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**Gun Control Debate:
Is Gun
Violence
the Target?**

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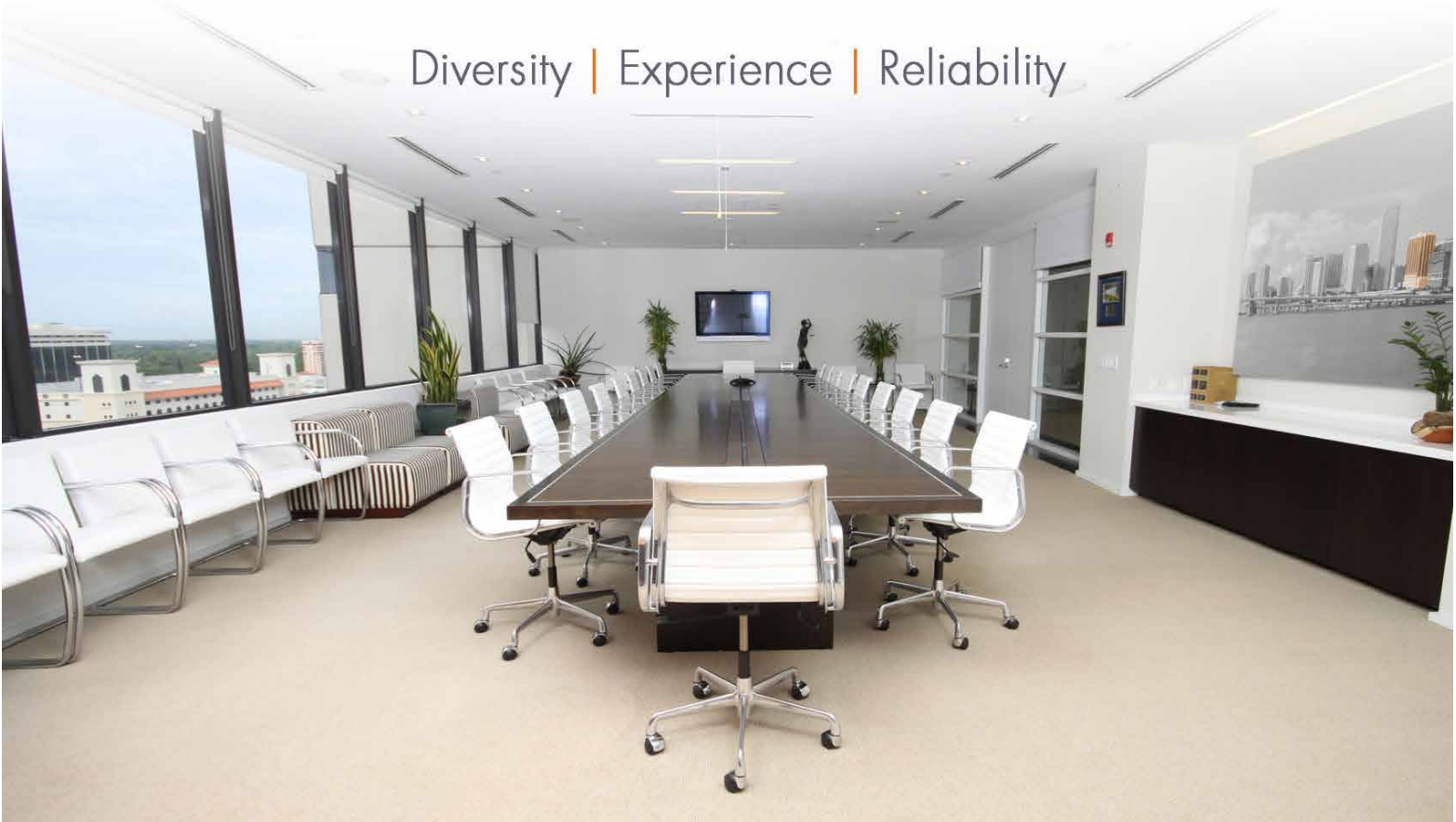
26 GUN CONTROL DEBATE: IS GUN VIOLENCE THE TARGET?

The tragic mass shooting in Newtown, Connecticut has inspired a new push for gun legislation. President Obama's immediate reaction was to ask for Vice President Biden to "come up with a set of concrete proposals" to "reduce the epidemic of gun violence that plagues this country."

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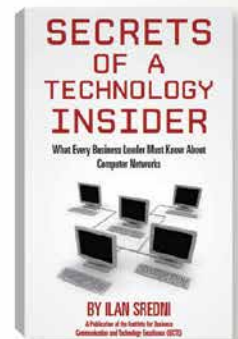
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PRESIDENT'S MESSAGE

¡Saludos a Todos!



It has been quite a year so far! CABA kicked off 2013 with our Kick-Off & Meet Your New Miami-Dade County Judges Cocktail Reception on **January 24, 2013**, sponsored by City National Bank. The event was a great way to kick off an exciting new year and to also have an opportunity to meet and welcome our new Miami-Dade County Judges. The CABA on Cuba Committee made great strides in January stepping up its work to support the re-establishment of the rule of law in Cuba when CABA selected for support and sponsorship three groups of vetted dissident attorneys in Cuba based on their proven track record of significant results. The groups were contacted and provided with much needed supplies in order to continue their active role against human rights violations in Cuba. The Committee has also remained deeply involved and oversaw the safe arrival of political prisoner, Julio Cesar Galvez, to Miami. Thank you to **Aldo Leiva** and **Eduardo Palmer**, CABA on Cuba's Co-Chairs, for their continued dedication in this regard.

On **February 2, 2013**, CABA held its 39th Annual Installation Gala “**Una Noche De Gala**” at the JW Marriott Marquis Miami. This year's event exceeded all expectations with nearly 1,000 guests in attendance. Thanks to our sponsors and members, we raised \$120,000—a heartfelt thank you to all of you for making the gala such a success. Proceeds raised at the gala will benefit our initiatives and programming throughout the year, CABA's Foundation, which provides scholarships to worthy law students throughout the state, and CABA's Pro Bono Project (PBP), which provides free legal services to needy members of our community. Additionally, in recognition of their leadership and community contributions, CABA was privileged to honor the Honorable Katherine Fernandez Rundle, Miami-Dade County's State Attorney, the Honorable Adalberto Jose Jordan, Appeals Court Judge for the U.S. Court of Appeals for the Eleventh Circuit, and Jorge Plasencia, Chairman of the National Council of La Raza (NCLR). All of our award recipient videos and pictures from the gala can be seen at <http://www.cabaonline.com/>. Gala pictures can be purchased at <http://photos.cabaonline.com/>.

On **February 12, 2013**, CABA hosted its first bi-monthly Desayuno Con CABA—CLE Breakfast Series on *Business Immigration* by **Eugenio Hernandez** and *Family & Removal Proceedings* by **Ada Pozo**. The CLE was well attended and provided informative and substantive continuing legal education to our members in the immigration arena. On **February 19, 2013**, we were pleased to welcome **Lesley Mendoza**, who commenced as Executive Director of CABA's PBP. A UM law alumna, Lesley worked as an attorney in the litigation department of the New York office of White & Case LLP prior to joining the PBP. CABA's PBP has also recently received funding through the Office of the State of Florida Attorney General as a result of a nationwide settlement to continue and expand the foreclosure defense legal aid in order to maximize efforts helping homeowners avoid foreclosure and providing direct legal assistance to homeowners and communities affected by the foreclosure crisis. Over the course of the next few months, CABA's PBP will increase its service in this area to assist as many homeowners

as possible facing the risk of losing their homes. If you are interested in helping the PBP in this endeavor, please do not hesitate to contact **Lesley Mendoza**, at Lesley@cabaonline.com.

On **March 14, 2013**, CABA's Young Lawyers Committee held its first networking reception of the year at Azucar, which provided CABA's young lawyers with a great opportunity to network and gave them a chance to learn more about CABA and its initiatives. On **March 22, 2013**, CABA was honored to host a "Celebratory Reception of the Passing of the Gavel Honoring Chief Judge-Elect, **Bertila Soto**" following her swearing in as the first Hispanic, Woman and Cuban American Chief Judge of Miami-Dade County (and Florida). CABA was also proud to recognize outgoing Chief Judge **Joel Brown** and thanked him for his leadership and efforts on behalf of our judiciary and court system over the last four years.

On **April 1, 2013**, CABA was happy to cosponsor a lecture by Cuban blogger, Yoani Sanchez, titled "Can Technologies and Social Media Accelerate Cuba's Democratization?" On **April 2, 2013**, CABA traveled to Tallahassee for a networking cocktail reception with CABA's FSU Student Chapter. More than 50 law students and members of the legal community attended the event aimed at expanding our presence at FSU and in Tallahassee. Our Legislative Committee took the opportunity to visit with our legislators to advocate for our Pro Bono Project at the state level. On **April 11, 2013**, CABA held its second, bi-monthly Desayuno Con CABA—CLE Breakfast Series, titled *Practicing Law in the Digital Age: Evolving Ethical Standards of Competence, Courtesy, & Communication* presented by Jan L. Jacobowitz from the University of Miami School of Law. On **April 20, 2013**, CABA and CABA's PBP held the 2nd Annual Lawyers on the Run 5K & Kiddie Dash to Benefit CABA's PBP. The 5K run/walk has become an integral component of CABA's PBP serving a two-prong goal of (i) raising awareness of the importance of health and well-being in the legal profession and (ii) raising funds to ensure that access to justice remains a reality for all in South Florida.

I invite you to continue your commitment and support to CABA and its initiatives throughout the year and in the future. Everything we will do over the coming year supports CABA's mission. The core tenets of CABA's mission—**equality, diversity, civility, access, opportunities and understanding**—can make a huge difference in the way we all live and work today and for the future. Together, we can make a difference in our profession and community.

In your service, I remain,



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EDITOR'S MESSAGE

Dear colleagues:



It is with great pleasure that I begin serving the Cuban American Bar Association as the Editor-in-Chief for this year. I hope this issue is a joy to read and thought provoking.

I would like to start by thanking all of you who have contributed to making this issue of *Briefs* a success. I particularly want to thank our amazing Articles Editors, Eric J. Eves and Kristina Maranges, both of whom selflessly volunteered their time to ensure a quality product was distributed to our readers. Without their hard work and dedication, I would not be able to get this done.

It dawned on me while preparing this issue of *Briefs* that I often take the luxuries of technology and social media for granted. I bemoan the trance-like state in which my peers and I meticulously peruse our Instagram, Facebook, and Twitter accounts right after we wake up, all day at work, in the middle of dinner with our families, and even after we have ostensibly called it a night by shutting the lights off while in bed. In an age where news and opinions are delivered electronically, however, social media and other technologies have replaced the pen in the old adage, “the pen is mightier than the sword.” These media platforms present a valuable way to measure the pulse of the people. Yoani Sánchez, a Cuban dissident, delivered this message with precision in a lecture cosponsored by CABA at Florida International University. Indeed, Sánchez, who writes a massively popular blog called *Generación Y*, is a sparkling example. Although we may always dispute the intentions of the Cuban government and, specifically, the Castro brothers, Sánchez’s blog led to an opportunity to travel the world and deliver her powerful message against political oppression in person. Without technology, Sánchez would not be able to tweet to the world that this trip has allowed her to “live the days of [her] dreams...Days that change your life!” We may have never heard of her plight and many of us would not have heard her brilliant retort to those who believe the only negative consequences of the Castro regime, which provides free healthcare and free education to all, are economic in nature—although a caged bird is given free water, the bird is still caged.

Thus, I humbly ask that we all keep these thoughts in mind when reading about the several polarizing topics in this quarter’s *Briefs*—the never-ending debate on gun control, privacy rights under the Fourth Amendment, state employee pension plans, and gay marriage. Respectful self-expression in any form is empowering and if we have opinions on these topics, we should share them. As always, I hope you enjoy reading this issue as much as I have enjoyed putting it together. Please send your comments and suggestions to cababriefs@hotmail.com.

Sincerely,

A handwritten signature in black ink that reads "Jorge Pérez". The signature is enclosed within a large, loopy oval flourish.

Jorge A. Pérez Santiago
Editor-in-Chief

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CHAIR'S MESSAGE



Welcome to this issue of CABA Briefs! You are certainly in for a treat, as CABA has kicked off spring with a variety of networking, fundraising, and educational events. Thank you to our new President, Sandra Ferrera, for choosing me as the new CABA Briefs' Committee Chair. It is with great pleasure that I take on this role for 2013. With the help of my committee and amazing writers, I hope I can continue to provide our readers with the high quality product that is CABA Briefs. We will continue to highlight pertinent legal issues that, although at times may be controversial, provide our readers with highly valuable insight and knowledge. Please keep the feedback regarding the magazine coming; we appreciate and learn from all of your thoughts.

If you have any questions or comments, do not hesitate to contact me, jeperez@bupalatinamerica.com, I would love to hear from you!

Thank you!

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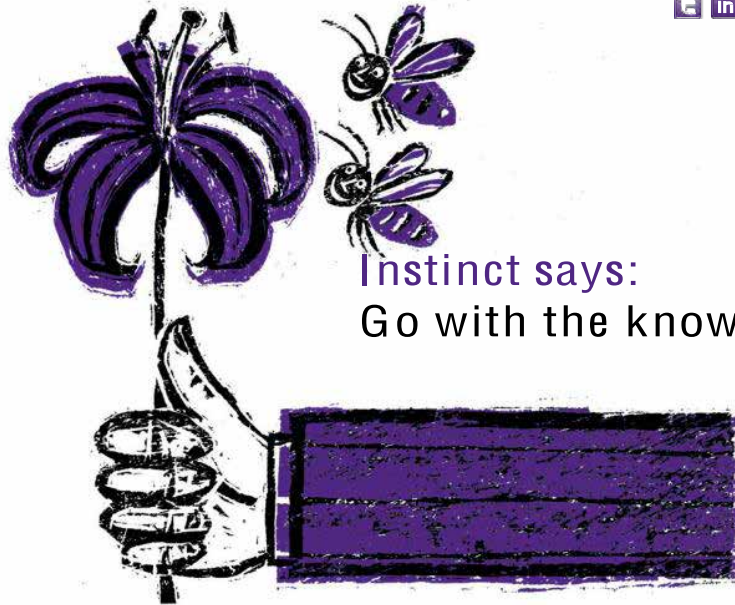
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We would like to thank the Cuban American Bar Association for its ongoing commitment to our community and congratulate Sandra M. Ferrera, *President* and Ricardo Martinez-Cid, *President-Elect*

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LEGAL ROUNDUP

by Elliot Kula and Daniel Samson

A BAILOUT FOR LAWYERS; OR HOW MANY LAWYERS DOES IT TAKE TO NAIL DOWN A DEFENSE?

