MESSAGE FROM THE CHAIR

By Dalila E. Patton
Staff Attorney
Supreme Court of the U.S. Virgin Islands
Fredricksted, VI

It is an honor to serve as the 2014-2015 Chair of the Council of Appellate Staff Attorneys (CASA), a Council within the Appellate Judges Conference (AJC) of the ABA Judicial Division. CASA strives to promote the exchange of information and ideas among appellate court attorneys as well as the practicing bar and the courts from which appeals are taken, to gain an appreciation for the role of appellate court attorneys. CASA also seeks to provide professional continuing legal education to appellate court staff attorneys, career law clerks, and other attorneys regularly employed by appellate courts.

Appellate Judges Education Institute (AJEI) 2014 Summit

Every year, the AJC and SMU-Dedman School of Law co-sponsor the Appellate Judges Education Institute Summit, which is a premier opportunity to obtain an advanced education on current legal issues and to network with other staff attorneys, members of the Council of Appellate Lawyers (CAL) – also within the AJC – and state and federal appellate judges. The annual AJEI Summit usually takes place during the second weekend of November and consistently attracts over 300 judges and attorneys from all over the United States, including U.S. territories.

The 2014 AJEI Summit was held in Dallas, TX on November 13-16 and featured a wide array of topics in-

COVERING THE CASES

By Rachel Zahniser
Staff Attorney
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Ryan Ferguson spent ten years in prison for a crime that he claims that he did not commit. A year after his release, Ferguson introduced Erin Moriarty, the journalist who covered his case from the beginning, at a lunch presentation at the AJEI Summit.

After graduating with a law degree from The Ohio State University, Moriarty started her professional career as a lawyer but ended up in journalism. Since 1990, Moriarty has been a correspondent for “48 Hours,” reporting on numerous criminal cases. Moriarty described her role as a “translator.” While she is passionate about the cases she covers, Moriarty emphasized that she “is just a reporter” and “not a crusader or advocate.” In picking cases to feature, Moriarty said that she looks for “great stories with great legal issues.”

One of those great stories was Ferguson’s case. In 2004, Ferguson was arrested after his friend Charles Erickson confessed to involvement in the 2001 robbery and murder of Kent...
Continued from page 1: Message From the Chair

cluding:

- “50 Years of the Civil Rights Act”, a discussion featuring the Hon. Carl Stewart, the first African-American Chief Judge of the U.S. Court of Appeals for the Fifth Circuit, on how the civil rights movement led to the passage of the Civil Rights Act;
- “Reading, Interpreting and Writing about the Law” with U.S. Supreme Court Justice Antonin Scalia and SMU Dedman School of Law Professor Bryan Garner;
- “Actually Innocent? Exoneration on Appeal”, a discussion on avoiding and addressing wrongful convictions on appeal, including issues such as: faulty forensic evidence, eyewitness testimony, prosecutorial actions, inadequate defense counsel, false confessions;
- several sessions on current SCOTUS issues, including the First Amendment rights of corporations and the increasing amount of certiorari petitions granted in patent/intellectual property cases.

CASA also sponsored several sessions, including the “Brain Games to Stay Motivated” session, in which Matthew Leyland and Dee O’Neill-Warren from the UT Dallas Center for Brain Health presented their workshop adopted from Dr. Sandra Bond Chapman’s Book, “Make Your Brain Smarter.” This workshop was aimed at learning to avoid habits that drain cognitive potential, learning how to strengthen productivity and understanding which habits and forces prevent a person from reaching the highest level of mental productivity. Additionally, CASA
sponsored a session titled “Three decades after 1984: Why does privacy matter?” Professor Susan Herman from Brooklyn Law School led a discussion on the interplay between law and literature, discussing how the world of George Orwell’s 1984 has come closer to reality due to modern technology’s ability to track people’s movements, preferences and purchases every day and how current legal issues arise from these technological advances. And last, but definitely not least, CASA sponsored Dean Erwin Chemerinsky’s review of the civil and criminal cases that the U.S. Supreme Court decided within the past year - as well as his preview of the cases currently before the Supreme Court and issues expected to arise in the near future. Needless to say, Dean Chemerinsky’s presentations have become an anticipated highlight of each AJEI Summit.

