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CASA Official Publication

*Spring 2008*

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PHOENIX, ARIZONA  
SITE OF THE APPELLATE JUDGES EDUCATION INSTITUTE 2008 SUMMIT  
November 13 - 16, 2008

Phoenix is the 5th largest city in the United States and the largest in the Southwest. It is located in the middle of Arizona on the banks of the Salt River. The people of Phoenix are called Phoenicians. Phoenix has an arid, or desert-like, climate and offers great sports, recreation, arts, culture, dining, and lodging. Go to [phoenix.gov](http://phoenix.gov) to learn more about this great city and to plan your fall visit.

**The 2008 Summit - Fun In the Sun in Phoenix**

by Gail F. Giesen

*Connecticut Supreme Court and Court of Appeals*

Since my article in the last edition of CQ, the AJEI Program Committee and the CASA Education Committee have nearly completed the programming line-up for the 2008 Summit for Appellate Judges, Lawyers and Staff Attorneys. We will begin the Summit on Thursday, November 13, with three outstanding sessions. At noon, Professor (soon-to-be-Dean) Erwin Chemerinsky will kick-off the conference with his ever-popular "Supreme Court Update for Staff Attorneys – Civil." In the second session, we are honored that Justice Sandra Day O'Connor will be joining us to speak on "The Role of Law in Challenging Times." Then we will end the first day of programming with Professor Chemerinsky and Professor Marci Hamilton discussing the topic "When Religious Practices Conflict with the Law." On Thursday evening, conference attendees and guests are invited to attend a reception at the beautiful Desert Botanical Garden.

The sessions on Friday, Saturday and Sunday (November 14-16) will include long-time CASA favorites Professor Linda Elrod (speaking on developments

in family law) and Susan Herman (presenting two sessions: her top-rated “Supreme Court Update for Staff Attorneys – Criminal” and “Law and Film: The Jury According to Hollywood”). In addition, we will have sessions on “Appellate Decision Making and the Impact of Technology,” “The Neuroscience of Virtue and Vice,” “Legal Issues Pertaining to Sexual Predators,” “Whiskey is for Drinkin’, Water is for Fightin’ – Current Fights Over Western Water,” a multi-topic program on Indian Law, and many others. Professor Rufus Fears, a renowned historian from the University of Oklahoma, will be speaking to us twice – as a lunch speaker on Saturday and as the presenter of “Natural Law and the Founding of the U.S.” on Sunday morning. From these representative sessions, you can see the program will be a great one.

In addition to the reception at the Desert Botanical Garden on Thursday night and a conference banquet at the hotel on Saturday night, CASA will have our traditional T-shirt exchange at the hotel on Friday evening, followed by a casual CASA dinner at a local restaurant. And CASA’s annual business lunch will be held on Saturday.

The conference will be held at the Doubletree Paradise Valley Resort/Scottsdale. (I encourage you to go ahead and make your hotel reservation by calling 480-947-5400; be sure to mention you are registering for the Appellate Judges Education Institute Conference, November 13-16, 2008, and ask about the special government room rate.) The hotel is located minutes from historic Old Town Scottsdale and offers stunning views of the Sonoran Desert. The resort has two large outdoor heated pools with whirlpools, tennis courts, and a full health club. For anyone who plays golf, Scottsdale is a premier golfing destination, with almost 200 courses in the area. And for all you shoppers, the hotel is close to the upscale Scottsdale Fashion Square. This is going to be a great summit, so mark the date on your calendars!

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### **Forbidden Caucus**

by Taye Sanford

*Supervising Staff Attorney, US Court of Appeals - 10th Circuit*

When we interview people for jobs in our office, one of the things we always warn them about is the prohibition on participation in political activity. This invariably surprises people, and sometimes even offends them, but most people generally come to understand the rationale for it. The stricture has required at least one attorney to resign from several organization’s boards before she could take the job, and it has led others to turn down the job. Outside the judiciary, most people don’t think twice about whether they can be politically active; it’s more a question of whether they want to be. But the people in our office are well aware that they can’t be, even if they want to be. No bumper stickers, no yard signs, no petition signing. And for the most part, they live with it. But sometimes it’s harder than others, like the past few months when political candidates have actually shown up in Denver to speak and none of us could go hear them. To a group of people who are all about research, being deprived of an opportunity to conduct firsthand research on a topic of great personal importance—who to vote for in the next presidential election—is very frustrating. But again, we just sighed and said, “Oh well, maybe we can catch a clip on NPR.” But then something came up that really got everyone stirred up and generated quite a bit of heated debate in the halls of the third floor of the Byron White U.S. Courthouse. A few days before Super Tuesday, a staff attorney sent us an email asking, “Are we allowed to go to our caucus?”

Colorado hasn’t always used the caucus procedure to choose candidates in the presidential primary; it used to choose them by election. But now it’s by caucus, and this year, Colorado was going to hold its caucus early in the election cycle—on Super Tuesday—which meant that Colorado’s vote might actually count for once. I think it’s safe to say that none of us had any firsthand experience with caucusing, but based on what I’d heard about it via my husband’s conversations with the get-out-the-vote solicitors, I had assumed that I couldn’t participate in our precinct’s caucus. But when the staff attorneys asked us officially, “yea or nay?”, we had to find an official answer.

It appeared the question was answered when my investigation led to Advisory Opinion 92, entitled “Political Activities Guidelines for Judicial Employees,” from the Committee on Codes of Conduct of the Judicial Conference of the United States. Section I.c. of the Advisory Opinion stated that “[a] covered judicial employee should refrain from partisan political activity, including . . . [p]ublicly endorsing a partisan political candidate or organization by . . . participating in a partisan political . . . caucus.” When I sent out an email informing the whole office of this apparent prohibition on attending the Tuesday caucuses, there was an immediate response in the form of emails and bodies spilling into the hall in protest.

And, someone asked, what about the provision in Section III.a. of the Advisory Opinion that said: “The following activities are consistent with the provisions of Canon 5 of the Code. For example, covered employees may: a. Register and vote in any primary or general election including registration as a member of a political party[.]” Weren’t the caucuses on Tuesday Colorado’s version of a primary election? Was it our fault that Colorado (actually, the RNC and the DNC) had chosen to switch from a primary election to caucuses? Was that decision going to deprive us of our chance to vote? Did they know what they had done? Did they care?

It seemed clear from the level of turmoil that we needed to make sure this really was the final word. There wasn’t time to seek our own Advisory Opinion, so we did the next best thing: we asked people in other states that had caucuses what they do. The answer that came back was even more dissatisfying in some ways, because it suggested that it depended on what kind of caucus you have. If you have the kind of caucus where people vote by secret ballot and you don’t have to publicly declare your support for a particular candidate to participate, then you’re okay—it’s like voting. But if you have the kind of caucus where you have to make a show of hands or go stand under a particular candidate’s banner for them to count how many votes each candidate gets, then it’s not okay because you are publicly endorsing a candidate.

Here’s the bad news. In Colorado, one party uses one style of caucus, and the other party uses the other style. So now it looked like whether people could participate in their primary caucuses depended on their party affiliation. That was even worse than if no one could participate. But on the other hand, the example of the two kinds of caucuses emphasized to people that the focus of the prohibition was on public endorsement and that there really is a difference between walking into the voting booth and pulling the lever where no one can see you and raising your hand to say you support a particular candidate—even if you insist that no one in the room will know who you are. But what if they did? And what if several people from the same office lived in the same precinct and showed up at the same caucus and raised their hand for the same candidate. How would that look?

And so after much discussion, people eventually calmed down and resignedly stayed home while their spouses went off to do their civic duty. They were perhaps bolstered by news that their peers over in the state court system were subject to a similar restriction, and that their last minute lawsuit seeking to

temporarily enjoin the restriction was denied Tuesday afternoon by a Denver district judge. People across Colorado attended their caucuses in record-breaking numbers on Super Tuesday, but not those of us in Staff Counsel. My husband took my fifteen-year-old son with him, and later I got the full report of what went on at something I won't get to participate in until I retire. Though my son is too young to vote, he actually spoke up and gave his opinion on one or two of the proposed party planks having to do with things that he's been studying in school. I missed that too. But I'm glad to know that I have a child who is interested enough to participate in the political process himself and who also knows why it is that I can't.

Most people don't give a thought to the independence of the judiciary, what it means, how it's achieved, how it plays out on a daily basis. The flurry of debate in our office before and after Super Tuesday concerning our ability to participate in Colorado's caucuses served to remind me just how important that independence is, and what we and others may have to sacrifice to achieve it. Most people may not think about the independence of the judiciary, but that doesn't mean they don't expect it and, more importantly, deserve it. Super Tuesday brought me some unexpected civics lessons. Just imagine what's in store for us when the convention hits town in August!

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### Notes From the Chair

by Lee Ramsey

*Staff Attorney, Supreme Court of Tennessee*

Except for one unfortunate incident involving the police, the CASA Executive Board's trip to Los Angeles for the ABA's Midyear Meeting went off without a hitch. Okay, okay, that reference to a police incident is pure fiction, but the Executive Board's meeting on February 9 in Los Angeles *did* go off without a hitch. Over breakfast at the Hyatt Regency Century Plaza, board members received committee reports from the chairs of the various CASA committees, including Education Committee Chair Gail Giesen's presentation of CASA's portion of the program for the Appellate Judges Education Institute's 2008 Summit in Phoenix. With expressions of thanks to Gail and her committee members, the Executive Board approved the Education Committee's proposed CASA sessions. The Board also formally voted to have the customary CASA annual dinner, the traditional "CASA T-shirt exchange," and CASA's annual business meeting in conjunction with the Summit in Phoenix, but the details of those events are not finalized; Gail and I will report on those details in a future edition of CQ.

