

THE FLAME

WINTER/SPRING 2014
NEWSLETTER

GREATER MIAMI CHAPTER
OF THE AMERICAN CIVIL
LIBERTIES UNION

DEATH PENALTY

Florida's definition of mental retardation comes before U.S. Supreme Court

BY TODD SCHER

IN ITS 2002 DECISION IN *ATKINS V. Virginia*, the United States Supreme Court held that the Eighth Amendment to the United States Constitution prohibited the execution of death-sentenced prisoners who have been determined to suffer from mental retardation. This March, the U.S. Supreme Court will confront that ruling anew, this time in the Florida case of Freddie Lee Hall, where it will determine the constitutionality of Florida's unique definition of mental retardation and decide whether Hall's execution will take place.

Freddie Lee Hall was originally sentenced to death in 1978 for his part in the abduction and murder of a 21-year-old pregnant woman. Hall's elementary-school teachers repeatedly classified him as mentally retarded and needing a "special teacher." At court proceedings in Hall's case, family members testified that his "mind wasn't right," that he was "slow with his speech" and that he had significant learning difficulties.

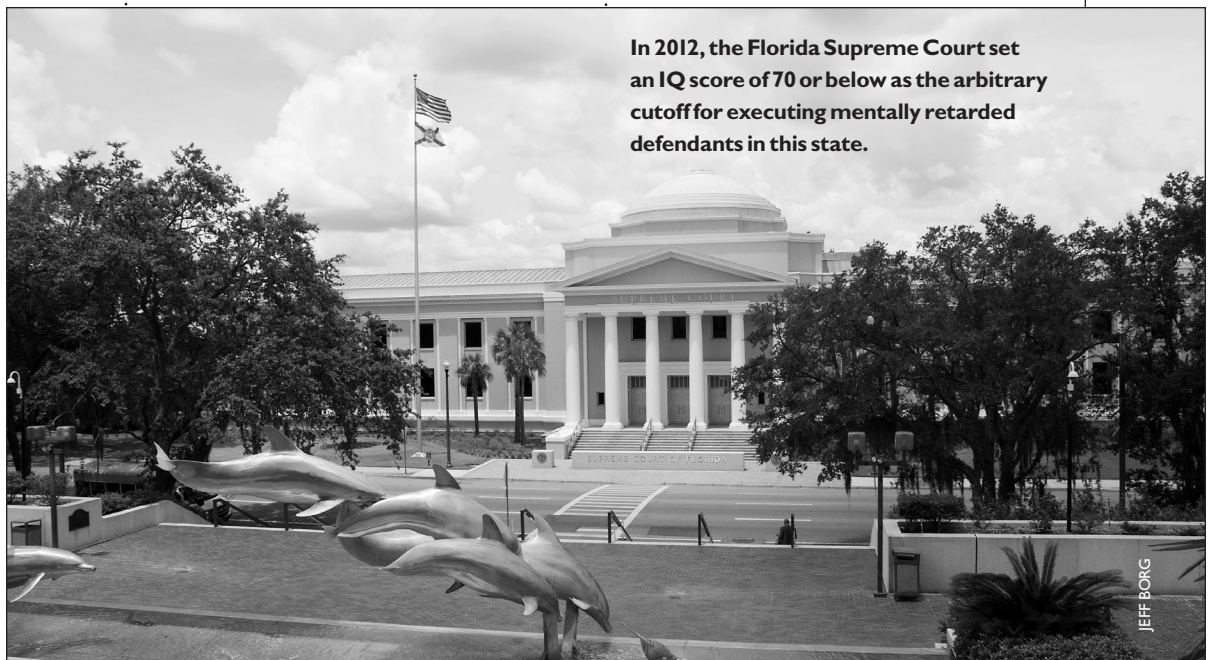
Hall never received any help for his developmental problems at home, where he and his 16 siblings were abused and starved by their mother. He and his siblings often worked 14 hours a day in the fields only to come home to empty dinner plates.

THE COURT SYSTEM has also long recognized Hall's mental retardation. For example, a judge in 1991 found "substantial evidence" that Hall "has been

mentally retarded his entire life."

