

CASA QUARTERLY

FALL 2011 A CASA OFFICIAL PUBLICATION

Fall Edition of the CASA (Not Quite) Quarterly

By Taya Sanford
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CASA Secretary

I've had the good fortune to serve as Secretary of CASA this past year. The best part of the job ('cuz who really likes taking board meeting minutes, right?) is putting together the CASA Quarterly. It takes some time to find people who are willing to contribute, but it's

well worth it when I get to meet (through email) such interesting members of our profession and read the wonderful pieces they write. Some of the articles in this edition will make you laugh and others may make you cry, but I hope all will peak your interest (and maybe inspire you to contribute an article yourself – wink, wink, nudge, nudge). Read on!

Message From the Chair

By Gail Feingold Giesen
Chief Staff Attorney (Retired)
Connecticut Supreme Court

As I write this on a brisk, but sunny, October day, I realize that this is my last Chair's Message. Writing this message represents, for me, another sign of letting go of "staff attorneyhood." As most of you know, I recently retired – so recently that I've only been retired for four days – after eighteen years as a staff attorney. In these uncertain financial times, I am fortunate to say that it was my choice to stop working, rather than a choice that was forced upon me. Nonetheless, it is bittersweet, because I'll miss my colleagues and the intellectual challenge of appellate work. I am excited, however, about the road ahead, and I look forward to travel

and volunteer work, both legal and otherwise.

With the AJEI Summit in Washington on the near horizon, my immediate goal is to help make it a really great seminar and a super experience for all of our members. By this time you have certainly received the Summit brochure, know about the AJEI website where you can get answers to your questions (just in case, here is it is: www.law.smu.edu/ajei) and, most importantly, have made your travel plans to D.C. I'll be arriving the day before the Summit begins to take care of odds and ends, such as stocking CASA's hospitality suite with good things to eat and drink. All staff attor-

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neys are welcome to visit the suite in the evening during the Summit. More details on that at registration. . .

On Friday, November 11th, we'll be having our Annual CASA Dinner and T-Shirt Exchange at a well-regarded French restaurant located within walking distance of the hotel. The T-Shirt Exchange is an old CASA tradition well-described several years back by Bill Lowe – long-standing member and past Chair – as follows:

“The T-Shirt Exchange harks back to the early days of Anglo-Saxon life. After trial by combat, early combatants would strip the armor from their downed and dying opponent, as a trophy. As the rule of law improved, and trial by combat fell into disfavor, the custom became one of ‘going through their pockets to look for loose change.’ Later, as courtroom trials became popular, although the

opponent was left clothed, a lawyer would frequently refer to having ‘taken his opponents to the cleaners.’ Now we come to the present era, in which a clothing exchange is just plain fun.” Well, even if Bill’s history is not quite accurate, he’s right that our T-Shirt Exchange is a fun way to encourage people to walk around and talk to other attendees. So, don’t forget to bring a T-shirt!

We will be having our annual business meeting over lunch on Saturday. That is the time when our new officers are inducted and it’s our only opportunity to meet with all of our members. As is customary, a sign-up sheet listing CASA committees will be circulated during the meeting. Please sign up – that is the best way to ensure that CASA continues to thrive and expand. See you at the Summit!

Please Join the American Bar Association’s Council of Appellate Staff Attorneys for the Annual Dinner and T-Shirt Exchange

Petit Plats Restaurant
2653 Connecticut Avenue, NW
Washington, DC 20008

(a short walk from the Omni Shoreham Hotel)
Friday, November 11, 2011, at 7:00 p.m.

\$50 per person
Cash Bar

Starter: Soup of the day, mesclun salad or mushroom medley ravioli

Entrée: Pan-seared salmon, free range roasted chicken, beef bourguignon or three-color vegetable lasagna

Dessert: crème brulee or floating island

Contempt of Court

By Judy White
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The 2010 AJEI Summit in Dallas provided many intriguing CLE topics designed for the appellate judiciary, staff attorneys, and practitioners. One of those programs, “Contempt of Court: A Lesson in Legal History & Ethics,” was presented by Mark Curriden, a legal affairs writer. Curriden told the tragic story of Ed Johnson, a black man wrongly convicted of the rape of Nevada Taylor, a white bookkeeper for a grocery store in downtown Chattanooga, Tennessee. Johnson’s case and subsequent court proceedings are the subject

of a book Curriden co-wrote with a prominent trial attorney in Chattanooga (1). This summary of Curriden’s presentation cannot begin to describe all the details of this heart-breaking story, and I commend the book to you.

