GALA

BRIEFS

GALA EDITION
SPRING-SUMMER 2015

Table of CONTENTS

Featured on the cover is artwork by **Miranda Mojena**, the winner of CABA's 10th Annual Art In The Tropics Contest. Ms. Mojena is a student at "Arts & Minds" Academy in Coconut Grove and hopes to continue her pursuit of the arts in college.

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SPRING-SUMMER 2015

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President's MESSAGE

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

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

2015 is a year filled with promise and opportunity for our organization to meet the legal, political and moral challenges presented by the rapid changes in relations between the United States and Cuba. As the character of the long and complex relationship between the two nations changes once again, CABA stands ready to provide sober expertise and guidance, whether in the private sector or the public sphere, including the drafting of transitional legislation to nurture the peaceful reintroduction of democracy to the people of Cuba.

We are members of one of the oldest and noblest professions. We are charged not only with helping our clients resolve whatever problem they have, but to do justice, as well, to give back to our community. Dr. Eduardo Couture, a renowned Uruguayan lawyer and professor of law who taught in universities in the U.S. and Europe, wrote a lawyer's ten commandments. And they are: To study, think, work, seek justice, be loyal, tolerant, patient, to have faith in the law, to not harbor rancor, and most of all, to love the profession.

Let us all actively contribute to CABA's mission and continue pressing forward. Our work is far from done.

Manny Crespo, Jr.
President

Editor-In-Chief's MESSAGE

I am both excited and humbled to take on the role of co-editor of CABA Briefs. I look forward to working with my editor in chief Jorge R. Delgado to bring you a publication that is worthy of our organization and its esteemed members and that is insightful, informative and thought-provoking. I thank you for electing me to the board of directors and for entrusting me with the task as co-editor in chief.

It does not escape me, or anyone on our editorial board, that given the rapidly changing geo-political landscape today, the organization and the editorial staff will be addressing significant issues this year. As most of us are aware, fifty years after the United States enacted an embargo with Cuba, we are now faced with the administration's decision to resurrect diplomatic ties with Cuba. Regardless of our political inclination on this subject, the inevitable truth is that this is, and will continue to be, a topic of debate and discussion for many years to come. I would like to assure you that the editorial staff is committed to addressing these legal, political and moral issues in a professional and ethical way. To that end, CABA's principle goal is to foster the peaceful reintroduction of democracy to the people of Cuba.

Our Spring-Summer issue addresses some of these important topics. The issue also highlights CABA's various events including CABA's Benefit Gala, CABA's premier fundraising event where we celebrated the installation of the Board of Directors and of Manny Crespo, Jr. as Caba President. I hope you enjoy the issue.

Again, Jorge and I, along with our brilliant group of assistant editors and board of directors, thank you for this opportunity. We shall endeavor to meet the journalistic and moral challenges presented by these ever changing times in a professional manner and also provide a voice to our members to freely express the issues and their opinions.

Lastly, I would be remiss if I did not take a moment to thank my family, my husband Rick, my firm Holland & Knight, and my colleagues that constantly provide me the support, guidance, and love to better serve you all.

Frances Guasch De La Guardia
Editor-In-Chief

Co-Chair's MESSAGE

Dear Friends and Colleagues,

With so much going on in the Cuban American community and in CABA over the last few months, it is with great excitement that I present you with our newest edition of CABA Briefs. This year we have put together a tremendous committee who have all worked tirelessly to bring you articles on relevant topics and hot-button issues. I commend the committee and its leaders, Frances Guasch-de la Guardia, Jorge Delgado and Jorge A. Perez Santiago, on a job very well done. Enjoy!

A. Dax Bello
Co-Chair

By Julie Kay

She Learned Firsthand Just How Lacking in Basic Freedoms Cuba is

On the day that Cuba was officially removed from the U.S. list of state-sponsored terrorism, I was banned from writing any stories while in Cuba.

So much for change.

I was in Cuba last week with some 30 lawyers from the International Section of the Florida Bar. The trip was controversial from the start. Florida Bar officials, including president Gregory Coleman, insisted that I state that this was not a Florida Bar-sanctioned trip and was not voted on by the Bar's board of governors, but was the decision of one section of the Bar.

And the president of the Cuban American Bar Association sent a letter of protest to all the members of the International Section, pointing out all the human rights abuses still taking place there.

But I asked to go and was thrilled when Peter Quinter, head of the International Section and a partner at GrayRobinson, agreed.

I knew many of the lawyers going on the trip, including former American Bar Association president Stephen Zack, Squire Pattons Boggs attorney Barbara Alonso and St. Thomas University law professor Marcia Narine. .

I had never been to Cuba, and I'm not Cuban American. But I saw the trip was a great opportunity for a Miami journalist, or any journalist for that matter, with so many changes afoot—the terrorist designation change, imminent opening of embassies and law firms clamoring to open offices in Cuba or establish relationships with Cuban law firms.

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Florida Bar Delegation Checking Out Opportunities in Cuba and DBR Reporter Julie Kay Will be There

Through day two, everything was going fine. Our five-star hotel, the Parque Central, was packed with a cross section of tourists from Canada, the United States and Europe—many attending an international art show, businessmen looking for opportunities and of course, our group.

I attended a lecture by a young Cuban attorney that morning. He spoke frankly about the Cuban legal system, relating how when a Cuban is arrested, he can be jailed without the right to see a lawyer or make a phone call for 72 hours. After a week, the prosecutor decides whether to grant the person bail or not.

He called the criminal system "disgusting."

The lawyer also discussed how students become lawyers, how the decision is made by the government based on their test scores, and how 79 percent of law students are female and only 10 percent black.

He also had positive things to say about the legal system, noting that bribery and corruption of judges does not exist in Cuba.

After taking copious notes, asking the lawyer questions and snapping his picture after the lecture, I went to the lobby—the only place the Internet worked—to write my story.

That night, while our group was eating dinner at a lovely, outdoor restaurant, our tour guide approached me with his cellphone. Someone had emailed him a copy of my story, already posted online.

"This headline is going to ruin that young lawyer's life," he yelled at me. The headline related how a Cuban lawyer declared the country's legal system "disgusting."

I later found out the tour guide had failed to tell the lawyer—or any of the speakers—a reporter was in the room. WHAT?

I assume the tour guide had little experience dealing with reporters. "This was supposed to be a positive story," he said. "You need to filter everything here."

I was incredulous. I had basically regurgitated everything the lawyer had said. I did no independent research, put no "spin" on the story.

Luckily, we were able to get my web editor on the phone and he changed the headline to something innocuous: "Cuban lawyer assesses Cuban legal system."

The rest of the dinner was tense. I could see the tour guide was trying to turn the lawyers against me. One—a friend—came up to me and said tersely, "Can you change the headline? I feel so bad for this man."

Things did not improve on the bus ride home. When we pulled back into our hotel, the tour guide took the microphone and announced to the group that he was kicking me off the tour. "Julie's a good person," he said. "But her Cuban American copy editor created this headline. And I have to take a stand."

I was stunned that not one of the lawyers—some of them my friends—said a word. I later learned they were in shock and had meetings throughout the night about the situation.

Quinter tried to calm me, taking me to the rooftop pool for a chat. I went back to my room a little nervous. I felt bad for the lawyer, but I was also concerned about what might happen to me. I felt like calling a friend but was afraid to even talk openly on the phone.

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I woke up that morning feeling better, if not growing a bit angry. Kick me off the tour? After I paid all that money? He better at least get me a ride to the airport, I thought. Anyway, I knew that U.S. Sen. Al Franken was in town for a press conference in Havana on the terrorism designation being lifted. I figured I'll just go cover that. I'll find my own stories, I thought.

I parked myself in the lobby to email my editor about what had happened with the tour guide, and Zack approached me. "You're back on the tour," they said. "Try to remember the spirit of this tour," added the tour guide.

I found out that the group of lawyers, instead of hearing the lecture they came to hear about investment schedule for 9 a.m., spent 45 minutes discussing whether I should be kicked off the tour.

The tour guide made his best case to remove me, I'm told, and even to write a letter of complaint to the newspaper.

I'm happy to say that none of the lawyers went along with his plan. I'm told they informed him we have something called freedom of the press in our country.

They did, I'm told, agree to write some sort of letter for the young lawyer to have as cover in case the government came calling. I never saw that letter.

Phew, I thought. I emailed my editor with the good news. "We're back," I said.

I sat through another lecture about foreign investment, then returned to the lobby to write up my story. That's when I saw the tour guide approaching again. "What now?" I thought.

"We have another problem," he said. We had a Cuban tour guide accompanying us through the entire tour. After he had made such a fuss, she had notified her government bosses about the situation. They decided I was banned from writing any more stories during my trip since I had failed to obtain a journalist license.

Now I had specifically asked the guide beforehand if I needed a journalist license. "No," was the answer, "you're with a special group."

I made the decision not to post any more stories while in Cuba and just save them up for when I returned to the United States. I had no desire to see the inside of a Cuban prison.

I enjoyed the rest of the trip anyway. In addition to the interesting lectures, I got to meet taxi drivers and shopkeepers and hear their stories. Like the lawyer, they were quite candid, telling me how they pray for an end to the embargo and how they are suffering. "Socialism doesn't work," one taxi driver said. "We're just people, like you," a shopkeeper said.

My last heart-stopping moment came at the airport, when I went to check in and the lady behind the counter said, "You're not on the list." She grabbed my passport and visa and left for 20 minutes. "Please don't leave me," I said to Zack, who was standing next to me. "I'm not going anywhere," he said.

Turns out there was a snafu and I was supposed to be on an earlier flight. They found a seat for me and I was never so happy as when I heard the sound of my passport being stamped.

People keep asking me whether the young Cuban lawyer got into any trouble. As he told me, things happen slowly in Cuba. You don't get arrested so much anymore, they just make your life miserable.

"I really like that you have freedom to say what you want," he told me. "We don't."

I pray that he's OK. CB

Julie Kay, Daily Business Review June 1, 2015. She can be reached at 305-347-6685.

ALL THAT GLITTER IS NOT GOLD

Commentary by: CABA Board Of Directors

Oppression is defined as: **(1)** An act of cruelty, severity, unlawful exaction, or excessive use of authority; **(2)** An act of subjecting to cruel and unjust hardship; **(3)** An act of domination. *Black's Law Dictionary,* 10th Ed. (2015). Julie Kaye—a journalist with the Daily Business Review in Miami who joined over thirty lawyer members of the Florida Bar International Law Section on their trip to Cuba—has a much more detailed definition as her article demonstrates.

