

CABA BRIEFS

The Magazine of the Cuban American Bar Association

SPRING 2009

IS GAY THE NEW BLACK?

The controversy over Judge Cindy Lederman's decision
to allow gay couples to adopt.



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Correcting Misperceptions

The *amicus* briefs filed on behalf of Petitioners in *Campa* and the gross generalizations contained therein.

For over thirty years CABA has strived to make way for its members in the legal community. Along the way, its members have worked hard to make a difference in the community at large serving as both examples of, and advocates for, equal opportunity and access.

Given the enormous strides we have made over the years, and the unmistakable mark our culture and society has made in Miami, it is sometimes easy to forget that there remains much work to be done. CABA is considered by many to be one of the preeminent voluntary bars in the state, and it is one of the largest and most influential minority bars. As such, we have an obligation to help our sister minority bars address continuing inequities in our community, and especially in other areas in the state and country.

We recently had the good fortune and privilege of hosting a reception for the Hispanic National Bar Association while they were in Miami for their moot court competition, and were reminded of the struggles our fellow Hispanics face in other areas of the country, which sometimes seem like ancient history here in Miami. We must do more.



By Roland Sánchez-Medina, Jr.

We must do more as lawyers to educate those outside of our community as to who we are, and what Cuban Americans stand for as law abiding residents and citizens of this country. Many of our members were surprised and saddened by commentary concerning our community contained in an *amicus* brief filed by the Howard University School of Law in the matter of *Campa*,

et al. v. United States of America, (currently on Petition for a Writ of Certiorari before The U.S. Supreme Court). In their brief, the authors (despite a number of half-hearted qualifying statements) liken the atmosphere in Miami to the 'Jim Crow society' in the pre-civil rights South, when it comes to dissident voices within the anti-Castro movement. Apparently, these authors cannot conceive that an impartial and fair jury can be assembled from a cross section of our community to sit in judgment of individuals accused of being spies for

the Castro regime.

To be sure, the Howard *amicus* brief is not the only one of its kind, there were several more of its ilk filed (copies may be downloaded from www.cabaonline.com). It is highlighted here, however, because it shows the need for us to reach beyond our immediate environs and make an impact on a broader scale, if only to continue educating the public as to who Cuban Americans are today --- even if we think the beneficiaries of our efforts should know better. Let us all actively contribute to CABA's mission and continue pressing forward. Our work is far from done.

roland@smgql.com

Why Gay Adoption?

Clashing opinions on whether or not we should have run a piece on gay rights.

I realize that the cover story of this issue of *CABA Briefs* will be discomfiting to some readers, and I am glad that prior to publication I circulated an email to several friends and colleagues soliciting their feedback with regards to same. Though I was heartened by the overwhelmingly positive response that I received, more than a few thoughtful individuals expressed concern that the topic of gay rights with respect to adoption and marriage was a highly personal one and might prove divisive and damaging to our venerable organization.

While I agree that human sexuality is a highly personal issue better left to the privacy of one's bedroom, it has become clear that the status and treatment of homosexuals in the eyes of the law is the civil rights issue of our time. Furthermore, legal questions that are forced into the public forum by judicial decisions -- such as the ruling by Miami-Dade Circuit Court Judge Cindy Lederman declaring Florida's ban on gay adoption unconstitutional -- or by proposed legislation -- such as the bills introduced by Florida Senator Nan Rich aimed at overturning Florida's statutory ban on gay adoption -- raise precisely the sorts of issues that organizations of the stature and importance of the Cuban American Bar Association should be confronting head-on.

Though I have done my best to refrain from editorializing within the pages of the magazine proper, I will briefly indulge myself here and offer some thoughts related to a conversation that I had with CABA Past President, Arturo Alvarez, whom I greatly admire. He reminded me that CABA was formed as a reaction to the dis-

crimination and racism that was being practiced against Hispanic lawyers by those whom did not feel that brown and black-skinned folks deserved, or were worthy of, a seat at the table. In that context, we spoke about what a wonderful opportunity this was for CABA to once again become a beacon of enlightenment on a legal issue -- a *civil rights* issue -- that unfortunately, far too many people feel is just too incendiary to be addressed openly. It is our hope that by addressing this topic here within our pages, we can at least begin to have a conversation that will hopefully lead us in the right direction.



By Augusto R. López

On a Lighter Note. As you may have noticed, I have taken the liberty of redesigning the look of our magazine a bit. I am grateful to last year's editor, Manny Crespo, Jr., for paving the way by radically transforming *CABA Briefs* in innovative and creative ways, allowing me to make

some creative adjustments of my own. I am also grateful to this year's CABA Board for affording me the opportunity to serve as editor, and for encouraging the pursuit of substantive legal issues affecting our community.

Finally, I'd like to thank all of those who contributed to the content of this issue, specifically Ed Guedes for his trenchant "Law Review" section, Armando Rosquete for his piece on the four new Florida Supreme Court Justices, Roland Sánchez-Medina for his profile of Justice Jorge Labarga and Tim Ravich for his timely article on our judicial selection process. I hope that you enjoy this, your Spring 2009 issue of *CABA Briefs*, and I encourage you to send comments -- positive or negative -- to alopez@smgql.com.

Law Review

Recent appellate court decisions and how they affect you.

This column is intended to provide CABA members with an update of recent case law decided by the state and federal appellate courts, which might be of interest. The listing is by no means intended to be exhaustive, and in this instance, will focus entirely on recent Eleventh Circuit decisions.

Eagle Hospital Physicians, LLC v. SRG Consulting, Inc., ___ F.3d ___, 2009 WL 613603 (11th Cir. Mar. 12, 2009)

Lest anyone forget - there may be consequences from invoking the Fifth Amendment during civil proceedings. In this commercial dispute involving cybersquatting and breach of contract claims, one of the defendants - who individually happened to be part owner of one of the plaintiff companies - somehow gained access to privileged e-mail communications between the plaintiff and its lawyers. The defendant then submitted the e-mails in support of an affidavit submitted to the court. When it became apparent that the defendant had gained access to privileged communications, his deposition was taken, during which he invoked the Fifth Amendment in response to questions relating to, among other things, how he had gained access to the privileged communications and whether he continued to have such access.

Upon the plaintiff's motion for sanctions, and after briefing and extensive hearings, the district court sanctioned the defendants by striking their answer, defenses and counterclaim. The court then went on to find the defendants in

default and entered final judgment against them. The defendants appealed asserting, principally, that the sanctions (1) were constitutionally impermissible because they punished the defendant for invoking the Fifth Amendment, and (2) were unduly harsh in light of the availability of lesser sanctions. The Eleventh Circuit affirmed on all grounds.



By Ed Guedes

The Eleventh Circuit reiterated that it is constitutionally permissible in a civil proceeding to draw inferences from the invocation of the Fifth Amendment provided the inference that is drawn does not supply a necessary element of the cause of action that would otherwise not be established. The Court also observed that the entry of default as punishment for invoking the Fifth Amendment was not permissible, but that in this case the district court did not enter a dismissal because of the invocation of the Fifth Amendment. Rather, the plaintiff had introduced evidence that the defendant had been improperly intercepting confidential emails of the opposing party and that he refused to answer questions about whether he could continue to do so. This evidence of misconduct established that the defendant had disrupted the litigation, and the district court was correct in light of the disruption to strike the pleadings and enter a default judgment for the plaintiff. The dismissal issued as a result of the disruption, not as a direct result of the defendant's invocation of the Fifth Amendment.

As one can readily see, there is a fine line between being impermissibly punished for invoking

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king the Fifth Amendment, and being punished as a result of the allowable inferences that can properly be drawn from the invocation. In this instance, the Eleventh Circuit no doubt was shocked by the knowing and egregious intrusion into the attorney-client privilege.

Florida Family Policy Council v. Freeman, ___ F.3d ___, 2009 WL 565682 (11th Cir. Mar. 6, 2009)

In this case, the plaintiff organization filed suit against the individual members of the Florida Judicial Qualifications Commission to have two Florida judicial canons declared unconstitutional, in violation of the First Amendment to the U.S. Constitution. Specifically, the two canons – 3E(1) and 3E(1)(f) of the Code of Judicial Conduct – expose a judge to potential disciplinary action if he or she fails to disqualify himself or herself from a case involving an issue as to which the judge has previously expressed a public position that commits or appears to commit the judge as to how the issue should be decided.

The plaintiff organization had submitted questionnaires to judicial candidates seeking to have them express their positions on a number of issues, ranging from abortion to same-sex marriage to gay adoption. Many of the judges “declined to respond,” essentially indicating that they feared disqualification from future cases if the issues in the survey came before them. The plaintiff argued the two canons effectively “chilled” free speech because it precluded the organization from receiving information

from the judicial candidates on topics of public importance.

The U.S. District Court for the Northern District of Florida concluded the plaintiff had standing to assert the challenge, but dismissed the lawsuit with prejudice finding that the complaint failed to state a colorable constitutional claim for violation of the First Amendment. On appeal, however, the Eleventh Circuit revisited the standing issues, as it was required to, inasmuch as they were directly related to the district court’s jurisdiction to decide the case. Rather than reach the broader – and arguably more interesting First Amendment issues – the appellate court vacated the district court’s opinion finding it lacked jurisdiction to hear the case because of the plaintiff’s lack of standing.

The standing analysis appears to turn on the fact that the plaintiff failed to challenge section 38.10, Florida Statutes, and Florida Rule of Judicial Administration 2.330, both of which allow a party to move to disqualify a judge who had previously expressed a public position on an issue that commits or appears to commit the judge to the issue’s resolution in one way or another. The Eleventh Circuit reasoned that declaring the two judicial canons unconstitutional would not provide the relief requested because the same result

would derive from application of the statute and related rule of administration. Since real relief (as compared to speculative relief) could not be obtained through the complaint, the plaintiff had failed to establish the third



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prong of federal standing, and consequently, the district court lacked jurisdiction.

If the plaintiff ever gets around to figuring how to challenge the statute and Rule 2.330, we might eventually find out what limitations may be constitutionally imposed on judicial candidates. In the meantime, Judge Carnes, the opinion's author, could not resist his usual light-hearted "turn of phrase." In his concluding paragraphs, he states: "This means that granting Florida Family the relief it seeks against the enforcement of Canon 3E(1) and subpart (f) will do nothing to lift the chill that prevents Judge Stargel and any other judges from responding to the questionnaire because it does nothing to remove the asserted penalty. The chill wind from that

asserted penalty will still blow in from § 38.10." He goes on to say, "We express no view on the merits of Florida Family's constitutional argument but decide only that, as the punch line goes, 'you can't get there from here.'" You have to love a judge who loves language.

***Sahyers v. Prugh, Holliday & Karatinos*, ___ F.3d ___, 2009 WL 510963 (11th Cir. Mar. 3, 2009)**

This is a fascinating case arising in the Middle District of Florida – not for its precedential value, which was severely limited by the Court – but rather for what it says of the legal profession and the Court's perception of each

lawyer's duty to the system and to each other. The case involved a paralegal who sued her former law firm for violations of the Fair Labor Standards Act (FLSA) arising from non-payment of overtime wages. The case settled for \$3,500, and the district court declared the plaintiff to be a prevailing party under the FLSA. However, upon the plaintiff's application for fees and costs, the district court awarded no fees or costs, finding that the failure of the plaintiff's lawyer to try to resolve the case informally with the law firm before filing suit constituted improper conduct

subject to the court's disciplinary authority over lawyers appearing before it. The lawyer explained his conduct by stating that his client had specifically instructed him to file suit first, before reaching out to the defendant law firm.