Nevada Taylor got off work at six o’clock on January 23, 1906, and took a twenty-minute electric trolley ride to the local cemetery where she lived in a cottage with her father, the cemetery’s gatekeeper. As she reached the gate to the cemetery, she heard footsteps behind her. Someone grabbed Taylor from behind; the attacker said he would kill her if she screamed. The

attacker choked Taylor with a leather strap until she fell unconscious, threw her over the fence, and raped her. The attack was brutal. Taylor regained consciousness about 15 minutes later and ran to the cottage to tell her father. News spread quickly, and an article about the attack and subsequent investigation appeared in the newspapers daily. Needless to say, the townspeople were angry about the attack. It had occurred during a “crime wave” in Chattanooga, and people were “in an agitated mood.” (2)

Taylor was able to describe her attacker only generally. She

thought he was black. Sheriff Joseph F. Shipp led the investigation and found one lead: the leather strap used around Taylor's neck was left at the scene. There were no clues to identify the perpetrator, no identification from the victim, and no witnesses. And, of course, in the 1900s, there were no forensic tests that could be run on the leather strap. As the days passed without a suspect in custody, the reward grew to \$375, more than most of the area's citizens made in a year. Soon thereafter, a man told Sheriff Shipp that he had seen a black man fitting the general description that Taylor had given near the stop where Taylor got off the trolley; he saw the black man holding what appeared to be a leather strap. He identified Ed Johnson the next day as the man he saw at the trolley stop.

Sheriff Shipp arrested Johnson, and the district attorney charged him with Taylor's assault. Johnson did not finish fourth grade, was illiterate, and worked part-time at the Last Chance Saloon. He denied attacking Taylor and said he was working at the saloon that night. The saloon was miles away from the cemetery where Taylor was attacked, and several people saw him at the saloon that night. It also appeared that the man who identified Johnson had done so for the reward money. But none of that mattered; someone had to pay. On several occasions before the trial, mobs gathered at the jail attempting to lynch Johnson. Sheriff Shipp tried to observe the

rule of law, but also wanted to bring swift justice.

Johnson's trial was anything but fair. The sheriff had attempted to coerce Johnson into a confession, the state's witnesses were not credible, and Taylor could not swear that Johnson was her attacker. His court-appointed lawyers had never tried a criminal case before. Each time they tried to assert a right on Johnson's behalf, such as a change of venue, a motion for continuance, or a challenge to the array because all blacks had been excluded from the jury pool, they were told that if they did so, Johnson would be lynched. During Taylor's testimony, one of the jurors tried to attack and kill Johnson right then and there. All the while, Johnson maintained his innocence. Despite the evidence supporting Johnson's alibi and the dearth of evidence that he was the perpetrator, the jury convicted him and sentenced him to hang for the crime.

Johnson waived his right to appeal because he had been told the mob would lynch his family if he didn't. He was scheduled to hang in less than four weeks after his conviction. On the Saturday following Johnson's conviction on Friday, Johnson's father asked Noah Walter Parden, a black lawyer with an oratory gift, and his partner, Styles Hutchins, to represent Johnson on appeal. Parden and Hutchins had to file a motion for new trial within three days of the conviction to preserve their issues for appeal. They went to court on Monday to file the motion. The

trial judge told them that Johnson had waived his right to appeal, but Parden argued that Johnson had made that decision under duress. The judge told Parden and Hutchins to come back on Tuesday to file the motion because the prosecutor wasn't there on Monday. Parden reminded the judge that the three-day deadline would have expired by Tuesday. Someone in the courtroom said the judge never counted Sundays against a defendant and the judge seemed to nod in agreement. Relying on this, Parden and Hutchins left and returned the next day to file the motion for new trial. The prosecutor objected because the motion was not timely; the judge agreed. Realizing they had been tricked, Parden and Hutchins filed an emergency petition with the Tennessee Supreme Court seeking a stay of execution. The state's highest court denied relief.

Parden prepared a petition for writ of habeas corpus and filed it in the federal district court in Knoxville. He argued that Johnson had not received a fair trial, that he was facing an illegal sentence of death, and that his federal constitutional rights had been violated. Although the federal petition was authorized under the Habeas Corpus Act of 1867, no federal court or Congress had ever stated that any of the federal constitutional rights belonged to individuals. And the Supreme Court had held expressly that the Bill of Rights were not binding on state courts in criminal cases. The Fourteenth Amendment's right to

due process had been interpreted to require only three things: that the criminal charges be based on an existing law; that the trial be conducted as required under the state's procedural laws; and that the defendant be given an opportunity to be heard. The due process requirement was so weak and had been interpreted so narrowly that Parden had been unable to find a single case that reversed a state-court conviction in the previous forty years. The federal district judge denied Johnson's petition, concluding that even if everything Parden argued was true, the Sixth Amendment did not apply to state courts and he was without authority to intervene. He did, however, grant Johnson a ten-day stay of execution so he could appeal to the United States Supreme Court.

