

First Annual Judicial Symposium

# JUSTICE AND SCIENCE

July 15–16, 2005  
The Drake Hotel  
Chicago, Illinois

Presented by

**NATIONAL FOUNDATION  
FOR JUDICIAL EXCELLENCE**



# PROMOTING EXCELLENCE AFFIRMING JUSTICE



*EXCELLENCE*



*JUSTICE*



**M**ost judges are not scientists, and yet judges are increasingly expected to make critical science-related decisions in the courtroom. Two basic questions—whether scientific evidence is valid and whether it is relevant to the case at hand—can be exceedingly difficult to answer. Statutes of limitations often require that lawsuits be filed before conclusive scientific studies have been performed, and impeccable credentials do not necessarily guarantee that an expert’s testimony will be probative rather than prejudicial.

Juries understand that human beings can make mistakes and that even eyewitnesses cannot always trust their eyes. Scientists, on the other hand, are often considered infallible, even though the history of science is replete with assumptions embraced as fact and later disproved. Even the axiom that each person’s fingerprints are unique has been recently challenged.

What is worse? Giving the benefit of the doubt to a plaintiff only to learn years later that the defendant was blameless? Or giving the benefit of the doubt to a defendant that science ultimately proves culpable? Individuals and communities—whether residents of towns poisoned by industrial waste or employees of firms driven into bankruptcy by legal judgments—may have their whole futures at stake.

The First Annual Judicial Symposium, **Justice and Science**, will lead appellate court judges in a provocative and spirited exploration of one of the most crucial issues in contemporary jurisprudence. Through presentations by top legal scholars, an interactive demonstration by two leading members of the plaintiff and defense bars, and breakout discussions with fellow judges, symposium attendees will learn:

- How and why the rules of evidence regarding expert testimony have evolved over time
- What the implications are of the lag time between the acquisition and recognition of scientific knowledge and the proffer of expert testimony in a courtroom
- What the differences are between the *Daubert* and *Frye* principles—and whether those differences matter

# Justice and Science

## Schedule of Events

### Friday, July 15, 2005

6:00 p.m. Registration and Cocktail Reception

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7:30 p.m. Dinner On Your Own

### Saturday, July 16, 2005

8:30 a.m. Registration and Continental Breakfast

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9:00 a.m. Welcome and Introduction to the Program

Lloyd H. Milliken, Jr., NFJE President

Christopher W. Tompkins, Program Chair

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9:15 a.m. Scrutinizing Scientific Evidence: How and Why the Rules Have Changed

Professor David E. Bernstein

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9:45 a.m. Conflict Between Legal and Scientific Timelines

Professor Jennifer L. Mnookin, Ph.D.

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10:15 a.m. Break

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10:30 a.m. – Demonstration

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12:30 p.m.

10:30 a.m. Review of *Daubert* and *Frye* Principles

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10:40 a.m. Examination of Expert

Lorna E. Propes, Plaintiff's Attorney

Lori E. Iwan, Defense Attorney

Dr. Jeffrey H. Mandel, Expert Witness

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11:20 a.m. Review and Comment on Examinations

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11:30 a.m. Breakout Discussions

## Saturday, July 16, 2005 (continued)

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- 12:30 p.m. Luncheon and Keynote Address  
Nina Totenberg
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- 2:00 p.m. – 3:45 p.m. Demonstration and Discussion Continued
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- 2:00 p.m. Argument to Admit or Exclude Evidence Utilizing Both *Daubert*  
and *Frye* Standards  
Plaintiff and Defendant
- 
- 2:45 p.m. Review and Comments on Argument  
Lorna E. Propes, Plaintiff's Attorney  
Lori E. Iwan, Defense Attorney
- 
- 3:00 p.m. Breakout Discussions
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- 3:45 p.m. Break
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- 4:00 p.m. *Daubert v. Frye*—Does the Standard Matter? Is It the Review That Counts?  
Professor Edward K. Cheng
- 
- 4:30 p.m. Questions and Comments  
Panel of Speakers and Presenters
- 
- 5:00 p.m. Cocktail Reception
- 
- 7:00 p.m. Dinner On Your Own, with Dine-Around Options



