

Feature Articles

# Truly Understanding NFJE’s Diversity

By Edward S. Sledge IV



NFJE annually opens its NFJE Symposium to appellate judges from all over the country and from all walks of life without regard to race, ethnicity, socioeconomic status, gender identity or sexual orientation. But NFJE leadership’s reflections on audience participation in years past recalled a rather homogeneous group. This raised questions about whether the reflections were grounded in reality and, if so, what could be done to increase symposium participation by appellate judges who have lived and served in the historically underserved communities of our country. The NFJE president at the time, Dan D. Kohane, commissioned a diversity review to address these issues.

NFJE joined forces with the International Association of Defense Counsel (IADC) Foundation board, the charitable arm of the IADC, to learn more about NFJE symposium’s participants and their views in the hopes of creating discrete calls to action. The joint efforts are mission focused and get to the core of both organizations’ reasons for existence.

The mission of NFJE focuses on the judiciary: “Address important legal policy issues affecting the law and civil justice system by providing meaningful support and education to the judiciary, by publishing scholarly works, and by engaging in other efforts to continually enhance and ensure judicial excellence and fairness for all engaged in the judicial process.” The IADC Foundation’s mission is similar: “To support the rule of law and access for all to a fair and just legal system through education and research, strategic partnerships, and relevant projects.”

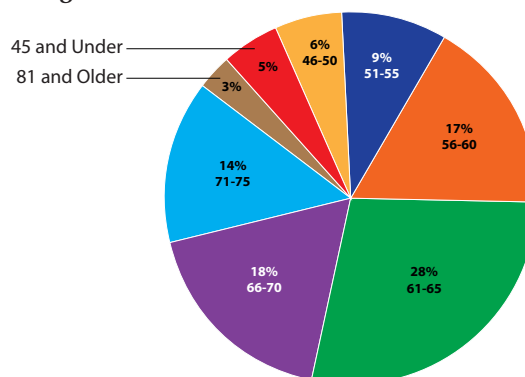
Initially, NFJE needed to see itself from an audience participation standpoint — the baseline, if you will. This involved preparing a survey for the past attendee-judges of the symposium to complete. Gino Marchetti, past president of both NFJE and the IADC; Joe Cohen of IADC’s Diversity and Inclusion Committee; and I worked together to frame 10 survey questions. The survey included two parts: The first focused on the demographic makeup of the judges, and the second focused on those judges’ responses to questions related to diversity.

The 10-question survey was sent to attendees of the 2016-2019 NFJE symposiums. We received responses from 66 past attendees.

Here is what we learned:

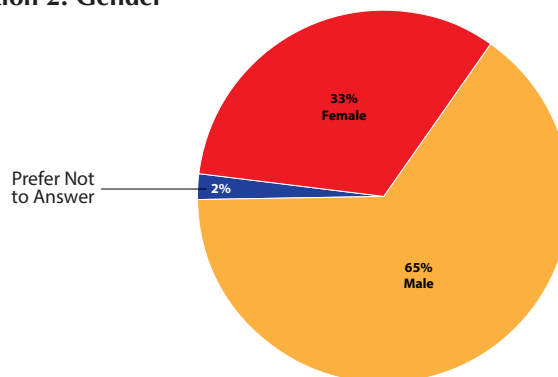
## The Demographic Makeup of Survey Participants

### Question 1: Age\*



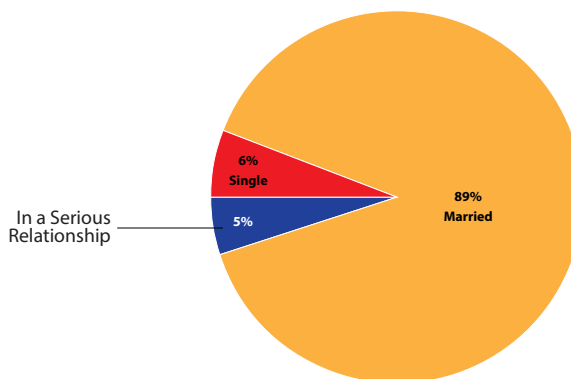
\* No respondents selected the 76-80 age option.

