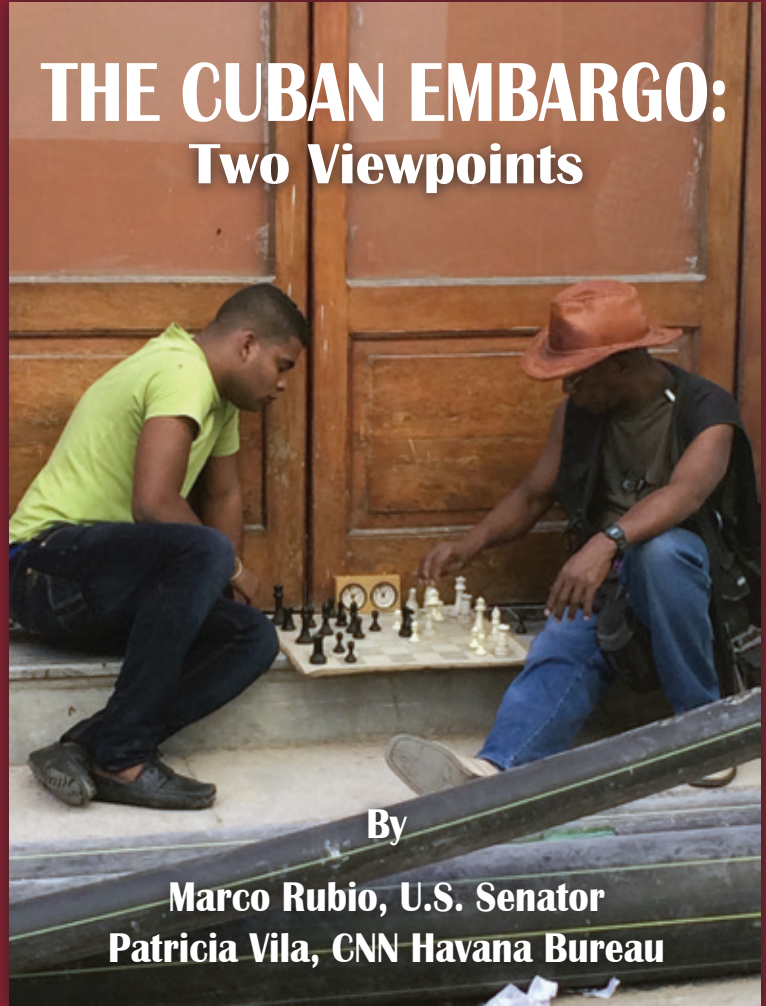


Q&A BRIEFS

THE CUBAN EMBARGO: Two Viewpoints



By

Marco Rubio, U.S. Senator
Patricia Vila, CNN Havana Bureau

WINTER 2016



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Featured on the cover is a photo by Allison Leonard, an attorney with Patino Associates and a CABA Briefs assistant editor. The photograph was taken during her travels to Havana in January 2015.

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to and adequate representation of all minorities before the courts; facilitate the administration of justice; build close relationships among our members; provide mentoring and scholarship to law students nationally; and support the indigent community through the funding and administration of an effective pro bono legal assistance project and other community programs. Currently, CABA has in excess of 2,000 members in our organization. Reproduction in part of any text, photograph, or illustration without written permission of the publisher is strictly prohibited. To submit an article or ad to CABA Briefs, please contact Frances Guasch De La Guardia at cababriefs@hotmail.com.

President's MESSAGE



I am humbled and honored to lead this great organization in 2016. Thank you for this opportunity. I wanted to start out by sharing a little bit about myself.

For those of you that may not know me, I was first elected to the Board of Directors for a one-year term commencing in 2006 under the 2nd female President of CABA, Corali Lopez-Castro. I was still a “baby” lawyer, about to turn 30, and eager to serve and get involved in the legal community, and in CABA, in particular.

I have always had an interest in Cuba and been in touch with my Cuban roots as a child of exiles, and frequent visitor of the Museo Historico Cubano with my maternal grandparents. It probably helped a great deal that I also attended a very Cuban (and excellent) elementary school—Conchita Espinosa Academy, where reciting the Cuban National Anthem was a frequent occurrence; math class in Spanish or Spanglish was the norm; and learning the great works of Ernesto Lecuona for the biennial recitals was a requirement.

Throughout my nine years on the Board, I have been privileged to serve under many fine Presidents, six of which were women (and now, the majority of the Board is comprised of women). Things have definitely changed since 1991 when Katherine Fernandez-Rundle served as the first female President and my first few years on the board—the board is more diverse in gender, age, politics and even sexual preference. The one constant though is that those who volunteer and run to lead this organization are intelligent, caring, and devoted to CABA.