## Keynote Speaker



**Nina Totenberg** is National Public Radio’s award-winning legal affairs correspondent. Her reports air regularly on NPR’s critically acclaimed newsmagazines, *All Things Considered*, *Morning Edition*, and *Weekend Edition*. She is also a regular panelist on *Inside Washington*. Totenberg’s coverage of legal affairs and the Supreme Court has won her widespread recognition. *Newsweek* says, “The mainstays [of NPR] are *Morning Edition* and *All Things Considered*. But the crème de la crème is Nina Totenberg.” In 1991, her ground-breaking report about University of Oklahoma Law Professor Anita Hill’s allegations of sexual harassment by Judge Clarence Thomas led the Senate Judiciary Committee to re-open Thomas’ Supreme Court confirmation hearings to consider Hill’s charges. NPR received the prestigious Peabody Award for its gavel-to-gavel coverage—anchored by Totenberg—of both the original hearings and the inquiry into Anita Hill’s allegations, and for Totenberg’s reports and exclusive interview with Hill. In 1988, Totenberg won the Alfred I. duPont-Columbia University Silver Baton for her coverage of Supreme Court nominations. Totenberg has been honored eight times by the American Bar Association for continued excellence in legal reporting and has received a number of honorary degrees. On a lighter note, in 1992 and 1988 *Esquire* magazine named her one of the “Women We Love.” A frequent contributor to major newspapers and periodicals, she has published articles in *The New York Times Magazine*, *The Harvard Law Review*, *The Christian Science Monitor*, *Parade* magazine, *New York Magazine*, and others. Before joining NPR in 1975, Totenberg served as Washington editor of *New Times Magazine*, and before that she was the legal affairs correspondent for the *National Observer*. Nina Totenberg has won every major journalism award in broadcasting, and is the only radio journalist to have won the National Press Foundation award for Broadcaster of the Year.

## Academic Speakers



**David E. Bernstein** is a Professor at the George Mason University School of Law in Arlington, Virginia, where he has been teaching since 1995. Professor Bernstein is a graduate of the Yale Law School, where he was senior editor of the *Yale Law Journal* and a John M. Olin Fellow in Law, Economics, and Public Policy. Professor Bernstein’s recent law review articles have appeared in the *Yale Law Journal*, *Michigan Law Review*, *Texas Law Review*, *Georgetown Law Journal*, *Vanderbilt Law Review*, and *California Law Review*, among others. He is the author of *You Can’t Say That! The Growing Threat to Civil Liberties from Antidiscrimination Laws* (Cato Institute 2003). Professor Bernstein is also the co-author of *The New Wigmore: Expert Evidence* (Aspen Law and Business 2003), author of *Only One Place of Redress: African-Americans, Labor Regulations, and the Courts from Reconstruction to the New Deal* (Duke 2001) and co-editor of *Phantom Risk: Scientific Inference and the Law* (MIT 1993). Professor Bernstein teaches Torts, Products Liability, Evidence, Constitutional Law, and Scientific and Expert Evidence.



**Edward K. Cheng** is an Assistant Professor of Law at Brooklyn Law School. He teaches evidence, torts, and criminal law, and his scholarship focuses on the legal dimensions of scientific and technological developments. He (along with co-author Albert Yoon) was recently awarded a grant from the Project on Scientific Knowledge and Public Policy for a study on whether scientific admissibility standards make a difference in practice. The results were published in the April 2005 issue of the *Virginia Law Review* and previewed in a January 2005 article in the *American Lawyer*. Professor Cheng is also the author of *Changing Scientific Evidence*, 88 Minn. L. Rev. 315 (2003). Professor Cheng holds a B.S.E. in Electrical Engineering from Princeton University, an M.Sc. in Information Systems from the London School of Economics, where he was a Fulbright Scholar from 1997–98, and a J.D. from Harvard Law School, where he was the Articles, Book Reviews & Commentaries Chair of the *Harvard Law Review*. Following law school, he clerked for Judge Stephen F. Williams of the United States Court of Appeals for the D.C. Circuit, and he was the Searle Fellow at Northwestern University School of Law.