But it was not all work and no play. CASA’s annual dinner and t-shirt exchange took place at Sonny Bryan’s Smokehouse, West End. This was a fun dinner party in which all members that brought a t-shirt from their hometown traded them with each other before we settled down and dug into some serious Texas BBQ! We also hosted a hospitality suite every night where CASA members, CAL members and many judges sat back and relaxed with snacks and drinks after the conclusion of the daily summit events. Also, prior to the summit, several CASA members visited UNT- Dallas, a newly formed public law school, and SMU Dedman School of Law in order to encourage students to seek summer internships, clerkships and permanent employment opportunities with courts. In these informal gatherings, we shared our educational background and our diverse work and personal experiences that led us to choosing to spend our careers serving our respective courts. These panels are always engaging as we not only enjoy sharing our experiences with the students but also each other.

The Education Committee is soliciting ideas for CASA’s proposed sessions at the 2015 AJEI Summit, to be held on November 12-15, 2015 in Washington D.C, so if you have any suggestions, please contact our Education Committee co-chairs or any member of the Executive Board.

ABA Midyear Meeting

The ABA held its Midyear meeting at the Hilton Americas Houston, in Houston, TX on February 4 - 10, 2015. During this meeting, members of the CASA executive board participated in the Judicial Clerkship Program - a collaboration between the Judicial Division of the ABA and the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline - in which minority law students received a direct introduction to a judicial law clerk’s job by forming teams to research a hypothetical factual problem (based on a case currently before the SCOTUS) and discussing those cases with a group of judges assigned to those teams. On behalf of CASA, I participated in the opening panel and discussed my experiences as a central staff attorney. I encourage CASA members to participate in this program in the future, as it is designed to expose law students to the numerous opportunities to work for a Court. The CASA Executive Board held its business meeting on Saturday, February 7, 2015 at 8:00 am to 11:30 a.m. It was great to see everyone at the meeting in Houston!

Council of Appellate Staff Attorneys
Executive Committee

Chair Dalila Patton
U.S. Virgin Islands Supreme Court

Chair-Elect Christina Cooley Smith
Georgia Court of Appeals

Secretary Frank Gibbard
U.S. Court of Appeals, 10th Cir.

Immediate Past Chair Rachel Zahniser
U.S. Court of Appeals, 6th Cir.

Member-at-Large Lisa Senter
U.S. Court of Appeals, 6th Cir.

Member-at-Large Greta Scodro
Indiana Supreme Court

Member-at-Large Cliffie Wesson
Texas Court of Appeals

Member-at-Large Tray Owen
Tennessee Court of Appeals

Member-at-Large Joe Merrick
Court of Appeals Indiana
Heitholt and implicated Ferguson. Moriarty saw Erickson’s videotaped confession and found it “so astounding” that he did not know how the victim died or what type of weapon was used. According to Moriarty, if the police had done further research, they would have learned that Erickson had serious drug and alcohol problems and was suffering from blackouts. The physical evidence found at the crime scene, including fingerprints, footprints, and a hair in the victim’s hand, did not match Ferguson or Erickson. Jerry Trump saw two young men at the crime scene but told police that he could not provide a detailed description of them. After Ferguson and Erickson were arrested, Trump asserted that he saw their photographs in the newspaper and recognized them as the men he saw at the crime scene. Ferguson was convicted based on Erickson’s confession and Trump’s identification and was sentenced to consecutive prison terms of thirty years on the murder conviction and ten years on the robbery conviction. Kathleen Zellner, an attorney who has obtained the release of numerous inmates on the basis of newly discovered evidence, saw Moriarty’s coverage of Ferguson’s case on “48 Hours” and took the case pro bono when his family called her. Both Erickson and Trump recanted their trial testimony in the post-conviction proceedings. Finding that the prosecution violated Brady v. Maryland, 373 U.S. 83 (1963), by withholding an interview with Trump’s wife, the Missouri Court of Appeals granted habeas relief and vacated Ferguson’s convictions. Ferguson v. Dormire, 413 S.W.3d 40 (Mo. Ct. App. 2013). After ten years in prison, Ferguson was released.

