MESSAGE FROM THE CHAIR

By Christina Cooley Smith
Senior Staff Attorney
Court of Appeals of Georgia

I confess I did not fully appreciate the obligations and rewards of serving as CASA’s chair when I joined the executive board as a member-at-large. But I’ve discovered that participating in the Appellate Judges Conference executive board has been unexpectedly enriching. I’ve also been lucky to work with the extremely competent and infinitely discrete ABA staff who keep this conference running.

Before I stepped up to be chair-elect and then chair, I had read about the duties involved, but actually participating in monthly conference calls with the AJC board is a lot more engaging than it sounds. I am one of the few non-judges on the board, but since I’ve worked at an appellate court for 17+ years, I’m used to being around judges, who are usually a lot less scary when they are off the bench. I did not expect, however, to become fond of some of my fellow board member judges, with whom I interact almost entirely by telephone or email. Some are wickedly funny; all are wicked smart.

The issues before the AJC executive board over the last year have been varied and sometimes complex. They arise through different avenues, from different entities, in different forms, including reports, proposed policies, and resolutions. The board abstains from commenting

Continued on page 2

LIKE IT OR NOT

By Brenda A. Gallagher
Staff Attorney
U.S. Court of Appeals, Sixth Circuit

For attorneys in private practice, social media has opened up a whole new world for connecting with clients, fellow attorneys, and the public. According to Eric Combs, the Immediate Past President of the Cincinnati Bar Association, a major focus of the organization’s efforts during his presidency was to increase activity on its website, Facebook, Twitter feeds, and other social media platforms. Combs did not want anyone to miss news or events of interest to the legal community and promised a prize to one lucky winner that would be drawn from the names of his Twitter followers @CincyBarPrez. You don’t have to look far to find suggestions for the best social media platform and the most effective online methods to reach potential clients on a global scale. But those of us who work for appellate judges have an entirely different perspective about using social media because we are obligated to remain im-

Continued on page 4
or voting on some issues and weighs in on others. For example, the Hispanic Commission proposed a Resolution on a Spanish Translation of *Miranda*, as no uniform translation exists. Since AJC members are primarily judges, the conference naturally abstained from endorsing or opposing that particular resolution, but the discussion about the crucial nuances of translation and idiom and dialect was enlightening.

AJC Chair Judge Robb and chair-elect Catharina Haynes synthesized and presented the AJC’s concerns regarding a proposed ABA policy presented by the Diversity & Inclusion 360 Commission that would impose mandatory diversity quotas on ABA-sponsored CLE. The proposal was revised, but the concerns of AJC board members remained, leaving little time to address the changes before the revision would go to the Board of Governors. The AJC’s response to the revised proposal, crafted in short time by Judge Robb, Judge Haynes, and ABA Board of Governors liaison Donald Dunner, was masterful. The policy as finally adopted by the BOG requires a set number of “diverse” panelists. Penalties for failing to meet the quota range from a one-time fine of $2,500 to the withdrawal of ABA funding for the program.

Finally, CASA’s education committee members Richard Schickele, Taye Sanford, and Cliffie Wesson have been working hard on the upcoming AJEI Appellate Law Summit in Philadelphia, November 10-13. The agenda is set, the brochure has been finalized, and registration is open. U.S. Supreme Court Justice Elena Kagan is speaking, and I encourage all CASA members to register, and to apply for scholarships right away if needed. I will represent CASA’s interests on the scholarship committee, which meets in August. Preference is given to ABA members and early applicants.

The AJEI Summit is the best appellate law CLE you will find anywhere.

If you are interested in serving or continuing to serve on the board, please contact nominations committee chair Dalila Patton at dalila.patton@visupremecourt.org. CASA’s new executive board will be elected at our annual lunchtime meeting at the AJEI summit on Saturday, November 12, 2016. Because the business part of the annual meeting is rather dull to non-members, we plan to entice new CASA prospects by encouraging critiques of the program and present an opportunity to offer ideas for next year’s summit. If you have other outreach ideas, please let me know. Once we draw people in, they will find the fellowship that makes this council so special. CASA has to be experienced to be appreciated.

And please come visit me at CASA’s hospitality suite at the summit. I look forward to seeing old friends and meeting new ones.
THE JUDICIAL CLERKSHIP PROGRAM: GIVING BACK AND FEELING RENEWED

By Joe Merrick
Staff Attorney
Indiana Court Of Appeals

Earlier this year, I volunteered for the Judicial Clerkship Program, and I want to share my wonderful experience with you. The JCP, which just completed its sixteenth session, is a joint project of the ABA Judicial Division and the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline. The JCP’s goal: encourage people from underrepresented groups to consider pursuing judicial clerkships and staff attorney jobs.

Here’s how it works. The JCP is held annually at the same time as the ABA’s Midyear Meeting, in the same location. Law schools agree to send four to six students to participate in the program, paying all of their expenses. The ABA encourages law schools to select law students who have a demonstrated knowledge of, and involvement with, racial and ethnic minority communities.

During the JCP, the students participate in panel discussions and social events, but the heart of the program is a project that is allows them to see how clerkling works. The students are placed in groups of five to six persons and are assigned to a panel of judges and law clerks (that’s where you come in!), who act as the group’s mentors. The students are given a factual/legal scenario that resembles an appellate case. With the help of their mentors, the students identify the legal issues, research the law, and prepare a memo setting forth the framework for an opinion. The work occurs in stages over several days, allowing ample time for discussion and legal research.

Ideally, participating in the JCP encourages students to consider clerkships and staff attorney work after graduation. As we all know, clerking can be a huge career boost, as well as an unparalleled opportunity to sharpen research and writing skills. In addition, the law schools benefit from being able to brag about their graduates getting clerkships.