Many in Chattanooga were outraged by the federal judge's decision. How dare a federal court judge interfere in their state's business! Sheriff Shipp did not know whether to obey the stay of execution issued by the federal judge or the order setting the execution date issued by the state judge. Ultimately, the two judges together asked the governor of Tennessee to grant Johnson a brief reprieve to give his attorneys a chance to appeal. The governor granted a seven-day stay of execution.

Parden was the first black lawyer listed as lead lawyer on a case filed in the United States Supreme Court. He took the train to D.C.

and waited all day on a Saturday to present Johnson's petition. When he finally was brought into the conference room, he had ten minutes to present the petition to Associate Justice John Marshall Harlan. Parden explained that Johnson had not received a fair trial. And he told Justice Harlan that the evidence showed Johnson was actually innocent. Parden realized, however, that the Supreme Court had never before intervened in a state criminal case. When his ten minutes were up, Parden told Justice Harlan that Johnson had only seventy-two hours to live.

Parden rode the train back to Chattanooga on Sunday. On that same day, Justice Harlan notified Sheriff Shipp, the federal district judge, and the state judge by telegram that the Court would hear Johnson's appeal and that the execution was stayed, making Johnson a federal prisoner. Justice Harlan asked Sheriff Shipp to confirm that he had received the stay order. The Court's intervention was precedent-setting.

News about the stay spread on Monday. Once again, many were outraged by the Supreme Court's interference. A lynch mob gathered that night, broke into the jail, and dragged Johnson out of his cell to a bridge. Johnson told the crowd before they hanged him, "God bless you all. I am innocent." (3) As Johnson dangled from the bridge, the mob shot at him. One of the bullets must have hit the rope; Johnson's body fell to the bridge. He was shot again several times. Then someone

in the crowd pinned a note to Johnson's mutilated body: "To Justice Harlan. Come get your n[] now." (4) Evidence showed that Sheriff Shipp was aware a lynching was planned that night and not only did not try to stop it, but also aided it by sending all but one elderly deputy home that evening.

The justices on the Supreme Court learned about the lynching on Tuesday. Justices Harlan and Oliver Wendell Holmes issued statements condemning mob rule. President Theodore Roosevelt called the incident "contemptuous of the court" and "an affront to the highest tribunal in the land that cannot go by without proper action being taken." (5) But the federal officials decided to wait until the local investigation concluded before launching an investigation. Meanwhile, the justices concluded that regardless of any federal charges that might be brought against those involved, they would research and make recommendations about how to proceed against the sheriff, his deputies, and possibly members of the mob for contempt of court.

The local investigation led nowhere and no charges were brought. The United States Attorney General sent two secret service agents to investigate the lynching. After several weeks of interviewing witnesses with Parden's help, the agents filed a report outlining their investigation and the culpability of the sheriff, his deputies, and the mob. But the agents concluded it would be all but impossible to get convictions in a federal district court because of fear

and intimidation. So the Justice Department charged Sheriff Shipp, his deputies, and several members of the mob with contempt of court.

Meanwhile, Sheriff Shipp won reelection in Chattanooga by a landslide. Parden and his partner became outcasts in Chattanooga and were considered troublemakers. Eventually they moved to Atlanta.

On October 15, 1906, eight justices heard opening statements in the case, *United States v. Shipp*. (6) Parden and Hutchins sat at the prosecutor's table. The defendants argued the issue was one of federal rights versus states' rights; they argued the federal government did not have jurisdiction to determine their guilt or innocence. The justices unanimously disagreed with the defendants about the Court's jurisdiction and issued a preliminary decision in December 1906 stating the appeal would proceed. (7) They appointed a commissioner to hear the evidence and make an official record.

After all the evidence had been

presented, the Court set the case for oral argument. Each of the justices then reviewed over 2,200 pages of testimony involving nine defendants. In a 5-3 opinion issued on May 24, 1909, and authored by Chief Justice Melville W. Fuller, the Court found Sheriff Shipp, the elderly deputy, and four members of the mob guilty of contempt. Sheriff Shipp was among those who received the harshest sentence--90 days in prison. That same day, the Court dismissed Johnson's appeal stating, "Appeal abated by death of appellant..."

Sheriff Shipp served his time and returned to Chattanooga in early 1910, arriving by train to a hero's welcome. A statue was erected in his honor.

Curriden explained that in the decades that followed the *Johnson* and *Shipp* cases, "[n]early every single federal constitutional issue raised by Noah Parden and Styles Hutchins in their appeal of the Johnson case became legal precedent..." Those issues--such as ineffective assistance of counsel, a defendant's right to a fair and impartial trial, the right to

appeal a conviction, how community sentiment impacts the jury pool--presumably would have been decided in Johnson's case if he had not been lynched. Curriden also explained that the issues raised and precedents set by these cases "are just as historic and embedded in the American system of jurisprudence as more famous cases, such as *Roe v. Wade*, *Miranda v. Arizona*, or *Brown v. Board of Education*. Indeed, the rule of law and America's respect for it were established or certainly grounded in the *Johnson* litigation."

