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Foreword

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FOREWORD

HON. EDWIN G. TORRES*

With great appreciation for the opportunity to introduce the *University of Miami Law Review*'s Eleventh Circuit Issue this year, forgive me for paying tribute to our corner of the federal landscape: the Eleventh Circuit. Our Circuit has been blessed with some of the finest lawyers and judges in our nation's great legal history. Indeed, Atticus Finch was from Maycomb, Alabama.¹ While Atticus was a fictional hero, the State of Alabama produced two real-life civil rights judicial heroes: Circuit Judges John C. Godbold and Frank M. Johnson, Jr., who will always be remembered as bulwarks of our Constitution in the face of hate and resentment.²

The State of Georgia was home to many great lawyers and judges, but none more consequential than Donald L. Hollowell. After law school, Hollowell started his own firm in Atlanta, Georgia, where he became one of the civil rights era's greatest lawyers. This was based, in no small part, on his pivotal work for his most famous client, Rev. Dr. Martin Luther King, Jr.³ And while Georgia native Bobby Lee Cook may not be as well known outside of his home state, his fifty-plus-year career inspired the character of Ben Matlock, the country lawyer at the heart of the television series *Matlock*—a fitting tribute after 300 murder trials in more than forty

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¹ HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

² See generally *John C. Godbold*, ALA. HONOR ACAD., http://www.archives.alabama.gov/famous/academy/j_godbold.html (last updated May 25, 2010); David J. Garrow, *Visionaries of the Law: John Minor Wisdom and Frank M. Johnson, Jr.*, 109 *YALE L.J.* 1219 (2000).

³ Eliza Paschal, *Leaders & Landmarks*, ATLANTA (May 1, 1981), <https://www.atlantamagazine.com/civilrights/donald-l-hollowell-civil-rights/>.

states.⁴ The work of these two “lions of the Trial Bar” represents the best in our profession.⁵

Notably, the State of Florida is home to civil rights legal pioneers James Weldon Johnson⁶ and Judge Joseph W. Hatchett.⁷ And they stand in good company. Many renowned lawyers—whether Florida natives like Janet Reno and Judge Jose Gonzalez, Jr.,⁸ or transplants like Robert Josefsberg and Judge William Hoeveler⁹—have served the Florida legal community for generations. These honorable men and women epitomize what every young lawyer should strive to become.

That begs the question: apart from courage, dedication, and wisdom, what makes one a *great* lawyer? Or a *great* judge? As this very abbreviated list illustrates, there is a circular undercurrent at work. Great writers make great lawyers. Great lawyers become great judges. And great judges become famous largely because they are great writers. This is the grand circle of legal success, as a lawyer’s stock-in-trade is her ability to write effectively. This conclusion is not novel. It is commonly understood that the written word is the essence of lawyering.

Yet, as many legal writing professors will bemoan, “legal writing” is often characterized by needlessly wordy passages, sprinkled with latin maxims, and larded with string citations that add little value. As Will Rogers said, “The minute you read something and

⁴ Mark Curriden, *Lions of the Trial Bar: Bobby Lee Cook*, A.B.A. J., Mar. 2009, at 44, 46.

⁵ *Id.*

⁶ EUGENE LEVY, JAMES WELDON JOHNSON: BLACK LEADER, BLACK VOICE (1973).

⁷ Elissa Maxwell, *Joseph Woodrow Hatchett (1932-)*, BLACKPAST (Mar. 15, 2018), <https://www.blackpast.org/african-american-history/hatchett-joseph-woodrow-1932/>.

⁸ *Janet Reno*, WOMEN’S INT’L CTR., <http://www.wic.org/bio/jreno.htm> (last visited May 18, 2019); *Gonzalez, Jose Alejandro, Jr.*, FED. JUD. CTR., <https://www.fjc.gov/node/1381341> (last visited May 18, 2019).

