



**20TH ANNUAL
JUDICIAL
SYMPOSIUM**



BATTER UP!

*THE NEW AGE OF STATE COURTS AS LABORATORIES
FOR EXPLORING LEGAL DOCTRINE*

JULY 26–27, 2024
JW MARRIOTT
WASHINGTON, D.C.

Presented by



**NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE**



PROMOTING EXCELLENCE AFFIRMING JUSTICE

A strong, independent, educated, responsive judiciary that adheres to the rule of law is one of the hallmarks of a democratic society. While every citizen has an interest in the maintenance of an effective judicial system, lawyers (as officers of the court) have an even keener interest.

With that in mind, NFJE was formed 20 years ago to provide meaningful support and education to the judiciary.



Batter Up!

The New Age of State Courts as Laboratories for Exploring Legal Doctrine

“Judges are like umpires. Umpires don’t make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire.”

- Hon. John G. Roberts, Jr., Chief Justice, United States Supreme Court, Opening Statement at Confirmation Hearing before U.S. Senate Committee on Judiciary (2005).

“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

- Hon. Louis D. Brandeis, Justice, United States Supreme Court, dissenting in *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932).

In his early 20th Century observation, Justice Brandeis was speaking primarily of states serving as experimental laboratories through their legislative acts. But in the early 21st Century, state appellate courts, facing state constitutional challenges, increasingly serve as the primary laboratories for novel legal issues. State courts encountering this modern-day “happy incident” are challenged to resolve these issues while also adhering to Chief Justice Roberts’ comparison of judges to baseball umpires—calling balls and strikes without a rooting interest in either team.

In our version of the Mid-Summer Classic, the 20th Annual Judicial Symposium offers state appellate judges the opportunity for robust collaboration on several legal issues they may face in the coming months and years. Leading off the dialogue is Professor Daniel Kiel, who will compare the interpretive umpiring displayed by Justices Thurgood Marshall and Clarence Thomas. On deck are conversations about admissibility of expert opinions, the growing problems with privilege logs, and how attorney advertising affects juries. Batting clean-up is a moderated panel examining state-law issues sparked by corporate diversity programs and challenges to them. While artificial intelligence enters the entire legal arena, a leading authority will discuss AI’s problems and opportunities on the judicial diamond. What happens outside the lines is often critical, and we offer a debate about the effect of off-the-field third-party litigation funding on litigation. We bring in a closer to finish the ninth inning with a thought-provoking discussion of judicial collegiality and its influence on decision-making and legal development.

Schedule of Events

Friday, July 26, 2024

- 1:30–4:00 p.m. **Speed Clerkship Interviewing Session with Law Students from The Appellate Project (TAP)**
A roundtable discussion for TAP law students about the benefits of clerking for state appellate courts. Following the discussion, we will facilitate informational speed interviews to give judges and candidates a chance to engage one-on-one.
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- 5:00–6:00 p.m. **Keynote: Umpiring: Interpreting Justice from Thurgood Marshall to Clarence Thomas**
In his last opinion as a Supreme Court justice, Thurgood Marshall lamented that changes in the Court's personnel seemed to be driving decisions more than facts and law. Few changes in Court personnel over the past 70 years have been as impactful in transforming a Court as the replacement of Justice Marshall with his successor, Clarence Thomas. Drawing from his recent book, *The Transition: Interpreting Justice from Thurgood Marshall to Clarence Thomas*, University of Memphis law professor Daniel Kiel will explore the role that transitions in personnel can play in the work of courts and how the impact of such transitions might be measured. This examination of a particularly impactful judicial transition, including how these justices came to their contrasting approaches, will touch on issues of both substance and perception at a time when judicial decisions—and judges—in both state and federal courts are under great scrutiny.
Daniel Kiel, *Professor of Law, Cecil C. Humphreys School of Law, Memphis, TN*
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- 6:00–9:00 p.m. **Welcome Reception and 20th Anniversary Dinner**

