

# CASA CHRONICLES

SUMMER 2018 | COUNCIL OF APPELLATE STAFF ATTORNEYS OFFICIAL PUBLICATION | WWW.AMBAR.ORG/AJCCASA

## MESSAGE FROM THE CHAIR

Joe Merrick

Indiana Court of Appeals

Thank you for supporting CASA, the ABA's home for attorneys who work for appellate courts. Whether you work for a judge, in an administrator's office, or for a clerk of a court, I hope you have found CASA to be welcoming and useful.

It's been a busy year so far, with more work to come, so there are plenty of opportunities to get involved. CASA has historically focused its efforts on two annual



projects: the ABA's Judicial Clerkship Program (JCP) and a summit produced by the Appellate Judges Educational Institute (AJEI).

The JCP is intended to encourage people from populations that have been underrepresented in the judiciary to consider careers as law clerks and judges. The JCP also encourages judges to hire clerks from a diverse pool of applicants. Each spring, judicial volunteers and law students from around the nation spend several days working on a fictional case to simulate the work that clerks perform. There are also numerous opportunities

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## Beaches, Property Owners, and the Public's Right of Access: The Indiana Supreme Court Wades In

Joe Merrick

Indiana Court of Appeals

Summer has arrived, and many of us are enjoying (or dreaming of) beach vacations. The Indiana Supreme Court recently decided *Gunderson v. Indiana Department of Natural Resources*, 90 N.E.3d 1171 (Ind. 2018), a case which is relevant to beach life and will be of interest to those working on seashore or lakeshore access issues, or those who are interested in ancient precedents.

The northwestern corner of Indiana borders Lake Michigan for about fifty miles. Indiana's coastline includes

heavy industry near the Illinois border, beautiful parks in the middle, and residential areas near the Michigan border.

One residential area, the Town of Long Beach, was the focus of *Gunderson*. The Gundersons owned property along Lake Michigan in Long Beach. Long Beach passed an ordinance setting administrative boundaries, and the Gundersons objected. They claimed that their property included the beach all the way to the water's edge, and the Town's boundary lines infringed upon their property rights.

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to get to know the judges and students. I volunteered at this year's JCP in Chicago, and I'm grateful to the ABA staff who made this year's program a success. Please consider volunteering for next year's JCP (date and location TBA).

AJEI is part of Duke Law School's Bolch Judicial Institute, but the members of the ABA's Appellate Judges Conference (of which CASA is a subgroup) are heavily involved in planning the AJEI summit. In my humble opinion, the summit is the best nationwide CLE in the country. There's something for everyone who works on appellate matters, from judges to staff attorneys and clerks to appellate practitioners. Practical writing tips, information about the latest judicial decisions, and inspiring speakers are always on the agenda. Every year, CASA members participate in selecting and organizing several presentations for the summit, and it is a fun way to meet your fellow staff attorneys, judges, and practitioners from around the country.

This year's summit will be held in Atlanta, Georgia on November 8-11. Highlights include a preview of the upcoming Supreme Court term, a presentation on AI, and a discussion of discretionary appellate review. Please check [www.judicialstudies.duke.edu/ajei](http://www.judicialstudies.duke.edu/ajei) for registration information. In addition, CASA always holds one of its biannual meetings at the summit, so please stop by if you are attending.

On a different topic, how long has it been since you looked up the benefits that the ABA provides to its members? I encourage you to visit the ABA website ([www.americanbar.org](http://www.americanbar.org)) to investigate the discounts. There's good stuff, including discounts on car rentals, appliances, and computers.

If you have any questions or would like to share ideas with fellow CASA members, please join our online community (ABA Connect) through the ABA website. Also, feel free to contact me at [joe.merrick@courts.in.gov](mailto:joe.merrick@courts.in.gov).

*Continued from page 1: Beaches, Property Owners, and the Public's Right of Access: The Indiana Supreme Court Wades In*

Informal attempts to resolve the dispute failed, and the Gundersons sued the State of Indiana, seeking a declaratory judgment describing the extent of their property rights. The parties agreed that the State held title to the shore of Lake Michigan's land up to the ordinary high-water mark (OHWM), but they disagreed as to the OHWM's location. The Gundersons claimed it was located where the water met the land at any given moment, and the State argued the OHWM was further inland, including some exposed shore. The core issue in the case will be familiar to many of you: do beachfront property owners have the right to control public access to the beach?