In February 2000, through the efforts of Curriden and others, the Chattanooga district court set aside Ed Johnson's conviction and dismissed the charges.

End Notes

(1) MARK A. CURRIDEN & LEROY PHILLIPS, JR., *CONTEMPT OF COURT: THE TURN-OF-THE-CENTURY LYNCHING THAT LAUNCHED A HUNDRED YEARS OF FEDERALISM* (1999).

(2) *Id.* at 30

(3) *Id.* at 213.

(4) *Id.* at 214.

(5) *Id.* at 223.

(6) 214 U.S. 386 (1909).

(7) 203 U.S. 563 (1906).

An Author in Our Midst

A Review of *Steam, Steel & Statutes: True Tales from Colorado Legal History*, by Frank Gibbard (Colorado Bar Association, CLE, 2010)

By Sharon Carroll
Library Technician
U.S. Court of Appeals Tenth Circuit

This unique and entertaining book is a compilation of "Historical Perspectives" columns published in *The Colorado Lawyer* from 2002 to 2010. Each column

offers a short vignette of a legal topic or of a case or person related to Colorado's legal history. The columns are organized into sections depending on their subject matter, such as the early history of Colorado courts or cases related to politics or religion. The section introductions

and most of the columns were written by Frank Gibbard, a staff attorney at the U.S. Court of Appeals for the Tenth Circuit in Denver. Other columns were written by Tom I. Romero, II, Jeffrey P. Kelson, Bill C. Berger, Robert M. Linz, and Claire E. Munger. With the intro-

ductions and a total of fifty columns, the book as a whole provides a unique and fascinating survey of Colorado's legal history, from the early days of frontier justice and miners' courts, which established early natural resource and property law, to the court system that exists today. What I found most interesting about this book is the way it weaves a tapestry of general history with threads of legal history and case information. Gold diggers, suffragettes, territorial judges, American Indians...all the typical western history characters come to life in a new way when presented from the perspective of the legal frontier they inhabited and the precedents many of them helped establish. And more contemporary individuals are presented as well, such as Captain Marlon Green, the first African-American commercial pilot, hired by Continental Airlines in 1964 after his civil rights case won on appeal at the U.S. Supreme Court.

The columns in this collection take law seriously, but are generally written in such a way that

they seem more like stories than legal analysis. A scan of their titles gives a hint to the intriguing and alluring approach many of them take, such as "Liquor and Dynamite: A One-Man Vice Crusade Yields to Explosive Results" and "From the Outhouse to the Courthouse: Keeping a Privy Private." Topics include the formation of the Tenth Circuit, the early history of Colorado's Court of Appeals, race relations, religious freedom, water law, politics, animal cruelty, and media law. The only disappointment is that some of the columns, at only a couple of pages in length, are too short – they introduce an area of law or a case, and then just as interest grows, they end. The book's preface describes the history of these columns – some of them are shorter than others because in the beginning they were used as space fillers. Later, due to reader interest, the Historical Perspectives column grew into a much longer, established feature piece appearing quarterly in the journal. But even with the shorter columns, the reader isn't left hanging. Each column gives references and sources that lead to further reading on the subject if a reader is inter-

ested in learning more. The section introductions also include a "For Further Reading" section that directs those interested to more information on the subject. Illustrations throughout the book round out the material visually.

The writing style of each of the columns' authors varies, and some are more engaging than others. All are well-researched, but some, especially those by Frank Gibbard and Tom Romero, bring their subject matter alive with colorful descriptions and rich details. Frank, especially, is a born storyteller, and the humor and historical detail in his introductions and columns make his writing so lively it seems to jump off the page at times. He is the best kind of history writer, one who makes history come alive and seem just as interesting and relevant today as it was in the past.

You might not expect a book of columns from *The Colorado Lawyer* to be a real page-turner, but this book was for me, and I highly recommend it as an entertaining introduction to legal history and as a fresh, new approach to western and Colorado history.

Susan Herman's Latest: *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford University Press 2011)

Susan N. Herman, a favorite speaker at CASA seminars, became president of the American Civil Liberties Union in 2008 after serving on its national board for twenty years. A constitutional scholar and chaired professor at Brooklyn Law School, she is the co-editor (with

Paul Finkelman) of *Terrorism, Government, and Law* and the author of *The Right to a Speedy and Public Trial*.

In her latest work, *Taking Liberties: The War on Terror and the Erosion of American Democracy*, Susan takes a hard look at the human and social

costs of the War on Terror. A decade after 9/11, it is far from clear that the government's hastily adopted antiterrorist tactics – such as the Patriot Act – are keeping us safe, but it is increasingly clear that these emergency measures in fact have the potential to

ravage our lives – and have already done just that to countless Americans.