If after reading Julia Kay's article shock is what you are feeling, then it is because you have probably been dismissing our messages as outdated. The Cuban government is still one of the world's most oppressive regimes. It continues to this day to deny the most basic human rights to its citizens. If the regime was successful in just 72 hours to make Americans (lawyers at that) feel compelled to ask a journalist to change her story out of fear of retaliation, imagine what it is like to be a dissident on the island. Imagine the terror they must endure every time they decide to speak on issues not in conformity with the regime's agenda. Then, think about what it must be like to be an average Cuban citizen. The fact is, there are two Cubas in this world. The first is the Cuba that the regime wants us to see. It is a place with gorgeous beaches, a lush tropical landscape, and great food and music that can make just about anyone dance. I suppose that is what Julie's tour guide attempted to remind her was the "spirit of the tour." The second is the real Cuba—a place where its citizens live in fear of their own neighbors and the government has absolute control over most things.

In his letter warning those lawyers that participated in the trip to not let the glitter of an island paradise fool them, CABA's President, Manny Crespo, spelled out a number of atrocities that are being carried out today by the Cuban regime on its own people.

CABA's mission is merely to educate,[1] and remind those embarking on the journey to not be blinded by the falsities portrayed by a regime that survives only on oppression, fear and intimidation. If we can guide our resources to helping end those vehicles of succession rather than celebrating them, then rest assured that our brethren on the island will one day enjoy the everyday rights that many of us may take for granted, nothing more, nothing less.[2] CB

[1] See CABA's open letter to Florida Bar International Section at www.cabaonline

[2] The Florida Bar's International Section's Chair was given the opportunity to respond to Ms. Kay's article. At the time of press, no response to the request has been received.

THE CUBAN RAFTER CRISIS REVISITED

By Christina M. Frohock

CABA v. Christopher: 20 Years Later the case stands as a landmark opinion in constitutional law.

In the summer of 1994, tens of thousands of refugees—or *balseros*—boarded boats, rafts, and even truck tires in a desperate attempt to leave Cuba and come to the United States. Despite U.S. law that promised asylum upon exit from the island, the Coast Guard intercepted these refugees at sea and brought them to the U.S. Naval Station at Guantánamo Bay, Cuba, where they lived for a year before finally entering the United States. *CABA v. Christopher* is the lawsuit filed on the refugees' behalf. [1]

Now, on its twentieth anniversary, the case stands as a landmark opinion in constitutional law and a prelude to U.S. Supreme Court opinions determining Guantánamo's legal status after September 11, 2001.

"MORE THAN EIGHTY ATTORNEYS VOLUNTEERED TO REPRESENT THE REFUGEES PRO BONO. . . THEY QUICKLY BONDED AS "BROTHERS AND SISTERS IN LAW."

The Cuban refugees' diversion to Guantánamo signaled a reversal of U.S. policy. For nearly thirty years, on the basis of the Cuban Adjustment Act and other laws, the U.S. Government had granted asylum to all Cuban citizens who managed to escape the island.[2] But this new exodus stretched U.S. policy to its breaking point. After Fidel Castro announced on August 8, 1994, that his government would no longer patrol the coast nor forcibly prevent emigration by boat, thousands fled.[3] Many refugees died at sea, approximately 8,000 reached South Florida, and more than 33,000 were picked up by Coast Guard cutters in the Florida Straits.[4] The massive scale of immigration reminded political leaders of the 1980 Mariel boatlift, during which 125,000 Cuban refugees arrived on the shores of South Florida and overwhelmed community services.[5] Fearing a repeat of Mariel, then-President Clinton ordered the Coast Guard to intercept at sea all those employing "irregular means of migration to the United States on boats and rafts" and divert them to "safe havens" in Guantánamo. [6]

The United States has held Guantánamo for more than a century, originally using the site for defense purposes during the Spanish-American War. Under lease agreements dating back to 1903, the United States exercises "complete jurisdiction and control" in perpetuity over 45 square miles of land and water, and the military pursues its contractual purposes of coaling and naval stations. [7] With the sudden arrival of tens of thousands of refugees, the military shifted its focus to humanitarian housing under what became known as Operation Sea Signal.[8]

The refugees' living conditions were grim. By September 1994, more than 33,000 Cuban refugees had joined 12,000 Haitian refugees already in Guantánamo, all crammed into dusty camps filled with brown tarp tents and surrounded by coiled wires. [9] Refugees lost privacy, sleeping in tents holding up to fifteen cots each.[10] They waited in long lines in the tropical heat for showers and shared a few thousand portable toilets.[11]

There was no end in sight On September 9, 1994, the United States and Cuba issued a Joint Communiqué that the two countries had "agreed to take measures to ensure that migration between the two countries is safe, legal, and orderly."[12] This agreement formally ended the open-arms policy of the United States toward Cubans and codified the long-term nature of Operation Sea Signal. Under new U.S. policy, Cuban "migrants" intercepted at sea had three options: (1) remain in Guantánamo camps; (2) repatriate to sovereign Cuba and seek formal relief through the U.S. Interests Section in Havana; or (3) travel to a third country.[13] The key to this policy was the requirement that refugees seek entry into the United States indirectly, that is, back through sovereign Cuba.

Watching the rafter crisis unfold, attorneys in Miami were appalled—and derided the United States-Cuba Joint Communiqué as the "Clinton-Castro Accord." Many attorneys were Cuban refugees themselves and disagreed with the United States' new policy of holding refugees in Guantánamo camps and forcing them to return to Castro's Cuba. More than eighty attorneys volunteered to represent the refugees *pro bono,* including Yale Law Professor Harold Hongju Koh, who previously argued in the U.S. Supreme Court on behalf of Haitian refugees. [14] They quickly bonded as "brothers and sisters in law," Professor Koh said, and their strategy from the outset was both political and legal.

On the political front, several attorneys flew from Miami to Washington, D.C., on October 13, 1994, for a private meeting with White House officials.[15]

"We did not want to file a lawsuit," attorney Frank Angones said. "We wanted to come to an arrangement."

The attorneys hoped to gain access to the refugees in Guantánamo and secure their release directly into the United States. Although both sides sought an open and democratic Cuba in the long term, the discussion stalled on the immediate issue of repatriation for the Guantánamo refugees.[16] In fact, White House officials refused to recognize the Cubans as detained refugees. The officials saw them as migrants who had chosen to "hit" rafts and were now choosing to stay in safe haven camps.[17]

On the legal front, attorneys back in Miami were busy drafting a complaint. But, as attorney Roberto Martínez explained, "we didn't have a client. Lawyers need clients."

They found clients in the form of both legal organizations in Miami and individual refugees in Guantánamo. The Cuban American Bar Association served as lead named plaintiff, along with sympathetic refugees such as pregnant women, minors, and political dissidents under the Castro regime. One named plaintiff was a twelve-year-old girl, Lizbet Martínez, who played the Star-Spangled Banner on her violin.[18]

On October 24, 1994, the Cuban refugees and their attorneys filed *CABA v. Christopher* as a class action in the U.S. District Court for the Southern District of Florida, raising claims under the First and Fifth Amendments to the Constitution. The complaint invoked the refugees' due process rights to seek asylum in the United States and to be free from indefinite detention. Additionally, against the new U.S.

policy of "coerced repatriation," [19] the complaint requested attorney access to the refugees for legal consultation.

Professor Koh described the legal theory as simple: informed consent. "Lawyers should talk to their clients, and clients should talk to their lawyers—especially if they're going to get repatriated to political persecution."

The morning after the filing, however, repatriations were underway. Twenty-three refugees, who previously had volunteered to return to sovereign Cuba, were boarding a plane in Guantánamo. The *CABA* plaintiffs moved for a temporary restraining order to block all repatriations, including the Government's imminent flight.

> "I WAS IN SEARCH OF FREEDOM"

"We had two hours to stop this plane," recalled attorney Marcos Jiménez, who was with Professor Koh typing the TRO motion while Roberto Martínez hurried to court for oral argument.

One minute before the plane was scheduled to depart, District Judge C. Clyde Atkins ordered the Government to stop all repatriations, and the flight was aborted. Judge Atkins also gave attorneys "reasonable and meaningful access" to the "detained plaintiff refugees."[20] In response, the Government moved the U.S. Court of Appeals for the Eleventh Circuit for reversal of Judge Atkins' order.[21] On November 4, 1994, ruling from the bench, the Eleventh Circuit overturned the district court's complete ban on repatriations, but maintained the ban for the vast majority of refugees.[22] Repatriations would be limited only to those who requested to return to Cuba. The appellate court also permitted attorneys to visit the camps.[23]

"We essentially bought about six months of time," Professor Koh said.

Within days of the Eleventh Circuit's ruling, attorneys flew from South Florida to the Guantánamo naval station to meet their clients. For each trip, a handful of attorneys were permitted to stay on the base for two days, and the military bused refugees from camps to base offices.[24] Attorneys met refugees in musty rooms with poor lighting and weak fans for ventilation.[25] Several attorneys complained the military delayed meetings or failed to bring in the refugees.[26]

Guantánamo visits proceeded nonetheless, and throughout November and December 1994, attorneys interviewed as many refugees as they could in whatever space the military provided. They aimed to gather evidence showing that repatriations were coerced and that all 33,000 Cuban refugees deserved direct entry into the United States. The refugees wrote poignant statements of their departure: "I was in search of freedom";[27] "I left Cuba because of the Cuban government authorities";[28] "there is no way I can return to my country"; [29] "[i]n Cuba I am forced by the police chief to throw myself in a raft because I do not agree with the politics of Castro." [30] They also wrote of their discomfort in Guantánamo: "They have locked me up like a vulgar delinquent, which I am not . . . I do not understand this brutal incarceration and I do not know how long I can stand it."[31]

While *CABA* attorneys continued to represent their clients in both Miami and Guantánamo, attorneys for Haitian refugees—who remained in Guantánamo camps alongside the Cuban refugees—moved to intervene in the litigation.[32] In addition to granting intervention, Judge Atkins permitted the attorneys access to any Haitian refugees who requested legal counsel. [33] The Government promptly appealed, and the Eleventh Circuit heard the consolidated matter.