Justices on the Florida Supreme Court, too, have acknowledged Hall's mental retardation. In a 1999 decision, former Chief Justice Rosemary Barkett wrote that executing Hall would violate Florida's constitutional prohibition on cruel or unusual punishment. But despite a documented lifelong diagnosis of mental retardation, Hall remains on death row.

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In 2012, the Florida Supreme Court set an IQ score of 70 or below as the arbitrary cutoff for executing mentally retarded defendants in this state.

JEFF BORG

PRESIDENT'S MESSAGE

Why Americans should support immigration reform

BY JEFF BORG

WHY SHOULD CIVIL LIBERTARIANS in Florida care about immigrants? First, because all persons, not just citizens, deserve due process, and they are not getting it.

In South Florida, five Sri Lankan asylum seekers recently languished in federal custody without bond for more than three years. In Massachusetts, a federal judge just granted class-action status to

detainees held there without bond hearings for six months. The average stay for an immigrant in federal custody is a month.

More important, we should care about immigrants because they are so many of our most energetic, creative, productive, intelligent, indefatigable coworkers, friends, and family members. They have to be.

Before she died, my Armenian grandmother recounted the harrowing story of her escape from central Turkey during the pogroms of the 1910s. The unlikely adventure sounded just like the plot of a spy movie.

BUT DESPITE MY GROWING UP in Dade County during the 1970s, when Cuban refugees were transforming this place into the capital of Latin America, I never knew anyone with immigration issues. Not until young Jose Mendoza, from South America, stumbled into my circle of friends in 1999. I learned about immigration — and perseverance — from him.

Cuban nationals merely have to touch dry land to get status. Canadians and Bermudans need only their passports to enter. A visa-waiver program welcomes visitors from another 37 countries — 81 percent of them in Europe. None is in Africa, South America, Central America, or the Caribbean. For Mendoza, just to wrangle a tourist visa was huge.

As a kid, his legs were weak, so he worked extra hard to become the leading ballet dancer of his country. After a drunk driver killed his friends, smashed his knees, and ended his career in dance, Mendoza launched a new career in medical research. When he arrived in Miami and his hosts abandoned him, he scrambled to make new friends.

Immigrant Jose Mendoza contributed countless hours of volunteer time and thousands of dollars in fees before his naturalization ceremony, seen here.



Mendoza filled his days here volunteering with several charities. After living through Hurricane Charley, he volunteered with the Red Cross in Punta Gorda. After witnessing the World Trade Center collapse, he reported for Red Cross duty at Ground Zero. He mastered English and learned about civil liberties.

But back home, when thugs and police robbed and beat him once too many times just for being gay, Mendoza gathered up his evidence, applied for political asylum in Miami, received it in record time, and the next day landed his dream job, researching HIV vaccines.

In Washington, he ran malaria vaccine trials for the U.S. Navy, served on a panel of the Food and Drug Administration, and partnered with Colon Cancer Alliance to launch a new Hispanic outreach operation, including fund-raising. Now in Los Angeles, Dr. Mendoza runs all clinical operations for a leading pharmaceutical research firm.

Two years ago, Jose Mendoza finally got to raise his hand in the stately federal courthouse on Constitution Avenue across from the Capitol, swear allegiance to the United States, and become one of us. From asylum to citizenship, he spent seven years and \$47,000, which he earned himself, on lawyers, applications, and documentation. We are a better society because he was strong enough, smart enough, and lucky enough to ply our byzantine immigration system.

Maria Rodriguez, an ACLU member who has received the chapter's Rodney Thaxton Racial Justice Award, is executive director of the Florida Immigrant Coalition. Last November, the group hosted the National Immigrant Integration Conference here in Miami.

Advocates came from around the

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POTTINGER LAWSUIT*Core protections remain in place as local homeless settlement gets altered***BY DANTE P. TREVISANI**

THE *POTTINGER V. CITY OF MIAMI* lawsuit recently reached what may be its final chapter. Litigated for a decade starting in 1988 by attorneys who were members of the Greater Miami Chapter of the ACLU, the case resulted in a historic agreement that protects the rights of homeless individuals in Miami.

In 1998, Federal District Judge Federico Moreno entered the ACLU-City agreement as a binding consent decree, and it remains in effect today. It prohibits Miami police officers from arresting homeless individuals who commit one of several “life-sustaining conduct” misdemeanors if there is no available shelter bed within the City of Miami.