From the Oregon lawyer falsely suspected of involvement with terrorism in Spain to the former University of Idaho football player arrested on the pretext that he was needed as a "material witness" (though he was never called to testify), this book is filled with unsettling stories of ordinary people caught in the government's dragnet. These are not just isolated mistakes in an otherwise sound program, but demonstrations of what can happen when our constitutional protections against

government abuse are abandoned. Whether it's running a chat room, contributing to a charity, or even urging a terrorist group to forego its violent tactics, activities that should be protected by the First Amendment can now lead to prosecution. Blacklists and watchlists keep people grounded at airports and strand American citizens abroad, although these lists are rife with errors – errors that cannot be challenged. National Security Letters allow the FBI to demand records about innocent people from libraries, financial institutions, and internet service providers without ever going to court. Government databanks now brim

with information about every aspect of our private lives, while efforts to mount legal challenges to these measures have been stymied.

Barack Obama, like George W. Bush, relies on secrecy and exaggerated claims of presidential prerogative to keep the courts and Congress from fully examining whether these laws and policies are constitutional, effective, or even counterproductive. Democracy itself is undermined. This book is a wake-up call for all Americans, who remain largely unaware of the post-9/11 surveillance regime's insidious and continuing growth.

(Review Courtesy of Amazon Books)

My Texas Experience

By Stacey M. Goldstein
Research Attorney to
Judge Michael E. Keasler
Texas Court of Criminal Appeals

Perhaps I should have the bumper sticker that features the popular slogan, "I wasn't born in Texas, but I got here as fast as I could." But I never imagined that I would be living in Texas or that I would end up working for the highest criminal court in Texas – the Texas Court of Criminal Appeals. I grew up in Pittsburgh, Pennsylvania, and following the path of my grandfather and step-father, attended the University of Pittsburgh School of Law. From the perspective of a northeasterner, Texas was a place primarily defined by the show "Dallas" – accent, big hair, boots, and cowboy hats – and the clichéd mantra, "Don't mess with Texas." Yet with

my graduation from law school approaching, I realized, for the first time in years, that I didn't have any commitments and was free to try something new. My sense of adventure and desire for independence led me to plan for a drastic life change. On my graduation weekend, I hit the road with a car full of necessities and moved to Austin.

I had always wanted a career in public service and was passionate about criminal law, and eventually I landed my first job as an attorney with the Texas Attorney General's Office in the post conviction litigation division, defending non-death-penalty state-court convictions in federal court.

About a year or so in, I encountered a "This could only exist in Texas" character – a tyrannical

rogue federal magistrate judge who had a reputation of putting attorneys in the pokey to achieve his desired result, even when it was contrary to the law. This judge – who will remain anonymous, but we'll say hangs his hat somewhere along the Rio Grande – attempted to pressure my co-worker and me into waiving a procedural issue and agreeing to litigate a prisoner's non-cognizable claim at an evidentiary hearing. It was clear that we were very green and lacked any authority to comply with his request. Nevertheless, the judge was irate, and he unreasonably concluded that he would hold someone accountable. Immediately, he issued an order for a second hearing, and this time, he directed my section chief to appear with me. He denied two motions to cancel the

hearing. Knowing this judge's reputation, we included a third attorney in the travel plans, who would file an application for a writ of habeas corpus in the Fifth Circuit in the very likely event that my division chief and I were placed in lock-up. I could not bear the thought of being stuck in a cell with my division chief: a man responsible for the creation of the "doomsday" book – an ever growing notebook full of his emails (always written in ALL CAPS with bolding and underlining to boot) that contained every mistake made – and not to be repeated – by the division's attorneys. All I could think was, "How did I get myself into this mess?" The judge finally relented and cancelled the hearing on the eve of a hurricane that was headed for the Texas coast. Fortunately, he never rescheduled it, and the case was eventually disposed of without further incident.

Despite this ordeal, I loved working at the AG's Office. I learned so much, and my co-workers were great mentors and friends, though known to have a twisted sense of humor at times. One April Fool's Day (so I should have seen it coming) a few of my co-workers, including my infamous division chief, handed me a show cause order, bearing the signature of one of the strictest and most intimidating district court judges, that directed me to appear in court to explain a late filing. It wasn't until the tears started rolling (in violation of my no crying at work rule) that they revealed the farce.

I joined the writ section of the

Texas Court of Criminal Appeals' central staff after a co-worker from the AG's Office, who joined the Court's central staff months earlier, urged me to apply. The Court is comprised of nine elected judges, who are elected to staggered six-year terms. The Court's central staff is comprised of seventeen attorneys and is headed by the Court's general counsel. The central staff is divided into three sections – the writ section, the capital section, and the petitions for discretionary review (the analogue to a writ of certiorari in the U.S. Supreme Court) section. Most of the central staff attorneys have been in their positions for years, and each attorney is regarded by the Court to be an expert in his or her particular area. By giving a recommendation as to how the Court should proceed, the staff attorneys generally are the first to deal with the cases. The cases are then randomly assigned to the judges, and it is the judges' responsibility to call up cases for Monday conferences as required by the Court's internal rules.