**Jennifer L. Mnookin, Ph.D.** recently joined the law faculty of the UCLA School of Law. Previously she was Professor and Barron F. Black Research Professor at the University of Virginia School of Law, and Visiting Professor of Law at Harvard Law School during the 2003–2004 school year. An expert on evidence law, Mnookin focuses on scientific, forensic, and visual evidence in her scholarship. She has written articles on fingerprinting and its origins, the history of handwriting identification evidence, the effects of photography on the 19th-century criminal justice system, and the early use of film as legal evidence. She is a co-author of *The New Wigmore: Expert Evidence* (Aspen Law and Business 2003). Mnookin received her A.B. from Harvard and her J.D. from the Yale Law School, where she was senior editor of the *Yale Law Journal*. She also earned a Ph.D. in the History and Social Study of Science and Technology at MIT. Professor Mnookin has taught a variety of courses, including evidence, scientific evidence, torts, and law and literature. In summer 2003, she taught scientific evidence to the judges participating in UVA's LL.M. program in Judicial Process.

## Demonstration Speakers



**Lori E. Iwan** is a principal in Iwan Cray Huber Horstman & VanAusdal LLC, a Chicago-based law firm. Ms. Iwan's practice is concentrated in the supervision, preparation and trial of complex commercial and product liability cases for a number of corporations and insurance companies on a national basis. She is a frequent lecturer and is author of numerous articles on privilege, discovery, trial tactics, law office economics, products liability, healthcare, preventive law and technology issues. She is a member of the Board of Directors of the Lawyers Club of Chicago and the Federation of Defense & Corporate Counsel. Ms. Iwan is "AV" rated by Martindale Hubbell, and is recognized as a "Leading Illinois Attorney" in the fields of Commercial Litigation and Products Liability by Leading American Attorneys. She is recognized as a Leading Lawyer by the Law Bulletin Publishing Company in the field of Commercial Litigation.



**Lorna E. Propes** is a partner in the Chicago firm of Propes & Kaveny LLC. She is one of Chicago's most successful trial lawyers specializing in personal injury and medical malpractice cases, and has achieved several multi-million dollar verdicts. She has been practicing in this field for 25 years, following 5 years as a prosecutor of major felony cases in the Cook County State's Attorney's Office. Uniquely, Ms. Propes has also been hired by several major corporations to defend them at trial in high stakes mass tort product liability cases. For example, Ms. Propes served as lead trial counsel for the Dow Chemical Company in a class action lawsuit filed in New Orleans by plaintiffs alleging injury from silicone breast implants. She has served for 25 years as a faculty member for the National Institute of Trial Advocacy. She has been an active lecturer and instructor for the American Bar Association, the Illinois Trial Lawyers' Association, the Michigan Institute of Continuing Legal Education and other professional societies and organizations. Ms. Propes serves on the Board of Managers of the Illinois Trial Lawyers Association, is a fellow of the International Academy of Trial Lawyers, and serves as Chairman of the Illinois Racing Board.



**Jeffrey H. Mandel, M.D.** is a Senior Managing Scientist in the Exponent consulting firm (Health/Epidemiology Practice). He is board certified in internal medicine and occupational medicine; is a Fellow in the American College of Occupational and Environmental Medicine; and has received formal training in epidemiology. In his capacity as an occupational physician, he has worked within academic, private clinical and consulting practices and industrial settings. He has collaborated with state and local health departments, with U.S. federal agencies, and agencies within Europe and Japan. His consulting and research interests have focused on the area of health issues linked to occupational and environmental exposures. Specific expertise includes clinical and epidemiologic aspects of asbestos, benzene, trichloroethylene and other halogenated solvents, isocyanates, acrylates, vinyl chloride and several fluorinated compounds. Dr. Mandel has a M.D. from Loyola University School of Medicine, M.P.H. in Epidemiology from University of Minnesota School of Public Health, and B.S. in Zoology from University of North Dakota.