On January 18, 1995, the Eleventh Circuit issued its opinion: Cubans and Haitians in Guantánamo "are without legal rights that are cognizable in the courts of the United States." [34] The court considered three questions: (1) whether "migrants in safe haven outside the physical borders of the United States have any cognizable statutory or constitutional rights," including due process; (2) whether attorneys have a First Amendment right to free association, such that the U.S. Government must allow access to the camps; and (3) whether Haitian refugees have equal protection rights.[35] The analysis turned on the assertion of constitutional rights by the refugees, individuals who were neither U.S. citizens nor within U.S. borders. Any rights of the attorneys would be predicated on those underlying claims. [36]

Examining the legal status of Guantánamo, the Eleventh Circuit found that, although the United States exercises perpetual jurisdiction and control over Guantánamo, it is not U.S. territory nor "functionally equivalent" to land within U.S. borders.[37] In the court's view, all the U.S. Government had done was act graciously: "[p]roviding safe haven residency is a gratuitous humanitarian act which . . . has not created any protectable liberty or property interest against being wrongly repatriated."[38] If ever the Government chose to act in a less gratuitous or less humanitarian fashion, the migrants could be shipped home.[39] Without due process protection, they had no basis on which to "rest a claim of right of counsel and information."[40]

The Eleventh Circuit applied similar reasoning to the Haitian minors' claim of equal protection.[41] The court held the children had no Fifth Amendment rights to challenge the Government's exercise of parole discretion or any other decision.[42] Noting the Supreme Court previously had declined to apply the Fourth and Fifth Amendments extraterritorially, [43] the Eleventh Circuit concluded that "aliens who are outside the United States cannot claim rights to enter or be paroled into the United States based on the Constitution." [44]

Thus, the Cuban and Haitian refugees in Guantánamo were judicially declared to be migrants standing outside U.S. territory and lacking any rights in U.S. courts. [45] The *CABA* opinion brushes over any hardships in the camps. The migrants were "beneficiaries of the American tradition of humanitarian concern and conduct," receiving the military's "goodwill" to "hopefully sustain and reassure them in their quest for a better life."[46] In closing the door on the Cuban and Haitian refugees, the court warned they had no "legal answer" and would have to find non-judicial remedies to their plight.[47]

CABA plaintiffs appealed to the U.S. Supreme Court, but the Court denied their petition for writ of certiorari. [48] The Guantánamo refugees were left to seek help outside the court system—and they did so.

From the start of the rafter crisis, attorneys had pursued both political and judicial avenues of relief.

"The objective here was not to win a lawsuit," Martínez said. "The objective here was to get a political solution for the Cubans who were detained in Guantánamo. The lawsuit was a tool."

While the initial White House meeting had failed to yield a solution, later political pressures succeeded. Cuban refugees in Guantánamo were allowed to enter the United States under a May 2, 1995, humanitarian parole announced by the Clinton administration.[49] Most of the Haitian refugees had repatriated to Haiti after Jean-Bertrand Aristide returned to the presidency in October 1994, with the last group leaving Guantánamo in November 1995.[50] Under the May 2nd plan, the Administration allowed nearly all of the 20,000 Cuban refugees remaining in Guantánamo to enter the United States as "special Guantánamo entrants."[51] Cuban refugees were paroled into the United States at a rate of 500 to 550 per week, on three weekly flights to Homestead Air Force Base.[52] On January 31, 1996, the last group left Guantánamo, and the U.S. Government closed the camps.[53]

As a "companion accord" to its May 2nd parole, the Clinton administration revised the Cuban Adjustment Act, adopting the "wet foot, dry foot" policy in effect today.[54] Cuban refugees intercepted at sea are returned to Cuba, while those reaching U.S. land can apply for permanent resident alien status in the United States.[55] Essentially, the "wet foot, dry foot" policy shifted the location where the Cuban Adjustment Act takes effect: now exclusively on land.[56]

The legacy of *CABA v. Christopher* extends even further, beyond the many lives affected by the rafter crisis and the ultimate success of the refugees in reaching the United States. The *CABA* decision—along with similar decisions regarding Haitian refugees interdicted at sea[57] —laid the groundwork for the Government's use of Guantánamo after September 11, 2001, to detain enemy combatants captured in the war against al Qaeda and associated forces.

The Eleventh Circuit's opinion "made the impression that Guantánamo was a land without law," Professor Koh said. "Therefore, there became constant pressure to bring people there."

Indeed, Guantánamo had been declared in *CABA* to be beyond constitutional reach for non-U.S. citizens.[58] After September 11th, with the United States at war and soldiers apprehending enemy combatants on the battlefield abroad, the opinion made it "administratively much easier" for the United States to choose Guantánamo as a detention site.[59] Detention camps opened in Guantánamo in January 2002 and have held a total of 779 detainees.[60]

Despite its denial of certiorari in *CABA v. Christopher,* the U.S. Supreme Court did finally weigh in on the legal status of Guantánamo. In 2004, the Court decided *Rasul v. Bush* and extended statutory habeas protections to Guantánamo detainees.[61] In 2006, the Court decided *Hamdan v. Rumsfeld* and afforded detainees who were to be tried by military commission "at least the barest of those trial protections that have been recognized by customary international law."[62]

In 2008, the Supreme Court decided the lead detainee case of *Boumediene v. Bush.*[63] The Court held certain constitutional protections, specifically the writ of habeas corpus under the Suspension Clause, apply to non-citizens detained in Guantánamo. The impact of *Boumediene* is more procedural than substantive, as detainees have not found success filing habeas writs.[64] Still, the echo of *CABA* is evident, as the judiciary again considered whether the Constitution reaches Guantánamo. Given the contrast between the plaintiffs in *CABA*—refugees seeking a free life in the United States—and the petitioners in *Boumediene*—enemy combatants captured in wartime—the cases may be reconciled as adjudicating rights in different historical moments. The Constitution reaches Guantánamo for those in detention, but not for those in safe haven.

In the end, *CABA v. Christopher's* place in history is secure. The case stands as both a public memory of the 1994-95 Cuban rafter crisis and a legal precedent for Guantánamo issues that continue to arise. CB

Additional Resources:

Related article by author Christina M. Frohock: "Brisas del Mar": Judicial and Political Outcomes of the Cuban Rafter Crisis in Guantánamo, 15 HARVARD LATINO LAW REVIEW 39 (2012): http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2122396.

Video of panel discussion held at the University of Miami's Cuban Heritage Collection: https://umiami.mediaspace.kaltura.com/media/

CABA+v.+Christopher/1_3qtht2dp/24745431.

Digital archive at the University of Miami's Cuban Heritage Collection: The Cuban Rafter Phenomenon, http://balseros.miami.edu/

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[1] CABA v. Christopher, 43 F.3d 1412, 1419 (11th Cir.), cert. denied, 516 U.S. 913 (1995).

[2] Act of Nov. 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966); Act of March 17, 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980); 28 U.S.C. §§ 6001-6010 (need date from author).

[3] Caba, 43 F.3d at 1417.

[4] *Id.*; U.S. GEN. ACCOUNTING OFFICE, GAO/NSIAD-95-211, CUBA: U.S. RESPONSE TO THE 1994 CUBAN MIGRATION CRISIS (1995) [hereinafter GAO REPORT] at 3.

[5] Administration, Lawyers Spar Over Cubans' Return, NAT'L L.J., Nov. 7, 1994, at 4.

[6] Janet Reno, U.S. Attorney General, Press Briefing (May 2, 1995).

[7] Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval Stations, U.S.-Cuba, Feb. 23, 1903, T.S. No. 418; Lease of Certain Areas for Naval or Coaling Stations, U.S.-Cuba, July 2, 1903, T.S. No. 426; Treaty Defining Relations with Cuba, U.S.-Cuba, May 29, 1934, 48 Stat. 1683, T.S. No. 866.

[8] *See* United States Navy Fact File, Naval Station Guantánamo Bay, Cuba (Nov. 8, 2011).

[9] *Id.*; CABA, 43 F.3d at 1419; GAO REPORT at 3, 9.

[10] GAO REPORT at 9; Fabiola Santiago, No Way Out: Cubans Feel Frustrated, Forgotten, MIAMI HERALD, Oct. 2, 1994, at 1A.

[11] Will More Rafters Be Eased into the United States?, MIAMI HERALD, Oct. 29, 1994, at 28A.

[12] Cuba-United States: Joint Statement On Normalization Of Migration, Building On The Agreement Of September 9, 1994, 35 INT'L LEGAL MATERIALS, 327, 329-30 (1996).

[13] GAO REPORT at 3-4.

[14] Sale v. Haitian Ctrs. Council, Inc., 509 U.S. 155 (1993).

[15] Memorandum from Jorge L. Hernandez-Toraño to Comm. for Freedom of Guantanamo Detainees (Oct. 18, 1994).

[16] *Id.*

[17] *Id.*

[18] Andres Viglucci, Suit Demands Freedom For Cuban Rafters Panamá, Guantánamo Camps Called Illegal, MIAMI HERALD, Oct. 25, 1994, at 1A.

[19] Class Action Complaint ¶¶ 54, 58-59, 64-67, CABA v. Christopher, No. 94-CV-2183 (S.D. Fla. Oct. 24, 1994) (No. 1).

[20] Order Granting Plaintiffs' Emergency Motion for Temporary Restraining Order at 13, CABA v. Christopher, No. 94-CV-2183 (S.D. Fla. Oct. 31, 1994) (No. 44).

[21] Motion for Summary Reversal, CABA v. Christopher, 43 F.3d 1412 (11th Cir. 1995); Andres Viglucci, Judge Lifts Orders Halting Repatriations Ruling Affects 1,000 Cuban Detainees, MIAMI HERALD, Nov. 4, 1994, at 1A.

[22] Order by the Court at 2, CABA v. Christopher, 43 F.3d 1412 (11th Cir. 1995).

[23] Id.

[24] Orlando J. Cabrera, Attorney, Memorandum re: Diary of Events at the United States Naval Base at Guantánamo Bay, Cuba November 7 to November 10, 1994 (Nov. 13, 1994).

[25] *Id.*

[26] *Id.*; Salvador G. Longoria, Summary re: Visit to Guantánamo, November 21-23, 2004.

[27] Counsel Request of Hector Medina Diaz, Guantánamo refugee No 000 833 057 (1994).

[28] Counsel Request of Mario Luis Fernandez Martínez, Guantánamo refugee No. 001 036 284 (1994).

[29] Counsel Request of Hector Medina Diaz, Guantánamo refugee No 000 833 057 (1994).

[30] Counsel Request of Raul Daniel Arenas, Guantánamo refugee No. 000 048 346 (1994).

[31] Counsel Request of Hector Medina Diaz, Guantánamo refugee No 000 833 057 (1994).

[32] CABA, 43 F.3d at 1420.

[33] Omnibus Order at 3, CABA v. Christopher, 43 F.3d 1412 (11th Cir. 1995).

[34] Caba, 34 F.3d at 1430.

[35] *Id.* at 1421.

[36] Haitian Refugee Ctr., Inc. v. Baker, 953 F.2d 1498, 1513 (11th Cir. 1992).

[37] Caba, 43 F.3d at 1425.

[38] *Id.* at 1427 (emphasis added).

[39] *Id.* at 1427, 1429-30.

[40] *Id.* at 1427.

[41] *Id.* at 1427-29.

[42] *Id.* at 1429.

[43] United States v. Verdugo-Urquidez, 494 U.S. 259, 274-75 (1990); Johnson v. Eisentrager, 339 U.S. 763, 784 (1950).

[44] CABA, 43 F.3d at 1428-29.

[45] *Id.* at 1430.

[46] Id.

[47] Id.

[48] CABA v. Christopher, 516 U.S. 913 (1995).

[49] Janet Reno, U.S. Attorney General, Press Briefing (May 2, 1995).

[50] Id.

[51] Id.

[52] GAO REPORT at 8.

