

NFJE SIXTEENTH ANNUAL JUDICIAL SYMPOSIUM

Law in the New Age:

**How Automation and Artificial
Intelligence Will Change Judging in
Substance and Procedure**



Presented by
NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

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 16 years, the NFJE has successfully produced a first-rate symposium, hosting over 1,800 appellate court judges from over forty states.

Judges' responses to the programs have been overwhelmingly enthusiastic:

- *"This is one of the best organized and informative seminars that I have ever attended. Keep up the good work."*
- *"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 was the best presentation I have ever attended."*
- *"It was perfect."*
- *"Best program I have ever attended."*
- *"I don't like to say that 'everything' was great—but everything was great."*
- *"It's already the best judicial CLE."*

The 2020 NFJE Symposium Becomes Virtual!

Challenging times call for creative solutions. Accordingly, the 2020 Annual Judicial Symposium will be presented virtually on four dates: July 16, August 20, September 17, and October 15. *The programs will begin at 3:00 p.m. Eastern, 2:00 p.m. Central, and 12:00 p.m. Pacific.* The program committee, chaired by Tillman Breckenridge, founder of the Washington, DC appellate firm Breckenridge PLLC, the board, and staff have been hard at work setting and implementing a plan for our 2020 symposium *where you are*. Attendees will be able to ask live questions and get answers from our presenters via videoconference, and we will have virtual happy hours after each one so that our attendees can mingle and catch up. Of course, it will be BYOB! We look forward to seeing you there!

This Year's Symposium

Law in the New Age: How Automation and Artificial Intelligence Will Change Judging in Substance and Procedure

Nearly twenty years into the new millennium, an advocate walking into an appellate courtroom might see little evident change from a century earlier. A closer look, however, reveals that some judges no longer have stacks of briefs before them on the bench. They have little screens that provide instant access to the briefs and the record. The briefs and records themselves have been filed electronically; boxes of pleadings and transcripts no longer clutter the clerk's office. Outside of the courthouse, the advocate can check the progress of the case online, instead of annoying the clerk with endless phone



calls. The nature of the cases has changed, too—judges face new, challenging questions that they could not have fathomed a century ago.

More changes are coming, to the courts and the world at large, in the years ahead. Our keynote speaker, Joseph Raczynski, will discuss emerging technologies and the rise of artificial intelligence. Not only will new technologies affect the way the courts do their own business, but those technologies will change the way litigants do business, and courts will have to shape the law to meet the new realities.

Our panels will discuss the changing landscape of cybersecurity, as it affects the protection of both court records and other data on which individuals and businesses rely. We will discuss the work of the Sedona Conference in attempting to identify the standards that courts should apply in determining whether parties have taken reasonable steps to protect personal data. Further, our panels will consider the effects of new technology on law practice and private business. They will explore whether automation and artificial intelligence help to secure the just, speedy, and inexpensive determination of every action, or if they simply create new things to fight about. And we will discuss how the insurance industry is using technology to improve its claims practices. Plus, we will consider the tools judges need to address these new questions, and whether it is enough to analogize new technologies to old corollaries, or if courts now need to be more inclined to consider first principles.

Please join us with your peers from state appellate courts throughout the country at the 2020 NFJE Symposium.

Schedule of Events

2020 Annual Judicial Symposium

Thursday, July 16, 2020

- 2:00 p.m. **Welcome and Introduction**
Dan D. Kohane, NFJE President
- 2:10 p.m. **How New Technologies Will Appear on Appellate Dockets**
Our keynote speaker, futurist Joe Raczynski, will discuss emerging technologies—such as blockchain contracts, artificial intelligence, and advanced metrics—to give a view of what new devices and services will raise challenging legal issues for the next wave of appellate decisions that shape the common law and how it is applied.
Joseph Raczynski, *Thomson Reuters*, Arlington, VA
- 3:30 p.m. **Question/Answer**
- 4:00–5:00 p.m. **Happy Hour**

Thursday, August 20, 2020

- 2:00 p.m. **Judicial Decision-making: Law by Analogy vs. First Principles**
Our panel will discuss how appellate judges decide cases, and the relative success of analogizing to cases resolved on similar fact patterns versus engaging with the first principles of the underlying law to determine the bases for the decisions on which they rely.
The Honorable Bridget Mary McCormack, *Michigan Supreme Court*, Lansing, MI
Anne E. Mullins, *Stetson University School of Law*, DeLand, FL

The Honorable Jeffrey S. (Jeff) Sutton, *United States Court of Appeals for Sixth Circuit*, Cincinnati, OH

2:45 p.m.