How would YOU benefit from the program? I enjoyed meeting the students and judges. The students had inspiring stories. Participating in the JCP reminded me why I wanted to become a lawyer and renewed my pride in my chosen career. On a more practical level, if you volunteer for the program, the ABA will pay you a stipend that will cover some of your travel and housing costs.

Please consider volunteering next year! For more information, please contact any CASA board member. We can put you in touch with the right folks at the ABA.

“PARTICIPATING IN THE JCP REMINDED ME WHY I WANTED TO BECOME A LAWYER AND RENEWED MY PRIDE IN MY CHOSEN CAREER.”

Please consider volunteering for the upcoming Judicial Clerkship Program, held during the Feb. 1-5, 2016 ABA Midyear Meeting in Miami. For more information, contact Kris Berliant at kris.berliant@americanbar.org.
partial on behalf of the courts that we serve. The danger lies in the possibility that our posts and tweets could be interpreted as reflecting the opinions of our courts, or that we may inadvertently reveal confidential information or internal practices or policies that should not be shared.

To get a handle on how I could stay within my boundaries for posting and tweeting without becoming a twenty-first century hermit, I looked to our Social Media Policy at the U.S. Sixth Circuit Court of Appeals. Our policy consists of ten seemingly straightforward paragraphs directed to all court employees, explaining that “the public must be able to trust the integrity of the court . . . and be confident that the outside activities of court employees do not undermine the court’s impartiality or reputation.”

The first paragraph warns employees not to identify themselves as employees of the court on any social media sites. The second paragraph instructs that court personnel should never share work-related photographs, videos, or information about other court employees without permission by a supervisor. This includes photos and comments about court-sponsored gatherings and events. The third paragraph prohibits the use of a court email address for social networking. The next paragraph clarifies our obligation to keep confidential information from being disseminated through social media and to refrain from posting or blogging about the court’s internal processes and procedures. Paragraph five is particularly relevant in this election year. Court employees cannot express any political views, join political groups online, advocate any position on an issue of current public controversy, or express any view for or against a particular policy. I would venture to say that this excludes participation in any post or blog that supports any candidate for any office or involves any discussion of issues relevant to any political campaign or initiative on a ballot.

The sixth paragraph requires court employees to comply with all relevant laws that may apply to social media communications, such as those governing libel and slander. The seventh paragraph warns against breaching the security of the court by posting information such as a judge’s personal schedule, travel plans, or personal residence. Paragraph eight authorizes judges to implement additional rules and restrictions within their own chambers. Decorum and professionalism is covered in paragraph nine, broadly prohibiting actions that would put into question the “propriety of the employee’s conduct in performing” his or her duties. Under the last paragraph, a court employee is expected to report any violation of the policy.

Simple enough, right? So I thought until listening to Judge Virginia M. Kendall speak on this topic in a recent webinar. Judge Kendall, a federal district court judge for the Northern District of Illinois, was instrumental in developing changes in the Judicial Conference’s Code of Conduct regarding social media. The Federal Judicial Canons regarding the use of social media reflect the same concerns that are outlined in my court’s ten paragraphs. One interesting side-note is that the Judicial Code now applies to all interns and externs (paid and unpaid) and to all volunteer court employees.

Judge Kendall explained that the answers to social media questions in the judiciary are sometimes counterintuitive. For example, many states are clear about whether judges can or cannot “friend” other lawyers on Facebook. However, as staff attorneys, we need to reconsider friending someone or even “liking” something on that person’s post when it is foreseeable that this “friend” may become associated with a group or an issue that will eventually be a point of controversy before our court. Judge Kendall also suggested that judicial employees remove all social media photos or videos that would suggest impropriety, such as questionable party pictures or events, even if the content was posted years before an employee began working for a court or judge. The judge pointed out that these photos are “forever,” and can be reposted over and over by anyone who has access to them. Judge Kendall described an innocent but potentially dangerous security breach when a law clerk sent out a social media message inviting others to a court employee’s birthday celebration, letting everyone know that a door to a judge’s chambers that was usually locked would be open for the
Any blogs or postings that may reveal our association with the courts may also violate the Judicial Code or our court’s policy by implying that we are using the “prestige” of the court to advance a private interest or view. Judge Kendall used the example of a clerk “liking” a favorite local hamburger spot on Facebook, posting that the owner of the restaurant treated all court employees well. When unsure about whether to post or tweet that message to your friends and acquaintances, Judge Kendall’s solution was to ask -- “WWJD” or “What Would Judge Do?” Of course, these policies and canons raise concerns about free speech and privacy rights when the rules extend to home computers and personal cell phones. How restrictive can an employer be, even the judiciary, without running afoul of the Constitution?

There are a myriad of social media questions not addressed here. So to explore the answers to all of your questions, please join us at the **Appellate Judge’s Education Institute Summit this November in Philadelphia**. As part of the Summit, CASA is sponsoring a break-out session on social media entitled “It’s an Honor to Be Your Friend?” This presentation will be led by two social media experts, Michael Pullano and Matthew Laver from the Philadelphia law office of Weber Gallagher. For more information on the 2016 AJEI Summit, visit: [http://ajei.law.smu.edu](http://ajei.law.smu.edu).

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**THE TRIAL OF ANTON PROBST**

By Frank Gibbard  
Staff Counsel  
U.S. Court of Appeals for the Tenth Circuit  

(Note: in honor of the AJEI Summit in Philadelphia this year, I have written up this account of a famous murder trial in Philadelphia. The crime took place shortly after the Civil War. The case has an old Philadelphia flavor. One of the key investigators of the crime was named Benjamin Franklin, the murders occurred on Pennsylvania farmland, and the trial was infused with Pennsylvania Dutch religious piety.)

On Wednesday, April 18, 1866, Anton Probst was arraigned in the Philadelphia Court of Common Pleas. A grand jury had issued indictments charging him with eight counts of murder. His alleged crimes were less than two weeks old.