As a staff attorney, I provided a written analysis of claims raised in state applications for writs of habeas corpus for the Court. My thinking shifted in an instant. Suddenly, I was no longer an advocate. It was my duty to make the best recommendation for the Court. At times, pleasing all nine judges proved to be impossible. But once again, I was fortunate to be surrounded by a great group of co-workers. The Court's staff shares a unique bond by virtue of the fact

that all of the Court's work is privileged and can only be discussed internally. I was also pleasantly surprised about how relaxed and informal the work-environment was. All of the attorneys, and even the judges, have an open-door policy so that legal issues can be discussed and debated. But the greatest advantage of working at the Court is the opportunity to get to know the judges and benefit from their insight and knowledge in a way that outsiders will never experience.

My perspective shifted again, when, after about a year and a half on central staff, I became Judge Michael Keasler's research attorney (or permanent clerk). Each judge has a permanent attorney and a briefing attorney (or one-year clerk), usually a recent law-school graduate. Before becoming a trial judge, Judge Keasler, a Texas native, began his career as a prosecutor in Dallas for then-District Attorney Henry Wade. We just celebrated Judge Keasler's thirtieth anniversary on the bench, with the past thirteen years on the Texas Court of Criminal Appeals. Judge Keasler and his secretary Laura (a genuine Texan, complete with big hair and accent (and sometimes boots), who I kindly refer to as my office spouse, certainly bring a Texas flair to the office that never ceases to entertain me. My, "This case is a mess!" is Judge's exasperated, "This is more mixed up than a stray dog's breakfast." And then there's one of my favorite critiques, "All hat, no cattle," which means that something or someone is all show without any

substance. When engaging in our usual inter-office banter, these sayings usually stop me cold – I need to have these sayings translated.

I am now in my seventh year with Judge Keasler, having survived one election. Each judge's chambers runs differently, but in working for my judge, I am responsible for drafting majority, concurring, and dissenting opinions, statements, and orders, reviewing all of the other judges' opinions, statements, and orders, and reviewing all the central staff recommendations. The last of these duties has proven to be the most awkward at times. Having come from the writ section, I am a stickler when reviewing writ work-ups and my comments are not always appreciated among the writ staff. Most of the time this tension is in jest, though a few years ago, near Halloween, in the central staff office space, I discovered a witch

figurine hanging from a noose tacked with a sticky note displaying my name. It was easy to attribute this to the newest member of the writ section (as well as a good friend) who had also been involved in the April Fools' Day antics at the AG's Office.

Nationally and in the state of Texas, the Texas Court of Criminal Appeals has been the subject of criticism over the years, which has only served to further the stereotype that Texas has a backwards sense of justice. But I am sure that any court attorney can appreciate the fact that media reports often miss important legal nuances on critical, determinative issues. Through my experience at the Court, I know that the judges and the staff are extremely conscientious and hard-working.

I have been in Texas ten years now, and I have grown personally and professionally from my experiences here (which are probably far less uncommon than I think). I can

enthusiastically say that I am proud to be a Texan and that it is a privilege to work for the Court. While writing this article, I have learned that my perspective of the Court is about to dramatically change. I have accepted a position with the Texas State Prosecuting Attorney, whose primary practice is before the Court of Criminal Appeals. I am looking forward to the new challenges ahead as an advocate, and I am sure that my first oral argument before the Court will be surreal. But my excitement is tempered by the reality that I will not be able to continue to have the same relationship with the Court and the staff.

On a final note, I must share my favorite writ attorney's response to my departure: "Ding-dong! The witch is dead."

Collected CASA Thoughts

By Susan Dautel
Assistant Deputy Clerk
New York State Court of Appeals
CASA Chair-Elect

First, please welcome our newest (and youngest!) CASA member. CASA Executive Board member Rachel Zahniser of the U.S. Court of Appeals for the 6th Circuit, gave birth to baby Robert on September 9, 2011. Robert must be as organized and efficient as his mother because he arrived right on his due date! We're hoping to see the whole family at the upcoming D.C. Summit. Congratulations,

Rachel!

Next, I am proud to report that I took advantage of the ABA Public Service Group Membership program, and formed a group for the New York State Court of Appeals last August. Judges and staff attorneys joined the ABA through this group for an annual fee of \$105 each, which also includes membership in the Judicial Division, the Appellate Judges Conference, and the Council of Appellate Staff attorneys. Everyone was interested in this deeply-discounted ABA member-

ship deal. I will be administrator for the group, which appears to be an easy task. I heartily recommend investigating this opportunity for your court. Contact JD Communications Specialist Jo Ann Saringer (joann.saringer@americanbar.org). And I'd be happy to chat with anyone about the process I went through to get my Court set up. It's easy and you'll be a hero to those enjoying the new group rate. Contact me at sdautel@courts.state.ny.us.