In a decision referencing English common law, United States Supreme Court decisions from the 1800s, the

Northwest Ordinance of 1787, and federal land patents, the Indiana Supreme Court determined that the OHWM includes some exposed shore. The court further determined the public has a right of access to the land below the OHWM for walking, at least, leaving it to Indiana's General Assembly to decide whether public use rights on beaches should be further enlarged.

Based on the holding in *Gunderson*, if you visit Indiana's Lake Michigan shoreline, you can enjoy a lovely summer stroll along the shore for many miles. I hope you find the case to be of interest and that you find time to visit Indiana's beaches. If you have any questions or comments, you can reach me at [joe.merrick@courts.in.gov](mailto:joe.merrick@courts.in.gov) or through [CASA's Community page](#) within [JD Connect](#).

## CASA November 4, 2017 Meeting minutes

- Frank Gibbard called the meeting to order at 12:20 p.m. Board members Cliffie Wesson, Joe Merrick, Christina Smith, Ric Schickele, Frank Gibbard, and Tray Owen were present. Elizabeth Ryan and Brenda Gallagher attended by phone.
- 1) The Board voted to approve the minutes of the February 2017 Board Meeting.
- 2) Frank Gibbard presented the Chair's report:
- 49 members of CASA were present at the AJEI Summit. Slightly less than normal.
- The Judicial Clerkship Program, which recruits minority law students, will be held in Chicago at the Judicial Division Conclave in April 2018 rather than at the ABA Mid-Year Meeting in February because many students cannot afford to travel to Vancouver. The AJEI, AJC, and CASA board meetings will also be held in Chicago in April rather than in Vancouver.
- The CASA list serve has been reactivated.
- The chair requested Contributions to the CASA Chronicles newsletter.
- CASA also participated in career panels at Loyola and UCLA Law Schools.
- 3) Judge Ann Breen-Greco, Chair of the Judicial Division, presented the JD Chair's report:
- JD Chair's theme for the year is "Fostering creative collaborative leadership globally to ensure fairness in justice systems."
- Focus on UN declaration of the international decade of people of African decent.
- Judicial outreach week -going out to the schools. Place for everyone in judicial outreach.
- Disaster relief – how can JD assist judges in disaster areas?
- Conclave in Chicago – education program for trial judges is the focus
- Judicial Clerkship Program – 6 law schools in Chicago to participate
- 4) Denise Dempsey, CASA staff representative, presented the conference unit report:
- Director Peter Koelling left at end of April. Tori Jo Wible is the new Director
- 5) Ric Schickele and Cliffie Wesson presented the Education Committee Report:
- CASA sponsored 7 events at this year's AJEI summit
- Explained the AJEI Education Committee process
- Requested topic suggestions
- The AJEI on-site planning meeting will be held in January in Atlanta.
- 6) Joe Merrick presented the long range planning report:
- Attended Spring planning meeting where all the chairs meet and discuss the JD plans for year.
- Participated in Judicial Clerkship planning committee.
- 6) Tray Owen presented the Secretary's report:
- Thanked all the contributors for the excellent CASA Chronicles articles. Thanked Denise and the staff for their assistance. Requested articles for the upcoming CASA Chronicles.

7) The Membership Chair was not available, so the Chair deferred her report.

8) Christina Smith introduced the slate of candidates for election to Board:

Chair - Joe Merrick

Chair Elect - Ric Schickele

Secretary - Elizabeth Ryan

Members-at-large - Brenda Gallagher (2<sup>nd</sup> Year), Tray Owen (2<sup>nd</sup> Year), Cliffie Wesson (1<sup>st</sup> Year (again)), and Jeremiah Morgan (1<sup>st</sup> Year)

Immediate Past Chair – Frank Gibbard

No nominations were received from the floor.

The new board was elected by unanimous acclamation.

