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by Susan Dautel
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In this issue, we have information on new ways to communicate and become acquainted, a preview of the next annual conference, a look at a fellowship opportunity enjoyed by a former staff attorney, and insights into how we do our work and where in the world we roam (everywhere!) in our free time. Thank you to the authors who have taken the time to share a bit of themselves with us. Given the eclectic nature of these offerings, we know YOU can find something interesting to submit for the next issue! Please consider this a personal invitation to get your writing juices flowing and submit an article about something that interests you personally or professionally--by job description, CASA members are excellent writers, so please exercise and share your skill. We continue to seek information about processes that are unique to your court or that have helped to overcome a particular challenge in your court. But we also enjoy learning about the wide-ranging talents and travels of our fellow members. Proposed articles may be submitted to me at sdautel@courts.state.ny.us. For those of you who like to work to deadline, please put August 6, 2010 on your calendar for the due date.

Over the last few years, CASA has managed to fuel a particular interest of mine: Frank Lloyd Wright. Although I'd long known his name as a famous architect, I got fascinated by his "larger than life" persona and quite scandalous life choices (for the early 1900's) a few years back while reading "Loving Frank" by Nancy Horan. For those who don't know about the scandal, a quick thumbnail is that Wright, who was married with six children, fell in love with Mamah Cheney, married with two children, while he was building one of his "prairie houses" for Mamah and her husband in the Oak Park suburb of Chicago (a couple of streets over from Wright's house and studio). In 1909 the two lovers left spouses and children behind and fled to Europe, to public outrage that threatened the young architect's career. The story of their intriguing relationship ends in the shocking murder of Mamah at the Wisconsin refuge (named "Taliesin") Wright built for them. Since reading the book, I also became fascinated by Wright's architectural genius, and travel for CASA meetings and conferences has allowed me to see many of the still-existing buildings he designed. A 2009 executive committee meeting in Los Angeles led to a group outing of CASA officers to see Hollyhock House, a house designed by Wright for an oil heiress--perched on a hill with views of the Hollywood sign, the ocean and all of downtown LA (www.hollyhockhouse.net). The 2008 Summit in Phoenix was not complete without a tour of Taliesin West, Wright's famous winter home and school in the Arizona desert (www.franklloydwright.org). A non-CASA trip to Pittsburgh led to an amazing exploration of Fallingwater, probably Wright's most famous residential design (www.fallingwater.org), and a visit to my
daughter in Chicago had to include tours of the Wright home/studio and the famous Robie House. I am looking forward to another CASA/Wright exploration in November in Dallas: the Kalita Humphreys Theater, the only theater he designed in the U.S. If you want to join me in that outing, let me know!

**Message from the Chair--Facebook and Me: Let’s Chat**

by Naomi Godfrey

US Court of Appeals for the 11th Circuit

Atlanta, Georgia

CASA is getting a Facebook presence, and we’d love to have you join us!

Thus far, I have created a personal page, where you can see pictures of me and my daughter, Khala. Feel free to send me a message or post a note on my wall, and as my familiarity with the site grows, I hope to expand my number of “friends” exponentially. Here, we can all get involved in lively discussions about what the staff attorneys of America are doing, both at work and after work. We can use the page as a place to circulate announcements, discuss life after staff attorneydom (a new word!), and post pictures of staff attorneys at work and at play. Right now, I am filling the page with pictures of our members engaging in various aspects of their personal and professional lives. Please send me your photos so I can add more! With your help, we can use our Facebook page to highlight the diverse, exciting, and energetic people that make up CASA.

What shall we discuss on our page? Everything. We are limited only by that which may run afoul of the Federal Judicial Code of Ethics, state judicial ethical codes, or the Local Rules of your court. Naturally, we will avoid discussing anything that may be offensive to our judges or to the public we serve.

I hope to use our space as a forum for nationwide discussions covering various professional topics, including:

- How many attorneys are there in your office?
- How is your office structured?
- Are your new hires experienced, or do they come fresh from law school?
- Do your staff attorneys serve for a term, or are they permanent?
- Do you present cases to your judges orally or in writing?
- Does your office work on a specific area of law? If so, what?
- How has the focus and mission of your office changed over time?
- What events or activities would you like to see at this year’s November conference?

By having a centralized place to collaborate and share ideas, we can make each of our offices better, for staff attorneys and judges alike.
Of course, I also hope to discuss who we are beyond our profession:

- What do you do in your spare time?
- To what exciting places have you traveled lately?
- What interesting books are you reading?
- If you could go anywhere in the world and meet anyone throughout history, where would you go and who would you like to meet?

By getting to know one another, we can make membership in CASA a better, richer, more valuable experience for all of us. Get ready to join me. I will be contacting each of you soon.

Meanwhile, please plan to take advantage of the American Bar Association’s new group rates. In some cases, entire courts are joining the ABA, the Judicial Division, the Appellate Judge’s Conference for as little as $100 a year. We’ve included a copy of the ABA Group Program Enrollment Form along with some FAQs at the end of this newsletter. These items may also be found at http://www.abanet.org/jd/pdf/Group_Program_FAQ.pdf.

To Whet Your CLE Appetite--A Preview of the 2010 AJEI Summit in Dallas, Texas 11/18-21

A preliminary listing of speakers and topics for the 2010 Summit in Dallas was forwarded by our Education Committee chair, Rachel Ekery of the Texas Supreme Court. Here are the bare bullet points for your perusal:

- **Keynote Speaker:** Laurence Tribe, Senior Counselor for Access to Justice, U.S. Justice Department

**Other Exciting Scheduled Speakers:**
- Dean John Attanasio, Dean Erwin Chemerinsky, Dean Larry Kramer, Former U.S. Solicitor Generals Greg Garre and Kenneth Starr
- Federal Judges: Consuelo Callahan, Jennifer Elrod, Catharina Haynes, Margaret McKeown, N. Randy Smith and Jeffrey Sutton
- State Judges: Chief Justice Rebecca Berch and Justice Joan Irion
- Journalists: Adam Liptak and Joan Biskupic
- Attorneys: Mark Curriden, Walter Dellinger, Julia Blackwell Gelines, Carter Phillips, Trevor Potter, Peter Rusthoven, Tom Sadaka and Seana Willing
Some of the Topics to the Presented:
- Executive Power: Does the President Have to Obey the Law?
- Search and Seizure, Cybercrimes: E-Discovery
- Why Bad Things Happen to Good Judges--A Discussion on ways ethical judges find themselves in difficult situations and how to avoid this from happening to you
- The Press and the First Amendment
- Choreography of Courts and Legislature
- Supreme Court Review and Preview
- Privacy in the Age of Technology
- Future of Courts: 20 Years Plus
- International Globalization
- Campaign Finance
- Contempt of Court
- National Security
- Civil Issues Percolating in Courts of Appeal
- Discretionary Appellate Issues, i.e. .. Certiorari, En Banc, Interlocutory
- Hot Topics in Family Law
- Amicus Briefing
- Difficult Oral Argument Vignettes

Entertainment: Texas Bar and Grill Singers

Venue: the Adolphus Hotel (www.hoteladolphus.com), a beautiful downtown Dallas hotel, just minutes away from the new cultural offerings of the Arts District

Scholarships: Will be available--look for further information about this in coming CASA Quarterly issues.

Put the dates on your calendar: November 18-21, 2010. Hope to see you in Dallas!

U.S. Supreme Court Fellowship
by Irina Axelrod-Angres
Supreme Court Fellow assigned to the Federal Judicial Center
Washington, D.C.

Greetings from the Supreme Court Fellows Program. CQ Editor Susan Dautel asked me to acquaint you with the Supreme Court Fellows Program and provide some helpful career development information. As some of you might know, the Supreme Court Fellows program was founded by Chief Justice Warren Burger in 1973. The
program has provided a wonderful opportunity for attorneys and other professionals to study firsthand the administration of the Federal Judiciary and the dynamics of interbranch relations.

As stated in the program’s mission, “every year the Supreme Court Fellows Program solicits applications from potential candidates from diverse professions and academic backgrounds, including law, the social and behavioral sciences, public and business administration, systems research and analysis, communications, and the humanities. The program accepts a maximum of four Fellows per year and the selected candidates are detailed to four different agencies: United States Supreme Court, Administrative Offices of the United States Courts, Federal Judicial Center, and the Sentencing Commission.” Further, “work assignments and projects assigned to the Fellows reflect the needs of the judiciary and the interests and capabilities of the Fellows. During their one year assignment Fellows gain insight into the contemporary policy issues facing the judiciary, as well as an appreciation of the nature of judicial administration.” For more information please visit http://www.fellows.supremecourtus.gov/index.php

The fellowship year traditionally begins in September and each fellowship is different depending on the needs of the office to which the Fellow is assigned. During the past eight months of my fellowship at the Federal Judicial Center I have been very fortunate to work on a variety of interesting projects, ranging from participating in a newly designated study of the Federal re-entry courts program to conducting briefings for international judicial delegations at the Supreme Court, the Federal Judicial Center, and the Department of State. As a Fellow I have had a unique opportunity to observe the biannual Judicial Conference last September, as well as participate in other conferences and workshops for the Federal Judiciary conducted by the FJC. Working and living in Washington DC during my fellowship has been providing me with many ongoing opportunities to learn from my colleagues, co-fellows, and international visitors. I look forward to the remainder of my fellowship and I hope that this brief review may be of some assistance to my colleagues looking for new, interesting steps in their career development. I will gladly answer any questions you may have about the program if you write to me at iaxelrod-angres@fjc.gov.

[Note from the Editor: Before applying to the Fellows Program, Irina served as a staff attorney in the Civil Division, Nevada Supreme Court.]

Managing Term Staff Attorneys: Taking the Positive Approach
by Paul McGrath
New York State Court of Appeals
Albany, New York

One of the neat aspects of belonging to CASA is the chance to see how different
appellate courts handle the constant need to manage cases and analyze legal issues. The tribunal that I have been honored to serve for the last 25 years, the New York Court of Appeals, uses both career staff attorneys and two-year term staff attorneys (or staff law clerks) (all of which are distinguished from the elbow clerks hired by each of our seven Judges). The career positions are found mainly in the Clerk’s Office. These attorneys interact with the lawyers and the pro se litigants, and deal with a myriad of case management decisions, like how to track an appeal and how to prepare the final entry and order.

Two other career positions are found outside the strict confines of the Clerk’s office. In the position of Chief Court Attorney, I, along with my capable Deputy Chief Court Attorney, are responsible for the success of the Court's Central Legal Research Staff. Apart from the two supervisors, our Central Staff consists of 13 other staff attorneys or staff law clerks (six first year clerks, six second year clerks and one more permanent clerk). This article addresses information pertinent to the Central Staff attorneys, as opposed to the elbow clerks working for each of our seven Judges.

In our Court, the Central Staff performs four main tasks. First and foremost, our staff attorneys prepare written reports on civil motions for leave to appeal or, to use Supreme Court of the United States terminology, petitions for writs of certiorari. These reports, which are written under the supervision of one reporting Judge, vary in length from 2 pages to 20 pages. Staff attorneys analyze the merits of the case and conclude with a recommendation as to whether the Court should (1) dismiss leave (for lack of subject matter jurisdiction), (2) deny leave (because the case was decided by the court below in accordance with settled law or presents no issue of statewide importance) or (3) grant leave (to resolve conflicts in the intermediate appellate courts or to entertain leaveworthy issues of statewide importance). Second, our staff attorneys prepare reports on civil appeals taken as of right to help the Judges determine whether the Court has subject matter jurisdiction to decide the appeal. For example, in New York, an appeal lies as of right to our highest Court if a substantial constitutional question is directly involved in the intermediate appellate court order being reviewed. Our staff reports help the Judges decide whether a constitutional question is directly involved and substantial, two terms of art that have received a good deal of judicial interpretation but are in constant need of close case-by-case application. Third, our staff attorneys prepare reports and draft decisions on civil and criminal appeals selected under the Court's rules for expedited resolution without oral argument or full briefing. In this respect the staff attorney does the exact same type of work that an elbow clerk does with the exception that the staff attorney's initial editor is a staff attorney supervisor rather than a Judge of the Court. The reviewing Judge gets involved only after the staff writer and his or her editor refines the initial legal analysis and polishes the report and proposed draft writing. Once the Judge does get involved, further editing and refinements are done between Judge and staff attorney without the supervisor's involvement. Finally, our staff attorneys prepare more generalized research projects from time to time as required by the Judges of the Court.

Because we are dealing with term staff attorneys whose salaries are set by a
collective bargaining agreement, salary increases or rapid promotions are not methods we can use to motivate these attorneys. Over the years, I have developed some strategies to help staff attorneys reach their maximum potential while at the same time provide the Judges with the most informative reports to enable them to make the best possible decisions. Here are several of these strategies.

1. **Hire not just smart people but the right people.** At one of the most prestigious state appellate courts in the nation, the Court's Central Staff is blessed each year with receiving a number of great applications from law students and recent law graduates across the state and even across the nation. The applications we receive are invariably submitted by students who were at or near the top of their law school classes. However, not all smart people make the best law clerks or staff attorneys. In our interviews we are honest and clear about what the job is -- and what the job is not -- so law clerks know what to expect before they take the position. For example, we emphasize the day-to-day rigors of the writing process, but we also stress the life-long benefits of learning how to refine the legal analysis in an efficient manner. We do not oversell the amount of day-to-day judicial contact. We emphasize that most staff attorneys come to the Court as good writers and leave the Court as truly excellent writers because they are writing and getting feedback every single day. If we have done our interviewing right -- and our track record is quite good -- we can tell just from an afternoon of interviewing with four different Court personnel which applicants will treasure the honor of working for the Court and which will see it as just another job. We want to hire those who see this job as a chance of a lifetime, an opportunity to seize and develop the clerkship to its maximum potential. These are the people that will be easy to manage and will be great team players. These are the people we hire.