During the meeting, I reported that I had asked Renee Simien, Chair of the Membership Committee, and Marcia McCormack, a former executive board member, to co-chair a work group to update the AJEI's staff-attorney database used to mail the brochures for the annual CASA conferences. Renee and Marcia's work group has already begun working on this vital project. If one of the members of the work group contacts you, I hope you will assist us in quickly updating the information we have about the staff attorneys at your court.

The Board voted to establish a new "Outreach Committee" to consider and implement "outreach" programs that we might offer. For example, CASA previously has sponsored "lunch and learn sessions" for law students at the SMU Dedman School of Law in Dallas and at American University Law School in Washington, D.C., and we are planning to offer another such session for law students at the Sandra Day O'Connor College of Law (Arizona State University) while we are in Phoenix for the 2008 Summit. In these informal sessions, staff attorneys talk about the various job opportunities for lawyers in the appellate courts; the students have responded very favorably to these sessions, and those of us who have participated as panelists have enjoyed very much meeting and interacting with the students. The Outreach Committee, chaired by Kembra Smith, will be working on making lunch-and-learn sessions more widely available to law schools around the country, using local CASA members as panelists. Kembra and her committee also will identify other outreach programs that CASA can conduct on our own or in conjunction with other ABA groups.

As some of you already know, our Chair-Elect, Dave Ewert, resigned his position in January due to his changing work responsibilities at the Iowa Supreme Court. Dave is a long-time CASA member, and we will miss having him on the Board; I am happy to report, however, that Dave is remaining a member of CASA. With Dave's resignation, the Board selected Bill Lowe to serve as interim Chair-Elect. Bill also is a long-time member and previously has served (more than once) as a member CASA's Executive Board; we are fortunate to have him step in to take over for Dave. (And luckily, for those of us on the Board, the switch from Dave to Bill did not leave us impoverished in the wit department.) Due to Bill's "interim" status as Chair-Elect, the membership will vote at the business meeting in Phoenix to elect the incoming Chair, in addition to the other officers and at-large Board members.

We had a productive Board meeting in Los Angeles, and these "Notes" mention only the more important agenda items. I close with a big "thank you" to all the Board members for their excellent work on behalf of CASA's membership, and with a second big "thank you" to Amanda Raible, Conference Manager of the Appellate Judges Conference and CASA's staff liaison, to Aimee Skrzekut, Director of the ABA Justice Center, and to their staffs for their many contributions to CASA; on behalf of the Board, we appreciate having such great people working with us at the ABA.



Kembra Smith (CASA Board Member), Aimee Skrzekut (Director, ABA Justice Center and Judicial Division), and Justice Denise Johnson (Vermont Supreme Court) at the 2008 ABA Midyear Meeting in Los Angeles in February



Chief Judge and Mrs. Burrell Carter (LA Courts of Appeals, First Circuit), and CASA Board Members Bill Lowe, Kembra Smith, Kevin Smith, Gail Giesen, and Leslie Davis

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### Notes From the Editor

by Naomi Godfrey

*U. S. Court of Appeals, 11th Circuit*

Welcome and hope you enjoy the first 2008 edition of the *CASA Quarterly*. In this issue, you will read about a daunting dilemma faced by the staff attorneys' office of the 10th Circuit in Denver regarding whether staff could participate in Colorado's republican and democratic caucuses. After all, a caucus is the equivalent of a primary in other states in which federal and state court employees are free to participate. It occurred to some of us in primary states that we really did not fully know how a caucus works. What we learned is that, in a primary, voters simply cast their ballot for the candidate of their choice. To differentiate, a caucus is based on party affiliation and requires voters to gather, hear speeches, and engage in open discussions before voting (usually publicly) for a candidate. Taya Sanford enlightens us about what happened in Colorado during the 2008 presidential caucuses. Lee Ramsey, on the other hand, enlightens the reader about what went on at the ABA mid-year meeting in Los Angeles in February and what to expect at the Appellate Judges Education Institute Summit (AJEI) in Phoenix in November. Both are outstanding programs. Graham Bateman reviews a lecture by Professor Jonathan R. Siegel, a professor of law at George Washington University Law School, on statutory construction. Two competing ideas - intentionalism/purposivism versus textualism are explored. And then, as your editor, I thought it appropriate to give our readers details about the man carrying the banner for us this year and where he expects to take us.

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### Statutory Construction: Competing Ideas and Real Consequences

by Graham Bateman

*Louisiana Court of Appeal, Third Circuit*

Professor Jonathan R. Siegel, professor of law at George Washington University Law School, recently spoke on the topic of the ongoing battle over statutory construction, which he presented as a clash between competing visions of the role of a judge. Professor Siegel laid out the two competing ideas: intentionalism/ purposivism versus textualism. He pointed out that over the last 10-20 years, the trend has been a shift from predominately intentionalist interpretation toward a textualist revival. He posited that a major cause of this shift has been the different conception of the judge's goal in interpreting statutes.

Judges have long perceived their role as being to discover and implement the legislature's intent. Professor Siegel suggested that people like intentionalism because it mirrors everyday conversation and interpretation. Everyone understands that those who give commands sometimes make mistakes in wording, and thus there are implicit qualifications. Professor Siegel used the example of a senior partner who tells a young associate that he is not to leave his desk until a certain project is finished. The associate understands that if he is still hard at work at 11PM when a fire breaks out in the office, he should leave his desk rather than be incinerated. We want our agents to interpret our commands intelligently – thus, judges should not act like idiots.

Purposivism, which was popular in the 1950's, is a subset of intentionalism. As one searches for the intent behind the statute, one looks for the statute's purpose. Advocates of purposivism suggests that part of the role of the court is to ensure that statutes serve their purposes.

Professor Siegel suggested that textualism is on the rise because in 1986 a textualist was appointed to the United States Supreme Court: Justice Antonin Scalia. Textualists assert that the role of the court is to do what the statute says – not to improve upon it. Textualism has two "strains." The first is an attack on the premises of intentionalism and purposivism, arguing that intentionalism and purposivism are based on unrealistic views of the legislature. The legislature is not a person; it doesn't speak like a person. And a multi-member body does not have "an intent" or "a purpose". Statutes are full of compromises because of the varying intents and purposes of the various players in the process that can veto bills. These can include illogical

compromises. Thus, when you look for a statute's "purpose", you may undo the compromises that let that statute pass. The second is a formalist strain, asserting that the text is the law. The primary argument is that Congress does not vote on purpose or intent - just on the text of the statute. Interpreting anything but that text invades the legislative role and is unconstitutional.

Professor Siegel discussed the real results that spring from this theoretical debate on statutory construction. He analyzed two cases, *Zuni Public School District No. 89 v. Dep't of Education*, 127 S.Ct. 1534 (2007) and *Limtiaco v. Camacho*, 127 S.Ct. 1413 (2007), showing how the statutes at issue could be interpreted using intentionalism/purposivism and textualism, and what the two courts did in each case. Professor Siegel's proposed some lessons for lawyers on how to appeal to judges' different philosophies.

Tools to appeal to intentionalists:

- 1) Read the statute!
- 2) Use the Legislative history

Committee reports

- b. Statements made on the floor
- c. Statements made in committee.
- 3) Include the statutory history – when it was amended, etc.
- 4) Examine the purpose of the statute.
- 5) Discuss the policy goals behind the statute.

Tools to appeal to textualists:

- 1) Read the statute! Especially if it is one you have been working with for 20 years.
- 2) Put the statutory text in your brief.
- 3) Use dictionary definitions.
- 4) Compare the critical terms of the statutory language to similar language in other statutes.
- 5) Use structural inferences from the rest of the statute.
- 6) Use the canons of interpretation (stating them in Latin may be helpful). He urged lawyers who are writing briefs to use all these things, in an effort to appeal to all judges.

Professor Spiegel also had suggestions that he, respectfully, offered to judges. He recognized that each judge has his or her own methodology, but he suggested that whichever method one uses, think about, and possibly incorporate, the best aspects of the other.

For intentionalists: the main hazard is implementing your own policy views. Read the statute. Accept the realists' critique. A judge cannot know what strange bargains occur in the legislative process. Before you conclude that the statute or phrase makes no sense, ask if maybe the legislature meant exactly what it said.

For textualists: if the text commands that you do something stupid, read the statute again and see if it is really that clear- isn't some ambiguity possible? And if you do see some possible multiple meanings:

- 1) Consider the multiple meanings and see which one fits from the context.
- 2) Try reading the statute in light of some purpose.

Professor Siegel concluded by outlining the class action fairness act of 2005, which allows plaintiffs to aggregate claims. The usual rule is that a remand order is not appealable. But it is allowed under 28 USC § 1453(c)(1): "a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action . . . if application is made to the court of appeals not less than 7 days after entry of the order." (emphasis added). In the statute as written, the intent and purpose go one way, while the text goes another. So far, the courts of appeal that have looked at the statute have said that here "less" means "more."

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## **An Interview With Lee Ramsey**

by Naomi Godfrey

*U. S. Court of Appeals, 11th Circuit*

### **1. How long have you been a member of CASA?**

I think I first joined in 2000, although my first seminar was Lake Geneva, in 1996.

### **2. Why did you join?**

My memory as to why I joined is very hazy, but as I recall, there was another Tennessee staff attorney who was a member at the time, and I thought it would be good for our court to have another member in the organization.

### **3. What do you see as the role of CASA?**

I have to give credit to Bill Lowe for this line, but I view CASA as "our [meaning appellate staff attorneys'] bar association." Attending CASA conferences and being a member of the organization gives us the opportunity to meet and make friends with colleagues from around the country and to attend CLE programs geared specifically toward our very unique jobs.