Probst, a German immigrant, had an interpreter but no lawyer. When the presiding judge, Joseph Allison, asked him if he wanted counsel appointed, he replied that he did not. In fact, he claimed, he didn’t want to present any defense at all.

Judge Allison was an experienced jurist who had already tried several high-profile murder cases. Though Probst had protested he wanted no defense, Judge Allison thought better of denying the accused counsel in a capital case. He appointed not one, but two attorneys to represent Probst at trial: John P. O’Neill and John A. Wolbert. Their task would not be an enviable one. Their client stood accused of some of the most heinous, senseless crimes in Pennsylvania history. Already, he had barely been rescued from a lynch mob baying for his blood. And his trial was scheduled to begin in a week.

**A Dissolute Life**

Nothing about his earlier life seems to have hinted at Probst’s later notoriety. At the time of the murders, he was in his early twenties. He had lived a lazy, dissolute life, wandering from one odd job to another, drinking heavily and consorting with prostitutes.

Probst was born in Baden, Germany in 1842. He came to the United States in May 1863, at the height of the Civil War. Once in this country, he quickly figured out a way to profit from the hostilities. He enlisted in the Union Army, which netted him an enlistment bonus, then deserted.
Before long, Probst again enlisted for a bonus, then deserted again. He did this several more times, in fact. The practice—possible in an age with no form of communication more sophisticated than the telegraph—was known as "bounty jumping." Probst could probably have continued profiting from taxpayer largesse through successive enlistments, but while stationed in Richmond, Virginia, he accidentally shot off his own thumb, ending his military career (and also, as it turns out, making him easily identifiable by various witnesses at his trial). He was discharged from the army in 1865.

Probst needed a new source of funds. His travels took him to Philadelphia, where he worked odd jobs. He was not a good money manager, however, and after working in a bar he was soon reduced to living in an almshouse.

Eventually, Probst left the almshouse to look for work in the countryside near the City of Brotherly Love. There, he found what looked to be a promising position, working with an Irish immigrant family, the Dearings, on their farm.

The Dearings

Christopher Dearing (sometimes spelled "Deering") had come to America from Ireland in 1849. He married Julia Duffy in 1855. She was seven years older than he was, and was also an Irish immigrant. With financing from a business partner, they bought a cattle business in rural South Philadelphia. Soon their family grew to include five children, whom they raised on an isolated but bucolic farmstead.

The Dearings raised cattle and then sold them, using part of the funds received to repay loans from their business partner. It was a cash business. Although cattle sales at the drove-yard often netted him only a few hundred dollars, Mr. Dearing sometimes had as much as ten thousand dollars in cash at the house, a sizeable sum of money in those days.

When Anton Probst showed up at his door in early 1866, Dearing hired him, paying him $15 a month plus room and board. But Probst did not last long at the Dearing farm. After only three weeks, he quit, complaining that Dearing had made him work on a rough day in the rain. This may have come as a relief to Mrs. Dearing, who seems to have found something unsettling about their hulking new farm hand.

Probst collected his accumulated earnings and exhausted them in riotous living. After a brief stint once again working odd jobs, he was back in the almshouse. There, he vowed, like the Prodigal Son, to return to the security of the farmstead from which he had so recently departed. But Probst did not return to the Dearing place with a repentant heart. Instead, an evil design had grown in his mind.

When Probst returned to the Dearings, Mr. Dearing rehired him. Perhaps he felt pity for the impoverished, pathetic-looking farm hand. Dearing seems to have been a trusting soul. It was later established that he had counted his money at a table in the same room where Probst took his meals.

The Murders

The state's evidence would later show that on Saturday, April 7, while Probst was working for the Dearing family, a woman named Elizabeth Dolan came from New Jersey to visit the family. She carried with her a few valuables: a gold chain and a black traveling bag with a pocket book containing three negotiable promissory notes. That Saturday morning, Mr. Dearing picked up Ms. Dolan on a Philadelphia street corner in his carriage and headed for his farm. It was the last time either of them was seen alive.

In fact, after Saturday, no one saw any of the Dearing family members, except for their ten-year-old son Willie, who happened to be away from the farm visiting grandparents. By the next Wednesday a neighbor became concerned. He went to the Dearing house and found no one there. But he was appalled to see that the animals at the farmstead were starving and severely dehydrated. The neighbor peered in the windows of the farmhouse, and found a shambles. The family’s belongings were scattered all over the floor.

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The neighbor went and got help from a relative. Together, they searched the premises. Inside the barn, sticking out of a heap of hay, the relative noticed what he first thought was a sock. Upon more careful inspection, he was horrified to find that it contained a human foot. He had found Mr. Dearing.”
tion, he was horrified to find that it contained a human foot. He had found Mr. Dearing.

Uncovered, the body was found to be dressed in the same grey suit that Mr. Dearing had worn the previous Saturday. His skull had been crushed, and his throat cut. Next to Mr. Dearing’s body, the two men found Elizabeth Dolan. She had been killed in the same way as Mr. Dearing.

The men did not attempt any further search. Instead, they went to the authorities. The police came to the farm and began a thorough search of the premises. In a hay crib near where Mr. Dearing and Ms. Dolan were found, they made a horrific discovery. They found the bodies of Mrs. Dearing and her four children. All of them had been killed the same way as Mr. Dearing: their skulls smashed and their throats slit. They had been heaped together in the crib, the two-year-old placed at his mother’s breast looking as though he were asleep, then covered with hay.

The police made one more gruesome discovery. Stuffed in a hay rick about 300 yards from the farmhouse, they found Cornelius Carey, a farm hand who lived at the Dearing house. He had been slain the same way as the other victims.

After a thorough search of the premises, the police found evidence of the crime. They uncovered the murder weapons: a bloody axe, a hammer, and a smaller hatchet, and the murderer’s bloody clothing, which he had discarded at the house. The house had been ransacked, with beds slashed apart, books slit open, and drawers thrown open. Everything of value was gone, including Ms. Dolan’s gold chain and pocket book and Mr. Dearing’s wallet, pistols, and other valuables. Even the children’s savings banks had been emptied.