But not all of the criminal cases covered by Moriarty end in release. After she received a letter from a prisoner claiming his innocence, Moriarty pushed for DNA tests. That prisoner became the first death row inmate in California to obtain post-conviction DNA testing. The testing, however, confirmed the guilt of the prisoner, who is still on death row.

Moriarty also discussed the case of Melissa Calusinski, a daycare worker convicted of murdering a toddler. Calusinski, who has a verbal IQ of 74, confessed after a nine-hour interrogation. The infant died of a skull fracture. According to Moriarty, the trial became a battle between medical witnesses, and “the jurors decided not on facts, but who was the best witness.”

A panel presentation entitled “Actually Innocent? Exonerations on Appeal” preceded Moriarty’s talk. Judge Catharina Haynes of the U.S. Court of Appeals for the Fifth Circuit moderated the panel, which included Zellner, Judge Barbara Hervey of the Texas Court of Criminal Appeals, and Professor Meghan Ryan of the SMU Dedman School of Law. The panel first showed a “48 Hours” clip about Ferguson’s case. The panel went on to discuss the potential sources for errors in convictions, such as faulty forensic evidence, eyewitness testimony, false confessions, prosecutorial misconduct, ineffective defense counsel, informants, and explicit and implicit bias. The panel also addressed the impediments to correcting errors on appellate review and the implementation of reforms.

Moriarty ended her presentation by stating that prosecutors can always take another look at cases. “The truth should not be sacrificed in the name of procedure,” she said.
Every Supreme Court scholar knows that United States Supreme Court Justice Antonin Scalia is a "textualist," believing that judges should interpret the law and the Constitution by looking at the language used rather than other sources for the intent of the drafters. And every wordsmith knows that Bryan A. Garner is a lexicographer: editor in chief of the 10th edition of Black's Law Dictionary, a professor at SMU Dedman School of Law, and author of more than 20 books on legal writing and language in general, among other things. At the 2014 AJEI Appellate Law Summit, Justice Scalia and Professor Garner talked about their new book, titled Reading Law: The Interpretation of Legal Texts. Every attendee received a copy of the book.

In 2008, Justice Scalia and Professor Garner published their first book, Making Your Case: The Art of Persuading Judges. After that project ended, Professor Garner explained, the two collaborators decided to embark on an ambitious endeavor to collect in one book all valid canons of construction and to disavow invalid ones. The result is Reading Law, a compendium of 57 canons, divided into those that apply to all legal language and those that apply to governmental prescriptions such as statutes and regulations and each given short titles, followed by a section titled ‘13 Falsities Exposed.’

The interaction between the justice and the professor was fun to watch. The co-authors are clearly comfortable with each other and took turns discussing particular canons, with engaging illustrations and anecdotes. Toward the end of the discussion, they presented five scenarios and challenged the audience members to be the first to name the applicable canon of construction. Each winner received an autographed copy of Making Your Case. After the discussion, Justice Scalia and Professor Garner autographed copies of Reading Law.

In the first week after I returned to work from the summit, I pulled out the book to review the canon applicable to a case involving statutory interpretation. The book is much more interesting than its title and subject matter would suggest, because the authors took pains to illustrate the canons with cases and discussion. For example, in discussing the “Ordinary Meaning Canon,” which is that “[w]ords are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense,” the authors describe how courts sometimes ignore plain meaning in astonishing ways. For example, they quote a Kansas Supreme Court case holding that roosters were not “animals” and that therefore cockfighting was not outlawed by a statute making it illegal to subject an animal to cruel mistreatment. More satisfactory, they note, is a Massachusetts appellate court opinion holding that a goldfish is an animal subject to a statutory prohibition against awarding a live animal as a prize in a game of chance. (Well, it’s not a vegetable or a mineral....)

