Third Annual Judicial Symposium

E-DISCOVERY AND SPOILATION ON APPEAL:
The Convergence of Law and Technology

Presented by
NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

June 29–30, 2007
The Renaissance Hotel
Chicago, Illinois
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, as an officer of the court, the lawyer’s obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3), charitable foundation that provides judges with educational programs and other tools to continually enhance the rule of law and administration of justice.


Judges’ responses to both programs have been universally enthusiastic, and many expressed appreciation for the high caliber and balanced nature of the program. Comments included:

- 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. This is my second year and 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. It is all too rare these days in the era of deficits.
The intersection of law and technology is impacting the Courts on a daily basis. From electronic filing to electronic evidence presentation, digital information has become not only prevalent in the courtroom but unavoidable.

And while application of digital information in the day-to-day administration of justice has become a utilitarian reality, it is the substantive collision of law and technology that presents the greatest challenge to modern legal theory. How does one reconcile the Common Law, taught still with cases based on millstones and railroads, with technological innovations such as nanotechnology and information stored on microscopic chips of glass?

Join the NFJE as we explore the challenges posed to the appellate courts by a case involving electronic discovery, the computer technology underlying it, and the current state of the law of spoliation.
Third Annual Judicial Symposium

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Schedule of Events

**Friday, June 29**

6:00 p.m. Registration and Cocktail Reception

7:30 p.m. Dinner On Your Own

**Saturday, June 30**

8:00 a.m. Registration and Continental Breakfast

8:30 a.m. Welcome and Introduction to the Program

8:45 a.m. The Hypothetical Case on Appeal: Facts and Procedural Posture

9:00 a.m. Emerging Issues in E-discovery: A Primer
    John Jessen

10:15 a.m. Break

10:30 a.m. Addressing E-discovery Issues through Adjudication: Judicial Philosophy in Light of the Convergence of Law and Technology
    Professor Richard Marcus

11:00 a.m. Addressing E-discovery Issues through Rules Changes: Federal and State Approaches
    Thomas Allman

11:45 a.m. Spoliation: Truth or Consequences
    Gregory P. Joseph

12:30 p.m. Luncheon and Keynote Address
    The Logical Construct of Appellate Arguments and Opinions
    Professor Douglas Lind
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<th>Time</th>
<th>Event</th>
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<tr>
<td>2:00 p.m.</td>
<td>Counsel for Appellant and Appellee Offer Pre-argument Perspective</td>
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<td>Michael B. King</td>
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<td>John Bredehoft</td>
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<td>2:30 p.m.</td>
<td>Mock Oral Argument: An Appeal from a Sanctions Dismissal for E-Discovery Violations</td>
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<td>Michael B. King</td>
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<td>John Bredehoft</td>
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<td>3:30 p.m.</td>
<td>Mock Judges Conference</td>
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<td>4:00 p.m.</td>
<td>Break</td>
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<td>4:15 p.m.</td>
<td>Panel Discussion</td>
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<td>All Presenters</td>
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<td>5:00 p.m.</td>
<td>Cocktail Reception</td>
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<td>6:30 p.m.</td>
<td>Dinner on Your Own</td>
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**Keynote Speaker**

**Professor Douglas Lind** is chair of the Department of Philosophy at the University of Idaho, and a faculty member at The National Judicial College, Reno, Nevada. Previously, he practiced law for a number of years, specializing in environmental law, as an assistant attorney general for the State of Missouri and in private practice in Philadelphia, Pennsylvania. Professor Lind received his B.A., *magna cum laude*, from the University of Minnesota, his J.D. from Washington University, St. Louis, and his Ph.D. from the University of Pennsylvania. At the University of Idaho, Professor Lind teaches the subjects of philosophy of law, logic, ethical theory, environmental philosophy, and the philosophy of Ludwig Wittgenstein. He regularly teaches courses on logic, legal reasoning, and judicial decision-making at The National Judicial College, through state judicial institutes and bar associations, and internationally. His recent publications include: “Azdak, The Rascal Judge,” *Canadian Journal of Law and Jurisprudence* (1999); “Logic, Intuition, and the Positivist Legacy of H.L.A. Hart,” *SMU Law Review* (1999); and “Constitutional Adjudication as a Craft-Bound Excellence,” in Dennis Patterson, ed., *Wittgenstein and Law* (2004). The second edition of his book, *Logic and Legal Reasoning*, will be published later this year by The National Judicial College Press.