2. **Keep an open door policy and encourage questions.** As editors and supervisors, my deputy and I try to make sure we keep our door open for questions that the staff attorneys may have about the court's tricky jurisdictional rules or about the merits or certiorari analysis specific to any given case. We set a tone that no question is a dumb question, and that no staff attorney is on his or her own when starting a new job. We try to let our enthusiasm for the law and the Court spill over so that it is easy to see. If staff attorneys feel welcome in the supervisor's office, it is more likely that they will stop in and ask a question, saving them hours of spinning around doing what might be unnecessary or unproductive legal research.

3. **Keep the editing reasonable and positive.** Each attorney develops at a different rate in his or her ability to perform the job of writing concise and precise case reports in an efficient manner. Thus, as staff supervisors, we must not be too quick to criticize or judge. We are careful not to edit just for the sake of saying something in a different way, and we edit only to make a report tighter or more informative. We try to work with the staff attorney's approach to the case, trying to be supportive of that person's legal analysis and recommendation if that approach is "in the ballpark." After all, the staff supervisor's name is not going on the report, and it is not the staff supervisor's job to impose his or her own views of the close cases on the staff attorney. Disagreeing with the report writer on close cases is strictly the right of the Judge. Staff
attorneys really appreciate the difference between an editor that second guesses and an editor that is supportive in helping the attorney reach a level of clarity that perhaps he or she cannot quite achieve so early in the clerkship process.

In my view, the best editing emphasizes a staff attorney's positive sections and sentences as much as pointing out grammatically incorrect or stylistically awkward passages. Edits are never made via red pen, but in nonthreatening pencil. After all, even editors sometimes change their own opinions as they read and reread a report.

4. Take some cases for your own writing and give your first draft to a term law clerk for the initial edit. As the staff supervisor, my main job is to assign the work to the various staff attorneys, monitor their progress, edit their drafts and insure consistency in approach and format, so I do not have time to complete a full load of motion and other report assignments from start to finish. However, during each three to four-week work cycle, I always manage to prepare three or more of my own reports. Not only does this report writing keep me tuned into the rigors of the writing process and make me keenly aware of the difference between writing and editing, but it sets the example for the staff attorneys. The term clerks realize from the outset that their supervisor isn't asking them to do anything that he is not prepared to do himself. In addition, the staff attorneys really appreciate the opportunity to do a little editing and coaching on their own. This little strategy builds teamwork and trust. When attorneys feel like a valuable player on the team, they will be willing to go "extra innings" to achieve the desired result: getting the best possible reports to the Judges in a timely fashion.

5. Assign each first year court attorney a second year mentor. As noted, the Court hires most of its term staff attorneys right out of law school. Frequently then, the new law graduates come to the Court with myriads of little questions with which they do not necessarily want to trouble their supervisors. They have simple inquiries, like dealing with computer issues or finding a certain office in the building. One approach that has proven successful for us is to pair up each first year court attorney with a second year court attorney. It is not hard for the second year attorneys to empathize with the first years' struggles. They are happy to import the little bits of knowledge that enabled them to succeed in the job.

6. Prepare and implement a good orientation where resources are explained and expectations are clearly articulated. If your court is anything like our Court, summer is the only real down time in the court year. This is the time of the year where the permanent and term staff attorneys alike take needed vacations to recharge their batteries. With increasing frequency, it is also a time where the six departing clerks leave their clerkships early to accept jobs in very tight public and private sector job markets. The combination of vacation and early clerk departures often leaves the Central Staff with a slight backlog of reports that need to be written come mid-August when our six new clerks start their jobs. There is an invariable urge to just give the new people their first assignments right away and let them get started. We try to resist this urge in favor of a one and a half day orientation process. We use this orientation as a
way to expose the attorneys to the work that they will be doing. We introduce them to computerized databases that will help them do their job. We expose them to certain books and treatises that they will consult on a frequent basis. We emphasize the importance of deadlines, remind them that not every staff attorney is going to work at the same pace and alert them that extra hours are expected if necessary to meet work deadlines. We try to explore a little of the Court's rich history, and we introduce them to just enough of the Court's appealability and reviewability rules that they will be able to ask good questions if they think they spot a jurisdictional problem in one of their assignments. We also take a bit of time for the staff attorneys to get to know each other so that they build a cohesive team that is essential to long-term success. The court year is not a sprint; it is a marathon. We value the slow steady progress that is best achieved by good preparation.

7. Perform Performance Reviews and Exit Interviews. Because my deputy and I manage a relatively small staff, we have day-to-day contact with the staff attorneys and are constantly giving attorneys feedback about their legal writing and analysis. Nevertheless, slightly more formal performance evaluations are still useful to give the attorneys a sense of where they stand, not vis-a-vis others in their class, but measured against an objective work standard. We do these performance evaluations twice during the clerkship. The first evaluation takes place in mid-November after the staff attorneys have been on the job for a full three months. By this time, the staff attorneys who have joined the Court immediately out of law school have received the results of the Bar Examination and have settled into a work routine. These evaluations take about 45 minutes each and are invariably the source of breakthroughs and insights by both supervisor and the new attorneys. We complete a second evaluation following the end of the clerks' first year of work. A positive report is necessary for the attorneys to be eligible for a one step raise, but we look at the evaluation as far more than an prerequisite to get a promotion. We hopefully get the attorneys to set their own goals for the year, realizing that they have only one more year to develop their skills and refine their talents before entering private practice or public sector law work outside a courthouse. Near the end of the two year clerkship, we do very informal exit interviews with our staff attorneys and have them anonymously fill out a Departing Staff Attorney Questionnaire that we use to improve the overall clerkship experience for future clerks.

What I Did on Summer (Okay, Fall...) Vacation
by Lee Ramsey
Tennessee Supreme Court
Nashville, Tennessee

CQ Editor Susan Dautel asked me to write an article about life outside work. So, here’s what I did on summer (okay, fall...okay, spring...it’s complicated) vacation:

All work and no play makes Lee a dull boy. Thus, the need for vacation. To shed the accumulating dullness from last year, I took off in mid-October for New
Zealand and Australia. My first stop was Southern California—Laguna Beach—where I spent one night with a sister and brother-in-law. The next day, we made the short drive to UC-Irvine for a brief visit with Dean Erwin Chemerinsky, who graciously showed us around “his” new law school. (By the way, the first thing Erwin did as we walked into his office was to point out, hanging on his wall, the Chemerinsky-as-Cubs-shortstop illustration that CASA presented to him at the 2008 AJEI Summit. He likes it very much!) Not long after my visit with Erwin, I headed to LAX for a late-night departure for New Zealand.

Yes, it is a very long airplane ride to New Zealand (and even longer flying home from Australia). My flight left LAX late on a Monday night, and I arrived in Christchurch on Wednesday afternoon (after losing a day crossing the international dateline and then changing planes in Auckland). Of course, their seasons “down under” are the reverse of ours in the U.S., so it was spring during my visit (hence, the “it’s complicated” above). Switching from autumn to spring in a matter of days was a treat!

On my first stop in NZ, I spent two nights in Christchurch. The afternoon I arrived, I explored the city center and then walked around the Botanic Gardens, enjoying the sunshine and the spring flowers. The next day, the weather turned gray and rainy, so I spent the day museum hopping, visiting the International Antarctic Centre, the Air Force Museum and the Canterbury Museum. On day three, I was up early to take an all-day bus tour from Christchurch to Queenstown. The weather that day was glorious, and the highpoint of the tour was a two-hour lunch break at Mt. Cook National Park. The mountain scenery at Mt. Cook NP is stunning. After several other stops along the way, the bus arrived in Queenstown in the early evening.

Queenstown sits on the shore of Lake Wakatipu, the largest lake in NZ, and is surrounded by mountains. Without a doubt, Queenstown was my favorite stop on the trip. Laid-back and friendly people, stellar scenery, good food, and a small-town feel—quite a place. While staying in Queenstown, I took a day-trip to Doubtful Sound via bus, boat, another bus, and another boat, and then back again. The weather that day was the worst weather of my trip—cold, with dark clouds and rain for most of the day—but Doubtful Sound is beautiful, no matter the weather. After four nights in Queenstown, I flew to Auckland to catch an early morning flight to Australia. (Since I stayed at a hotel near the airport, which is outside the city, I didn’t actually visit Auckland.)

My first stop in Australia was Brisbane, where I visited a young friend from Nashville who was there for a semester at the University of Queensland. The first afternoon, my friend showed me around the UQ campus, and then we took a CityCat (a boat—think city bus on the river) to the city center, where we walked through the old Queen Street Mall and then had dinner. The next day we walked several miles along the “RiverWalk” and grilled kangaroo steaks for lunch in a riverside park. (Mmm...kangaroo is tasty!) After those two days in Brisbane, I flew on to Sydney, for the longest stop on my trip.

The Sydney Opera House is the iconic image of Sydney, and having now seen it
in person I understand why—it truly is a wondrous piece of architecture, both inside and out. I stayed in the beach town of Manly, which is a ferry ride across the harbor from downtown Sydney. The ferry terminal is adjacent to the Opera House, so twice a day I rode past the Opera House on the water, going to and from Sydney, and I marveled at it on every trip. Highlights of my stay in Sydney, other than the Opera House, were visiting “The Rocks” (an old part of the city), spending an unseasonably hot afternoon on Bondi Beach, and taking a day trip to the Blue Mountains. After five nights in Sydney, it was on to Melbourne for my last stop.

Although I spent two nights in Melbourne, I only had a day for sightseeing. In addition to exploring the quaint alley-way shops in the city, I visited the Shrine of Remembrance, a poignant war memorial. Then I spent a sunny afternoon in the Royal Botanic Gardens, a nice relaxing way to end my visit “down under.” The next morning, I was headed home, flying from Melbourne to Los Angeles and then from LA to Nashville. I arrived home a little weary, but as they say in both New Zealand and Australia, “no worries.”

As some of my CASA friends already know, I enjoy taking pictures on my occasional travels. If you’d like to take a virtual mini-vacation to New Zealand and Australia, here is a link to photos from my trip: http://www.pbase.com/leeramsey/nz_a.

Visiting Cambodia - Sublime Beauty Mixed with Sadness
by Gail Feingold Giesen
Connecticut Supreme Court and Court of Appeals
Hartford, Connecticut

I am fortunate to have a place to go when I need to get away. I can escape to Southeast Asia, which I do every couple of years because I have a brother who lives in Malaysia. This year, on January 20, 2010, my husband and I met my brother in Bangkok, and we all boarded a flight for Cambodia.

To back up a little, this trip took some significant planning. The three of us decided that we would go somewhere where none of us had ever been before. It didn’t take long for us to choose Angkor Wat in Cambodia, as our initial destination. As soon as we made that decision, I realized that I know next to nothing about Cambodia and that I had to take a quick cram course of my own design. I started by re-watching The Killing Fields, which is a movie made in 1985 about the fall of Phnom Penh and an enduring friendship between a New York Times reporter and his Cambodian interpreter, Dith Pran. Then, before we embarked on our long trip to Bangkok (air time: 2 hours from Hartford to Chicago, 13 hours from Chicago to Tokyo, and 7 hours 20 minutes from Tokyo to Bangkok), I began to read. I started with Survival in the Killing Fields, the biography of Haing Ngor, the Cambodian physician who played the part of Dith Pran in The Killing Fields. This was a first-hand account of an ordinary person forced by the
Khmer Rouge to leave Phnom Penh “for three days” to avoid being bombed by the United States. In fact, in 1975, the Khmer Rouge marched almost the whole population of the capital into the country, murdered those who were associated with the ousted political party of Lon Nol (this included those who were educated and even those who wore glasses) and forced those who were not immediately killed to become slave laborers. Over the course of our trip, I read one book after another, culminating in Jon Swain’s ode to Indochina, *River of Time*. While Swain’s book was the most poetic, two books written by Loung Ung were the most moving. Ung describes her family’s suffering at the hands of the Khmer Rouge in *First They Killed My Father* and her own experience as a refugee in Vermont in *Lucky Girl*.

Against this sad backdrop of modern history, we landed in the charming little city of Siem Reap, on the outskirts of which the Angkor complex is located. We stayed at a small French hotel that was decorated in a combination of European sophistication and Asian minimalism. From there, we explored the temples of Angkor, which are evidence of a culture that flourished between the 9th and 15th centuries. Angkor Thom was, for me, the most stunning part of the complex. It contains an area known as Bayon, which consists of 54 really big towers on which are carved the coldly smiling face of a Hindu deity. The deity’s features, it is said, mirror those of the Cambodian king who built the temple. Some ego!

Back in Siem Reap, the backpacker/tourist scene is interesting. Although the city has been “discovered,” it is still remote enough to attract an adventurous sort of traveler. Perhaps this is because Cambodia, having suffered so badly, is still a very poor country. Medical care is basic, and if a serious health crisis should arise, it’s best to head for Bangkok. It is a country where travel insurance, with medical evacuation coverage, is a really good idea. One morning, I decided to take a class in Cambodian cooking. It was offered by Le Tigre de Papier, which supports a restaurant and hotel training school for Cambodians. The class started with a walk through a local market, after which we donned our aprons and got to work chopping and pounding under our teacher’s watchful eye. Each of us was allowed to choose a salad and a hot dish to prepare. I chose a green mango salad and a fish “amok” curry. While I can’t say that I’ll ever be able to recreate these dishes at home in Connecticut (although one day, I’m going to try), with professional guidance, I think I did a pretty good job. The best part of the class was when all the students sat down to enjoy the fruits of our labor. We were a diverse group – a lady from Holland, a young man from Ireland, a young woman from Australia, a couple from California and a staff attorney from West Hartford!

Our next stop was Cambodia’s capital, Phnom Penh. I initially found the city overwhelming. It was not only noisier and dustier than Siem Reap, but Cambodia’s poverty was more apparent here. We tried to spend our tourist dollars at restaurants and establishments run by NGOs. A gem of a restaurant was a little place called Friends, which, like Le Tigre de Papier, trains young people in the hospitality business. We also dined at the Foreign Correspondents’ Club and drank iced tea looking out over the Tonle Sap River. There are indeed beautiful sights to see in Phnom Penh. We
visited the stunning National Museum, the Royal Palace and the Silver Pagoda. But then there was the other stuff – the horrific Tuol Sleng Museum (aka S-21), where Pol Pot detained and tortured more than 17,000 people. And we took a tuk-tuk (a motorbike with a carriage attached) to the outskirts of Phnom Penh to visit the Killing Fields of Choeung Ek, which was where the unfortunate souls who passed through S-21 were exterminated.