### **4. As Chair what is your vision for the organization?**

My primary goal as Chair is to have top-rated CLE programs and a successful conference in Phoenix, as part of the 2008 Summit for Appellate Judges,

Appellate Staff Attorneys and Appellate Practitioners. Thanks to the hard work of Gail Giesen and her 2008 Education Committee, we're well on our way to achieving that goal. I'd also like to expand our membership and to plan future "outreach" activities, such as holding more "lunch-and-learn" sessions for law students and, if possible, participating in the ABA's Judicial Clerkship Program, sponsored by the Judicial Division and the ABA Presidential Advisory Council on Diversity in the Profession.

#### 5. What is at the top of your short list of favorite CASA activities?

Riding in a 4-person bobsled down the Olympic bobsled course, on our "free day" in Park City, Utah (July 2004).

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#### **Who is Lee Ramsey: A Profile**

*by Marcia McCormack, N.H. Supreme Court – first published in CQ, Fall 2005; updated by Naomi Godfrey, 11th Circuit*

Well-traveled in his early years, Lee Ramsey was born in Tuscaloosa, Alabama, and later lived in Elmira, New York, and then in Stockton, California, before his family moved to Tennessee. Lee received his undergraduate degree from the University of Tennessee-Knoxville and his law degree from American University in Washington, D.C.

After graduating from law school, Lee accepted a judicial clerkship with a state trial court judge in Nashville. Following the clerkship, Lee hung up his own shingle as a sole practitioner in Nashville for over five years and then served for four years as General Counsel for the Tennessee Health Facilities Commission, a state health-care regulatory agency. In 1991, Lee began working in his current position as a central staff attorney for the Tennessee Supreme Court.

In addition to working on civil cases pending before the Supreme Court, Lee is the Court's so-called "rules guru," assisting the Court in amending the various rules of procedure, the Rules of Evidence, the ethical rules for lawyers and judges, and the Rules of the Supreme Court. He also serves as a non-voting member of the Court's Advisory Commission on the Rules of Practice and Procedure.

Lee first attended a CASA seminar in Lake Geneva, Wisconsin in 1996. Since then, he has attended conferences in Breckenridge (1998), San Diego (2000), Flagstaff (2002), Park City (2004), Dallas (2006), and Washington, D.C. (2007). Before being elected CASA Chair, he served on the Long Range Planning Committee and on the Executive Board as a member-at-large.

In addition to his service to the Tennessee Supreme Court and to CASA, Lee has many outside interests. Although in his self-effacing way, Lee claims that he "enjoys" photography, actually, he has attended photographic workshops in both Santa Fe and Maine and has even had an exhibition in Nashville of his photographs of Japanese gardens in the U.S. His interest in photography is complemented by his love of travel and outdoor activities. Recent travel and photography include trips to Norway, Sweden, and Denmark (September 2007); Carmel/Big Sur, CA (August 2007); Hawaii (August 2006); and the Netherlands, Belgium, and Luxembourg (September 2005). Now "retired" from martial arts after being active in several different disciplines over fifteen years, Lee continues working out at "the Y" (YMCA) most days at lunchtime – which is a good thing because he also likes to cook. As a resident of "Music City," Lee regularly takes advantage of the live-music scene in Nashville and enjoys listening to music by his favorite singer-songwriters (e.g., Jerry Jeff Walker, Guy Clark, John Prine, and Todd Snider), as well as Bruce Springsteen, Steve Earle, Django Reinhardt, and other musicians.

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#### **CASA Executive Board Members**

##### **Chair**

Lee Ramsey

##### **Chair-Elect**

Bill Lowe

##### **Immediate Past Chair**

Kembra Smith

##### **Secretary and Editor of the CASA Quarterly**

Naomi Godfrey

##### **At-large Members**

Gail Giesen  
Renee Simien  
Susan Dauatel  
Leslie Davis  
Kevin Smith

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*Summer 2008*

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### **Notes From the Chair**

by Lee Ramsey

*Staff Attorney, Tennessee Supreme Court*

Since my last installment of “Notes From the Chair,” CASA’s Executive Board and Education Committee (Chaired by Gail Giesen) have virtually completed CASA’s portion of the planning for the Appellate Judges Education Institute’s 2008 Summit in Phoenix, November 13 - 16, 2008. The program is going to be another excellent one, and the social events include CASA’s annual T-shirt exchange (pool-side at the hotel) and CASA’s annual dinner at Scottsdale’s renowned Old Town Tortilla Factory. Conference brochures will be mailed this summer, but in the meantime information about the Summit’s programming, hotel reservations, registration, etc., can be found at [www.law.smu.edu/AJEI](http://www.law.smu.edu/AJEI). If you haven’t already done so, I encourage you to make your hotel reservation ASAP, because there are a limited number of rooms available at the special government rate of \$102 per night. (Go to the website and click on the “Hotel Reservation” link for info.) I understand that the special government rate might not be available for the night of Wednesday, November 12, but if you are traveling from a greater distance, you still might want to arrive on Wednesday – our first session begins at 12 noon on Thursday, with Dean Erwin Chemerinsky’s not-to-be-missed *Supreme Court Update (Civil) for Staff Attorneys*.

On behalf of the Executive Board, I want to publicly thank a special work-group of CASA members who updated the AJEI’s staff-attorney mailing list, just in time for the Summit’s “save-the-date” cards to be mailed. Led by Marcia McCormack and co-chaired by Renee Simien, the work-group overhauled the AJEI’s staff-attorney database and provided the AJEI staff with an updated list of staff attorneys at each of the appellate courts. In addition to Marcia and Renee, the members of the work-group were: Executive Board members Susan Dautel and Leslie Davis, as well as Sandi Broussard, Rachel Ekery, Lynn Pelley, Peter Stevens, and Anne Zinkin. Unfortunately, I wasn’t able to give them much time to complete the project, but I still was amazed at how quickly they accomplished their daunting task. The database update was one of my major goals for this year, and I’m grateful to each of the work-group members for their important contributions to CASA. So, if you know any of the work-group members, please give them a pat on the back on behalf of the membership.

While we're in Phoenix/Scottsdale for the Summit, Chair-Elect Bill Lowe, Immediate Past Chair Kembra Smith and I will be presenting CASA's fourth "lunch and learn session," this one for the students at the Sandra Day O'Connor College of Law, Arizona State University. In our lunch-and-learn sessions, we talk with law students about the various job opportunities for lawyers in the appellate courts, including clerkships, staff attorney positions, and the various positions available in other offices/agencies affiliated with the appellate courts. Those of us who've participated as panelists in the previous lunch-and-learn sessions have enjoyed them, and the law students also seem to have enjoyed them (including Bill's heartfelt it's-not-too-late-to-go-to-medical-school speech).

I hope you'll plan on joining us in Phoenix in November for the 2008 Summit. In the meantime, "happy summer" everyone.

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### **Gail's Challenge: The 2008 Summit**

#### ***An Interview With Gail Giesen***

by Naomi Godfrey

*U.S. Court of Appeals, 11th Circuit*

Of course, the CASA educational seminar is the *raison d'être* for the organization. Work on the 2008 Summit began long before 2008. It is an awesome task that requires tremendous effort on the part of the CASA chair and members of the education committee. This committee must develop an agenda that appeals to the interest and the needs of attorneys and judges from all over the country. The ultimate responsibility, however, lies with the education committee chair who, for the 2008 Summit, is Gail Giesen.

So, who is Gail Giesen and what is her goal for the Summit.

#### **Q. How long have you been a member of CASA?**

A. My records are really bad, but I guess I've been a member since 2000. I recall that I attended one conference in the mid-nineties before I actually joined.

#### **Q. Why did you join?**

A. I found that first conference intellectually stimulating, and I really enjoyed meeting other people who do the same kind of work that I do. I should mention that my state does not have a continuing legal education requirement, so obtaining continuing legal education credit was not a factor in my decision to join and attend the seminars.

#### **Q. When did you become Chair of the Education Committee?**

A. I accepted the invitation to be the Chair of the Education Committee soon after the 2007 conference, and I started the planning process with Lee Ramsey shortly after that.

#### **Q. What are your goals with respect to the 2008 Summit?**

A. To make it a really dynamite conference! As head of the committee, I believe we have chosen CASA topics that will have broad appeal to all appellate staff attorneys and speakers who will fill us in on the important developments in their fields. The conference will have "CASA" sessions, as well as sessions planned by the appellate judges and practitioners. We can attend virtually any session. I should mention that one of our goals is to include some social time, when we can get to know one another -- that is a great benefit of all of our conferences. To do this, we'll keep up our tradition of having our CASA T-shirt exchange and annual CASA dinner. There will also be a reception at Scottsdale's renowned Desert Botanical Garden for all of the attendees that promises to be memorable.

#### **Q. What are some of the topics you plan to cover?**

A. We will, of course, have speakers on the most significant decisions issued by the United States Supreme Court during the past year. As for nuts 'n bolts topics, we will have a session on ethical issues for staff attorneys and a panel that will address management issues for supervisory staff attorneys. In addition, we are going to have a family law expert speak on jurisdictional issues involving custody and visitation when minor children are moved across state lines. A panel will address the tension between civil liberties and public safety that arises from restrictions imposed on sexual offenders and sexual predators.

**Q. Who are some of the presenters?**

A. The Honorable Sandra Day O'Connor will speak at a plenary session on the rule of law. A very special treat! I'm delighted to say that Dean Erwin Chemerinsky and Professor Susan Herman, who have impressed us in the past with their vast knowledge of the Supreme Court's decisions and their amazing ability to convey succinctly the important teachings of each decision, will be joining us again. Professor Ted Schneyer from the University of Arizona, James E. Rogers College of Law, will be joining us to lead the ethics session. A panel on Native American law will be comprised of Judge William Canby, Jr., of the U.S. Court of Appeals for the Ninth Circuit; Judge Joseph Thomas Flies-Away of the Hualapai Tribal Court; Professor Robert Clinton, a law professor at Arizona State University; and Elizabeth Rosenbaum, who specializes in Indian law. I've named only a handful of a very illustrious line-up of presenters.