The Eleventh Circuit affirmed using broad language as to the duty of lawyers to the system: "Defendants are lawyers and their law firm. And the lawyer for Plaintiff made absolutely no effort -- no phone call; no email; no letter -- to inform them of Plaintiff's impending claim much less to resolve this dispute before filing suit. Plaintiff's lawyer slavishly followed his client's instructions and -- without a word to Defendants in advance -- just sued his fellow lawyers. As the district court saw it, this conscious disregard for lawyer-to-lawyer collegiality and civility caused (among other things) the judiciary to waste significant time and resources on unnecessary litigation and stood in stark contrast to the behavior

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expected of an officer of the court. The district court refused to reward -- and thereby to encourage -- uncivil conduct by awarding Plaintiff attorney's fees or costs."

In the next breath, the Court made the following statement: "We strongly caution against inferring too much from our decision today. These kinds of decisions are fact-intensive. We put aside cases in which lawyers are not parties. We do not say that pre-suit notice is usually required or even often required under the FLSA to receive an award of attorney's fees or costs. Nor do we now recommend that courts use their inherent powers to deny prevailing parties attorney's fees or costs. We declare no judicial duty. We create no presumptions. We conclude only that the district court did not abuse its discretion in declining to award some attorney's fees and costs based on the facts of this case."



It remains to be seen whether the strong policy statements in the opinion relating to a lawyer's conduct and duty to the legal system will be extended to other cases where the defendant is not a law firm.

***Fennell v. Gilstrap*, ___ F.3d ___, 2009 WL 485187 (11th Cir. Feb. 27, 2009)**

This case involved a claim for excessive force under 42 U.S.C. § 1983 brought by a detainee against an individual officer who kicked him in the face after the detainee was already in custody. The officer claimed qualified immunity and the district court granted summary judgment in favor of the officer. On appeal, the 11th Circuit found the district court had erred in its analysis, but nonetheless affirmed because the plaintiff had failed to demonstrate as a matter of law that excessive force had been used.

The case is interesting for a number of reasons. First, the Court explicitly holds that the

standard for determining excessive use of force under the due process provisions of the Fourteenth Amendment is higher than under the Fourth Amendment. In other words, it is easier to prove excessive use of force during the arrest of an individual than it is to prove once the individual is already in custody at the police station. So, using the facts of this case, if six officers are struggling on a street to subdue and arrest a sus-

pect and a seventh officer comes along and kicks the suspect in the face, a different standard of excessive force applies than if those same six officers are struggling to re-handcuff that same suspect on the floor of the police station after the arrest has been made and that same seventh officer comes along and kicks the detainee in the face. The standard in the latter

situation is that the conduct must "shock the conscience" and the force must be applied "maliciously and sadistically to cause harm."

Second, the Court concluded that the independent investigation conducted by the officer's department, which resulted in the officer being fired for using excessive and unnecessary force, even if correct, was not determinative because it did not establish that the officer acted "maliciously and sadistically."

The Court's per curiam decision does not explain why, from a policy perspective, there should be two different standards for excessive use of force depending upon whether the restraint occurs during the arrest process or immediately after it. The decision stands in contrast to another case decided by the Court just one day earlier, involving allegations of excessive use of force during an arrest.

***McCullough v. Antolini*, ___ F.3d ___, 2009 WL 469327 (11th Cir. Feb. 26, 2009)**

In this civil rights case arising from a police car chase and subsequent deadly shooting of the

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suspect driver, the issue presented was whether the officers used excessive force in trying to apprehend and arrest the suspect by shooting him as he drove his vehicle. While the facts of the case, as described by the Court, generally reflect the standard deference afforded to the split-second decisions of law enforcement officers involved in a late-night pursuit, what is notable about the decision is that the officers' conduct was measured against an "objective reasonableness" standard. In other words, in order to defeat the officers' qualified immunity, the plaintiff was not obligated to establish, as would be the case the following day in *Sahyers*, that the officers acted with malicious and sadistic intent. Instead, the standard turned on whether what the officers did was "objectively reasonable" under the circumstances.

Miccosukee Tribe of Indians v. So. Fla. Water Mgm't Dist., ___ F.3d ___, 2009 WL 454180 (11th Cir. Feb. 24, 2009)

Whether an order granting a stay of ongoing district court proceedings is immediately reviewable pursuant to 28 U.S.C. § 1291, when the stay was granted to allow another, related federal court proceeding to be appealed to conclusion. Because the stay did not seek to accommodate the exercise of independent jurisdiction by a state court or administrative or foreign authority, the stay did not leave the party "effectively out of court" and thus was not sufficiently "final." The stay did not fall within the "extended suspended

animation" corollary to the "effectively out of court" doctrine because the delay occasioned by the stay would not cause an "indefinite delay[]" pending the outcome of proceedings that were unlikely to control or to narrow substantially the claims or unresolved issues in the stayed lawsuit." Lastly, the stay did not fall within the collateral order doctrine because that doctrine was exceedingly narrow in scope and the stay failed to implicate a sufficiently "substantial public interest."

The decision commends itself for reading – as do most of Judge Carnes' decisions – for the writing style alone. Never reticent to play on or with words, Judge Carnes' decision frequently demonstrates his felicity of expression. For example, perhaps poking just a little fun at court decisions that carve out ever narrowing exceptions to exceptions to already narrow doctrines, Judge Carnes' decision cobbles together the newly articulated exception to the finality doctrine of "effectively out of court by suspended animation" and declares it to be a "narrow doctrine." A little less subtly, though no less humorously, Judge Carnes makes the following conclusion in this case involving pumping stations that transfer pollutants from one body of water to the other: "The central argument for the Water District, as supported by an EPA regulation, is the 'unitary waters theory.' If we accept that theory in the S-2 appeal, it will wash out the plaintiffs' S-2 case entirely and also will flood most of their S-9 case. But if we reject the unitary waters theory, then the S-9 case would remain on dry ground and proceed to a determination of whether the canals and water conservation area involved in that case are 'meaningfully distinct' water bodies." You just know he was smiling as he wrote it.

Edward G. Guedes is a shareholder in the Appellate Practice Group at Greenberg Traurig, P.A. He is currently co-chair of the Third District Court of Appeal's 50th Anniversary Committee and is Board Certified by the Florida Bar in Appellate Practice.



CABA President Roland Sánchez-Medina, Jr.
and Past President Corali López-Castro

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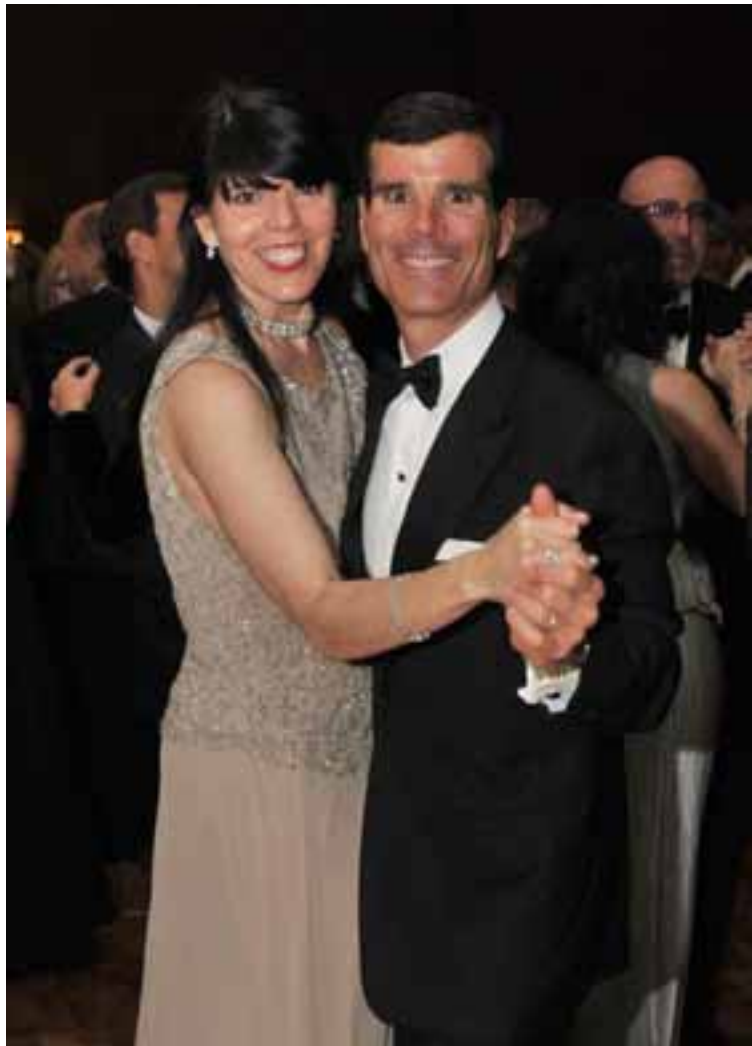
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**IS
GAY
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The controversy over Judge Cindy Lederman's decision to allow gay couples to adopt.

Several weeks ago, during a roundtable discussion on gay rights on *This Week* with George Stephanopoulos, it was none other than George Will, Burkian conservative and arch-defender of the status quo, who was the first to observe that amongst Americans 30 years old and younger, being gay is roughly the equivalent of being left-handed: to wit, unremarkable, banal and commonplace. His point was that with each passing generation, Americans are becoming more accepting of gays and gay rights, in the same way that today, racial issues that would have been incendiary in the past -- issues such as miscegenation -- are banal and commonplace.

While that may be so, the sad reality is that today, the great mass of Americans -- or perhaps more accurately, the great mass of *voting* Americans -- remains steadfastly opposed to extending to homosexuals the same rights afforded to heterosexuals. One need look no further than to California, one of the most progressive states in the union, where a constitutional amendment was recently enacted that effectively undid the California Supreme Court's earlier decision upholding the constitutionality of gay marriage.

Not to be outdone, on the same day, Floridians rushed to the polls and overwhelmingly voted for the so-called "Florida Marriage Protection Amendment". Though supporters of this amendment maintained that its sole purpose was to cherish, honor and protect the union of a man and a woman, existing Florida Statutes already afforded the citizens of our state such "protections" by prohibiting gay marriage.¹ Thus, it would seem that the true purpose behind the amendment was to protect against the possibility that the courts would declare the existing laws banning gay marriage unconstitutional, a con-

temptuous (and contemptible) preemptive strike against the possibility of judicial recognition of the right of homosexuals to marry.