Question/Answer

3:00 p.m.

Insurance Meets Automation: How Carriers Implement Fair Claims Practices in a Hands Off World

Insurance bad faith claims are among the most contentious and heavily defended lawsuits in civil litigation. This session will explore the growing use of automation and predictive analytics in the insurance industry, and how courts may evaluate bad faith liability in an increasingly hands off world.

Kathleen J. Maus, *Butler Weihmuller Katz Craig LLP*, Tallahassee, FL

3:45 p.m.

Question/Answer

4:00 p.m.

Diversifying Your Clerks: The Way to a More Diverse Appellate Bar

A discussion about diversity in the legal profession and how appellate judges can help diversify the panel of attorneys qualified to argue before them.

The Honorable Ann Claire Williams (Ret), *Jones Day*, Chicago, IL

4:30 p.m.

Question/Answer

4:45-5:45 p.m.

Happy Hour

Thursday, September 17, 2020

2:00 p.m.

Automation in the Legal Practice

Do AI and other e-discovery and technical software solutions really solve case management and docket concerns, e-discovery battles, and increase cooperation between the parties?

Hear from experts in the field on whether these solutions are moving the needle for courts and practitioners in the real world.

Hunter McMahon, *iDiscovery Solutions*,
Greenville, SC

Francis X. (Frank) Nolan IV, *Eversheds
Sutherland (US) LLP*, New York, NY

Iria Giuffrida, *William & Mary Law School*,
Williamsburg, VA

3:00 p.m.

Question/Answer

3:15 p.m.

**Changes in the Essence of Duty: Where Does
Obligation Begin in the Age of Automation?**

Automated technologies have changed the ways in which we design, manufacture, and assemble. Now, with the incorporation of artificial intelligence, not only are we changing the way we think, our machines are thinking for themselves. What happens when artificial intelligence makes a mistake? Who or what is at fault? What is the effect of government regulation and approval? Hear from industry leaders on the current status of AI, its future, and the liability questions that are sure to arise.

Emily E. Frascaroli, *Ford Motor Company*,
Dearborn, MI

Phil Goldberg, *Shook Hardy & Bacon LLP*,
Washington, DC

Megan Gordon, *Clifford Chance LLP*, Washington,
DC

4:15 p.m.

Question/Answer

4:30–5:30 p.m.

Happy Hour

Thursday, October 15, 2020

2:00 p.m.

The Nuts and Bolts of Cybersecurity

Our panel will provide an overview of the cybersecurity landscape and the existing and

future challenges in protecting the data and privacy. This discussion will include a primer on the types of legal issues that arise when there is a data breach and the type of litigation that ensues, including individual versus class actions, breach of contract, and insurance coverage.

Sean C. Griffin, *Dykema Gossett PLLC*,
Washington, DC

William Nagel, *Lenovo*, Chicago, IL

3:00 p.m.

Question/Answer

3:15 p.m.

**Judging Efforts to Protect Personal Information:
What Test Should Apply?**

In *LabMD, Inc. v. Federal Trade Commission*, the United States Court of Appeals for the Eleventh Circuit vacated the FTC's order that LabMD implement the FTC-designed security program on grounds it required an "indeterminable standard of reasonableness." The panel will discuss *LabMD, Inc.* and the most promising standard that has emerged in the wake of it—one based upon a duty-of-care risk analysis. Such an approach has been adopted by the Center for Internet Security, and it has been used by Pennsylvania's OAG in a settlement with Expedia. It is also the subject of an important, current study by the Sedona Conference; and two members from the Sedona Conference will be part of the panel.

Chris Cronin, *Halock Security Labs*, Schaumburg, IL

William R. Sampson, *Shook Hardy & Bacon LLP*,
Kansas City, MO

4:15 p.m.

Question/Answer

4:30 p.m.

Closing Remarks

Dan D. Kohane, Chair of the Board

Laura E. Proctor, NFJE President

4:45-5:45 p.m.

Happy Hour

Speaker Bios

Tillman Breckenridge is the principal of Breckenridge PLLC in Washington, D.C. He has represented companies, organizations, individuals, and foreign, state, and local governments in cases valued in the millions and billions of dollars before the Supreme Court of the United States, every federal court of appeals, and several state courts. He also has taught appellate advocacy at the William and Mary Law School. Mr. Breckenridge is the 2020 NFJE Program Chair.