The agreement also prohibits Miami police from arbitrarily destroying homeless people’s property and requires the city to keep records of every police encounter with homeless individuals. Essentially, the agreement prevents the city from criminalizing homelessness.

In September 2013, the city asked Judge Moreno to eliminate the agreement’s core protections. The Greater Miami Chapter of the ACLU opposed the changes. Led by chapter board member Benjamin Waxman, the lead attorney in the earlier round of litigation and settlement, the team of attorneys included University of Miami law professor Stephen Schnably, ACLU of Florida’s Associate Legal Director Maria Kayanan, chapter board member and Florida Justice Institute attorney Dante Trevisani, and Florida Legal Services attorney Arthur Rosenberg. Schnably and Rosenberg were also on the team who negotiated the 1998 agreement. Bobbi Ibarra and Terry Coble of the Miami Coalition for the Homeless provided invaluable assistance.

Judge Moreno ordered the parties to negotiate with the assistance of a neutral mediator, former Third District Court of Appeals Judge Angel Cortiñas. After nearly 20 hours of intense negotiations over two days, with named class representatives David Peery and Carole Patman participating, the parties agreed on limited modifications.

These modifications leave the 1998 agreement’s core protections in place. Miami police still cannot arrest homeless people for certain “life-sustaining conduct” misdemeanors if there is no shelter bed available in the City of Miami. The changes include:

- Building structures or lighting fires in parks will no longer be “protected” misdemeanors.
- Arrests can be made, regardless of the availability of a shelter bed, for bathing or going to the bathroom in public if within a quarter mile of an open public restroom.
- Arrests can be made, regardless of the availability of a shelter bed, for blocking a sidewalk by lying on it perpendicular to the street or causing someone to walk into the street.
- Citations can be given for littering if done within 300 feet of a usable trashcan.
- Arrests can be made for any misdemeanor, regardless of the availability of a shelter bed, if the conduct causes an imminent threat of physical injury.
- The shelter that must be offered can be a three-inch mat instead of a bed.
- Registered sex offenders will no longer be protected by the agreement; however, other options for legal challenges to draconian residency restrictions that render them homeless remain open.

THE PROPERTY PROTECTIONS remain in place, except that any property can be confiscated and destroyed if it poses an obvious safety risk. Neither party is permitted to request further modifications to the agreement before January 2016. Finally, every six months and free of charge, the city will be required to provide the ACLU with documentation of all encounters with the homeless.

These changes were to take effect only if the court approved them. As class

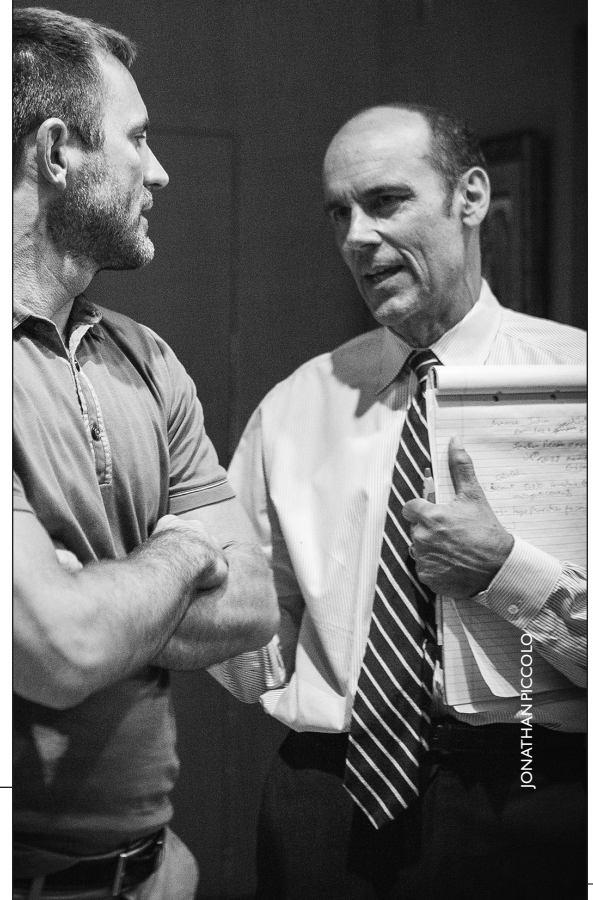
members, homeless people in Miami had the right to know about the changes and object if they disagreed with them. The ACLU lawyers conducted an extensive notice effort through presentations in shelters and at church feeding programs, outreach on the street, and distribution of hundreds of flyers explaining the changes in English and Spanish.