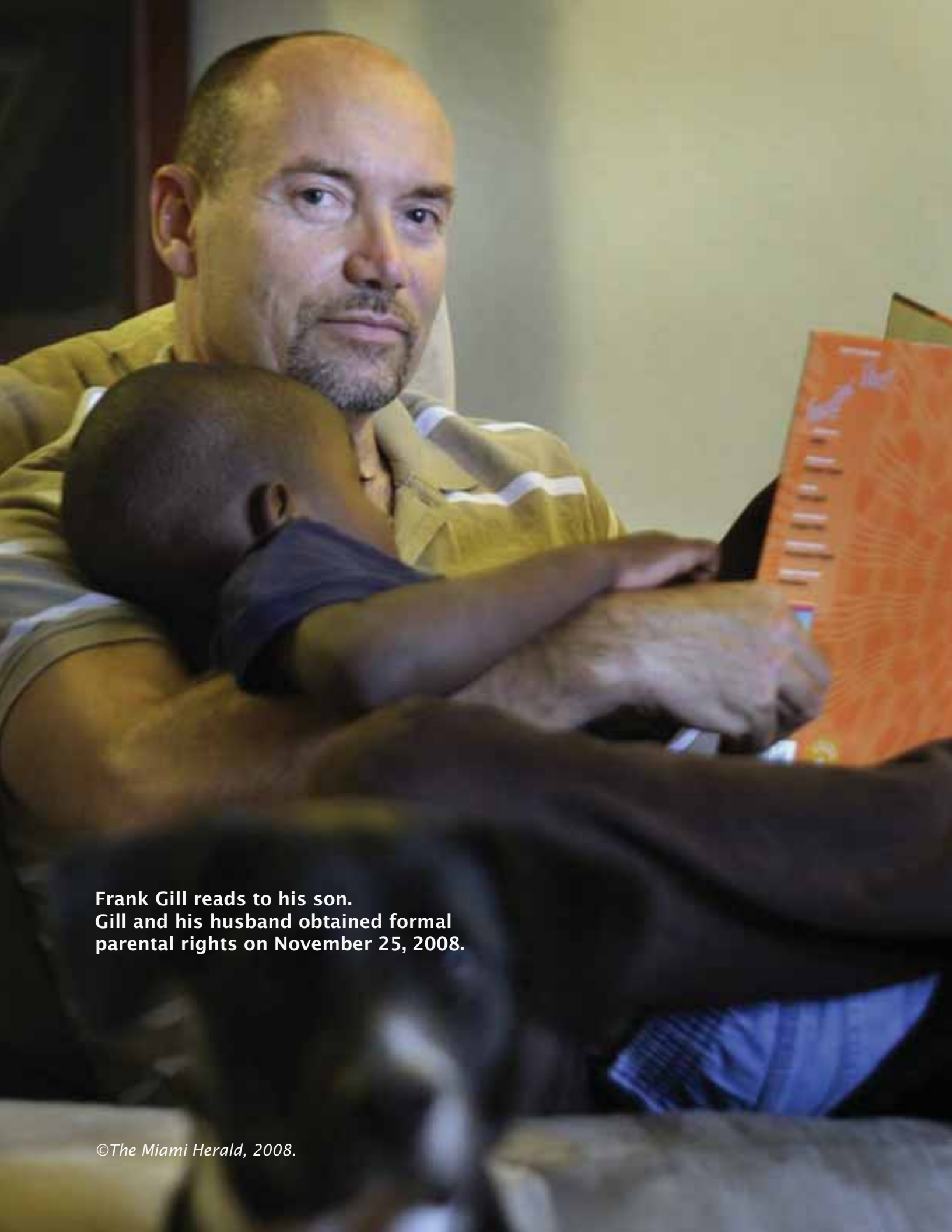
It is significant, and perhaps even revelatory, that the supporters of the Florida Marriage Protection Amendment and its ilk refer to gay relationships using the same terminology used in decades past to inveigh against inter-racial relationships: that such relationships are "unnatural" and "against God". Today, it is universally acknowledged that those arguments, such as they are, in favor of prohibiting individuals of different racial and ethnic backgrounds to meet, fall in love and marry are irrational to the point of being ridiculous. Unfortunately, such is still not the case for the identically ridiculous arguments proffered *in the present day* with respect to gay couples, a demographic that seems to inspire fear and loathing in far too many people.



By Augusto R. López

In Florida, this current backlash against gays is reminiscent of the movement led by Anita Bryant in the late 1970s as a reaction to a 1977 ordinance passed by Dade County that prohibited discrimination based on sexual orientation. Back then, the anti-gay backlash resulted in not just an overturning of the Dade County ordinance by a margin of 69% to 31%, but also led to the passage of a state law prohibiting homosexuals from adopting, a law that has remained enshrined in Florida Statutes for over three decades.

In 2008, however, over thirty years after the passage of the ban on gay adoption, two circuit court decisions in Florida, one in Monroe County and the other in Miami-Dade, arrived at the same conclusion: the 1977 statute prohibiting gay adoption was unconstitutional and could not



**Frank Gill reads to his son.
Gill and his husband obtained formal
parental rights on November 25, 2008.**

stand. Though the State of Florida decide not to challenge the Monroe County decision (thus limiting its precedential value), the state *has* decided to pursue an appeal against the Miami-Dade County decision, and thus, as with the fight to eradicate racial discrimination of decades past, the fight against discrimination on the basis of sexual orientation is today being waged in the courts. What follows is an account of the Miami-Dade County decision that is currently on appeal and the aftermath of said decision.

THE BACKSTORY

On December 11, 2004, the State of Florida determined that the level of chronic neglect and emotional impoverishment to which two young boys were being subjected required that they be immediately removed from their home and placed in state custody. On that same day, the state contacted a licensed foster caregiver, Frank Gill, whom agreed to accept the two children into his home, ostensibly until a more permanent home could be found. When the boys arrived at the Gill home in stained, tattered and ill-fitting clothing, John, the oldest, was suffering from a severe case of ringworm, and his brother, James, from an advanced inner-ear infection, neither malady having been properly treated.² It quickly became clear that John could not speak, “had never seen a book, could not distinguish letters from numbers, could not identify colors, and could not count.”³ John’s singular concern was with changing, feeding and caring for his little brother, and it was soon evident that up to that point in time, John had been James’s primary caretaker.⁴ John, the “caretaker”, was all of four years old, and his brother, James, was four months.

THE LAW

Though the placement of John and James with Gill was only intended to be temporary, the two boys thrived in their new home, and for years, this foster placement received the continu-

ous and unqualified support of both the Department of Children and Families (DCF), the state agency entrusted with administering the foster care system, as well as the children’s Guardian Ad Litem, whom considered Gill and Oglesby to be model parents. Thus, in 2006, when the the parental rights of the boys’ biological parents were terminated under Florida law, Gill petitioned the state to formally adopt John and James.

“Chapter 39 of the Florida Statutes requires the state to provide all dependent children with a stable and permanent home. The aim is to ensure that every child in foster care is placed in a permanent home as soon as possible. Fla. Stat. §§39.001(1)(h); 39.621(6). The law also provides that adoption is the preferred permanency option for children who cannot be returned to their biological families. Fla. Stat. §39.621(6) ...Florida’s statutory framework is explicit that dependent children have the right to permanency and stability in adoptive placements. Fla. Stat. §§39.621; 39.001(1)(h). The law is also explicit that there is a compelling state interest in providing such permanent, adoptive placement as rapidly as possible. *Id.*...[In short], the legislature has recognized that permanency in an adoptive home is a foster child’s right, and that the state has a compelling interest in achieving that result in the most expeditious way possible.”⁵

Though achieving permanency for foster children in adoptive homes is the undisputed law in the State of Florida, there is another law on Florida’s books that arguably works at cross-purposes with those enshrined in Chapter 39. Fla. Stat. §63.042(3) bars adoption by gay persons, stating simply and unequivocally, “No person eligible to adopt under this statute may adopt if that person is a homosexual”. In fact, Florida is the only state in the union that expressly bans all gay adoptions without exception, an ignominious distinction indeed.

Ironically, however, there is no prohibition in Florida against gay individuals or gay couples

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serving as foster caregivers within Florida's foster care system, and the DCF routinely places children in long-term foster care with individuals known by DCF to be homosexual. Frank Gill and his spouse, Bruce Oglesby, were two such

Undeterred, in January 2007, Gill filed a petition in Miami-Dade Circuit Court requesting that he be allowed to adopt John and James, and furthermore, that the law preventing him from doing so be declared unconstitutional on equal protection and substantive due process grounds.

THE EXPERTS

During the adoption proceeding, the two sides brought in experts to make their case. The State of Florida argued that "the homosexual adoption restriction serves the legitimate state interest of promoting the well-being of minor children, as well as broader, societal morality interests,... [arguing through its experts that] when compared to heterosexuals, homosexuals experience (1) a lifetime prevalence of significantly increased psychiatric disorders; (2) higher levels of alcohol and substance abuse; (3) higher levels of major depression; (4) higher levels of affective disorder; (5) four times higher levels of suicide attempts; and (6) substantially increased rates of relationship instability and breakup."⁷



©The Miami Herald, 2008.

IN AUGUST 2008, MONROE COUNTY CIRCUIT JUDGE DAVID J. AUDLIN, JR. RULED THAT WAYNE LARUE SMITH AND HIS PARTNER, DANIEL SKAHEN, COULD ADOPT THEIR SPECIAL NEEDS SON, MARKING THE FIRST TIME THAT GAY PARENTS SUCCESSFULLY ADOPT A FOSTER CHILD IN FLORIDA IN OVER THREE DECADES.

individuals.⁶ Not surprisingly then, Gill's petition to adopt John and James was denied. Florida's black-letter law prohibited an adoption under such circumstances, and despite the best intentions of the state employees directly involved with this case, DCF's hands were ultimately tied.