Chris Cronin is partner at HALOCK Security Labs, a cybersecurity consultancy. While at HALOCK Chris developed Duty of Care Risk Analysis (DoCRA) and is principal author of *CIS RAM*, Center for Internet Security's Risk Assessment Method. Mr. Cronin's clients represent a full range of industries and sizes, including Fortune 100 companies, universities, hospitals, professional services firms, technical services, and manufacturers. He also serves as expert witness on breach cases, provides litigation support services, and formulates reasonable security plans for recovering breached organizations. Mr. Cronin serves multiple professional organizations, including Center for Internet Security and the Sedona Conference.

Emily E. Frascaroli serves as counsel for Ford Motor Company, where she advises globally on automotive safety, regulatory, and product liability issues, including a focus on autonomous vehicles, mobility, and cybersecurity. She has extensive experience handling regulatory matters with NHTSA and other governmental entities, product defect investigations, and complex product litigation cases. She also is a lecturer at the University of Michigan Law School on the legal issues involved with autonomous vehicles, and she is co-chair of the Legal and Insurance Working Group of MCity. In 2017, she was appointed by then-Governor Rick Snyder to the Michigan Council on Future Mobility.

Iria Giuffrida is a professor of the Practice of Law at William & Mary Law School and is the deputy director of the Center for Legal & Court Technology (CLCT). She has been working on a grant-funded research project focusing on legal issues arising from the increasing use of artificial intelligence, the rapid growth of the Internet of Things and related emerging technologies. She leads CLCT's research efforts in this area and has been invited to speak at several conferences. Professor Giuffrida co-teaches the Law School's

innovative artificial intelligence course, which was first offered in spring 2018.

Phil Goldberg is the office managing partner of Shook Hardy & Bacon, LLP in Washington D.C. and the co-chair of its Public Policy Practice and National Amicus Practice. Through this work, he has become a leading voice for common sense liability policies. Since joining Shook in 2003, he has filed amicus briefs with courts at every level, from the U.S. Supreme Court to the U.S. Courts of Appeals and state appellate courts. He also has testified before state legislatures, authored legal scholarship, and spoken at judicial and attorney conferences on some of the highest-profile liability issues in the last decade.

Megan Gordon practice focuses on risk management, transactional due diligence, compliance and internal investigation matters. Her work encompasses a broad range of regulatory matters arising under the Foreign Corrupt Practices Act, U.S. anti-money laundering and economic sanctions laws and regulations, export controls, privacy, and U.S. data protection laws and regulations. Ms. Gordon advises clients on how to manage risk exposure in a wide-variety of legal areas affecting companies and financial institutions conducting international business. She also advises multinational companies in connection with transactional risks and in designing and implementing their compliance programs.

Sean C. Griffin is a member in the Washington, D.C., office of Dykema. He litigates breach of contract and fraud cases before courts, arbitrators, and mediators around the country. He also responds to subpoenas investigating violations of federal or state laws, including the False Claims Act, anti-bribery laws, and securities laws and regulations. Additionally, he assists clients with data security and responding to data breaches.

Dan D. Kohane is president of the National Foundation for Judicial Excellence and a senior member of Hurwitz & Fine, P.C. He is an insurance coverage counselor, and the chair of the firm's Insurance Coverage and Extra Contractual practice team, with offices in Buffalo and Long Island and providing legal services through New York, New Jersey and Connecticut. He is a founding fellow of the American College of Coverage Counsel, a member of the American Law Institute (ALI), past president of the Federation of Defense & Corporate Counsel, and a former board member of DRI.

Kathleen J. (Kathy) Maus a partner of Butler Weihmuller Katz Craig LLP, is active in her firm's bad faith, casualty, and first/third party insurance coverage practices. She is a recognized Super Lawyer in Insurance Coverage and a Board Certified Civil Trial Lawyer. Her memberships are varied, including past board member of DRI. Ms. Maus is an author and served as a speaker at numerous seminars on issues including first and third party coverage and bad faith.

The Honorable Bridget Mary McCormack joined the Michigan Supreme Court in January 2013. Before her election to the court in November 2012, she was a law professor and dean at the University of Michigan Law School. Since joining the court, Justice McCormack continues to teach at the law school as a lecturer. In 2008, then-Associate Dean McCormack cofounded the Michigan Innocence Clinic, in which students represent wrongfully convicted Michiganders. The clinic has exonerated seven people so far, and has shined a light on the important justice issues underlying wrongful conviction.

Hunter McMahon is the chief operating officer for iDiscovery Solutions, focused on collaborating with its team of experts to provide industry leading solutions for clients. Clients rely on Mr. McMahon as a strategic partner, leveraging data analytics for litigation, investigations, data privacy, and compliance issues. He has served as a testifying and consulting expert to large and small corporations, while working with Am Law 100 and boutique law firms. Mr. McMahon is a member of the Sedona Conference, Working Groups 1 (Electronic Document Retention and Production), 6 (International Electronic Information Management, Discovery and Disclosure), and 11 (Data Security and Privacy).