Judge Moreno held a fairness hearing on February 28 at the federal courthouse at 400 North Miami Avenue. He made a final decision to approve the proposed changes that day.

This campaign has truly been a team effort involving countless hours of legal work by ACLU attorneys and other volunteers. It represents a major part of the ACLU’s commitment to protect the constitutional rights of homeless people, ensuring that their very existence is not criminalized.

Dante Trevisani is the vice chair of the Legal Panel of the Greater Miami Chapter of the ACLU.

Chapter Legal Panel Chair Jeffrey Hearne, left, gets an update from Benjamin Waxman, lead attorney on the chapter’s Pottinger litigation and settlement.



JONATHAN PICCOLO

BILL OF RIGHTS RECEPTION

Chapter celebrates civil libertarians who have moved freedom forward

BY LORNA VERALDI

ON JANUARY 24, 2014, THE GREATER Miami Chapter of the ACLU once again held its annual Bill of Rights Reception and Awards Presentation at the tony South Miami home of Gabriele and Patrick Fiorentino. Supporters of civil liberties from around South Florida gathered to honor community activist Jack Lieberman and *Miami Herald* reporter Carol Rosenberg.

Greater Miami Chapter board member Julia Dawson presented the Stanley Milledge Lifetime Achievement Award to Lieberman. She noted that his grassroots activism and commitment to equal justice began early. As a teenager in

1965, he became active in the civil rights movement, joining the Southern Christian Leadership Conference, whose first president was Dr. Martin Luther King, Jr. In the late 1960s, as a college student at Florida State University, Lieberman fought for free speech as a member of Students for a Democratic Society. When he was expelled from FSU for teaching a course on revolutionary politics, the ACLU came to his defense.

In 1978, Lieberman became one of the co-founders of the Haitian Refugee Center in Miami, and in the decades since he has been an outspoken advocate for the rights of Haitian-Americans. In the age of the Internet, he has broadened his advocacy for social justice to cyberspace, regularly informing a network of social activists about important developments.

Howard Simon, executive director of the ACLU of Florida, presented the Maurice Rosen Act of Courage Award to *Miami Herald* reporter Carol Rosenberg. Simon stated that almost everything the

SPONSOR Thanks, Jeff

THANKS TO JEFFREY HEARNE, the Greater Miami Chapter's first vice president and Legal Panel chair, for sponsoring our 2014 Bill of Rights Reception. To help advance the ACLU's mission of liberty for all, you can sponsor our annual Law Day Reception, coming up in May, by contacting any officer listed in the masthead on page 2.

American public knows about the prison at Guantánamo is a result of Rosenberg's dogged reporting efforts over more than a decade.

She was there on the first day, January 11, 2002, when the U.S. government brought its initial captives in the war on terror to Guantánamo. Since then, she has been at Guantánamo more than any other journalist, fighting for access to informa-



tion. In a recent front-page story in the *Herald*, Rosenberg wrote that even routine information is becoming more and more difficult to obtain as the years go by. Because Guantánamo is isolated and because so much time has passed since the terrorist attacks of 2001, she noted, “What is happening there in this new era has mostly gone unnoticed.”

Rosenberg, however, has stayed on the story — a constant presence at Guantánamo as 12 different commanders and thousands of U.S. troops have rotated through. So far, the detention center has withstood all efforts at closure, including President Barack Obama’s 2009 pledge to shut it down within his first year in office. In a recent interview published in the *Herald*, retired Marine Corps Major General Michael Lehnert, who commanded the detention center when it first opened in 2002, bluntly told Rosenberg: “It is time to get back to the rule of law, both domestic and international, and close Guantánamo.”