**Q. Who else is on your Committee?**

A. I have a great committee consisting of: Taye Sanford, U.S. Court of Appeals for the Tenth Circuit; Bill Thompson, Missouri Supreme Court; Kevin Smith, Indiana Supreme Court; and Ric Schickele, U.S. Court of Appeals for the Ninth Circuit. I should note that Lee Ramsey, who works for the Tennessee Supreme Court and has plenty to do as the head of CASA, has been very instrumental in the success of my committee.

**Q. Tell us something about yourself.**

A. I was born in Hartford, Connecticut and grew up in the Hartford area. I decided to see another part of the country when it was time for college, so I got my undergraduate degree from the University of Colorado at Boulder. I came back East for law school and earned my law degree at the University of Connecticut School of Law. My entire legal career has been with the judicial branch of Connecticut. I clerked for a year at the intermediate court of appeals, served for nine years as the Executive Assistant to the Chief Judge of that court, and later served almost the same amount of time as Deputy Chief Staff Attorney. I have been the Chief Staff Attorney since 2002. I am fortunate to have a really great bunch of people in my office and two terrific appeals courts to work for. (My office is unusual because we serve both the highest appeals court in the state, as well as the intermediate court of appeals. We make it work!)

My husband, Tom, is a technical writer employed by Pratt & Whitney. I have a step-daughter, who is working on her L.L.M. in tax at Boston University; and two sons -- one is working on his master's in soil science at Penn State, and the other is a furniture designer and bass player in Washington, D.C. When I'm not doing staff attorney stuff, I take French classes, garden when I have a chance and spend time with my friends. I love to travel and have been to Malaysia quite a few times to visit my brother who lives just south of the Thai border.



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### **Editor's Notes**

by Naomi Godfrey

*U.S. Court of Appeals, 11th Circuit*

The focus of this issue is, of course, the [Appellate Judges Education Institute's 2008 Summit](#) in Phoenix, Arizona, from November 13-16. While the weather in Phoenix during the summer months is quite hot (highs in the low 100s), the weather in November is ideal (highs in the 70s) with virtually no precipitation. In addition to perfect weather, the Summit will be held at the beautiful Doubletree Paradise Valley Resort/Scottsdale. Please see the pictures (courtesy of Lee Ramsey) inside this issue including the pool-side site of CASA's 2008 T-shirt exchange. An overview of the summit can be found in CASA Chair Lee Ramsey's "Notes from the Chair," our lead-off article. Included also is "An Interview With Gail Giesen," in which the plans for the educational program are detailed.

This issue of CQ also takes a look at what some select staff attorneys or former staff attorneys are doing both in a professional setting and otherwise. For example, longtime CASA member Dave Ewert's title is no longer staff attorney but is now "Assistant Director for Admissions" of the Iowa Supreme Court's Office of Professional Regulation. He is actually the Director of Admissions and not the Assistant Director but let him explain that. Then there is Tina Landerfelt who explains how the Nevada Supreme Court, the state's only appellate court, does its work.

Included is a brief note about former 11th Circuit staff attorney Ann Paschall who recently became an Administrative Law Judge for the Department of Labor, and an article and pictures of Elena Ris and her husband Steve's travels to the site of the 2008 Olympic Games, Beijing, China. Enjoy!

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## **Dave Meets the Tsunami**

by Dave Ewert

*Assistant Director for Admissions, Office of Professional Regulation, Iowa*

[Naomi asked for an article about my new job; proceed at your own risk.]

When last we visited our beleaguered hero, he was in the midst of "transitioning" from his position as chief staff attorney for the Iowa Supreme Court, to a new position in the newly formed Office of Professional Regulation (OPR). His new title is the Assistant Director for Admissions. This does not mean he is not the actual director of admissions, rather, he is the assistant director of the overarching OPR and his task involves bar and court interpreter admissions. There are counterparts for discipline and commissions. The three assistants are overseen by a highly competent director.

Let us tune in and hear from our protagonist in the first person.

I had a unique experience from April 1, when I officially first began my new job, until about April 19, when I physically moved to my new office. It was sort of a Twilight Zone (ask your parents) existence. My former staff was in a similar position because their offices in the clerk's office were not yet completed. So we were all physically together in our usual digs, yet separated by function. My former secretary was in an even stranger world, since she was neither going with me nor moving with the staff, but instead had become a floater working for the state court administrator.

Since April 19, I have been easing into my new duties as best as I can. In our office suite, we have 3 program managers, two of the assistant directors, and the director. There are also some auditors who appear on a part-time basis. My boxes are unpacked (you wouldn't want to look in the drawers) and the artwork is up (come to think of it you wouldn't want to look on the walls, either). There are some odd quirks, like phone calls, foot traffic, and actual processing of funds, which will take some getting used to. Also, my beloved island shirts have been relegated to my closet in favor of starched collars and ties. The shirts seem smaller than they used to be.

On a brighter note, I attended not one, but two seminars in April. The first one was a general bar admissions seminar in Portland, Oregon, and the second was a mini seminar on electronic character and fitness processing in Madison, Wisconsin. Nothing impresses a boss like immediately taking off on multiple occasions when you first start your job.

Much of my work in the last few months has involved some editing the rules meant to facilitate the OPR transition. I have also overseen our court interpreter orientation seminar, which is a requirement to take the interpreter examinations and occurs over our ICN on two Saturdays each in the Spring and Fall. Thanks for that powers that be! Fortunately the certified interpreters who present the seminars are consummate professionals, and very tolerant of both my general cluelessness and the fact that my entire Spanish vocabulary consists of "Cervesa, por favor."

I also have painstakingly reviewed the bar applications for about 250 July bar applicants for character and fitness problems, or any other foibles I might be able to exploit for my own advantage. I am also working hammer and tongs on the possible adoption of the Multistate Essay Examination as a component of our bar examination. Our clerk is patiently grooming me for the February 2009 examination and he will give his last examination in July 2008. I, in turn, am helping him with issues arising from managing his new staff attorneys.

The court additionally has me researching and drafting proposals regarding foreign legal consultants, temporary practice by foreign attorneys, and an emeritus attorney pro bono program. I also still staff the court's bar conduct

subcommittee, which rules on admission on motion applications and various and sundry obscure admissions and disciplinary matters.

I recently started drafting a proposed disciplinary system for court interpreters and will start working on a CLE system for them as well. Both systems were listed in our court rules as though they were adopted in 2007. P.S., since many of you do draft rules, I would highly recommend not listing a future date for adoption of a rule that doesn't exist. When that time comes and goes and nothing has happened, it tends to generate a lot of phone calls.

Perhaps the most grueling aspect of my job so far has been trying to develop budgets for bar admissions and the court interpreter programs, a process for which I have virtually no training, patience, or aptitude.

I soon discovered there has not been an actual budget for the bar admissions process, since, well, ever. The bar examination has been given by our clerk's office since the 1970's, and really the expenses and revenues have been wholly intermingled with the clerk's functions. Now there have been what I call Mock Budgets every year, but the categories and figures they use make virtually no sense. So, most of the 3000 times I bugged the clerk for figures, I got the answer, "I don't know, I never had to track that" or "I don't know, we give them the money and they give it back."

Checking with finance and personnel regarding the components of these categories also proved less than fruitful. When I inquired how printing costs listed in the past bar budgets could be so high, they remarked, "well that might have included printing the pro se domestic abuse forms." While that is a laudable task, I had a hard time making the apparently obvious connection with bar admissions (unless there is a clear link between new attorneys and domestic abuse). In any event, I doggedly pursued the matter until I came up with what I believed to be an accurate budget for the operation.

The court interpreter budget was even more of a mystery, because there seemed to be ever-increasing outlays paired with virtually no (hope of) revenue. While that mirrors my personal finances, it seemed like sort of a losing proposition for one's job, especially if said interpreter program has been slated to generate 15% of one's salary and one's program manager's salary as well. The program manager, by the way, does not exist. While the others in the office have been a great help, I have no dedicated support staff at this time.

All of those worries were for naught, of course, because the legislation that would have shifted the funding for the admissions process from the clerk (where it gets funneled to the General Fund and back) to OPR died a rather bizarre last-second death through the type of random, non-malignant miscommunications that make modern-day legislating more of an art than a science. This caused me no small consternation, given that my livelihood depended on passage of that bill, and my actual budget had suddenly decreased to, well, "Why can't I reuse that sticky note?"

Fortunately, I have been assured the court is going to take care of the funding through contractual agreements. After all, we have to admit more lawyers, don't we? And, given our second major ICE raid in Iowa recently, we need more interpreters, right?

Fade back to the youthful, resonant voice of our Narrator:

So, as you can see, our intrepid, but battered hero has a full platter and at least some prospects of continued, fruitful employment. He is boring open some new pathways to accommodate new fields of knowledge, and hopes to serve the court well in this new iteration of Daveness.

While the waters are murky and roiling, this might be a wave worth riding.