Univ. of Miami v. Great Am. Assurance Co.,
No. 3D09-2010, 2013 WL 616156 (Fla. 3d DCA Feb. 20, 2013)

What is an insurance company to do when multiple defendants assert reciprocal comparative fault defenses? Provide separate defense counsel, says the Third District Court of Appeal in *Univ. of Miami v. Great Am. Assurance Co.*, No. 3D09-2010, 2013 WL 616156 (Fla. 3d DCA February 20, 2013). According to the Third District, an insurer must provide separate defense counsel for multiple insureds where those insureds share a common liability defense, but conflict on comparative fault defenses and entitlement to indemnity from each other. *Id.* at *5–*6.

Great American Assurance Company insured MagiCamp, which ran a summer swim camp at the University of Miami. *Id.* at *2. The University was an additionally named insured on MagiCamp's policy. *Id.* A severely injured camper filed a negligence lawsuit against both MagiCamp and the University, and Great American hired one law firm to defend both MagiCamp and the University. *Id.* And, thus, a conflict was born.

MagiCamp asserted a comparative fault defense, pointing the finger at the University as the party responsible for the child's injuries, at least, in part. *Id.* at *2–*3. MagiCamp also asserted its contracts with the University entitled it to indemnity. *Id.* The University then requested that Great American provide it separate counsel because it intended to assert MagiCamp's comparative fault as a defense, materializing the potential conflict. *Id.* at *4. However, Great American refused the University's request on the ground MagiCamp's indemnification agreement removed any conflict. *Id.* at *5.

The parties went on to settle the underlying lawsuit, but the conflict was not over. After the settlement, the University brought a declaratory action against Great American, seeking indemnification for the costs of its defense. *Id.* The

trial court granted summary judgment for Great American, ruling the insurer had no contractual, legal, or professional obligation to provide separate counsel for the University. *Id.* at *4–*5.

Not so, held the Third District. In a split decision, with Judge Shepherd dissenting, the majority held MagiCamp and the University took inherently adverse legal positions. *Id.* at *8. "Great American's counsel would have had to argue conflicting legal positions, that each of its clients was not at fault, and the other was, even to the extent of claiming indemnification and contribution for the other's fault." *Id.*

Judge Shepherd, however, opined differently. Under Florida Rule of Professional Conduct 4-1.7, Judge Shepherd explained that a lawyer may not represent clients who are directly adverse to each other, but "a possible conflict does not itself preclude the representation." *Id.* According to Judge Shepherd, the conflict between the University and MagiCamp was not manifest conflict, but only a potential conflict. *Id.* at *10–*12. It never escalated from speculative to actual because the case settled. The University suffered no loss, neither party filed a claim against one another, and neither insured ever sought to prove liability of the other at any time during the underlying case. *Id.* at *11–*13.

Still so, the majority has it: the mere assertion of conflicting defenses in an initial pleading triggers Rule 4-1.7's conflict provisions, even where neither party ever sought to prove the other's liability. Far beyond the insurance defense context, now, where counsel represents two parties who may have post-lawsuit contribution and indemnity claims against each other, the shared counsel may face troubles where the two parties are united in the defense of the lawsuit. Based on this opinion, it is likely separate defendants will require separate representation under nearly all circumstances. **CB**



TO MOVE TO VACATE, OR TO MOVE FOR REHEARING?

THAT IS THE QUESTION

Balmoral Condo. Ass'n v. Grimaldi,
No. 3D12-1037, 2013 WL 238203 (Fla. 3d DCA Jan. 23, 2013)

The uncertainty many have faced in the intermingled world of rehearing and vacatur is now a little less uncertain. In *Balmoral Condo. Ass'n v. Grimaldi*, No. 3D12-1037, 2013 WL 238203 (Fla. 3d DCA Jan. 23, 2013), the Third District Court of Appeal drew the line between motions for rehearing under Florida Rule of Civil Procedure 1.530, and motions to vacate judgment under Florida Rule of Civil Procedure 1.540. There is no mixing-and-matching. A trial court cannot use Rule 1.540's vacatur provision as a basis for rehearing, which should be governed by Rule 1.530. See *id.* at *3-*4.

At the trial level, Balmoral Condominium Association secured summary judgment in its favor after Ms. Grimaldi failed to appear or contest the summary judgment. *Id.* at *2. Ms. Grimaldi moved for rehearing within the 10 days as allowed by Rule 1.530 on the basis she was too ill to oppose Balmoral's summary judgment motion. *Id.* The trial court denied the motion, but at the hearing, Ms. Grimaldi produced a second motion entitled "motion to vacate and/or for rehearing," which the trial court, having already disposed of Ms. Grimaldi's Rule 1.530 motion for rehearing, treated as a motion to vacate under Rule 1.540. *Id.* at *2-*3.

Subsequently, the trial court granted Ms. Grimaldi's Rule 1.540 motion to vacate on the basis it previously had erred on the merits by granting summary judgment in Balmoral's favor. *Id.* at *3.

Not so fast, or loose, said the Third District Court of Appeal. The Third District held the denial of Ms. Grimaldi's Rule 1.530 motion for rehearing divested the trial court of jurisdiction to reconsider the merits of the case. *Id.* A Rule 1.530 motion is broad in scope, but limited in duration, as it permits a trial court to reconsider its rulings entirely so long as it is filed within 10 days. *Id.* at *2. In contrast, a Rule 1.540 has a lengthier filing period of one year from judgment, but is supported only by limited enumerated grounds. *Id.* at *3. Thus, the Third District held that even if the trial court indeed erroneously entered summary judgment on the legal merits, where the trial court already has denied a Rule 1.530 motion for rehearing, it is without power to reverse itself and vacate the summary judgment under Rule 1.540. *Id.* at *3-*4. The two rules provide review of a final judgment in the trial court, but do so in different ways and for different reasons. So you have been forewarned: "Litigants intermingle the provisions of these rules at their risk." *Id.* at *1. **CB**

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Allstate Ins. Co. v. Total Rehab & Med. Ctrs., Inc.,

No. 4D12-3095, 2013 WL 949832 (Fla. 4th DCA Mar. 13, 2013)



The Fourth District Court of Appeal's decision in *Allstate Ins. Co. v. Total Rehab & Med. Ctrs., Inc.*, 4D12-3095, 2013 WL 949832 (Fla. 4th DCA Mar. 13, 2013), tells a cautionary tale of a counsel-of-record's deposition. It started like any other case. Attorneys for Allstate Insurance produced a trial exhibit consisting of Allstate personal injury protection files and medical/billing records generated by Total Rehab. *Id.* at *1. At trial, the exhibit was admitted into evidence, but later, due to an incident unrelated to the exhibit, the trial court declared a mistrial. *Id.* The lawyers prepared for the retrial, but Total Rehab sought to depose the Allstate attorneys who created the exhibit. See *Id.* The trial court permitted the depositions on the ground the Allstate attorneys "interjected" themselves into the case by creating the exhibit, and should be subject to deposition, regarding the exhibit's accuracy. *Id.*

Allstate petitioned the Fourth District for writ of certiorari, but found it was not in good hands. *Id.* While recognizing attempts to depose an attorney during ongoing litigation are extraordinary and ordinarily denied where irrelevant or privileged information is sought to be obtained, the Fourth District explained "attorneys are not *per se* exempt

from the reach of Florida Rule of Civil Procedure 1.310(a), which allows the taking of the deposition of *any* person." *Id.* (emphasis in original). Because trial courts retain the authority to limit depositions to relevant, non-privileged material, the Fourth District rejected concerns over potential abuses. See *Id.* at *2. "While we recognize the potential for abuse of the process of deposing the opposing party's attorney during ongoing litigation, we are confident trial courts in this district will use their powers of supervision" to avoid those abuses. *Id.*

“ Time will tell if this decision will stick, but for now, litigators should be wary.

The Fourth District essentially has authorized *carte blanche* depositions of attorneys during ongoing litigation. We likely will see an increase in the number of certiorari petitions filed with appellate courts policing the boundaries of proper attorney depositions.

”

Time will tell if this decision will stick, but for now, litigators should be wary. The Fourth District essentially has authorized *carte blanche* depositions of attorneys during ongoing litigation. We likely will see an increase in the number of certiorari petitions filed with appellate courts policing the boundaries of proper attorney depositions.

A word on behalf of all appellate counsel: Please make a clear record of the areas of inquiry for which the trial court has authorized such depositions, and of course, make sure to bring a court reporter to the hearing because your appellate counsel will need a hearing transcript to file the petition. **CB**

THE DEBATE OVER PUBLIC PENSION PLANS COMES TO FLORIDA

It was a Constitutional Revamp of Florida Retirement System

Scott v. Williams,

No. SC12-520, 2013 WL 173955 (Fla. Jan. 17, 2013)

In *Scott v. Williams*, No. SC12-520, 2013 WL 173955 (Fla. Jan. 17, 2013), the Florida Supreme Court rendered its decision on the constitutionality of Senate Bill 2100, the bill that converted the mandatory pension plan for State employees, the Florida Retirement System (FRS), from a noncontributory to a contributory plan and eliminated the cost of living adjustment (COLA).

Challengers to Senate Bill 2100 successfully argued in the Leon County Circuit Court that the act violated three sections of the Florida Constitution:

- (1) **Article I, section 10**, which prohibits laws impairing the obligation of contract;
- (2) **Article X, section 6**, providing no private property shall be taken for public purpose without compensation; and
- (3) **Article I, section 6**, which ensures the right of public employees to bargain collectively is not denied or abridged.

Id. See also *Williams v. Scott*, No. 2011 CA 1584, 19 Fla. L. Weekly Supp. 475b (Fla. 2d Cir. Ct. 2011).

In reaching its decision, the Leon County Circuit Court focused primarily on two authorities: (i) a section of the FRS statute referred to as the “preservation of rights” statute, section 121.011(3)(d), Florida Statutes (1974), which the trial court ruled guaranteed a noncontributory system, *Scott*, 2013 WL 173955, at *5; and (ii) a Florida Supreme Court case interpreting that statute, *Florida Sheriffs Ass’n v. Dept. of Admin.*, 408 So. 2d 1033, 1037 (Fla. 1981), which the trial court interpreted as permitting the legislature to alter benefits prospectively but not alter the nature of the pension plan in its entirety. *Scott*, 2013 WL 173955, at *6.

The State parties appealed the Circuit Court’s ruling, and the First District Court of Appeal utilized “pass-through” jurisdiction under article V, section 3(b)(5), of the Florida Constitution, to certify the issues to the Florida Supreme Court as being of great public importance requiring immediate resolution. *Scott*, 2013 WL 173955, at *1. The Supreme Court’s majority opinion, authored by Justice Labarga and joined by Chief Justice Polston and Justices Pariente and Canady, reversed the Circuit Court’s decision and declared all aspects of Senate Bill 2100 constitutional. *Id.* at *22. Justice Pariente authored a concurring opinion, and Justices Lewis and Perry wrote dissents, with Justice Quince joining Justice Perry’s opinion. *Id.*

THE MAJORITY OPINION

In holding Senate Bill 2100 did not violate the aforementioned constitutional protections, the majority focused on the “preservation of rights” statute, section 121.011(3)(d), Florida Statutes (1974), and the *Florida Sheriffs* decision interpreting that statute. The “preservation of rights” statute provides:

The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

§ 121.011(3)(d), Fla. Stat. (1974). The challengers contended this statute vested the members’ rights to a noncontributory plan with a continuing COLA since those were the contract terms that existed under the FRS statute at the time section 121.011(3)(d) was passed. *Scott*, No. SC12-520 at *13. The State parties disagreed, arguing the *Florida Sheriffs* decision dictated the legislature could “alter retirement benefits *prospectively*.” *Scott*, 2013 WL 173955, at *16 (emphasis in original). In retort, the challengers argued, as the trial court ruled, that the *Florida Sheriffs*’ opinion is limited to altering benefits and not the fundamental nature of the FRS plan from noncontributory to contributory. *Id.* at *17.

“ However, the majority held “the preservation of rights statute was enacted to give contractual protection to those retirement benefits already earned as of the date of any amendments to the plan,” and to interpret the Florida Sheriffs decision or section 121.011(3)(d) any differently would “bind future legislatures from prospectively altering benefits for future service performed by all members of the FRS.”

However, the majority held “the preservation of rights statute was enacted to give contractual protection to those retirement benefits *already earned* as of the date of any amendments to the plan,” and to interpret the *Florida Sheriffs* decision or section 121.011(3)(d) any differently would “bind future legislatures from prospectively altering benefits for future service performed by all members of the FRS.” *Id.* at *17–*18. Because the changes made by Senate Bill 2100 were only prospective in nature, and did not affect those benefits already earned by employees, no contractual rights were impaired, and thus, no property was taken without compensation. *Id.* at *18.

The Supreme Court further disagreed with the challengers in holding Senate Bill 2100 did not violate public employees’ rights to bargain collectively, a right protected by article I, section 6, of the Florida Constitution. The challengers argued and the Leon County Circuit Court held Senate Bill 2100 violated these rights by precluding effective bargaining on the mandatory bargaining subject of retirement pensions and benefits. *Scott*, 2013 WL 173955, at *19–*20.

THE DISSENTS

Justice Lewis premised his dissent on the ground he would have struck down Senate Bill 2100 because the “preservation of rights” statute vested the FRS members with “continuous, unconditional rights to a noncontributory plan with a cost-of-living adjustment,” and that those rights are not “related to future state service.” *Id.* at *32. He acknowledges such an interpretation does, indeed, bind future Legislatures from altering or impairing contract rights, but such an outcome has been authorized by the *Court in State v. Gadsden Cnty*, 229 So. 2^d 587 (Fla. 1969). *Scott*, 2013 WL 173955, at *32. In order to alter that contract, Justice Lewis opines, the Legislature must follow the dictates of *Chiles v. United Faculty of Fla.*, 615 So. 2d 671 (Fla. 1993), and show there was “no other reasonable alternative means for preserving the contract with the public workers, and there was a compelling state interest.” *Scott*, 2013 WL 173955, at *33. Moreover, Justice Lewis agreed with the Leon County Circuit Court that Senate Bill 2100 impaired the collective bargaining rights of the state employees because “there can be no effective bargaining only after the fact where, as here, the Legislature has unilaterally predetermined the term or condition through statute, rendering any subsequent negotiations futile.” *Id.* at *34, *39.

Similarly, Justice Perry agrees with the Leon County Circuit court and Justice Lewis that the “preservation of rights” statute means state employees have a contractual right to a noncontributory retirement system that cannot be abridged by the Legislature. *Id.* at *39–*40. For that reason, Justice Perry would recede from *Florida Sheriffs*, or at least limit it to its facts, which did not concern fundamental alterations to the structure of the plan itself. *Id.*



FUTURE LITIGATION

Sidestepping the collective bargaining issue, the majority held that, on its face, nothing in Senate Bill 2100 precludes bargaining over retirement pensions or benefits. *Id.* at *21. Additionally, because this action only facially challenged the act’s constitutionality and included a record devoid of any evidence of Senate Bill 2100’s actual effects on subsequent bargaining, the majority further held it was unable to determine if “effective” bargaining had been impaired. *Id.* As a result, this question remains open and likely will be revisited as the effects of Senate Bill 2100 are shown. Lastly, the importance and weight of the dissents is yet to be determined. Both dissents argue collective bargaining is destined to be abridged by the majority’s opinion, and so they will become a must read for future litigation over whether effective bargaining actually has been impaired. **CB**

WHITHER GOEST THE ECONOMIC LOSS RULE?