It's fun when different parts of

your world come together in interesting ways. At the New York State Court of Appeals, we are celebrating the fact that, in a courtroom filled with 120 portraits of our Judges through the years (starting with New York's first Chief Justice, John Jay, and including others such as Benjamin Cardozo), the very first portrait of a woman was unveiled this year. Now hanging is a beautiful portrait of our most-recently retired Chief Judge, Judith S. Kaye, dressed in her trademark red (complementing the red in John Jay's robe, by the way). Our local women's bar association decided to celebrate the portrait and honor New York's former chief judge with a ceremony and continuing legal education event on October 14, 2011. In thinking of possible speakers for a segment about the writings of Judge Kaye, I reached out to one of CASA's favorite speakers, Susan Herman, professor at Brooklyn Law School and now president of the American Civil Liberties Union. Susan was in the middle of a national book tour for her recently

published book *Taking Liberties: The War on Terror and the Erosion of American Democracy*, but her publisher was able to squeeze in an additional book promotion event in the Albany area (fascinating talk and book signing which I attended) so that Susan would be available to speak at our event, too. I am now in the middle of Susan's book, and highly recommend it as way of reflecting on the upcoming 10th anniversary of the passage of the US PATRIOT Act and its ramifications.

I am so looking forward to attending the D.C. Summit – reconnecting with old CASA friends and meeting more of our members. The Friday night CASA dinner will be at a wonderful French restaurant, Les Plats, which is in a charming row house in walking distance from our hotel. Just before dinner will be the T-shirt exchange, a CASA tradition, used as a mixer and ice-breaker – checking out the T-shirts draped on someone's back is really just an excuse to introduce yourself and have something silly to chat about – the shirts! I remember being confused and apprehensive about

"the T-shirt thing" at my first CASA conference. Now I love it as a way for us to get acquainted in a light-hearted setting. So, don't be shy – bring a shirt and get ready to greet your fellow CASA members by taking the shirt off their backs!

We are pleased to have been able to offer scholarship funds through AJEI and some additional reimbursement funds through the Appellate Judges Conference for those attending this year's Summit. It is another CASA tradition that recipients of such funds write an article for this newsletter after the Summit. The article may be on any topic of the writer's choosing – related to such things as your court, your job, your hobbies, your travels, or summarizing one of the Summit sessions that you attended. So, if you have been awarded funds for the D.C. Summit, you might want to think about article possibilities. The person taking over as Secretary and CQ Editor in November will be looking for your help as the next issues are in process.

See you in D.C.!

An Insider's Guide to Washington, D.C.

By Taye Sanford
Supervising Staff Attorney
U.S. Court of Appeals, Tenth Circuit
CASA Secretary

There are plenty of guidebooks on Washington, D.C., but it's always better to get recommendations from someone who lives there. So I asked some of our colleagues in D.C. for their advice on where to go, what to

see, and (most importantly!) where to eat when we hit town for the Summit in November. Here's the scoop:

[From Clark Price, Staff Attorney, U.S. Court of Appeals for the Armed Forces](#)

The Omni Shoreham Hotel is close to the **Woodley Park Metro**

station so it will be easy to move around the city on the subway. One tip on riding the Metro: although it is a wonderful mass transit system, one cannot rely on working escalators, and in the deepest stations, that means you climb a steep hill or try to find the elevator to street level. In most stations, it is not a big problem.

The **National Zoo** is a short walk from the hotel up Connecticut Avenue and is certainly worth the effort especially since there is no admission charge. However, in November, the animal exhibits close at 4:30 PM, so plan accordingly. Lots of interesting shops, cafes, etc. up and down Connecticut Ave but I don't know enough about any of them to give a specific recommendation.

Forget about trying to get into the **White House** unless you have connections with the occupants. If you have never seen the **Capitol** or the **Supreme Court** I strongly recommend taking a tour as suggested in the conference agenda for Friday afternoon. They are co-located on First Street NE and can be reached by Metro on the Red Line to Union Station (then walk about half mile) or on the Blue or Orange Line to Capitol South (then walk about half mile). If you do go over that way, try my favorite restaurant in the city, **Tortilla Coast**, 400 First Street SE, just below the Capitol South stop. It is not fancy and not expensive but has great Mexican food and nice ambience. I have never had to wait more than 10 minutes for a table and the service is excellent.