Until that happens, the ACLU will continue to be grateful for Rosenberg’s courageous efforts to shed light on the secretive detention, interrogation, and trials of terror suspects — and the troubling questions Guantánamo raises about fundamental American liberties and values.

Lorna Veraldi is the treasurer of the Greater Miami Chapter of the ACLU.

PROFILE: BRANDON DEEGAN

Dedicated activist starts club, recruits UM law students

BY LORNA VERALDI

ONE OF THE MOST IMPORTANT issues facing every community organization is recruiting the next generation of activists. In the fall of 2013, the Greater Miami Chapter of the ACLU was thrilled to see a new student club created at the University of Miami law school and to welcome its founder, Brandon Deegan, to our board of directors.

Deegan grew up in Gainesville and says he became interested in the ACLU at a young age. “My father would often tell me that he always respected how the ACLU stuck to its principles and stood up for the rights of people regardless of how unpopular the person’s cause.” An anthropology major at the University of Florida, Deegan became involved in human rights activism as a member of Human Rights Awareness on Campus.

Now a third-year law student at the University of Miami, Deegan says he wanted to get involved with the ACLU but found that the UM law school did not have a student club. So last summer he decided to attend a monthly board meeting of the Greater Miami Chapter. He met President Jeff Borg, who encouraged him to start an ACLU student club at UM. One month was all it took for him to turn Borg’s suggestion into a reality. He quickly did all the paperwork, and by October 2013, he was ready to launch ACLU-UM. Borg has nothing but praise for Deegan: “He’s a dynamic young man. I’m thoroughly impressed with how he showed up at the board meeting, found out he could form a UM club, and made it happen.”

Deegan quickly set out to recruit other activists. In less than six months, more than 50 students have joined ACLU-UM. Deegan says the new student club is growing rapidly. “Our main purposes are supporting the Greater Miami Chapter, fighting for civil liberties, and connecting students with pro-bono opportunities, volunteer opportunities, and potential employers.”

Last November, soon after ACLU-UM was formed, Deegan organized members to help the local chapter with outreach at the Miami Book Fair International. Currently, ACLU-UM members are helping with information sessions to inform the homeless about changes to the *Pottinger* settlement negotiated between the ACLU and the City of Miami (see page 3). ACLU-UM

is also planning a variety of panels on important civil liberties issues. On March 31, the club will host a panel featuring Michael E. Pheneger, a retired U.S. Army colonel and president of the ACLU of Florida, to discuss the impact of mass surveillance.

In addition to serving as president of ACLU-UM and a member of the board of the Greater Miami Chapter, Deegan

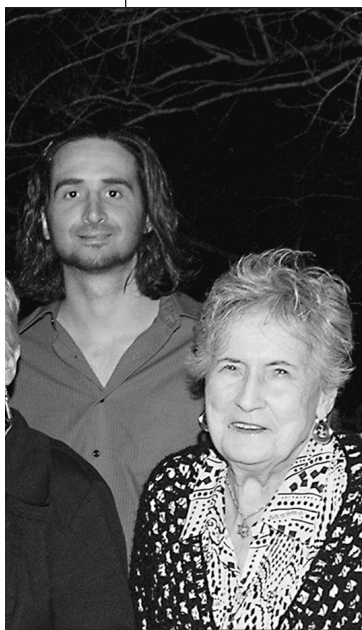
also serves on the chapter’s legal panel. He is an intern with the Miami-Dade Public Defender’s Office and works for the law firm of chapter board member Israel Sands. After graduation, Deegan, who is engaged to Jenny Farkash, hopes to work full-time in the Miami-Dade Public Defender’s Office.

Right now, however, his focus is on creating both civil liberties awareness and activism among his fellow students. In his words, “Talking about civil liberties issues is not enough. Our members are actively working with the Greater Miami Chapter of the ACLU to help the people of Miami and to achieve concrete change.”

Lorna Veraldi is a staff writer of The Flame and the treasurer of the Greater Miami Chapter of the ACLU.



Brandon Deegan,
civil libertarian



Miami Herald reporter Carol Rosenberg, far left, who writes on the Guantánamo Bay prison, displays the Maurice Rosen Act of Courage Award. Community activist Jack Lieberman, left, flanked by family members, holds the Stanley Milledge Lifetime Achievement Award.