Saturday, July 27, 2024

- 7:45–8:30 a.m. **Continental Breakfast**
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- 8:30 a.m. **Welcome and Introductions**
Tillman Breckenridge, *NFJE President, Stris & Maher LLP, Washington, D.C.*
E. Todd Presnell, *2024 Symposium Chair, Bradley LLP, Nashville, TN*
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- 8:45–10:00 a.m. **Base Hits: Coffee, Colleagues, and Conversations**
Grab your coffee and join your NFJE colleagues for a lightning round of legal conversations. Lee Mickus discusses the state-level reactions to Rule 702 amendments. Adam Gajadharsingh previews privilege-log woes and proposed amendments that state judges should consider. And Lisa Bellino illustrates how attorney advertisements may land on appellate benches.
Lee Mickus, *Evans Fears Schutttert McNulty Mickus LLP, Denver, CO*
Adam Gajadharsingh, *Google, Atlanta, GA*
Lisa M. Bellino, *Zurich Insurance Company, Philadelphia, PA*
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- 10:00–10:15 a.m. **Break**
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- 10:15–11:30 a.m. **How Artificial Intelligence is Disrupting Law Practice: Substantive Legal Claims and Legal Ethics**
Artificial intelligence is rapidly disrupting the practice of law. This presentation will first describe the different forms of AI and why the technology has suddenly become so prevalent and impactful. It will then describe how AI is starting to disrupt the substance of law in fields such as product liability, intellectual property, privacy, medical negligence, consumer protection, and evidence. Finally, the presentation will discuss a number of legal issues that AI is creating, including novel challenges to

ethical rules relating to competency, confidentiality, duty to consult with clients, supervision, billing, unauthorized practice of law, and deep fakes.

Gary Marchant, *The Center for Law, Science & Innovation at the Sandra Day O'Connor College of Law, Arizona State University, Phoenix, AZ*

11:30–12:45 p.m.

Lunch

12:45–1:00 p.m.

Break

1:00–2:00 p.m.

On Deck: State Courts and Challenges to Corporate Diversity and Inclusion Efforts

From State Attorneys General to public-interest groups, parties are increasingly confronting organizations' DEI programs and goals. And while the U.S. Supreme Court's recent affirmative-action decision served as the catalyst, state appellate courts will serve as testing grounds for DEI questions under state constitutional and statutory law. This panel will discuss these upcoming legal debates and their judicial interpretative and philosophical keystones.

Moderator | Wade Hinton, *Hinton & Company, Chattanooga, TN*

Professor Doris "Wendy" Greene, *Drexel University Thomas R. Kline School of Law, Philadelphia, PA*

Justice Lori Skjerven Gildea (Ret), *Greenberg Traurig, LLP, Minneapolis, MN*

2:00–2:15 p.m.

Break

2:15–3:15 p.m.

Money Ball: What You See is Not What You Get in Third-Party Litigation Funding

Originating overseas, third-party litigation funding is now firmly entrenched in each of the 50 states. These secret funding agreements raise critical ethical, conflict-of-interest, and related concerns, yet transparency to the judiciary and litigants remains lacking. This panel will discuss outsiders' financing of civil litigation, the inherent problems, and efforts to level the playing field.

Moderator | David Levitt, *Hinshaw & Culbertson, Chicago, IL*

Victoria Sahani, *Boston University School of Law, Boston, MA*

Kristin Herber, *Under Armour Inc., Baltimore, MD*

Alex Dahl, *Lawyers for Civil Justice, Washington, D.C.*

3:15–3:30 p.m.

Break

3:15–4:45 p.m.

Judges in the Dugout: Why and How Judicial Collegiality Matters

Too little has been said about the importance of interpersonal relationships among appellate judges in their work. Until now. Morgan L.W. Hazelton and Rachael K. Hinkle will discuss their research regarding judicial collegiality, including their book *The Elevator Effect: Contact and Collegiality in the American Judiciary*. Their work highlights the importance of interpersonal relationships among judges for judicial decision-making and legal development, including evidence that collegial interactions among judges diminish the role of ideology in judicial decision-making to the point where it is imperceptible. This finding starkly contrasts accounts that present ideology is an unwavering determinant of judicial choice. The authors will describe their research and discuss the implications for how judges can enhance collegiality in their work environment.

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

Morgan L.W. Hazelton, *Saint Louis University Department of Political Science, St. Louis, MO*

Rachael K. Hinkle, *Department of Political Science University of Buffalo, Buffalo, NY*

4:45 p.m.

Adjourn

Speakers



Lisa M. Bellino is Zurich North America's VP, Claims Judicial & Legislative Affairs, combatting social inflation and its drivers, most often at a national level. In this role, she analyzes these issues and educates others about them, building a coalition of attorneys, carriers, brokers, businesses and tort reform groups to achieve a level playing field within our civil justice system. Previously, Lisa was the Chief Trial Attorney of Zurich's Philadelphia Staff Legal Office, handling a wide variety of cases for Zurich North America through trial and appeal, as well as training attorneys in the art of trial advocacy. She obtained her undergraduate degree from La Salle University and her J.D. from Temple University School of Law.