[53] United States Navy Fact File, Naval Station Guantánamo Bay, Cuba (Nov. 8, 2011).

[54] Fact Sheet: Cuba-U.S. Migration Accord, U.S. Department of State, Bureau of Western Hemisphere Affairs (Aug. 28, 2000).

[55] Janet Reno, U.S. Attorney General, Press Briefing (May 2, 1995).

[56] Statement of Randy Beardsworth, former Coast Guard officer (July 22, 2011).

[57] Sale, 509 U.S. 155 at 187-88; Haitian Refugee Ctr., Inc., 953 F.2d at 1511; Haitian Refugee Ctr., Inc. v. Baker, 950 F.2d 685, 687 (11th Cir. 1991).

[58] CABA, 43 F.3d at 1424-25, 1430.

[59] Statement of attorney Seth Waxman (Jan. 2015).

[60] U.S. GOV'T ACCOUNTABILITY OFFICE, GUANTÁNAMO BAY DETAINEES: FACILITIES AND FACTORS FOR CONSIDERATION IF DETAINEES WERE BROUGHT TO THE UNITED STATES (2012) at 7.

[61] 542 U.S. 466, 476, 478 (2004).

[62] 548 U.S. 557, 633 (2006). Six years later, the U.S. Court of Appeals for the D.C. Circuit overturned Hamdan's conviction for material support for terrorism. Hamdan v. United States, 646 F.3d 1238, 1250-53 (D.C. Cir. 2012).

[63] 553 U.S. 723 (2008).

[64] Kiyemba v. Obama, 555 F.3d 1022 (D.C. Cir. 2009); Kiyemba v. Obama, 605 F.3d 1046, 1048 (D.C. Cir. 2010).

Immigration Consequences: THOUSAND OF CUBAN EXILES IN JEOPARDY

By Carlos J. Martinez

The Effect Of Normalizing Relations With Cuba On Thousands Of Cubans Living In The United States With Final Orders Of Deportation.

The December 17, 2014 announcement the U.S. would be normalizing relations with Cuba has spawned much media attention. However, the furor has focused on questions like whether to lift the embargo, unfreeze Cuban assets, abolish or amend the Cuban Adjustment Act, eliminate the "wet-foot dry-foot" policy, and whether to remove Cuba from the list of sponsors of terrorism.

The subject of immigration consequences, particularly the involuntary repatriation of Cuban-born non-U.S. citizens, has received scant media coverage. Even then, the focus exclusively has been on the massive number of deportations that could take place. A reported 34,525 Cubans already have final deportation orders. The list has yet to be made public, but we can be fairly certain that the majority on that list will not be hardened, violent criminals. Only about 100 of the 34,525 are actually detained.

THE POSSIBLE TRANSFER TO CUBA OF 34,525 CUBANS IS WITHOUT A DOUBT AN IMPORTANT PART OF THE STORY, BUT IT IS BY NO MEANS THE WHOLE STORY.

No media attention has been focused on the tens of thousands of Cuban-born refugees or U.S. residents who are technically "deportable," but do not have a deportation order. Although the exact number is unknown, Cubans convicted of misdemeanor crimes, that under immigration law could be considered crimes of moral turpitude, or aggravated felonies, such as drug possession offenses, are subject to deportation. Of course, these deportation consequences are not unique to Cuban non-citizens. However, a possible solution may exist if the U.S. mimics the agreement reached after the U.S. normalized relations with socialist Vietnam.

The Intersection of Immigration and Criminal Law

Immigration law is complex, particularly within context of a criminal case. Upon arrival to the United States, Cubans obtain parolee status through the Cuban Adjustment Act. After one year of physical presence in the U.S., the Cuban parolee becomes eligible to apply for Lawful Permanent Resident status, which then leads to his or her eligibility for citizenship. However, some criminal convictions change this process. Depending on the type of crime, a conviction could preclude the individual from adjusting his/her immigration status or from staying in the U.S. In *Padilla v Kentucky*, 559 U.S. 356, 130 S.Ct. 1473 (2010), the U.S. Supreme Court recognized this complexity and the need for non-citizens to receive salient advice from their criminal defense attorneys. The Court reasoned that, in certain situations, banishment from the U.S. may be worse than being sentenced to jail time. Therefore, it is crucial the criminal defense attorney be well-versed in immigration law to advise his or her client about the consequences a conviction or admission will or could have on the non-citizen's status in the U.S.

To understand the scope of the concerns and the possible solution to the repatriation dilemma, it is helpful to take a historical approach to sensitize policy-makers regarding the special conditions to be considered when formulating a future U.S. and Cuba repatriation agreement.

The Drug Epidemic

In the 1980s and 1990s, Miami-Dade County experienced a drug epidemic. Drug arrests, particularly for possession and purchase of controlled substances and paraphernalia, were rampant. Our criminal justice system was overwhelmed, and it was not simply drug traffickers who were convicted. During a period of 15 years, an estimated 100,000 drug users, including many in the Cuban-American community, ended up with an indelible criminal record.

In response to the drug epidemic, the drug court was created in Miami-Dade in 1989. Clients with no criminal history had cases dismissed when they completed drug court; others with previous convictions did not receive a dismissal.

Despite their success in drug treatment, their case dispositions are now considered "convictions" for deportation purposes. Countless others did not receive treatment through the drug court, but instead served a short period of time in the local jails and received a drug conviction or what is called a withhold of adjudication. In the immigration context, this withhold is considered a conviction.

In 1996, Congress approved additional immigration reforms. Drug cases that were originally not grounds for deportation, became deportable offenses and the laws were made to apply retroactively. Thus, a drug offender, who previously pled to an offense at a time when that charge carried no threat of deportation, was now deportable. We can expect a large number of the 34,525 on the deportation list would list drug offenses as the basis for the deportation.

No Right to an Attorney When Facing Misdemeanor Charges

Every attorney knows *Gideon v. Wainwright,* 372 U.S. 335, 83 S. Ct. 792 (1963), is the case that established the right to counsel for indigent defendants accused of felony crimes. Attorneys who do not practice criminal law often are surprised to find out there is no similar right to an attorney in misdemeanor or criminal traffic cases if the defendant is not facing jail time as a result of the conviction. Florida Statute section 27.512, prohibits indigent defendants from having legal representation in misdemeanor cases if the defendant will not be facing jail time on the misdemeanor offense, and the judge enters an order to that effect. This is called an Order of No Imprisonment (ONI). Yes, that is correct. The defendant with no money to hire an attorney has no defense attorney on a misdemeanor case even when there are immigration consequences. The number of people negatively impacted due to the consequences of a misdemeanor offense is astounding. Miami-Dade County has the highest rate of ONIs in Florida. Every year for the past 10 years, more than 50,000 indigent defendants have faced misdemeanor convictions without legal representation. While not every misdemeanor is a deportable offense, the impact to non-citizens who cannot afford a criminal defense attorney on a misdemeanor offense can be devastating. More alarming, the misdemeanor conviction may be the decisive reason why a deportation order is entered. If the Department of Homeland Security ever releases the identity of the 34,525 Cubans who have been issued orders of deportation, it is likely to contain names of people convicted of misdemeanors without the benefit of counsel for the criminal case or during the immigration proceedings.

No Right to Counsel in Immigration Court if you are Indigent

The U.S. government says there is a right to an attorney in immigration court. However, the right to an attorney in immigration proceedings is an illusory right when the person lacks funds to hire an attorney. An indigent person facing deportation or exclusion from the U.S. does not have the right to government-appointed counsel. An attorney is essential because relief from deportation is possible. One with the benefit of an attorney to present his or her case in immigration court is in a much better position to present his/her case and avoid deportation back to Cuba. For example, relief may be sought when one is facing deportation proceedings as a result of a misdemeanor conviction obtained in a case where an Order of No Incarceration has been entered because a misdemeanor conviction does not fall into the category of crimes resulting in automatic deportation.

No Te Preocupes, You Won't Be Deported to Cuba

Older Cubans who were caught up in the drug epidemic of the 70s, 80s and 90s often were told not to worry about deportation consequences by their lawyers and even some judges. My experience as the Public Defender in Miami-Dade County revealed these lawyers and judges reasoned the U.S. did not have relations with Cuba, and an agreement already had been reached to deport only the violent "Mariel" felons. That message was not only conveyed in criminal court. In fact, many Cubans signed waiver of deportation hearing forms or deportation orders without the assistance of counsel while in custody for a criminal case, without even their criminal defense attorney being notified. I have heard countless stories of Cubans approached by ICE officers, Border Patrol agents, or INS officers, as they were previously known, and asked to sign a deportation order under the pretense that "this paper you are signing is just so you do not have to go to court." They often were told "it is a deportation paper but you don't have to worry. No one gets deported to Cuba." Since December 17, 2014, immigration attorneys have been inundated with calls from concerned Cubans who had a remote brush with the law and signed a deportation order. These individuals are afraid they now will be shipped back to Cuba where they have no family, while their U.S.-born children and grandchildren remain in the United States.

If the U.S. agrees to repatriate the 34,525 who already have a deportation order, thousands of Cubans will need legal assistance in immigration court. Even if private attorneys volunteer in droves, the social and economic disruption in Miami-Dade will be enormous.

A Possible Solution

The United States has established a precedent for dealing with repatriation of those who have been deported after originally seeking asylum. That precedent comes to us in the form of the 2008 agreement between United States and the Socialist Republic of Vietnam. The agreement states, in pertinent part, the following:

Article 2

Removable Persons and Conditions of Acceptance

1. The Vietnamese Government will accept the return of Vietnamese citizens in accordance with Article 1 and item 2 of Article 2 of this Agreement, if upon investigation the individual meets the following requirements:

(a) The individual is a citizen of Vietnam and is not a citizen of the United States or of any other country;

(b) The individual previously resided in Vietnam and has no current residence in a third country;

(c) The individual has violated U.S. laws and has been ordered by competent authority removed from the United States; and

(d) If the individual has been convicted of a criminal offense (including immigration violation), the person will have completed any imprisonment before removal, and any reduction in sentence will have been ordered by competent authority.

2. ***Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995, the date on which diplomatic relations were re-established between the U.S. Government and the Vietnamese Government.*** *The U.S. Government and the Vietnamese Government maintain their respective legal positions relative to Vietnamese citizens who departed Vietnam for the United States prior to that date. (emphasis added).*

Undoubtedly, the immigration situation between Cuba and the U.S. is far more complex than it was with Vietnam because of geographical proximity, length of time the two countries have been without normal relations, and the pervasive anti-immigrant sentiment in Congress. Even if the U.S. wished to push for the removal of these Cuban nationals, it is doubtful the Cuban Government would want to absorb the 34,525 Cubans who have obtained deportation orders nor the additional thousands who are eligible for deportation. Nevertheless, we expect the U.S. government not to leave the fate of tens of thousands of Cuban-American families in the hands of a Communist Cuba. CB

Carlos J. Martinez
Miami-Dade Public Defender

RISKY REALITIES OF FOREIGN INVESTMENTS IN CUBA

By Candice Balmori, Esq.[1]

Newly Paved Foreign Investment Avenues in Cuba: Potholes and Pitfalls.