Frank Gibbard handed the gavel to Joe Merrick

9) Joe Merrick gave thanks to past board for all of their work, especially Frank, and presented Frank Gibbard a mahogany compass and bass strings.

10) Joe Merrick appointed Susan Dautel and Cliffie Wesson co-chairs of the education committee.

Encouraged recruiting new members, mentioned group membership deals

11) The 2018 AJEI will be in Atlanta, need program ideas.

The 2019 AJEI will be in Washington DC; AJEI returns to DC every 3 years

The meeting adjourned at 1:20 p.m.



(L-R) Tray Owen, Ric Schickele, Joe Merrick, Frank Gibbard, Cliffie Wesson, and Jeremiah Morgan.

## Colorado Mountain Winefest

*By Frank Gibbard*

A few years ago, my wife and I began attending wine festivals in various Western states. Most of these festivals take place in September, which also happens to be my birth month, so we can celebrate my birthday at the same time. Although we have attended festivals in New Mexico, Texas, and Denver, and toured wineries in California, our favorite wine festival is the Colorado Mountain Winefest in Palisade, Colorado. We have been there several times.

Palisade is located on Colorado's western slope, in an area of high mesas and red rocks, known for growing fruit including cherries, peaches, and of course wine grapes. The alternating cool and warm weather and dry climate produces good grapes for making wine. The local wineries began presenting their wines at the Winefest in 1991.

According to their website, Colorado Mountain Winefest was recently voted the Best Wine Festival in the U.S.A. through USA Today. Some of the things that make this wine festival special are the excursions and events, including winery tours, chocolate pairings, wine and painting events, and educational seminars. There are cooking classes and classes on how to read a wine label, for example. There is a sound stage with live music and many food vendors. There is also a grape stomp!

If you have never been to a wine festival before, here's what you can expect. You purchase a ticket that allows you unlimited wine sampling throughout the day. (Non-drinker tickets are also available for minors, designated drivers, or people who just aren't interested in drinking.) You are issued a commemorative glass you can use throughout the day. There are many local wineries represented at the festival, each of whom brings several dif-

ferent wines to taste. If you like a particular wine, you can usually also purchase a glass of it, or a bottle to take with you. In addition to traditional red and white wines, some vendors sell some rather exotic fruit-based wines, mead, port wine, and hard cider. My favorite recent non-wine drink was pumpkin hard cider. I brought some home for Halloween.

Buses are available to transport you to and from the event from local hotels, so no one from the festival needs to be out on the road before or after the event. If you are feeling particularly adventurous and have a designated driver, you might stay at the historic Wine Country Inn near Grand Junction. Wherever you stay, if you enjoy good wine you are likely to have a great time at the Colorado Mountain Winefest.



## The Value of Youth Court

By Brenda Gallagher

Staff Attorney, U.S. Court of Appeals, Sixth Circuit

Youth Court in Hamilton County, Ohio, is an early intervention program for first-time juvenile offenders who have committed low-level misdemeanors, such as shoplifting, fighting at school, violating curfew, obstructing official business, resisting arrest, and vandalism. This diversion program offers these teens the chance to pay back the community for their mistakes while training local teenagers to serve as jurors and to address real-life circumstances of their peers. In Hamilton County, the process is similar to a sentencing hearing. Once a youth (referred to as a “respondent” in Youth Court) is charged with an offense and admits to guilt, the juvenile may choose to face a jury of teenage peers to decide their punishment (called a “sanction”). If the respondent completes the sanction within the allotted time, the respondent’s record is sealed. The entire process is strictly confidential.



The hearings take place in a courtroom guarded by security personnel at Hamilton County’s Youth Center (which houses the detention facility), and this setting exudes seriousness and legitimacy. A parent or guardian must accompany the respondent and be present throughout the process. Law students from the University of Cincinnati Law School and Northern Kentucky University’s Chase College of Law act as defense counsel for the respondents and also play the roles of prosecutor and bailiff. Area attorneys volunteer to sit as judges, but only to direct the hearing process, clarify the Youth Court rules, and mediate discussion among the jurors during their deliberations. Although the prosecutor and defense

counsel end their presentations with a recommended sanction, the final sanction is left entirely up to the jury, as long as it falls within the parameters of Juvenile Court and Youth Court policy.