To me, the book and the authors’ lecture were one of the highlights of this year’s appellate law summit. I recommend it to any lawyer interested in interpreting legal documents.
HIRING A NEW STAFF ATTORNEY

By Greta Scodro
Deputy Administrator,
Indiana Supreme Court

An article in the CASA Quarterly last year about the work performed by the six attorneys in Indiana Supreme Court’s Administration Office mentioned that openings for an attorney arose infrequently. But this year one of the attorneys took a position with the attorney discipline agency, so there was an opening in our office for the first time in eight years. This article describes the process we used to fill the position.

For internal reasons, we were on a short deadline, so the first step was immediately drafting a job posting that would appear in enough time to reach as wide an audience as possible. We chose a weekly Indiana newspaper for lawyers (print and on-line editions) and the Court’s website. The posting generally described the position, the required qualifications, and a salary range, and stated instructions on how to submit an application. A more detailed description of duties and expected qualifications was also drafted and posted on the Court’s website.

A single person was designated to field questions from applicants during the application period. Application materials arrived electronically (a letter, resume, and writing sample from the applicant, and letters of recommendation from the applicants’ references), and were distributed to each attorney as they arrived. Our office paralegal maintained a spreadsheet to keep track of the process. When the application period closed, each attorney gave input, and tallying the responses resulted in a list of applicants who were invited for a first interview. The paralegal sent an invitation by email to each applicant selected for an interview. The email listed the time slots for each interview, and applicants were instructed to call the paralegal to reserve their preferred slot on a first call/first scheduled basis.

The Court’s Administrator decided that he and the other Administrator Office attorneys would all participate in the interviews. We discussed the structure and time limits of the interviews, the questions that would be asked, and choreographed arrangements to reduce chance meetings of applicants at arrival and departure. One person was assigned to greet applicants and provide them relevant last-minute information. For example, we decided to dispense with traditional handshaking to save time, and the greeter conveyed that information while escorting the applicant to the interview room. On a rotating basis, one attorney was assigned to take good notes, which left the rest of us free to concentrate on the applicant.

The interviews in the first round lasted only 20 minutes. We gave thought to the questions we would ask and decided on a set of five. The time was just enough for each applicant to be asked those questions by the same person plus a few resume-based questions as needed, and a few minutes for the applicant to ask questions if they had any at that point. We discussed the applicants as a group after the first interviews, and that discussion resulted in a smaller list of applicants who were invited for a second interview.

The second interviews lasted an hour. To get a sense for how the applicant processed information and performed under some pressure, each applicant was given 10 minutes in the library to read a (short) court opinion, and then was escorted to interview room where one of the attorneys asked three questions about it. After that, the
The interview was more free-form. We had agreed ahead of time to a pool of possible questions on a variety of topics, and took turns asking them as time allowed. With about ten minutes left in the interview, one of us invited questions from the applicants. After the interviews were finished, we arrived at a recommendation that we provided to the Chief Justice, along with application materials and typed interview notes.

We received applications from many qualified candidates and met fine people. One surprise was how much time the process took, but we all thought it was a good investment. We are glad to have Hattie Harman as a new staff attorney on our team; she plans to attend her first AJEI summit in Washington this fall.

SUMMIT PLANNING UNDERWAY

By Taye Sanford
Staff Attorney, Tenth Circuit Court of Appeals
Denver, Colorado

CASA’s Education Committee, which is responsible for putting together programs for the AJEI Summit in D.C. this November, is off to a great start. The committee came up with a variety of topics to propose to the full AJEI Education Committee for its consideration. Once CASA, CAL, and the judges submitted their ideas to the full AJEI committee, it had a two-day planning session at SMU in Dallas at the end of January. Ric Schickele, my co-chair, and I attended the planning meeting, along with Cliffie Wesson who is on CASA’s Education Committee and—conveniently—lives in Dallas. Over the course of two days, the AJEI committee hammered out a list of plenary and breakout sessions for the Summit. And I’m happy to report that many of CASA’s suggested programs made the cut.