Not So Fast

Tiara Condo. Ass'n, Inc. v. Marsh & McLennon Cos., Inc.,
No. SC10-1022, 2013 WL 828003 (Fla. Mar. 7, 2013)

In *Tiara Condo. Ass'n, Inc. v. Marsh & McLennon Cos., Inc.*, No. SC10-1022, 2013 WL 828003 (Fla. Mar. 7, 2013), the Florida Supreme Court receded from two decades of precedent, holding “the economic loss rule applies only in the products liability context.” *Id.* at *18. Or did it?

The case is not nearly as important to Florida jurisprudence as is the ultimate holding, but can be summarized as follows. Tiara Condominium Association sued its insurance broker in federal court, asserting a variety of contractual and non-contractual claims, and lost on summary judgment. *Id.* at *1. On appeal to the Eleventh Circuit, the parties found themselves diverted to the Florida Supreme Court on the certified question whether the professional services exception to the economic loss rule would allow Tiara to survive summary judgment. *Id.* at *4. The Florida Supreme Court seized the moment to attempt to put a lid on the 20 years worth of economic loss rule cases since its recognition in *Casa Clara Cond. Ass'n, Inc. v. Charley Toppino & Sons, Inc.*, 620 So. 2d 1224 (Fla. 1993). The Florida Supreme Court eliminated the economic loss rule from all areas of the law but products liability, thereby obviating the need for any exceptions, such as the professional services exception. *Tiara*, 2013 WL 828003, at *8.

The Supreme Court looked back at the economic loss rule's initial inception in response to strict liability. *Id.* at *2-*6. The Supreme Court traced Florida's adoption of the rule to even earlier than the 1993 Casa Clara decision, beginning its analysis with *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899 (Fla. 1987), wherein the Court held the rule prevented recovery of economic losses in tort without a claim for damages to property separate from the defective product or without personal injuries. *Tiara*, 2013 WL 828003, at *5. The Court lamented the expansion of the rule beyond its originally intended purposes in the product

liability context, as well as the Court's largely unsuccessful effort to “roll back the economic loss rule to its products liability roots” by crafting numerous exceptions. *Tiara*, 2013 WL 828003, at *2-*6. Consequently, the Court set out to remedy the “unprincipled extension” of the economic loss rule by receding from its prior rulings overstepping the rule's original products liability boundaries. *Id.* at *7.

Chief Justice Polston and Justice Canady disagreed with the majority opinion, cautioning “Florida's contract law is seriously undermined by this decision” and noting the widespread expansion of tort law at the expense of contract law. *Id.* at *11. In a concurring opinion penned by Justice Pariente and aimed at assuaging the dissenters' fears, Justice Pariente wrote, “Basic common law principles already restrict the remedies available to parties who have specifically negotiated for those remedies,” and the Court's holding did nothing to alter those common law principles. *Id.* at *9. Justice Pariente noted that to bring a tort claim, a party still must show all the elements of that tort to prevail, including “that the tort is independent of any breach of contract claim.” *Id.*

The state of tort law and its future remain unclear, but to be sure, the Court has stripped the economic loss rule from Florida's legal lexicon. Justice Pariente's concurrence is undoubtedly correct that tort remedies will remain impaired by common law principles and the subsequent contract doctrine. In effect, this opinion likely will make it more difficult to dismiss tort claims based upon a contract, but is not likely to affect ultimate outcomes with one exception. The expansion of the economic loss rule into the murky waters of fraudulent inducement claims in recent years certainly has been rolled back. Such independent torts will no longer suffer the fate of being dismissed based solely on the economic loss rule. **CB**



Elliot Kula, board certified in appellate practice, and Daniel Samson, have been practicing appellate law for a combined twenty-six years. Having recently formed Kula & Samson, LLP, Elliot and Dan continue to practice in all areas of appellate law, as well as provide litigation support for trial lawyers throughout Florida.

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WHAT'S HAPPENING WITH THE FLORIDA BAR?

Source: Florida Bar Department of Public Information and Bar Services

E-filing Resources: The Florida Bar has assembled a dedicated webpage with resources on mandatory e-filing including links, manuals, deadlines, and free online education. Although e-filing is not a Florida Bar program, all Bar members need centralized information on this new development in the practice of law. The E-Filing Portal is operated by the Florida Courts E-Filing Authority, under a joint agreement between the courts and the Florida Association of Court Clerks. Staffing and technical support for the Authority and the Portal are being provided by the Florida Association of Court Clerks.

Request e-Filing Support for Attorneys & Paralegals by sending an e-mail to support@myflcourtagency.com or by calling 850-577-4609.

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2013 Legislative Session: Weekly updates on legislation being monitored by The Florida Bar will be available throughout the session on Friday afternoons at www.floridabar.org/legislativesession. Also posted on that page are Bar legislative positions, links to track bills and to contact legislators, and other sources for information.

2013 Annual Convention: Make plans now to attend the 2013 Florida Bar Annual Convention at the Boca Raton Resort and Club, June 26-29. Hotel reservations are already being accepted at discounted group rates—be sure to use Group Code: AFLBAR. Convention registration begins in mid-April. Florida Bar Annual Convention Highlights:

- Twice as many CLE seminars over prior years for one fee.
- June 26 e-seminars on e-filing include: “Adjusting to Service by E-Mail: Fundamentals, Failures, and Consequences,” “E-Filing and the Florida Courts E-Filing Portal in Florida State Courts,” and “10 Things Florida Lawyers Must Know About E-Discovery.” The Bar will record these seminars during the convention and make them available as complimentary OnDemand CLE programs via the Lawyers Helping Lawyers program.
- The annual Judicial Luncheon on Thursday, June 27, will feature guest speaker Soledad O’Brien, CNN anchor, in addition to having Chief Justice Rickey Polston deliver a state of the courts report.
- The Lawyer’s Marketplace is an outstanding opportunity for all Bar members to learn about products and services to improve their practices, and many are discounted through the Bar’s Member Benefits program.
- General Assembly on Friday, June 28, will feature the installation of Eugene Pettis as The Florida Bar’s first African-American president as well as a state of the Bar report from current president Gwynne Young. Gregory Coleman, of West Palm Beach, will be installed as president-elect. **CB**



Vivian de las Cuevas-Díaz

Anna Marie Hernandez

Isabel C. Díaz

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...shocks the nation
20 young children killed by gunman, 'evil visited' small town, governor says

Chicago Tribune
SATURDAY, DECEMBER 15, 2012
CONNECTICUT SHOOTINGS
'Our hearts are broken today'
Gunman kills 27, including 20 children

BEARS EXTRA Bears fall out of playoff picture, will need help to get in, after 21-13 loss to Packers
6-PAGE SECTION

CHICAGO SUN-TIMES
MONDAY, DECEMBER 17, 2012 | Sports Final | A WRAPPORTS COMPANY

'NEWTOWN, YOU ARE NOT ALONE'
President comforts a town, and nation shaken with sorrow
COVERAGE INSIDE MAIN PAPER
President Barack Obama speaks at a vigil Sunday in Newtown, Conn., for the shooting victims from Sandy Hook Elementary School.

TOM CRUISE NIGHTMARE! DEADLY HEALTH CRISIS - what his fans don't know
NATIONAL ENQUIRER
SPECIAL ENQUIRER INVESTIGATION
Inside School Shooting Tragedy
WHY HE DID IT!
& WHO ELSE KNEW
Chilling SECRET DIARY he kept on computer
Cops search for killer's ACCOMPLICE
Why mom didn't commit him to MENTAL WARD
Renee Zellweger dating ex-heroin addict
GUNMAN ADAM LAMZA
WHY HIS NEXT PERS OF GOLF RELATES
DECEMBER 16, 2012 | 444

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GOODBYE IN NEWTOWN
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"All the News That's Fit to Print"

MASSACRES 20 CHILDREN AT SCHOOL CUT; 28 DEAD, INCLUDING KILLER
A PRINCIPAL DIES
People Ages 5 to 10 - No Motive Offered for the Attack
BY JAMES BARBOUR
A gunman and his wife...
BY MARK LANDER and ERICA GOODE
Obama's Cautious Call for Action Sets Stage for Debate on Guns
Do This to Our Poor Little Babies'
AMY TARA KOCH IS DREAMING OF A SWEATLESS CHRISTMAS
Newspaper of the Rock River
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“ HEARING THE HEROIC STORIES OF THE PRINCIPAL, LUNGING, TRYING TO PROTECT... I WISH TO GOD SHE HAD HAD AN M-4 IN HER OFFICE, LOCKED UP SO WHEN SHE HEARD GUNFIRE, SHE PULLS IT OUT AND SHE DIDN'T HAVE TO LUNGE HEROICALLY WITH NOTHING IN HER HANDS, BUT SHE TAKES HIM OUT, TAKES HIS HEAD OFF BEFORE HE CAN KILL THOSE PRECIOUS KIDS. ”

God has called them all home?
PAGES 2-5
report 'El'

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'Everybody in... is thinking about...'
AMY TARA KOCH IS DREAMING OF A SWEATLESS CHRISTMAS
INSIDE

Gun Control Debate: Is Gun Violence the Target?



by Jane Muir, Esq. *

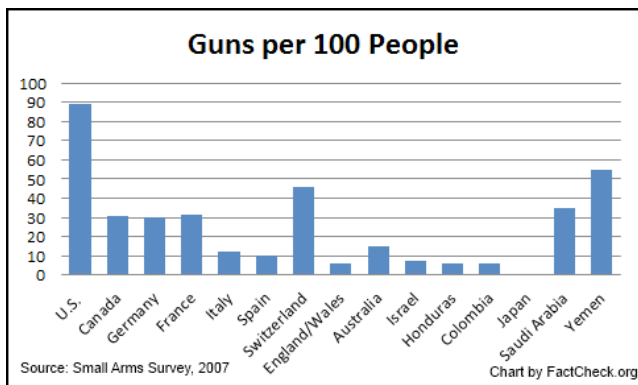
The tragic mass shooting in Newtown, Connecticut has inspired a new push for gun legislation. President Obama's immediate reaction was to ask for Vice President Biden to "come up with a set of concrete proposals" to "reduce the epidemic of gun violence that plagues this country."

In a December Press Conference, Obama spoke about the need to make it easier to access mental health care, as well as the need to "look more closely at a culture that all too often glorifies guns and violence." He also mentioned polls supporting for "banning the sale of military-style assault weapons," "banning the sale of high-capacity ammunition clips" and "laws requiring background checks before all gun purchases."¹ Though most gun rights advocates refused to speak publicly after the shooting, Rep. Louie Gohmert, (R-Tex.), illuminated a viewpoint in opposition to President Obama's: that the answer to tragedies like that was not fewer guns, but

more guns. In an interview, he said, "Hearing the heroic stories of the principal, lunging, trying to protect... I wish to God she had had an M-4 in her office, locked up so when she heard gunfire, she pulls it out and she didn't have to lunge heroically with nothing in her hands, but she takes him out, takes his head off before he can kill those precious kids." Since December, the heated and highly publicized debate has raged among politicians and the press.

DEFINING THE PROBLEM

Identifying viable solutions requires defining the problem. Based on proposals by Senate Majority Leader Harry Reid, (D-Nev.), to provide for universal background checks, school safety, and gun trafficking reported by the Judiciary Committee, and Senator Dianne Feinstein, (D-Calif.), to provide for bans on assault weapons, it is clear some consider gun ownership itself to be the problem. These senators point to the fact Americans own more guns than citizens of any other country, but is there a connection between the number of guns owned by Americans and the incidence of gun violence in the United States? Is gun violence, in general, the problem or specifically school shootings?



Certainly, the statistics of gun ownership in the United States is the highest in the world.² The Small Arms Survey gives high and low estimates, along with an average. The average numbers show the United States with 88.8 guns for every 100 people. Yemen is No. 2 with 54.8 guns per 100 people. Switzerland, with 45.7 guns per 100 people, is No. 3 in the world, with nearly half the rate of the United States. Switzerland also requires military service. For many, this fact is a cause for concern in and of itself. They consider possession of firearms to be a privilege, like driving a car, which should require training, licensure, and registration. A privilege is defined as a special entitlement granted by the state or another authority to a restricted group that, either by birth or on a conditional basis, can be revoked in certain circumstances.³

Does the high rate of gun ownership lead to higher rates of gun violence? When considering comparison to other countries, it depends. The United States has a higher homicide rate than some countries that have strict gun ownership restrictions, including Canada, Australia, and other European countries. Then again, other countries with high levels of firearm homicide show low levels of gun ownership. Honduras has a gun ownership rate of 6.2 per 100 people, and a gun homicide rate of 68.43 per 100,000 people, while Colombia has a gun rate of 5.9 and firearm homicide rate of 27.09.⁴

What is the incidence of gun homicides in the United States? The Center for Disease Control and Prevention's (CDC) most current data, from the Division of Violence Prevention of the National Center for Injury Prevention and Control's "Surveillance for Violent Deaths" show there were 11,078 homicides committed with guns in 2010. The CDC data also shows gun homicides have declined each year since 2007, falling from 12,791 in 2006 to 11,078 in 2010, even as the nation's population grows.⁵ In fact, the homicide rate in 2010 (3.6 per 100,000 people) was the lowest since, at least, 1981, which is as far back as the CDC's online database chronicles. To provide a basis for comparison,⁶ motor vehicle crash deaths account for nearly three times the number of deaths annually than those due to firearms.⁷ Motor vehicle fatalities also are on the decline.

| | | | | | |
|----------------|--------|--------|--------|--------|--------|
| FATALITIES | 2006 | 2007 | 2008 | 2009 | 2010 |
| FIREARMS | 12,791 | 12,632 | 12,179 | 11,493 | 11,078 |
| AUTO ACCIDENTS | 38,648 | 37,435 | 34,172 | 30,862 | 30,196 |

Fortunately, gun homicides are on the decline, as is overall gun violence, even as gun ownership and population increases.⁸

FIREARM FACTS

FACTCHECK.ORG 12/20/12
A PROJECT OF THE NONPROFIT PUBLIC POLICY CENTER

GUN MURDERS
11,078 in 2010
3.59 per 100,000
Lowest rate since at least 1981

NONFATAL GUN INJURIES, ASSAULT
55,544 in 2011
17.8 per 100,000
Highest rate since 2008

GUN AGGRAVATED ASSAULT
138,336 in 2011
50.8 per 100,000
Lowest rate since at least 2004

GUN ROBBERY
122,300 in 2011
45.8 per 100,000
Lowest rate since at least 2004

GUN OWNERSHIP
88.8 per 100 people in 2007
84 per 100 people in 2001

U.S. GUN MANUFACTURING
3,717,831 in 2007
6,107,512 in 2011

GUN SUICIDES
19,392 in 2010
6.28 per 100,000
Highest rate since 1998

CAUTION: NO SINGLE NUMBER CAN TELL THE WHOLE STORY

http://factcheck.org/2012/12/gun-rhetoric-vs-gun-facts

Are school shootings specifically the problem to confront? There certainly have been far too many. Since the massacre at Columbine High School on April 20, 1999, Factcheck.org identifies 62 school shootings that resulted in more than one student, teacher, or school employee being killed or injured, a description that could fit "major school shooting." There were another 68 where one student, teacher, or school employee was killed (not counting suicides) or injured.⁹ The data indicates fewer than one hundred people are killed in mass shootings annually.¹⁰

In an effort to evaluate the risk of school shootings, the United States Secret Service with the United States Department of Education completed a study of school shootings and other school-based attacks. The study examined school shootings from 1974 to 2000, analyzing a total of 37 incidents involving

41 student attackers. The goal was to help prevent school shootings, with the knowledge they rarely are impulsive acts. The study identified ten key findings, which the Secret Service and Department of Education used to modify the Secret Service threat assessment approach for use in schools to give school and law enforcement professionals tools for investigating threats in school, managing situations of concern, and creating safe school climates.¹¹ Among the key findings of the study was that many attackers felt bullied, persecuted, or injured by others prior to the attack, and had difficulty coping with significant losses or personal failures, including attempts at suicide.¹² Another key finding was that the shooters typically let fellow students know in advance they had a plan to perpetrate a mass shooting and intended to follow through on it. The study recommended anti-bullying efforts, and encouraged students to report peers who shared information with them.



because tragic events, like the Newtown shooting, are widely publicized and provide heightened awareness of gun violence? There also is a question as to the cause of gun violence and mass shootings. Some consider violence in entertainment, like movies and video games, to be the root cause of gun violence. Others consider mental illness to be the cause. Still others wish to target black-market arms trafficking or certain types of arms or ammunition, considering them to cause the most violence.