DEATH PENALTY

From page 1.

In 2012, the Florida Supreme Court was again provided with the opportunity to reduce Hall’s sentence from death to life imprisonment in light of the U.S. Supreme Court’s *Atkins* decision. This time, however, Hall was confronted with the Florida Supreme Court’s new test for determining whether Florida would be prohibited from carrying out a death sentence for a mentally retarded individual.

Under this test, a death-sentenced inmate could not be executed under the *Atkins* decision if he or she had an IQ score of 70 or below, notwithstanding any other evidence to support a finding of mental retardation. Because Hall’s scores, which fell in a range between 71 and 80, were above the arbitrary “cutoff” of 70, a majority of the Florida Supreme Court justices ruled that Hall’s execution would not offend the Eighth Amendment and that his death sentence could be constitutionally enforced.

The Florida Supreme Court’s 2012 decision was highly fractured. Justice Barbara Pariente, while concurring with the majority’s decision in light of the fact that Hall’s scores were not below the cutoff of 70, wrote of her “concern” that in some states, which did not have the cutoff score of 70, Hall would be ineligible for execution, while in others, like Florida, he was still subject to the death penalty. She also wrote that perhaps, one day, the U.S. Supreme Court would review this issue — a statement that would come true in Hall’s own case.

Justices Jorge Labarga and James E. C. Perry, who dissented from the affirmation of Hall’s sentence, were more forceful in their analyses. Labarga

In October 2013, the U.S. Supreme Court agreed to review Hall’s case, no doubt in reaction to the divided decision by the Florida Supreme Court and the overarching importance of the issue.

expressed profound disagreement with Florida’s arbitrary cutoff score, finding that it created a “substantial risk” that mentally retarded defendants would be executed by the State of Florida. Perry’s dissenting opinion was more blunt: “If the bar against executing the mentally retarded is to mean anything, Freddie Lee Hall cannot be executed.”

In October 2013, the U.S. Supreme Court agreed to review Hall’s case, no doubt in reaction to the divided decision by the Florida Supreme Court and the overarching importance of the issue. And once more, Florida finds itself at the forefront on the capital-punishment front.

Indeed, the battle lines have been clearly drawn in the briefs filed by Hall and Florida. According to Hall’s brief, the “predictable consequence” of Florida’s arbitrary cutoff score is that “persons with mental retardation will be executed” and that Hall, who was classified as men-

tally retarded by his teachers over 60 years ago, will be put to death only because of Florida’s unconstitutional rule.

Florida, on the other hand, argues that it is exercising its “prerogative” to set a cutoff score at 70 and that the sovereign authority of Florida and other states over the “administration of their criminal justice systems” trumps Hall’s constitutional arguments. According to Florida’s brief, states are “laboratories for devising solutions to difficult legal problems,” and thus the U.S. Supreme Court should decline to strike Florida’s standard and should leave Hall’s death sentence in place.

Arguments before the U.S. Supreme Court are scheduled to take place soon, and its highly anticipated decision is expected by the end of its current term in June 2014.

Todd Scher is a staff writer for The Flame and a member of the board of directors of the Greater Miami Chapter of the ACLU.



In 1999, former Florida Chief Justice Rosemary Barkett wrote that executing Hall would violate the state constitutional prohibition on cruel or unusual punishment.

WEB miami.aclufl.org

THE FLAME has gone online at the Greater Miami Chapter’s web site, MIAMI.ACLUFL.ORG. Find recent articles, pictures, and late-breaking news, as well as upcoming events.

BOARD Come to meetings

THE GREATER MIAMI Chapter of the ACLU invites you to participate as a guest at its dinner meetings at 6:30 p.m. on the first Tuesday of months except January and July; the November meeting is on the second Tuesday.

The location is the private room at Soyka restaurant, 5556 Northeast Fourth Court, Miami, Florida 33137, with plenty of parking.

PRESIDENT'S MESSAGE

From page 2.

country to network with fellow educators, students, publishers, authors, philanthropists, legislators, executives, bureaucrats, lawyers, organizers, labor leaders, religious people, and policy wonks. They worked on developing human capital and citizenship, expanding rights and freedoms, and receiving new members into our communities.