In addition to Dean Chemerinsky’s review of Supreme Court decisions from the previous term—a perennial favorite—CASA is primarily responsible for planning the following sessions: (1) a plenary session on legal writing; (2) a breakout session on Second Amendment issues; (3) a breakout session on the changing concepts of marriage and the family; (4) a breakout session on issues arising from state legalization of marijuana; and (5) a breakout session on managing pro se appeals. In addition, while not primarily responsible for planning, CASA is actively involved in planning two other breakout sessions: (1) motion practice in the appellate courts; and (2) emerging technologies and appeals of the future. As you can see, we have our work cut out for us! But we are very pleased to have such a significant role in putting together the Summit’s programming.

We welcome any ideas CASA members may have about issues to include in the programs listed above or about possible speakers. And we are particularly interested in any information you can give us about how your court handles pro se litigation. Please send any suggestions or comments to me (taye_sanford@ca10.uscourts.gov) or to Ric (richard_schickele@ca9.uscourts.gov).

I hope to see you all at the Summit in November. I think you’ll find the programming both interesting and informative. And the AJEI Education Committee is busy planning a variety of social events too, including tours of numerous D.C. attractions and a reception at the U.S. Supreme Court.
Chair Rachel Zahniser called the meeting to order. The members approved the minutes from the February 2014 Midyear meeting.

Rachel reported that several CASA members had participated in the Judicial Clerkship Diversity Program at the February 2014 ABA Midyear Meeting in Chicago, and gave a short overview of the program. She encouraged members to sign up for the program at the 2015 Midyear Meeting in Houston.

Rachel also reported that CASA member Lee Ramsey attended the Judicial Division’s celebration of its fiftieth anniversary at the ABA Annual Meeting in Boston.

Before the Dallas AJEI Summit, CASA members attended panel discussions at UNT Dallas (Judy White, Rachel Zahniser, and Karen Hornsby) and SMU Dedman School of Law (Cliffie Wesson, Taye Sanford, Dalila Patton, Christina Smith) to tell students about attorney positions in appellate courts in addition to positions as law clerks for particular judges.

Peter Koelling, the director and chief counsel of the Judicial Division, reported that registration for the 2015 ABA Midyear Meeting in Houston was open, and thanked CASA members for their past and future involvement in the Judicial Clerkship Program. The clerkship program attendees will be able to attend oral arguments before the 14th Court of Appeals in Houston, which will be hearing both a civil and a criminal appeal on the Friday morning of the meeting. Koelling reported that Judge David Waxley has been elected the new chair of the Judicial Division, which will focus this year on forensic science and the role of judges as gatekeepers. In April 2015, Northwestern University in Chicago will sponsor a symposium on “The Role of Judges in Developing Forensic Science,” followed by a special edition of the Northwestern University Journal of Criminal Law and Criminology that will include the participants’ symposium papers. On Dec. 1, 2014, the Judicial Division executive committee will nominate a judge to serve as the Judicial Member at Large on the ABA Board of Governors.

Koelling also reported that the ABA has awarded an Enterprise Grant to the Judicial Division and the Criminal and Litigation Sections to form a taskforce to develop curriculum and training on Fighting Implicit Bias in the Courthouse, chaired by Karen Arnold-Burger of the Court of Appeals of Kansas and Phyllis Pickett of the ALC. The Judicial Division is also working with the National Judicial College in Reno to present the National Judicial Institute and Conclave on October 14-15, 2015 in Chicago, which will be similar to the AJEI Appellate Summit, but for trial judges. There will be scholarships available for trial judges to attend. Koelling has also been named as the editor of the 8th Edition of “Improvement of the Administration of Justice,” and has secured authors for 47 out of 54 chapters.

The ABA Annual Meeting will be held in Chicago on July 30-August 1, 2015, and the Judicial Division will offer a session titled on ethics titled “Scamalot.” The meeting will offer 36 CLE programs, three of which are from the JD.