In light of the United States Supreme Court's 2008 decision in *District of Columbia v. Heller*, wherein the Court held the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia and to use that arm for traditionally lawful purposes, such as self-defense within the home, it is unlikely gun ownership will be banned. The definition

of "right" differs from that of a privilege because a right is an inherent, irrevocable entitlement held by all citizens or all human beings from the moment of birth. Perhaps we should be cautious before permitting restrictions on the Second Amendment that the Supreme Court has decided does, indeed, protect an individual right to possess and carry firearms, and patiently evaluate the extent of the problem of gun violence, as well as its causes, before implementing any solution. **CB**

IMPRESSIONS

It appears gun violence is, in fact, on the decline, and yet, many of our leaders believe it is epidemic. Could this be

Jane Muir, is a civil litigator with Gersten & Muir, P.A. For more information, please visit www.gerstenmuir.com.

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by Jennifer J. Perez, Esq.

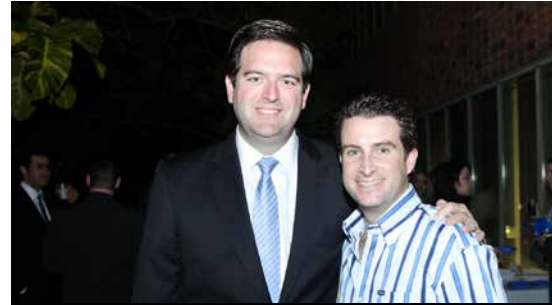
CABA Board of Directors Spring Events

Way to ring in the New Year, CABA! From the chilly winter months to the beginning of springtime, CABA has once again successfully brought together lawyers as well as business members of the South Florida community for various networking and fundraising events.

CABA kicked off the winter holidays by hosting a **Winter Law School Student Cocktail**, hosted by Piedra & Associates, bringing together students from across Florida to toast to the upcoming year.



Judge Abby Cynamon, Jorge Piedra



Jose Felix Diaz, Daniel Diaz Leyva



Alex Alvarez, Jorge Piedra, Joseph Salzverg



Alex Alvarez and Ricardo Martinez-Cid



Ricardo Martinez-Cid, Gina Beovides, and Judge Milton Hirsch



Olivia Rodriguez, Kristina Maranges



Maggie Sanders and Vanessa Brizo



Judge Milton Hirsch, Vivian de las Cuevas-Diaz

To kick off 2013, on **January 24, 2013**, CABA hosted its **2013 Kickoff Cocktail Reception** sponsored by and held at City National Bank. Attendees welcomed the New Year with CABA, enjoyed complimentary wine and hors d'oeuvres, and were given the unique opportunity to meet and network with our new Miami-Dade County Judges.



Yara Lorenzo, Judge Milton Hirsch



Cameron Sisser, Judge Tanya Brinkley, Marlene Quintana, and Gabriela Morello



Yara Lorenzo, Judge Rudy Ruiz, Jennifer Ruiz, and Judge Maria Elena Verde



Richard Lara, Sandra Ferrera, and Richard Greiffenstein



Dax Bello, Olivia Rodriguez, Gina Beovides, Sandra Ferrera, and Eddie Dominguez



Olivia Rodriguez, Isabel Diaz, Ed Arista, Isis Pacheco



Judge Bertila Soto, Sandra Ferrera



Judge Ivonne Cuesta, Judge Vicky del Pino, and Judge Bertila Soto



Elena Smuckler Doyle, Annette Rasco, Melanie Fernandez

On **February 2, 2013**, CABA held its 39th Annual Installation Gala **“Una Noche De Gala”** at the JW Marriott Marquis Miami. This year’s event exceeded all expectations with nearly 1,000 guests in attendance. Thanks to our sponsors and members, CABA raised \$120,000. Proceeds raised at the gala will benefit our initiatives and programming throughout the year, CABA’s Foundation, which provides scholarships to worthy law students throughout the state, and CABA’s Pro Bono Project (PBP), which provides free legal services to needy members of our community. A heartfelt thank you to all of you for making the gala such a success!



Sandra Ferrera, Mr. and Mrs. Manuel Morales



Mark Meland, Sandra Ferrera and Peter Russin



Victoria Mendez, Chief Judge Bertila Soto, Yara Lorenzo



Albert Lazo, Judge Monica Gordo, Paola Bellido, Nelson Bellido



Frank Angones, Georgie Angones, Sandra Ferrera, Cori Lopez Castro



Auro Garrido, Jose Garrido, Jr., and Vivian de las Cuevas-Diaz



Gianella Russo, Javier Lopez, Mercy Lopez



Ryon Little, Maria Garcia, Gina Beovides, and Yara Lorenzo



Honorable Robert Scola, Mark Meland, Victor Diaz, Jr.



Mr. and Mrs. J. Raul Cosio and Mr. and Mrs. Rodolfo Sorondo, Jr.



Sandra Ferrera and Dan Medina



Marlene Fernandez-Karavetsos and George Karavetsos



Ricardo Martínez-Cid, Wendy Polit



Judge Betty Butchko, Jorge Piedra



Mr. and Mrs. Wilfredo Ferrer and Mr. and Mrs. Adalberto Jordan



Victor Diaz, Katherine Fernández Rundle, Nicole Mestre



Judge Gloria Gonzalez-Meyer, Christos Lagos and Alexandra Bach-Lagos



Mr. and Mrs. Bert De Armas, Judge María Korvick and Chief James Skinner



Outgoing 2012 CABA Board of Directors



Gina Beovides, Annie Hernandez, Vivian de las Cuevas-Diaz, Jennifer Perez



Mr. and Mrs. Manuel Garcia Linares, Mr. and Mrs. Eugene Pettis and Mr. and Mrs. Marlon Hill



On **February 12**, CABA hosted one of its many one-hour breakfast **CLE seminars**, **“Business Immigration and Family Removal Proceedings”** presented by Eugenio “Gene” Hernandez, Esq., and Ada B. Pozo, Esq., at the offices of Koyzak Tropin & Throckmorton, P.A. This CLE was designed to help our members familiarize themselves with relevant immigration issues faced on a daily basis.



Javier Lopez and Osvaldo Soto



Sandra Ferrera, Denise Moreno Lopez Sanabria



Gene Hernandez, Nicole Mestre, Sandra Ferrera, and Ada Pozo



On **March 14, 2013**, CABA's Young Lawyers Committee **“Sprung into Spring”** by holding its first networking reception of the year at Azucar, which provided CABA's young lawyers with a great opportunity to network and gave them a chance to learn more about CABA and its initiatives.



Olivia Rodriguez, Maria Garcia, Giselle Gutierrez, Dax Bello, Mark Pacin



Dax Bello, Annette Rasco, Nicholas Basco, Elena Smuckler Doyle



Judge Vicky del Pino, Gina Beovides



Kristina Maranges, Ray Rasco, Jennifer J. Perez



Jessica Haayen, Beatriz Osorio and Olivia Rodriguez



Dax Bello, Ricardo Martínez Cid, Brenna Caballero and Ray Rasco



Gina Beovides, Olivia Rodriguez

On **March 22, 2013**, CABA was honored to host a “Celebratory Reception of the Passing of the Gavel Honoring Chief Judge-Elect, **Bertila Soto**” following her swearing in as the first Hispanic, first Woman and first Cuban-American Chief Judge of Miami-Dade County (and Florida). CABA was also proud to recognize outgoing Chief Judge **Joel Brown** and thanked him for his leadership and efforts on behalf of our judiciary and court system over the last four years. The event, honoring this historic accomplishment, was sponsored by CABA Past Presidents and Board of Directors, and by Sabadell United Bank. The event was held at the University of Miami Life Science and Technology Park. Members celebrated with complimentary hors d’oeuvres, wine, beer, and mojitos.



Jennifer Perez, Judge Milton Hirsch, Sandra Ferrera



Elena Smucker Doyle, Annette Rasco, Jennifer Perez



Sandra Ferrera, Manuel Garcia Linares, Judge Bertila Soto, Manuel Morales



Judge Abby Cynamon, Victoria Mendez



Judge Vicky del Pino, Gina Beovides



Judge Federico Moreno, Ricardo Martinez-Cid

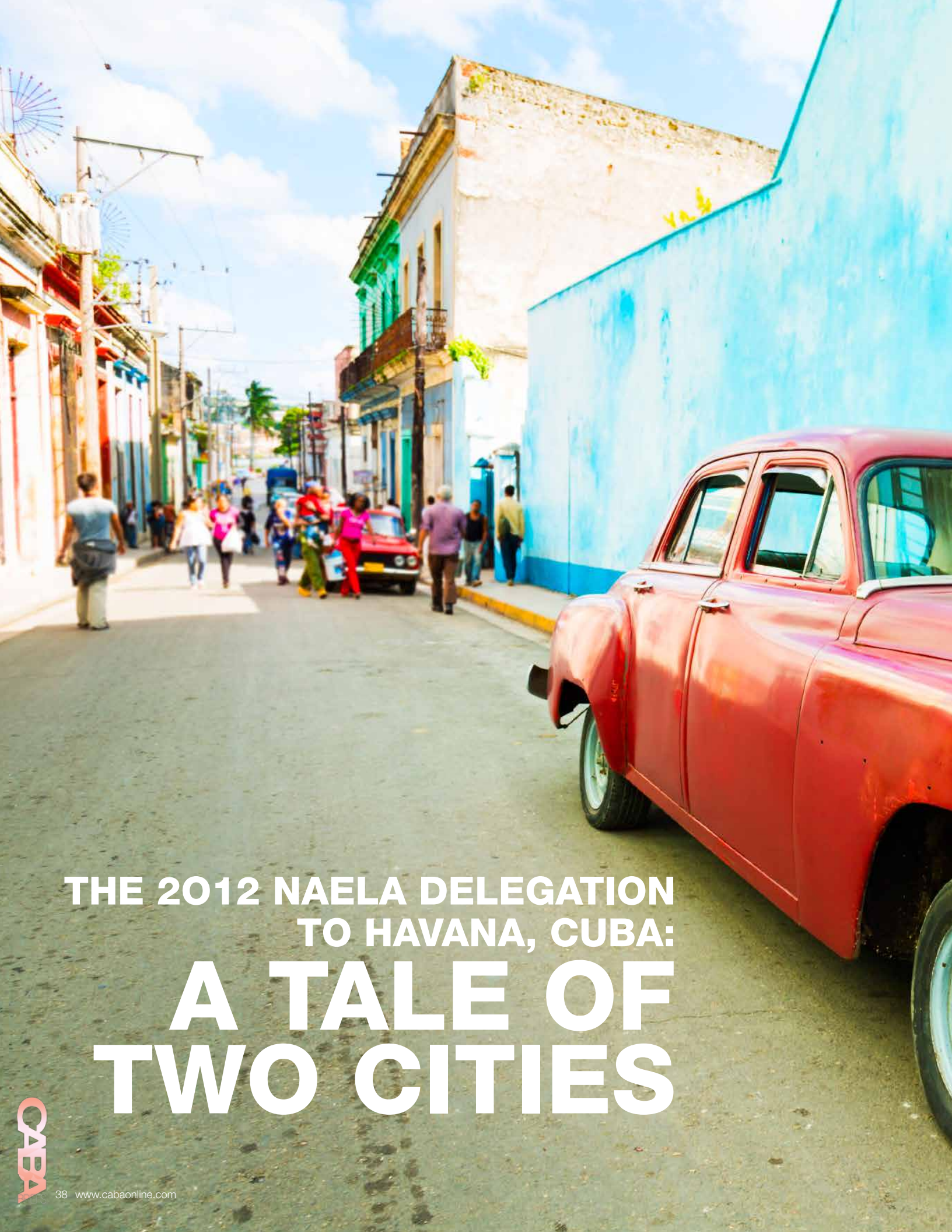


Judge Bertila Soto, Judge Federico Moreno



Annie Hernandez, Judge Joel Brown, and Sandra Ferrera





**THE 2012 NAELA DELEGATION
TO HAVANA, CUBA:
A TALE OF
TWO CITIES**



by John R. Frazier, J.D., LL.M. ¹

with contributions by NAELA President-elect
Howard S. Krooks, JD, CELA, CAP. ²



As a member of the National Academy of Elder Law Attorneys delegation, led by NAELA President-Elect Howard Krooks, I traveled to Havana, Cuba in December 2012 with a group of

attorneys who are NAELA members. The purpose of our trip was to study the long-term care and legal systems in Cuba, as well as cultural perspectives on the treatment of the elderly and persons with disabilities in Cuba. However, the trip went well beyond issues involving elder care. The trip made a significant impact on our group, and Havana was not what I expected. After a brief visit, I am not in a position to make sweeping generalizations, but I can offer a few experiences.