Amy L. Miletich is a founding member of Miletich PC in Denver. Ms. Miletich has extensive experience with employment law matters and has represented domestic and international private employers and public employers in the defense of claims alleging violations of federal and state employment laws. Ms. Miletich is a member of the board of directors for both the NFJE and the Federation of Defense and Corporate Counsel. She is a former national director of DRI and a former chair of the DRI Employment and Labor Law Committee.

Anne E. Mullins is a professor of law at Stetson University College of Law. Her scholarship examines judicial writing through a cognitive theoretical framework. Her published articles include

“Source Relational Ethos in Judicial Opinions” in the *Wake Forest Law Review*, “Opportunity in the Age of Alternative Facts” in the *Washburn Law Journal*, “Jedi or Judge: How Cognitive Psychology Redefines Judicial Opinions” in the *Wyoming Law Review*, and “Subtly Selling the System: Where Psychological Influence Tactics Lurk in the Judicial System” in the *University of Richmond Law Review*.

William Nagel is senior counsel for global privacy at Lenovo, where he helps shape Lenovo’s global privacy practices and strategies and provides advice to development teams to help ensure that product designs, features, and functions comply with regulatory requirements. He has 18 years of privacy compliance experience and has advised government and private sector clients on how to address privacy risks raised by emerging technologies. His privacy insights are enhanced by over eight years as a commercial trial lawyer and four years as a regulatory attorney with the State of Illinois.

Frank Nolan is a litigation partner in Eversheds Sutherland’s New York City office. Mr. Nolan defends companies in class action and commercial litigation in federal and state courts across the country, arbitrates domestic and international business and reinsurance disputes, and counsels clients on compliance matters. He is a founding member of Eversheds Sutherland’s biometrics team, which counsels clients employing biometric technology and defends against litigation arising from biometric protection and other privacy and data security laws. Frank has been recognized by “The Legal 500 United States” in the area of e-discovery.

Joseph Raczynski is an innovator and early adopter of all things computer related. His primary focus is around the future of technology, and speaks globally about Legal Technology, Cybersecurity, Blockchain, Artificial Intelligence, Cryptocurrency, and Robotics (drone technology). He also writes about the future of technology as it impacts the crossroads of our personal and professional lives, especially in the legal sector. Under the umbrella of Thomson Reuters, Mr. Raczynski hosts *The Hearing*—a podcast with a technology focus. He also serves as a mentor with the Columbia | IBM Blockchain Accelerator and guest lecturer at Fordham University School of Law.

Bill Sampson, a partner of Shook Hardy & Bacon LLP in Kansas City, Missouri, has tried more than 80 jury cases in federal, state,

and military courts and tribunals, and has been active nationally and internationally in the defense of civil litigation. In addition, Mr. Sampson has taught more than 100 programs on trial practice, litigation strategy, and legal writing for law students, clients, and professional associations. A past president of DRI, Bill's many recognitions include the Louis B. Potter Lifetime Professional Service Award, DRI (2018); and the Richard T. Boyette Distinguished Achievement Award, National Foundation for Judicial Excellence (2018).

The Honorable Jeffrey S. Sutton was nominated by President George W. Bush to a seat on the Sixth Circuit and confirmed in 2003. He is recognized as one of the brightest and most thoughtful judges on the court. A former law clerk to Justices Antonin Scalia and Lewis F. Powell, Jr., he was in private practice and served as Ohio's solicitor general before becoming a judge.

The Honorable Ann Claire Williams (ret.) is a retired circuit judge of the United States Court of Appeals for the Seventh Circuit, and a former district judge of the United States District Court for the Northern District of Illinois. Following her retirement from the bench in 2018, Judge Williams joined the Chicago office of Jones Day, where she heads the firm's efforts in advancing the rule of law in Africa. Among other things, Judge Williams helped found Just the Beginning—a non-profit organization offering pipeline programs aimed at inspiring young students and increasing diversity in the legal profession and judiciary.

To register

Either register online: www.nfje.net or mail your registration to:

National Foundation for Judicial Excellence
222 S. Riverside Plaza, Suite 1870
Chicago, IL 60606

Contact Information

First Name _____ Middle Initial _____

Last Name: _____

Preferred Name: _____

Title: _____

Court: _____

Address (business):

Street _____ Suite _____

City _____ State _____

Zip Code _____

Phone Number (business) _____

Email(required) _____