In the context of President Obama's December 2014 statement regarding the re-establishment of diplomatic relations between the United States and Cuba, the expansion of the sales and exports of certain goods, and the undertaking of other initiatives discussed therein, an intrigue in the opening of other prospective avenues presently unavailable to U.S. citizens seems to have awakened, particularly with regard to U.S. business interests. December's statements set forth a media firestorm regarding the potential left largely unexplored since the enactment over five decades ago of U.S. legislation limiting transactions with the island nation.

Novelty of concept aside, understanding some of the risky realities associated with entering the Cuban market, should be a critical factor in the rhetoric and analysis of any perceived incentive to expand engagement in business transactions.

There are two basic realities of engagement by foreign investors in Cuba that cannot be discounted: (1) the cumbersome nature of doing business in a bureaucratic command economy reluctant to follow any free market reforms, and (2) the legal exposure associated with foreign investment in a totalitarian jurisdiction. These realities are highlighted by Cuba's recently-revised foreign investment law, Ley No. 118.

With an economy predicated upon bureaucratic centralized power, the Cuban nation has been largely sustained over the last five and a half decades by foreign subsidies and preferential trade agreements. During the Special Period of the 1990s, following the collapse of the Soviet Union, Cuba's struggle to reorient its weak economy was particularly palpable and gave drastic rise to a "black market," or informal economy, which ordinary Cubans depended on to meet their basic needs and which the Cuban government arguably cannibalized as it subsequently incorporated the practice into its own brand of top-down mixed economy. Thereafter, Venezuela—another ideologically-aligned trade partner—began subsidizing the Cuban economy in an amount estimated at approximately $13 billion a year, inclusive of 100,000 barrels of oil per day, half of which were re-exported and sold in Spain.[2] With the value of Venezuela's oil aid decreasing as a result of the decline in oil prices and the erosion of a delicate political and economic environment in Venezuela, Cuba recently started entertaining economic alternatives in order to keep itself afloat in a sea of otherwise unfinanced ideology.

In March of 2014, the Cuban National Assembly adopted a new foreign investment law, Ley No. 118,[3] which has been billed as offering greater incentives for foreign direct investment under terms more favorable than the previous Ley No. 77, enacted in 1995, which it supersedes. "The new law offers much better terms. It cuts the tax on profits in half—from 30 percent to 15 percent for most industries—and eliminates the old 25 percent tax on labor costs. The new law allows 100 percent foreign ownership, which, though previously legal, was never allowed in practice. Investors in joint ventures get an eight-year exemption from all taxes on profits."[4] These revisions to Cuban law in particular aim to make a more attractive landscape for the foreign investor. Notwithstanding several projects undertaken for largely political reasons, this potential, however, has not thus far materialized. There is a sizable gap in Cuba's reported growth of just 0.6 percent in the first half of 2014 and its goal to reach annual growth targets of above 5 percent by attracting a minimum of $2.5 billion per year in foreign direct investment. The reality is foreign investors to date have been cold towards Cuba, at least in part, if not in great part, as a result of the reasons set forth herein. Estimations indicate just $5 billion has been invested in Cuba over the last 20 years.[5]

There are two aspects of Cuban law, however, that remain wholly unchanged despite the revisions made by 2014's Ley No. 118—first, that major projects still will require approval by the Council of State or Council of Ministers; and second, that investors will still need to hire workers through the state's labor exchange rather than hiring them directly.[6] The approval of Cuba's heavy-handed bureaucratic mechanism has proven incredibly cumbersome, as the delays associated with obtaining requisite authorizations linger well beyond the most generous of plausible projections. Additionally, investment proposals under negotiation "still must be approved by the highest level of the Cuban government [and] include projects in light manufacturing, packaging, alternative energy, pharmaceuticals and warehouse shipping logistics." [7] The disadvantages presented by the cumbersome reality of dealing with a bureaucratic state that has not relinquished control of certain elements, otherwise basic to doing business in a free-market economy, unquestionably hinders the pace, progress, and control of the foreign business investor's undertaking and, in many instances, frustrates the purpose of the enterprise as a whole.

The prospect of entertaining any investment that necessitates the use of Cuban labor also poses numerous disadvantages for the foreign investor. Presently, no foreign investor can hire labor in Cuba directly (with very limited exceptions). Therefore, the foreign investor must procure the labor force needed for its joint ventures from a government employment agency, "which charges a fee for such services and pays the employee's salary in Cuban pesos (CUP) while charging the investors in convertible currency (CUC). This salary is negotiated with the foreign investor on the basis of the minimum pay equivalent to the national average salary, which [as of 2014] amount[ed] to 456.00 CUP (1 CUC= 25 CUP; 1 CUC = $1)."[8] The Cuban state has effectively positioned itself as

the island nation's largest employment placement agency, profiting directly from every employment agreement entered into while paying only a fraction of the salary negotiated with the foreign investor in convertible currency to the worker in Cuban pesos. In seeking to bolster its economy through foreign investment, Cuba seems to have found one of its most profitable trades at present to be the human capital of its people.

Furthermore, Cuba's laws present significant legal risks to be weighed by corporate foreign investors. The prohibition of foreign investors from hiring or firing employees directly[9], for example, obligates companies to submit labor disputes to a state agency for resolution. Additionally, under Article 4.1 of Chapter III of the new Ley No. 118, foreign investment also can be expropriated for reasons of public utility or social interest. In several cases, conflict resolution is even governed by local courts rather than an international court of arbitration or any other resolution term bargained for at arms-length.

Given the axiomatic totalitarian nature of the Cuban system, and the lack of a transparent legal system in which the rights of investors may find protection, the legal exposure associated with foreign investment requires profound consideration.

In fact, just last year, the executive of the Canadian-based Tokmakjian Group, one of the more successful foreign companies in Cuba selling transportation equipment, was sentenced by a Cuban court to 15 years in prison for bribery and other economic charges (which the Tokmakjian Group vehemently has denied) after the Cuban government seized $100 million worth of the company's assets.[10] Though only charged last year, Tokmakjian had been detained for more than three years in prison, under house arrest, or in a military hospital.[11] While it is unclear what prompted the Cuban government to release the seventy-four year old executive only recently in February 2015, allowing him to finally return to Canada, it certainly is a cautionary tale of the potential cost of availing oneself or one's business to Cuba's legal jurisdiction.

The irony of depending on the capital of direct foreign investment at the expense of its labor force by a regime whose centralized economy adheres to a self-proclaimed Marxist Leninist doctrine certainly is not lost. That incongruity is second only to the use of the Port of Mariel[12] as the location of Cuba's new "Special Development Zone"—a project undertaken by the Cuban government in an effort to appeal to and draw interest from potential foreign investors. By its adoption of Ley No. 118, the Cuban government now seeks to incentivize certain aspects of investment in an effort to overcome the disadvantages still inherent in its economic climate—an economy whose ceiling is imposed upon citizen and foreign investor alike by the lack of free-market reforms that would incentivize investment. Instead, Cuba's present foreign investment laws present its populace with a policy designed primarily for the maintenance of the regime at both the expense of its workforce and the unwary foreign investor. CB

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[2] Carlos Alberto Montaner, "Cuba: The Selling of a Nation," MIAMI HERALD, February 3, 2014, available at, http://www.miamiherald.com/opinion/op-ed/carlos-alberto-montaner/article1959938.html.

[3] Full text of Ley No. 118 available at: http://www.granma.cu/file/pdf/2014/04/16/G_2014041609.pdf

[4] William M. Leogrande, "Cuba's New Foreign Investment Law is a Bet on the Future," WORLD POLITICS REVIEW, April 2, 2014, available at, http://www.american.edu/clals/upload/WPR-Cuba-s-New-Foreign-Investment-Law-Is-a-Bet-on-the-Future.pdf.

[5] Marc Frank, "Cuba Struggles to Attract Investors Despite Reforms," REUTERS, August 21, 2014, available at, http://www.reuters.com/article/2014/08/21/cuba-investment-idUSL2N0QP1K320140821.

[6] *Supra* note 4.

[7] *Supra* note 5.

[8] Raul Valdes-Fauli, "What the New Cuban Foreign Investment Law Means," BUSINESS INSIGHTS: CUBA, August 2014, available at, http://www.foxrothschild.com/newspubs/newspubsArticle.aspx?id=15032395045

[9] *See* supra note 8, "The foreign investor may discharge the employees hired through the employment agency, but it is required to pay the agency the compensation amount established by the Ministry of Labor and Social Security."

[10] Claire Brownell, "Cuba Releases Canadian Managers of Tokakjian Group Held on Corruption Charges," FINANCIAL POST, March 5, 2015, available at, http://business.financialpost.com/2015/03/05/cuba-releases-canadian-managers-of-tokmakjian-group-held-on-corruption-charges/

[11] *Id.*

[12] The Port of Mariel bore witness to a mass exodus of approximately 125,000 Cuban citizens seeking asylum in 1980 in response to the poor political and economic climate of the Cuban nation. To ease the crisis confronting the Cuban state by the thousands of Cubans cramming into the Peruvian embassy in Havana within only a matter of days to seek asylum, the Cuban government permitted the would-be emigrants who could coordinate a boatlift to leave for the United States from the Port of Mariel.

Street Net Helps Cuban Youth Connect

LA RED DE LA CALLE

By Jane Muir

It is no surprise Cuba's connection to the internet is highly regulated. Many consider it to be among the most tightly controlled in the world.[1] With few connections, tight censorship and high costs, it is difficult, some would even say impossible, to gain access see news updates, share files and play online games on the World Wide Web. Due to these difficulties, resourceful Cubans have created an underground network known as *La Red de la Calle,* or Street Net, ("SNet") which has been under construction since 2001.[2] This private network of more than 9,000 computers is made up of small, inexpensive, and powerful hidden Wi-Fi antennas and Ethernet cables strung over streets and rooftops spanning the entire city.[3] Currently, it has approximately 2,000 users a day.

Cuban officials blame the limitations of their internet access on the U.S. embargo.[4] Conversely, others blame the Cuban government's regulation and preference for censorship. Many consider the main barriers to be physical. The island is isolated by its geography and the absence of stable or reliable internet connections.