I grew up in the 1960s and 70s, listening to my parents recount stories of the fear they experienced during the Cuban Missile Crisis. Over the years, I also have heard many things about the impact the Cuban expropriation of foreign-owned property had on people who owned property in Cuba in the 1960s. The embargo between the United States and Cuba remains a significant issue in the news today. Communism in Cuba lives on, and many of the people who spoke to the NAELA delegation still represent the “party line” view. However, as compared to this “party line” mentality of the Cuban government, the people I met on the streets of Havana seem to have quite a different view of the world.

For example, the NAELA delegates attended a number of meetings at Union Nacional de Juristas de Cuba. We also attended meetings at Casa de la Amistad. These meetings were more representative of the governmental point of view of the Cuban political structure. Many of the speakers made comments that caught my attention. Specifically, there were three general messages that stood out clearly. First, a retired judge delivered an emphatically clear message about the embargo against Cuba. His message was threefold: (1) The United States is entirely to blame; (2) the embargo, in effect, constitutes “economic warfare” by the United States against the Cuban people; and (3) the embargo is not only economic warfare, but is a “criminal act.”

A second speaker who caught my attention was an economist working on a plan to improve the Cuban economy. He spoke of the details of Cuba’s economic plan, a central theme of which pins its economic hopes on a normalization of trade between the U.S. and Cuba. The economic plan is centered on putting an end to the embargo, and a subsequent normalization of U.S. and Cuban economic relations. The third speaker who made an impact on me was a professor at the University of Havana. In my opinion, the most impactful and shocking statement was that she believed the Cuban government had the “legal right” to expropriate all foreign property under the Agrarian Reform Laws. She further pointed out the embargo is entirely the fault of the U.S. government. The professor advised our group that because former dictator Batista looted the Cuban

Treasury when he fled Cuba, Cuba was unable to pay for the expropriated property in cash. Instead, Cuba offered to pay for the expropriated property in sugar, over time in the future. The U.S. rejected payment for the property in sugar, which ultimately led to the embargo. In effect, she stated the embargo is the fault of the U.S. because of its failure to accept the Cuban terms of payment.

In sum, I gathered the following from the meetings I attended:

- 1) The Cuban Government believes the U.S. Government is entirely to blame for the embargo. The Cubans we encountered universally expressed a willingness to engage in trade with the U.S.
- 2) The Cuban government wants the embargo to end because normalization of U.S./Cuban economic relations is critical to the wellbeing of the Cuban economy.

After my experiences in Cuba and some reflection, I feel the Cuban Government's refusal to accept any responsibility for the issues that led to the embargo poses a significant barrier to the normalization of the U.S./Cuban economic relations and end to the embargo.

From a health care perspective, Cuba has a system in place providing access to health care (and long-term care services) to every Cuban, bar none. Because the island country is so small, relatives tend to live near or with each other, creating multi-generation households. This allows family caregivers to provide needed care without many of the geographic limitations that exist in the U.S. because of its larger geographic size and the mobile society in which Americans live. Further, because many younger Cubans are unable to afford their own homes, they tend to live with the older generations in homes owned by the elderly. This configuration, although undesirable from an economic

standpoint, sets the stage for family caregivers to provide much of the needed care in the community. Doctors are assigned a certain number of families in the town in which they live. They are paid by the State, and families assigned to a particular doctor have all of their physician services met by their assigned doctor. If skilled services are required, these services are provided to the extent possible in the home, or if need be, in a hospital setting. Family caregivers are even paid by the State, further promoting community-based living arrangements. In fact, only 1% of those in need of long-term care are residents of homes for the elderly, or what we would call nursing homes.

Perhaps one of the downsides of this "socialized" approach to health/long-term care is that doctors, who are provided a free education at the university and medical school level, are not paid the same way doctors are compensated in the U.S. For example, on our trip, we met a doctor driving a taxi to make extra money to support his family. He told us he only earned the equivalent of \$28 per month from being a doctor.

He also explained he not only drove a taxi to earn extra money, but since many tourists use taxis, he earns more money driving a taxi than he does being a doctor.

Our conversation with the doctor turned out to be one of several candid encounters with the people of Havana. Each personal interaction

was more meaningful than the next, and gave me a new perspective of this island country. There is the "party line" side of Havana, and then in dramatic contrast, are the beautiful people on the streets of Havana. In today's world, with news from Iraq, Afghanistan, and about Al Qaeda, it is easy to get the feeling there is significant anti-American sentiment outside of the U.S. However, to my surprise, I did not find anti-American sentiment in the streets of Havana! I had two similar encounters with Cuban citizens that truly epitomize what I experienced.

“
After my experiences in Cuba and some reflection, I feel the Cuban Government's refusal to accept any responsibility for the issues that led to the embargo poses a significant barrier to the normalization of the U.S./Cuban economic relations and end to the embargo.
”





Although the Cuban government controls most of the Cuban economy, there are some private businesses and street vendors in Cuba. One area we visited had a number of private business owners who owned little stands in the open market where they sold things ranging from Cuban arts and crafts to fresh coconut water (right out of the coconut!). I met two brothers who were selling their arts and crafts at one of the stands. Everywhere I went in Cuba, I wore my NAELA name tag, which identified me as an American, and as one with a group of American lawyers. The two brothers read my name tag, and asked if I was from America. I said, “yes I am,” and one of the brothers yelled to me, “We love you!!!” He immediately started to tell me “Raul Castro is in big trouble” and “Raul needs an attorney.” He jokingly asked me if I was visiting Cuba to be Raul Castro’s attorney. He also engaged me in a discussion about a government-produced newspaper he was reading, and he indicated he thought most of what was in the newspaper was not true. He said the newspaper spoke favorably about the economies of China and North Korea, and he did not believe it. He told me he thought the U.S. economy was the best in the world. By the way, he did not even try to sell me anything! He only wanted to talk to me because I was from the U.S., and he wanted to tell me about the great admiration he had for our country.

My second experience occurred one evening as I was walking along El Malecón. The skies were clear, but the weather was changing and getting windier. Whitecaps from the Havana Harbor splashed over El Malecón, covering the sidewalk and the street with water. Two young Cuban men walked nearby, and one of them slipped in the water and fell very hard. After helping the young Cuban man up and making sure he was

not injured, his friend noticed my nametag and asked me if I was American. When I said yes, he could not control his excitement and said to me, “You’re an American – we love you!!!” He practically could not contain his enthusiasm about my being American, and he started talking to me about wanting to visit the U.S. and how difficult things were in Havana. He explained he was 19, and had a young daughter, but only made 60 pesos per month. He was such a nice young man; I decided to give him 10 pesos for his daughter. He could not stop thanking me and said 10 pesos was a big portion of his monthly pay. After we finished talking, he told me in Spanish: “Tu eres mi buen amigo” (you are my good friend). The next night walking on El Malecón again, I saw the same young man again. He came up to me and thanked me again for talking to him and for the 10 pesos I gave him the previous night. Once again he told me: “Tu eres mi buen amigo.”

So that is my tale of two cities. On the one side, the party line communist government still exists. On the other, the people of Havana appear to love the people of America. I returned from Cuba with a clearer understanding of its socialized approach to health care and long-term care. Just as importantly, we came away from Cuba with fond memories of the beautiful people of Havana who were somewhat surprised to meet Americans, were pleased we had visited, and simply lit up with appreciative and meaningful conversation.

In a world that is sometimes portrayed by the news media to be filled with anti-American sentiment, it is a good feeling to know America is truly loved by some in this nearby, small Caribbean island. **CB**

¹ *John R. Frazier graduated Cum Laude from Hampden-Sydney College in Virginia with a B.A. in Economics in 1986; received his Master’s degree in Business Administration from Virginia Tech in 1994; graduated Cum Laude from the University of Toledo, College of Law in 1997; and received his LL.M. in Taxation from the University of Florida, College of Law in 1998. He is licensed to practice Law in both Florida and Georgia, and he practices primarily in the fields of Elder Law, Medicaid Planning, Veterans Benefits Law, Estate Planning, Asset Protection, Taxation, and Business Organizations. He can be reached through his website: www.estateplanning.com.*

² *Special thanks to Howard Krooks for writing the health/long-term care portion of this article.*

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SMGQ proudly supports its partners,
2012 Board Member and Vice President, Manny Crespo, Jr.,
and Past-President, Roland Sanchez-Medina, Jr.

in their continued service and dedication to the advancement of CABA's mission.



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WHAT'S HAPPENING WITH THE United States Supreme Court?

Same-Sex Marriage Cases Before the U.S. Supreme Court



by Jorge R. Delgado

On March 26 and 27, respectively, the United States Supreme Court heard oral argument in a pair of cases touching on the hot-button issue of same-sex marriage. In *Hollingsworth v. Perry (Perry II)*, the Court will decide the fate of Proposition 8, which states that “[o]nly marriage between man and a woman is valid and recognized in California.”¹ In *United States v. Windsor (Windsor II)*, the Court could have the chance to weigh in on the validity of Section 3 of the Defense of Marriage Act of 1996 (“DOMA”), which similarly states that “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”¹

The Ninth Circuit Court of Appeals in *Perry v. Brown (Perry I)* definitively stated that “Proposition 8 serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians in California. . . .”³ But as broad

as that sentiment reaches, the court struck down Proposition 8 on rather narrow grounds born, coincidentally, of California’s reaction to DOMA.⁴ When DOMA was enacted, California codified its own “mini-DOMA,” but also created a “domestic partnership”⁶ designation that granted same-sex couples virtually all benefits that heterosexual

couples enjoy, save the title of “marriage.”⁷ The California Supreme Court, however, held that the segregation of that title violated California’s due process clause and equal protection clause.⁸ Proposition 8 sought to overturn that decision, and in doing so doomed itself, said the Ninth Circuit, which held that under *Romer v. Evans*⁹ California could not take away privileges to gay couples already given to them.¹⁰ Whether the Supreme Court will likewise travel down this narrow road,¹¹ or tackle the broader question of whether gay couples have the *same* right to marry under the United States Constitution as heterosexual couples, remains to be seen.

In *Windsor I*,¹² the Second Circuit Court of Appeals held that Section 3 of DOMA could not survive intermediate scrutiny,¹³ rejecting many often stated bases for the law.¹⁴ But before the Supreme Court delves into those merits, it will have to decide whether it can even consider the case. Questions remain as to whether President Barack Obama’s administration (which disagreed with DOMA and, therefore, won below) can appeal the decision, and whether the House GOP leaders have Article III standing to defend DOMA. The Court appointed an *amici* to consider these questions, and her recommendation was to deny review of the case.¹⁵

Worthy of note, the business community has taken a definite interest in the outcome of DOMA, with 278 employers—including Google, Goldman Sachs, Nike and Facebook—filing an *amicus* brief in support of Ms. Windsor.¹⁶ These business interests argue that DOMA has imposed undue burdens on them by affecting workplace benefits, straining employer/employee relations, and raising administrative costs. Whether the apparent effects of DOMA on the business community will sway the Justices is, again, yet to be seen.



¹ Proposition 8 is now codified as Article I, Section 7.5 of the California Constitution. Also before the high court is a standing question: whether the proponents of Proposition 8 could pursue an appeal and defend the validity of Section 8. The Ninth Circuit said yes. *Perry v. Brown* (Perry I), 671 F.3d 1052, 1063 (9th Cir. 2012), cert. granted, 133 S. Ct. 786 (2012) (No. 12-144).

² 1 U.S.C.A. § 7 (1996).

³ *Perry I*, 671 F.3d at 1063.

⁴ 1 U.S.C. § 7.

⁵ Cal. Fam. Code § 308.5 (West 2000) ("Only marriage between a man and a woman is valid or recognized in California.").

⁶ See Cal. Fam. Code § 297 (West 2011).

⁷ *Perry I*, 671 F.3d at 1065.

⁸ See *In re Marriage Cases*, 43 Cal. 4th 757 (Cal. 2008).

⁹ 517 U.S. 620 (1996) (invalidating an amendment to the Colorado Constitution that prohibited local governments from enacting any laws for the protection of homosexuals as lacking any legitimate state interest).

¹⁰ *Perry I*, 671 F.3d at 1076.

¹¹ The United States has advocated this approach in its brief.

¹² *Windsor v. United States*, 699 F.3d 169, 175 (2^d Cir. 2012), cert. granted, 133 S. Ct. 786 (2012) (No. 12-307) (*Windsor I*).

¹³ Laws subject to intermediate review must be "substantially related to an important government interest." *Id.* at 185.

¹⁴ *Id.* at 185-88 (addressing the need for a uniform definition of marriage, fiscal conservatism, preservation of the traditional understanding of marriage and encouragement of responsible procreation).

¹⁵ See Brief for Court-Appointed *Amica Curiae* Addressing Jurisdiction, *United States v. Windsor* (*Windsor II*), No. 12-307, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/01/DOMA-amicus-Article-3-brief-1-24-13.pdf>.

¹⁶ Brief of 278 Employers and Organizations Representing Employers as *Amici Curie* in Support of Respondent Edith Schlain Windsor, *United States v. Windsor* (*Windsor II*), No. 12-307, available at http://www.americanbenefitscouncil.org/documents2013/amicus_doma022713.pdf.

Jorge R. Delgado, is an associate at Kluger, Kaplan, Silverman, Katzen & Levine, P.L. He received his Juris Doctorate from St. Thomas University School of Law, where he graduated valedictorian of his class. His litigation practice touches on a multitude of areas in both state and federal court. He holds a special interest in appellate and constitutional law, and regularly coaches moot court teams from his alma mater in well-renowned national moot court competitions.



Amgen, Inc. v. Connecticut Retirement Plans & Trust Funds



by Leonel Peraza

In *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*,¹ a 6-3 decision, a putative class of shareholders of Amgen stock alleged that Amgen committed securities fraud under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 by misrepresenting the effectiveness and safety of two of its most popular drugs.² When the truth regarding the drugs was revealed, the stock price dropped significantly, and shareholders incurred substantial losses. The shareholders sought class certification under Federal Rule of Civil Procedure 23.³ The issue before the United States Supreme Court was whether a putative class alleging securities fraud is required to prove materiality of the alleged misrepresentations or omissions in order to avail themselves of the fraud-on-the-market presumption of reliance for purposes of certifying the class.

