

An Endeavor to Benefit Everyone

Is Justice Really in Jeopardy?

By Sheryl L. Willert, DRI Past President



Is our system really at a crossroads such that all who use the judiciary for the resolution of disputes should be concerned? In short, the answer to the question is “yes.” There has been a large amount written in the last decade about the loss of confidence in the judiciary with little done to focus on the reasons that, in a society that has previously held its judiciary in high esteem, there is a loss of regard. Moreover, there has been an increase in complaints about the judiciary coming from the plaintiffs’ bar, the defense bar and even corporate America. Almost everywhere you go in the business world, questions are being raised about the costs and the uncertainty associated with securing justice. The questions that face DRI clients range from whether they will be able to continue in business when they are required to comply with complex electronic discovery requests, to whether it is appropriate to be subject to expanding theories of liability in contravention of well established law, to whether they should be concerned about losing protections afforded by the attorney-client privilege and the work product doctrine.

So, what if anything can and is being done to address not only these concerns but other legitimate concerns that are raised by those who most often find themselves in the role of defendants in tort litigation or as parties in commercial litigation? One thing that can and is being done is the provision of fair and balanced education to members of the appellate courts that ultimately establish the standards by which all trials across the country are conducted. Who is providing the education? That education is being provided by the National Foundation for Judicial Excellence (NFJE).

Since 2004, NFJE has provided unbiased educational opportunities to more than 300 appellate judges from around the country, with presentations being given by journalists, university professors, practicing attorneys and individuals who are knowledgeable of the impact of technology on the administration of justice. In each of the years that this 501(c)(3) organization has held a symposium, there has been one common thread that has been the guiding principle, to remain true to its noble, right and good mission. That mission is to address important legal policy issues that affect the law and the civil justice system by providing meaningful education to the judiciary, publishing scholarly works and engaging in other efforts to continually enhance and ensure judicial excellence and fairness for all engaged in the

judicial process. Although it can be said that the NFJE is about persuasion, it is not about persuasion to a cause or a belief unless that cause and/or belief is about balance, fairness and a level playing field for all participants in the judicial system.

As defense lawyers, you might now be asking yourself, why should you care? The answer is simple. You should care because in the end, without a level playing field and without judges who not only understand all sides of an issue but who are also willing to fairly evaluate all aspects of an issue, both members of the public, as well as our clients, will become more and more disenchanted with the judicial system and will seek alternative means of dispute resolution. And while alternative means of dispute resolution may be of some benefit in some circumstances, our judicial system is at the very core of what America stands for.

So, what can you do? Encourage your clients to learn about NFJE. Encourage the appellate judges of your state to attend the 2008 Symposium, “Justice in Jeopardy: The Search for Due Process, Statutory Construction and Ethics in New Age Litigation,” to learn not only from the presenters but also from each other. Encourage your colleagues to support an endeavor that will benefit everyone.



NFJE hosted its first Annual Judicial Symposium, **Justice and Science**, on July 15–16, 2005, in Chicago at The Drake Hotel.

NFJE’s second Annual Judicial Symposium, **Essential Elements of Justice: Judicial Independence and Client Privileges in the Modern Courtroom**, was held July 7–8, 2006, in Chicago at The Renaissance Hotel.

The third Annual Judicial Symposium, **E-Discovery and Spoliation on Appeal: The Convergence of Law and Technology**, was held June 29–30, 2007, in Chicago at The Renaissance Hotel.

The fourth Annual Judicial Symposium, **Justice in Jeopardy: The Search for Due Process, Statutory Construction and Ethics in New Age Litigation**, will be held July 11–12, 2008, in Chicago at The Drake Hotel. Information regarding this program will be published at a later date.

The fifth Annual Judicial Symposium will be held July 10–11, 2009, in Chicago at The Drake Hotel.