The Indictment

The district court read out the indictment on which Probst would be tried. It charged him with a single count: the murder of the father of the Dearing family, Christopher Dearing. The archaic verbiage echoed through the courtroom:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the City and County of Philadelphia, upon their respective oaths and affirmations, do present that Anton Probst, late of the said county, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the seventh day of April, in the year of our Lord one thousand eight hundred and sixty-six, at the city and county aforesaid, and within the jurisdiction of this Court, with force and arms, etc., in and upon the body of one Christopher Dearing, in the peace of God and of the said Commonwealth then and there being, feloniously, willfully, and of his malice aforethought, did make an assault, and him the said Christopher Dearing, then and there being, feloniously, willfully, and of his malice aforethought, did kill and murder, contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Trial was fixed for a week later.

The Trial

After a perfunctory voir dire, by today’s standards, a jury was seated in the Dearing case. The date was April 26, 1886. The all-male jury that would decide Probst’s fate constituted a cross-section of Pennsylvania farm country: a saw maker, two storekeepers, a grocer, a turner, a brooker, a farmer, a surveyor, a flour dealer, a hosier, a merchant, and a “gentleman.” The murder trial began the same day, only eight days after Probst’s attorneys were appointed to represent him.

In his opening statement, the prosecutor pulled no punches. He referred to Probst as a “cruel and inhuman wretch” and a “monster of iniquity.” He promised to prove to the jury beyond all doubt that Probst was guilty of first degree murder.

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There is no recorded opening statement from the defense. After its opening, the prosecution immediately began calling its witnesses—ordinary farming folk, policemen (including a
detective named Benjamin Franklin), and forensic experts—who testified to the ghastly facts and gory details of the murders of Christopher Dearing and his family.

Faced with a damning quantum of evidence, Probst’s attorneys did what they could to defend him. They attempted to exclude evidence concerning the other victims besides Mr. Dearing, reasoning that Probst was only on trial for Dearing’s murder. But the court determined that such evidence was part of the res gestae, and allowed it in. They also tried to cast doubt on whether some of the personal items found in his possession belonged to the victims. But the state’s witnesses generally proved unshakable on this point.

The state closed its case with the testimony of its last witness, Willie Dearing, the only surviving member of the family. Probst offered no evidence. The attorneys then presented their closing arguments.

The State’s Closing Argument

The state’s attorney began with an elaborate depiction of a ruined temple, representing man in his fallen state. He remarked that the evidence in this case offered no such evidence of spoiled beauty, only ugliness. He rejected any implication that Probst’s experiences as a soldier had hardened him toward killing, reasoning that experience in war only makes decent people weary of killing once the hostilities have ended, rather than emboldening them. Probst killed his victims because of his own depraved nature and for his own evil ends. Also, although he was on trial for only the murder of Mr. Dearing, the jury should consider the fate of his other victims as well.

The evidence clearly showed that Probst had deliberately murdered Mr. Dearing, with premeditation. Probst was seen with the victims’ property soon after the murders occurred; he did not have time to have acquired it from anyone but the victims themselves. Nor was there time for anyone else to have committed the murders after Probst left the premises. Finally, there was no indication that he acted with anyone else in committing the murders. The victims had all been killed in exactly the same manner—Mr. Probst’s signature style of murder—and Probst was the only one who was found with their belongings.

Closings for Probst

The prosecution having completed its argument, Mr. Wolbert now presented his closing argument on behalf of Probst. This argument is remarkable by today’s standards because it began with a factual narrative apparently unsupported by any evidence at trial. Wolbert described Probst’s arrival from Germany, his successive enlistments in the Union Army (which Wolbert presented as perfectly legitimate, not an instance of “bounty jumping”), his wanderings after his discharge from the military, and his employment by the Dearings.

Wolbert then argued that the state had failed to prove when or how the murders occurred. He claimed the state’s case was purely circumstantial. At most, the state had proved larceny, from the fact that Probst was found with articles belonging to the victims. Wolbert noted that Probst had been seen in Philadelphia bars and houses of ill repute on several successive days before the bodies were found. The victims could have been killed on any one of those days.

The evidence was consistent with murders carried out by two people, on an unknown date. There was no mud on the bodies, as there would have been if they had been dragged to the barn by one person, acting alone. On Thursday, a witness had found a shirt wet with perspiration at the farm. If it was the murderer’s shirt, the murders could not have been committed on Saturday, because the shirt would have had time to dry out by then.

The very evidence that seemed most damning actually exonerated Probst. Wolbert argued that the bloody pants found underneath his bed at the farm were inconsistent with guilt. Who would put pants stained from a bloody murder under his own bed? Why not burn them or discard them instead? Moreover, the fact that Probst stayed around Philadelphia, drinking in the city’s bars, and did not attempt to flee showed that he had no consciousness of being guilty of a murder.

Next, it was O’Neill’s turn to argue for Probst. His closing began with a flourish of rhetorical eloquence, calling on the jury to render justice to the innocent immigrant Probst who looked to them as friend and peer. He invoked Jesus (the “sinless babe”), the pagan goddess Justitia, and even the “voice from the shell of Triton,” all in favor of a calmly deliberated verdict for his client. He assured the jury that if they acquitted Probst, their verdict would stand like Mount Parnassus above the waves when all other facts about the case had been forgotten. But the heart of O’Neill’s closing was the same as Wolbert’s: the jury should not convict because the state’s case rested on purely circumstantial evidence. There was really nothing else to say.