CASA Education Committee Co-Chair Frank Gibbard reported that the committee (himself, Co-Chair Rick Schickele, Cliffie Wesson, Susan Dautel, and Rachel Zahniser) had been working on the AJEI Summit program since January 2014. He noted that CASA benefits from having more members on the AJEI program committee’s conference calls. CASA and CAL each have a
certain number of program openings allotted to them, and one of the CASA slots was left open this year for either CASA to fill or to be filled by overflow from other participants. The CASA Education Committee was eventually successful in securing a session for Professor Susan Hermann to speak about Law and Literature, specifically about privacy issues and ‘1984.’ This year the decision was made to specifically identify the two CASA-sponsored programs as being sponsored by CASA in the promotional materials, with the intent of bringing in more CASA members. Frank wondered if the result was that the programs appeared to be only for CASA members. But as others pointed out, the Brain Games session, organized by Cliffie Wesson, drew an overflow crowd. As for CASA’s influence, Rick Schickele noted that CASA does not raise the money that CAL does, and does not offer the prestige of the judges, and suggested that members solicit help from their judges to talk to other JD members about CASA’s contributions.

JD Chair-Elect Michael Berman introduced himself and remarked that a panelist from another session wanted to attend the Brain Games session but was unable because his presentation time conflicted. Berman noted that every six years, the chair of the JD was not a judge, and that next year he would be the non-judge chair. Next year’s theme would be “Increasing Understanding of and Confidence in the Justice System,” and he welcomed ideas and suggestions from CASA members.

Dalila Patton deferred her report as chair of the Long-Range Planning Committee until after the election, when she would report as the new CASA Chair.

CASA Quarterly editor Christina Smith noted that two editions of the newsletter had gone out during her term as 2013-2014 CASA Secretary.

Membership Chair Taye Sanford reported that current CASA membership was at 71 or 72, which was up slightly from last year. ABA group membership, with discounted dues, has been a huge boon to gaining members, and Taye encouraged anyone who was interested in starting a group to talk to her or to Jo Ann Saringer at ABA about the process. The requirements are simple: the group must have at least five members, at least three of which must be “new” (new members can be lapsed members). The ABA had its first dues increase for individual members in eight years, and has now evened out the three-year cost instead of front-loading the first year’s dues. Koelling noted that once a group is established, the percentage of new members need not remain at at least half, and a group of court employees can include staff attorneys, law clerks, and judges as long as all serve the same Chief Judge. Taye noted that 48 or 49 staff attorneys were attending the current summit, but only some were CASA members. The committee will reach out to those who were not members, pointing out that scholarship money was available to assist members whose courts did not pay their way to attend the summit.

Rachel noted that Taye was leaving CASA’s executive board after serving six years, and presented her with a plaque thanking her for her service. Karen Hornsby is leaving the board after serving two years as a member at large, and Rachel thanked her for her service as well. Rachel presented both Taye and Karen with certificates for their service on the board.

As chair of the Nominating Committee, Taye read the biographies of the slate of nominees, which had been published in the latest CASA Quarterly. There were no nominations from the floor, and the members voted in the new executive board as follows:

Chair Dalila Patton
Chair-Elect Christina Smith
Immediate Past Chair Rachel Zahniser
Secretary Frank Gibbard
Member-at-Large (2d Year) Lisa Senter
Member-at-Large (2d Year) Greta Scodro
Member-at-Large (2d Year) Cliffie Wesson
Member-at-Large (1st Year) Tray Owen
Member-at-Large (1st Year) Joe Merrick

Dalila presented a plaque to Rachel honoring Rachel for her effort in stepping directly into the Chair position this past year. Dalila noted that most of CASA’s work is done through committees. Her major commitment will be to the success of the 2015 Summit and her major goal will be to increase involvement by members in achieving
CASA’s goals. She intends to work closely through the committees. For this purpose, she passed around a committee group sign-up sheet.

Dalila noted that the next midyear meeting will be held in Houston in February. CASA will participate in the Judicial Clerkship Program, held during the meeting. She will report to AJC on the Program’s progress. This is part of the CASA Chair’s responsibility. She will circulate contact information for the Board so Board members can keep in touch with each other.

The meeting adjourned at 1:57 p.m.

Frank Gibbard, Secretary

CASA Discussion Group List Serve

The CASA Discussion Group list serve provides a forum for members to share information, seek advice and obtain professional support. The only requirement to join a discussion group is membership in CASA. To learn more and to sign-up visit:

http://www.americanbar.org/groups/judicial/discussiongroups.html
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