### Question 2: Gender\*

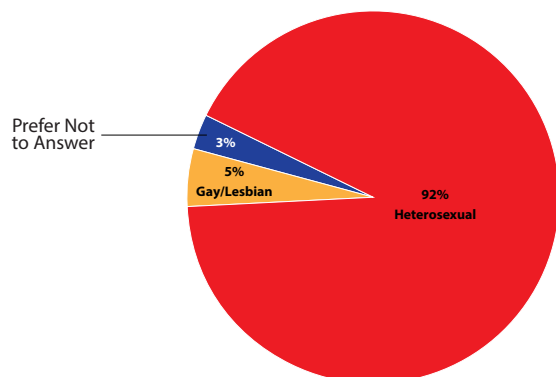


\* No respondents selected the Transgender Male, Transgender Female or Gender Variant/Non-conforming options.

### Question 3: Relationship Status

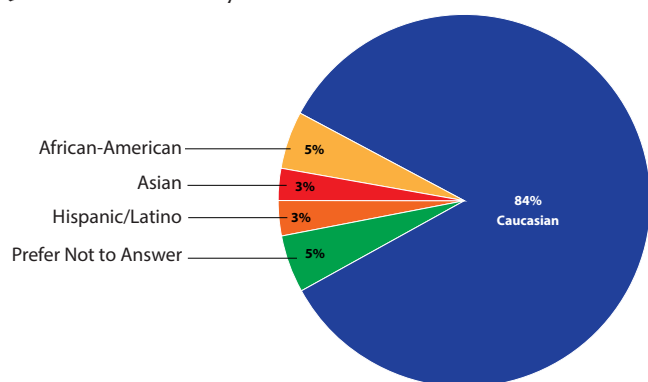


### Question 4: Sexual Orientation\*



\* No respondents selected the Bisexual/Pansexual option.

### Question 5: Ethnicity\*

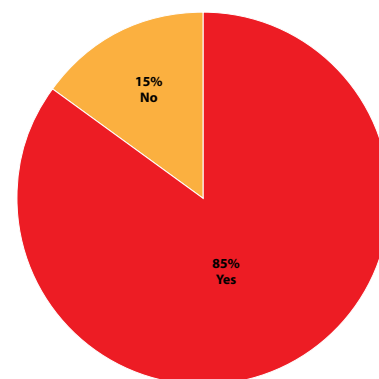


\* No respondents selected the Native American, Pacific Islander or Other options.

As shown, the pool of audience-respondents was largely middle-aged or senior, male, married, heterosexual, and Caucasian appellate judges. This was not an altogether surprising outcome, as this is generally reflective of the judiciary's makeup nationwide.

But what did these respondents have to say about their observations of the judiciary and diversity? NFJE asked them a variety of questions about the judiciaries on which they serve. Although some consistency in response arose, particularly because of the binary nature of the yes-or-no questions presented, the comments revealed the nuances, complexities and challenges associated with the interplay of diversity and the judiciary.

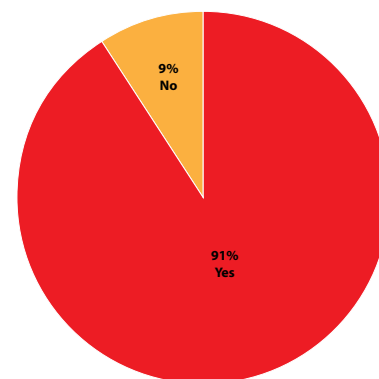
### Question 6: The judiciary leadership responds effectively to inappropriate behavior related to diversity.



Selected comments:

- My impression is that the judiciary responds slowly — sometimes very slowly — with the result being that discipline is administered in a tardy fashion, and outsiders conclude there is little concern for the matter(s).
- The correct answer is sometimes. We need more education. We need frameworks to check ourselves.
- Because some have implicit biases, others do not believe certain conduct is wrong
- I have not personally seen or experienced inappropriate behavior, but I believe generally the leadership responds well.
- We tend to ignore [this] as if it doesn't apply or exist.

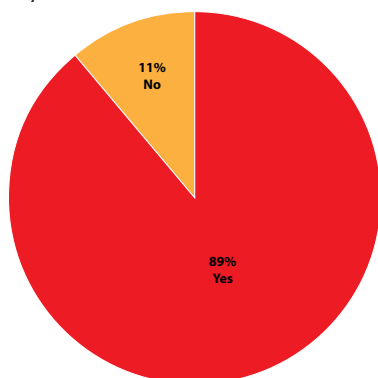
### Question 7: Differences of people are valued in the judiciary.