Given the time I have served on the Board, I have been fortunate to sit and lead several committees—Judicial, Events, Mentoring, Membership, Website, and the long-forgotten Community Liaison, to name a few. I have also served as Secretary, Treasurer and Vice President, and thus, have worked my way into this awesome position I am now grateful to occupy. I follow in the footsteps of so many great leaders, which is very intimidating (only minimized by all that I have learned from not only the last 9 Presidents, but all of my other fine predecessors as well).

I will not list a long set of goals that I intend to carry out in 2016, as I know the year will go by quickly and I pride myself with managing expectations in all aspects of my professional and personal lives. Instead, I vow to do my best and give 100% to the duties and office entrusted to me.

A handwritten signature in black ink, appearing to read 'Anna Marie Hernandez'.

Anna Marie Hernandez
President

Past-President's MESSAGE



It has been a pleasure and a great privilege to serve you as President in 2015. The challenges of the position hold true to the sage words of the past presidents whose counsel I sought before embarking on this endeavor, but the rewards of leading a dedicated and hardworking Board of Directors and an engaged membership is truly beyond what words of gratitude can give justice to.

CABA is one of the most important and well respected voices for the Cuban American community both locally and nationally. With this status come responsibilities and challenges as we serve an increasingly, and thankfully, diverse membership to ensure that the Hispanic community is appropriately represented in positions of leadership, in law school enrollments and scholarships, and no less importantly, equal access to justice.

I encourage each and every member to remain involved and to give of their time and whenever possible to make financial contributions to the CABA Pro Bono Project and to the CABA Foundation so that we can continue to do the impactful work that we do as an organization, and so that we can continue to serve as an example of what can be accomplished by a minority bar when its members stand firmly behind its principals and refuse to accept anything less than excellence.

The 2015 Board was committed to continuing the good work of our predecessors, and I am confident that our President-Elect, Annie Hernandez, together with the 2016 Board, will steward this great organization to even greater heights with your support.

A handwritten signature in black ink, consisting of a large, stylized 'M' and 'C' with a horizontal line extending to the left.

Yours very truly,
Manny Crespo, Jr.
Outgoing President

Editor-In-Chief's MESSAGE



Dear CABA Members:

Happy New Year! It is an exciting year as we installed Anna Marie “Annie” Hernandez as CABA’s 42nd President and the Board of Directors at the Gala on February 6th.

This New Year presents us with fast moving and controversial issues regarding our homeland, Cuba. The topic of Cuba and US-Cuba relations always elicits heartfelt and passionate responses from our fellow countrymen and women. While we may not all agree on how to proceed or respond to the current issues, we cannot escape the reality that changes and choices, based on those changes, have been thrust upon us. At CABA, we have remained constant and steadfast in our mission and beliefs—that every man, woman and child in Cuba deserves basic human rights. Until those basic liberties are restored, we can all agree that whatever changes occur, in Cuba or with US-Cuba relations,

would be incomplete. Nonetheless, it is important to engage in dialogue and face the issues head on so that we are better able to tackle the fast moving changes already implemented, as well as those that are yet to come. Our CABA on Cuba Committee will be hosting an educational, informative and thought-provoking multi-day conference on many of these issues at the Sans Carlos Institute in Key West, Florida in September of this year. Please be on the lookout for the Save the Date email to hit your inbox very soon.

To that end, this Winter issue addresses various Cuba related topics, with the central piece being a point/counter point on the controversial easing of US-Cuba relations and proposal by the current administration to lift the US embargo on Cuba. One viewpoint is shared by US Senator Marco Rubio and the other by Patty Vila, founder of the CNN Havana Bureau. Neither author was aware who was writing the counter point nor what was being written by the other author. I hope you enjoy the articles and welcome the contrasting viewpoints as a means to engage in meaningful discussion in the midst of all the changes. Whatever your personal inclination is on the subject, I think we can all agree that it is newsworthy and that we can benefit from meaningful debate on the topic. We share these articles with you with the intent of exposing you to contrasting opinions and viewpoints, and to encourage and inspire collegiate conversations among us. I am hopeful that the political and moral issues that are attached to these topics do not cloud the right we all share to freedom of speech.

As always, CABA remains committed to promoting a peaceful transition to democracy in Cuba. These principles are best expressed in CABA on Cuba’s mission statement, which acknowledges and supports the following fundamental principles:

“That the Cuban people are entitled to live and enjoy the rights and duties of a functioning true democracy; That the Cuban people are entitled to enjoy the fundamental human rights encompassed by the United Nations Declaration of Human Rights; That all the Cuban people, . . . have an inalienable and fundamental right to participate in promoting and establishing democracy and human rights in Cuba; [and] that the Cuban people are entitled to a free and fair process to draft a new constitution and an explicit Constitutional guarantee of personal rights, to establish of an independent judiciary, to elect legislators, and elect executive officers. . .”