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## **What To Do In Beijing**

by Elena Ris

*Supervisory Staff Attorney, U.S. Court of Appeals, 11th Circuit*

When asked to write this article about Beijing for CASA Quarterly, the first thing that came to mind was The Regent Beijing Hotel where I stayed during my visit to Beijing. The Regent, which had been opened for business less than two months when I checked in, is the most luxurious hotel I've stayed at in my life. I checked the hotel's website a couple of days ago to make sure that I had the correct name of the hotel and I guess I'm not the only one who thinks it's pretty decent. The hotel seems to have won a multitude of awards since my visit including "Conde Nast Traveler" (Jan. 2008) The World's Best Places to Stay Award. I guess it doesn't hurt that the hotel has a Rolls Royce dealership in the lobby. After all, doesn't everyone buy a car to take home as a souvenir after a trip to Beijing? I guess that I don't need to mention that the bed was comfortable, the bathroom clean and the view from the windows incredible. Its location was ideal- a 10-15 minute walk to the Forbidden City and Tiananmen Square.

As has been widely reported by the media and I can personally attest to having been there now, Beijing is preparing diligently for its coming-out party—the 2008 Olympics. The city was in a construction frenzy during my visit. The National Stadium, nicknamed the "Bird's Nest" for its thatch of interlocked steel girders, was well on its way to completion and already a well known city landmark. New freeways into the downtown area had been completed and new hotels were in various stages of completion. A total of 31 stadiums were to be renovated or built before the Olympic games begin this summer. Unfortunately, it is evident that a lot of the construction that is taking place in anticipation of the Olympics is at the expense of the historic districts of Beijing's courtyard houses and alleyways.

The highlight of my trip was a visit to the Great Wall. The Wall is a massive fortification that was built between the 6th and 16th centuries to protect the northern borders of the Chinese Empire during the rule of successive dynasties. Although the Great Wall is over 4,000 miles in length and much of it is in disrepair, the section I visited has benefitted from restorations. It is known as the Badaling section and is located about 50 miles from Beijing. Originally, this section of the Wall could hold five horsemen riding abreast. These days it holds approximately 15 tourists walking abreast. To get on top of the Wall, you can either hike up a series of long steep stairs or take the roller-coaster type ride that delivers you to the top of the Wall. From the top of the Wall, you can see the Wall extend for miles in either direction. It is the most incredible of all sights.

Another "must see" in Beijing is the Forbidden City. Once the home to emperors, the emperors' eunuchs, consorts, concubines and servants, it was off limits to commoners for 500 years. The Forbidden City is located in the center of Beijing and is now open for tours daily. The Forbidden City is composed of 800 separate buildings and endless courtyards. One could spend an endless number of hours or days exploring this place.

Tiananmen Square, which adjoins, the Forbidden City, is another worthwhile place to visit in Beijing. Known as the world's largest square, it is where major rallies took place during the Cultural Revolution. Today the Square is a place where people fly kites and watch the Olympics Countdown Clock. Surrounding the Square is a multitude of monuments: Tiananmen (Gate of Heavenly Peace), the Mao Mausoleum, the Monument to the People's Heroes, the Great Hall of the People, and the Chinese Revolution History Museum.

If you don't have your tickets to the 2008 Olympics yet, I encourage you to order them now. Beijing is a destination worth checking out.



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## **Staff Attorney Work at the Nevada Supreme Court**

by Kristina Landerfelt

*Staff Attorney, Nevada Supreme Court*

Nevada is one of only eleven states without an intermediate appellate court. Thus, the Nevada Supreme Court must hear and decide every appeal that comes before it, as it does not have the authority to reject any appeals on a discretionary basis by a writ of certiorari. In order to manage its caseload, which now totals over 2,000 appeals per year, and to improve efficiency, the court has implemented several fast track programs, including appeals involving child custody matters and direct and post-conviction criminal appeals, for which expedited and abbreviated briefing schedules apply.

The Nevada Supreme Court divides staff attorneys into two divisions, civil and criminal. The civil division has twelve attorneys, a paralegal, two administrative assistants, and Legal Counsel, who supervises the division. The criminal division has a similar make-up of attorneys and support staff, with one person serving as supervising Legal Counsel. By dividing the criminal caseload from the civil caseload, attorneys are able to develop expertise in those areas of the law. In the civil division, attorneys also are assigned practice areas, and similarly, the criminal division is divided into teams, and the attorneys on those teams primarily work on certain types of appeals, for example, death penalty cases,

allowing for even more refined specialization.

Staff attorneys assist the Supreme Court justices by recommending dispositions of civil and criminal appeals. In assisting the justices, staff attorneys engage in extensive legal writing, analytical thinking, independent research, and editing. When assisting the justices in resolving complex cases or cases involving issues of first impression, staff attorneys will draft bench memoranda and assist in drafting judicial opinions. When a staff attorney assists the court by resolving a relatively straightforward appeal, the attorney presents the matter during oral presentations before a panel of justices. Those types of appeals are resolved by unpublished order.

Another task that staff attorneys at the Nevada Supreme Court perform is to prescreen filed appeals to determine whether the court has jurisdiction based on Nevada's rules of appellate procedure. If it appears that there is a jurisdictional defect, the court enters an order to show cause why the appeal should not be dismissed for lack of jurisdiction. Depending on the response and any reply, the court will either dismiss the appeal or allow briefing to proceed.

After an appeal is briefed and the appendices and transcripts have been filed, staff attorneys screen the cases by outlining the issues and evaluating the briefs. The appeal is then assigned a weight from a scale of 1 to 10, based on the number and the nature of the issues presented and the size of the record. The attorneys present screening memorandum to the justices for a determination of whether the case should be assigned to staff or chambers for resolution and also whether the case should be considered by a three-judge panel, or the full court of seven justices. Writ petitions (mandamus and prohibition), emergency appeals, and appeals involving pro se litigants generally are assigned to staff and presented to a panel for resolution.

Staff attorneys also assist the justices by drafting procedural orders resolving emergency motions and motions that the parties might file while the appeal is pending. While the clerk's office attorneys handle the majority of procedural motions, staff attorneys typically resolve motions that are filed once the case has been assigned but is pending resolution.

Finally, staff attorneys have editing responsibilities and we engage in peer review and also edit chambers' draft opinions and orders.

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## **Hot News From the 11<sup>th</sup> Circuit**

Ann Garrison Paschall recently became an Administrative Law Judge for the Department of Labor in Atlanta, Georgia. Ann is a graduate of the University of Florida Law School. She served as a staff attorney for the 11th Circuit Staff Attorneys' Office before being asked to serve as law clerk to the late Senior Circuit Judge Lewis R. Morgan. After her clerkship, Ann joined the Office of the Solicitor of the United States Department of Labor where she remained until she became an ALJ. Ann was an outstanding staff attorney and law clerk to Judge Morgan and we congratulate her on her continued success.

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## **Hear the Call**

by Kembra Smith

*U.S. Court of Appeals for the 11th Circuit*

We're seeking a few good folks to serve on the CASA Executive Board for 2008-09, and hope that you'll either nominate someone or volunteer!

Recognizing that in any organization, ninety percent of the membership are just members and ten percent work,

Interim Chair-Elect (“ICE”) Bill Lowe (Louisiana Second Circuit Court of Appeal) explained during the February executive board meeting that he’s seeking to get more of the 100% ten percenters on board. He wants the Executive Board to be folks who will “show up on deck with a knife in their teeth!” If that’s you or, on a more sedate note, if you’re a committed, dedicated CASA member who is willing to work (or know someone who is), please let us know!

For the 2008-09 year, we are seeking a Chair-Elect, a Secretary, and at least two Executive Board members-at-large. Under the CASA Bylaws, the Executive Board is composed of the officers (the Chair, the Chair-Elect, and the Secretary), the immediate past Chair (“IPC”), and five members-at-large. The Chair-Elect succeeds to the position of Chair at the end of the annual seminar. The duties of the Executive Board members are defined in the Bylaws at Articles 4 and 5, which are available in the Directory of Appellate Staff Counsel at <http://www.abanet.org/jd/ajc/casa/home.html>. The CASA Executive Board meets at the annual seminar and during a midyear meeting, and occasionally holds special meetings by telephone conference. For the past few years, the midyear meeting has been held in conjunction with the ABA’s Midyear Meeting. The CASA midyear meeting for the 2008-09 year will be held in Boston, Massachusetts in February 2009 in conjunction with the ABA’s Midyear Meeting.

Nominations (and volunteers) will be accepted for the vacant positions until August 15, 2008. The slate of officers will be published in the next issue of CQ or disseminated on the CASA official and unofficial email lists. The vote by the membership will take place at the CASA Business Luncheon on Friday, November 14, 2008 during the AJEI seminar in Phoenix, Arizona.

As IPC, I serve as the Chair of the Nominations Committee with ICE Bill Lowe, and three CASA members appointed by the Chair: Dave Ewert (Iowa Supreme Court), Riley Fenner (U.S. Court of Appeals, Fourth Circuit) and Marcia McCormack (New Hampshire Supreme Court). Please contact me with your nominations and comments at [Kembra\\_Smith@ca11.uscourts.gov](mailto:Kembra_Smith@ca11.uscourts.gov).

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### **Minutes of February CASA Board Meeting**

by Kembra Smith

*U.S. Court of Appeals for the 11th Circuit*

Lee Ramsey, 2007-08 CASA Chair, called the Executive Board meeting to order at 8:01 A.M. In attendance were: Interim Chair-Elect Bill Lowe; Immediate Past-Chair Kembra Smith; Members-at-Large Susan Dautel, Leslie Davis, Gail Giesen, and Kevin Smith, and Past-Chair Jack Fowler; and American Bar Association Representative Amanda Raible.

Lee welcomed and introduced all participants and directed that we all get breakfast.

Jack referenced the minutes from the 2007 Executive Board meeting in Washington, D.C. Upon motion by Bill and a second by Leslie, the minutes were approved as submitted.