Notably, the state's lead science expert on the subject of gay adoption, clinical psychologist and behavioral scientist Dr. George Rekers, also happened to be an ordained Baptist minister who had written books with titles such as "Growing Up Straight: What Every Family Should Know About Homosexuality" and "Shaping Your Child's Sexual Identity", the latter containing the

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following passage: “The gay liberationists have taken the deliberate ploy of pressing first for legislation to legalize the sexual behavior between two consenting adults. After they have succeeded in winning the emotional war of soothing the public’s queasy feelings about homosexual activity among adults, the next planned step of the gay liberationists is to press for an elimination of laws of age discrimination (in the terminology of the rhetoric of revolt). This means that the gay activists are now beginning to press for the rights of the children to engage in homosexual behavior with adults. This will be their battle to legalize pedophilia!”⁸

One would think that the lunatic rantings of such a seemingly unhinged individual would serve to disqualify him as a scientific expert, but evidently not. However, his unsubstantiated testimony during the proceeding proved to be his undoing. The good doctor not only proffered discredited studies and methodologically unsound reports, but at one point posited that “he favors the removal of a child from a homosexual household, even after placement in that household for *ten years*, in favor of a heterosexual household” (emphasis added).⁹ Dr. Rekers further discredited himself by arguing, contrary to decades of research in child development, that “such a child would recover from the removal from his family of ten years after merely one year in a heterosexual household”.¹⁰

Faring somewhat better than Dr. Reker, the state’s other expert witness, Dr. Walter Schumm, was forced to admit that much of the scientific community disagreed with his conclusions and conceded the possibility that some gay parents may be beneficial to some children.¹¹ Taking issue with Dr. Reker, Dr. Schumm did not agree that homosexuals should be banned from adopting but rather acknowledged that “gay parents can be good foster parents, and...that the decision to permit homosexuals to adopt is best made by the judiciary on a case by case basis”.¹²

By contrast, the Petitioner’s expert witnesses concentrated on dispelling the prevailing myths related to homosexuals, homosexuality and adoption by citing to the latest scientific studies and research from the most credible sources available such as the American Psychological Association, the American Psychiatry Association, the American Pediatric Association, the American Academy of Pediatrics, the Child Welfare League of America, *Journal of Child Development*, the *Journal of Family Psychology*, the *Journal of Child Psychology* and the *Journal of Child Psychiatry*. Each of the hundreds of studies and reports cited had “withstood the rigorous peer review process and were tested statistically, rationally and methodologically by seasoned professionals prior to publication.”¹³

Among the findings, “the American Psychological Association, the nation’s leading association in the field, concluded that same sex couples: (1) want to have primary and committed relationships and are successful in doing so; (2) are no more dysfunctional or less satisfying than heterosexual relationships; (3) are able to form committed, stable and enduring relationships; and (4) are affected by the same internal and external processes as heterosexual couples.”¹⁴

To counter the unsubstantiated claims made by the state’s experts that homosexuals experience significantly increased levels of psychiatric disorders, alcohol and substance abuse, and depression, one of Petitioner’s experts, Dr. Susan Cochran, Professor of Epidemiology and Statistics at the University of California, Los Angeles, explained that “taken as a whole, the research shows that sexual orientation alone is not a proxy for psychiatric disorders, mental health conditions, substance abuse or smoking; members of every demographic group suffer from these conditions at rates not significantly higher than for homosexuals. Therefore, based on the research, while the average rates of psychiatric conditions, substance abuse and smoking are generally slightly higher for homosexuals than heterosexu-

als, the rates of psychiatric conditions, substance abuse and smoking are also higher for Native Americans as compared to other races, the unemployed as compared to the employed and non-high school graduates as compared to high school graduates, for example...[Accordingly], if every demographic group with elevated rates of psychiatric disorders, substance abuse or smoking were excluded from adopting, *the only group eligible to adopt under this rationale would be Asian American men*" (emphasis added).¹⁵

Finally, Petitioner's experts introduced studies from preeminent psychology and psychiatry journals to support their conclusion that "children raised by homosexual parents do not suffer an increased risk of behavioral problems, psychological problems, academic development, gender identity, sexual identity, maladjustment, or interpersonal relationship development."¹⁶ Moreover, the research further revealed that "children raised by gay parents develop social relationships the same as those raised by heterosexual parents...and do not experience discrimination or ostracization any more than children of heterosexual parents...Children have always and will continue to tease and bully their peers about their parent's appearance, employment, ethnic background, parenting style, or sexual orientation. A child that is teased views one reason no less hurtful than another. [Thus]..., the exclusion of homosexuals from adoption does not shield a child from being teased by his/her peers".

After carefully considering the collective expert testimony presented by Petitioners and the state, the Court concluded that "there are no differences in the parenting of homosexuals or the adjustment of their children...[B]ased on the robust nature of the evidence available in the field, the Court [was] satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption".¹⁷

THE DECISION

On November 25, 2008, the judge hearing Frank Gill's petition, Judge Cindy Lederman, Chief of Miami-Dade County's Juvenile Court, rendered her decision. It was based on two equally compelling arguments, either of which alone would have sufficed to defeat Florida's ban on gay adoption.

(i) Substantive Due Process and Chapter 39 of Florida Statutes.

The first argument was based on the substantive due process rights of foster children memorialized in Chapter 39 of Florida Statutes which, as noted *supra*, recognizes that permanency in an adoptive home is a foster child's *right*, requiring the state to provide all dependent children with a stable and permanent home.¹⁸ The Court noted that the Florida Supreme Court had "recently re-established the child's right to permanency doctrine and confirmed that adoption is the highest preferred form of permanency. In *G.S. v. T.B.*, 985 So.2d 978 (Fla. 2008), the [Supreme Court] affirmed the recognition of the state's compelling interest in providing 'stable and permanent homes for adoptive children...and to enforce the child's statutory right to permanence and stability in adoptive placements...' *Id.* at 982 (emphasis added)."¹⁹

In Florida then, "laws that would interfere with a child's fundamental right to be free from unnecessary restraint, rather than aid the state's interest in achieving adoptive permanency for the child, are subject to enforcement as impinging on the child's rights", and thus laws such as Florida's ban on gay adoption "that burden fundamental rights protected by the substantive due process clause are subject to *strict scrutiny*" (emphasis added).²⁰

Applying the strict scrutiny test to Fla. Stat. §63.042(3), the Court concluded that, "in precluding otherwise qualified homosexuals from adopting available children, [the challenged stat-

ute] does not promote the interests of children and in effect, causes harm to the children it is meant to protect...The exclusion causes some children to be deprived of a permanent placement with a family that is best suited to meet their needs. As it relates to the case at bar, John and James were placed into the foster care placement of Petitioner [Gill] by the State. The record clearly reflects that it is in their best interest to remain in this placement permanently and to be adopted by Petitioner. However, the statutory exclusion deprives John and James the ability to be adopted by their caregivers, to whom they are strongly bonded. Failure of the state to effectuate a permanent placement for John and James with applicants willing and qualified to assume the task creates the risk of severing the children's healthy attachments and causing profound long-term negative consequences to their development or relegating them to a childhood and adolescence without a permanent home in foster care".²¹

In short, the Court found that "Fla. Stat. §63.042(3) violates the children's rights by burdening [the children's] liberty interest in being free from undue restraint in state custody on one hand [while] simultaneously operating to deny them a permanent adoptive placement that is in their best interests [on the other].²² Accordingly, the Court refused to "permit such a double-edged sword to continue to lie dormant in [Florida] law, to the peril of children like John and James."²³

(ii) Equal Protection and Rational Basis

As noted, the substantive due process argument (and the corresponding strict scrutiny analysis) alone would have sufficed to defeat Fla. Stat. §63.042(3). However, the Court articulated a



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second argument that reveals a great deal about the anemic nature of the arguments proffered by the state. The second argument - an equal protection argument -- was based on Article I, §2 of the Florida Constitution which states, in relevant part, "All natural persons, female or male alike, are equal before the law." Gill and the children had argued that Fla. Stat. §63.042(3) "violates their right to equal protection under the law because it singles out homosexuals and children raised by homosexual caregivers for unequal treatment without serving a rational

basis. Similarly, the children posit[ed] that they [were not being] offered equal protection

because one class of children placed by the state with heterosexual caregivers have the potential to be adopted by their caregivers, while other children who are also adoptable, but placed by the state with lesbian and gay men cannot be adopted by their caregivers."²⁴

However, unlike the substantive due process argument which required a strict scrutiny analysis, the equal protection arguments proffered by Gill and the children required only that the Court apply the *lowest* level of scrutiny in order to determine whether the gay adoption ban was constitutional: the rational (*continued on page 34*)

[OPEN FORUM ON GAY RIGHTS]



In today's world, a judge needs to be afforded the opportunity and discretion (on a case by case basis) to determine what is in the "best interest of the child", as opposed to banning and singling out a group of people because of their sexual orientation who can very well be loving and fit parents to children who would otherwise not have that opportunity.

-- Sandra Ferrera, CABA Vice President

Religion aside, I do not believe the state has any right to dictate whether homosexuals can marry. So long as the union is not a sham, more power to them. The same goes for adoption. So long as they are found to be both financially and psychologically fit, adoption should be allowed. Some would argue that being homosexual is evidence of a psychological defect. That opinion has been, I believe, sufficiently discredited to merit a response.

-- Raul Chacón, CABA Director



Children have a right to the security of a stable, loving home. That right should not be sacrificed because of society's prejudices. It is time to repeal Florida's shameful ban on gay adoption.

-- Sen. Nan Rich (D-Weston)



What could possibly be wrong with a child being adopted by a loving couple of any kind? There is such a deep and widespread need for the care and placement of children, and yet people expounding moralistic principals against gay adoption don't seem to understand that while we waste time and resources fighting to deny willing gay parents, many children lose their chance to be loved.

-- Roland Sánchez-Medina, Jr., CABA President

Homosexuals should be treated like any other persons, period. Of course they should be allowed to adopt and marry.

-- Arturo Alvarez, CABA Past President



How can one believe in equality under the law and not believe that gays should be allowed to adopt children when it is in the child's best interest? Similarly, how can one believe in equality under the law and not believe that gays should be allowed to marry in the State of Florida? Put simply, the best way to treat everyone equally is to do so and demand that it be done. Moreover, as a general rule, shouldn't we really be making it easier for people to commit to children and to each other?

-- Luis Suárez, CABA Past Director

It should be far from anyone who is part of a minority to agree with any type of discriminatory limitation on another group. There is no more sense in prohibiting gays from adopting on the basis of 'moral' grounds, than there would be to prohibit a person of color from adopting a white child (and vice-versa) on the basis of "cultural" differences. Surely in the age of the "post-racial debate" we can find something better to argue about.

-- Manuel Crespo, Jr., CABA Vice President



[OPEN FORUM ON GAY RIGHTS]



I think there are too many kids out there in foster homes that are in need of good parents and a happy home, and think any responsible, caring adult should be allowed to adopt if he/she/they really want(s) a child – whether straight, gay, single, divorced, black, white, Hispanic, what have you. Love is “color blind”, and we must look past this to afford abandoned, orphaned, neglected kids with a chance at hope, happiness and life.

-- Annie Hernández, CABA Director

I can't think of any other area of the law where the controlling standard for deciding a case is disregarded simply by virtue of the party being part of an insular group in society. In adoption cases, the standard is and should be in every case the best interests of the child. There is no intellectually honest basis for abandoning that standard in a case because the adopting party is gay or lesbian. The standard is applied even in scenarios where the adopting party is a former drug addict, felon, homeless person or divorced single parent -- no other group of people, regardless of how classified, is automatically excluded as an end run around the "best interests of the child" standard.



-- Ed Guedes

It should be unacceptable to deny any minority group an opportunity available to the majority based solely on their minority status, whether it is the right to marry or the right to adopt. If a gay couple can meet the stringent adoption standards that currently exist, they should not be denied the right to provide a child, who would otherwise languish in the foster care system, a loving family simply because there is prejudice and ignorance regarding gay lifestyles.

-- Michele Samaroo, Wilkie D. Ferguson Bar Assoc. President



As a judge in Juvenile Court, I saw hundreds of children languish in foster care because no permanent homes could be found for them. This ruling does nothing more than open up another option for a judge to give a few of these children a permanent home. The old law, passed by the legislature during the Anita Bryant era, states that gay people can never be qualified to adopt. This new court ruling simply states that each case should be decided on the merits of what is in a child's best interest. If a person is otherwise capable of providing a good home for a needy child, isn't that the most important thing? Our laws give tremendous lip service to the best interest of children. It's only fitting that a judge should be able to consider all the facts of any particular case, and not be limited to reviewing only those facts of which the biggots approve, before deciding what is best for any child.