As I absorbed this horror, my thoughts kept returning to an article that I had read about a University of Connecticut Law School student who had gone to Cambodia to work in Phnom Penh and witness the Khmer Rouge war tribunal. As a lawyer, I yearned to have some contact -- even minor contact -- with this historic undertaking.

After several days in Phnom Penh, our itinerary took us into the countryside. In a small van, we drove on dusty, narrow and, often, unpaved roads, to Kep, a small town on the Gulf of Thailand. In the early 1900's, Kep was a retreat for the French elite. In the middle of the century, it became a favorite destination for wealthy Cambodians who built modern villas on the coast. During the four-year nightmare of Khmer Rouge rule, they were targeted for annihilation and their luxurious villas are now blackened shells.

In Kep, we stayed at a small resort, where we dined outside under large umbrellas by a pool. The day that we arrived, as I sat under an umbrella sipping a cold drink, I noticed a group of young women at the next table. They spoke English and seemed so convivial that I couldn’t resist asking what had brought them to this remote place. Imagine my surprise when I learned that they were young lawyers and law students who were serving as interns in the United Nations-sponsored court that is holding war crimes trials in Cambodia. They were from France, India and Austria and were on a weekend holiday from Phnom Penh. As they described what they did, their energy and optimism was infectious -- it gave me hope for Cambodia and made me feel proud to be a member of the same profession as these young women. Meeting with them was a real highlight of my trip.

Visiting Cambodia, a country of sublime beauty (Angkor Wat) and sadness (S-21), was a transformative experience for me. I recommend that anyone who visits Southeast Asia take the time to explore Cambodia.

New Dues Rates for Government Lawyers
by ABA Membership Staff

The American Bar Association understands the unique challenges that many lawyers are facing. We want to be sure that every attorney has access to the tools, resources and benefits they need to succeed.

New special dues rates have been established for:
- government Attorneys
- Judges
- Legal aid attorneys
- Solo practitioners in private practice

Under these special rates, a lawyer admitted to the bar from one to four years will pay $100, from four to six years $125, from six to ten years $145, and over ten years $225.

The ABA is also introducing new flexible payment options including installment billing, and is developing new tools and resources to help lawyers in their day-to-day practice.

Contact the Service Center at 800.285.2221 if you have any questions.
1. What is the ABA Group Program?

2. What are the advantages of group membership?

3. What are the requirements for group membership?

4. How are groups defined?

5. What are the responsibilities of the group administrator?

6. I have a group of interested colleagues, how do we sign-up?

7. Can I make updates to my group online?

8. Some of our group members want to pay using credit cards? Is this possible?

9. Who can I contact if I have questions about group membership?

10. What if a member drops out of my group? How does this affect everyone?

11. How do our dues rates change?

12. I’ve already paid my dues for this year? Can I get a refund or a credit?

13. How does this program affect senior judges receiving reduced ABA dues?

1. **What is the ABA Group Membership Program?**

   The ABA Group Membership Program is a special membership pilot created to offer courthouses reduced membership fees in exchange for consolidating membership registration and billing.

   The Group Membership Program isn’t available to everyone. Groups must meet certain criteria. Only a select number of groups will able to participate in this pilot program.

2. **What are the advantages of the Group Membership Program?**

   - Group members receive a significant discount on ABA dues by joining the Group Membership Program.
   - A group administrator serves as a single point of contact for a court or office regarding all membership items. Renewing membership is simple and consolidated.
   - Group Program membership can be managed online. If a judge or staff attorney wants to add or drop their membership, the group administrator can make updates online.
   - A consolidated invoice for the group makes it easy to pay and track changes to your group.
   - Two dedicated Group Program specialists offer specialized customer service for any questions you may have.
3. **What are the requirements for group membership?**

- All members must join or renew membership as ABA and Judicial Division members.
- 50% of each group must be comprised of new ABA and Judicial Division members.
- Groups must contain a minimum of five people. For example, a court with six current ABA members who are interested in creating a group would need to find six new judges for a group total of 12.
- Additionally, one individual must be designated as the Group Administrator for the group, responsible for collecting and transmitting all dues payments and making membership updates.

4. **How are groups defined?**

Group Definitions by Conference:

- **Appellate Judges Conference** – Appellate judges at the same level within a state or federal government who report to the same Chief Judge or Justice. If the Court sits in districts or divisions with a designated Chief or Presiding Judge or Justice, each district or division will comprise the group.

- **National Conference of State Trial Judges and the National Conference of Specialized Court Judges** – The group of judges that are administratively managed by the same Chief or Presiding Judge. If the Court sits in districts, counties or division with a designated Chief or Presiding Judge, each district, county or division will comprise the group. Exceptions may be made on a case by case basis for very large courts, such as Cook County, where organization may be by facility or by a designated number of judges.

- **National Conference of Federal Trial Judges** – Judges who are in the same judicial district and report to the same Chief Judge.

- **National Conference of the Administrative Law Judiciary** – Federal agencies, including Social Security Administration, Office of Medicare Hearings and Appeals, HHS and the Department of Labor are designated for the pilot program. State agencies include the District of Columbia Office of Administrative Hearings, the North Carolina Central Panel and the California Office of Administrative Hearings.

Please note that staff attorneys are welcome to join any group and the benefits of membership remain the same. Attorneys will count towards the group size.

5. **What are the responsibilities of the group administrator?**

One individual will be designated as the group administrator. The group administrator serves as a single point of contact for the group, and is solely responsible for collecting and transmitting all dues and making any updates to the account. Please note that the Group Program and Judicial Division staff will not be responsible for any of these duties.

6. **I have a group of interested colleagues, how do we sign-up?**

To obtain a copy of the enrollment form, please e-mail, Sarah Bollinger, Manager of Group Program Sales, at bollings@staff.abanet.org.

Please complete the enrollment form, scan and e-mail, or fax to Sarah Bollinger, Manager of Group Program Sales, at bollings@staff.abanet.org or 312.988.5531.
The Group Administrator will receive a group invoice at the next scheduled bill date. Please do not send payment in advance of the Group invoice. In addition, please wait to communicate the per member amount to your colleagues until the group size has been finalized, as the amount each member will owe will be different if additional members are added to the group.

7. Can I make updates to my group online?
Yes. The Online Group Membership website allows the Group Administrator to make membership updates. You need a Login ID and password to view the actual site.

The website cannot be used to join the program. Once a new group has been enrolled in the program and a Login ID has been created and sent to the Group Administrator they can use the site to make membership updates.

8. Some of our group members want to pay using credit cards? Is this possible?
Dues may be paid using credit cards; however, there is no form. Please send the credit card number and expiration date of the card when mailing in the payment.

Individual checks may also be sent for payment. Please ensure that all forms of payment are sent in one mailing after your group receives its bill for the year.

9. Who can I contact if I have questions about group membership?

Meghan Lazier
Publishing, Technology & Membership Specialist, Judicial Division
American Bar Association
321 N. Clark
Chicago, IL 60654
T: 312.988.5124
F: 312.988.5709
lazierm@staff.abanet.org
www.abanet.org

Sarah Bollinger
Manager, Group Program Sales
American Bar Association
321 N. Clark St.
Chicago, IL 60654
T: 312.988.5538
F: 312.988.5531
bollings@staff.abanet.org
www.abanet.org

10. What if a member drops out of my group? How does this affect the group?
As long as your group is able to maintain five members, you are still eligible for the group discount. Your flat membership dues rate for the group will remain the same as long as your group maintains the same size. New members are always welcome to a group. Keep in mind adding new members will affect the group size and therefore may change the flat rate for the group. It is the responsibility of the Group Administrator to document this information and distribute any individual refunds.

11. How do our dues rates change?
Depending on the size of your group, membership rates may fall between $90-135. Both judges and lawyers pay the same rate.

ABA Membership dues and Judicial Division dues are included in the Group Membership Program fee. Additional Sections will be billed at the regular price and will be invoiced and paid separately from the group program.
Please confirm the membership rate prior to submitting payment. New groups should wait to receive their group invoice prior to paying in order to eliminate any discrepancies.

12. I've already paid my dues for this year? Can I get a refund or a credit? Previous dues payments will be transferred to the newly formed group account. The group administrator will be responsible for documenting this information and distributing any individual refunds.

13. How does this program affect senior judges receiving reduced ABA dues? Senior judges can take advantage of reduced ABA dues—eligibility is not based on age, but instead practice setting for that particular position (i.e. Gov't- an employee of a governmental unit, Judiciary- judge, Military- military lawyer, etc.). For a judge that was admitted to the bar 10+ years ago, the cost is $299.25 (a savings of 25%).

Unfortunately, if the dues rate did happen to be $100 for senior judges, they still would not be permitted under the program to pay the lower amount if their Group was taking advantage of a flat rate.
American Bar Association Group Program  
- Institutional Program Enrollment Form -

Thank you for your interest in the ABA Group Program. The Group Program provides an easy and efficient way for your office to manage individual ABA memberships through one centralized point. This group membership offers a single consolidated invoice and two dedicated Group Program Specialists to assist you.

Creating Your ABA Group Program Membership… in 4 Easy Steps

**Step One:**
Complete the first two sections of the Group Program enrollment form, including Group Organization and Group Administrator Information. The role of the administrator is to make individual membership updates and to facilitate payment of the consolidated invoice.

**Step Two:**
Fill out the Member/Associate Information section by gathering pertinent information from current ABA Lawyer/Judge and Associate members at your office as well as from individuals who would like to join the ABA. If possible, please provide the ABA ID# for all current members. For any new members, original bar admission date and state is required to complete their enrollment in the ABA, and each should fill out a separate ABA enrollment form. Associate membership is available to non-U.S. lawyers or anyone not admitted to the bar in the U.S. with an interest in the law.

**Step Three:**
Indicate any ABA Section, Division, and Forum enrollments for each member. These specialty groups are customized to each area of practice and career stage. Members enjoy networking opportunities with others in their practice area, across the nation, and get the latest and most in-depth information from the leading experts. The ABA strongly encourages members to sign up for at least one Section to take full advantage of their membership. Please indicate whether your office covers the cost of ABA Sections, Divisions, and Forums in the Group Organization Information section.

**Step Four:**
Send the completed form by mail, fax, or e-mail to the following:

American Bar Association  
Group Program  
321 N Clark St.  
Chicago, IL 60654  
Fax: 312-988-5850  
E-mail: abagroup@staff.abanet.org

**Questions?**
Please call our Group Program Specialists at **1.800.285.2221, ext. 5503**

Each year, you will receive your organization’s Group Roster with the names, ABA ID #’s, and Section enrollments for all ABA members and associates included in your Group account, as well as a Profile for each individual ABA member. You may update your Roster by logging onto our Online Group Management (OGM) webpage. A customer ID and password will be communicated shortly after your enrollment is complete. You’ll then receive a consolidated invoice reflecting your membership updates. Roster updates can be made any time throughout the membership year, and subsequent invoices will be mailed, tracking these changes and other activity.

Thank You for Participating in the ABA Group Program
The ABA dues rate under the Institutional Program is based on your office size (by number of lawyers/judges). Institutional offices pay the dues for all lawyers/judges at a set price for the entire office regardless of dues class.

<table>
<thead>
<tr>
<th>Code</th>
<th>Section, Division, Forum</th>
<th>Dues</th>
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<tbody>
<tr>
<td>AL</td>
<td>Administrative Law and Regulatory Practice</td>
<td>$60.00</td>
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<tr>
<td>AH</td>
<td>Affordable Housing and Community Development Law Forum*</td>
<td>$50.00</td>
</tr>
<tr>
<td>AS</td>
<td>Air and Space Law Forum*</td>
<td>$40.00</td>
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<tr>
<td>AT</td>
<td>Antitrust Law</td>
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<td>CL</td>
<td>Business Law</td>
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<td>CO</td>
<td>Communications Law Forum*</td>
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<tr>
<td>CI</td>
<td>Construction Industry Forum*</td>
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</tr>
<tr>
<td>CR</td>
<td>Criminal Justice</td>
<td>$45.00</td>
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<tr>
<td>DR</td>
<td>Dispute Resolution</td>
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</tr>
<tr>
<td>ES</td>
<td>Entertainment and Sports Industries Forum*</td>
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<tr>
<td>NR</td>
<td>Environment, Energy, and Resources</td>
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<tr>
<td>FL</td>
<td>Family Law</td>
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<td>FR</td>
<td>Franchising Forum*</td>
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<td>GP</td>
<td>General Practice, Solo, and Small Firm Division</td>
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<td>GD</td>
<td>Government and Public Sector Lawyers Division</td>
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<td>HL</td>
<td>Health Law</td>
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<td>IR</td>
<td>Individual Rights and Responsibilities</td>
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<td>PT</td>
<td>Intellectual Property Law</td>
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<tr>
<td>IC</td>
<td>International Law</td>
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<td>JD</td>
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<td>LL</td>
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<td>LE</td>
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<td>Litigation</td>
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<tr>
<td>PC</td>
<td>Public Contract Law</td>
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<tr>
<td>PL</td>
<td>Public Utility, Communications and Transportation Law</td>
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<td>RP</td>
<td>Real Property, Trust, and Estate Law</td>
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<td>SL</td>
<td>Senior Lawyers Division</td>
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<td>LG</td>
<td>State and Local Government Law</td>
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<td>TX</td>
<td>Taxation</td>
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<td>IL</td>
<td>Tort, Trial, and Insurance Practice</td>
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<tr>
<td>YL</td>
<td>Young Lawyers Division – Members under 36 years old or admitted to practice for five years or less</td>
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<tr>
<td>CP</td>
<td>Center for Professional Responsibility</td>
<td>$100.00</td>
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</table>

Membership requires enrollment, at no extra cost, in one of six conferences:
- Appellate Judges Conference
- Nat’l Conference of Administrative Law Judges
- Nat’l Conference of Federal Trial Judges
- Lawyers Conference

*You must belong to at least one Section or Division in order to join a Forum; the Young Lawyers Division qualifies.