Lee asked for committee reports, and encouraged everyone to recruit committee members. He requested that all committee chairs focus on finding new members who can serve on their committees, and will thus be in the line up to chair those committees in the future. On behalf of CASA Secretary and CQ Editor Naomi Godfrey, Lee reported that the CQ fall edition had been released and that the winter edition should be released within the next month. Amanda explained that Sheena Johnson Wade, with the ABA, worked with Naomi for publication of CQ on the ABA website. Naomi will be providing a timetable and requesting articles.

Listserv czar Bill noted that there are approximately 60 members on the CASA email list. At Lee’s request, Bill will do an article for CQ on the list, explaining how a member must “opt-in.” Bill, as Long-Range Planning Chair, had no report, but noted that he hoped to begin working with his education committee soon. It was pointed out that one of the primary focuses of the LRPC will be whether or not to hold a separate seminar in the future.

Membership Chair Renee Simien was not present but submitted a written report. In the report, she explained that this year's committee's primary goal is to update the CASA Directory of Appellate Staff Counsel and that this would be accomplished in coordination with an update of the AJEI mailing list. Renee and former CASA executive board member Marcia McCormack will be working with other members on these projects. Copies of the forms developed by Lee for the update of the Directory were attached to her report. It was suggested that copies of CQ be sent out with any materials for membership recruitment. There was some discussion regarding the drop in our membership numbers due to the loss of CASA members who have now joined the National Association of Appellate Court Attorneys ("NAACA").

Kembra, as Chair of Nominations, had no report. She will be recruiting committee members, and will issue a call for nominations in the CQ summer issue.

Lee, as Chair of Scholarships, noted that we have \$3500 available for the 2008 Phoenix seminar. Application process information will be published in CQ.

Amanda reported that we have \$1130.60 leftover from last year that will need to be used by August 30, 2008. She suggested that we use this money to prepay expenses for the 2008 Phoenix seminar, such as the CASA business luncheon. The luncheon was discussed, and it was decided that the luncheon be limited—and clarified on the registration form accordingly—to CASA members, that it be held at the hotel, and that we plan on having 35 members in attendance. Amanda will coordinate the arrangements for this with the AJEI staff. Upon further discussion, Kembra's travel expenses to attend the ABA Spring Planning Meeting in New Orleans were approved and \$200 was allocated for a gift to be given to Erwin Chemerinsky. If any monies remain, they will be used to assist with any prepayment toward the CASA annual dinner during the 2008 Phoenix seminar.

At this point, we were visited by Judicial Division ("JD") Chair North Carolina Court of Appeals Judge James Wynn, Appellate Judges Conference ("AJC") Vice Chair Florida Court of Appeals Judge Martha Warner, and AJC Past-Chair Vermont Supreme Court Justice Denise Johnson. They all thanked us for our work and commented that they were grateful for our continued support.

Lee commented that Bill will serve on the 2008 AJEI Program Committee.

Education Chair Gail and Lee reported on the 2008 AJEI Conference in Phoenix, Arizona, and distributed copies of the draft program. The Board unanimously approved the proposed CASA programming. We discussed the t-shirt exchange as there is little time during the schedule for it to be held. The Board voted to hold the exchange, at 5:15 P.M. on Friday, November 14, by the pool. Lee provided us with the options available for the CASA annual dinner on Friday, November 14. After much discussion, the Board voted to hold the dinner at the Old Town Tortilla Factory and to consider bus transportation.

Lee advised that this year will be Dean Erwin Chemerinsky's twentieth year of consecutive CASA presentations and asked for gift suggestions.

The process of voting on the CASA Chair-Elect position was then discussed. It was decided that, absent a vote by the entire CASA membership, Bill will remain in an "interim" position.

Lee explained that the CASA Directory update work group will initially update the AJEI mailing list and then work on the directory. The work will take this order to expedite the mailing of the AJEI Summit save-the-date cards and Summit brochures.

Lee and Bill addressed planning for the CASA 2009 seminar. Bill explained that the seminar will be held in late September or early October, and that the AJEI Long Range Planning committee had selected four potential sites: New Orleans, Orlando, Philadelphia, and Washington, DC. Following a vote, the Board voted for either Orlando or Washington, DC. We also discussed whether we should join the AJEI at their 2009 seminar hotel or attempt to hold a split conference at a separate hotel. The Board voted to join the AJEI at their hotel. Bill noted that he has no objection to the joint seminar arrangement.

Lee discussed the CASA “lunch and learn” programs, and explained that three have been held at law schools in conjunction with the CASA seminars or AJEI meetings: in 2006, at Southern Methodist University (“SMU”) in Dallas; in 2007, at SMU, and at American University. Lee will be contacting the law schools in Phoenix regarding us holding one there before the Phoenix seminar. We discussed formalizing the information for these programs so that it can be shared, and that such programs could be conducted in other locations. Kembra, as Outreach Chair, will handle this effort.

We also discussed possibly updating and revising the bylaws but no date was set for such to begin.

With Bill’s agreement, Lee requested that everyone attempt to attend the AJC/AJEI meeting on Sunday, February 10, and advised everyone that the 2008-09 Executive Board meeting will be held during the ABA Midyear Meeting in Boston, Massachusetts, February 11-17, 2009.

The meeting adjourned at 11:50 A.M.

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### **Save the Date**

PHOENIX, ARIZONA  
SITE OF THE APPELLATE JUDGES EDUCATION INSTITUTE 2008 SUMMIT  
November 13 - 16, 2008

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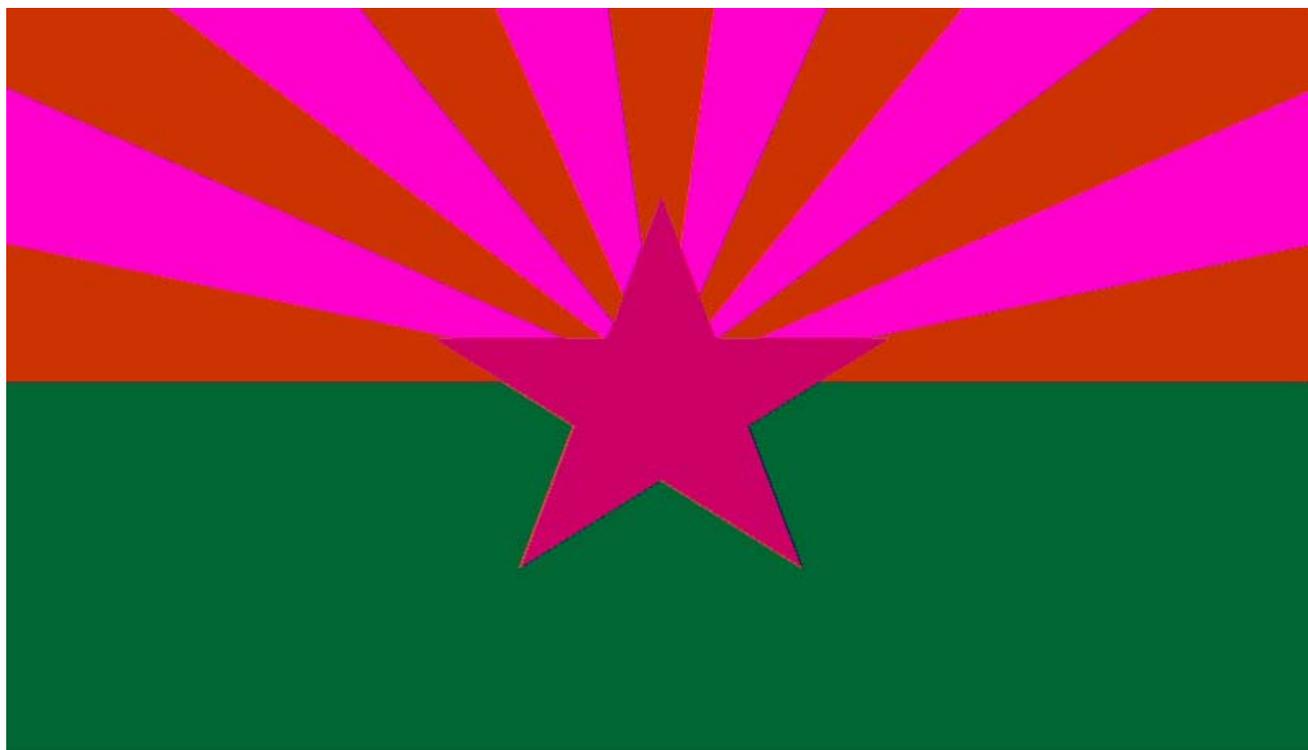


CASA Official Publication

*Fall 2008*

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**We're Going to the Valley of the Sun**

by Naomi Godfrey

*U.S. Courts of Appeals, 11th Circuit*

In just a few weeks, November 13, 2008, CASA will convene in beautiful Phoenix, Arizona for what promises to be the best ever Appellate Judges Education Institute Summit. The metropolitan area, also known as "The Valley of the Sun," is surrounded by the McDowell Mountains to the northeast, the White Tank Mountains to the west, the Superstition Mountains to the far east, and the Sierra Estrella to the southwest. The Phoenix and South Mountains are within the city. In November, the average high temperature is 75 and the low is 50 with very little precipitation. An ideal setting and ideal weather.

Add to the beautiful setting and the great weather this year's Summit and you have perfection. Gail Giesen's "A Time For Difficult Choices" will regale you with many of the insightful educational offerings. Gail's enthusiasm is not an overstatement of what you can expect. In addition to the excellent programming, exceptional social events are planned. The first evening of the Summit includes a reception at the Desert Botanical Garden which is a 140 acre botanical garden with over 21,000 plants. (Please see the photo gallery in this newsletter). The annual CASA T-Shirt Exchange will take place the following evening around the pool of the Doubletree Paradise Valley Resort (overlooking the Sonoran Desert - see photo gallery) followed by CASA's Annual Dinner at the Old Town Tortilla Factory. The AJEI Annual Dinner will include a reception featuring a Native American cultural event and United States Supreme Court Justice (ret.) Sandra Day O'Connor as the guest speaker.