Much of the evolution of securities fraud jurisprudence occurred in a climate quite different from the modern capital markets. Traditionally, securities fraud cases involved “face-to-face fraud cases.”⁴ Thus, to succeed in a securities fraud claim, a plaintiff had to show that “he was aware of a company’s statement and engaged in a relevant transaction . . . based on that specific misrepresentation.”⁵ With the increasing expansion of capital markets, and multiplicity of players involved, securities fraud law had to evolve in order to effectively serve its remedial purpose. The Supreme Court recognized the difficulty faced by plaintiffs to show reliance on the misrepresentations or omissions who have traded in “impersonal markets.”⁶

In 1988, the Supreme Court in *Basic Inc. v. Levinson*⁷ adopted the “fraud-on-the-market” theory, a rebuttable presumption of reliance by a purchaser or seller of a security traded in an efficient market after a *material* misrepresentation or omission was made publicly. The fraud-on-the-market theory is based on the efficient market hypothesis premise that “the price of a security traded in an efficient market will reflect all publicly available information about a company.”⁸ Therefore, any material misrepresentation or omission would be priced into a stock trading in an efficient market, and “thus transmitted to investors through the market price.”⁹ The development of the fraud-on-the-market theory was crucial to securities fraud class action because it “facilitates class certification by recognizing a rebuttable presumption of classwide reliance on public, material misrepresentations when shares are traded in an efficient market.”¹⁰

Here, Amgen argued the putative class must meet all the requirements of the fraud-on-the-market presumption (an efficient market, publicity, materiality, and purchase after the misrepresentation or omission) in order to be certified. However, the Supreme Court rejected Amgen’s argument. Certification under Rule 23(b)(3) requires only that “questions of law or fact common to class members predominate over any questions affecting only individual members.”¹¹ Unlike the other requirements to qualify for the fraud-on-the-market presumption, materiality is an element of both the presumption and a 10b-5 cause of action.¹² Furthermore, the test for materiality is an objective one that can be proved with evidence common to the class.¹³ Therefore, “because a

failure of proof on the issue of materiality, unlike the issues of market efficiency and publicity, does not give rise to any prospect of individual questions overwhelming common ones, materiality need not be proved prior to Rule 23(b)(3) class certification.”¹⁴ In other words, despite acknowledging that the fraud-on-the-market presumption cannot apply without a material misstatement or omission, because materiality is also dispositive of the securities fraud claims, it is a question common to the entire class and thus satisfies Rule 23(b)(3).

Importantly, **while *Amgen* resolves a split among the circuits as to whether materiality of the misrepresentations or omissions must be proved by a putative class prior to certification, it also calls into question the future of the fraud-on-the market theory.**

The *Levinson* decision was always controversial for the adoption and application of an economic theory to the law, however it had been seen as well settled by now. Both Justice Samuel Alito’s concurring opinion and Justice Clarence Thomas’s dissent called for a revisiting of the *Levinson* presumption. Even the majority opinion acknowledged possibly revisiting the opinion. However, the majority ultimately concluded *Amgen* was a “poor vehicle” for such.

¹ 133 S. Ct. 1184 (2013).

² A claim for securities fraud under Section 10(b) and Rule 10b-5 includes six elements: (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

³ There was no dispute between the parties that the putative class satisfied the requirements of Federal Rule of Civil Procedure 23(a). The issue was solely whether Rule 23(b)(3) was satisfied, i.e., that the questions common to the class predominated over questions affecting only individual investors.

⁴ *Amgen*, 133 S. Ct. 1184 (Thomas, J., dissenting).

⁵ *Id.* (citing *Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2179, 2184 (2011)).

⁶ *Id.* at 1192.

⁷ 485 U.S. 224 (1988).

⁸ *Amgen*, 133 S. Ct. at 1190.

⁹ *Id.* at 1195.

¹⁰ *Id.* at 1193.

¹¹ FED. R. CIV. P. 23(b)(3).

¹² *Amgen*, 133 S. Ct. at 1199.

¹³ *Id.* at 1195.

¹⁴ *Id.* at 1199.



Supreme Court Round-Up—Florida Dog Sniffing Cases



by Jason D. Silver, Esq.

Aldo and Franky, a pair of Florida police dogs, were key players in events that led to the litigation of two highly publicized cases, which have been debated by people inside and outside the legal community. The two cases reached the Florida Supreme Court, and were then argued in front of the United States Supreme Court during the October 2012 term. Both cases present the Supreme Court an opportunity to provide further commentary and direction on issues related to privacy under the Fourth Amendment, and insight into when the constitutional line is crossed in the use of police dogs.

In *Florida v. Harris*,¹ which was decided in February this year, a unanimous Supreme Court reversed the Florida Supreme Court. The issue in the case involved the standards courts should review in deciding whether a drug-detection dog's positive alert during a traffic stop constitutes reliable information that gives rise to probable cause to search a vehicle.² During a truck stop in Blountstown, Florida, an officer pulled over Clayton Harris's truck because it had an expired license plate. On approaching the driver's-side door, the officer noticed that Harris seemed visibly nervous and he also spotted an open can of beer.³ The officer requested consent to search the truck, but Harris refused. The officer then retrieved Aldo from the patrol car and walked him around the truck. The dog alerted that he smelled drugs on the driver's-side door handle—thus, the officer believed he had probable cause to search the truck, suspecting that the truck driver was under the influence of drugs.⁴ The search did not turn up any of the drugs Aldo was trained to detect, but it did reveal 200 loose pseudoephedrine pills, 8,000 matches, a bottle of hydrochloric acid, two containers of antifreeze, and a coffee filter full of iodine crystals—all ingredients for making methamphetamine.⁵ The officer arrested Harris, who admitted after proper *Miranda* warnings that he routinely “cooked” methamphetamine. As a result, the defendant, Clayton Harris, was criminally charged.

The Florida Supreme Court ruled that the dog's alert was not a strong enough indicator to show probable cause and, in turn, to justify a search of the vehicle. In its opinion, the Florida Supreme Court formulated a review that required evidence to be shown relating to the reliability of the dog's abilities. The Florida Supreme Court further elaborated that the State of Florida must present evidence revealing how the dog was trained, what was done to satisfy an expert that the dog was properly trained, how the dog specifically performed in drug alerts in other situations, and how the dog handler was trained. With those standards taken into consideration, the Florida Supreme Court ruled that the State did not show that Aldo's reliability in providing a drug alert was enough to establish probable cause in this particular case.

WHAT'S HAPPENING WITH THE
United States Supreme Court?

The Supreme Court, in a unanimous decision authored by Justice Kagan, reversed the opinion of the Florida Supreme Court, rejecting the requirement that police officers show evidence supporting reliability of the dog's alert.⁶ The Supreme Court centered its disagreement on the application of a checklist or strict formula to determine if the dog's alert is strong enough to meet the standard of providing probable cause for a subsequent search. The crux of the Supreme Court's ruling is that probable cause is a flexible, common sense test that considers the totality of the circumstances in each situation, which necessarily means that it should not be subject to any type of formal standards. With that said, the Court sided with the Second Judicial Circuit of Florida and Florida's First District Court of Appeal in deciding that the police in this case had probable cause to search Harris's vehicle applying the totality of circumstances test under *Illinois v. Gates*.⁷

In *Florida v. Jardines*, the issue revolved more closely around a person's Fourth Amendment privacy around the home. Based on only a tip, Franky, a police dog, was called for assistance and sniffed around the front porch area of Joelis Jardines's home. After sniffing around the front porch, Franky sat down near the front door, alerting his handler that he detected the scent of drugs. After obtaining a search warrant, police found marijuana in Jardines's home and charged him accordingly. The specific issue in *Jardines* is whether the front porch of the home constitutes an area that should be afforded privacy protection considerations under the Fourth Amendment as it pertains to government searches.

The Florida Supreme Court in *Jardines v. State*⁸ relied on the well-known *Kyllo v. United States*⁹ decision, in which the United States Supreme Court ruled that the use of a heat-detecting device not available for use to the general public, in an attempt to gain information about what is happening inside a home, constituted a government search. With the above rationale in mind, the Florida Supreme Court decided that a dog sniff meets the standard threshold of a government search due to the ability to carry out the dog sniff in public view, which could then cause humiliation, embarrassment, the strong idea of an

accusation of a crime, and the opportunity for the government to use the sniff in an arbitrary or discriminatory way.

The State of Florida challenged that ruling, asserting that a dog sniff does not meet the level of a government search. Howard Blumberg of the Miami-Dade County Public Defender's Office Appellate Division argued on behalf of Jardines in the Supreme Court. "Arguing the *Jardines* case in the United States Supreme Court was the highlight of my career as an appellate public defender. It was an incredible challenge and a truly amazing experience to stand within a few feet of the nine justices and respond to their questions," Blumberg said.

In a ruling that instantly made national headlines, the Supreme Court affirmed the Florida Supreme Court's ruling in a five-to-four decision, written by Justice Scalia on March 26, 2013. The Supreme Court held that the law enforcement officers' use of a drug-detection dog on the front porch of Jardines's home, to investigate an unverified tip that marijuana was being grown in the home, was a trespassory invasion of the curtilage which constituted a search for purposes of the Fourth Amendment.¹⁰ The court based its ruling on the fact that the dog sniff took part in an area of Jardines' home referred to as the "curtilage," which has been referred to by the Court as the area "'immediately surrounding and associated with the home'—what our cases call the curtilage—as 'part of the home itself for Fourth Amendment purposes.'"¹¹ The Court further held that officers did not have an implied license for the physical invasion of the curtilage.

The Court relied on its previously applied Fourth Amendment principles and its relation to protecting privacy especially at the home. The opinion in this case echoed Howard Blumberg's position regarding the main issue in this case. "Every citizen will be affected by the decision in this case as the issues at the heart of the case involve the privacy rights of every citizen in their home," Blumberg said. **CB**

¹ 133 S. Ct. 1050 (2012).

² *Id.* at 1053.

³ *Id.*

⁴ *Id.* at 1054.

⁵ *Id.*

⁶ *Id.* at 1055-56.

⁷ 462 U.S. 213 (1983).

⁸ *Jardines v. State*, 73 So. 3d 34 (Fla. 2011).

⁹ 533 U.S. 27 (2001).

¹⁰ *Florida v. Jardines*, No. 11-564, 2013 WL 1196577, at *4 (U.S. 2013).

¹¹ *Id.* (quoting *Oliver v. United States*, 466 U.S. 180 (1984)).

Jason D. Silver, is a member of the real estate litigation and lender foreclosure services team for Greenspoon Marder, P.A., representing various creditors and servicers. He constantly appears in state courts throughout Florida, and takes part in mediations frequently.

DADE COUNTY BAR ASSOCIATION'S TWELFTH ANNUAL CO-ED SOFTBALL TOURNAMENT AT TROPICAL PARK: CABA CRUSHERS

On Saturday, February 23, 2013, the Cuban American Bar Association proudly participated in the 12th Annual Co-Ed Softball Tournament at Tropical Park. The event, which is organized annually by the Dade County Bar Association's Young Lawyers Section, benefited the Children's Services Program.

After losing its opening game, CABA's team, the CABA Crushers, came back to defeat Hoffman & Hoffman, P.A., by a score of 16-11. The CABA Crushers followed up that victory with a thrilling 17-16 win over Weil, Gotshal & Manges, L.L.P. The team was led by pitcher, and Most Valuable Player, Javy Lopez, who struck out the last batter with the bases loaded in the bottom of the last inning. Following the victory, an exuberant Lopez jumped for joy and threw his glove up in the air, as he was hugged and congratulated by his teammates, which included directors Nelson Bellido (shortstop), Gina Beovides (catcher), Manny Crespo (third base), Javy Lopez (pitcher), past-president Vicky Mendez (right field), Judge

Marisa Tinkler Mendez (first base), Ninoshka "Sacha" Reyes (left center field), Joe Cantrell (second base), Alex Alvarez (right center field) and J.C. Perez (left field).

CABA would like to thank the Young Lawyers Section for organizing a successful tournament this year. And the CABA Crushers would also like to express their appreciation to everyone who came out to support the team, including the Honorable Jacqueline Schwartz who cheered on the team at every game and director Jorge Piedra for bringing the drinks. The CABA Crushers look forward to participating in the tournament again next year.



The CABA Crushers: *Standing:* Joe Cantrell (second base), Past-President Vicky Mendez (outfield), Javy Lopez (pitcher), James, J.C. Pérez (outfield), Gina Beovides (catcher), Nelson Bellido (shortstop), and Manny Crespo (third base). *Kneeling:* Judge Marissa Tinkler Mendez (first base) and Ninoshka "Sacha" Reyes (outfield). *Not pictured:* Alex Alvarez (outfield).

MAXIMIZE THE OPPORTUNITIES

Best wishes and congratulations to President Sandra Ferrera and the 2013 Board of Directors. We, at Navigant, wish you a successful year.

Special thanks to 2012 President Vivian de las Cuevas-Díaz for your service to the legal community.

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CABA's Pro Bono Project

Exciting News

Source, CABA Pro Bono Project.

Exciting new things are happening at the CABA Pro Bono Project. We have hired a new full-time executive director, Lesley Mendoza, and full-time attorney, Yesenia Arocha.

Lesley is a Miami native. She graduated from the University of Miami School of Law in 2002, and received a Bachelor of Arts degree from the University of Pennsylvania in 1998. After law school, Lesley moved to New York with her family where she worked in the Litigation Department at White & Case LLP. At White & Case, she worked primarily on complex commercial litigation matters. Additionally, she performed pro bono work in cases involving special immigrant juvenile status, asylum, and parental rights. Lesley's hiring signals a new phase for CABA Pro Bono. With the support of CABA Pro Bono's Board of Directors, Lesley will focus on growing our operation exponentially by diversifying the cases handled in-house, as well as growing our ranks of volunteer attorneys.



Yesenia Arocha

As part of that effort, we also welcome Yesenia Arocha to CABA Pro Bono. Yesenia is a graduate of St. Thomas University School of Law. Prior to joining CABA Pro Bono, Yesenia served as the Assistant Director for the Kids Learning About Safety Program at Florida International University. In that capacity, she developed programming geared towards preventing the sexual abuse of children. Yesenia's background in community advocacy and grant writing will be critical in the next year as CABA Pro Bono pursues grants in new services areas.

As in the past, CABA Pro Bono will continue to provide legal assistance to victims of domestic violence, whether it is by providing court representation at injunction hearings or by serving as a referral source to other organizations providing assistance to this group in our community. We also plan on starting projects geared towards assisting those in the armed forces, our community of veterans, and victims of human trafficking. Finally, we are working on collaborating with the Guardian Ad Litem program to provide a voice to children in our legal system.

To begin this new phase, CABA Pro Bono has taken steps to promote its work and the services we offer to our community. We have made appearances on public television, WLRN, and on radio stations such as Miami Rescue Mission. Particularly, we are grateful to Luis Fernandez for having us as a guest on his show, Ante Usted, as well as Marilyn Brummet, Development Director, from the Miami Rescue Mission. Both have been crucial in providing us a platform to create awareness. We are also regularly meeting with elected officials in our community to determine how we can better serve members of our community.

FORECLOSURE DEFENSE

Since 2009, CABA Pro Bono has provided assistance in the area of foreclosure defense. As many of you know, Florida has been one of the states hit hardest by massive foreclosure filings. The backlog of foreclosure filings in our court system affects the rate at which families are losing their homes. CABA Pro Bono has responded to the foreclosure crisis by providing legal assistance and, in the process, keeping families in their homes. We continue to work on this commitment. To assist in these efforts, we will be hiring another full-time attorney.