**Special Joint Offer**

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<td>Criminal Justice</td>
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<td>Dispute Resolution</td>
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<td>GD/NR</td>
<td>Environment, Energy, and Resources</td>
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<td>GD/GP</td>
<td>General Practice, Solo, and Small Firm</td>
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<tr>
<td>GD/HL</td>
<td>Health Law</td>
<td>$55.00</td>
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<td>GD/IC</td>
<td>International Law</td>
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<td>GD/PC</td>
<td>Public Contract Law</td>
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<td>GD/PL</td>
<td>Public Utility</td>
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## Group Organization Information:

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<thead>
<tr>
<th>Organization Name</th>
<th>Executive Director</th>
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<tbody>
<tr>
<td>Mailing Address</td>
<td>City, State, Zip</td>
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<tr>
<td>Phone Number</td>
<td>Fax Number</td>
</tr>
<tr>
<td>Practice Setting</td>
<td># of Lawyers/Judges in your Organization</td>
</tr>
<tr>
<td>Areas of Specialty</td>
<td>Does your office pay for ABA Section memberships? If so, how many? (e.g., all, some)</td>
</tr>
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</table>

How did you hear about the Group Program?

## Group Administrator Information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title, Department</th>
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<tbody>
<tr>
<td>Phone Number</td>
<td>Fax Number</td>
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<td>E-mail Address</td>
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## ABA Member / Associate Information:

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<tr>
<th>Name</th>
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<tr>
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<td>New ABA Member</td>
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</tr>
<tr>
<td>Phone # and E-mail</td>
<td>Original Bar Admission Date</td>
<td>Bar State</td>
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Sections, Divisions, and Forums (for your convenience, you may use the codes from page 2)

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Please Return Enrollment Form:
American Bar Association  
Group Program  
321 N Clark St  
Chicago, IL 60654  
FAX: 312.988.5850  
E-MAIL: abagroup@staff.abanet.org

Questions?
Call our ABA Group Program Specialists:  
1.800.285.2221, ext. 5503
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Page 6 of 6
Notes from the Editor
by Susan Dautel
New York State Court of Appeals
Albany, NY

Of course, the main feature of this issue of CASA Quarterly is the upcoming Summit from November 18-21 in Dallas, Texas. We are all excited about this annual opportunity to renew friendships, make new acquaintances, fill our minds with new ideas and information, and benefit from the experience and collegiality of our counterparts from all over the nation. If CASA is the "bar association" for appellate court attorneys, the Summit is our association's premier professional and social event--we hope you can make it this year!

Inside this issue of CQ: in her Message from the Chair, Naomi Godfrey gives you all the details for Summit registration, hotel reservation, scholarship application, ABA and CASA membership (for member discount on Summit tuition), and conference event listings. Special past and present looks at the Adolphus Hotel, the Summit venue, are provided in articles by Coleen Blair and Naomi Godfrey. And I've given you a few "big" ideas for your leisure time in Dallas. In a glance away from the Summit, a former colleague of mine, Marge McCoy, offers a view of retirement--one perk of public service that can open new vistas and new definitions of the word "service". Finally, another colleague of mine, Stuart Cohen, discusses a special clerk's office phenomenon: the late filing. (If you think this CQ issue has too much information from Atlanta and New York, you are most sincerely invited to contribute an article from your part of the nation!)

Finally, extended to you is the attached invitation to CASA's Annual Dinner and T-Shirt Exchange--a special night in Dallas. If you haven't been to a CASA T-Shirt Exchange, you are due to discover the fun and frivolity of this ice-breaking event. Just bring an interesting or quirky t-shirt show-casing your part of the country (size L) and have fun chatting with people all looking to acquire the "best shirt of the night".

Message from the Chair--On to the Summit!
by Naomi Godfrey
US Court of Appeals, 11th Circuit
Atlanta, GA

It's hard to believe that November and the Summit are fast approaching. As you know, CASA's mission is devoted to the professional development of appellate court attorneys through continuing education seminars and the exchange of ideas and information among state and federal appellate court attorneys. The annual Summit is the pinnacle
of this endeavor. The Summit is the culmination of hard work by members of the Appellate Judges’ Conference (AJC), the Council of Appellate Lawyers (CAL), and us (CASA). Since their inception, these Summits have proven to be an invaluable opportunity for judges, appellate lawyers, and appellate court attorneys to learn from outstanding speakers and each other.

So, it’s time. If you are not a member of CASA, it’s time to join. The ABA has reduced fees for individuals to join the AJC and CASA, and has even further reduced fees for groups of five or more. You may access information about these opportunities at http://www.abanet.org/join/. It’s also time to renew your membership if you are already a member--you will be pleased to see the reduced fees recently introduced by the ABA.

It’s also time to register for the Summit. You may access all Summit information and register at http://www.law.smu.edu/smulawdms/ajei/registration/register.

And, of course, it’s time to make hotel reservations at the fabulous Adolphus Hotel for only $115 per night. For online reservations, go to www.hoteladolphus.com (select "Reservations", populate "Arrival/Departure Dates" with the conference dates, select the number of rooms and occupants, click on the "Select Accounts" icon, select "Company", enter Account Code WWGRP003, enter Promotional Code G03$, select "Continue" to place your reservation, and you are done!).

You should also apply for one of the scholarships to be awarded by the AJC for attendance at the Summit this year. You may do so by requesting an application from Rebecca Greenan at Southern Methodist University at rgreenan@smu.edu. Scholarship applicants also should contact Rebecca Greenan about the process for registering for the Summit as the online registration process may not accommodate all of the information needed.

Now it’s time to take a look at the outstanding list of presentations and social events offered at this year’s Summit: http://www.law.smu.edu/AJEI/Program-Agenda. Once you have done all of these things, you can rest assured that you are in for the best professional experience of your life. The Texas judges, appellate lawyers, and appellate court attorneys have worked tirelessly to make it happen. See you there.
Memories of the Adolphus
by Coleen Blair
US Court of Appeals, 11th Circuit
Atlanta, GA

Nearly 100 years ago, on October 5, 1912, the Adolphus Hotel in Dallas, Texas opened its doors, and this November the attendees to the CASA Conference will walk through those same doors. It’s my honor to be asked to write about my experiences at the Adolphus Hotel. Many years before I decided to attend law school, I lived in Dallas, following my husband after he graduated from Yale University School of Architecture and started working for an architecture firm. For a short while, not knowing exactly how my life would turn out, I worked at the Adolphus. More about that later.

The story of the Adolphus is connected to the spirit of American competition. At the turn of the last century, Fort Worth was the better-known city. As Dallas was striving to become a financial capital, several businessmen in 1910 approached Adolphus Busch, the founder of the Anheuser-Busch brewery in St. Louis, Missouri, and asked him to build a world-class hotel. An interesting bit of trivia is that the turret on the roof is said to be modeled after a Busch beer stein. When the Adolphus was completed, it was the tallest building in Texas. Throughout history, a variety of famous people have stayed as guests, for example: Queen Elizabeth II and Prince Philip, President Warren G. Harding, President George H. W. Bush, Amelia Earhart, James Earl Jones, Michael Caine, Grace Slick, Gene Autry, B.B. King, Yul Brynner, and Donald Trump.

I have fun memories of my time at the Adolphus. I worked at the Palm Bar Restaurant, which was open for lunch only. If customers entered from the corner entrance on the street, they walked through a revolving door made of mahogany wood, and then into an elegant but comfortable space outfitted with brass railings, small white floor tiles, and velvet curtains on the windows. The customers would include ladies from other states who had traveled to Dallas to shop at Neiman-Marcus and businessmen who made deals over martini lunches. On one of those visits from the fashionable ladies who came for lunch, I had a devil-of-a-time figuring out that the woman who was ordering a beverage wanted a “Tab” rather than a “Tie-up” as my Nebraskan ears had heard it. Another memorable occasion was when two couples were just seated at their table and, while the husband of one of the couples momentarily left, his wife furtively placed in my hand the additional money that would make up for the small tip that she apparently knew her husband left for all waitresses. She was truly his better half. On another occasion, I had the chance to work a large party, in which drinks were served at a cash bar. Little by little, we started hearing rumors that several ladies had secretly brought in liquor and had converted the ladies’ lounge off the banquet room into a bar. I and another worker were sent in to investigate. We discovered that the ladies had a huge stash of everything needed to make mixed drinks! Very colorful and innovative characters.
I hope that you enjoy Dallas and the Adolphus. I was excited to work at such a beautiful hotel and am excited to be returning as a guest. The Palm Bar is no longer there, but I understand that other great restaurants are within the hotel. For art lovers, the Trammel and Margaret Crow Asian Art Museum, in the nearby downtown Arts District, is excellent [Editor's Note: exhibitions on view in November are "Tibet: The Land Closest to the Sky, Photography by Marc Riboud" and "Black Current: Mexican Responses to Japanese Art, 17th-19th Centuries"]. Also, although I've never been there, the National Cowgirl Museum in Fort Worth sounds interesting, especially since Justice Sandra Day O'Connor, who was raised on a ranch in Arizona, is included in the Hall of Fame. See you at the conference!

The Crown Jewel of Dallas
by Naomi Godfrey
US Court of Appeals, 11th Circuit
Atlanta, GA

This past June, I attended the wedding of my cousin in Dallas. Imagine my surprise when I discovered, moments after arriving at the headquarters hotel for the wedding, that The Adolphus, the site of the 2010 Summit was right next door. What a splendid surprise, I thought. In addition to visiting the Dallas Cowboy's Stadium and Southern Methodist University, I got to hop in and out of both The Adolphus and the flagship Neiman Marcus Department Store whenever I wished. When I exited my hotel and turned right, I was only one block from The Adolphus, and when I exited to the left, one block away was Neiman Marcus. There was really no need to go anywhere else, but since I was there for a wedding, I took time out from my dalliances to attend the wedding which was held in a beautiful chapel at Southern Methodist. And, since I had my husband and brother in tow, I allowed myself to be taken on a tour of the Dallas Cowboys’ football stadium. Admittedly, I enjoyed everything: Southern Methodist, the Dallas Cowboys’ wonder of the world, and, of course, Neiman Marcus. But, I was just as impressed, if not more, with The Adolphus hotel.

I was impressed from the moment I walked in the door. The lobby is the most fabulous I’ve ever seen. It is filled with beautiful but comfortable furniture, antiques, paintings, and other decorative art objects. The paintings reminded me of those I saw at the Uffizi Gallery in Florence, Italy. The decor was like stepping back in time; the old world European style was not what I expected in contemporary downtown Dallas. In the midst of all this beauty is the French Room, a five-diamond restaurant voted #1 in America, and next to that, a cozy little bar that’s perfect for a relaxing respite. The merchandise in the gift shop was as beautiful as it was unique. And, if hanging around the hotel is not enough, there are many restaurants and attractions within a few block radius of The
**Adolphus.** In addition to Neiman Marcus and SMU, there is the John F. Kennedy Memorial Plaza, the Dallas Public Library, Dealey Plaza & The Sixth Floor Museum, the Dallas Museum of Art, The Dallas Zoo, and many restaurants and night spots. So, together with the most extraordinary educational program ever, this year’s Summit in Dallas will be one to remember and to emulate for years to come.

**Dallas Here We Come!--Places to Play and Ponder**

By Susan Dautel

New York State Court of Appeals

Albany, NY

A city website for Dallas invites us to "**Live Large, Think Big**"! In that light, I offer the following ideas for varied and unusual places to visit when not attending Summit events:

**See Large Pieces of Art:** at the Nasher Sculpture Center in the Central Business District, an outdoor "roof-less" museum. In addition to the many large outdoor permanent pieces by world-renowned artists, the exhibit "Revelation: The Art of James Magee" will be featured through November 28. This is the first major museum exhibition of the artist's work in 18 years, featuring 10-15 medium to large scale relief sculptures.

**Think as Big as Don Quixote:** Playing at the Garland Civic Theater will be the musical "Man of La Mancha". You know the story of the aging Cervantes playing out the larger-than-life delusions of the hero of his novel Don Quixote, and you will delight in the big sound of songs like "The Impossible Dream".

**Visit the Largest Domed Stadium in the World:** Yes, it's the Cowboys Stadium, seating 80,000 people and featuring the world's largest high-definition video screen suspended above and stretching from the 20-yard line to the opposite 20-yard line. The stadium has a retractable roof and the world's largest column-free interior. You can take a VIP or self-guided tour of the stadium, including the field, the team entryways, the locker rooms of the football players and the cheerleaders, and the post-game interview room. **And, on Sunday, November 21 at 1:00 p.m., you can be one of the 80,000 people watching the Dallas Cowboys play the Detroit Lions.**
Re-Visit a Big Moment in History: The Summit ends the day before a dark anniversary in American history: the November 22, 1963 assassination of President John F. Kennedy. You can honor the occasion by visiting the Sixth Floor Museum at Dealey Plaza, located on the sixth and seventh floors of the warehouse known in 1963 as the Texas School Book Depository. There you can ponder the famous Abraham Zapruder film, conspiracy theories, and the nearby "grassy knoll". On November 19, the museum will present "The Parkland Experience", an exhibit of artifacts from Parkland Memorial Hospital, where President Kennedy and Governor Connally were rushed after the shooting, and where, 48 hours later, accused assassin Lee Harvey Oswald died after being gunned down in police headquarters.
Think Very Tall Men: If you are a basketball fan, you might want to catch the Dallas Mavericks playing the Chicago Bulls on November 19 (after the CASA dinner and T-Shirt Exchange, of course).

Think Big Thrills and Chills: To banish all feelings of nerdiness, try Zero Gravity Thrill Park. There you will find such things as classic bungee jumping from a 7-story tower, or the Skycoaster (3 people soar through the air at 60 miles per hour to a height of 110 feet, and pull their own ripcord to coast to the ground), or "Nothin' but Net" (you are dropped from a 16-story tower for a 130-foot drop, without bungee or parachute, and just free-fall to a net below).