Our current Chair, Lee Ramsey, turns in his last "Notes From the Chair" and reminds us that its time once again to elect new CASA officers and Executive Board members for the upcoming year. Our current Nominating Committee Chair, Kembra Smith, explains the process and includes the list of nominees.

Gail Giesen, still in her educating mode, tells how the Staff Attorneys' Office in Connecticut goes about the business of serving both the Appellate and Supreme Courts. An anomaly for sure but a very efficient and interesting concept.

Then, Susan Dautel walks us through "The Long and Winding Road..." all of us have or will experience while developing an electronic case management system.

Included also in this newsletter look for a scholarship application for those who may wish financial assistance to the 2008 Summit and a reduced membership application for those who may wish to join the ABA and CASA under the dues waiver plan.

Well, this is it for now. Please plan your visit to Arizona as hotels are filling up fast. As you plan, remember that this is a great time of year to visit other sites in Arizona such as the beautiful artist colony of Sedona and the amazing Grand Canyon. See you in The Valley!

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### **A Time For Difficult Choices**

by Gail Giesen

*Office of the Chief Staff Attorney*

No, I'm not talking about November 4th! What I'm talking about is how hard it's going to be to choose which sessions to attend at the 2008 Summit that will be held in Phoenix on November 13 to 16. As head of our education committee, I know how good our CASA-sponsored sessions are going to be. We're talking the likes of Erwin Chemerinsky and Susan Herman, who will be speaking on recent important decisions of the U. S. Supreme Court. And how about that panel of staff attorneys whose topic will be "Management Issues for Supervisory Staff Attorneys: A Nuts `n' Bolts Discussion"? (I'm on the panel, so I guess I'm not exactly unbiased!)

In addition to our CASA-sponsored sessions, the other Summit organizers, i.e., the judges (a.k.a., the "Spencer-Grimes folks") and the appellate practitioners (a.k.a., the "CAL folks") have come up with a great slate of topics and speakers. And we can choose from virtually all of them! Except for a handful of time slots with plenary sessions, there will be many simultaneous sessions that are going to demand some tough calls on which ones to attend. (If only I could be in two places at once. . . .) Looking just at the offerings for one of the Friday afternoon time slots, "Judging and Neurobiology: Morality, Virtue and Vice" sounds absolutely fascinating. But so does "Preserving Error and

Establishing Prejudice: Jury Instructions on Appeal," which is a topic of enormous practical significance. And then there is "Whiskey is for Drinkin', Water is for Fightin' -- Current Fights Over Western Water." Even though I'm an Easterner, water rights are of increasing importance for all of us . . . . The problem spills (pardon the pun) over to Saturday, when I'm going to have to choose between "The Treasure Hunt -- Deciphering Statutory Intent" (believe it or not, I think statutory construction is really interesting) and Susan Herman's always terrific "Supreme Court Update (Criminal) for Staff Attorneys." This is going to be tough. . . . Anyhow, I encourage you to come to the Summit and share the pain. You won't be disappointed!

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## Notes From the Chair

by Lee Ramsey

*Staff Attorney, Tennessee Supreme Court*

I hope everyone had an enjoyable summer. My summer included a trip to Manhattan in early August for the ABA Annual Meeting, where I attended the meeting of the Appellate Judges Conference ("AJC") Executive Committee. The biggest news to report from the meeting is that the AJC Executive Committee has decided on the location for the 2009 Summit for Appellate Judges, Lawyers & Staff Attorneys, and the selected site will be very attractive to many appellate staff attorneys. As of the date I'm writing this article, however, the hotel contract has not been finalized; additionally, we traditionally announce the location of *next* year's conference at *this* year's conference. So, for both reasons, an announcement of the 2009 site in this article would be premature; stay tuned, however, because the site of the 2009 Summit will be announced in Phoenix at the 2008 Summit (and in the next edition of *CQ*).

Speaking of the 2008 Summit, I hope you'll be able to attend the conference in Phoenix, November 13 -16. CASA's Education Committee, working with the Appellate Judges Education Institute's ("AJEI") Program Committee, has planned another excellent seminar. Not only will we have stellar CLE programs, but the weather in Phoenix in mid-November is bound to be much nicer than in Nashville (where I live) and, for many of you, also nicer than where you live. So, come learn from the finest CLE speakers around *and* enjoy the beautiful autumn weather in Arizona. Information about the 2008 Summit (and online registration) may be found at: <http://www.law.smu.edu/ajei/>.

For anyone interested in attending the 2008 Summit, but whose court is unable to pay all or part of the tuition, as well as travel and lodging expenses, CASA has \$3,000 available for scholarships to this year's seminar. A scholarship application was circulated via CASA's listserv and a copy is included in this edition of *CQ*. Scholarships can be requested for most of the expenses related to the seminar, including tuition, transportation, and lodging. Given the amount of funds we have available, the Executive Board has asked the Scholarship Committee to favor granting partial scholarships this year, in order to assist more people in attending the Summit. Applications should be submitted to me (at [lee.ramsey@tncourts.gov](mailto:lee.ramsey@tncourts.gov)) as soon as possible; the applications will be reviewed by the Scholarship Committee, which then will notify each applicant of the Committee's action on his/her application.

On July 15, 2008, CASA's Executive Board held a special conference-call meeting to address a number of pending business items. I will briefly mention several items that might be of interest to CASA's members. First, the Board voted to adopt a number of "housekeeping" amendments to CASA's bylaws; CASA's membership will vote on the proposed amendments at our annual meeting to be held during the 2008 Summit, and then the amendments will be submitted to the AJC's Executive Committee for its approval. Second, the Board also voted to establish the "CASA Distinguished Service Award"; the Board will make the award on an occasional basis to an individual (member or non-member) who has made an extraordinary contribution to CASA. The Board has chosen the first recipient of the CASA Distinguished Service Award, and the award will be presented during the 2008 Summit in November. And last, we decided to update CASA's web site and hope to have that project completed sometime this fall.

CASA is a council of the Appellate Judges Conference and, as such, is also one of the constituent organizations of the Appellate Judges Education Institute (which sponsors the AJC's educational programs.) CASA members have been active in AJC and AJEI committee work over the past year and will continue to participate in the upcoming year. Gail Giesen (CASA's 2008 Education Committee Chair) and I have been representing CASA on the AJEI's 2008 Program

Committee. Also, Bill Lowe and I represented CASA on the AJC's 2007-2008 Long Range Planning Committee. For 2008 - 2009, CASA member Rachel Ekery has accepted an appointment to represent CASA on the AJC's Membership Committee, and Kembra Smith will serve as CASA's liaison to the ABA's Commission on Racial and Ethnic Diversity in the Profession. Additionally, I have accepted an appointment to Chair the ABA Judicial Division's Special Initiatives Committee for 2008 - 2009. CASA's "profile" within the Judicial Division and the Appellate Judges Conference has risen in the last several years, and it's a positive reflection on CASA that we have been asked to participate more in JD and AJC activities.

To once again borrow a line from our Chair-Elect Bill Lowe, "CASA is our bar association." Bill's right – our local and state bar associations offer little that is relevant to our specialized work as appellate court staff attorneys. I hope you will adopt Bill's (and my) view of CASA and actively participate in "our bar association." I encourage you to volunteer to serve on one of CASA's committees in the 2008 - 2009, especially if you are a new member or someone who hasn't previously served. By the way, all of our committee work is done via email and telephone conference calls, so it's easy. (The Education Committee requires more of a time commitment than the other committees, but it's very gratifying to participate in the planning of our annual conference.) To volunteer for any of our regular committees – the Nominating Committee, the Education Committee, the Membership Committee, the Publications Committee, and the Long Range Planning Committee – please contact Bill (at [bill.wllowe@gmail.com](mailto:bill.wllowe@gmail.com)).

With my term ending at the annual meeting in Phoenix, this will be my last installment of "Notes From the Chair." I'll close by saying it's been an honor to serve as CASA's Chair, and it's been a pleasure working with Immediate Past Chair Kembra Smith, Chair-Elect Bill Lowe (and his predecessor, Dave Ewert, who resigned earlier this year due to a change in his job responsibilities), Secretary Naomi Godfrey, and the other members of the Executive Board – thanks to all of you for your many contributions to "our bar association." I also commend Gail Giesen and the members of her 2008 Education Committee for all of your hard work in planning for the 2008 Summit. Well done, everyone – I look forward to seeing you in Phoenix.

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## **Lunch With A Judge**

by Bruce Vail

*11th Circuit Court of Appeals*

I remember well a lesson taught to me by a former law firm partner. Following a meeting with clients, he told me, "Bruce, never make the mistake of thinking you're in the legal profession. You are, and always will be, in the "people business."

Later, I understood what this meant. The idea of rugged individualism, of being a lone wolf and succeeding completely on your own, is a myth, at least when you have to work for, and with, others.

This is true in private practice, of course. That's because success only comes from satisfying clients on a consistent basis. But it's also true for those of us working for the judiciary, because we have to work with both the judges we report to as well as the attorneys and staff we manage.

The question is, how do we work on establishing and maintaining good working relationships?

According to Keith Ferrazzi and Tahl Raz, authors of the 2005 bestseller, "Never Eat Alone: And Other Secrets To Success, One Day At A Time," having lunch with someone can help. And although Ferrazzi and Raz didn't specifically mention judges, the same idea applies.