On immigration reform, U.S. Chamber of Commerce President Thomas J. Donohue stated recently, "It will add jobs, talent, innovation, investment, and dynamism to our economy."

Reform now languishes in the House of Representatives, where a recalcitrant

Tea Party threatens Republican members with primary fights if they vote for it. Civil libertarians should support reform and be sure their congresspeople know it.

In Miami-Dade, our ACLU chapter helped convince the county to withdraw from the federal ICE-detainer program, which misuses local resources to round up undocumented coworkers, friends, and family members. We plan more activities to support the rights of immigrants. So call, write, come, help.



According to the White House:

BUSINESS. Immigrants are 30 percent more likely to launch a business. They started 25 percent of U.S. public companies backed by venture capital, including Google, eBay, Yahoo!, and Intel.

JOBS. Immigration reform could support and create up to 900,000 new jobs in three years. Immigrants are 33 percent of our engineers; comprise 27 percent of our mathematicians, statisticians, and computer scientists; and account for 24 percent of our physical scientists.

GDP. If passed, reform would increase gross domestic product by at least 0.8 to 1.3 percent from 2012 to 2016.

REACHING OUT

Did you know Tobias Simon?

BY DINA WEINSTEIN

I AM A MIAMI-BASED journalist researching Tobias Simon (1930–1982) for a number of articles on the 50th anniversary of the 1964 civil rights demonstrations in St. Augustine, Florida, that were key to passing the federal Civil Rights Act.

Simon was a Miami-based lawyer who specialized in civil rights cases, representing those in need. He represented Dr. Martin Luther King, Jr., when he was jailed in St. Augustine, as well as hundreds of protesters. Born in Montreal and educated at Harvard Law School, Simon personally led Florida opposition to the death penalty in the 1960s and 1970s. Since his death, the Florida Bar has annually recognized a private lawyer for voluntary, free legal services to the poor with an award in Simon's name.

I am eager to connect with people who knew Simon. I would be very grateful to hear from people who were a part of the Lawyers' Constitutional Defense Committee (LCDC), which handled important civil rights cases during the 1960s. Please get in touch with me at 786.246.0644 or coralgablesdina@gmail.com.

ELECTIONS

Greater Miami Chapter elects board members, officers for 2014

ELECTIONS FOR THE GREATER MIAMI Chapter's officers and board of directors took place at the chapter's annual meeting on December 3, 2013. An installation brunch was held at the home of board member Benjamin Waxman on January 19, 2014.

DIRECTORS. The following were elected for a two-year term on the board of directors: Joseph F. Bessard, Ronald Bilbao, Jeff Borg, Omar Contreras, Mariano Cruz, Julia Dawson, Charles Fischer, Nicole Foster, Linda M. Horkitz, Max Lesnick, Rigo Lozano, Joseph E. Nascimento, Jean Newland, Israel Sands, Mauro C. Santos, Carlene Sawyer, Dante Trevisani, and Lorna Veraldi.

OFFICERS. At the annual meeting, members of the board who were present and voting elected officers for a one-year term. Jeff Borg is serving as president again. Jeffrey Hearne is first vice president and Manning Salazar is second vice president. Lorna Veraldi



Chapter board members meet over dinner each month at Soyka.

and Christopher Brochyus will handle the treasurer's and secretary's jobs, respectively, for another term.

Borg appointed two additional board members for one-year terms: Ellis Berger and Emily Graham. They filled slots that were vacant for the remaining year of the board's 2012–14 term.