At the hearing, a respondent is given the opportunity to make a statement to the jury, and the jurors may ask the respondent and the parent or guardian questions. After the hearing is completed and the sanction is announced, the jurors often add words of encouragement and support if they see that a respondent is truly remorseful and has already made positive changes, such as avoiding peers who may have negatively influenced them to commit the offense. The sanctions usually consist of community service, a reflection letter on a topic relevant to the offense, or a letter of apology to the victim or family member. However, juries have imposed more stringent sanctions such as house arrest under the parent or guardian’s supervision, a temporary loss of driving privileges, or denial of access to a cell phone. Jurors sometimes invite respondents to return to Youth Court to serve as jurors themselves.

The law students maintain a respectful and caring environment for these young offenders. To better understand the circumstances, both defense and prosecutor conference with each respondent prior to the hearing and inquire about the respondent’s family and home life, after-school summer jobs, any involvement in sports or clubs at school, responsibilities at home (e.g., caring for younger siblings), or possible aspirations of enrolling into a certain college or academic program after graduating. We are able to refer any case to Juvenile Court’s Department of Behavioral Services if a parent sees the need for additional help and counseling.

Remarkable interaction and learning takes place at these hearings. The jurors, who hail from several area private

and public high schools, are genuinely concerned about why the respondents committed the offenses and what really happened. These teen peers seek to understand everything that the respondents may not have been able to explain to the arresting officer. It is powerful for the respondents to experience a group of teens who listen carefully to their stories—in a non-judgmental manner—and ask: “Are you still hanging out with those same friends?” “Why did you do it?” “Who made the actual decision to leave the store without paying?” “Were you the one driving when you were out beyond curfew?” “How long had you known that person before you started fighting with them at school?” “Could you have avoided the fight?” “What punishment were you given at home?” The respondent’s answers to these questions always seem to factor into the severity of the sanction.

The premise of Youth Court is grounded in studies showing that positive peer pressure is much more effective than lectures from teachers and parents. Simply put, teens listen to other teens. There are now more than 1,800 similar diversion programs in the United States and these programs have succeeded in diverting thousands of teens from the juvenile justice system and reducing recidivism among this group.

Although Hamilton County had a similar “Teen Court” several years ago, a local attorney, Katie Miltner, fashioned the current version in 2014 as part of her class project with the Cincinnati Academy of Leadership for Lawyers (CALL), sponsored by the Cincinnati Bar Association. Katie drew from her experience with a Youth Court in Philadelphia, where she also coached high school mock trial. My co-coordinator, Ryan Ragland, is a trial attorney with the Hamilton County Public Defenders office and was a high school juror in the county’s first version of Youth Court, inspiring her to pursue a legal career.

After reviewing the many thoughtful reflection essays and letters of apology that were assigned as sanctions, I am convinced that our program has had a significant impact on the great majority of the respondents. I am also certain that the participating law students, who routinely demonstrate their sincerity and professionalism, will be more caring and compassionate attorneys in the future. The high school jurors get a practical civics lesson by participating in these real life cases. My time is well-spent for such a great return.

Judge John M. Williams, Administrative Judge for the Hamilton County Juvenile Court, fully supports Youth Court as one of his court’s approved diversion programs, and his staff provides us with qualifying cases. With this support, along with the financial support of the Cincinnati Bar Foundation and the contribution of time from all of the talented volunteers, Youth Court will continue to thrive and provide a valuable service to the youth of Hamilton County.

## **CASA Chronicle Call for Articles**

Interested in writing an article for submitting a CASA related photo for the next issue of CASA Chronicle?

Contact Editor Elizabeth Ryan at  
[Elizabeth.Ryan@tncourts.gov](mailto:Elizabeth.Ryan@tncourts.gov).

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## 2018 Appellate Judges Education Institute Summit

November 8 – 11 | Atlanta, Georgia

Registration is now open for the 2018 Appellate Judges Education Institute Summit. Register by September 30, 2018 for early-bird rates.

Learn more at:

<https://judicialstudies.duke.edu/ajei/2018-summit/>

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