The State’s Reply

The prosecutor presented an eloquent argument in reply, emphasizing the atrocious and horrendous nature of the murders.
The eerie poetic cadences of his final address to the jury were reminiscent of a story by Edgar Allen Poe. “A cloud has lowered upon that house,” he told them, and “the hand of the Destroyer has been there, and with the finger of blood has written upon its walls, Desolation.” The prosecutor asked the jury to imagine the scene, where “no father, no mother, no child, no loving one of God’s creatures dwells there now,” but “eight several black-covered coffins in the darkened room . . . with their silver lace faintly glimmering, with the name and age inscribed on each victim, reveal the terrible cause of this otherwise mysterious solitude.” One can almost see the guttering candlelight flickering over coffins in the deadly silence.

He then led the jurors through a scenario showing how one man could have committed all the murders, appealing to their imagination with stories from French history, Shakespeare, and native American lore, all designed to show that Probst had left his mark on the victims and was conscious of his guilt. Most damning, perhaps, was Probst’s failure to react when discussion at the tavern turned to the deaths of his former employer’s entire family. He showed no sign of curiosity or horror at the news. This, the prosecutor argued, was not the conduct of an “innocent servant.”

**Charge and Verdict**

The arguments completed, the court then charged the jury. The charge is interesting, because the judge not only reiterated certain facts about the case, emphasizing particular facts he felt were important, but also discussed facts of other cases based on circumstantial evidence, where the defendants had been justly convicted.

The jury returned with a verdict twenty minutes later. They found Probst guilty as charged.

**Sentencing**

A three-judge panel denied Probst’s motion for a new trial. Judge Allison then proceeded to sentencing. He described with indignation the circumstances of the murders, which showed evidence of Probst’s ghastly, evil, premeditated conduct. The three judges stood, and he passed sentence: death by hanging.

**Confession**

While awaiting execution, Probst subsequently gave two confessions to his crimes. These were widely published. Much like the devotional pamphlets in prior centuries that recounted the crimes of repentant sinners for the edification of the reader, they recited his full confession and at least his superficial turn to faith (he both fingered a rosary and laughed inappropriately when recounting his crimes). But they were also sensationalistic, the tabloid journalism of their day.

**Execution**

Probst spent his last days with his confessor. He was hanged on June 8, 1866. In reporting his execution, the *New York Times* called him the “greatest criminal of the nineteenth century.” As with many executed criminals in those days, his body was donated to science. It was subjected to weird experiments involving post-mortem application of electricity and later dissected. In a final, macabre touch, his severed head and right arm later wound up displayed to the public in a “dime museum” in New York City.

**SOURCES**


13th Annual Appellate Judges Education Institute Summit
Philadelphia, PA
November 10-13, 2016

Thursday, November 10, 2016

9:00 a.m. – 12:15 p.m.  Check-In and Registration
12:30 p.m. – 1:00 p.m.  Presentation of the Colors and Welcome
          Hon. Steven David, Indiana Supreme Court, AJEI 2016 Summit Chair
          Hon. Thomas G. Saylor, Chief Justice, Pennsylvania Supreme Court
1:00 p.m. – 2:00 p.m.  The Interactive Constitution
          Jeffrey Rosen, National Constitution Center
2:00 p.m. – 2:10 p.m.  Break
2:10 p.m. – 3:10 p.m.  Privacy Surviving Technology
          Moderator and Panelist: Professor Fred H. Cate, Indiana University Maurer School of Law
          COL Gary Corn, United States Cyber Command
          Ben Wizner, American Civil Liberties Union
3:10 p.m. – 3:20 p.m.  Break
3:20 p.m. – 4:20 p.m.  Evolution or Revolution? The Future of the Supreme Court
          Moderator: Amy Howe, SCOTUSBlog
          Dean Erwin Chemerinsky, University of California, Irvine School of Law
          Professor Sanford V. Levinson, University of Texas
          Ed Whelan, President, Ethics and Public Policy Center
6:00 p.m. – 7:30 p.m.  Opening Reception
          A reception at the National Constitution Center, which is within walking distance of the Loews Philadelphia Hotel. Optional round-trip bus transportation will be available.

Friday, November 11, 2016

7:00 a.m. – 7:50 a.m.  Continental Breakfast and Optional CAL Roundtable Discussions, including these topics:
          • Post-trial Motions: working effectively with trial counsel from the moment the
verdict is in until the appeal is perfected

- Solo and Small Firms: latest challenges in managing a small appellate practice
- Diversity in the Appellate Bench and Bar: explore challenges and solutions unique to increasing diversity within the appellate bench and bar
- Federal and State Appellate Court-based ADR: compare experiences; discuss best and worst practices
- Rules under Review: learn about and discuss current proposed procedural rule changes the CAL Rules committee is reviewing, and bring your own ideas to the table

**7:50 a.m. – 8:00 a.m.**

**Veterans Day Tribute**

Hon. Steven David, *Indiana Supreme Court*

Hon. Andy Effron, *U.S. Court of Appeals for the Armed Forces, Ret.*

Hon. James E. Lockemy, *South Carolina Court of Appeals*

Hon. Scott Stucky, *U.S. Court of Appeals for the Armed Forces*

**8:00 a.m. – 9:00 a.m.**

**Supreme Court Review – Civil**

Dean Erwin Chemerinsky, *University of California, Irvine School of Law*

**9:00 a.m. – 9:10 a.m.**

**Break**

**9:10 a.m. – 10:10 a.m.**

**Breakout I: Supreme Court Review – Criminal**

Dean Erwin Chemerinsky, *University of California, Irvine School of Law*

**Breakout II: Class Actions: What Future?**

Moderator: Leane Capps, *Polsinelli PC*

Elizabeth Cabraser, *Lieff Cabraser Heimann & Bernstein, LLP*

Professor Robert H. Klonoff, *Lewis and Clark Law School*

Mary Massaron, *Plunkett Cooney, P.C.*

**10:10 a.m. – 10:20 a.m.**

**Break**

**10:20 a.m. – 11:20 a.m.**

**The Role of Personality in Appellate Writing**

Professor Ross Guberman, Author, *Point Made: How to Write Like the Nation's Top Advocates; Point Taken: How to Write Like the World's Best Judges; and Deal Struck: The World's Best Drafting Tips*

**11:20 a.m. – 11:30 a.m.**

**Break**

**11:30 a.m. – 12:30 p.m.**

**Breakout I: Making 31 Flavors of Opinions: Who’s Eating What You’re Serving?**

Moderator: Professor Ruth Cross, *Southern Methodist University Dedman School of Law*

Hon. Consuelo Callahan, *U.S. Court of Appeals for the Ninth Circuit*
Hon. Anne Lazarus, Pennsylvania Superior Court
Hon. Dale Wainwright, Supreme Court of Texas, Ret.