Cuba's first internet connection was established in 1996. It was a 64 bit link to Sprint in the United States.[5] The connection to the internet has not developed much further than its original form. In 2011, plans were made to establish a fiber optic connection with Venezuela, by way of Jamaica.[6] Ultimately costing $70 million and funded by the Venezuelan government, the underwater fiber-optic cable line linking Cuba, Jamaica and Venezuela went online in January 2013.[7]

Aside from the physical barriers, there are regulatory barriers to access. Internet service is reserved for state officials and foreigners, while most Cubans turn to government offices, hotels, some businesses and more than 100 government-run cyber-centers around the country.[8]

Observers from abroad and many Cubans blame the lack of internet on the Government's desire to control the populace and to use disproportionately high cell-phone and internet charges as a source of cash for other government agencies.[9]

"Rather than relying on the technically sophisticated filtering and blocking used by other repressive regimes, the Cuban government limits users' access to information primarily via lack of technology and prohibitive costs,"[10] Sanja Tatic Kelly, project director for Freedom on the Net at the American NGO Freedom House, told AFP.[11] CB

[1] VOEUX, CLAIRE & PAIN, JULIEN, GOING ONLINE IN CUBA: INTERNET UNDER SURVEILLANCE, REPORTERS WITHOUT BORDERS (2006), www.rsf.org/IMG/pdf/rapport_gb_md_1.pdf.

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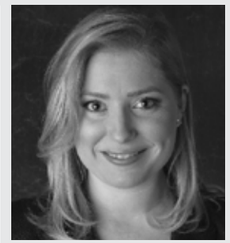

Jane Muir is a civil litigator with Gersten & Muir, P.A. For more information, please visit www.gerstenmuir.com.

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AN INTERVIEW WITH
JUDGE MONICA GORDO

By Jason Silver

Former CABA leader Judge Monica Gordo relishes her new role in the Circuit Civil Division

Every three years, Miami-Dade County judicial assignments rotate, and change springs on the court administration, the bench and attorneys throughout the county. That change has been felt in a big way in Circuit Civil's Division 02, where the Honorable Monica Gordo begins her first term as a Civil Judge after four successful years in the Criminal Division.

Judge Gordo's Miami roots run deep. She received her Bachelor's degree in Business Administration and *Juris Doctorate* from the University of Miami. She was admitted to the Florida Bar in 1999, and dedicated her career to public service, serving as an assistant state attorney for eleven years. Immediately prior to taking the bench, Judge Gordo served as a special prosecutor in the Gang Strike Force.

Judge Gordo is no stranger to the Cuban American Bar Association, having proudly served on its Board of Directors from 2007 to 2010.

"I wake up excited to go to work every day," says Gordo, who began her judgeship in the Criminal Division of Miami-Dade County.

"I miss the hustle and bustle in the morning in Criminal [Division]. You really get to interact with the public at large and members of the community. I was able to deal with people first hand," Gordo said. "At the same time, that is where I learned the skills I use today. The regular motion calendar gave me the opportunity to review a lot of fact intensive issues, and gave me a chance to review a high volume of motions and issues. That has helped me transition to my current role in the Civil Division."

It certainly is a new role. At any time during motion calendar, Judge Gordo can be confronted with a vast array of new and complex issues presented by attorneys well-versed and experienced in their respective fields.

"I have loved every minute of the civil bench, so far. It has been extremely interesting," Gordo said. "It is a very busy division. I sometimes wonder if people realize how much work we have, and how high volume the caseload is. Even when I work nights and weekends, there is still a high volume."

Thus far, Judge Gordo's impressions on the civil bench have been fascinating, exciting, and educational.

"I have found the breadth and scope of the areas of law are extremely interesting and challenging, and that the attorneys appearing before me are very well prepared," Gordo said. "I love the issues that I am dealing with, and I enjoy that it is more complex and involves more legal determinations. In civil, I interact with numerous fields of law on a daily basis, versus criminal, which was very fact intensive with a firm set of controlling legal principles."

Judge Gordo's education certainly has prepared her for the civil bench. "In undergrad I majored in business and I always had a strong interest in commercial law," Gordo said. "Being on the civil bench gives me a chance to see and study the issues which businesses deal with, which I love."

While the law Judge Gordo handles has changed, some things remain the same, such as trial practice, managing a motion calendar and her expectations of the lawyers who practice before her.

"I already had my first trial and dealing with the different substantive law was refreshing. At the same time, the aspects of the trial such as the evidentiary procedures, process of how the trial went and working with a jury were things I was familiar with from Criminal [division]," Gordo said. "I like to see attorneys be courteous to each other. I sometime[s] sense attorneys are in agreement even before the hearing, but have not yet talked to each other about the issue. I encourage them to resolve their issues outside the courtroom and come back. The parties often are in agreement after their meeting."

Judge Gordo has a firm blueprint for how her division is run. She prides herself on her thorough preparation and constant accessibility.

"I always read everything before [the hearing]. I really appreciate the pleadings and the research into the pleadings. I make sure the law cited is still the good law, and I really appreciate the research into the issues that I have seen so far on the civil bench. At the same time, if you have a 500-page binder of materials, please provide it to me a reasonable amount of time before your hearing," Gordo said. "My goal is to be as available as possible. My staff and I try to be as responsive as possible. I maid [make] it a point to make sure that someone from my staff is always in chambers."

Judge Gordo walked us through her basic expectations she has for her courtroom. "I like and appreciate when counsel confer with each other beforehand. I also believe that emergency motions really should be for emergencies, not necessarily for an issue with a possible trial in a few months," Gordo said. "Also, if you set something on calendar and want to cancel, please do cancel. My staff and I are very grateful when someone lets us know the hearing is cancelled. We can then also attempt to give the time to another group waiting for a hearing."

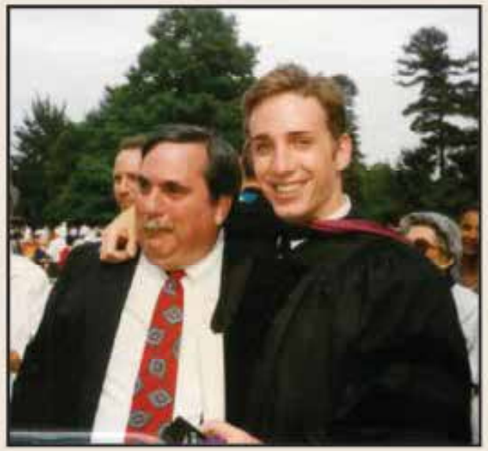
It is easy to see Judge Gordo is passionate about her role as judge. She has spent her career as a dedicated public servant. It is evident her true purpose is to continue to serve the people from the bench. With an emphasis on professionalism and preparedness, Judge Gordo has brought four years of vast experience in the Criminal Division coupled with a hard-working and positive attitude to the civil bench.

"I am extremely grateful to be a judge. I really enjoy what we do in the courtroom. I also feel I have a lot to offer as a jurist," Gordo said. "I am so lucky and blessed, and I think Miami-Dade has one of the best benches. I could not be more honored to be a part of our great bench."

Jason is a member of the Banking & Finance Litigation team for Greenspoon Marder Law, representing various banks, servicers, and financial institutions in real estate litigation, bankruptcy matters, and municipal code enforcement matters.

Congratulations to Attorney Manuel L. Crespo

Upon assuming the duties of President of the Cuban American Bar Association.



Having worked daily with your father Manuel A. Crespo for ten years, I fondly recall the smile in the photo reflecting his happy and warm personality.

You have followed in your father's footsteps with the same dedication to helping others.

He was so proud of you and always knew you would accomplish great things in life. I was at his Gala Dinner thirty-three years ago when he became President, and am proud to be at yours.

We wish you continued success, happiness and accomplishment with the Cuban American Bar Association, and in all your endeavors.

Jack, Sherry, Alyssa, Dara, and Blake Bernstein
Jack G. Bernstein, Esq. (Bernstein and Maryanoff)

LEGAL ROUND UP

By Elliot Kula and William Mueller

Warger v. Shauers, 135 S. Ct. 521 (2014)
Jurors' Secrets Don't Make Friends… or New Trials

When prospective juror, Regina Whipple, was asked during jury selection whether she could be a fair and impartial juror in a case about medical expenses and pain and suffering, she answered "yes." But when the trial started, Whipple found out the case involved a motor vehicle incident similar to one her daughter was in years ago. She then professed to the rest of the jury that an award of such medical expenses in her daughter's case would have "ruined her life."

The jury informed the trial attorneys of Whipple's statements and one individual juror prepared an affidavit representing as much. The trial attorney, seeking a new trial, introduced the affidavit to the trial court.

But the Supreme Court held Federal Rule of Evidence 606(b) bars the introduction of juror testimony when a party seeks to secure a new trial on the ground a juror lied during *voir dire.* A post-verdict motion for a new trial based on dishonesty during *voir dire* plainly entails "an inquiry into the validity of [the] verdict" which is precluded under 606(b).

Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547 (2014)
Need Your Case Removed from State Court? Just Allege "There's No Place Like Federal Court"

In a 5-4 decision, with Justice Ginsburg writing for the majority, the Supreme Court found a party who wishes to remove a case from state court to federal court need not provide factual evidence of the amount in controversy.

When a party wishes to remove an action to federal court, they are required only to file a "notice of removal" containing "a short and plain statement of the grounds for removal." 28 U. S. C. §1446(a); *Owens,* 135 S. Ct. at 558 (Scalia, J., dissenting). The Tenth Circuit Court of Appeals, interpreted this as requiring evidence beyond mere allegations supporting federal jurisdiction. After finding Dart's notice of removal did not include evidence of the jurisdictionally required amount in controversy, the district court remanded the case to state court.

The High Court reversed, holding a defendant's notice of removal need include only a plausible allegation the amount in controversy exceeds the jurisdictional threshold. "Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Id. at 554.*

Koster v. Sullivan, 40 Fla. L. Weekly S63 (2015)
Florida's Supreme Court Declares Which Service of Process Statute Stands on First

Until recently, a fundamental question about service of process had gone unanswered. In *Koster,* the Florida Supreme Court supplied clarity on whether, in addition to the requirements of section 48.21, a facially valid return of service must also include the factors relating to manner of service under section 48.031(1)(a). Which of two statutes' requirements must be met to constitute a valid return of service: those of Florida Statute §48.21, which defines valid return of service, or § 48.031(1)(a), which defines the manner of service generally?

CABA BRIEFS

Fla. Stat. §48.21, defining valid return of service, states that:
"Each person who effects service of process shall note on a return-of-service form attached thereto, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served and, if the person is served in a representative capacity, the position occupied by the person."

A failure to do so invalidates service.
Appearing to require additional express elements in a valid return of service, Fla. Stat. §48.031(1)(a) states:
"Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents."

In *Koster,* the Florida Supreme Court held that, in order to be facially valid, a return of service need only demonstrate compliance with those requirements found in section 48.21. The return need not also expressly list the factors defining the general "manner of service" contained in section 48.031(1)(a). The Court found the Legislature is "best positioned to make a policy determination" regarding the contents of a return of service. Employing the maxim, *expressio unius est exclusio alterius* (or, "the express mention of one thing excludes all others") the Court determined the Legislature's list of specific requirements in section 48.21 prevented reading any additional requirements—found elsewhere—into that statute.