From Jason Oller, Staff Attorney, U.S. Court of Appeals for the Armed Services

For nightlife and the best restaurants, I suggest **Gallery Place-Chinatown** (Red Line). Places of interest include: **Nando's** (excellent Portuguese-style

chicken); **Chophouse and Brewery** (classic American executed well); **Oyamel Cocina Mexicana** (fancy, pricey, but tasty); **Matchbox** (wood-fired pizza); and **RFD** (a huge selection of beers). All locations are on or extremely close to 7th St, which is the primary street for Gallery-Place Chinatown.

If you are looking for a laid back experience that still retains that great city ambience, then I recommend my backyard, **Cleveland Park** (Red Line). The restaurants in Cleveland Park span the food spectrum from Vietnamese to Greek to Mexican. Places of interest include: **Siam House** and **Paragon Thai** (fairly good Thai); **Dino** and **Palena** (a little expensive, but great Italian); **Cleveland Park Bar and Grill** (an upstairs, outdoor patio with a number of TVs); **Indique** (wonderful Indian food); and **Medium Rare** (a great steak).

For shopping, I recommend Metro Center (Red/Blue/Orange Line), Friendship Heights (Red Line), or Pentagon City (Blue/Yellow line). **Metro Center** has number of shops spread out over a number of blocks. Metro Center is also located near Gordon Biersch Brewery and Capitol City Brewing Company, which are two of the best breweries that I have found in DC. **Friendship Heights** is similar to Metro Center, but the shops tend to be a little higher end, e.g., Louis Vuitton, Saks Fifth Avenue, etc. **Pentagon City** is the classic large mall and everything that en-

tails.

Finally, I offer a word of caution. Whereas as every place noted above is not more than a few blocks from a metro station, **Georgetown** is not. Although Georgetown is an excellent part of DC with exceptional architecture, fascinating history, and restaurants that overlook the Potomac, it will require either a cab ride or a solid walk from the **Foggy Bottom Metro**. So, be prepared if you cannot resist the allure of **Georgetown Cupcake** (also tasty).

From Lt. Daniel LaPenta, Appellate Defense Counsel, Navy-Marine Corps Appellate Review Activity

With locations in Capitol Hill and Chinatown, **Matchbox** always delivers a good meal and fun atmosphere. I've only ventured to my neighborhood 8th street Capitol Hill location (by the Eastern Market metro), but I've never been disappointed. They don't take reservations, and it's usually packed (sign of a good place), so if you're going at a peak time, plan to grab a drink (or two) at the bar. When you get to your seat, there's much to choose from. The salads are great – try the apple pear salad. They do offer a good selection of dinner entrées, but it's tough to pass up their specialty pizzas – the Q Special and Spicy Meatball are delicious. With a group, I've often combined the mini-burgers with a salad and some pizza. But be sure to save some room for desert, the coffee & doughnuts are sneakily the



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Nominees For CASA'S 2012 Executive Board

The Nominating Committee of C SA is proud to present the list of nominees for the 2012 CASA Executive Board. Members of the Nominating Committee are Susan Dautel, Naomi Godfrey, Peter Stevens, Bill Thompson, and Holly Freed. As you may recall, the Committee first solicited nominees from our membership. Thereafter, we contacted the ABA to determine which of the nominees were current members. We then contacted all nominees who were current ABA/CASA members about whether they were willing to serve in the capacity for which they were nominated. Only one position has multiple candidates, i.e., member-at-large (federal) - 1st year. According to the CASA by-laws, the selection of this position will be by written ballot and shall proceed separately from the election of officers. For all officers, the election will be held by a single vote on the slate of candidates. The election will be held at our annual meeting in Washington, DC in November. A short biography of each nominee will be made available to all members prior to the annual meeting.

List of Nominees

Chair

Susan Dautel (New York State Court of Appeals)

Immediate Past Chair

Naomi Godfrey (US Court of Appeals, 11th Circuit)

Chair Elect

Taye Sanford (US Court of Appeals, 10th Circuit)

Secretary

Janice Irving (Louisiana Court of Appeals, 1st Circuit)

Members-at-Large - 2nd Year

Rachel Zahniser (US Court Appeals, 6th Circuit)

Peter Stevens (Louisiana Court of Appeals, 3th Circuit)

Kembra Smith (US Court of Appeals, 11th Circuit)

Gray Proctor (US Court of Appeals, 4th Circuit)

Members-at-Large (AState) - 1st Year

Dalila Patton (US Virgin Islands Supreme Court)

Geoff Davis (Indiana Supreme Court)

Members-at-Large (Federal) - 1st Year

select one

Teresa Malone (US Court of Appeals, 11th Circuit)

Bruce Vail (US Court of Appeals, 11th Circuit)

Kembra Smith (US Court of Appeals, 11th Circuit)

Gray Proctor (US Court of Appeals, 4th Circuit)

(continued from page 11) best thing on the menu. **Ted's Bulletin** down the street (same owner) is also great for burgers (try the peanut butter bacon burger), and they have nice cocktails, which include adult milkshakes.