Alex Dahl is General Counsel of Lawyers for Civil Justice (LCJ), a national coalition of corporations, law firms, and defense organizations that advocates for procedural rule reforms. LCJ is advocating for amendments to the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure that would require or encourage disclosure of third-party litigation funding agreements in civil cases. Alex's background includes serving as: the Deputy Staff Director and Senior Counsel to the U.S. Senate Judiciary Committee; an Assistant U.S. Attorney in the District of Columbia; and a shareholder in the D.C. office of Brownstein Hyatt Farber Schreck. Alex began his legal career as a law clerk to the Hon. Dee Benson in the U.S. District Court for the District of Utah.



Mark Fahleson is a partner with Rembolt Ludtke in Lincoln, Nebraska, where he practices employment and labor law and serves as the firm's Chief Strategy Officer. Mark also is an adjunct professor teaching Employment Law at the University of Nebraska College of Law and was recently inducted as a Fellow in The College of Labor and Employment Lawyers. He has long been active in NFJE and served as the 2023 Symposium Program Chair.



Adam Gajadharsingh is Discovery Counsel at Google in Atlanta, where his practice focuses on all aspects of the litigation and government investigation discovery process, both in the United States and globally. This includes developing case discovery strategies, negotiating ESI protocols and protective orders, overseeing the collection, review, and production of documents, addressing complex privilege issues and disputes, and developing eDiscovery best practices. Adam is a co-team leader of the Sedona Conference Working Group 1 Drafting Team for the *Commentary on Privilege Logs*. He is also a member of Sedona's Drafting Team for a *Commentary on Conducting eDiscovery of Modern Communication and Collaboration Platforms* and has been a faculty member of Sedona's *eDiscovery Negotiation Training* program.



Lorie Skjerven Gildea is a shareholder at Greenberg Traurig, LLP. She served as Chief Justice of the Minnesota Supreme Court for 13 years. She was the second woman to hold the position and the third longest-serving Chief Justice in Minnesota history. In her capacity as Chief Justice, Lorie presided over one of the most transformative eras in the history of the Minnesota judiciary, and she helped move Minnesota's courts into the digital age. Before joining the Supreme Court, Lorie served as a judge in the Fourth Judicial District, Hennepin County, a prosecutor in the Hennepin County Attorney's Office, and as associate general counsel for the University of Minnesota. Since returning to private practice, Lorie represents clients in diverse areas of law, including civil litigation, appellate work, and internal investigations.



Professor Doris "Wendy" Greene is a trailblazing U.S. anti-discrimination law scholar, teacher, and advocate who has devoted her professional life's work to advancing racial, color, and gender equity in the workplace and beyond. Professor Greene is the first tenured African American woman law professor at Drexel University Thomas R. Kline School of Law and the Director of the law school's Center for Law, Policy, and Social Action. Her work is both celebrated and recognized on an international level. The 11th Circuit and the 9th Circuit Court of Appeals endorsed Professor Greene's published definition of race as a legal authority on the social construction of race and as a practicable definition for constitutional decision making respectively. A native of Columbia, South Carolina, Professor Greene is a graduate of Xavier University of Louisiana; Tulane University School of Law; and the George Washington School of Law.



Morgan L.W. Hazelton earned her law degree at the University of Texas at Austin and her Ph.D. in Political Science at Washington University in St. Louis. She is an Associate Professor at Saint Louis University in the Department of Political Science with a secondary appointment in the law school. She studies how features of court systems influence the decisions that both litigants and judges make.



Kristin Herber serves as Vice President, Deputy General Counsel for Under Armour, Inc., having joined the company in 2013. In her capacity as Deputy General Counsel, Kristin leads the team that manages all litigation and arbitration matters involving all aspects of the business world-wide, including securities, employment, real estate, privacy, intellectual property, insurance coverage, class action and complex commercial disputes. In addition to leading the litigation team, Kristin manages the employment, global insurance and risk management and brand protection teams in North America, as well as the EMEA, APAC and LATAM regions. Before joining Under Armour, Kristin was a partner at Tydings & Rosenberg LLP, in Baltimore, Maryland. Kristin is a graduate of the University of Maryland Carey School of Law and the University of North Carolina at Chapel Hill.

Speakers



Rachael K. Hinkle is a professor in the Department of Political Science at the University at Buffalo and a member of the advisory council for the Baldy Center for Law and Social Policy. Her research agenda focuses on judicial politics with particular attention to glean insights through the use of computational text analytic techniques. Dr. Hinkle earned her Ph.D. in Political Science from Washington University in St. Louis after completing a J.D. with high distinction at Ohio Northern University and clerking for federal judges in both the District of Arizona and the Sixth Circuit.