In addition, we continue to collaborate with other legal aid organizations to address increasing foreclosure rates. To that end, CABA Pro Bono, along with other legal aid offices, have set up hotlines dedicated to providing free legal advice to homeowners that are at risk of losing their homes. This assistance cannot come at a better time because 1 in every 300 homes in our state is subject to a foreclosure proceeding. The assistance is available even if no formal action has been filed against the homeowner. Advocates are available Monday through Friday, from 8:00 a.m. to 5:00 p.m. Issues that can be addressed range from short sales, bankruptcy, or loan modifications. Information is also provided to homeowners who are having issues either with their condo or homeowner associations. There are many resources available and we are working hard to connect our clients with the necessary information.

SECOND ANNUAL LAWYERS ON THE RUN 5K RUN/WALK

CABA Pro Bono hosted its Second Annual Lawyers on the Run 5K on April 20, 2013, thanks to the generous support of many law firms and business in our community and our title sponsor, City National Bank. Our run is the first lawyer-driven run in Florida, and we welcome friends, family members, and our clients to participate. Through our 5K, we hope to raise awareness about the importance of healthy living, provide a family-friendly environment, as well as raise much-needed funds. With state budget cuts to legal aid, we have had to look for additional sources of funding to maintain our services. Like last year, Lawyers on the Run was held at Tropical Park. Awards were given in various categories. And this year's run outshined last year's successes! Additional activities included a kiddie dash and bounce house for the kids. The kiddie dash consisted of three races in the following categories: children ages 2-3 ran 100 meters; children ages 4-6 ran 200 meters; and children ages 7-9 ran 400 meters. For more information, please visit the website lawyersontherun.org.

BOARD OF DIRECTORS

None of the work CABA Pro Bono is expanding on, or breaking ground in, would be possible without the support and dedication of our Board of Directors. Back as Co-Chairs are Yara Lorenzo and Isabel Diaz. The other members of the Board include: Director and CABA's President, Sandra Ferrera; Director and CABA's immediate Past President, Vivian de las Cuevas-Diaz; Director, Eddie Dominguez; and Director, Ralph McNamara. The members of the Board have been critical in ensuring that the services of CABA Pro Bono not only continue, but also evolve to reflect and meet the needs of our community.

CABA Pro Bono would also like to take this opportunity to welcome President-Elect, Ricardo Martinez-Cid, a graduate of the University of Miami, and a William S. Beinecke Scholar from Yale Law School. After graduating from Yale law, Mr. Cid served as a law clerk to the Honorable James Lawrence King, United States District Court for the Southern District of Florida. He joined the firm Podhurst Orseck in 2002 and was named partner in 2006.

CABA Pro Bono would also like to welcome Javier A. Ley-Soto and Monica Cunill-Fals. Mr. Ley-Soto is the Chief Regional Counsel for the Florida Department of Children and Families, where he oversees the general counsel functions of the Department for Miami-Dade and Monroe Counties. Mr. Ley-Soto was given the Assistant General Counsel of the Year award by the Florida Government Bar Association in 2010, and he was a Finalist for the Miami Chamber of Commerce 2011 HYPE Awards Go-Getter Award.

Ms. Cunill-Fals is a partner at Bilzin Sumberg's Real Estate Group, where she has represented local and national clients in the acquisition, disposition, leasing, and financing of all types of projects, including, but not limited to, shopping centers, office buildings, hotels, storage facilities, and multi-family projects. She is one of several attorneys in the firm representing the largest special servicer of commercial mortgage-backed securities in the country.

With the support of our Board of Directors and our newly-hired Executive Director, we look forward to continued growth. Our program has come a long way from its humble beginnings and, as our community grows, so will we. Anyone interested in referring a case or serving as a volunteer attorney should call (305) 646-0046, or visit the CABA Pro Bono office at 1779 NW 28th Street, Miami, Florida 33142. Our office is open Monday through Friday, from 9:00 a.m. to 1:00 p.m. No appointment is necessary. Assistance is also available online at www.cabaproboproject.com.

BOARD OF DIRECTORS BIOGRAPHIES



Isabel C. Diaz, Co-Chair & Member of CABA's Board of Directors

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Isabel C. Diaz is an associate in the Miami office of Holland & Knight. She is a member of the firm's Real Estate Group. She received her Juris Doctor degree from the University of Miami School of Law in 2004 and graduated Summa Cum Laude from Florida International University with a Bachelor of Arts in 2001. In 2008, she was named Guardian Ad Litem Volunteer of the Year, Eleventh Judicial Court, Division 01. That same year, she was recognized as one of the Cuban American Bar Association Outstanding Members. In 2009, she was one of 12 honorees among the "Hispanic Women of Distinction," which is an honoree for significant contributions to the tri-county community while maintaining culture and traditions. Ms. Diaz is also an active member of the Florida International University Alumni Association Board of Directors.



Yara Lorenzo, Co-Chair

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Yara Lorenzo is an attorney with the Miami office of Hogan Lovells. She practices in the Litigation, Arbitration, and Employment Practice Group. Before joining private practice, Yara served as a Law Clerk for three years to the Honorable James Lawrence King, District Court Judge for the Southern District of Florida and the Honorable Peter T. Fay, Circuit Court Judge on the Eleventh Circuit. She graduated cum laude from St. Thomas School of Law where she served as Editor-in-Chief of the Intercultural Human Rights Law Review. Yara is a Director of the Cuban American Bar Association and co-chairs the CABA Pro Bono Project.



Sandra Ferrera, Director & CABA's President

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Sandra Ferrera is a partner at Meland, Russin and Budwick Attorneys At Law handling a wide range of transactional real estate matters along with probate and guardianship matters. She graduated Cum Laude from the University of Miami School of Law in 1999 and received a Bachelor of Arts in 1996 from Florida International University. Ms. Ferrera was named Top Up & Comer Lawyer in South Florida by South Florida Legal Guide and Florida Trend's Legal Elite from 2007 through 2011. She was also named Rising Star by Super Lawyers from 2009 through 2011. In 2010, Sandra was honored as one of the "40 under 40" Outstanding Lawyers of Miami-Dade County, by the Cystic Fibrosis Foundation.



Vivian C. de las Cuevas-Diaz, Director & CABA's Immediate Past President

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Vivian C. de las Cuevas-Diaz is a partner in Holland & Knight's Miami office and a member of the firm's Real Estate practice. Ms. de las Cuevas-Diaz has extensive experience in complex real estate transactions for both private and public clients, representing institutional lenders in commercial lending for various types of projects and developments in the United States, and in asset-based loans secured by real estate, inventory, equipment receivables and securities. Ms. de las Cuevas-Diaz was recently appointed by Florida's U.S. Senators Bill Nelson and Marco Rubio to the Florida Judicial Nomination Commission (JNC), and was also selected to serve on the Board of Directors for the Florida Chamber of Commerce. She was named to the Space Florida Board of Directors earlier this year, and Florida Trend magazine lauded her as a "Must-Know Floridian."

CABA's Pro Bono Project

In addition to serving seven terms on the CABA Board of Directors, she has served as a member of the Enterprise Florida Board of Directors since 2007 and as Legislative Chair in 2009 and 2010. She is a member of the Latin Builders Association and serves on the Board of Directors for both the Kristi House and the American Red Cross. Her additional civic participation includes the Greater Miami Chamber of Commerce, the Builders Association of South Florida, the Florida Association of Women Lawyers, the National Association of Professional Women and Commercial Real Estate for Women (CREW). She has also accumulated a variety of honors and awards. Most recently, she was named among the Miami Herald's elite "20 Under 40" list. She has been repeatedly listed as a Florida Trend magazine "Legal Elite—Up & Comer" and Law & Politics magazine "Florida Super Lawyer—Rising Star." In 2010, she was named among "40 Under 40" by the South Florida Business Journal.

Ms. de las Cuevas-Diaz is a graduate of Florida State University and received her Juris Doctor from the Tulane University School of Law. During her tenure at Tulane she served as president and conference chair for the International Law Society from 1997-2000, and was also a member of the European Civil Law Journal.



Ricardo Martinez-Cid, President-Elect

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Ricardo earned his undergraduate degree in only three years at the University of Miami (B.A. cum laude 1997) and his Juris Doctorate at Yale Law School (J.D. 2000) where he was the William S. Beinecke Scholar. While a law student, Ricardo was a director at Yale's renowned clinical program. He served on the Board of Directors of the Latino Law Students Association, and was an editor of the Yale Journal of International Law. Before joining the firm, Ricardo served as a law clerk to the Honorable James Lawrence King on the United States District Court for the Southern District of Florida. He joined the firm in 2002 and was named a partner in 2006. He is a Co-Chair of the Aviation and Space Law Committee of the American Bar Association; Chair-elect of the Aviation Law Section of the American Association for Justice; and serves on the Board of Directors of the Cuban American Bar Association, as well as the Belen Jesuit Preparatory School Alumni Association.



Eddie Dominguez, Director

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Eddie Dominguez is City National Bank's Senior Vice President and Director of Marketing, Communications and Community Relations. The former longtime media executive and journalist joined the bank in late 2011 after a decade as Executive Editor of the Daily Business Review, South Florida's news outlet of record for business, real estate, and the law. In addition to overseeing the day-to-day news operation, he helped redesign the newspaper, launch the DBR's new website, and was a force behind the creation of event driven special reports such as Most Effective Lawyers and Top Dealmakers. Before his decade of service to the Review, Mr. Dominguez was Executive Editor at Miami Business and Latin CEO magazines. Under his leadership, Miami Business was repeatedly named "Best Written" by the Florida Magazine Association. He also worked for the Associated Press where he covered major national and international news stories, including Pope John Paul II's historic visit to Cuba. Mr. Dominguez earned a Bachelor of Science in Journalism and Political Science from the University of Miami. He also attended Miami-Dade College and is a member of that institution's Hall of Fame. He was honored in 2010 with the Cuban American Bar Association's Public Service Award for his work to increase awareness of judicial elections. He received History Miami/11th Judicial Circuit Historical Society's Chairman's Award for his work leading the coverage of the court's centennial in 2011.



Ralph MacNamara, Director

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Ralph MacNamara serves as Director of Advisory Services for Kaufman, Rossin & Co., one of the largest independent accounting firms in Florida and one of the top 100 CPA firms in the country. He is a member of the firm's Forensic Advisory and Valuation Services Practice Group and regularly works with attorneys to assist with their forensic accounting, economic damages, e-discovery and expert testimony needs. He specializes in providing a variety of consulting services relating to financial reporting, outsourced accounting, financial forecasting and strategic planning. MacNamara's clients include public companies, private businesses, and entrepreneurs, which represent a wide-array of industries such as banking, finance, entertainment, healthcare, hospitality, information technology, insurance, legal, logistics, manufacturing, online commerce, pharmaceutical, and wholesale.

He is currently Chairman of the Florida District Export Council, to which he was appointed by U.S. Secretary of Commerce Gary Locke, and serves on the Enterprise Florida Stakeholder's Council. He is a member of the Board of Directors of the Cuban American Bar Association Pro-Bono Project and Co-Chair of the Greater Miami Chamber of Commerce's 2012 Top 100 Minority Business Awards. A lifelong resident of South Florida, MacNamara earned an MBA from the University of Miami with specializations in Finance and Marketing and holds a Bachelor degree in Business Administration from Florida International University.



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Monica Cunil-Fals is a partner at Bilzin Sumberg Baena Price & Alexrod LLP in the Real Estate Group. Monica represents local, national, and international clients in the acquisition, disposition, development, financing, and leasing of various types of commercial real estate projects including shopping centers, office buildings, hotels and apartment complexes. She also represents special servicers (including the largest special servicer in the country) of securitized commercial real estate loans with respect to loan modifications, discounted payoffs, partial releases, REO sales, loan sales, loan assumptions, and interest transfers. Monica has also represented lenders with respect to the origination of commercial real estate loans including conduit and construction loans.

In addition to being a partner, Monica is a member of the training and culture committees at Bilzin and also serves as the co-head of the women's initiative at the firm. Monica is also actively involved with, and committed to, our community. She is an active member of CABA, has served on various CABA committees throughout the years, and was previously awarded with CABA's Outstanding Member Award. She was also the recipient of the John Edward Smith Child Advocacy Award. Monica serves on the membership committee of Commercial Real Estate Women (CREW) and is a participant in the Street Law Legal Diversity Pipeline Program.



Javier A. Ley-Soto

Email: javierleysoto@gmail.com

Currently the Chief Regional Counsel for the Florida Department of Children and Families, Mr. Ley-Soto oversees the general counsel functions of the Department for Miami-Dade and Monroe Counties. Prior to joining the Department, he worked at a boutique law firm handling commercial litigation matters. Mr. Ley-Soto also clerked at the Third District Court of Appeal for the Honorable David M. Gersten. Mr. Ley-Soto has been a member of CABA since graduating from St. Thomas University School of Law where he was the Student Bar Association President, Student Senator, and founding member of the St. Thomas More Catholic Law Society. He was awarded 2010 Assistant General Counsel of the Year award by the Florida Government Bar Association and a Finalist for the Miami Chamber of Commerce 2011 HYPE Awards Go-Getter Award. **CB**



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Spotlight on local charity **United Way**

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For nearly 90 years, United Way of Miami-Dade has been an innovative force in the community with a long and successful track record of responding to emerging needs and transforming people’s lives. Our work is focused on education, financial stability, and health, with education at the foundation of it all. A good education leads to better jobs, better health, and a better quality of life.

Our mission is to build community by helping people care for one another—a mission we make possible by bringing people and resources together, creating partnerships, and forging relationships that change lives in our community. United Way of Miami-Dade advocates for local, state, and federal government investment in social services; funds nearly 120 programs with measurable outcomes at 58 charitable organizations in the community; provides guidance to local non-profits, helping them to become more effective; incubates innovation in service delivery; and convenes key community leaders to address important issues. All this is essential to our success and to the success of our community.

For nearly 40 years, CABA’s mission has been to serve its community by promoting equality among Miami-Dade residents. CABA addresses issues in many areas within the judiciary and legal community. With a focus on providing equal access to legal and adequate representation to all minorities and indigent individuals, and funding and administering an effective pro bono legal assistance project, CABA is demonstrating the same vision as United Way’s: a caring community strengthened by its diversity and compassion.

Serving as a volunteer leader for United Way and CABA, Executive Vice President and Corporate General Counsel of MasTec, Inc., Albert de Cardenas, works to encourage members of CABA and the broader legal community in Miami to get involved with United Way. As Chairs of United Way's Legal Cabinet, Albert, John Sumberg of Bilzin Sumberg, and Bob Fatovic of Ryder Systems, developed an event known as the United Way Legal Mingle. This annual gathering of local legal professionals is in its fourth year, and provides an opportunity to acquaint associates, partners, and general counsels with the work of United Way. Beyond Albert, John, and Bob, United Way is delighted to have attorneys across Miami-Dade County engaged in our work.

"What drew me to United Way was the tremendous work it does in helping the local community. Everyone knows someone who has been helped directly or indirectly by United Way," said Albert de Cardenas. When asked what he considers to be the most valuable part of United Way's work in the community, Albert responded: "The United Way has such an important role in the community, it's difficult to choose one. If I had to pick, it would be their work in early education."