In the Eleventh Circuit Court of Appeals, judges periodically have lunch with entire court departments - including the staff attorney's office. They eat "with the troops," ask or answer questions, and just take time to learn something about those they work with. If a judge prefers not to have lunch with a large group (e.g., with 50 or more in attendance), a nice alternative is to have a "brown bag" style lunch with only a few participants, so as to maximize the time for questions and the exchange of information. Finally, a third option is to offer "strength in numbers." Which is

to say, a single judge not willing to have lunch with a large room of relatively unfamiliar co-workers might be much more agreeable when joined by one or two others. The panel system has helped courts adjudicate cases for years, and a lunch with a panel is a unique experience.

Finally, even those in private practice recognize the benefit of having lunch with those on the bench. The Oklahoma City Chapter of the Federal Bar Association, for example, recently initiated a Lunch with Judges Program, which affords its members an opportunity to meet in a small, informal gathering with members of the federal judiciary.

Lunch with a judge? Why not? So ask your judicial colleagues to join you today - and see if you both agree that we are all in "the people business."

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### **Connecticut's Staff Attorneys' Office - Serving Two Courts**

by Gail Giesen

*Office of the Chief Staff Attorney*

For years, when I've attended CASA conferences and had the "what we do in my state" conversation with other staff attorneys and mentioned that my office serves both of Connecticut's appeals courts, I have frequently been asked, "Wow, how do you do that?" Or, "Don't you have big conflict of interest problems?" Well, I've decided to write this little article to clear things up. This way, at the Summit in Phoenix, maybe I won't have to answer all those questions!

My office was created by the Connecticut Supreme Court in 1982. Its core function was to make sure that the appeals that the court heard were free of jurisdictional defects so the court could address the issues on their merits. In 1983, after a constitutional referendum, our intermediate court of appeals - the Connecticut Appellate Court - was created. At the time of its creation, the powers that be decided that both courts should be served by one central Staff Attorneys' Office, as they would also be served by one Chief Clerk's Office and one Reporter of Judicial Decisions.

The system works smoothly because of the division of labor. The judges of both courts have permanent and temporary (one year) law clerks who assist them with their opinions. These clerks are attached to the judges' chambers and are administratively not connected to my office. As the law clerks, as opposed to my staff, draft opinions, there is virtually no possibility of a staff attorney's having a vested interest in the outcome of case on which he or she worked while it was in the intermediate appeals court.

Although we don't draft opinions, we opine - a lot - on matters of jurisdiction to anyone who will listen. Call us final judgment nerds. Also, we draft web site summaries of all Supreme Court pending cases, examine the dockets of both courts to see if cases share similar issues that would warrant their being "grouped," etc., etc., etc. If a law clerk runs into a mootness or standing problem, we are always at hand to share our thoughts. Once in a while, we're asked to read an opinion prior to publication if it contains a jurisdictional discussion or if the court is concerned that it has the potential of conflicting with another case that is in the works. We also administer an appellate preargument conference program. The list goes on and on. . . .

By any measure, this office may be different from a lot of staff attorneys' offices, but it's a hopping place where judges from two courts keep us plenty busy with work that is challenging and satisfying!

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### **The Long and Winding Road: Development of a New Appellate Case Management System**

by Susan Dautel

*New York State Courts of Appeals*

The New York State Court of Appeals has been operating a DOS-based computerized case management system since 1986. That system, though cumbersome in some respects, still does many basic case management functions well;

however, the need for a more sophisticated, comprehensive and responsive system has been apparent for some time. The Clerk's Office developed its first action plan for development of a new system in 2003. This November, nearly five years later, a new system, uniquely created for the Court, will "go live". System users are both excited and nervous about the transition.

The development process has been a fascinating one. Initial steps were of the research variety: speaking with private vendors of case management systems, speaking with other courts which recently had put a new system into use or were in the process of doing so, and visiting other appellate courts to view their systems. CASA members were very helpful in providing information, particularly about their courts' experiences with system developers and the sometimes long and painful process of implementing a new system. Ultimately, the Court of Appeals was fortunate to have the assistance of the New York State Office of Court Administration's Department of Technology in designing and building its new system.

The first design step was to create workflow diagrams detailing all of the business of the Court, including processing motions, appeals, criminal leave applications, certified questions from other courts, etc. The diagrams were a joint effort by the Court staff and the technical team, and involved a great deal of education and translation going both ways. A major early realization, and one which we've had to remain aware of throughout the process, was that legal minds and technical analyst minds may be processing the same information differently and may be making different assumptions about the same data. A constant refrain has been: "I hear your question, but is this what you are really asking?" After the diagram creation followed development of "requirements" statements, detailing the existing needs for the new system, as well as the "wish list" items from Court staff. The requirements documents were turned over to programmers to begin building the new system.

Next was the phase of reviewing screen shots as they were being developed, and reviewing form documents and reports to be produced within the system, all of which proceeded simultaneously with the technicians' process of converting existing data for incorporation in the new system. Currently, we are in the testing phase of operational screen shots, checking the capabilities for accurate and complete data input and correct relational functions. Testing will continue through November and serves as training to smooth the actual transition to the new system. During November and December we expect to enter case data in both the old and new systems to ensure that 2008 data is complete and intact. In January 2009 we expect to operate only in the new system, with forms, documents, reports and statistical data generated in that environment only. We are excited about the upcoming ability to scan documents into the system, to produce letters and other documents directly from the system, and to further mechanize the calendaring and decision release functions. If anyone would like further information about the system under development or the process of development, we'd be happy to share our experience.

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## **Nominating Committee's Slate of Nominees for CASA Officers and Executive Board Members for 2008-2009**

by Kembra Smith

*U.S. Courts of Appeals, 11th Circuit*

Pursuant to CASA's bylaws, the Nominating Committee has conferred to select a slate of nominees for CASA's officers and Executive Board members for the upcoming year. The Committee, comprised of Bill Lowe (as current Chair-Elect), Dave Ewert, Marcia McCormack, Riley Fenner and myself (as Immediate Past Chair), is pleased to announce the following nominations which will be voted on by the CASA membership at its annual business meeting this November in Phoenix.

Under the CASA bylaws, there are nine individuals on the CASA Executive Board: three officers (Chair, Chair-Elect, and Secretary), the Immediate Past Chair, and five Members-at-Large. By virtue of the bylaws, the Chair-Elect automatically moves into the position of Chair. Early this year, however, Dave Ewert, the Chair-Elect elected by the membership at the last annual meeting, resigned due to taking a new position at the Iowa Supreme Court. Upon Dave's resignation, the Executive Board voted to select Bill Lowe as Interim Chair-Elect, subject to his election by the membership as Chair for the upcoming year. Also by virtue of the bylaws, current Chair Lee Ramsey (Tennessee

Supreme Court) will automatically move into the position of Immediate Past Chair.

In addition to formally nominating and recommending Bill Lowe (Central Staff Director, Louisiana Court of Appeal, 2nd Circuit) as Chair for the upcoming year, the Committee also nominates and recommends Naomi Godfrey (Senior Staff Attorney, U.S. Court of Appeals, 11th Circuit) as Chair-Elect. Naomi currently is Secretary and also serves as the editor of CQ. For the position of Secretary, the Committee nominates and recommends Gail Giesen (Senior Staff Attorney, Connecticut Supreme and Appellate Courts); Gail currently is a Board member-at-large and has served this year as Chair of the Education Committee.

Three members-at-large have served one term on the Board and under our tradition are eligible for a second term; accordingly, the Committee nominates and recommends that Susan Dautel (New York Court of Appeals), Leslie Davis (North Carolina Court of Appeals), and Kevin Smith (Indiana Supreme Court) be re-elected as members-at-large. The Committee also nominates and recommends two new members-at-large: Janice Irving (Louisiana Court of Appeal, 1st Cir.) and Tye Sanford (U.S. Court of Appeals, 10th Cir.).

On behalf of the Nominating Committee, I thank the nominees for their willingness to serve as CASA's officers and Board members in 2008-2009. Although we recommend to the membership the nominees named above, we also note that CASA's bylaws permit members to make additional nominations from the floor at the annual CASA business meeting.

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## **CASA 2007-2008 Executive Board Members**

### **Chair**

*Lee Ramsey*

### **Chair-Elect**

*Bill Lowe*

### **Immediate Past Chair**

*Kembra Smith*

### **Secretary and Editor of the CASA Quarterly**

*Naomi Godfrey*

### **At-large Members**

*Gail Giesen*

*Renee Simien*

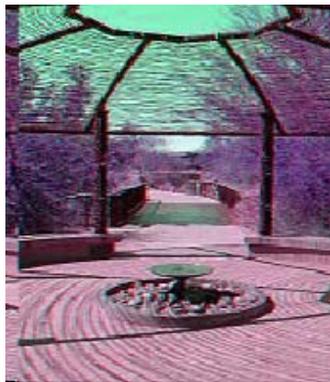
*Susan Dautel*

*Leslie Davis*

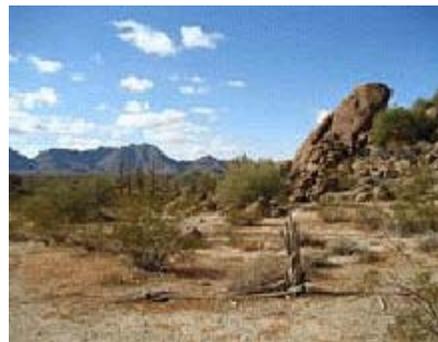
*Kevin Smith*

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## **CASA Photo Gallery**



The Desert Botanical Garden - site of the opening reception of the 2008 Summit



The Sonoran Desert - the view from the site of the 2008 Summit



The Grand Canyon - 229 miles from Phoenix



Sedona, Arizona - 116 miles from Phoenix

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