Think "Urban Cowboy" and Visit a Big Country Music Bar: At Gilley's Dallas, there are free dance lessons Saturdays from 6-8:00 p.m. How can you miss this iconic watering-hole?

See the Biggest Animals on Screen, on Power and on Land: The Museum of Nature & Science will be featuring "Dinosaurs Unearthed" including 10 life-size animatronic dinosaurs, as well as the immense-screen IMAX film by National Geographic "Sea Monsters: A Prehistoric Adventure". And, of course, you can see animals large and small at the Dallas Zoo, the largest zoo in Texas.

There you have just a few "big" things to think about. With a bit of internet exploration, I'm sure you'll readily find all the fine dining, great shopping, varied museums and gems of the downtown arts district that Dallas has to offer--to your own taste. Have fun looking and living large in Dallas!

Greetings from the Land of Retirement
by Marjorie McCoy
(formerly) New York State Court of Appeals
Albany, NY

Hello to all my old CASA friends!! Too much time has passed since we last saw each other, but Paul McGrath and Susan Dautel have kept me posted on individual and group milestones, achievements and gossip. Susan asked me to write a piece for the Quarterly on my experience of retirement, and I am happy to do so.

You may know that I retired from the New York Court of Appeals in January 2009, after
eighteen months of working half-time. Our Court was prescient in allowing a long transition for Richard Reed, my replacement as Deputy Clerk, who started a month before I moved to half-time status, for which I am forever grateful.

My retirement life has unfolded in a way I could neither have predicted nor imagined. Within a week of my last day at the Court, family and friends’ illnesses and vicissitudes abounded. I spent the majority of 2009 caregiving – but how wonderful that, for the first time in my working life, I was not conflicted by work and personal responsibilities! In the course of the year, I also developed some medical issues of my own, all now happily resolved.

The caregiving experience helped me refine how I wanted to spend my post-Court years, namely through hospice service. I had originally planned to volunteer for our local Legal Aid Society, but that did not pan out for a variety of reasons. In the meantime, I had taken hospice volunteer training and began to work with our small community hospice program in Catskill, New York. I have been blessed to work with extraordinary people – staff, patients and families. I am currently serving a patient living alone who is determined to stay out of the nursing home and hospice residence, and two families through the death of their husbands/fathers and the aftermath. I participate in the quarterly remembrance services for those who have died while on hospice program, and am the Thursday “drug runner” delivering medicine and medical supplies to patients and families who cannot get to the hospice pharmacy. Drug-running allows me to travel weekly through the mountains, back roads and river valley of this most glorious of Mid-Hudson counties (Greene County, the land of Rip Van Winkle).

Best of all, in September I went back to school! I was accepted at the New York Zen Center for Compassionate Caregiving - a groundbreaking program given at the Village Zendo in Greenwich Village. I’ll be in class one weekend a month for ten months. The program includes lectures, reading assignments, mentoring, commitments to meditation and to volunteer. If you are interested in learning more, go to www.zencare.org.

Another dramatic change in my life is the almost complete absence of legal thoughts of any kind! Through my new associations with our local food pantry and our tiny quirky farmers’ market, I am meeting a wide range of people in my community whom I never had a chance to know while I was working long hours in Albany. I agreed to serve as trustee of a local sustainable agriculture trust, but immediately and forcefully declined two requests to run for local public office. A city-born person who has never had a garden of any kind, I now spend my time with folks in blue jeans rather than suits, and I love it!

I have learned that life after appellate court practice evolves, and offers unexpected opportunities (and difficulties). I would be delighted to talk with anyone thinking about retirement. In fact, I’d be delighted to talk with any of you anytime. My email address is
What Happens After "The Last Minute"?
by Stuart Cohen, Clerk
New York State Court of Appeals
Albany, New York

The filing deadline...the potential cause of drama and headache for the appellate practitioner. What happens in your court when the due date for a filing passes and no papers arrive?

Not too long ago, a law firm in the Albany area finished up a brief intended for the State's highest court, the Court of Appeals, on the afternoon it was due. The firm dispatched its messenger to file the papers with the Court. For reasons unknown, the messenger delivered the documents to the courthouse of the Appellate Division, Third Department, the intermediate appellate court also located in Albany. The papers arrived there shortly before 5:00 p.m. A member of the Appellate Division's clerk's staff stamped them in and put them on a shelf to be processed the following day.

The next day, appellant's counsel, having been notified by the Appellate Division of the misfiling, called my office and was told that an order dismissing the appeal was being prepared. Section 500.16(a) of our Court's Rules of Practice requires me to enter an order dismissing the appeal "if appellant has not filed and served the papers required...within the time set by the clerk's office...." There is no discretion on our part to accept a late filing.

To further complicate matters, this was a criminal appeal and the appellant was out on bail. The dismissal of the appeal would expose appellant to the risk of incarceration. The only advice we could give the attorney was to prepare an order to show cause asking the Court to vacate the dismissal order and to ask the prosecutor to allow the appellant to remain at liberty until the matter could be resolved.

As it turned out, the Court granted the motion to vacate the dismissal, although it didn't have to. The People graciously had agreed not to scoop up the appellant in the interim. Aside from possibly losing some sleep, counsel and appellant suffered no dire consequences.

Similar situations have arisen when the appellant's brief was delivered timely by counsel to an overnight courier but got lost or misdirected in the courier's distribution hub or fell
victim to a snowstorm-related transportation failure all over the east coast, and arrived at the Court after the due date. These are all understandable reasons for a filing to arrive late, and may be considered by the Court when deciding the motion to vacate a dismissal of the appeal, but all will result in the initial nondiscretionary dismissal of the appeal by the Clerk once the due date passes.

Of course, we appreciate early filings that avoid the dismissal drama, and when possible, we try to get the word out to litigants about the less painful (for them!) procedure of calling the clerk’s office preemptively for an extension of time when there is any inkling on their part that a deadline will be a problem. Our Court’s rules permit the Clerk to grant a filing extension before the due date, and our clerk’s office staff are cooperative in giving whatever additional time is possible within the confines created once the appeal is calendared for argument. When the extension request is on consent of opposing parties (and we encourage that civility and cooperation among counsel), we can arrange the extension by phone, with a follow-up written confirmation by counsel copied to all parties. When opposing parties do not consent to an extension, a written request to the Clerk copied to all parties is required, and the issue is handled promptly. All of the extension request scenarios are less anxiety-producing for appellate counsel than the need to make a motion to vacate an appeal dismissal--a bit of last minute drama that everyone would prefer to avoid.

(Editor’s Note: we’d be interested in learning about how your court handles "the last minute" drama. If you have anecdotes or information to share, please forward it to sdautel@courts.state.ny.us and we will provide an update in a future issue of CASA Quarterly.)
NOTE FROM THE EDITOR
by Taye Sanford

As the newly elected Secretary of CASA, this is my first edition of the CASA Quarterly. I hope you will find it interesting reading. We have messages from Naomi Godfrey, the outgoing CASA Chair, and Gail Geisen, the incoming Chair. You’ll find the minutes of the CASA Board Meeting in November, as well as short bios and pictures of the current Board members. Judge Warner explains the relationship between CASA and the AJEI and AJC. And finally, there are a series of articles about sessions at the AJEI Summit in Dallas. I hope they will spark your interest and spur all of you to attend the upcoming Summit in D.C. this November.

My sincere thanks to everyone who contributed to this edition — especially those who are not yet CASA members but agreed to take on the assignment. I encourage any of you readers either to submit articles for future editions or send me ideas for articles you would like to see. We would also love to see any pictures you would like to share. No doubt some of you have pictures of the effects of the wild weather we’ve experienced this winter. Send them in! Please email your ideas, articles, or pictures to me at taye_sanford@ca10.uscourts.gov. Happy reading!

SIGNING OFF
by Naomi Godfrey

It is my pleasure to say that Gail Giesen is now the new chair of CASA. She is herding us towards Judicial Division activities during the ABA’s mid-year meeting in Atlanta, which begins on February 10, 2011. She has already set up a program to take place during the meeting at which CASA members will meet with Georgia State University law students to talk with them about what staff attorneys do for the courts.

We are all still excited about our time together in Dallas in November. The Summit was simply super extraordinary. Everything was outstanding: the topics, the speakers, and the accommodations. The social activities were all first class and beyond. Rachel Ekery and Judy White were the brains and the energy behind this great effort. And, of course, many thanks go to the “Rebeccas,” Rebecca Greenan and Rebekah Bell, our meeting planners from SMU, and Amanda Rabble of the ABA. How they manage to accomplish all the wonderful things they do is the mystery of the century.

Attending the Summit is a gift. Whether you are an appellate judge, an appellate staff attorney, or an appellate lawyer, the sessions are full of useful information. Even if you do not practice or work in a particular area of law, it is thought-provoking to hear about things going on in the area of appellate law. As we walked the halls of the Adolphus Hotel, long after a particular session was over, you could overhear conversations among Summit attendees critiquing what was said during the sessions. Naturally, CASA’s own, Erwin Chemerinsky is still the hottest ticket at the Summit. Between sessions and in the evenings, Gail and I hosted a hospitality suite that was, by all accounts, a smashing success. Our goal was to have a central meeting place where CASA members and their guests could meet during the day and in the evenings to chat and relax. Gail and I had purchased gifts to hand out at random to whomever could answer our nonsense questions. Since we ran out of questions, we had to rely on our guests to help us out. Thanks to the efforts of 11th Circuit staff attorney Kyle Wilson and his mother-in-law, Karen Easby-Smith, we had more food and beverages than we could use. Continued on page 2
SIGNING OFF

(Continued)

In addition to Gail, Kyle, and Karen, I wish to thank Kembra Smith and her husband, Bill Lowe, for their support throughout the Summit. They were always there to help wherever they were needed and were clearly our leaders. Their knowledge and experience as longtime members of CASA and the Judicial Division were invaluable. And, it also helped that they are Mr. & Mrs. Personality. They made the T-shirt lottery, annual dinner, and hospitality suite the place to be for all of us. They also helped guide me through the maze of activities and preparations for the seminar and our annual meeting.

It has been my pleasure to serve as CASA Chair, and I know Gail will do a fantastic job in the coming year. As we move forward, let us give Gail, CASA, and the Appellate Judges’ Conference our continued support. If I don’t see you in Atlanta, I hope to see everyone in Washington, DC in November.

MESSAGE FROM THE CHAIR

by Gail Geisen
Chief Staff Attorney
Connecticut Supreme Court and Court of Appeals

Hi, Folks,

I began this column right after the Summit - in fact, while I was waiting in the Dallas airport for my flight back to Hartford. My “airport thoughts” about the conference were that the 2010 programming was extraordinary and a direct result of the hard work of all the members of the tri-partite group that sponsors the Summit - appellate judges, appellate practitioners and, of course, appellate staff attorneys. I also reflected on the fact that for staff attorneys, the Summits are very special because they give us a chance to mingle with others who do similar work.

Here at home, I am one of a small group of staff attorneys and few people outside of the court system know what we do! Even though our work is extremely “lawyerly,” many people are unfamiliar with the type of work we do, and the phrase “appellate staff attorney” explains very little. This has led me to create a brief, ultra-simple description of staff attorney work, just to be able to answer “what-do-you-do” questions at cocktail parties. So, it is refreshing to rub shoulders with other staff attorneys at the Summit! I’d like to thank Immediate Past Chair Naomi Godfrey for making this easy by hosting a superb hospitality suite at the Adolphus Hotel and stocking it with good food and a variety of beverages. Naomi issued a blanket invitation to all of the staff attorneys - CASA members and nonmembers - at the Summit to drop by the suite every evening. It was wonderful to have a space where we could relax and chat and swap stories! I would also like to express my appreciation to the staff attorneys who volunteered to jump-start the hospitality theme by greeting staff attorneys at the registration table. Thank you to volunteers Dalila Patton, Judy White, Lee Ramsey, Kembra Smith and Bill Lowe!

As Chair of CASA, I’ll be working with Judge Andrew Effron of the U.S. Military Court of Appeals and his Program Committee to make the 2011 Summit another great one. I am thrilled that John Olivier will head the CASA Education Committee. Thank you, John, and those who will be helping you. Peter Stevens will lead the Membership Committee, and Chair-Elect Susan Dautel will be the head of the Long Range Planning Committee. I look forward to working with all of you. If you have any suggestions for the 2011 Summit, please contact me or John as soon as possible.

Amanda Wynn Raible, who has been a stalwart supporter of CASA, has recently announced that she has accepted a new position (a promotion) within the ABA. I am very happy for Amanda, but I’ll miss her - she has been a real asset for us over the past several years. In the future, we will have the pleasure of working with Jo Ann Saringer, Kris Berliant and Meghan Lazier. Please join me in wishing Amanda the best of luck in her new job!

Until the next Quarterly,

Gail
When the Appellate Judges Education Institute was formed six years ago, taking the place of the many judicial and CASA education programs offered through the ABA, economic realities brought CASA together with the AJC and CAL to produce the Summit education programs. What a wonderful collaboration that has turned out to be! With CASA’s tireless involvement in the enterprise, the AJEI Summits have turned into the premier appellate education programming in the country, attracting judges, staff attorneys, and lawyers from both state and federal practice.

In its infancy, the Summit program committees planned three separate programs, one for the judges, one for the lawyers, and one for CASA. We had only a few combined sessions. When I was appointed program chair for the 2007 Summit in Washington, I wanted to bring all the groups closer together. There were so many outstanding offerings that it was a shame not to have all sessions open to everyone. That year we produced one brochure listing all of the programs and announcing that participants could attend any program they desired.

The Washington summit brought in over 300 participants, and each summit since that time has exceeded our expectations in attendance and enthusiasm.