Deutsche Bank Trust Co. Am. v. Beauvais, No. 3D14-575 (Fla. 3d DCA Dec. 17, 2014)
Only One Bite at the Foreclosure Apple

The Third District Court of Appeal blazed the foreclosure trail in *Beauvais* by holding a mortgage lender's acceleration of a mortgage triggers the statute of limitations that may preclude the lender, following dismissal of its action without prejudice, from accelerating the note anew.

The lender in *Beauvais* initiated a foreclosure action against the borrower in December 2007, stemming from the borrower's default that occurred in 2006. That initial action was involuntarily dismissed *without prejudice.* Two years later, the lender filed a second action based on a subsequent default one month after the default on which the original action had been based. The lender contended the dismissal of the first action constituted an automatic "deceleration" of the loan – allowing the lender to re-accelerate the loan during a subsequent legal action.

But the Third District held the applicable 5-year statute of limitations had run by the time the lender sought to initiate the second action. The Third reasoned that when a mortgage contains an optional acceleration clause, the statute of limitations commences once the lender elects that option to accelerate by, for example, filing a foreclosure action. As a result, the clock started ticking when the initial action was filed in 2007.

Here's the kicker, according to the Third, the dismissal *without prejudice* did not stop the clock. That is, the Court distinguished the facts in *Beauvais* from Singleton *v. Greymar Associates,* 882 So. 2d 1004 (Fla. 2004) *and U.S. Bank Nat. Ass'n v. Bartram,* 140 So. 3d 1007 (Fla. 5th DCA 2014), cases involving a dismissal with prejudice. Specifically, the Third found that in the lender's initial action, by virtue of the dismissal *without prejudice,* there had been no adjudication on the merits, and thus no determination regarding the lender's acceleration of the debt. Without adjudication on the merits, the entire debt remained accelerated and due; thus there were no new installment payments due from which to accrue a new cause of action.

Elliot Kula, board certified in appellate practice, is the principal at Kula & Associates, P.A., and together with attorney W. Aaron Daniel and their law clerk William Mueller, the Firm works collaboratively with trial lawyers to provide appellate service and trial strategy consultations.

Visit their website at HYPERLINK "http://www.kulalegal.com" www.kulalegal.com

LEGAL ROUND UP

Silveira v. Quiroga, 156 So. 3d 574 (Fla. 3d DCA 2015) *Florida Court Expands Pro Se's Right to Claim Guardianship*

After a psychiatric evaluation performed on ward, Ana Maria, found her to be incapacitated, the trial court appointed a committee to determine her legal capacity. The committee recommended the court appoint a plenary guardian. Ana Maria's sister, Ursula Silveira, could not be present when the appointment took place and the court appointed the Guardianship Program of Dade County, Inc. as Ana Maria's guardian.

Typically, a public guardian should be appointed where "there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian."

But Ana Maria's sister, Ursula, was willing and financially capable of becoming her guardian. Accordingly, she petitioned the trial court to become Ana Maria's guardian. The trial court ruled that under Florida Probate Rule 5.030(a), it could not review Ursula's petition unless she was represented by a lawyer.

But the Third District held Florida Probate Rule 5.030(a) applied to only those guardians already appointed and not to individuals seeking guardianship. Under the Third's holding, therefore, a *pro* se litigant now can seek appointment as a guardian without the use of counsel, greatly expanding access to courts for many family members or friends who wish to serve as guardians, but for whom an attorney would be too costly.

AmMED Surgical Equip., LLC v. Prof'l Med. Billing Specialists, LLC, 40 Fla. L. Weekly D352 (Fla. 2d DCA 2015) *Bankruptcy Stay Puts the 30-Day Appeals Window on Hold*

The Second District concluded the deadline for filing of a notice of appeal is extended when the relevant party files for bankruptcy and receives a bankruptcy stay within the thirty-day window. Ultimately, the Second found the filing of an appeal in state court should be considered a "continuation ... of a judicial ... proceeding against" the appellant, which is expressly forbidden by the bankruptcy code during a stay.

An appellant has thirty days after the bankruptcy stay has been lifted to file his/her notice of appeal. At least, in the Second District. And it is a brazen appellate attorney (even in the Second District) who would advise a client not to file a notice of appeal within the initial thirty days after rendition of the order.

Oleckna v. Daytona Disc. Pharmacy, 40 Fla. L. Weekly D370 (Fla. 5th DCA 2015) Pharmacists Precluded from Doing the "Robot"

The Fifth District held pharmacists can be sued for negligently filling prescriptions when a pharmacists' duty to use due and proper care extends beyond just following the prescribing physician's directions.

In *Oleckna,* the pharmacist failed to live up to that duty when he issued too many pills within too short a period—contributing to a patient's overdose. The pharmacist did not "check[] in with the prescribing doctor or warn[] the patient." Going forward, the Courts will not interpret a pharmacist's duty to use "due and proper care in filling the prescriptions" as being satisfied by "robotic compliance" with the instruction of the prescribing physician. Reasonable, independent, exercise of care is required.

Sanislo v. Give Kids the World, Inc., 157 So. 3d 256 (Fla. 2015) *Negligently Drafted Exculpatory Clauses Still Cover Negligence*

The Supreme Court of Florida found exculpatory clauses are not required to expressly refer to "negligence" or "negligent acts" to render them as an effective bar to a negligence action. Ultimately, the Court decided, the basic objective in interpreting a contract is to give effect to the parties' intent. So where the circumstances are such that a liability release form clearly conveys it wishes for one party to be "released from any liability," it should be read as exculpating the party from negligent actions, even absent express language.

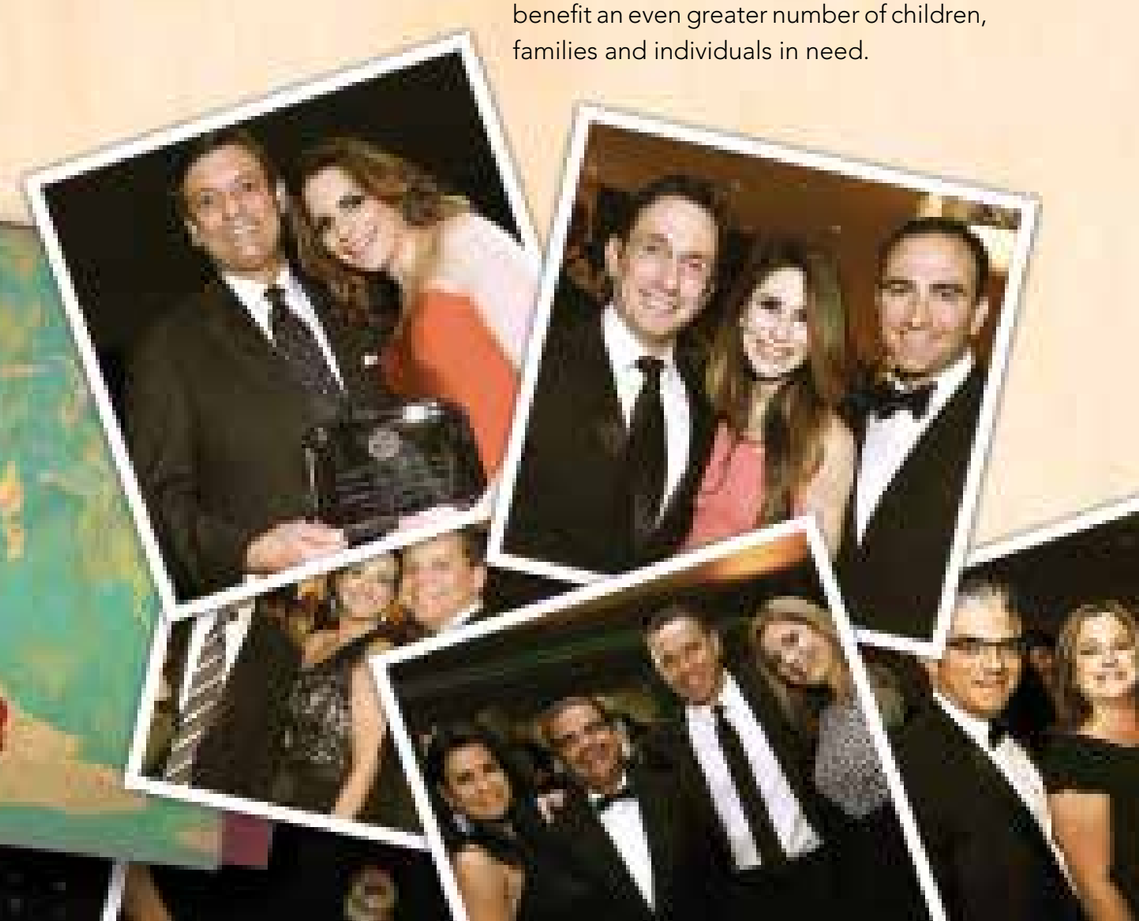
The Court's decision represents a divergence from case law governing indemnification agreements, which require a specific provision protecting the indemnitee for its own negligence in order to be enforceable. *See Univ. Plaza Shopping Ctr. v. Stewart,* 272 So. 2d 507 (Fla. 1973).

W. Aaron Daniel, is an attorney at Kula & Associates, P.A.

2015
CABA BENEFIT GALA

The Cuban American Bar Association's 41st Annual GALA held on January 31st, 2015 at the Fontainebleau Hotel in Miami Beach was not only an exciting social event, but also an important philanthropic event benefiting both the Cuban American Bar Association Pro Bono Project (CABA Pro Bono) and the Cuban American Bar Association Foundation; raising funds vital to the success of each of these organizations.

One of the most memorable parts of the evening was when Elmer Ernesto Guardado Leiva, an 18 year old young man from El Salvador, addressed the crowd of over 1,000 attendees on how CABA Pro Bono had changed his life forever. Elmer's words followed by a short video on CABA Pro Bono prompted a record-breaking amount of donations to CABA Pro Bono. These donations will help make possible the expansion of existing programs to benefit an even greater number of children, families and individuals in need.



IN RECENT YEARS CABA PRO BONO HAS GROWN TREMENDOUSLY, AND CURRENTLY PLAYS A CRITICAL ROLE IN MAKING ACCESS TO JUSTICE FEASIBLE FOR ALL IN MIAMI DADE COUNTY.







CABA PRO BONO

Represented over 2250 clients in 2014 alone. A 72.8% increase from 2013.


CABA PRO BONO

Has offices located at 2400 South Dixie Highway.

Has a staff of eight (8) including 5 attorneys.





CABA PRO BONO

Had over $1,200,000.00 of in-kind legal services donated by pro bono attorneys in our community over the past 18 months.

CABA PRO BONO

Sponsors 2 outreach clinics each month at different locations across Miami-Dade County for income eligible clients.

CABA PRO BONO

Held over 25 CLE clinics to train pro bono attorneys in 2014.