11:30 a.m. – 12:30 p.m. Breakout II: Pixels to Punctuation: Writing in the Digital Age
Moderator: Hon. Samuel A. Thumma, Arizona Court of Appeal, Division One
Robyn Ridler Aoyagi, Tonkon Torp, LLP
Hon. Barbara Jackson, Supreme Court of North Carolina
Hon. Eric Magnuson, Robins Kaplan LLP, Retired Chief Justice, Supreme Court of Minnesota

12:30 p.m. – 5:00 p.m. Free Time and Optional Tours to Explore Philadelphia
5:00 p.m. – 6:00 p.m. Council of Appellate Lawyers (CAL) Meet and Greet at Bank & Bourbon in Loews Philadelphia Hotel
Cash Bar - All AJEI Summit attendees are invited

6:30 p.m. – 9:00 p.m. CAL Dine-Around for Lawyers and Judges (Optional; additional charge)

7:30 p.m. – 9:30 p.m. CASA Dinner and T-Shirt Exchange for Staff Attorneys and Judges (Optional; additional charge)

Saturday, November 12, 2016

6:00 a.m. – 7:15 a.m. Optional 5K Rocky Fun Run from the Loews Philadelphia Hotel to the “Rocky Steps” at the Philadelphia Museum of Art. The group will meet in the lobby at 6:00 a.m. and depart at 6:15 a.m.

7:30 a.m. – 8:30 a.m. Continental Breakfast

8:30 a.m. – 9:30 a.m. A Conversation with Justice Kagan
Hon. Elena Kagan, Supreme Court of the United States
Facilitated by Hon. N. Randy Smith, U.S. Court of Appeals for the Ninth Circuit and Hon. Steven David, Indiana Supreme Court

9:30 a.m. – 9:45 a.m. Break

9:45 a.m. – 10:45 a.m. Supreme Court Preview
Moderator: Professor Dale Carpenter, Southern Methodist University Dedman School of Law
Paul Clement, Bancroft, PLLC
Professor Pam Karlan, Stanford Law School
Dean Robert Schapiro, Emory University School of Law

10:45 a.m. – 11:00 a.m. Break
11:00 a.m. – 12:00 p.m. Breakout I: Canons of Construction
Moderator and Panelist: Professor William Eskridge Jr., Yale Law School
Hon. Mariano-Florentino “Tino” Cuéllar, California Supreme Court
Hon. Jeffrey Sutton, U.S. Court of Appeals for the Sixth Circuit

Breakout II: It’s an Honor to be Your Friend? Social Media and Court Staff
Matthew Laver, Weber Gallagher Simpson Stapleton Fires & Newby LLP
Michael Pullano, Weber Gallagher Simpson Stapleton Fires & Newby LLP

12:00 p.m. – 12:10 p.m. Break

12:10 p.m. – 1:15 p.m. Buffet Lunch and CAL/CASA Business Meetings

1:30 p.m. – 2:30 p.m. Breakout I: Is the Pendulum Swinging? Mandatory Minimums vs. Individualized Sentencing
Moderator: Hon. Lana Myers, Texas Court of Appeals for the Fifth District
Hon. Michael Keasler, Texas Court of Criminal Appeals
Hon. Stefan Wolfe, Lieutenant Colonel, U.S. Army Court of Criminal Appeals
Jonathan Wroblewski, U.S. Department of Justice

Breakout II: Are Three (or More) Heads Better Than One? How Groups of Judges Decide
Moderator and Panelist: Hon. Chris McFadden, Court of Appeals of Georgia
Professor Susan Brodie Haire, PhD, The University of Georgia School of Public and International Affairs
Hon. Renee Cohn Jubelirer, Commonwealth Court of Pennsylvania
Dr. Reid Hastie, The University of Chicago Booth School of Business

2:30 p.m. – 2:45 p.m. Break

2:45 p.m. – 3:45 p.m. Breakout I: Handling the Big Case: How to Manage a Landmark at the Lectern
Moderator: Michael Scodro, Jenner & Block LLP
Debo Adegbile, Wilmer Cutler Pickering Hale and Dorr, LLP
Caitlin Halligan, Gibson, Dunn & Crutcher LLP
Paul M. Smith, Jenner & Block LLP

Breakout II: Hate Speech in the Marketplace of Ideas: A First Amendment Dilemma
Professor Nadine Strossen, New York Law School
Professor Jeremy Waldron, New York University School of Law
3:45 p.m. – 4:00 p.m.  Break
4:00 p.m. – 5:00 p.m.  **Breakout I: Election, “Merit,” or Advice and Consent: Trends in Judicial Selection**

Moderator and Panelist: Hon. Rebecca Love Kourlis, *Institute for the Advancement of the American Legal System at the University of Denver; Colorado Supreme Court (Ret.)*

Hon. Brent D. Benjamin, *Supreme Court of Appeals of West Virginia*

Hon. Madeleine Dean, *Pennsylvania State Representative, 153rd Legislative District*