⁹ *Robert C. Josefsberg*, PODHURST ORSECK, <https://www.podhurst.com/our-team/robert-josefsberg/> (last visited May 18, 2019); Hon. Alan S. Gold & Vanessa Sisti Snyder, *Judicial Profile: Hon. William M. Hoeveler Senior U.S. District Judge, Southern District of Florida*, FED. LAW., Oct./Nov. 2012, at 26.

you can't understand it, you can be sure it was written by a lawyer."¹⁰

Fortunately, the Eleventh Circuit Court of Appeals has been blessed with skilled legal scholars and writers. Our Circuit, the youngest in the federal system, has regularly produced great judicial writers who take to heart Will Rogers's criticism. Rather than offer citation-laden expositions on the evolution of law from the dawn of time, jurists in our Circuit often lead with a compelling factual narrative, succinctly analyze how the governing legal principles apply to those facts, and neatly conclude. This is accomplished in tight opinions that do not suffer from excess verbiage. Perhaps most importantly, those opinions do what a skilled lawyer's brief should do—educate and persuade.

Take our Chief Judge, for instance. Judge Ed Carnes's opinions are compelling because he follows that efficient and effective format.¹¹ He often begins his opinions with a revealing "hook" premised on some historical event or literary passage.¹² Most importantly, he uses plain language to facilitate the reader's comprehension of the nature of the case and the court's well-analyzed conclusion.¹³ That is not to say, of course, that all readers will agree

¹⁰ STEVEN D. STARK, *WRITING TO WIN*, at vii (1999); Sandy F. Kraemer, *Will Rogers—the Legal Profession's Best Critic*, 59 A.B.A. J. 1431, 1431 (1973).

¹¹ *See, e.g.*, *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1316 (11th Cir. 2016); *Rambaran v. Sec'y, Dept. of Corrections*, 821 F.3d 1325, 1327 (11th Cir. 2016); *McCullum v. Orlando Reg'l Health Care Sys., Inc.*, 768 F.3d 1135, 1138 (11th Cir. 2014); *United States v. Godwin*, 765 F.3d 1306, 1308 (11th Cir. 2014); *Bates v. Sec'y, Dept. of Corrections*, 768 F.3d 1278, 1283 (11th Cir. 2014).

¹² *See, e.g.*, *Sciarretta v. Lincoln Nat'l Life Ins. Co.*, 778 F.3d 1205, 1207 (11th Cir. 2015); *United States v. Hough*, 803 F.3d 1181, 1183 (11th Cir. 2015); *Calderon v. Baker Concrete Constr., Inc.*, 771 F.3d 807, 808 (11th Cir. 2014).

¹³ *See, e.g.*, *United States v. Sec'y, Dept. of Corrections*, 778 F.3d 1223, 1225 (11th Cir. 2015) ("There is a vast amount of federal law. So much that no one can hope to keep it all in mind, much less master of the mass of it. . . . Charting a course through this universe of federal law, which is expanding at an ever accelerating rate, can be difficult. Attorneys and judges sometimes overlook a statutory provision, a regulation, or a decision date directly controls a case. We have all done it occasionally. It happened in this case."); *Silvera v. Orange Cty. Sch. Bd.*, 244 F.3d 1253, 1255 (11th Cir. 2001) ("The school board fired an employee who had pleaded no contest to a charge of child molestation and who also had multiple arrests for violent assault. One would think that would have been the end of that, since in any sane world school boards should not be required to employ child

with the outcome. Reasonable minds can and will disagree. But even when I disagree with Judge Carnes's result, I appreciate his ability to articulate his legal reasoning and conclusion with accuracy, brevity, and clarity. That is the work of a great legal writer.

One of Judge Carnes's colleagues, Judge Stanley Marcus, has published many remarkable opinions over his twenty-plus years of respected service as a Circuit Judge. Judge Marcus's opinions display his meticulous attention to detail and keen focus on the core of the disputed issue. A good illustration of his focus-driven approach appears in one of his most-cited opinions, used by lawyers since 2003 in almost every *Daubert* motion filed in our Circuit (and naturally in the responses and orders that follow).¹⁴

We find the newer generation of Eleventh Circuit Judges following this plain-language approach and producing noteworthy opinions. A personal favorite is Judge Adalberto Jordan's opinion in an employment case involving FedEx drivers, in which he tightly summarizes the parties' positions and the significance of the legal dispute. He then persuasively explains why a jury must resolve it.¹⁵

Similarly, Circuit Judge Kevin Newsom, appointed in 2017, is already producing must-read opinions. Even ardent proponents of substantive due process principles will find persuasive Judge Newsom's concurring opinion advocating that their reach must be limited; following Judge Carnes's model, his opinion is highlighted by

molesters.”) (vacating jury verdict and reversing denial of motion for judgment as a matter of law).