# R.S.V.P.

To R.S.V.P., please fax this form to 312.795.0748 or call 312.698.6280.

## Contact Information

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

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

Court \_\_\_\_\_

Business Address \_\_\_\_\_

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

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

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

## Other Information

To which rules does your court adhere?

*Daubert*    *Frye*    Neither

Were you designated to attend by another judge? If yes, please indicate by what judge you were designated.

Yes    No   \_\_\_\_\_

Will a spouse or guest be traveling with you? If yes, please indicate his/her name. Will he/she join you at the luncheon?

Yes    No   \_\_\_\_\_    Yes    No

## Hotel Information

Unless indicated as a special note, a deluxe room will be booked in your name for the nights of July 15 and 16, 2005. If you would like to extend your stay at your own expense, please indicate below and you will be contacted with additional information. Any upgrades and incidentals are the responsibility of the attendee.

Please indicate your preferences:

King Bed    Two Double Beds

Smoking    Non-Smoking

Special Requests \_\_\_\_\_

**The Drake Hotel**  
140 East Walton Place  
Chicago, IL 60611  
Phone: 312.787.2200  
Fax: 312.787.1431  
www.TheDrakeHotel.com

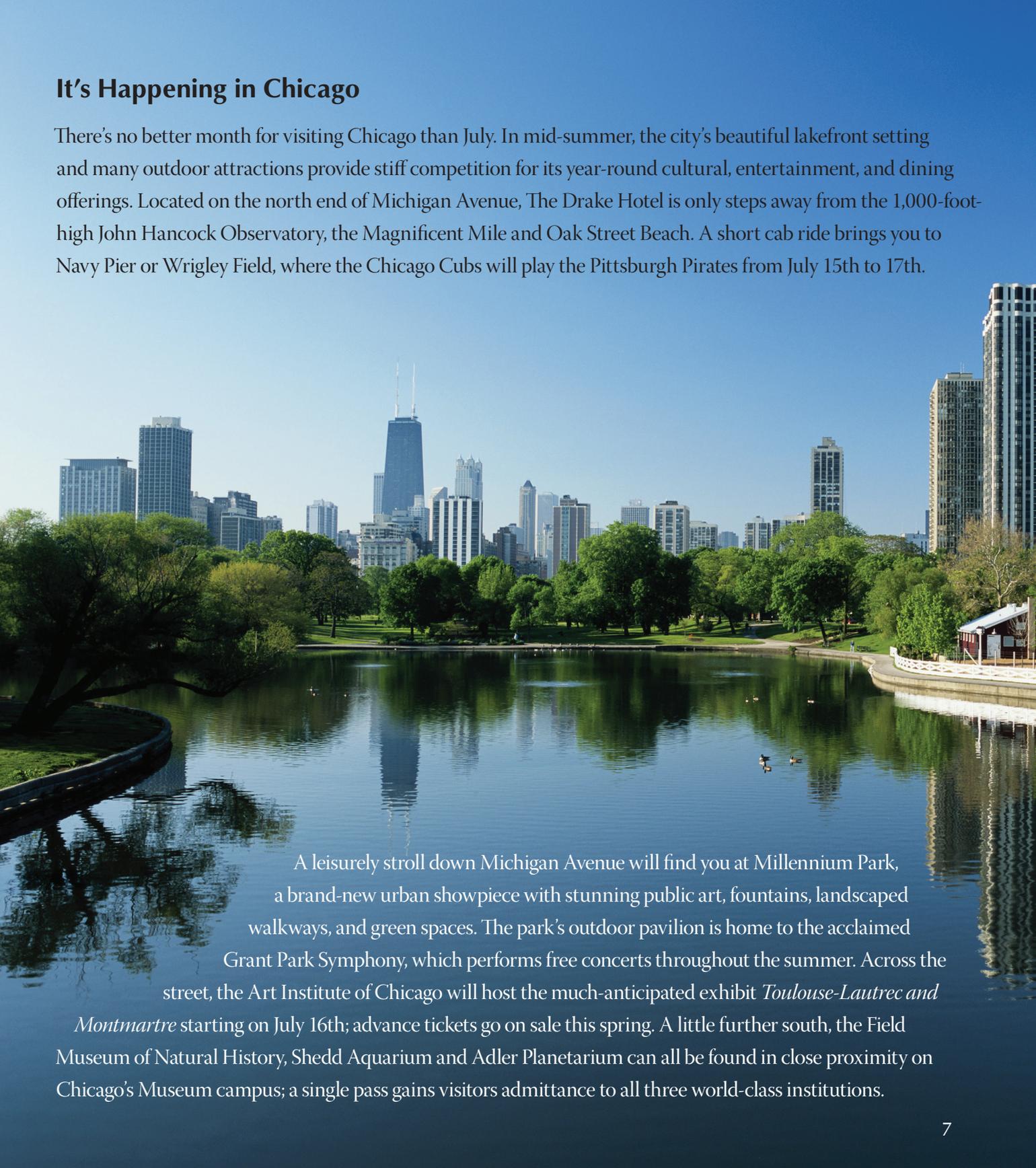
## Travel Information

Once NFJE receives your completed R.S.V.P. form, you will be sent an e-mail confirmation that will include instructions to make your travel arrangements. When making your travel arrangements, please plan to arrive by 5:00 p.m. on Friday, July 15 and depart on Sunday, July 17.

If necessary, please cancel at least three weeks prior to the event so another judge can be given the opportunity to attend.

## It's Happening in Chicago

There's no better month for visiting Chicago than July. In mid-summer, the city's beautiful lakefront setting and many outdoor attractions provide stiff competition for its year-round cultural, entertainment, and dining offerings. Located on the north end of Michigan Avenue, The Drake Hotel is only steps away from the 1,000-foot-high John Hancock Observatory, the Magnificent Mile and Oak Street Beach. A short cab ride brings you to Navy Pier or Wrigley Field, where the Chicago Cubs will play the Pittsburgh Pirates from July 15th to 17th.