**Speakers**


**John Jessen** founded EED, Inc. in 1987 with the vision that a group of specialists combining technical and legal expertise would be needed to address the growing number of electronic evidence issues facing the legal profession. To meet the needs of his clients, Mr. Jessen hired a diverse team of experts, from trial lawyers to software engineers, creating the first—and now largest—company in the industry. At EED, Inc., Mr. Jessen directs the consulting activities and
develops litigation, mediation and electronic data retention strategies for clients. He has contributed to more than 20 legal journals and publications, serves on eight professional boards and organizations, and has spoken at more than 130 conferences and forums on electronic evidence, including guest lectures at Harvard Law and the University of Washington Law School. Mr. Jessen regularly delivers courses to law firms and federal judges on the latest technology and policies related to electronic discovery. Mr. Jessen is a member of a diverse range of industry groups, including the National Association of Certified Fraud Examiners, the National Computer Security Association (NCSA) and the Association for Information and Image Management (AIIM). He earned his bachelor’s degree in finance from the University of Washington and completed the Executive Management Program at Harvard Business School.


**Professor Richard Marcus** holds the Horace O. Coil Chair in Litigation at the University of California’s Hastings College of the Law. Before joining the Hastings faculty, he taught for eight years at the University of Illinois, and before that was a litigator for several years in San Francisco, becoming a partner in his firm. Since 1996, he has been Special Reporter to the U.S. Judicial Conference’s Advisory Committee on Civil Rules, dealing with discovery matters. In that capacity, he participated in the drafting of the Federal Rule amendments for E-Discovery that went into effect on December 1, 2006. He is co-author of leading casebooks on Civil Procedure and Complex Litigation, as well as being the author of the discovery volumes of the Federal Practice & Procedure treatise (“Wright & Miller”). He has written widely on all aspects of discovery practice.
Mock Argument Counsel

Michael B. King practices with the Talmadge Law Group in Seattle, Washington. A full-time appellate litigator who has made over 85 arguments to full merits panels, Michael has successfully represented clients before the Alaska, California and Washington Supreme Courts, the Ninth and Eleventh Circuit Courts of Appeals, and all divisions of the Washington State Court of Appeals. He has chaired DRI’s Appellate Advocacy Committee, is the Program Chair for the ABA’s Council of Appellate Lawyers, and has organized and spoken at appellate CLEs around the country. He is a founding member and past President of the Washington Appellate Lawyers Association, was named a “Best Lawyer in America” for appellate law in 2007, and has been named a “Super Lawyer” in appellate law by Washington Law & Politics magazine for the last six years. Michael graduated *magna cum laude* from University of Washington School of Law in 1984, and received his A.B. in Government from Harvard College in 1979.

John Bredehoft practices law in the Norfolk, Virginia office of Kaufman & Canoles, P.C. He is a member of DRI’s Appellate Advocacy Committee, a long-time instructor at the Virginia Supreme Court’s course on Professionalism for Law Students, and currently serves as the Chairman of the Virginia Bar Association Section on Labor Relations and Employment Law. A frequent speaker before Bar and other groups, his presentations have run the gamut from witness-coaching to whistle-blowing and from supersedeas bonds to cyber-terrorism. A business counselor as well as an experienced appellate advocate, he has even been known to try cases when the occasion demands. He has been recognized by numerous publications including *Chambers USA* and *The Best Lawyers in America*. John is an honors graduate of Harvard Law School and received his A.B., *magna cum laude*, in history from Harvard College.
It’s Happening in Chicago

There is no place more captivating than Chicago in the summer. The weather is ideal, the city’s beautiful lakefront is a flurry of activity and there are myriad cultural, sporting, entertainment, and dining offerings.

Located at the edge of “The Loop,” The Renaissance Hotel is in the heart of the city, overlooking the Chicago River. The hotel is a short walk to Millennium Park, home of the unique Chicago landmark, “the bean,” and just an “L” ride away from historic Wrigley Field where the Chicago Cubs play. Other nearby attractions include: Michigan Avenue, Navy Pier, Sears Tower, the Art Institute of Chicago, the Theatre District, and Museum Campus with the Field Museum of Natural History, Shedd Aquarium, and Adler Planetarium.
Registration

To register, please fax this form to 312.795.0748. If you have questions, call 312.698.6280.

Contact Information

First Name ___________________________ Middle Initial _________ Last Name ___________________________

Preferred Name ___________________________ Title ___________________________

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* Please provide an e-mail address as confirmation and course materials are sent via e-mail.

Will a spouse or guest be traveling with you? If yes, please indicate his/her name.

☐ Yes ☐ No

________________________________________

If yes, will your guest attend the keynote luncheon?

☐ Yes ☐ No

Hotel and Travel Arrangements

Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions to make your hotel and travel reservations.

NFJE will cover the cost of a deluxe room for Friday, June 29 and Saturday, June 30, 2007 and transportation (flight, train, ground). When making your travel arrangements, please plan to arrive by 5:00 p.m., Friday, June 29th. If you would like to extend your stay, you are welcome to do so at your own expense.

The Renaissance Chicago Hotel
One West Wacker Drive
Chicago, IL 60601
Phone: 312.372.7200
Fax: 312.372.0093
www.renaissancechicagodowntown.com

Cancellations

If you must cancel your attendance, please do so at least three weeks prior to the event so a judge on the waiting list can attend.

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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