-- Judge David Young

Florida is the only state in the US that does not permit adoption of children by people who self identify as being homosexual. It is an antiquated statute passed by the legislature as a punitive measure with apparently no thought as to the detriment to the children in this state that need to be in a permanent family. Florida does permit foster care parents to be gay/lesbian and have the children live with same for extended periods of time. There are now over 3,500 foster children in the system and a significant percentage of them could and would be adopted by a homosexual if permitted. It is time to move forward in Florida and repeal the statute by legislative means or finding that it is unconstitutional through the court system. All voluntary bar associations, including CABA, should file *amicus* briefs in support of Judge Lederman's determination that the statute is unconstitutional. As for same sex marriage or civil union, one need only look to other jurisdictions to see that those who want to commit to a permanent relationship with all of its responsibilities and liabilities should be granted the ability to do so. The states within the United States that are granting full marital rights, no matter what they call them, are mostly in New England, the birthplace of democracy in the United States. Other countries that permit marriage rights include the United Kingdom, Canada, South Africa and others. The time has arrived to recognize equality for all human beings to love and be loved by whom each wants. Full rights need to be granted to same sex couples through a legalization of the relationship. We hope that Florida will be a leader in this regard.



-- John Kozyak and Richard Milstein

(continued from page 31) basis test. This was because, in the context of equal protection, the case did not involve a fundamental right or a suspect class. Though the courts in California determined as far back as 2000 that homosexuals comprise a suspect class deserving of strict scrutiny analysis in the equal protection context, this was not the case in Florida, and thus the Court limited itself to the rational basis test.²⁵

Under rational basis scrutiny, Fla. Stat. §63.042(3) would be upheld if there were any reasonably conceivable set of facts that could have provided a rational basis for the discrimination to which Gill and the children were being subjected under the statute.²⁶ However, even applying this exceedingly low threshold, the State of Florida failed to meet its burden with the three “rational basis” arguments that it proffered in support of its contention that the statute served the best interest of foster children. The state’s arguments were that (1) homosexuals experience higher levels of stressors (e.g., alcoholism, drug abuse, mental health disorders, etc.) that are disadvantageous to children than do heterosexuals, (2) children placed in homosexual households will suffer greater social stigmatization than those placed in heterosexual households, and (3) the ban on gay adoption protects society’s “moral interests”.

In holding that the state unequivocally failed to meet its burden under the rational basis test, the Court found that (1) all credible evidence proves that “homosexuals are no more susceptible to mental health or psychological disorders, substance or alcohol abuse or relationship instability than their heterosexual counterparts”, (2) “it is a well established and accepted consensus in the fields [of child psychology, psychiatry and development] that there is no optimal gender combination of parents”, and (3) even though the contradiction between allowing homosexuals to serve as foster parents but at the same time prohibiting them from adopting would alone defeat the public morality argument, “public morality

per se, disconnected from any separate legitimate interest, is not a legitimate government interest to justify unequal treatment.”²⁷

Accordingly, Judge Lederman ruled that the ban against gay adoption memorialized in Fla. Stat. §63.042(3) was dead; not only was it violative of the substantive due process rights of Florida’s foster children, but it also violated the equal protection rights guaranteed to both Gill and his children by Florida’s Constitution. And thus, on November 25, 2008, what was already true in spirit, became true in practice: John and James formally became Frank Gill’s *sons*.

THE AFTERMATH

At this point, the State of Florida could have let the decision lie, as it had done a few months earlier with the Monroe County decision, limiting its precedential value to Miami-Dade County. However, on this occasion, the state has decided to pursue an appeal, a move that jeopardizes the viability of the statute going forward: an appellate ruling on the decision would, practically speaking, apply across Florida, and if it were challenged by a sister appellate court, the issue would undoubtedly land before The Florida Supreme Court. Various groups have mobilized on both sides of the ideological divide and are expected to submit *amicus* briefs to the Third District Court of Appeal with respect to the Lederman decision.

One of the groups that will be submitting a brief on behalf of Gill and his sons is The Florida Bar’s Family Law Section. The Family Law Section is a voluntary bar association composed of thousands of members throughout Florida, most of whom are attorneys who practice in the area of family law and have had exposure to Florida’s foster care system. Thus, when the state filed its appeal of the Lederman decision, The Family Law Section’s Executive Committee voted unanimously to submit an *amicus* brief on behalf of Gill and his children. And on January 30, 2009,

the Florida Bar Board of Governors (BOG) voted, again unanimously, to allow the Family Law Section to proceed with its brief.

This is in marked contrast to years past, when the same Family Law Section petitioned the bar to allow it to lobby to repeal Fla. Stat. §63.042(3) (2004), and later to allow it to lobby to amend the statute to allow *some* homosexual foster parents to adopt (2005), in both cases being denied by the BOG. This time, however, many members of the BOG who had been reluctant to authorize *lobbying* with respect to the gay adoption issue, did not hesitate to approve the filing of an *amicus* brief with respect to the case currently on appeal. In the words of President-elect of The Florida Bar, Jesse Diner, “I adopt everything Ervin says”, referring to Ervin González, Miami litigator and one of the most influential and outspoken members of the BOG on this issue. Diner added, “It is true that the last time, we were dealing with the issue of a section lobbying. This is a section that wants to file an *amicus* brief. This is about specific children in this case. It is about constitutionality. It is different.”

Unfortunately, because of the arguably arcane rules and regulations that govern The Florida Bar, the vote by the BOG was initially misconstrued by some (including this author) as an endorsement of the Lederman decision by The Florida Bar *as a whole* – rather than by the voluntary Family Law Section of The Florida Bar. In one notable instance, the *Daily Business Review*,

the South Florida periodical that reports on, among other things, news in the legal profession, reported that the Florida Bar was “coming out in a big way for gay adoption”, before retracting the statement in a follow-up piece that criticized the bar for equivocating on such a watershed civil rights issue. And in another highly publicized case, a conservative advocacy group known as “The Liberty Counsel” has filed a petition with the Florida Supreme Court seeking to enjoin the Family Law Section from submitting its *amicus* brief.

After a review of The Florida Bar’s rules, it seems clear that the bar acted appropriately in voting to allow the Family Law Section to proceed. Under bar rules, sections such as the Family Law Section need approval from the BOG before filing briefs. The test that the BOG applies when it reviews a section’s request consists of two prongs: (1) whether the subject area falls

within that section’s jurisdiction and expertise, and (2) whether the subject area is one in which it is permissible for the Bar to become involved. These rules were enacted to assure compliance with the criteria established by both the U.S. Supreme Court as well as the Florida Supreme Court with respect to political and ideological issues on which The Florida Bar may take a position.²⁸

As summarized by Barry Richard, the attorney representing The Florida Bar in its case against The Liberty Counsel, under bar rules, “the default is that a section [like the Family Law



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Section] can file an *amicus* brief. If the subject matter is within the section's jurisdiction and beyond the area in which the bar is permitted to be active, the Board cannot block it. The only time the bar can block the section is when either (i) the subject is outside the section's jurisdiction or (ii) the bar is permitted to deal with the issue and the [BOG] believes the position of the section is contrary to the position of the bar." Since neither was the case with respect to the Family Law Section's petition, it follows that the bar would authorize the Family Law Section to proceed.

In defense of the bar's actions, John "Jay" White III, the President of The Florida Bar, dispatched a strongly worded letter to the head of The Liberty Counsel admonishing that organization for misconstruing the bar's role with respect to the proposed *amicus* brief. In his words, "The Florida Bar's *amicus* activities stem from this organization's authority to provide information and

advice to the courts and other branches of government on legal matters...I understand your sentiments regarding past actions of prior governing boards concerning the advocacy of homosexual adoption. However, last month's vote was the product of a different board, on a new day, and beyond matters of influencing public policy in the legislative arena. The [BOG] gave particular deference to the fact that this is now a legal question, in a court of law, where substantive commentary by lawyers should be registered by those who are among the most authoritative on

this issue...The bar has no intentions of rescinding its January 30 vote regarding this *amicus* brief".

As we go to print, the issue of the propriety of the Family Law Section's *amicus* brief is still before the Florida Supreme Court, and the *amicus* brief has not yet been filed with the Third District Court of Appeal. Unless the Supreme Court rules otherwise, the Family Law Section will be able to file its brief immediately after Respondents -- in this case, Gill and the children -- file theirs sometime in mid-May.

THE PROPOSED LEGISLATION

The controversy over the Lederman decision has not been limited to the courts. In December 2008, as she has done every year since being elected to the Florida Senate in 2004, Senator Nan Rich, a Democrat representing Florida's 34th District (covering portions of

both Miami-Dade and Broward Counties), introduced a bill that would effectively neuter Fla. Stat. §63.042(3). Senate Bill 460 (SB 460) would allow for adoption by homosexuals under two limited circumstances: (1) if a child has resided with a gay foster caregiver, recognizes the caregiver as his or her parent and a judge determines that adoption would be in the child's best interest, or (2) if a child's guardian is gay, both of the child's biological parents are dead, and the parents expressed an intention prior to their deaths that the guardian adopt the child.



**JOHN "JAY" WHITE III
President of The Florida Bar**

[ISSUES & IDEAS]

However, this year, emboldened by the Lederman decision, the senator has also introduced a second, parallel bill, Senate Bill 500 (SB 500), this one simply repealing Fla. Stat. §63.042(3) altogether. Unfortunately, the Florida legislature is controlled by Republicans who generally speaking have been historically unfriendly towards extending to homosexuals the same rights afforded to heterosexuals. Thus, for the past four years, the amendment to the statute proposed by Senator Rich in SB 460 has been roundly defeated by the legislature, and it is a *fait accompli* that this year, SB 460 as well as SB 500 will both die in committee without a vote.

THE FUTURE

The modern-day civil rights battle over gay rights is being waged in the courts and legislatures throughout our country, and while it is true that with every two steps forward, the cause takes one step back, progress is nevertheless being made. Witness the recent passage by Vermont's legislature -- after overriding the governor's veto -- of legislation legalizing gay marriage, as well as the *unanimous* decision of the Supreme Court of Iowa (a decision authored by a Republican appointee) to recognize the right of homosexuals to marry.

In Florida, the Gill case and Judge Cindy Lederman's well-reasoned decision may yet lead the way towards championing the rights of homosexuals throughout our state. And even though Judge Lederman, perhaps for strategic reasons, chose not to declare homosexuals a sus-

pect class as the California Fourth District Court of Appeal did in *People v. Garcia*, 77 P.2d 1269 (Cal. 4th Ct. App. 2000), as the Gill case heads to Florida's Third District Court of Appeal (and perhaps ultimately to The Supreme Court of Florida), one can only hope that our own appellate courts find the arguments outlined in the *Garcia* decision compelling enough to declare homosexuals a suspect class in Florida once and for all.

George Will may be right that the issue of gay rights is fast becoming prosaic, destined to be viewed historically through the same lens as we now view racial integration, the rights of women, and inter-racial marriage. However, the *current* resurgence of hostility towards gay rights cannot be denied, and in a free society such as ours, it will not suffice to passively accept change via the eventual transfer of power from a less enlightened generation to a more enlightened one. Laws rooted in

bigotry and hatred whether against Blacks, women or homosexuals should not be allowed to stand, and it is incumbent upon us all to do everything in our power to assure the equal treatment of all people under the law.