¹⁴ *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1335 (11th Cir. 2003) (“Although this case arises in a technologically sophisticated context, the evidentiary issues it presents are straightforward. At its core, this appeal requires us to determine whether the district court abused its discretion by admitting, and subsequently rejecting a post-trial challenge to, the testimony of . . . an expert in computational fluid dynamics . . .”).

¹⁵ *Carlson v. FedEx Ground Package Sys., Inc.*, 787 F.3d 1313, 1316 (11th Cir. 2015) (“For customers who are regularly visited by the ubiquitous white trucks of FedEx Ground, with their familiar purple and green logos, the usual concern is whether packages are picked up on schedule and delivered on time. If asked, a good number of those customers would probably say that they believe (or reasonably assume) that the drivers of those white trucks are employed by FedEx. The law, however, sometimes has a funny way of making hard what would otherwise seem intuitively simple, and that is the case with the legal status of FedEx's drivers.”).

a plain-English introduction that neatly summarizes his view.¹⁶ Comparing and contrasting his opinions with those of another superb writer, Judge Robin Rosenbaum (armed with a different judicial perspective), will soon become commonplace.

This plain-writing approach has its occasional drawbacks. The recent penchant for contractions and overly-casual interjections has raised some eyebrows. But on the whole, the benefits of this modern approach far outweigh the negatives. Will Rogers would likely agree.¹⁷

For this Eleventh Circuit Issue, the *University of Miami Law Review* has once again assembled a series of thought-provoking articles that address many interesting topics. Fortunately for us, the readers of the Review, they are well written and crafted to persuade. Most helpful, from a practical perspective, is *Advocacy Before the Eleventh Circuit: A Clerk's Perspective*, written by two young lawyers who clerked for Circuit Judge Charles R. Wilson. They have written a pointed article focusing on best practices for those litigating in our Circuit Court of Appeals. Every practitioner should heed their advice: focus on collegiality, candor, and brevity.

A similarly helpful article offers guidance from an experienced jurist: Judge Jennifer D. Bailey forcefully advocates for judges to get more involved in active case management in *Why Don't Judges Case Manage?* Judge Bailey seems to be channeling Circuit Judge Gerald Tjoflat, who has been asking that question for almost fifty years, both as a respected District Judge in the Middle District of Florida and as a Circuit Judge on the Fifth and Eleventh Circuits. Judges and practitioners will benefit from Judge Bailey's research and guidance.

¹⁶ *Hillcrest Prop., LLP v. Pasco Cty.*, 915 F.3d 1292, 1303 (11th Cir. 2019) (Newsom, J., concurring) (“About 20 years ago now, an insightful (and hilarious) lawyer friend of mine said to me—and because this is a family show, I’ll clean it up a bit — ‘Not everything that s[tink]s violates the Constitution.’ If ever a case proved the truth of that little nugget, this is it.”).

¹⁷ Kraemer, *supra* note 10, at 1431 (“If its [written] in a few words and is plain, and understandable only one way, it was written by a non-lawyer.”); see TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER’S GUIDE TO WRITING WELL* 28 (2d ed. 2002) (“Everytime a lawyer writes something, he is not writing for posterity, he is writing so that endless others of his craft can make a living out of trying to figure out what he said.” (quoting Will Rogers)).

Finally, this Issue includes a fascinating substantive law article by Professor Christina Frohock. Professor Frohock has focused on our Circuit's analysis of copyright issues involving statutory code annotations. Her article, *The Law as Uncopyrightable: Merging Idea and Expression Within the Eleventh Circuit's Analysis of "Law-Like" Writing*, is a compelling read.

Highlighting varied topics of interest, these articles underscore the value of the *University of Miami Law Review's* annual Eleventh Circuit Issue.