Wade A. Hinton is an attorney, entrepreneur, and nationally-regarded expert on improving diversity and inclusion outcomes in the workplace. He is the CEO and Founder of Hinton & Company, a business services firm with a focus on culture and leadership. Hinton & Company provides assessment, engaging leadership development sessions as well as bespoke leadership offerings to support an organization's cultural and engagement goals. Wade's two decades of service and experience in the private and public sectors has garnered national and global recognition as the Board Connector and co-founder of Designation One - platforms connecting historically underrepresented talent to inclusive nonprofit boards, gubernatorial appointments to state boards and commissions by multiple administrations, inaugural member of Harvard's Young American Leaders Program and a Marshall Memorial Fellow by the German Marshall Fund and was one of six Americans named to GMF Future of U.S. German-Relations Task Force.



David H. Levitt is a partner in the Chicago office of Hinshaw & Culbertson, which he joined in 1979. He is chair of the DRI Task Force on Third Party Litigation Funding (part of DRI's Center for Law and Public Policy) and was principal author of its 2018 White Paper, *Third Party Litigation Funding: Civil Justice and the Need for Transparency*. Mr. Levitt is Past President of Illinois Defense Counsel and Past Chair of DRI's Intellectual Property Committee. He received his J.D. from Loyola University of Chicago School of Law and his L.L.M. in Intellectual Property from the University of Illinois Chicago School of Law.



Gary Marchant, Ph.D., J.D., M.P.P., is Regents' Professor and Faculty Director of the Center for Law, Science & Innovation at the Sandra Day O'Connor College of Law, Arizona State University (ASU). Professor Marchant's research interests include the governance of emerging technologies such as genomics, biotechnology, nanotechnology, artificial intelligence, neuroscience and blockchain. Prior to joining ASU in 1999, Professor Marchant was a partner at the Washington, D.C., office of Kirkland & Ellis. He has authored more than 200 articles, books and book chapters on various issues relating to emerging technologies. He has served on six National Academies of Science, Engineering and Medicine (NASEM) consensus committees, and has been elected as a lifetime member of the American Law Institute and a Fellow of the American Association for the Advancement of Science. He also chairs the IEEE Working Group (P2863) to create a governance standard for entities that develop or use artificial intelligence.



Lee Mickus is a partner in the Denver office of Evans Fears Schutttert McNulty Mickus LLP. He defends manufacturers and other business interests nationally in product liability and tort lawsuits. He has successfully tried cases to verdict in Colorado, Texas, California, New York, Florida, Montana, Arkansas, and several other states.

He is Co-Chair of the Lawyers for Civil Justice Rule 702 Committee supporting the recent Rule 702 amendment, and in that capacity has written articles, given presentations to judges and lawyers, provided comments and submissions, and testified to the Advisory Committee on Evidence Rules about the need for these revisions. He has also presented to the Advisory Committee on Civil Rules and testified before several state legislatures on bills affecting a wide range of civil justice issues.



Victoria Shannon Sahani is the Associate Provost for Community and Inclusion at Boston University and a Professor of Law at Boston University School of Law. Before joining BU, she served as Associate Dean of Faculty Development / Special Projects and Professor of Law at Arizona State University's Sandra Day O'Connor College of Law. She started her teaching career and was promoted to Associate Professor of Law at Washington & Lee University School of Law.

Professor Sahani is an internationally recognized legal scholar in arbitration law and third-party litigation funding law and an award-winning teacher. She is a co-author of the book *Third-Party Funding in International Arbitration* (Wolters Kluwer, 2d ed. 2017) (with Lisa Bench Nieuwveld) – the first book in the world on this topic.

You don't want to miss this year's event, we are returning to Washington D.C.!



Registration

To register:

Phone: 312.698.6202

Email: cpalombizio@nfje.net

Hotel and Travel

Registration for the 20th Annual Judicial Symposium is first come first served. Once you register on www.NFJE.net, you are welcome to make reservations at the JW Marriott under the NFJE room block. For your (up to two nights) stay to be covered, you must be registered for the program. We will reimburse you for up to \$500 for your flight.

JW Marriott Washington, D.C.
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Cancellations

Cancellations are accepted up to three weeks in advance, please email your request in writing to cpalombizio@NFJE.net

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National Foundation for Judicial Excellence

222 S. Riverside Plaza, Suite 1870

Chicago, IL 60606

Phone: 312.698.6202

Email: nfje@nfje.net

Website: www.nfje.net