Augusto R. López practices commercial litigation and intellectual property law with the firm of Sánchez-Medina, González, Quesada and Lage in Coral Gables. Email your comments to alopez@smgql.com.

1-- Fla. Stat. §741.212

2-- The boys are referred to as John and James in



FL. SENATOR NAN RICH

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1-- Fla. Stat. §741.212

2-- The boys are referred to as John and James in

[ISSUES & IDEAS]

order to protect their identities.

3-- *In the Matter of the Adoption of: John Gill and James Gill*, Case No. Redacted (Fla. 11th Cir. Ct. November 25, 2008) at 4.

4-- *Id.* at 3.

5-- *Id.* at 38-39.

6-- Though Florida does not extend the civil right of marriage to homosexual couples, in 2001 Gill and Oglesby engaged in a ceremony wherein they acknowledged their commitment towards each other by exchanging rings before gathered loved ones. Since that time, they have considered themselves spouses, and thus, in deference to their commitment to one another, I refer to them as such.

7-- *In the Matter of the Adoption of: John Gill and James Gill*, Case No. Redacted (Fla. 11th Cir. Ct. November 25, 2008) at 10.

8-- *Id.* at 22-23.

9-- *Id.* at 21.

10-- *Id.* at 21.

11-- *Id.* at 24.

12-- *Id.* at 24.

13-- *Id.* at 36.

14-- *Id.* at 12.

15-- *Id.* at 13-14.

16-- *Id.* at 16.

17-- *Id.* at 37.

18-- *Id.* at 39.

19-- *Id.* at 39.

20-- *Id.* at 40.

21-- *Id.* at 44.

22-- *Id.* at 43.

23-- *Id.* at 43-44.

24-- *Id.* at 45.

25-- See *People v. Garcia*, 77 P.2d 1269 (Cal. 4th Ct. App. 2000).

26-- *In the Matter of the Adoption of: John Gill and James Gill*, Case No. Redacted (Fla. 11th Cir. Ct. November 25, 2008) at 48.

27-- *Id.* at 50-51.

28-- See *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *The Florida Bar Re: Schwarz*, 552 So. 2d 1094 (Fla. 1989).

29-- SB 500 is co-sponsored in the Senate by Senators Smith, Gelber, Sobel, Justice and Aronberg. In the House, the sponsor on this issue, Rep. Mary Brandenburg, only filed the complete repeal language, refraining from filing the approach outlined in SB 460.

House members are limited to filing just six bills, and she did not want to use two of her allotted bill slots on the same issue. In the House, this bill is co-sponsored by Representatives Abruzzo, Brise, Bullard, Culp, Luis Garcia, Gibbons, Audrey Gibson, Heller, Jenne, Kiar, Kriseman, Long, Pafford, Porth, Rader, Randolph, Reed, Rehwinkel Vasilinda, Sachs, Sands, Ron Saunders, Schwartz, Skidmore, Steinberg and Waldman.

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[P I C T O R I A L]

CABA / HNBA Cocktail

Novecento Restaurant • March 5, 2009

The Cuban American Bar Association sponsored an after-party networking reception in honor of the Hispanic National Bar Association's (HNBA) Mid-Year Conference that took place on March 5th and 6th in Coral Gables, Florida. The HNBA Mid-Year Conference was a tremendous success, and featured over 170 conference participants from around the country, a multi-day CLE program, a national moot court competition, and a speed networking event where participating law firms were able to meet senior in-house counsel from across the United States (including from multi-national companies such as Nike, Office Depot, Liberty

Mutual, Exxon Mobil, Microsoft and AT&T). The CABA event was another step forward in CABA's and the HNBA's efforts to find opportunities to work together and forge stronger ties.

The HNBA Mid-Year Conference was Chaired by Richard C. Lorenzo, of Hogan & Hartson, LLP and Jorge A. Mestre, of Rivero, Mestre & Castro, LLP. The HNBA Mid-Year Conference was held in conjunction with the 14th Annual HNBA National Moot Court Competition that was chaired by two of CABA's own, Jorge A. Mestre, and Augusto López, of Sánchez-Medina, Gonzalez, Quesada & Lage, LLP.



[CABA/HNBA COCKTAIL]



[P I C T O R I A L]

HNBA Moot Court Competition

F.I.U. College of Law • March 5-6, 2009

The Florida International University College of Law is honored to have had the opportunity to host this year's Hispanic National Bar Association (HNBA) Moot Court Competition. This competition brought many new faces to our campus. If you have not yet seen our amazing facility, Rafael Diaz Balart Hall is a 162,000-square-foot state-of-the-art building complete with two large courtrooms, which provide a realistic setting for any trial or appellate argument. In fact, both courtrooms will be home to the Third District Court of Appeal this spring, while its facilities are renovated.

The College of Law's Founding Dean, Len Strickman, was delighted we were able to host the competition noting, "As the American law school with the highest percentage of Hispanic students, it was a particular thrill for us to host the HNBA Moot Court Competition. Our students enjoyed showing off our magnificent facilities to their counterparts from across the country. We congratulate the winning team from the

University of Texas, and are proud that a team from FIU received one of the four prizes awarded in the competition for best brief."



By Adam Owenz

The FIU College of Law student body was also happy to assist the HNBA. Thirty-one volunteers stepped forward to serve as bailiffs during the competition and assisted with the HNBA Mid Year Conference. The student body at the FIU College of Law, while principally from South Florida, is diverse in racial, ethnic, and professional background. In 2008, FIU College of Law graduates had the second highest pass rate among Florida's ten law schools on the Florida Bar Exam.

As the FIU College of Law builds its name and reputation within the legal community, we are proud to do so alongside organizations such as CABA and the HNBA, and we thank them for their support.

Adam Owenz is the Director of Development and Alumni Relations at the FIU College of Law.



[HNBA MOOT COURT COMPETITION]



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CABA Inspires Leadership



I want to take the opportunity to thank my partners at Houck Anderson for allowing me the opportunity to actively participate in CABA, and for their consistent support of all the organizations CABA takes interest in. It is a great honor to be involved through many valuable programs. I have had the honor to receive grants of these programs, most notably CABA Pro Bono Program, Community Service, and the Hispanic and Bicultural Commission.

I am honored to represent CABA's Board of Directors and to be associated with an organization whose programs benefit so many in our local community. Founded in 1966, the Pro Bono Program has recognized as a Pillar of LGB by President Bush in 1992 and has grown to be a source of justice for the legal needs of the judicial community in South Florida.

CABA's community outreach through its Community Liaison Committee supports community programs such as the Youth Debt Action Day, Services Action Day, Take Action in October, Adopt a Family and the HIV/AIDS Day.

CABA's Mentor Program gives our law firm students the opportunity to learn from experienced lawyers in our profession, and to develop relationships with the judges and lawyers who are our community. CABA has also been a leader in providing administrative support.

CABA leads the way in providing continued, self-paced CLE courses in a convenient and flexible format. CABA also provides CLE courses for our members and staff through its CLE program. CABA also provides CLE courses for our members and staff through its CLE program.

It is the tradition of leadership in the organization that inspires our CABA members to give back to our community. It is our responsibility to bring our strength to our local judicial community that helps us to be successful in our profession. Once again, I am grateful to CABA and all of you who are a part of this great organization.

Paul J. Christie, Esq.
CABA Director 2010-2011



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Gov. Crist's Appointments

Four new faces remake Florida's Supreme Court.

There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals."

-- Benjamin Cardozo in THE NATURE OF THE JUDICIAL PROCESS (1921).

The recent change in the Florida Supreme Court's composition makes Justice Cardozo's words especially thought provoking. The Florida Supreme Court, like many high courts, is intrinsically mysterious and largely insulated from the outside pressures that typically inform government decision-making. Yet, in many ways, the Court is the most human of institutions: seven individuals tasked with the solemn, and collaborative, responsibility of addressing the most important legal issues affecting Florida's citizens.

Throughout the last year, this most human of government institutions has seen the appointment of four new justices whose philosophies will affect the coherence and future direction of the Court's decisions. A unique combination of retirements and personal circumstances created four judicial vacancies, causing Governor Charlie Crist to engage in a series of rapid fire judicial appointments. Governor Crist's recent appointees include Justice Charles T. Canady, Justice Ricky Polston, Justice Jorge Labarga, and Justice James E.C. Perry. The new justices bring to the Court a wide range of legal experience and varied backgrounds.

JUSTICE CHARLES T. CANADY

On August 28, 2008, Governor Charlie Crist appointed Justice Charles T. Canady to the Florida Supreme Court after Justice Raoul G. Cantero's departure from the bench. As the 82nd Justice to serve on the high court, he took office on September 8, 2008. Justice Canady was born in Lakeland, Florida in 1954. He received his B.A. from Haverford College in 1976 and his J.D. from Yale Law School in 1979. Justice Canady practiced with Holland & Knight in Lakeland, Florida from 1979 through 1982. From 1983 through 1992 he practiced with the firm of Lane, Trohn, Bertrand & Vreeland.



By Armando Rosquete

Justice Canady has a long career in public service that began in November 1984 with his election to the Florida House of Representatives. Initially elected as a conservative Democrat, he subsequently switched parties. He completed three terms in the Florida House of Representatives from November 1984 to November 1990. In January 1993, he defeated his Democratic opponent, Tom Mimms, and won a seat in the United States House of Representatives where he served until January 2001. While in Congress, he figured prominently in the impeachment proceedings against President Bill Clinton and was a key figure in legislation aimed at addressing partial-birth abortions. During his time in Congress, Justice Canady served as a member of the House Judiciary Committee and from January 1995 to January 2001 he held the Chairmanship of the House Judiciary Subcommittee on the Constitution.

[THE COURTS]

Upon leaving Congress, Justice Canady became General Counsel to Governor Jeb Bush who subsequently appointed him to the Second District Court of Appeal for a term that began on November 20, 2002. Justice Canady is in the unique position of having a public-service career that encompasses time in the legislative, executive and judicial branches. Not surprisingly, at the time of his appointment, Justice Canady said he would work to maintain open lines of communication with the other branches of government. "I think it is important that the judiciary has a constructive working relationship with the other two branches as we go through these challenging times and I will strive as a member of the court to help ensure there is always a constructive working relationship among the branches and that there is clear communication," he said.



JUSTICE CHARLES T. CANADY

Hector Lombana, who has been a longtime member of the Third District Court of Appeal Judicial Nominating Commission, characterized Justice Canady's record on the Second District Court of Appeal as "spotless." Past President of the Florida Bar, Howard Coker, said Justice Canady was "eminently qualified to serve" and that "he has set a high standard of fairness, humility and respect for the law."

At his December 3, 2008, investiture, Justice

Canady struck a humble—and at times humorous—tone with those in attendance. "I will always strive to be a justice for all the people of this great state. I will never forget that it is the people who speak directly through the constitution they have adopted," he said.