Programs in the area of early education, like Centro Mater Child Care Center's preschool program, provide high-quality services to children and families, including a sound learning environment, age and developmentally appropriate assessments, and research-based best practice curriculums. Beyond early education, Centro Mater also assists the youth in our community in improving their English language skills. Youth program participant Lissandra was having difficulty with her schoolwork and falling behind in her classes when she arrived at Centro Mater. With the support she received there, she was able to improve her English through literacy activities, and complete her homework with greater ease—enhancing her education and making academic success more attainable. To learn more about Lissandra, visit unitedwaymiami.org/liveschanged.



“*What drew me to United Way was the tremendous work it does in helping the local community. Everyone knows someone who has been helped directly or indirectly by United Way,*”
said Albert de Cardenas

Beyond education, United Way invests in programs that set individuals and families on a path to achieving long-term economic independence, such as the Cuban American National Council's economic independence program, which provides low and moderate income Hispanic residents in Little Havana and Hialeah with access to bilingual financial literacy training and case management. And, in an effort to improve the health and nutritional status of our neighbors, United Way of Miami-Dade partners with dozens of non-profit agencies to provide preventative health screenings, HIV/AIDs education and testing, help with daily living, and nutritious meals for older adults. The Little Havana Activities and Nutrition Centers of Miami-Dade County, a United Way community partner, operates an elderly meals program providing group meals at 14 senior centers county-wide and offering home-delivered meals to the frail, home-bound elderly.



Each year, United Way provides help and hope to tens of thousands of Miamians by investing in quality programs such as these, advocating for policies that change lives, and creating innovations in service delivery.

United Way of Miami-Dade offers a variety of opportunities to get involved—serve on a community impact council, become a volunteer reader, or join an affinity group such as Women's Leadership, Young Leaders, or The Tocqueville Society. It takes all of us working together to create a more educated, prosperous, and healthy Miami. For more information and to get involved, please contact Karina Alvarez at alvarezk@unitedwaymiami.org, or (305)646-7044. **CB**



YOANI SANCHEZ LECTURE: “CAN TECHNOLOGIES AND SOCIAL MEDIA ACCELERATE CUBA’S DEMOCRATIZATION?”



by Alejandra Moreno*

On April 1, 2013, CABA cosponsored Yoani Sanchez’s lecture titled “Can Technologies and Social Media Accelerate Cuba’s Democratization?” The event was held at Florida International University’s Wertheim Performing Arts Center and was cosponsored by FIU’s School of International and Public Affairs, School of Journalism and Mass Communication, the Latin American and Caribbean Center, and the William Randolph Hearst Foundation. The following is a description of Sanchez’s message written by Alejandra S. Moreno. A video of Yoani Sanchez’s presentation can be seen on CABA’s website at <http://www.cabaonline.com/content/lecture-yoani-sanchez>.

Sanchez, the Cuban philologist, teacher, and blogger, has recently created waves with her trip to South America, Europe, and most recently Miami this spring. Indeed, Sanchez is known for her blog called *Generación Y* in Cuba, in which she holds accountable those in power, sheds light on the veil that communism has used to

shelter the island from the outside world, and encourages capitalism.

Through her blog, which is available in 17 languages, she shares not only a political message, but a social one as well. Sanchez captivates her readership, whether it is on her blog or via twitter with her poetic license and a writing style that is truly unique. She recounts her experiences of repeatedly being denied visas to travel, being arrested and beaten, losing friends and family to fear of government reproach, and how technology has given her a way to impart the reality of living under the communist regime.



Eduardo Palmer, Nelson Bellido, Judge Gladys Perez, Pedro Freyre, and Yoani Sanchez in the middle

Sanchez also confronts controversial topics such as the embargo, capitalism, and the Cubans in exile compared to those born into communism. Although her supporters are many throughout the world, there are still those who criticize and try to discredit her efforts. Sanchez is constantly being badgered about her lifestyle, trips, and access to new technologies compared to

those of others in present-day Cuba. Her response is always the same, transparent, honest, and composed. She lives with her husband, independent journalist Reinaldo Escobar, and their teenage son, Teo, in a two bedroom high-rise apartment built by her husband's bare hands and sweat over five years; her trips are financed by educational organizations; and her computer and other electronic devices that allow her to communicate to the world have been provided through donations.

It is through her studies of computer science in Switzerland for two years that Sanchez came to realize how powerful the Internet could be. It was only then that she made a choice to return to Cuba in 2004 and began publishing an online blog, although over 95% of Cubans do not have Internet access. While this has been a challenge for Sanchez, who has faced scrutiny and intimidation from Cuban government officials and has even been physically assaulted, she has remained determined more than ever to spread her message and allow the world to see the true condition of life in Cuba where malnutrition and totalitarian repression is a reality, and where basic freedoms of speech, press, and religion do not exist.

Having come from a family of "plantados" (political prisoners for 20+ years) myself, and hearing the stories of torture and suffering, I wanted an opinion from that voice. Sharing a Cuban coffee at Larios with my Godfather, we ran into a Cuban radio personality whose words I wrote on a napkin:

"Ya lo nuestro no funcionó, tú en el presidio y yo en la invasión. Tenemos que rendirnos como vencidos. Tenemos que apoyarla porque ella es otra esperanza nueva para una Cuba libre. Y esa es la verdadera misión de todos."



Nelson Bellido, Yoani Sanchez

There is still hope on the island; it just needs cultivation. There is an ambassador who stands firmly on Cuban ground like a palm tree solid and unwavering. Our mission is one in the same. **CB**



Pedro Freyre, U.S. Representative Mario Diaz Balart, Nelson Bellido, Judge Gladys Perez, Eduardo Palmer

* *Alejandra S. Moreno is a Partner at Casal & Moreno, P.A. She focuses on estate planning, guardianships, and probate, and her offices are located in Coral Gables.*



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CABA FSU Student Chapter's Networking Reception



by Maria Garcia

On April 2, 2013, CABA and the new Florida State University (FSU) College of Law CABA Chapter co-hosted a member cocktail reception in Tallahassee. More than 50 law students, attorneys, and state legislators attended the event. It was an opportunity for students to network with local as well as Miami-based attorneys who made the trip up to Tallahassee. This event was part of CABA's significant outreach to Florida law schools and its efforts to assist students as they enter the legal workforce. Past President Vivian de las Cuevas-Diaz and Board Member Maria D. Garcia were in attendance to represent the organization's leadership.



Rick DeMaria, Public Defender Carlos Martinez



Derek Cavada, Vanessa Espinosa, Joseph Salzberg, Javier Mesa, Maria D. Garcia, Daniel Puente, Erica Steinmiller, Daniel Bart, Jessica Fernandez, Vivian de las Cuevas-Diaz, and Katie Husta



Rep. Jose Felix Diaz, Vivian de las Cuevas-Diaz, Maria Garcia, Rep. Carlos Trujillo, and Rep. Michael Bileca

Dichos de Cuba



by Monica M. Albarello

Many Cuban sayings are quite visual. If you can picture the statement, then you will understand the meaning of the saying. The following are a few of the most visual Cuban sayings my family, Cuban friends, and I could recall.

Monica M. Albarello, Esq., practices personal injury law and civil litigation at Conerly, Bowman and Dykes, LLP, a law firm in Destin, Florida. She can be reached via email malbarello@emeraldcoastlawyers.com or by phone (850) 837-5118.



Lo que esta pa' ti nadie te lo quita

English translation: *No one can take away what's in store for you.*

Simply put, what is meant to be is meant to be. I have heard this saying used in different contexts, and maybe you have too. Some like to use it to describe how there is no luck, just fate, while others use it to explain someone is destined to love you. For example, Willy Chirino said it best when he wrote a song about this *dicho*: **la tipa que esta pa' ti ni Don Johnson te la quita** (the girl that's meant for you, not even Don Johnson can steal her from you). Willy is singing about destiny and the idea that it is already set in stone for us. Does this mean everything that happens to us and will happen to us in the future is our destiny and already decided? If that is the case, I sure hope my destiny (and ideally while I am still young) includes a hefty winning Powerball ticket.

Un clavo saca otro

English translation: *One screw removes another.*

If there is one thing I love about our Cuban culture it is that every Cuban, whether born on the island or to Cuban parents elsewhere in the world, has the same approach to romantic advice. For a broken heart, I have been told, “oyeme, olvidate que lo que esta pa’ ti, nadie te lo quita. Y acuerdate que un clavo saca otro. No te vuelvas loca.” (translation: hey, forget about it! What’s meant to be is meant to be and remember one screw removes another. Don’t get upset.) What they are trying to tell me is that “there are plenty of fish in the sea.” It’s easier said than done, but moving on from a failed relationship provides the healthiest recovery for the heart. Meeting new people, whether you are ready to move on or not, may lead to an unexpected, yet pleasant surprise.

Barriga llena, corazón contento

English translation: *A full stomach means a happy heart.*

Ah, food...I love food. I love sweet food, I love Cuban food, and I love to cook food. I get my cooking skills from my mom, but I will admit she is still better than me. My mom cooked everyday for my three older brothers and me while we were growing up. She would fill the dinner table with food – ensalada de berro y cebolla (watercress and onion salad), platanitos fritos (fried plantains), tostones (green plantains) for one of my brothers who prefers them, arroz (rice), frijoles colorados (red beans), and bistec empanizado (fried breaded steak). We sure ate like champions! All that flavor in our mouths brought us instant happiness. Every one of us made sure to tell our mom we loved her at the end of the meal, if we could hold it in until then. This *dicho* is also known as one to describe a tactic to conquer love. My friend Mike said his wife had him at first bite. For Mike, the way to his heart was through food. Just as the saying goes.

Vístame despacio que voy de prisa

English translation: *I’m in a hurry so dress me slowly.*

You might be asking yourself, “how does this make any sense?” I will attest this makes all the sense in the world. When you are in a hurry – maybe you are running late to work, you tend to become frazzled and your judgment is clouded. Then, once you are frazzled, you are not thinking straight, you become frustrated with minor things, and the worst part is you become forgetful. I have been in a rush many, many times, and as a result, I have suffered plenty of bruises on my limbs, bad hair days, and other unpleasant events. Said differently, big mistakes happen when one is in a rush. Home Alone is my favorite example of a big mistake arising out of a rush. It was Christmas; everyone was excited for the family trip to Europe, but they overslept and almost missed their flight. No doubt, everyone was in a crazy rush, but to forget one of your own kids at home, and notice he is missing when you are already in flight, is the kind of rush you want to avoid. Next time you are in a rush, ask yourself, “what did I forget? What could I forget?” Stay cool and focused when the clock is ticking against you. **CB**

La Cocina de Christina



Pastel de Medianoche

When I initially read the recipe for Pastel de Medianoche, I did a double-take. First, you form the dough for the top and bottom crusts, from scratch, and then build a *medianoche sangüiche* (midnight sandwich) in between. Yes, the recipe process is really scary. As you go through the process for the first time, I would advise you to have someone hold your hand or help you balance on one leg, because the dough is soft, mushy, and very hard to handle. But when the dish is baked to crispy golden perfection—and the smell of the hot Swiss cheese, ham, turkey, and Cuban pork is emanating from your oven—you have to sit down and realize what you have just achieved—homemade Cuban greatness.

Ingredients:

For the dough: 2 ½ cups of flour; ½ cup of sugar; 1 teaspoon of double-acting baking powder; ¼ teaspoon of grated nutmeg; ½ teaspoon of salt; ¼ pound (1 stick) of butter; 2 egg yolks; 1 whole egg; ¼ cup of dry white wine; ¼ cup of oil.

For the filling: ½ pound of sliced sweet ham; ½ pound of sliced Swiss cheese; ½ pound of sliced roasted pork; ¼ pound of sliced turkey breast; ½ pickle, chopped; 1 teaspoon of mustard.

For the egg wash: 1 egg yolk; 1 teaspoon of milk

Instructions:

(1) Preheat oven to 375 degrees; (2) sift the flour with the sugar, baking powder, salt, and nutmeg; (3) add butter and cut it with a pastry cutter until little pellets form, or until you have a sand-like consistency; (4) beat the egg yolks, whole egg, oil, and cooking wine, together; (5) add them to the dry ingredients and mix them together with a fork until it is well-blended; (6) pat out the dough and divide it into two parts; (7) put one of the parts on the bottom of a greased, 9” glass pie plate; (8) spread half the mustard on the dough; (9) place the ham, pork, turkey, cheese, and pickles in layers; (10) spread with the remaining mustard; (11) repeat the ham, pork, turkey, and cheese layers; (12) top with the second part of the dough; (13) brush the egg wash over the top of the dough; (14) to let the steam out, seal the edges with a fork and cut holes in the middle of the top; (15) cook until golden, approximately 50 minutes.

Note: If you would like to reduce the preparation time for this recipe, you can buy refrigerated piecrust at a grocery store and follow the package instructions for baking. **CB**

MOVING FORWARD



by Jorge A. Pérez Santiago

In this issue, it is evident that CABA is well along its way to accomplishing the core tenets of its mission. In particular, some of the events we highlighted demonstrate that we are closer than ever to achieving equality, diversity, access, and opportunity in the legal profession and in our community. Of note, CABA:

(1) celebrated the Passing of the Gavel honoring Chief Judge Bertila Soto, the first woman and first Hispanic to serve as chief judge of the Eleventh Judicial Circuit of Florida; (2) cosponsored Cuban dissident Yoani Sanchez's lecture regarding the possibilities of accelerating the democratization of Cuba; and (3) expanded our presence at Florida State

University and in Tallahassee. Although some of these accomplishments are greater than others, they all are proof that CABA's efforts make a difference in our community and in Florida, and with continued dedication, perhaps we can expand our reach to influence the lives of many more.

To that end, our next edition of *Briefs* will feature a chapter about Cuban American lawyers written by Past-President Rene Murai for a recently published book, *Cubans, An Epic Journey*. The excerpt will demonstrate the rise of the Cuban American lawyer. Also, we will share Murai's installation speech from 1985 to provide a perspective on how far CABA

has come since the 1980s. We hope that these passages will allow our readers to travel to the past and see for themselves what can be achieved with the power of unity and impassioned service to the community.

We will also continue to highlight the work of CABA and its members, such as CABA's Pro Bono Project, and CABA's amazing events, such as its "Lawyers on the Run" 5K. In addition, we will present relevant and recent cases from Florida and the United States Supreme Court, and discuss antitrust in the context of *O'Bannon v. NCAA*. As always, we will offer both sides of the issue.

Jorge A. Pérez Santiago is a Staff Attorney for Justice Labarga of the Florida Supreme Court and CABA Briefs' Editor-in-Chief for 2013.

CB



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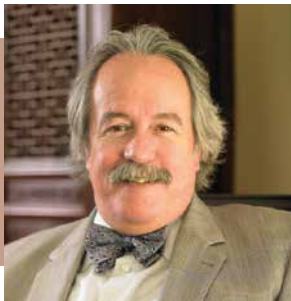
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