Carrie Severino, *Judicial Crisis Network*

Professor Jed Shugerman, Author, *The People’s Courts: Pursuing Judicial Independence in America, Fordham University School of Law*

**Breakout II: Dueling Appeals: A Comparison of Best Practices and Opportunities for Reform in Civilian and Military Appellate Systems**

Moderator and Panelist: Dwight H. Sullivan, *Department of Defense Office of the General Counsel*

Hon. Steven David, *Indiana Supreme Court, COL USA Ret.*

Associate Dean Lisa Schenck, *The George Washington University Law School*

Hon. James Wynn Jr., *U.S. Court of Appeals for the Fourth Circuit*

6:15 p.m. – 10:00 p.m.  Saturday Night Cocktail Reception, Dinner and Entertainment, and Just Desserts Finale

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**Sunday, November 15, 2015**

7:15 a.m. – 8:15 a.m.  **Continental Breakfast**

8:15 a.m. – 9:15 a.m.  **Breakout I: Unreported Opinions: Declining News Coverage of Appellate Courts**


Chris Davey, *The Ohio State University*

Chuck Lindell, *The Austin-American Statesman*

Paula Reed Ward, *The Pittsburgh Post-Gazette*

Professor Henry Weinstein, *University of California, Irvine School of Law*

**Breakout II: Appellate Ethics: A Practical Discussion of What Not to Do**

Doug Richmond, *AON Risk Solutions*

9:15 a.m. – 9:30 a.m.  Break
9:30 a.m. – 10:30 a.m.  The Pain of Waiver: Everything You Ever Wanted to Know about Waiver but Were Afraid to Raise

Moderator: David H. Tennant, *Nixon Peabody LLP*

Hon. Erin Peradotto, *New York Supreme Court, Appellate Division, Fourth Department*

Hon. D. Brooks Smith, *U.S. Court of Appeals for the Third Circuit*

Hon. N. Randy Smith, *U.S. Court of Appeals for the Ninth Circuit*

10:30 a.m. – 10:45 a.m.  Break

10:45 a.m. – 12:15 p.m.  Intuition, Deliberation, and the Appellate Process

Moderator and Panelist: Professor Jeffrey Rachlinski, *Cornell Law School*

Hon. Delissa Ridgway, *U.S. Court of International Trade*

12:15 p.m. – 12:30 p.m.  Conclusion and Preview of Summit 2017
The Board of Directors of CASA held its regularly scheduled business meeting at the AJEI Summit meeting in Washington, D.C. Board members present included Dalila Patton, Christina Smith, Rachel Zahniser, Frank Gibbard, Lisa Senter, Greta Scodro, Tray Owen, Karen Hornsby, Cliffie Wesson, and Joe Merrick. Also present was Dr. Peter Koelling, Director of the ABA’s Judicial Division.

Chair Dalila Patton called the meeting to order at 12:08 p.m.

The Board approved the minutes of its meeting of February 7, 2015.

Dalila presented a Chair’s report. The AJC’s Executive Board, consisting of representatives from the Appellate Judges’ Conference, the Conference of Appellate Lawyers, and CASA, met from 8:00 to 12:30 before the AJEI Conference began. The Executive Board focused on the updated AJC Strategic Plan. CASA has been charged with developing “best practices” for pro se appeals, and will create a “primer” with procedures. To do this, we will need to gather information about practices in various appellate courts. We also need to reach out to law students, recruiting them for CASA. We need to outline the benefits of belonging to the ABA’s Judicial Division, and CASA.

Dr. Koelling presented a report from the Judicial Division. Michael Bergmann is the Chair of the Division. He is a lawyer, not a judge, and comes from the Lawyers’ Conference. The Division has outlined four pillars for its activities in the coming year: (1) Quality of Justice; (2) Diversity; (3) Public Education; and (4) Developing and Retaining a Talented Judiciary.

To work for quality of justice, the JD will put on a program for trial judges similar to the AJEI Summit. A task force on implicit bias has been organized and will publish a book on how to combat implicit bias. It is hoped that a curriculum can be organized based on the book, including videos and power point presentations. The JD is also publishing a book in March 2016 on improving the administration of justice. In addition, an issue of The Judges’ Journal on implicit bias is planned, and there will be a program in the Hague on international issues.

To promote diversity, the JD is organizing its “Path to the Bench” program. It will also continue with the clerkship program, and is preparing a database of all judges in the United States.

To improve public education, the JD is sponsoring a program on “Judicial Outreach on a Shoestring.” There may be a summit of all entities that provide public education about the judiciary. The JD is encouraging judges to speak to the public about the role of courts and the law, possibly on the first Monday in October. The JD will be working with other organizations to fulfill this mission: (1) they are seeking a grant from the NEH to produce a program on the “Art of Judging”; (2) they will work to produce a PBS-style program on “Eight Aspects of Judging,” which will examine contemporary or high-profile cases, interspersed with a discussion of the issues; and (3) they will work with the Kettering Foundation to prepare a booklet on the role of the courts in our democracy.

To help retain a talented judiciary, the JD is considering developing a program for “pre-adjudicative certification.” This would be a program for lawyers who are interested in being judges, and would lead to a certificate. Also, the JD is working on a “sounding board” program, to allow judges to help lawyers who want to become judges. The lawyers’ conference will be doing a “Day on the Hill,” a lobbying effort in Congress, and possibly in the states as well.

Dr. Koelling showed the CASA Board a booklet the JD put together with interviews concerning the Judicial Clerkship program. The booklet includes some CASA Quarterly articles that they reprinted. Finally, Dr. Koelling noted that he had just returned from the Philippines, where he was working on a “Rule of Law Initiative.”

Ric Schickele presented an Education Committee report. The planning for the Summit went very well this year. CASA had responsibility for a large number of programs.
The Committee members did a great job.