Justice Canady said his appointment represented a career where he has been fortunate enough to apply his legal skills in service of the public. "Those two loves have truly shaped my life," he said. "There has never been a moment when I have regretted the decision to pursue a career in the law." He took the opportunity to praise his legal mentors who helped him throughout his career, including Bob Trohn, who hired Justice Canady at Lane, Trohn, Bertrand & Vreeland, and encouraged him to pursue his political career. He also cited

his time on the Second District Court of Appeal. Justice Canady said the appel-

late court would have "a special place in my heart . . . even on those occasions when it's my duty as a justice on this court to quash and disapprove" opinions from the lower court, drawing a laugh from the audience. Justice Canady has made it clear that he plans to stay on the Court until he is forced to retire at age 70. "I love being a judge," he said, "and I anticipate being a judge for the rest of my life."

[THE COURTS]

JUSTICE RICKY POLSTON

On October 1, 2008, Governor Crist appointed Justice Ricky Polston to replace Justice Kenneth B. Bell. He is a native of Graceville, Florida who lives in Tallahassee with his wife of 31 years, Deborah Ehler Polston, a children's book author. They have four biological daughters, ages 18, 21, 23, and 25. They also have adopted six brothers, ages one through 15, from foster care. He obtained both his undergraduate and law school degrees from Florida State University, graduating with high honors and summa cum laude respectively.

From January 2, 2001 to October 1, 2008, he served on the First District Court of Appeal. Since 2003 he has also taught as an Adjunct Professor at Florida State University. Prior to his time on the bench, he was in private practice where he handled commercial-litigation cases in state and federal courts throughout Florida, including matters involving property tax, employment law, disability and health benefits, real property title disputes, and various cases arising from receivership proceedings of insurance companies and HMOs. He also handled various cases involving constitutional law and was a certified circuit court mediator. Initially trained as an accountant, Justice Polston first developed an interest in the law while taking business-law courses in conjunction with his CPA license. Justice Polston mentioned Chief Judge Robert Hinkle, before his appointment to the bench, and John Aurell among his most important mentors.

For those with an interest in appellate work,

Justice Polston was gracious enough to answer a few questions about appellate practice. "Good appellate briefs quickly frame the issue, describe the applicable facts and law and analyze how the



JUSTICE RICKY POLSTON

law applied to those facts results in the relief desired," he said. When asked to describe the qualities that make a good appellate practitioner, he emphasized the need for candor. "Good appellate practitioners build credibility with the court by correctly describing the facts and the law, without any mischaracterizations, even when it may seem to undermine the position taken. They admit those potentially adverse facts and law, and then explain why the court should rule otherwise." He emphasized that "the primary benefit of oral

argument is to address the Court's questions and concerns (not to simply reargue what is already in the brief) and, for an appellee, it is an opportunity to address a reply brief."

I seized on the opportunity to ask Justice Polston about any memorable experiences he may have had while arguing before the Court. While in private practice, Justice Polston argued *Leon County Educational Facilities Authority v. Hartsfield*, 698 So. 2d 526 (Fla. 1997). He remembers being in that all too familiar, and frustrating, position that appellate practitioners often find themselves in: not being permitted to answer a question by a justice before being asked a different question by another justice. Justice Polston offered some advice to young lawyers: "Work for great lawyers who are willing to take the time to teach you how to do excellent work, and to not compromise your integrity and ethics."

[THE COURTS]

JUSTICE JORGE LABARGA

On January 2, 2009, Governor Crist appointed Justice Jorge Labarga to replace Justice Harry Lee Anstead. Justice Labarga took office on January 6, 2009, and his story is one of humble beginnings. Fleeing his native Cuba as an 11-year-old boy after Fidel Castro seized power, Justice Labarga and his family settled in Pahokee, Florida where his father continued working in sugar mills as he had in Cuba. Justice Labarga recalled attaching a Cuban flag to the radio antenna of his father's '56 Chevy. His family's first home was a shack that still stands today. After graduation from Forest Hill High School in 1972, Justice Labarga received his bachelor's degree and his law degree from the University of Florida.

From 1979 to 1982 he served as an Assistant Public Defender in Florida's Fifteenth Judicial Circuit and from 1982 to 1987 he served as an Assistant State Attorney in the same circuit. He practiced with Roth, Duncan & Labarga for four years and with Cone, Wagner, Nugent, Johnson, Roth & Romano for five years before his appointment to the Fifteenth Judicial Circuit by Governor Lawton Chiles. He served on the circuit bench for thirteen years before his appointment to the Florida Supreme Court.

Following his appointment, Justice Labarga commented on the qualities that make a good judge. "A good judge, in my opinion, is one who is all over the place. I'm all over the place. . . . My judicial philosophy is that every case is different, every case should be judged on the merits of the particular case." He said judges cannot and should not be seen by the public as reliably liberal or conservative. He was also realistic about the challenges that await him. "It's going to be a difficult job," he said. "The Florida Supreme Court is not an easy job." In addition to rendering opinions on difficult aspects of law, Justice Labarga said the Court also has a key role in administering the state-court system at a time when resources are getting scarce. "We're going to

have to learn to do more with less," he said of the courts. "That's a major problem."

While on the Fifteenth Judicial Circuit Justice Labarga briefly found himself in the spotlight during the 2000 Presidential election. In *Florida Democratic Party v. Palm Beach County Canvassing Board*, No. 00-11078, 2000 WL 1728721, at *1 (Fla. Cir. Ct. Nov. 22, 2000), he ruled on the Florida Democratic Party's motion for declaratory judgment, requesting that the court invalidate the Palm Beach County Canvassing Board's per se policy of excluding ballots with irregular chads that had not been fully punched out on ballot cards.

He phrased the central issue as follows: "The question before the Court is the standard that the canvassing board must apply in determining the intention of the voters as it examines ballots without a clearly identifiable puncture through one of the Presidential slots." Justice Labarga ruled that the canvassing board could not have a per se policy in place that excluded any ballot and the canvassing board would have to consider the voter's intent under a totality-of-the-circumstances test. "Where the intention of the voter can be fairly and satisfactorily ascertained," he said, "that intention should be given effect." Justice Labarga included this ruling in his application for the Court, citing it as an important opportunity to write about a constitutional issue of first impression.

His appointment was greeted with enthusiasm by members of the Palm Beach bar. Current president, Richard Schuler of the West Palm Beach firm of Schuler Halverson & Weisser, said he believed the new Justice "will be a great Supreme Court justice" because he is "a fair individual." Past president, Meenu Sasser of the Gunster firm in West Palm Beach, said she was "very pleased" with the selection because Labarga "exemplifies the best of our bench here in the Fifteenth Judicial Circuit," which is Palm Beach County. She said she has practiced before him

[THE COURTS]

and was impressed with his preparation for hearings. President-elect, Michelle Suskauer of the Suskauer Law Firm in West Palm Beach, echoed those comments and said Justice Labarga's appointment was "well deserved" and that he is a "hard-working jurist."

See more on Justice Labarga in a separate section of this issue of CABA Briefs devoted to his investiture.

JUSTICE JAMES E.C. PERRY

Most recently, Governor Crist appointed Justice James E.C. Perry to replace Justice Charles T. Wells. He took office on March 11, 2009. He is a native of New Bern, North Carolina. He is married to Dr. Adrienne M. Perry, the former Mayor of Longwood, Florida and currently a professor at Stetson University. They have three children. Justice Perry is a graduate of Saint Augustine's College where he received a Bachelor of Arts in Business Administration and Accounting. After serving in the U.S. Army as a first lieutenant, he went on to Columbia Law School where he earned his law degree in 1972.

Before his appointment, he served as a Circuit Judge in the Eighteenth Judicial Circuit upon his appointment by Governor Jeb Bush in March 2000. He was the first African-American appointed to the Eighteenth Judicial Circuit. Justice Perry later served as Chief Judge of the Circuit for a two-year term beginning July 2003.

Prior to his appointment to the trial bench, Justice Perry was senior partner in the law firm of Perry & Hicks, P.A., where he specialized in civil and business law. Justice Perry has received

numerous honors and awards including the Seminole County NAACP Humanitarian Award, the Orange County Chapter NAACP Paul C. Perkins Award, and the 2005 Martin Luther King Drum Major Award for Social Justice.

In 2004, Justice Perry was honored by his hometown, New Bern, North Carolina, receiving the "Key to the City." And in 2005, the United Negro College Fund selected Justice Perry as one of four individuals to be profiled during its



GOV. CHARLIE CRIST & JUSTICE JAMES E.C. PERRY

national broadcast of "An Evening of Stars: A Celebration of Educational Excellence." Justice Perry also received the prestigious Williams-Johnson Outstanding Jurist of the Year Award for 2006 from the Brevard and Seminole County Bar Associations.

[THE COURTS]

Justice Perry's accomplishments extend well-beyond the professional sphere. He has been actively involved in a variety of community activities, including managing his son's AAU basketball team, the San Lando Greyhounds, but his commitment to improving children's lives extends beyond his own family. As founder and president of the Jackie Robinson Sports Association, he established a baseball league serving 650 at-risk boys and girls—the largest in the nation. The Association, however, did more than coach baseball. Volunteers also served as mentors and provided free tutoring.



In addition to his work with disadvantaged kids, Justice Perry served as captain of the Heart of Florida United Way Campaign and his firm served as general counsel for the Florida Chapter Branches of the NAACP. He currently serves as treasurer on the Board of Trustees for Saint Augustine's College. Justice Perry has been a member of the Carter CME Tabernacle Church of Orlando for more than 20 years, where he currently serves as trustee.

Justice Perry's decision to pursue a legal career was inspired by tragic circumstances. He was serving as a First Lieutenant in the U.S. Army when Martin Luther King, Jr. was killed. That night, he decided that he wanted to leave the Army and attend law school. As a young lawyer, he considered Judge John H. Ruffin, Jr., of the Georgia Court of Appeals, an important mentor. He considers a good appellate practitioner to be someone "who thinks about all sides of an issue because it is often only by considering the weaknesses of your position that you identify its greatest strengths." Justice Perry also empha-

sized that parties should utilize oral argument as an opportunity "to hone in on whatever is not yet clear from the briefs, or to focus on things that were not emphasized in the briefs." "The most effective appellate briefs," he said, "are succinct and focus on the most important issues, which often includes a discussion of jurisdiction."

His advice to lawyers applies equally in the courtroom and life: "Maintain your integrity, above all else, even when you think no one is watching. Your rep-

utation will precede you. It is also important to maintain and nurture positive relationships. In the final analysis, 85% of what you do is relationship-based. You do not form relationships when you need them, you form them in everyday life and call on them when you are in need. Finally, if you want to be great, serve. You receive by giving; do not give simply to receive."

CONCLUSION

The four new justices bring a wealth of knowledge and experience to the bench. Whether it's Justice Labarga's personal journey from a small shack in Pahokee, Florida to the high bench, or Justice Canady's years of varied public service, the new Justices inspire both personally and professionally. There is little doubt that they will each leave their unique mark on the Court and Florida jurisprudence.

Armando Rosquete currently serves as an Assistant U.S. Attorney for the Southern District of Florida in the Narcotics Section. Prior to joining the U.S. Attorney's Office, he worked at Hogan & Hartson LLP and served as a law clerk to Justice Raoul G. Cantero from August 2003 to August 2004.

Judicial Review

Who is qualified to be a judge in Miami?