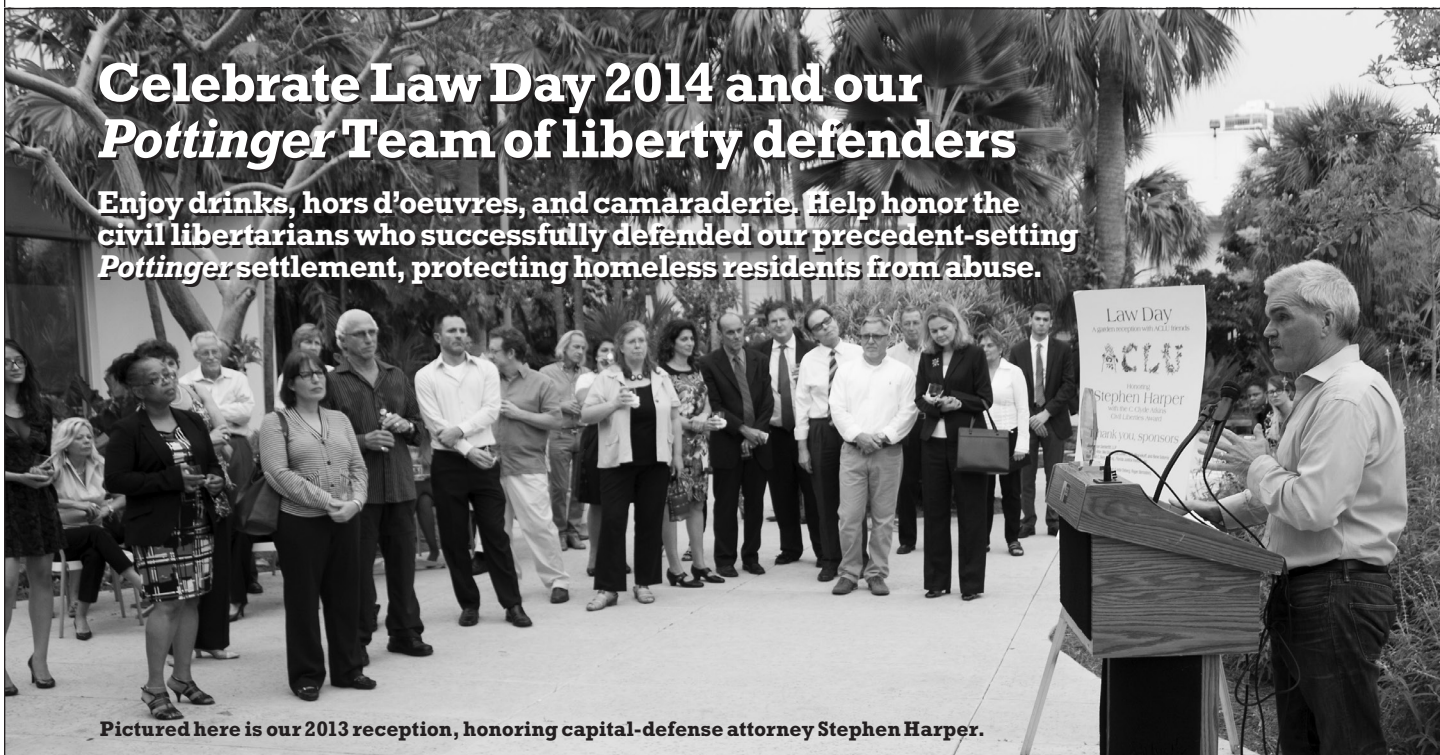
Benjamin Waxman chaired the Nominating Committee and Linda M. Horkitz served as vice chair. Members of the committee were Ronald Bilbao, Helen McEachrane, Lorna Veraldi, and Jeffrey Hearne, first vice president, as an ex-officio member.

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American Civil Liberties Union**
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Celebrate Law Day 2014 and our *Pottinger* Team of liberty defenders

Enjoy drinks, hors d'oeuvres, and camaraderie. Help honor the civil libertarians who successfully defended our precedent-setting *Pottinger* settlement, protecting homeless residents from abuse.



Pictured here is our 2013 reception, honoring capital-defense attorney Stephen Harper.

IN 2014, THE ACLU OF FLORIDA GREATER MIAMI Chapter will bestow the C. Clyde Atkins Civil Liberties Award on the *Pottinger* Team: lead attorney Benjamin Waxman; cooperating attorneys Stephen Schnably, Maria Kayanan, Dante Trevisani, Arthur Rosenberg, and Valerie Jonas; advocates Bobbi Ibarra and Terry Coble; and plaintiffs David Peery and Carole Patman.

An individual ticket is \$65, or sponsor this high-profile event for \$500 for 10 guests. Ask about scholarships for low-income attendees.

Please RSVP at miami.aclufl.org. For questions, email israelsands@gmail.com or call 305.528.5581.



Law Day Reception

Miami Beach Botanical Garden • Friday, 2 May 2014, 6–8 p.m.