A leisurely stroll down Michigan Avenue will find you at Millennium Park, a brand-new urban showpiece with stunning public art, fountains, landscaped walkways, and green spaces. The park's outdoor pavilion is home to the acclaimed Grant Park Symphony, which performs free concerts throughout the summer. Across the street, the Art Institute of Chicago will host the much-anticipated exhibit *Toulouse-Lautrec and Montmartre* starting on July 16th; advance tickets go on sale this spring. A little further south, the Field Museum of Natural History, Shedd Aquarium and Adler Planetarium can all be found in close proximity on Chicago's Museum campus; a single pass gains visitors admittance to all three world-class institutions.



NATIONAL  
FOUNDATION  
FOR JUDICIAL  
EXCELLENCE

## A New Advocate for America's Civil Justice System

America's civil justice system is the best, most fair means of resolving disputes the world has ever known. To strengthen and preserve that system, bar associations, law schools, think tanks, and other nonprofit organizations all bring distinctive resources and important insights to bear. The National Foundation for Judicial Excellence (NFJE) joins these and other groups in providing educational programs and other support that will enable officers of the court to perform at their highest levels.

Founded in 2004 and supported in its first year by DRI, NFJE is an independent 501(c)(3) charitable organization. In addition to sponsoring the Annual Judicial Symposium, the Foundation will publish scholarly works and engage in other efforts to continually enhance the rule of law and the administration of justice.

*“A well-informed judiciary is in the best interests of all engaged in the judicial process. We are pleased to contribute to the health and strength of the American civil justice system through sponsorship of the Annual Judicial Symposium.”*

Richard T. Boyette  
Board Member  
National Foundation for Judicial Excellence

For additional information on NFJE, visit [www.nfje.net](http://www.nfje.net) or contact headquarters at 312.698.6280.

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## National Foundation for Judicial Excellence

150 N. Michigan Ave., Suite 310

Chicago, Illinois 60601

Phone: 312.698.6280

Fax: 312.795.0748

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