CASA has been an integral part of that success. Every year, the programs developed by the CASA attorneys are hits. Dean Erwin Chemerinsky draws huge crowds, and Professor Linda Elrod has given lots of judges insight into family issues. Many good programs have been created by CASA, and CASA members have been able to tap their resources to get great speakers. For instance, for the Washington Summit, Lee Ramsey talked Linda Greenhouse, New York Times Supreme Court reporter, into giving the keynote presentation of the conference. What a fantastic start to the weekend!

What has enriched the Summits and the AJC more than anything, however, is the amount of interaction we now have between the judges, staff attorneys, and lawyers. Through this endeavor many of us have developed great friendships as well as professional relationships. I consider CASA members Lee Ramsey, Bill Lowe, and Kembra Smith, in particular, great friends and colleagues. And I got to know them through the terrific work they have done over the years on the Summits and with AJC.

The work of the CASA attorneys and how integral they are to the entire AJEI as well as the AJC was finally formally recognized this past year when the AJC Executive Committee adopted, and the ABA Board of Governors approved, an amendment to the AJC By-Laws to include the CASA chair as a voting member of the Executive Committee. In turn, that also makes the CASA representative a member of the AJEI Board. CASA is truly now a full partner in the AJC and the AJEI.

I hope that this enthusiasm translates into greater membership for CASA. We have continued to attract many staff attorneys to the Summits and hope that many will join CASA. In addition, CASA members should encourage their judges to apply for the group membership program with the ABA which will substantially reduce dues. The group can include both judges and staff attorneys.

More information can be obtained from Meghan Lazier with the ABA staff (lazier@staff.abanet.org).

I hope that this enthusiasm translates into greater membership for CASA. We have continued to attract many staff attorneys to the Summits and hope that many will join CASA. In addition, CASA members should encourage their judges to apply for the group membership program with the ABA which will substantially reduce dues. The group can include both judges and staff attorneys.

For all that you do to make the AJEI and the AJC the dynamic organization that it is becoming, I thank CASA and its members.
SCHOLARSHIP: Kembra Smith reported that the AJEI awarded 15 scholarships to CASA members for the Dallas Summit, and that CASA awarded an additional four scholarships. On the CASA Scholarship Committee were Kembra, Kyle Wilson and Theresa Malone. Persons who were awarded scholarships were reminded of their obligation to write an article for the CASA Quarterly.

MEMBERSHIP: Taye Sanford reported that an email had been sent to all court attorneys attending last year’s Orlando Summit thanking them for their attendance and inviting them to the 2010 Dallas Summit. In June the Membership Committee sent a letter to the Orlando attendees who were not CASA members, describing the benefits of joining CASA, explaining the new ABA dues structure and inviting them to join CASA. That letter also was attached to an email sent by Naomi Godfrey to everyone on the CASA listserve, with further information on the new ABA dues structure. These efforts, plus those of individual members (kudos to Judy White), resulted in a number of new members, with Texas pulling ahead of Indiana and Louisiana in CASA representation. The Membership Committee also spent the summer and fall on the project of updating the CASA Directory (last updated in 2005). That project is expected to wrap up in January 2011 when the directory information will be sent to the ABA to insert on the CASA website.

EDUCATION: Rachel Ekery reported on the success of the Dallas Summit, with attendance by at least 70 court attorneys/law clerks.

CASA QUARTERLY: Susan Dautel thanked authors for the articles submitted for the 2010 CQ issues, and encouraged everyone to submit articles to Taye Sanford for the upcoming issues for 2011.

AJC/CASA BUSINESS REPORT: ABA Liaison Amanda Raible announced that the ABA Midyear Meeting will be held February 11-15, 2011 in Atlanta, with free tuition, and the 2011 ABA Annual Meeting will be in August in Toronto. Amanda stated that the Judicial Division newsletter (JD Record) will be going online, and reminded everyone to update his or her ABA profile to make sure that the profile did not opt out of receiving emails from ABA. Amanda reported that the CASA and CAL chairs are now voting members of the AJC and AJEI Boards, and discussed the ABA’s new focus on “webinars” for online CLE, inviting CASA to submit webinar ideas to her and indicating that some of the revenue generated would be returned to CASA.

NOMINATIONS COMMITTEE REPORT: Bill Lowe reported that the Nominations Committee had consisted of himself, Naomi Godfrey, Gail Giesen, Kembra Smith, Rene Simeone and Dave Ewert. The slate put forth by the committee for CASA’s 2010-2011 year was:

- **CHAIR:** Gail Giesen
- **CHAIR-ELECT:** Susan Dautel
- **IMMEDIATE PAST CHAIR:** Naomi Godfrey
- **SECRETARY:** Taye Sanford
- **MEMBERS AT LARGE (2D YR):** Rachel Ekery, Janice Irving, John Olivier
- **MEMBERS AT LARGE (1ST YR):** Peter Stevens, Cleo Rauchway

A motion to accept the slate as proposed was made by Lee Ramsey and seconded by Kembra Smith. All were in favor and the election was concluded. [Editor’s Note: In December, Cleo Rauchway resigned her position as staff attorney to return to private practice and Rachel Zahniser, a staff attorney in the Sixth Circuit, was appointed to replace Cleo on the Board.]

COMMENTS OF NEW CHAIR: Gail Giesen thanked Naomi Godfrey for her service as chair, and presented a gift to Naomi. Gail then distributed a sign-up sheet for persons interested in serving on committees in the new year. She introduced John Olivier as chair of the Education Committee and asked everyone to send any speaker ideas for the 2011 Summit in Washington, D.C. to John or Gail. Gail announced a meeting that evening for the newly elected officers at 5:15 p.m. in the Director’s Room at the Adolphus Hotel. She also announced that the CASA section on the ABA website will soon have a new capacity for updating and posting of photos directly by CASA, and solicited volunteers to attend the free training in Atlanta at the ABA Midyear Meeting in February to learn how to update the website. Gail also requested ideas for ways to increase the collegiality for court attorneys at the Summits, commending Naomi for her extensive use of the hospitality suite in Dallas.
After graduating from the University of Colorado, I returned to my home state of Connecticut and eventually went to law school at the University of Connecticut. After graduating, I lived in Tokyo, Japan, where I worked part-time, studied Japanese and soaked up the culture. Several years later, back in Connecticut, I focused on building my law career and raising my two sons, Jonah and Kenneth Takagi. In 1983, I began working in Connecticut's appellate system as a per diem clerk. I later served as a law clerk for a judge of the Connecticut Appellate Court and, after that, as Executive Assistant to the Chief Judge of the Appellate Court. Currently, I am Chief Staff Attorney for the Supreme Court and the Appellate Court.

For many years, I competed in horse shows and rode as much as my career and parenthood would allow. Recently, I decided to pursue other interests, which include yoga, gardening, cooking and learning French. My husband, Tom, and I love to travel and together have explored Asia, Europe and the United States. Our next trip will be this spring to northern Italy.

I belong to the ABA/CASA, the Connecticut Bar Association, the Hartford County Bar Association and the Connecticut Supreme Court Historical Society. I’m also a Fellow of the Connecticut Bar Foundation and have served on the Board of Directors of the Alliance Francaise of Hartford.

I was born in Ormond Beach, Florida, also known as the “Birthplace of Speed” (which refers to car racing). I grew up in Daytona Beach, Florida which is a short stones throw from Ormond. Both cities are located on the East coast of Florida approximately 40 miles northeast of Orlando. I received a bachelor’s degree in English from Bethune-Cookman College in Daytona Beach. I briefly taught Enlish in Daytona Beach before moving to Atlanta, Georgia where I earned a master’s degree in English from Atlanta University. I later attended the University of Georgia where I received a juris doctorate. After law school, I worked in private practice at a law firm specializing in trusts and estates. I began working in the staff attorneys office of Unit B of the Fifth Circuit Court of Appeals located in Atlanta before the Circuit split in 1981. After the split, Unit B became the 11th Circuit Court of Appeals. I first served as a line attorney, then a supervisory attorney, and in 1994, I became director of the office. The statutory title for the director is Senior Staff Attorney.

I joined CASA many years ago; so many years ago that I can’t remember how many. I do recall, however, that the first CASA seminar I attended was in Charleston, South Carolina and that Ira Robbins, Mark Zanchelli, and Bill Lowe were there. Before becoming chair-elect of CASA in 2008, I served as secretary, editor of the CASA Quarterly, and on the membership and education committees. I first joined the organization in order to meet other attorneys from throughout the country who did similar work. Then and now, we were exposed to substantive and procedural issues, writing and editing lectures, ethics, human resources management, and other relevant topics, in one place and in less than one week. Most of what we learn though comes through the exchange of ideas with state and federal staff attorneys and law clerks from offices like and unlike our own.

In the past, I have served as a member of the Atlanta Public Library Board of Trustees, Chair of the Staff Attorney Advisory Committee for the federal courts, and a member of the Human Resources Advisory Committee as well as many other study and working groups for the Administrative Office of the federal courts. I have also served as president of the National Alliance on Mental Illness for Dekalb County and currently serve as vice-president of that group. I am also a member of the Community Service Board for Dekalb County. The Dekalb CSB has oversight of services for the treatment of mental illnesses, developmental disabilities, and addictive diseases.

In my spare time, I own a small antique business, read, watch movies, garden and walk. I also enjoy traveling and most recently traveled to Istanbul and Inukum, Turkey and Paris, France.
I have served as Assistant Deputy Clerk at the New York State Court of Appeals since 2003. My primary focus is administration of the appeals (as opposed to civil motions for leave to appeal or criminal leave applications) before New York’s highest court—from review and processing of filings to scheduling of arguments and dissemination of decisional documents. As part of the Clerk’s five-attorney management team, I have been involved with court rules revisions, court policy reviews, death penalty case management and, most recently, coordinator of development of the Court’s new case management system.

I rejoined the Court staff after 16 years in private practice, becoming a founding partner in 1989 of the Albany firm of Deily, Dautel & Mooney, LLP. My private practice was concentrated in employment law and commercial litigation, appeals and transactional work. I previously had served the Court of Appeals from 1981 to 1986 as Central Staff Attorney, Deputy Chief of Central Staff and Deputy Consultation Clerk. I am a graduate of Albany Law School and Bucknell University.

I have been a member of CASA since 2003, and have enjoyed serving for several years on its Executive Board and earlier on its Education Committee. I have been pleased to attend CASA’s annual seminar almost every year since 2003. I also am active with the local Capital District Women’s Bar Association, serving for several years as an officer and on its Board of Directors. In the past two years I have begun lecturing on appellate practice at Albany Law School and on discrimination in the workplace for the Graduate School of Social Work at the State University of New York at Albany.

My main interests outside of the legal world are travel and competitive tennis. In the last few years I have participated in Habitat for Humanity builds in India and Portugal, and have wandered to Bolivia, Peru, China, Australia, Ireland, Spain, Greece and France. Part of my traveling has been to meet up with my globe-trotting daughters, one currently in a PhD program at the University of Chicago and about to continue her dissertation research in Northern Ireland, and the other now living and teaching in Spain. When at home, I am usually on a tennis court. In the last two years, I’ve been privileged to be on teams playing in national competition at the U.S. Open Tennis facility on Long Island and at the Indian Wells facility in California—great fun to play on courts used by the big names in tennis! Any other CASA tennis players out there?

I grew up in a small town in rural Northeastern Ohio but went to school for 10 years on the East Coast. I spent 3 years in prep school in New Hampshire and then migrated south for college to Wesleyan University in Connecticut. I graduated in 1980 and, not knowing what else to do with my History degree, went to law school. I was fortunate enough to spend the next 3 years in beautiful Williamsburg, Virginia, at William and Mary Law School, where I was able to indulge my love of history. After graduating in 1983, I moved to Denver, where I had clerked for a firm the summer before.

I clerked for a Colorado district court judge and, when he retired, for his replacement, and then left in 1985 to become the first female associate at a small firm where I practiced mostly commercial litigation. The best thing about private practice was that it introduced me to my husband, Tim. I met him when I was called into the conference room one morning to witness his mother’s will. Much to my chagrin, the senior partner used the opportunity to do a little matchmaking, extolling our respective virtues. Tim asked me out to lunch a few days later and we advanced from first date through engagement under the watchful eyes of everyone at the firm.

Meanwhile, I decided that if I wanted to have a life outside the office, I needed to find a job that was less stressful and didn’t require such long hours. In April 1988, I was lucky enough to be hired as a staff attorney at the U.S. Court of Appeals for the Tenth Circuit. I worked as a line attorney until June 1998, when I became the Supervising Staff Attorney. It’s hard to believe that I have been here almost 23 years. The time has passed so swiftly due, no doubt, to the interesting work and wonderful colleagues I’ve been lucky to have.
I graduated from law school in 1993 and practiced law for eight years, first as an associate and then as a shareholder, with firms in Dallas and El Paso, Texas. My practice centered primarily on commercial litigation and appellate law, and I am board certified in the latter. I have been a staff attorney since 2002, when I was hired by the Texas Supreme Court as the staff attorney for extraordinary writs, more commonly known as the mandamus attorney. As mandamus attorney, I reviewed all emergency matters that came before the court and made recommendations to the justices about how to proceed on particular cases. In 2003, Justice Wallace Jefferson hired me as his staff attorney, and I have been in that position ever since. In 2004, Justice Jefferson was elevated to Chief Justice.

The Supreme Court of Texas is the highest court in the state for civil matters (criminal matters are handled by the Court of Criminal Appeals, which is in a different section of the building). It is a court of discretionary review. Each chambers is staffed by a justice, a staff attorney, two law clerks, and an executive assistant. My job consists primarily of helping Chief Justice Jefferson draft opinions and managing our two law clerks. I really enjoy the work and learn something new every day.

I first learned of CASA through former Texas Supreme Court Justice Craig Enoch, who encouraged me to get involved. I have really enjoyed the AJEI Summits I have attended—in D.C., Phoenix, Orlando, and Dallas—and am looking forward to this year’s Summit. I have learned a lot and am looking forward to remaining an active member of CASA.

