

Cancellations

If you must cancel your attendance, please do so at least three weeks before the symposium, so a judge on the waiting list may attend. All cancellations must be received in writing via fax (312.795.0748) or email (tcaldwell@dri.org).

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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