Christina presented a report from the Long-Range Planning Committee. CASA has been deeply involved with AJEI, and our CLE programs have broadened the horizons. We will continue our participation with the Education Committee. She hopes we will expand our outreach to universities for the Judicial Clerkship Program. We need more student participation in the program. She gave the example of Henry Tran, a student she helped with his résumé. He told her that he didn’t get much feedback after the program, so perhaps we need to think about post-program efforts.

Frank presented a report from the CASA Quarterly committee. The Quarterly put out two issues during his time as Secretary. There was a wide diversity of articles, and the quality was good. Frank encourages members of the Board and others to submit articles for consideration by the incoming CASA secretary, Lisa Senter.

Karen presented a Membership Committee report. She stated that her husband had hired a participant she met in the Judicial Clerkship Program. She has participated in conference calls with the JD’s membership committee, and noted some concern in the ABA about declining membership numbers. But CASA’s numbers are pretty steady. Karen encouraged people to look into ABA group memberships. A group member can join the ABA and the JD for just $130. They can also join CASA. A group requires five or more members, at least half of whom are new members. Staff attorneys who want to become part of a group may be able to join an existing group of judges. The JD can let us know if there is a group in a particular court, or a particular state, and which judges are in the ABA or the JD.

The CASA membership then elected the following slate of candidates for the 2015-2016 board: Chair: Christina Cooley Smith; Chair-Elect: Frank Gibbard; Immediate Past Chair: Dalila Patton; Secretary: Lisa Senter; Members-at-Large (2nd Year): Joe Merrick and Tray Owen; and Members-at-Large (1st Year): Brenda Gallagher, Elizabeth Ryan, and Ric Schickele. Christina presented a gift to Dalila for her work as CASA Chair.

Christina requested volunteers for the education committee. Volunteers will participate in a few conference calls and will communicate by email. Additionally, she announced that the midyear meeting will be in San Diego, California, and that additional reimbursement funds may be obtained by those participating in the Judicial Clerkship Program. Dalila presented certificates to outgoing members of the board.

MINUTES, CASA MIDYEAR MEETING: FEBRUARY 16, 2016

The meeting was called to order at 8:03 a.m. Board members in attendance were: Christina Cooley Smith, Chair; Frank Gibbard, Chair-Elect; Lisa Senter, Secretary; Tray Owen, Member-At-Large (Second Year); Joe Merrick, Member-At-Large (Second Year); Ric Schickele, Member-At-Large (First Year); and Brenda Gallagher, Member-At-Large (First Year). The minutes from the Summit meeting were approved by all in attendance. Tray made the motion to approve, and Joe seconded the motion.

Christina gave a report as chair. She suggested that a list of duties for each position would be useful. At the next day’s AJEI meeting, the possible meeting places for the 2018 Summit were to be considered, with Southern California, Denver, and Atlanta as possible locations. The 2018 Summit may also take place earlier in the month of November. The Judicial Clerkship Program was a success. The students did an amazing job.

Ric gave a report regarding the Education Committee. The committee met in Dallas and developed a provisional list of Summit session topics. Professor Chemerinsky will return for his civil and criminal Supreme Court Review sessions. Additionally, the committee is inviting Ross Guberman to give another appellate writing seminar. His writing seminar at the last conference was very popular. The committee would like to have a military-themed breakout session as well. There were 22 military attendees in Washington, D.C. CASA will have two sessions, which will be about social media and court staff and sentencing. One of these topics could change. CAL
will also have two sessions. Multiple additional topics are being considered, including sessions on how judges write as a group, the canons of construction, and class actions. Ric, Cliffie Wesson, and Taye Sanford were able to give strong support for CASA at the Education Committee meeting. The Committee is also hoping to have a Supreme Court justice as a speaker. Due to budget concerns, the committee is also questioning whether to drop a lunch and Just Desserts. Duke University will take over hosting the Summit in the coming years.

Regarding long-range planning, Frank said that the Judicial Division will have a meeting in Cincinnati in April. Frank also discussed the Judicial Clerkship Program. Three CASA members participated this year. This ABA program seeks to promote judicial clerkships to talented minority law students in order to increase diversity. In this program, judges, CASA members, and others met with minority law students and helped them research and write about an issue as a law clerk would. CASA members also gave participants advice about their résumés and potential careers as law clerks or staff attorneys. Sixteen schools and seventy-two students participated. All CASA members are encouraged to participate in the future. The Judicial Clerkship Program is hoping to improve follow-up with attendees and see if the program helped them.

Lisa solicited articles for the next CASA Quarterly. Tray then discussed the ABA Membership Meeting. The ABA’s membership numbers have been on a downward trend for the past twenty years. Although law student totals have gone up, overall membership has decreased. Other voluntary associations’ memberships are declining as well. The Judicial Division’s numbers went up due to an increase in law student membership. Perhaps outreach to courts and law schools in the vicinity of the Summit could help increase numbers.

It was noted that reimbursement requests may be submitted to Denise Jimenez via email.

Joe asked for ideas on how we could increase interest in CASA among non-member attendees at the Summit. Ric suggested that the CASA business meeting broaden its appeal by, for example, providing Summit attendees with the opportunity to critique the sessions that had happened so far and make suggestions for the following year’s Summit. Additionally, Summit attendees should be reminded of the CASA hospitality suite. Brenda mentioned that she felt that CASA was very welcoming.

The meeting was then adjourned. Lisa made the motion to adjourn, and Tray seconded the motion. All were in favor.

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**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:

[www.americanbar.org/groups/judicial/discussiongroups.html](http://www.americanbar.org/groups/judicial/discussiongroups.html)
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Appellate Judges Education Institute 2016 Summit

November 10—13
Philadelphia, PA

Join us in DC for the thirteenth annual Appellate Judges Education Institute (AJEI) Summit for judges and lawyers.
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2016 ABA MIDYEAR MEETING

Save-the-Date
February 1-5, 2017
Miami, FL