CABA PRO BONO IS CHANGING LIVES FOR THE BETTER THROUGH ITS VARIOUS SPECIFIC PROGRAMS.

GT GreenbergTraurig
Around the Corner, Across the World
The global marketplace is changing at light speed. So is the law. That's why businesses expect lawyers who can innovate and navigate change. We've built a firm of approximately 1800 lawyers in 37 locations that is focused on delivering efficiency and value in legal services.
BOCA RATON
FORT LAUDERDALE
MIAMI
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

DRIVEN
OPPORTUNITY
THE POWER AND SUPPORT TO MAKE IT HAPPEN
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COMMERCIAL SERVICES DIVISION
Your Sophisticated And Innovative
Title Insurance Service Provider
We provide a single point of contact for agents to receive all the priority assistance required throughout the entire commercial transaction, no matter the level of complexity.
• Single Point of Contact for All Commercial Needs
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• Designated Commercial Services Underwriting Counsel
• Full Range of Escrow Services
• 1031 Exchange Program
• Multi-Jurisdictional Support
• Closing Assistance and Support
• Site Management and Due Diligence through Old Republic National Title Insurance Company
FOR MORE INFORMATION
DONNA M. MORE
Vice President
Commercial Services Manager
Senior Underwriting Counsel
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REAL ESTATE ATTORNEYS SINCE 1948

EVENTS

CABA

CABA

FOUNDATION GOLF TOURNAMENT*
10/30/14

The CABA Foundation came together with the Cuban American CPA Association for the 13th Annual CABF & CACPAA GOLF CLASSIC at International Links Gold Course for a great day of golfing and dinner to raise money for student scholarships. 1 FirstBank Florida was the Tournament Sponsor.

CABA

PAST PRESIDENTS' DINNER
11/13/14

Sabadell Bank once again hosted the annual Past President's Dinner, where CABA's Past Presidents join the sitting Board of Directors to reflect on the events of the previous year and exchange thoughts for the future of CABA.

CABA

ELECTIONS
12/02/14

The annual CABA Board of Director Elections and Toy Drive - one of the most well-attended events of the year - took place once again at Regions Bank in Coral Gables, with catering by Novecento. The membership voted, and elected your 2015 Cuban American Bar Association Board of Directors:

President - Manny Crespo, Jr.

President Elect - Anna Marie "Annie" Hernandez

Immediate Past President - Ricardo Martinez-Cid

Directors - Nory Acosta-Lopez, A. Dax Bello, Gina Beovides, Isabel Diaz, Maria D. Garcia, Frances Guash De La Guardia, Javier Lopez, Yara Lorenzo, Olivia Rodriguez, Jennifer Jimenez Perez, Jorge L. Piedra, Wendy Polit

BOARD
HOLIDAY PARTY**
12/18/14

The Board of Directors gathered to celebrate the close of another fantastic year and gather strength for the events of 2015. Dinner was graciously hosted by Mass Mutual Financial Group. at Casa Juancho on the famed Calle Ocho.

MEMBERSHIP
APPRECIATION COCKTAIL &
PAST PRESIDENTS' RECEPTION
02/24/15

City National Bank's Brickell Avenue branch hosted the 2015 Kickoff Membership Appreciation Cocktail and Past President's Reception, where CABA members started the year by welcoming and recognizing all the newly elected Judges taking the bench.

5K
04/04/15

The 4th Annual Lawyers on the Run 5K drew its most diverse crowd to date, with everyone from competitive runners to kiddies taking part. An Easter Egg hunt, rock climbing wall and dunk tank helped give the event a family-friendly carnival feel enjoyed by all, as much-needed funds were raised to benefit the CABA Pro Bono Project.

CABA V. CHRISTOPHER:
20TH ANN. GUANTANAMO
LITIGATION
2/16/15

To mark the 20th anniversary of the 1994 Cuban Rafter Crisis, CABA Members were able to hear a panel discussion detailing the events surrounding the CABA v. Christopher litigation from the pro bono attorneys who worked on the case, including CABA Past President Frank Angones. The event was co-sponsored by the University of Miami School of Law, the University of Miami Cuban Heritage Collection, CABA, Southern Wine & Spirits, and Colson Hicks Eidson.

DICHOS DE CUBA

by Monica M. Albarello

EL QUE QUIERA SU CELESTE QUE LE CUESTE–IF YOU WANT THE SKY, IT WILL COST YOU.

El que quiera su celeste que le cueste – If you want the sky, it will cost you. Success has a price: effort, time, money, dedication, etc. This dicho may sound insensitive, but it is only the truth: hard work is how to succeed. We cannot expect for all dreams to come true without playing a part in making sure they are met. I recently saw a picture on social media of a ballerina wearing only one ballerina pointe shoe. The foot that was bare revealed all the cuts, bumps, and missing toe nails of that ballerina. I am not sure who this ballerina is, but she is living her dream and the picture confirms she has paid a price for her dream to come true. I bet she has no regrets about the price she paid. Similarly, all of us in our legal profession have paid a price to get to where we are today. If you believe success is limitless like I do, then we will forever be paying some sort of price. Thankfully, the prices I have paid have been well worth it.

La avaricia rompe el saco: Your insatiable desire for wealth and gain will break the sack. This dicho is meant to be visual. Although avarice is a synonym of greed, avarice also can mean you want but just for the sake of having it, not necessarily to use or waste it. This dicho concerns the latter definition. Someone who continuously gets what he or she wants and just keeps it, will eventually collect enough things to break the sack. If you have seen those TV shows about weird obsessions, you will find these types of avaricious people. One notable person was a lady from a southern state who fanatically loves gingerbread cookies. The lady even goes to work, the grocery store, doctor's visits, etc. with a big gingerbread doll by her side. Her entire house is filled with gingerbread memorabilia, and she bakes gingerbread cookies every day! This gingerbread lady broke the sack when she turned her residential mobile home into a gingerbread house because there were no more gingerbread things to collect.

Toma chocolate y pague lo que debe: Take this chocolate and pay your debt. Do you know someone who is not responsible enough to borrow money? I know a few. These people require a loan with no interest and will return payment on their own terms (when it is convenient for them). These kinds of people usually come with the reputation they do not pay off their debts, yet have the confidence to continue to seek loans. Beware of these folks. This dicho is what you would tell someone who owes you money and you are trying to collect the overdue debt. The chocolate does not mean much but let's us consider it a motivating factor to make someone pay you back. This dicho is used mainly by frustrated lenders who are tired of waiting for repayment while the borrower continues on with life without concern for his debt. Sadly, all you are left with after you tender the money to one of these people is this dicho. CB

Monica is a civil litigator focusing on personal injury matters. She works at the law firm Conerly, Bowman & Dykes, LLP, in Destin, Florida. She can be reached via email at malbarello@emeraldcoastlawyers.com

COSTILLITAS
TRADER VIC'S

La Cocina de Christina

3 LBS PORK LOIN BACK RIBS (TERNILLA DE LOMO DE CERDO)

FOR THE SAUCE:
½ cup soy sauce
½ cup ketchup
3 Tablespoons of light brown sugar
1 Tablespoon of freshly grated ginger

FOR THE MARINADE:
½ cup of light brown sugar
2 Tablespoons of salt
2 Tablespoons of Liquid Smoke

This recipe is for 4 guests. Double and triple the recipe, depending on the number of guests you will host. I hope you have enjoyed the simplicity of this recipe. Email me at lacocinadechristina@gmail.com or share your costillitas stories with us on Facebook at http://facebook.com/lacocinadechristina.

I always have had a silent respect for all things ribs. Respect for the ribs themselves – never really knowing the difference between pork and beef; not understanding if a dry rub or wet marinade was the best way to go; not doing any research, really, on *costillas*. All I knew is it would be an impressive dish to make, and when I picked the recipe for *Costillitas Trader Vic's,* I was not sure where we were headed.

I can tell you one thing, now that I have made this dish —ribs are easy to make. You must have patience and a good attention to detail, but if you can manage that, you will impress your dinner guests.

Why *Trader Vic's?* My research online shows *Trader Vic's* was a chain of Polynesian-themed restaurants and bars, one of which opened in Cuba in the *Havana Hilton* in 1958. It is still open today as *Polinesio* in the same hotel, now named *Habana Libre Hotel.* Prior to oalocation in Cuba, Vic, "The Trader" Bergeron, traveled to Cuba to refine his skills as a bartender and explore the subtleties of rums from around the world. You can learn more at TraderVics.com.

INSTRUCTIONS

1. Mix the ingredients for the marinade the night prior to cooking the ribs and let the ingredients sit in a plastic container overnight.
2. On the day you will cook the ribs, rub the ribs with the marinade and let them sit in the rub for at least two hours in the fridge.
3. Remove the ribs from the fridge and brush them generously on both sides with the sauce and let them sit in the sauce for at least an hour in the fridge.
4. Preheat the oven to 450 degrees.
5. Place the ribs in the oven, fatty side up, on a rack or oven tray with slits, in order to let the grease drip down into another tray that sits in the rack underneath.
6. Bake at 450 degrees for 15 minutes.
7. Lower the temperature to 350 degrees and cook the ribs at this temperature for another hour.
8. Reapply the sauce to the ribs every 15 minutes and make sure to flip the ribs each time you reapply the sauce in order to ensure even browning on both sides.

FOR MORE RECIPES AND OTHER CUBAN RECIPES FROM THE CHRISTINA & NITZA PROJECT, VISIT:

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MOVING
FORWARD

I congratulate Frances Guasch De La Guardia and Jorge R. Delgado on the success of their first issue, which celebrates the twentieth anniversary of the Guantánamo Refugees Litigation, and features an excellent article authored by Carlos Martinez, the Public Defender for Miami-Dade County, on the less prevalently discussed repercussions of the renewed diplomatic relations between the United States and Cuba.

As many know, the restoration of diplomatic relations between the United States and Cuba is a dynamic and developing story with economic, historical, political, and emotional angles to explore. Indeed, with the exciting revelation that two Cuban-Americans are candidates to become president of the United States in 2016, and with President Obama removing Cuba from the List of State Sponsors of Terrorism, we can expect this topic to continue garnering widespread attention. In turn, we anticipate that upcoming issues of CABA *Briefs* will feature commentary on these emerging issues from prominent members of the community. Further, we invite and encourage our readers to submit articles sharing their views on this evolving diplomatic relationship. I, for one, have found it difficult to remove my emotions from the equation when I hear my peers eagerly refer to Cuba as a land of opportunity when I know it as a land of oppression and obstruction.

Lastly, as the times change and technology improves, the printed word is becoming a less efficient method of mass communication. Thus, the time has come for CABA *Briefs* to adapt and accommodate change. CABA *Briefs*, in a deliberate process, will move towards the increased efficiencies of electronic production and distribution of our publication. We hope this will allow CABA *Briefs* to have more room for content such as event photographs and substantive articles, be more readily accessible than ever, and be easier to amend after publication. CB

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