Legal Affairs



The Crusaders: (From left) Attorneys Steven Kozlowski, Elizabeth Schwartz, Jerry Chasen and Paul Hampton Crockett from the South Beach firm of Crockett & Chasen.

Law And The **New Order**

One Pioneering Firm's Fight For Gay Rights

by Jim Oliphant

t's tough enough to watch a marriage crumble, face the death of a loved one, or fight a former spouse in court for custody of a child

Try doing it when you're gay. "There are something like 1,012 rights in civil marriage," says Elizabeth Schwartz, a Miami Beach lawyer. "Gays and lesbians can avail themselves of about a dozen of them."

Using those dozen rights - hell,

using anything - is the mission of Schwartz's South Beach law firm, Crockett & Chasen. It's about narrowing the gap between gays and straights, about the struggle to fill a vacuum where no laws exist to protect homosexual relationships.

In Florida, for instance, gays and lesbians can't marry and can't adopt children. If two men share a house for 10 years in a marriage, whoever doesn't have his name on the deed is out of luck when the two split up. If two women are raising a child and the biological mother dies, the other parent can't adopt the child.

Schwartz and another lawyer in the firm, Steven Kozlowski, serve as Miami counsel for a lawsuit filed in May by the Florida chapter of the American Civil Liberties Union that challenges the state's ban on gay adoption. Florida is the only state in the nation that prohibits gays and lesbians from adopting children thanks to a statute passed 22 years ago during the height of orange juice spokesman Anita Bryant's anti-gay crusades. The lawsuit, a class action brought on behalf of both gays and lesbians ready to adopt and children who need to be adopted, was filed in federal court in Key West May 26th and charges that the Florida law is unconstitutional.

Schwartz's four-lawyer firm, tucked away in a decidedly unglamorous building on glitzed-up Lincoln Road, is composed entirely of gay and lesbian lawyers. It wasn't designed as a marketing move to reach out to South Florida's substantial gay community (the firm still serves a handful of heterosexual clients), but it has worked out that way.

"We're not creating the need, we are just trying to address it," says the firm's co-founder, Paul Hampton Crockett, "The laws are lagging behind the reality. I have to help people fight back and use the laws that are out there."

That means using devices like trusts and wills to protect the shared property of a gay marriage. Or suing under the federal Americans with Disabilities Act to ensure equal treatment in the workplace for HIV-positive workers. Or creating "sperm donor agreements" for a lesbian couple that wants to have a baby, but wants to ensure the sperm donor has no parental rights.

A gay-rights activist and frequent lecturer, Crockett started the firm with another lawyer, Gary Franklin, in 1993 after spending several years with South Florida's Akerman Senterfitt & Eidson. The other name partner, Jerry Chasen, came aboard shortly thereafter. Franklin, burned out from the profession, left for New York in 1996. "It's exactly what I wanted," says Chasen, whose specialty is estate planning. "This was the community I wanted to serve."

One client of the firm was Richard Hammond, whose lover was dying of AIDS. Hammond needed a lawyer to help secure the transfer of his partner's assets in an estate plan to prevent claims on his partner's estate from hostile family members. He found Crockett. "He fought for me. He stood up for me," says Hammond, a technician at Mt. Sinai Medical Center in Miami Beach. "He handled [my partner's] family for me."

Hammond went to Crockett for a reason. "I'm gay, he's gay. I didn't have to hide anything," Hammond says. "I could say, "This is my lover we've lived together for 10 years.' It was like trusting my own."

For three years, Crockett and Chasen built their practice. But something significant was missing. In 1996, Crockett spoke to law students at the University of Miami. Schwartz was in the audience. She asked Crockett to lunch and told him that he had to hire her. "She told me, 'You need me," Crockett says.

"This firm purported to represent the gay community and it didn't have a woman," Schwartz says. Crockett hired Schwartz immediately, before she'd even graduated.

Schwartz does many of the same things Crockett does - making speeches, writing columns, etc. -

but with one significant difference: Her work targets lesbians. "Even within the gay community, lesbians are underrepresented," Schwartz says. "The issues that lesbians face are unique. Our concerns about family and health issues go largely unaddressed."

The bulk of her practice lies in those issues, and runs the gamut from sperm donor agreements to negotiating property, custody and visitation rights when a couple with a child splits up. "It's cuttingedge law," Schwartz says. So cutting-edge, in fact, that when Schwartz draws up something like a sperm donor agreement - in which a man providing sperm to fertilize an egg surrenders all parental rights - she has no idea whether it will

be enforceable in court. Nobody knows. Generally, courts (continued on page 70)

(continued from page 28) don't allow people to sign away their parental rights and responsibilities. But this is a new universe.

Last year, a Bradenton man, Danny Lucas, sought to put such a contract to the test. He donated the sperm which fathered a set of twins that were being raised by two lesbian partners. In doing so, he voluntarily surrendered his rights.

Two years after the two boys were born, Lucas decided he wanted visitation rights. And a judge seemed poised to recognize that Lucas had a legal role to play in raising the children. But in October, in the middle of trial, the parties came

"There are something like 1,012 rights in civil marriage," says lawyer Elizabeth Schwartz. "Gays and lesbians can avail themselves of about a dozen of them."

AIN'T LIFE GRAND.



It's even grander at the Sheraton Grand Resort Paradise Island, Bahamas. Set like a jewel along 3 miles of spectacular white-sand beach less than

an hour from South Florida, the Sheraton Grand

From 250*
has 340 newly – and fabulously renovated –

ocean-view rooms, all with private balcony. Plus 4 excellent restaurants. 2 casual lounges. Room service. Fully equipped fitness center. 4 on-site lighted tennis courts. Every water sport known to man and fish. Beachfront, freshwater swimming pool. We're adjacent to the fast-action Atlantis Casino. Minutes from duty-free shopping, PGA championship golf and downtown Nassau. All rooms have cable TV with pay-per-view movies, well-stocked minibar, hair dryer, iron, ironing board, safe, and coffeemaker. For more information on a fun-filled holiday and Resort Reservations, call 800-782-9488 or visit our Website at www.sheratongrand.com.



*Per person per night, double occupancy. Effective 4/25/99 thru 12/22/99. Rates based on availability.

to their own visitation agreement. So, for now, the legality of such contracts remains in question.

"It's funny," Schwartz says. "You always hear that we aren't fit to be parents, but you won't find anyone more deliberate or careful when it comes to parenting than gays and lesbians."

Still, as with any relationship, things can sour. Schwartz currently has one such case, in which two women raising a child have decided to separate. Now, she says, her client, who wasn't the birth mother, but who supported the family financially, isn't being allowed to see the child.

"We're no more or less vicious to each other than straight people in a typical dissolution," Schwartz says. "But we don't have the law's protections."

She says she is trying to convince her client to settle the conflict without going to court because she fears that a judge would be unsympathetic.

"No judge wants to see these two dykes fighting over this baby," she says.

Schwartz's fears are realistic - just look at the experience of a Palm Bay woman, Penny Kazmierazak: She went to court to seek visitation rights for the five-year-old child she helped raise, but a judge threw out her case. It's now being appealed. "In the child's eyes, there's no difference between the two parents," says Kazmierazak's lawyer, Stephen Scarborough. But Scarborough feels his client is being treated as if she has no significance at all in the child's life.

Stories like that motivate Crockett and Schwartz, who see themselves as more than two lawyers who are billing by the hour. "I'm serving my community," Schwartz says. "I get to do good and I get to do [it] well. I'm really very lucky.

Jim Oliphant is a staff writer for the Daily Business Review. M²