The Dade County Bar Association (“DCBA”) by-laws do not allow me as the organization’s president to endorse or contribute money to any candidate for elective public office. You will not be surprised to learn that I saved some money and everybody was my friend during the last election cycle. As the leader of our community’s umbrella bar organization, however, I do have opinions about the political process in South Florida judicial elections.

For starters, the assertion that residents of Miami-Dade County vote in judicial (or other) elections exclusively on the basis of the apparent ethnicity of a candidate’s last name is as insulting to the diverse members of our community as it is undermining of the civil and criminal justice system’s reputation for fairness, impartiality, and respectability. True, not all names – and certainly not all hyphenated names – are created equal. This is especially true in today’s sound-bite media age where perception seems to get the better part of reality. However, our community is not served when otherwise regular political contests are charged artificially with racial, ethnic, and gender-based rhetoric by our brethren in the legal community.

Against this backdrop, I believe it is imperative that the voluntary bar associations come together to candidly and cooperatively confer to develop a unified strategy to optimize the chance that the most qualified candidates for elected office win. Promoting the diversity of our judiciary – not just in Miami, but state-wide – is and should be a core value of every Florida lawyer’s

professional responsibility to seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. Equally obvious is the obligation of voters, legislators, executives, and other decision-makers to select candidates with the appropriate merit, character, and temperament necessary for the public office sought.



By Tim Ravich

Recently, in late December 2008, the Florida Supreme Court Judicial Nominating Commission considered 18 applicants for a vacancy on the State’s highest court created by the retirement of Justice Harry Lee Anstead. Because seven of the 18 candidates were from Miami, I felt a special responsibility as DCBA President to express and invite support for our local candidates. Specifically, I wrote to the DCBA’s entire membership to urge our legal community to voice its support for our own local judges and practitioners. After all, Miami is one

of the most diverse metropolitan locations in the nation and it is appropriate that the state judiciary reflect a commitment to diversity by drawing from the rich variation in viewpoints, talents, and backgrounds that are the hallmarks of our bench and bar. Make no mistake: I was comfortable sending this message because – and primarily because – I had confidence in the qualifications of each of the candidates.

Florida’s Governor is committed to diversity, as some interesting events occurred as this article went to print, however. Governor Charlie Crist returned a nominating commission’s recommendation of several judicial candidates for a seat on

[THE VOLUNTARY BARS]

the Fifth District Court of Appeal on the grounds that the list of candidates lacked diversity. Later, Governor Crist appointed Palm Beach Circuit Court Judge Jorge Labarga to the Fourth District Court of Appeal. As a result, Judge Labarga was no longer in the running to fill Justice Anstead's seat and Governor Crist asked the Florida Supreme Court Judicial Nominating Commission to send him two more names for potential appointment. Because Governor Crist had earlier appointed two (exceptionally qualified) white men to the high court—Justices Charles T. Canady and Ricky Polston—it was assumed that he could not and would not appoint another white man, notwithstanding the merits of any particular individual. I am concerned that this assumption has found some momentum in our community, thereby creating a political process that allows the qualifications of otherwise excellent candidates for office to be diluted or even overridden by demographic considerations.

Based on the names ultimately sent to the Governor, Floridians should be totally confident that a sound judge will succeed Justice Anstead. But, the atmosphere surrounding the appellate and supreme court judges appointment process, along with local bench and bar elections, raises an overriding question: Should particular public posts correspond directly to demographics, whether Hispanic, White, Jewish, Female, African-American, etc.? Should there be such a thing as a conservative seat, a liberal seat, a women's seat, etc.?

Consider one of the latest justices whose retirement created a vacancy for Governor Charlie Crist to fill. Justice Anstead's formal biography explains that he was raised as the youngest of six



children by his mother in Jacksonville's Brentwood housing project just after the Great Depression and in the years during and after World War II. "He worked at a young age, cutting lawns, moving furniture, doing anything to help support himself and his family, and ultimately build a future career as a lawyer and public servant." He raised five children and is now the grandfather of four. Justice Anstead not only overcame challenges in life, but excelled as a scholar and jurist, working for the National Security Agency in Washington, D.C. and becoming the first sitting judge in the United States to earn an academic degree in the judicial process, receiving his Master of Laws degree from the University of Virginia. Justice Anstead and his wife also have taken special interest in advocating for children's rights.

Wow. Let's get more justices with those sorts of credentials—whatever their race, gender, or ethnicity. To be sure, the make-up of a political candidate is obviously important, but it should not override the candidate's resumé. There is work to be done, and I write now to propose that the various voluntary bar associations in our community—and DCBA, CABA, FAWL, Wilkie-Ferguson Bar and other voices—work together to ensure that public officials in Miami-Dade County are not just, in President Abraham Lincoln's words, "of the people, by the people, for the people," but also among the best and capable of all the people in our community.

Timothy M. Ravich is the President of the Dade County Bar Association. He practices aviation law, commercial litigation, and products liability defense with the law firm of Clarke Silverglate & Campbell, P.A. in Miami, and welcomes comments at travich@csclawfirm.com.



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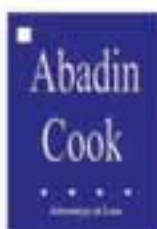
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Florida Supreme Court Justice Jorge Labarga and his lovely wife, Zulma.

Photos by Stacy Ferris, Office of the Governor

Justice Jorge Labarga

The Florida Supreme Court's
second Cuban Justice.

When Justice Labarga asked me to speak at his investiture, I was deeply honored. However, the true breadth of the honor didn't really hit me until I learned more

about the man himself.

At the age of 11, Justice Labarga fled his native Cuba with his family, after Fidel Castro seized power, settling in Pahokee, Florida, where his father worked in the sugar mills. Later, the family moved to West Palm Beach, where Justice Labarga graduated from Forest Hill in 1972 and enrolled at the University of Florida, majoring in Political Science, and then enrolling in the University of Florida Law School. Rene Lamar, Justice Labarga's best friend in law school, and Alfredo Garcia, Dean of St. Thomas Law School and a classmate of Jorge's, praise Justice Labarga's analytical skills and work ethic, and both commented that his law school notes were the envy of his classmates.

After graduation, Justice Labarga began his public service. He was an assistant public defender from 1979 to 1982 and an assistant state attorney from 1982 to 1987. In 1987, he entered private practice in Palm Beach County Florida at the law firm of Roth, Duncan and Labarga. After several years of private practice, he returned to public service being appointed to serve on 15th Judicial Circuit in and for Palm Beach County Circuit Court, and earlier this year for one day on the 4th District Court of Appeal before being appointed to the Florida Supreme Court.

I also had the pleasure of speaking with the Justice's wife, Zulma, and as I did, the love, devotion and mutual admiration they share was obvious, and the commitment to their your

daughters, Stephanie and Caroline, cannot be denied. Mrs. Labarga also shared anecdotes related to the lives transformed through the Justice's good deeds. I learned about the waitress who approached Jorge at a restaurant and thanked him for helping her straighten out her life. I learned about the teenager from Wellington High

School who had been breaking into people's homes before the Justice intervened and helped him steer a new course. And like these, I learned of countless others whom owe the Justice a debt of gratitude for his selfless commitment to improving their lives.

In summary, Justice Labarga, devoted father and husband, cherished friend, acclaimed jurist, and only the second Cuban to be named to the Florida Supreme Court (and the first to have been born on the island), I offer you a heartfelt congratulations from all of your friends at the Cuban American Bar Association. We wish you, and all of the new Justices, Godspeed.

Roland Sánchez-Medina, Jr. currently serves as the President of the Cuban American Bar Association. He practices corporate, tax and transactional law with the firm of Sánchez-Medina, González, Quesada and Lage in Coral Gables.



[P I C T O R I A L]

Spring Mentor Reception

Bilzin Sumberg • March 31, 2009

The Cuban American Bar Association held its Annual Spring Mentor Reception at the firm of Bilzin Sumberg Baena Price & Axelrod LLP, the event sponsor. Over one hundred people attended including judges, attorneys and law students. The goal of the reception was to give students and their mentors another opportunity to meet and socialize during the academic year (the initial pairings took place in October 2008 at the Fall Mentor Reception).

The Spring Mentor Reception was also the perfect venue to announce CABA's Passing On Leadership award. This honor is bestowed annually on the CABA member whom most embodies the cause of mentoring. This year, CABA pre-

sented the award to Ramón Abadin of the firm of Abadin Cook. Ray, a CABA Past President and member of The Florida Bar Board of Governors, has made mentoring law students and young attorneys one of his top priorities, and we are proud of his achievements in this regard. Congrats, distinguido!

CABA strongly encourages all of its members to participate in the mentoring program, so if you would like to serve as either a mentor or a mentee, please sign up via www.cabaonline.com. You may also contact either of the co-chairs of CABA's Mentoring and Scholarship Committee, Raul Chacón at rchacon@houckanderson.com or Victoria Méndez at victoriamendez@aol.com.



[SPRING MENTOR RECEPTION 2009]



[SPRING MENTOR RECEPTION 2009]



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[P I C T O R I A L]

CABA Pro Bono Breakfast

Versailles Restaurant • March 26, 2009

The Cuban American Bar Association Pro Bono Committee sponsored a breakfast at Versailles Restaurant featuring a presentation entitled “Foreclosures and Renegotiating Mortgages: Hot Topics in Property Law” conducted by noted real estate attorneys John Ruiz, of the Ruiz Law Center, and Juan Martínez, of Gray Robinson, P.A. The purpose of the event was to educate the legal community on recent issues in real estate law, as well as to recruit additional attorneys to participate in CABA’s Pro Bono Project. With South Florida at the ignominious epicenter of the national mortgage crisis, CABA’s Pro Bono Committee is committed to

doing everything in its power to helping the low-income and indigent clients that it serves stay in their homes and keep their families intact.

On that front, the event was a complete success as it was not only very well attended, with over 60 members of our legal community participating, but a great majority of the attorneys who participated agreed to assume at least one pro bono case involving landlord-tenant issues. If you were unable to attend, but are interested in giving back to your community, please contact Sandra Ferrera, Chair of CABA’s Pro Bono Committee, at sferrera@melandrussin.com.



[CABA PRO BONO BREAKFAST]



[THE WEBSITE]

Que Pasa CABA?

CABA Online gets a facelift.

This year will bring significant change to our monthly online newsletter, “Que Pasa CABA?”, or QPC for short. As many of you may have already noticed, the new format for the newsletter was introduced in the March edition, and has continued through April. Members are encouraged to visit the QPC webpage to discover the new features such as pointing and clicking between sections of the newsletter, a marked improvement over the endless scrolling of issues past.

QPC is also featuring a more robust “Members in the News” section, and we encourage all of our members to submit summaries of recent

achievements or career milestones for circulation on QPC. Additionally, a new section, “Remember When”, presents one or more photographs of vintage CABA events as submitted by CABA members contributing to ongoing archiving efforts. We have also focused on simplifying feedback links in an effort to collect more comments and suggestions from members. Please help us make QPC a welcome and useful medium by which to update our membership on CABA’s latest and greatest.

Manuel Crespo, Jr. is a sole practitioner whose practice focuses on civil and criminal litigation as well as real estate law.

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