Selected comments:

- I can think of a recently released opinion (The rehearing was denied.) in which the court deliberately misgendered a petitioner.
- If they seem to blend in. Diversity of thought — not so much.
- The courts as a whole are very traditional and very slow to change.

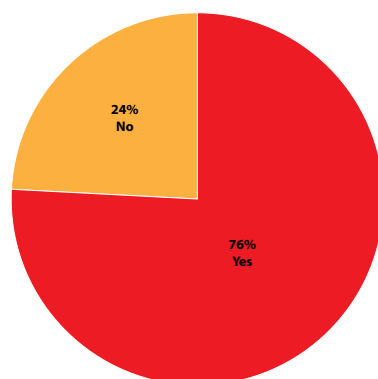
**Question 8: Different cultures are welcomed and respected in the judiciary.**



Selected comments:

- I think we are one generation away from this. I still hear comments that concern me.
- If you are not Catholic or Baptist, you are not respected.
- Equal rights under the law is not just a quaint notion!

**Question 9: The judiciary actively recruits people from different cultures and backgrounds.**



Selected comments:

- In Missouri, our appellate courts and metropolitan circuit courts are using the nonpartisan merit selection process. This helps a wide diversity of applicants for Missouri judicial positions.
- But it is tough to get them to apply in my state even though the governor, who has the appointment authority, is supportive of greater diversity on the bench. Many of the best from diverse backgrounds are reluctant to give up lucrative salaries in private practice. Almost all of our minority/diverse judges end up coming from public service positions.
- I think courts typically don't do much recruiting at all, especially with respect to law clerks. They apply whether recruited or not.
- I recruit the best person. Period.

Finally, NFJE asked the judges what NFJE could do to actively promote diversity. This question generated lots of great ideas, some of which are already underway:

- Ask frequent attendees to invite a diverse judge.
- Have a white judge talk about why diversity matters to him or her.
- Recruit faculty participation from historically black colleges and universities' law schools.
- Continue to ensure our organization and our symposium, along with the symposium's speakers and panels, are led by and made up of visibly diverse people. Create an annual Diversity Lecture and present it during lunch on Saturday. Initiate a Diversity Forum. Establish an online clearinghouse for comments and complaints about diversity in the judiciary.
- Urge state bars and the decision-makers who appoint judges to encourage a diverse array of people to seek careers in the judiciary.
- Invite former dean of Yale Law School Anthony Kronman to discuss his book, "The Assault on American Excellence," and diversity at the conference.
- Become involved in activities like Washington State's Judicial Institute that actively recruit a diverse population to become interested.

*If you are reading this article, please consider yourself tapped to purposefully engage with members of the judiciary to attend the symposium, especially those who have lived in and serve in the underserved communities.*

**Calling on you for action**

NFJE wishes that every appellate judge would attend its symposium; network with colleagues; and engage in interactive, thought-provoking programming. If you are reading this article, please consider yourself tapped to purposefully engage with members of the judiciary to attend the symposium, especially those who have lived in and serve in the underserved communities. Although some of the ways in which diversity can be promoted are involved and will take time, other ways can begin immediately:

- Pick up the phone and call a diverse judge in your state and invite them to attend.
- Give the name of a diverse appellate judge in your state to NFJE leaders so they can make the invitation and facilitate participation.

It is only through the collective, concerted work of many that we can improve diverse participation at the symposium and in the judiciary generally, effect positive change, and ultimately fulfill not only the missions of NFJE and the IADC Foundation but also a larger mission of humanity to adhere to and apply the rule of law in the way we all expect: with due understanding and respect for the differences inherent in all people and in equal application of the rule of law to all. If we can look out in the audience in the years to come and see those differences with our own eyes, we'll have made progress.

*commercial litigation in courts across the country. He also routinely represents businesses in bet-the-company litigation including high-exposure personal injury and wrongful death matters. Sledge has tried cases in multiple state and federal courts and in arbitration and is a frequent lecturer and author on civil litigation and trial issues. He also is a Fellow of the American Bar Foundation and has been listed among "The Best Lawyers in America," Mid-South Super Lawyers and the top 50 Alabama Super Lawyers, among other honors.*

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