I have been a staff attorney for the Louisiana First Circuit Court of Appeal since July 1982, the first month the Louisiana Courts of Appeal had jurisdiction over criminal matters. I became the assistant director for the criminal section in 1984 and have been the central staff director since 2004. Our staff has grown from 4 attorneys and a secretary to 25 attorneys and a slew of support people during the past 27 years. At the end of September I went through a box of emails, memos and other assorted directives staff has received over the years, and I was shocked at how much some things had changed and how some things had not.

My first CASA conference was the great Chicago trip of 1984, but I had a terrible cold the whole time. I stuck to decongestants and diet Coke, thus avoiding the ouzo hangover that plagued a few. My favorite conference was Key West in 1994. I was sitting on the beach with a group of friends when word came about O.J. Simpson and the white Bronco chase, but we decided it was too pretty to go inside. I’ve still never seen any of the video footage.

I am finally settling into an empty nest. My husband and I dropped our younger daughter off at college a month ago, and our older daughter is living in Utah, trying to convince her dad and me that she really will go back to school in January. We set an ambitious schedule of Things To Do when the kids were finally out of the house—go bike riding (check), cook different types of ethnic dishes (check), arrange a home library (check), go the gym twice a week (uh, maybe next week). I am on the board of directors of a local adult literacy organization, and it seems we are always having to plan fundraisers these lean and hungry days. We are a family of avid readers, and I just finished cataloging our fiction (1000+ entries) and have 24 boxes of nonfiction to keep me busy after football season. Go Tigers!
John Tarlton Olivier received his undergraduate degree in Business Administration and his Juris Doctor degree in 1979 from Loyola University School of Law (New Orleans). He is admitted to the Louisiana State Bar and to practice in the Eastern and Western Districts of the United States District Court and in the United States Supreme Court.

Mr. Olivier entered the private practice of law with the firm of Olivier & Brinkhaus in 1979. In 1982 he moved to New Orleans and worked for the Board of Commissioners for the Port of New Orleans. In 1985 he was appointed by the Louisiana Supreme Court as Deputy Clerk and on March 1, 1996, was sworn in as Clerk of Court.

Mr. Olivier completed the National Center for State Court’s Institute for Court Management Executive Development Program and in 1991 was recognized as a Fellow of the Institute during ceremonies at the United States Supreme Court, presided over by Chief Justice Warren Burger. Since 1991, Mr. Olivier has been a member of the Conference of State Court Administrators (COSCA)/National Center for State Courts (NCSC) Court Statistics Project Advisory Committee which guides and directs staff in the content, design, collection, compilation, and analysis of State court caseload statistics for the nation. Also, he is currently a member of the Supreme Court of Louisiana Historical Society (formerly on the Board of Directors), National Conference of Appellate Court Clerks (NCACC) where he served on the Executive Committee 2007-2009 and is currently Chair of the Technology Committee, National Association for Court Management (NACM), American Bar Association (ABA), and Louisiana State Bar Association (LSBA).

In 2003, Mr. Olivier was presented with the National Center for State Court’s Distinguished Service Award. In 2004, he was recognized by Louisiana Supreme Court Chief Justice Calogero for exemplary service to the Court and the renovation of the historic Royal Street Courthouse.

In his spare time, Mr. Olivier enjoys sailing with his family and friends.

I graduated from Paul M. Hebert Law School, Louisiana State University, Baton Rouge, Louisiana in May of 1987. I have worked for the Court of Appeal, Third Circuit, State of Louisiana, from August 1987 to the present and am currently the Civil Staff Director for the Central Staff. I am a member of the Louisiana Bar Association and American Bar Association.

Rachel is a graduate of Centre College in Danville, Kentucky, and the University of Kentucky College of Law, where she served as editor-in-chief of the Kentucky Law Journal. After graduating from law school, Rachel clerked for the Honorable Karl S. Forester of the United States District Court for the Eastern District of Kentucky and the Honorable Eugene E. Siler, Jr., of the United States Court of Appeals for the Sixth Circuit. Rachel worked as an associate in the labor and employment department of Taft, Stettinius & Hollister LLP for five years before returning to the judiciary as a staff attorney for the United States Court of Appeals for the Sixth Circuit. Rachel and her husband Dave are avid Cincinnati Reds fans, holding season tickets and traveling to see the team play across the country. She also enjoys reading, running (until recently sidelined by foot surgery), traveling, and tailgating for Cincinnati Bengals games (but not going to the games given their dismal season).
The star power of the Supreme Court media panel made waking up early for the Saturday morning session easier: Adam Liptak, the Supreme Court correspondent of The New York Times; Dahlia Lithwick, senior editor at Slate; and Stuart Taylor, Jr., a contributing editor for National Journal and Newsweek. Kevin Newsom, the chair of the appellate litigation group at Bradley Arant Boult Cummings, LLP, and a former Supreme Court clerk, served as moderator. The panel discussed the dynamics of the Roberts Court, especially with the addition of two new justices, and the major issues coming before the Supreme Court in this and upcoming terms.

Liptak characterized the Roberts Court as slightly to the right of the two preceding Courts, adding that the Court is not out of step given the nation’s move to the right. In Taylor’s opinion, the Court has moved to the right in only a limited sense and has moved to the left on many issues, including national security, gay rights, and the death penalty. According to Lithwick, the addition of Justices Sonia Sotomayor and Elena Kagan has brought a positive energy to the Court. The two newest justices are not “shrinking violets” and are both aggressive questioners. Both Lithwick and Taylor praised Justice Kagan’s questioning, noting that she skillfully flatters her fellow justices in framing her questions. Like her predecessor, Justice David Souter, Justice Sotomayor has voted with Justice Ruth Bader Ginsburg and Stephen Breyer. Justice Sotomayor was expected to be tough on criminal defendants because of her prosecutor background, but her strong dissent in the right to remain silent case, Berghuis v. Thompkins, 130 S. Ct. 2250 (2010), indicates otherwise.

The panel condemned the judicial confirmation process. Taylor called the process an “undignified spectacle” and asserted that the nominees would never be confirmed if they answered candidly. Lithwick referred to the hearings as a “public bloodletting” and said that at least two of the justices are still angry over their experience. According to Lithwick, the process damages the nominee and the public’s perception of the Court. As an alternative, Taylor suggested that the nominees should “go in front of Stephen Colbert for an hour and a half.”

Technology is an area in which the justices need to play catch-up. While Justice Antonin Scalia reads briefs on an iPad, Justice Breyer recently admitted that he did not understand “The Social Network,” the movie about Facebook. During oral arguments in City of Ontario v. Quon, 130 S. Ct. 2619 (2010), the text messages case, and Schwarzenegger v. Entertainment Merchants Association, the violent video games case, the justices have displayed their lack of knowledge of how the technology at issue works. The panel previewed some of the issues that will soon be before the Court, including the healthcare mandate and gay marriage. The panel predicted that, given the Court’s broad reading of the Necessary and Proper Clause, the healthcare mandate will be upheld. With respect to gay marriage, Liptak noted that the Court typically tracks public opinion and may not be ready to rule in favor of gay marriage. According to Taylor, standing might be a way for the Court to avoid the issue. Lithwick believes that Justice Anthony Kennedy has “put a lot of personal stock” into the issue of gay rights, referring to his opinions in Romer v. Evans, 517 U.S. 620 (1996), and Lawrence v. Texas, 539 U.S. 558 (2003).

For several years, staff attorneys at the Oklahoma Court of Criminal Appeals have discussed attending the AJEI Summit, but our continuing legal education budget just did not allow for such an expenditure. This year, upon discovering that the Summit was in Dallas (a short 3 hour drive from Oklahoma City) we thought we might be able to swing it. It was scheduled at the same time as our Oklahoma Bar Association Annual Meeting, but when members of our group were awarded Summit scholarships, we were delighted at the prospect of attending a conference with others of our “unique breed”—the appellate staff attorney!

Being a first time conference attendee, I wasn’t sure what to expect from the abundance of options offered on the 2010 AJEI Summit Agenda. However, by the time I attended the Saturday afternoon breakout session titled “The Choreography of Courts and Congress,” I was certain that it would be as outstanding as the other sessions I had attended. I was not disappointed.
A historical review indicated that while Congress is currently exhibiting a “heightened interest” in criticizing the judiciary and courts, the criticism is nothing out of the ordinary. Criticism of the courts is nothing new, and, like the economy, appears to be cyclical. Currently, Congressional chastisement seems to have entered a more active phase, evidenced by court-curbing bills, and increased public criticism displayed on political party websites and in party platforms. Democrats and Republicans alike have commented unfavorably upon the judiciary, with criticisms attacking everything from judicial appointments to the labeling of judges as judicial activists whose actions need to be checked. When the major political parties are in a heightened sense of flux, the actions of state and federal courts seem to be a natural beacon for disparagement, from both sides of the aisle.

About every 30 years, a new attack is launched upon the judiciary. Statistical data offered during the presentation indicated that in 1947, court-curbing legislation was nonexistent. In 1970, the number jumped to 60; only 8 such bills were presented in 1990; and in 2007 Congress introduced 35 bills that attempted to limit or encroach upon the institutional powers of the courts. At the federal level, the routine cycle includes critical constitutional commentary, proposals of legislative override or suggested constitutional amendments, grandstanding at judicial confirmation hearings, attempts to push judicial regulation (both specific and general), and increased budgetary oversight. Occasionally, the suggestions for legislative oversight of the judiciary extend as far as impeachment, disestablishment of the courts, and budget cuts.

Our speakers noted that the States are a little more dynamic in their various approaches to the judiciary, especially in States where the judiciary is elected. They noted a steady decline of legislatures populated by lawyers, and opined that criticism of the courts has become a new battleground for progressives and evangelical conservatives alike. A historical review indicated that while Congress is currently exhibiting a “heightened interest” in criticizing the judiciary and courts, the criticism is nothing out of the ordinary. Criticism of the courts is nothing new, and, like the economy, appears to be cyclical. Currently, Congressional chastisement seems to have entered a more active phase, evidenced by court-curbing bills, and increased public criticism displayed on political party websites and in party platforms. Democrats and Republicans alike have commented unfavorably upon the judiciary, with criticisms attacking everything from judicial appointments to the labeling of judges as judicial activists whose actions need to be checked. When the major political parties are in a heightened sense of flux, the actions of state and federal courts seem to be a natural beacon for disparagement, from both sides of the aisle.

Looking ahead, the observation was that anti-court sentiment has subsided somewhat in recent years. In 2008, there were only 8 bills introduced that attempted to rein in the power of the courts in some fashion. The session concluded with the observation that, in the long term, dramatic changes at the Federal level were unlike-ly, while predictions for changes at the State level were less certain.

My personal observation: the more things change, the more they stay the same! As an aside, our entire group thoroughly enjoyed the AJEI Summit. The programs were thought-provoking, educational, and informative; the speakers were amazing, and meeting attorneys and judges from other venues was a treat. It was gratifying to know that we are not alone. The suggestions, comments and discussions about the work we do, ways to better accomplish our goals and to make the courts more efficient and effective were encouraging and enlightening. Hope to see you at next year’s Summit!

The panelists for this Saturday afternoon session presented a program that not only identified specific issues “percolating” in the intermediate federal appellate courts but also provided the attendees with practical suggestions on how to advocate their positions when the courts have taken conflicting and/or different approaches to determining those issues. The panelists explained how to effectively use federal appellate court standards and appellate analysis of specific issues in state and federal trial courts. Professor Suzette Malveaux (Columbus School of Law) discussed the shift in pleading standards—from the generous notice pleading standard set forth in the seminal case Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957) (applying rule that “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief”), to Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955 (2007) (complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face”), to what she referred to as the “new transsubstantive standard” pronounced by M. Cristina Romero, Indiana University Maurer School of Law and Professor Bruce Peabody, Fairleigh Dickinson University, tag teamed the session. The two outlined the issue of Congressional attacks upon the judiciary over the past 15 years, with an eye toward assessing whether congressional action in recent years reflected a change with regard to the judiciary, or was simply more of the same.
Professor Malveaux’s presentation included a useful discussion of the more difficult Iqbal pleading standard that now applies to “all civil actions” in federal courts. In Ashcroft v. Iqbal, 556 U.S. ___, 129 S. Ct. 1937 (2009), Professor Malveaux’s presentation included a useful discussion of the more difficult Iqbal pleading standard that now applies to “all civil actions” in federal courts. Id. at 1953. She also discussed how the courts might determine “facial plausibility” of a claim in view of the Supreme Court’s observation that the facial plausibility determination is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id. at 1950.

Professor Malveaux further discussed how the shift in pleading standards might affect plaintiffs faced with a Fed. R. Civ. P. 12(b)(6) motion to dismiss. She identified some of the competing interests involved with this issue such as docket management, control of discovery expenses and unequal access to information or “informational inequality” between parties. And, Professor Malveaux discussed the use of limited and targeted pleading-stage plausibility discovery as a possible solution for balancing these competing interests.

Julia Blackwell Gelinas (Frost Brown Todd LLC) identified two percolating issues in the area of arbitration. The first issue she identified was the nature of the stay in district court when there is an appeal from the denial of a motion to compel arbitration. Ms. Gelinas spoke regarding an apparent split in the circuits on this issue. She explained the “mandatory stay” and the “trial court discretion” approaches, and how the advocate can use the split to his or her advantage. The second percolating issue Ms. Gelinas identified dealt with waiver of the right to arbitrate. She discussed the different approaches to that issue: (1) that the party asserting waiver must show prejudice; and (2) that waiver applies through the inconsistent act of engaging in the litigation process.

Roger D. Townsend (Alexander, Dubose & Townsend LLP) discussed the nature of equitable allocation under CERCLA. He identified conflicting views in the circuits regarding the appellate standard of review to be applied to the trial court’s determination of contribution between defendants for proportionate share of costs. Mr. Townsend stated that, although the majority of the circuits applies the abuse of discretion standard of review, the Fifth Circuit and the Ninth Circuit review the trial court’s determination for clear error. In his opinion, the trial court’s unfettered discretion in choosing and weighing the “Gore Factors” in these cases makes it difficult for an appellant to effectively argue under the clear error standard.

The moderator Kirsten M. Castañeda (Locke Lord Bissell & Liddell LLP) engaged the panel in a discussion of percolating issues regarding class action certifications. A portion of that discussion focused on the Ninth Circuit’s 6-5 en banc decision in Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571 (9th Cir. 2010), cert. granted in part by Wal-Mart Stores, Inc. v. Dukes, ___ S. Ct. ___, 2010 WL 3358931 (U.S. Dec 06, 2010) (NO. 10-277), and the circuit split it created on the standard for determining when claims for monetary relief can be certified as a class action under Fed. R. Civ. P. 23(b)(2).

The breakout session concluded with a summary of the panel’s suggestions for dealing with circuit splits: (1) Do not think that a split will operate automatically against you and that you will always be bound by the precedent in your circuit; (2) Make a specific argument for overruling unfavorable precedent in your circuit and preserve that argument for appeal; and (3) Remember that state court appellate divisions are not bound by each other’s decisions. If there is no precedent in your circuit, then attempt to identify the policy underlying the favorable decision of another circuit and apply it to the facts of your case.
PRIVACY IN THE AGE OF TECHNOLOGY

[Continued]

4th Amendment concerns are raised at each step. Finally, Prof. Jeffrey Bellin of the SMU Dedman School of Law discussed the pressures new technologies place on the traditional balance between an individual’s interest in privacy and the government’s legitimate need for information. He focused on the distinction between searches and non-searches and how it relates to new technologies, in particular, GPS tracking.

As Justice Irion pointed out, when the 4th Amendment was drafted in 1789, the Framers were not concerned with the privacy implications of modern technology. The 4th Amendment protects “[t]he rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.”

But what are the privacy rights of life in the age of technology? What are unreasonable searches in the internet era? What is the appropriate normative balance between an individual’s interest in his privacy and law enforcement’s need for investigative tools? As Prof. Bellin discussed, the government now has the ability to engage in a broad range of surveillance that does not physically intrude into an individual’s person or property, but that society might view as an invasion of privacy nonetheless.

One overriding question is whether new technologies have simply provided new ways to do old things more easily, more effectively, and more cheaply, or whether they have created a fundamentally different environment with changed expectations about what is or is not, or what should or should not, be private. Can the rules that were developed to cover older technologies simply be stretched to cover new ones? Or do we need new rules to reestablish the function of the old rules in the new technological environment?

In answering these questions, courts need to keep in mind a number of factors. First, new technology may or may not be functionally the same as old technology. Prof. Bellin touched on this in his discussion of traditional views of what is and is not a search.

Traditionally, an individual had no expectation of privacy in what he knowingly exposed to the public. So the police could follow someone who was driving his car on public thoroughfares, for instance, and it would not be considered a search. But what about new GPS tracking technology? Police can now attach an extremely small, unnoticeable GPS tracking device to a person’s car and track everywhere the person drives twenty-four hours a day, seven days a week, for months at a time. Is a GPS tracking device just an improvement on the beeper police used to track the defendant in United States v. Knotts, 460 U.S. 276, 282 (1983), and which the Court held was not prohibited by the 4th Amendment? Or is there something fundamentally different about a device that allows the police to engage in prolonged, undetectable surveillance of a person’s otherwise public movements?

Compare United States v. Pineda-Moreno, 591 F.3d 1212 (9th Cir. 2010) (prolonged GPS tracking not a search), and United States v. Garcia, 474 F.3d 994 (7th Cir. 2007) (same), with United States v. Maynard, 615 F.3d 544 (D.C. Cir. 2010) (prolonged GPS tracking is a search).

Another factor to consider is that modern computing has given us an unprecedented ability to store masses of information, and when we use much of the new technology, we leave digital records in multiple locations that can be tracked and searched. In addition, advances in technology, network capability and telecom infrastructure has prompted a shift to web based communication, and with development of the cloud, more sensitive information is being stored on third-party-provider servers that ever before.

And finally, most if not all of today’s communication intermediaries that provide the platforms for the internet, e.g., telephone and cable companies, have both the technical capability and the business need to engage in customer surveillance, and law enforcement is increasingly looking to these intermediaries to engage in surveillance for law enforcement purposes. Since passage of the Communications Assistance for Law Enforcement Act in 1994, Congress has required telecommunications carriers to have the technological ability to intercept the communications of their customers, and the Obama administration plans to introduce legislation to expand the law to cover all information services providers, including providers of encrypted email (like Blackberry), social networks, and file-sharing programs. Last year the FBI spent $9.75 million to make sure that private companies have the ability to do online surveillance of their customers, and this year they plan to spend another $9 million to do the same. Continued on page 13
Application of the 4th Amendment requires a high level of abstraction; the use of the word “unreasonable” leaves much room for interpretation and evolving standards. The Supreme Court has been extremely reluctant to weigh in on how the 4th Amendment applies to much of the new technology. The source of the Court’s reluctance is not clear. It may be that the Court is simply unfamiliar with much of the new technology (as evidenced in the questioning during oral argument in several cases last Term). Or it may be that the Court is waiting for societal expectations of privacy with regard to these new technologies to become more settled. Whatever the reason, the Supreme Court’s silence means that the state and federal courts are left to sort through these very difficult questions about expectations of privacy in the age of technology largely on their own.

Remember those law school exams where you were presented with a fact pattern and had to identify as many issues as possible? That is how the moderator began the presentation at the Appellate Judges Education Institute seminar in Dallas entitled “Guantanamo and Beyond: Comparative Options for Trying a Terrorism Case in a Federal District Court, a Military Commission, and a General Court-Martial.” Andy Efron, the Chief Judge of the Court of Appeals for the Armed Forces, introduced the moderator—Professor David Schlueter of St. Mary’s Law School. Schlueter presented a fact pattern in which a U.S. citizen, a U.S. soldier, and a Mexican national were discovered in a vehicle loaded with explosives just outside of the gate to Fort Dix, N.J. (The complete fact pattern can be found at the end of this article.) Referring to the fact pattern, Schlueter began by asking the panel whether the public can reasonably expect the three men to be tried in one jurisdiction.

Professor Richard Rosen of Texas Tech University School of Law responded that the non-citizen terrorist could be tried in a military commission. The U.S. army officer should be tried by court martial. But the U.S. Attorney General in consultation with the President would decide the issue. The Department of Justice would establish the protocols for decision, especially in light of the need to protect sources of intelligent gathering. Rosen concluded that the military officer would be court martialed. The other two would probably be prosecuted in a district court.

Schlueter then asked whether not trying a person at all was an option. Professor Robert Chesney of the University of Texas School of Law began his answer with an aside, saying that he loved the fact pattern and would use it as a final exam for his students. Chesney said that in the U.S. there must be a trial. In theater, however, no trial is a possibility. Many persons are held in Afghanistan without a trial, although some of those detainees are now being prosecuted in Afghan courts. He asked “what about pirates?” In terms of American public opinion, the public would have no problem detaining the Guantanamo detainees without a trial, and he cited John Yoo’s recent editorial supporting such detention.

Professor Geoffrey Corn indicated that the discussion must be framed in the context of the fact that we will be attacked again, so many feel that we may well just hold such a suspect. Even a U.S. citizen could be subject to detention as an enemy combatant in this context. He asked where you are better off as a government: with no trial, or with a trial and then preventative detention no matter what the result?

Schlueter asked what sort of crimes were set forth in the fact pattern. Chesney mentioned conspiracy and attempted terrorism, use of weapons of mass destruction, attacks on military personnel, and use of explosives to attack U.S. facilities. Chesney said that the facts would support treason charges against all except for the Mexican national. The facts also raise material support charges. Not only could such charges be raised against the citizen’s sister under these facts for aiding and abetting, but the charge could be leveled against the defendants themselves. Providing yourself as material support can be enough to support such a charge. The evidence may not be enough to actually convict the sister of material support. But she could be convicted of another crime under the statute regarding supporting a designated terrorist organization. Such a charge would be okay because of the Pakistani Taliban reference.

Schlueter asked if the fact pattern would support any war crime charges. Corn responded that the military commission statute does not use the term “war crimes.” Congress did this to avoid problems such as including espionage when Congress funds CIA activities. Corn noted that the military commission statute adds many terrorist crimes. He wondered if Congress creating an Article I court for non-war crime offenses was constitutional.

Schlueter asked if there were any overriding public perception issues. Corn said that the argument that military
prosecutions automatically give less constitutional rights is false. He said that the court martial is the gold standard of justice. While military commissions were bad, they are now better. In the fact pattern, the district court would exclude evidence from the search because there was no probable cause. A military commission would not suppress the evidence. Corn stressed that in America we define justice by process. The people of the United States do not act like a terrorist. There will be pressure on the administration to adopt a forum that clears a path to conviction. But we should follow the prisoner of war convention: a country must use the same procedures for prisoners of war that they use for their own people.

Schlueter than moved the discussion on to stage two concerning procedural rights. Rosen explained that a military judge rules on evidence and instructs the jury. A military judge does not have tenure and can be demoted. In federal district courts, the jury of 12 is randomly selected; they need only be a citizen, be able to understand English, and not be infirm. Their verdict must be unanimous. The “members” of military jury must be commissioned officers chosen by the convening authority. The selection process is fairly random. In a general court martial, a minimum of five jurors must vote to convict for non-capital crimes, but all 12 must vote to convict for a capital crime. These same rules apply for a military commission. The military jurors are the best qualified by age, experience, and temperament. It is a well-educated jury (everyone with at least bachelor degree). No guilty pleas are allowed in a death penalty case. The members set the sentence (except spring in time of war). They are notoriously independent, and statutes protect them from command influence. In the recent Galany case, he would have received lighter sentence from a military jury than under the Sentencing Guidelines.

Chesney indicated that in the Galany case, the evidentiary rulings would have been the same, including the voluntariness standard. The point of capture exception would not apply to Galany. At the end of the day, a higher court may say that the Constitution applies to all of these trials.

Schlueter asked a hypothetical about the protections of Miranda. The consensus was that in the district court the protections would apply. Under the Code of Military Justice or before a military commission, Miranda could be disregarded in the interests of justice regarding preventing future attacks.

Schlueter then referred to the part of the fact pattern concerning a party’s own statements as against interest and whether they would be admissible against co-defendants. He asked if the result would be same across all the systems. Again, in the military commission the standard regarding hearsay is the interests of justice. The evidence could come in against other parties there but not in federal district court.

Schlueter than turned to constitutional principles and asked: “Are the military commissions constitutional?” Corn said yes and no. The military commissions are constitutional regarding captured enemy litigants prosecuted for war crimes but not regarding non-war crime charges. Corn says the action in the fact pattern are not war; they are crimes. But for United States, it is now settled that we are at war. The public wants people who look like terrorists to go to Guantanamo. Corn noted the ironic fact that if Hamdan had been prosecuted in civil court he would have been hammered at sentencing. Before the military tribunal, he was sentenced to time served. The military jury understood the range of culpability for battlefield conduct. Those offenses should go to them. Schluter concluded that it sounded like where to prosecute it would be a wash regarding evidence. The final factor would be time and expense.

Schlueter then asked about the appellate stage of the proceedings. Rosen said that from the district court you would get an appeal as well as the possibility of a § 2255 action. With the Code of Military Justice you get collateral review. The Burns case in 1950 gave the litigant § 2241 review, limited to whether there was full and fair consideration of the constitutional issue. Most courts look at record before military court and then the intermediate military appellate court decision regarding full and fair consideration. The Court of Appeals for the Armed Forces and the Supreme Court have said that the Anti-terrorism and Effective Death Penalty Act is inapplicable. Finally, regarding the military commission, we don’t know yet. The 2006 Act is not clear about direct review and collateral review. On that note, the presentation ended.

My one observation on this fascinating discussion is to note that panel indicated that the military jury sentenced Hamdan, the driver for Bin Laden, to his “time served” as the appropriate punishment for the level of severity of his offense based on their knowledge of what happens on battlefields. All of us who labor in the fields of the appellate courts hope that the juries and the judges whose work that we review can sow similar straight, precise rows of justice.
Following an anonymous tip at 4:30 PM to the Criminal Investigation Division (CID) office at Fort Dix, New Jersey, that a car loaded with explosives was parked near the entrance to Fort Dix, CID agents contacted the FBI. FBI agents arrived and approached the vehicle. The car was occupied by a man identified as Carson Whitley, a United States citizen and resident of Missouri. His passengers included a service member in the Army, identified as Lt. Dan Mosby, and another civilian, Johnny Flores. Flores identified himself as a citizen of Mexico.

The occupants were ordered out of the car. Without asking for consent to search the car, the FBI agents, joined by CID agents, searched the interior of the car and the trunk. In the trunk they found high grade explosives connected to remote-control detonators. While the search was being conducted, two CID agents questioned the three occupants, without first giving them any rights warnings, and learned that they were members of the Pakistani Taliban, who intended to detonate explosives at 5:00 PM, when large numbers of service members and civilian employees would be leaving the installation.

Following standard procedures, the three individuals were initially taken into custody by the FBI for interrogation. After being given their Miranda warnings, Whitley and Mosby invoked their rights to counsel and the right to remain silent. Flores offered to cooperate and gave information which incriminated the other two. He also provided a sworn statement that the three had received money to flee the country, from Whitley’s sister, Sonja. Sonja was aware that they were engaged in anti-US activities but was not aware of their plan to bomb Fort Dix. Flores later recanted his statement and stated that he would never testify against the others. He told his lawyer that investigators threatened to seek the death penalty if he did not cooperate with them.

Although the vehicle had not actually entered the gate to the installation, when the car was searched, it was located on property over which the United States had exclusive jurisdiction, as part of Fort Dix. Thus, by prior agreement between the United States and the State of New Jersey, the state has no jurisdiction over the incident.

Personnel in the Department of Justice, the State Department, FBI, Department of Homeland Security, and the Pentagon are now engaged in conversations about whether one or more of the four individuals should be tried by 1) a federal district court; 2) a court-martial; or 3) military commission.

In making that decision, those offices and agencies are considering numerous questions relating to procedural, evidentiary, and substantive issues, which may or may not be present in those three forums.