Frances Guast De La Guardia

Un abrazo,

Frances

Editor-in-Chief

Don't Reward Repressive Castro Regime

By Marco Rubio, US Senator



Much has transpired between the governments of Cuba and the United States in the last 11 months. While the Obama Administration has continued to make concession after concession to the Cuban dictatorship throughout the entire process of normalizing relations, key questions regarding this new relationship remain unanswered.

Instead of concrete progress on political reforms and human rights, the repatriation of U.S. terrorists and fugitives being harbored in Cuba and the resolution of outstanding property claims, Cuba's rulers have responded to each Obama Administration concession with an increase in political arrests and other violations of fundamental human rights, all while leaving their debts to thousands of Americans unpaid and the victims of the criminals they are harboring without justice.

Throughout the Obama Administration's negotiations with Cuba, a demoralizing message was sent to Cuba's valiant pro-democracy movement, which had neither a voice nor a presence in these talks. Since President Obama announced his new Cuba policy, a steady stream of Obama Administration officials and members of Congress have visited Cuba with few of them bothering to meet with Cuban democracy and human rights leaders and none demanding to meet with political prisoners. Not surprisingly, the Castro regime has responded with more arrests and detentions of human rights defenders, independent journalists, and other critics.

The Obama policy of pouring more American money into the Castro regime's coffers won't make the Cuban people more free. As our extensive experience with transitions from Communism has shown, economic

opening and diplomatic engagement do not automatically lead to political freedom; on the contrary, it gives committed dictators and authoritarians greater legitimacy and more money to repress their people. No Communist police state has ever unclenched its fist just because a McDonald's has opened or an embassy has been established.

Unfortunately, the Obama Administration's actions don't just affect the people of Cuba. The FBI estimates there are more than 70 fugitives from justice that are being provided safe-harbor by the Castro regime, including Joanne Chesimard, a cop-killer on the FBI's Top Ten Most Wanted Terrorists list; Frank Terpil, a renegade CIA agent who became an assassin-for-hire and arms smuggler for Libyan dictator Muammar Gaddafi; and William Morales, a convicted FALN (Fuerzas Armadas de Liberación Nacional) bomb maker who conducted a terror bombing campaign in New York.

The victims of these individuals, who are being openly harbored by Cuba's dictatorship, deserve justice. Instead of ensuring the credibility of the American legal system and protecting and defending the American people, the Obama Administration has signaled time and time again that justice for the victims of these criminals is not a priority. Worse than that, it has sent a message to criminals around the world and here at home that our nation's laws do not apply if you can make it to Castro's safe-harbor, a protection extending past individual criminals and terrorists to nations like Russia and China, who use the island just 90 miles from our shores to target America. The repatriation of known terrorists and other fugitives from U.S. justice cannot continue to go unresolved, and it must be addressed before any further concessions are made.



The Cuban government must also account for the billions of dollars in outstanding American property claims against it. It has been our longstanding policy that nations must address outstanding property claims and judgments. Instead, in Cuba's case, the Obama Administration decided to look the other way, and as a result thousands of verified American claimants who have been waiting for decades remain uncompensated for the Castro regime's illegal expropriation of their property and assets. Throughout the last 11 months, the Obama Administration has also done nothing to force Havana to address the billions of dollars in outstanding judgments from U.S. federal courts against the Cuban government for acts of terrorism.

Families and entities in the U.S. and around the world deserve just compensation for the properties the Castro regime seized from them, which is why earlier this year, I joined with Senator David Vitter (R-LA) to introduce the Cuban U.S. Claims Settlement Act so that, at the very least, the Castro regime is forced to pay

back the people they stole from before easing travel and trade restrictions any further.

President Obama is now calling for a lifting of the embargo and reportedly even thinking about failing to defend it at the United Nations despite all of these unresolved issues. The United States must continue being a beacon of freedom for the Cuban people and must stand with the victims who are still seeking justice for the crimes committed by fugitives in Cuba and the thousands of Americans waiting to be paid for property stolen by the Castro regime. Anything short of a strong defense of the embargo would be a slap in the face to Cuba's growing dissident movement, the victims of criminals Cuba is harboring and the Americans waiting patiently to be paid back for what was theirs.

The embargo is critical to denying hard currency to the Cuban regime's monopolies, which history has proven are only used to further oppression and enrich those close to the ruling class. Article 18 of the country's Communist

Constitution requires that all foreign trade with the island must be funneled through the state.

It is the Cuban dictatorship and its backward political and economic policies—not the embargo—that has kept Cuban society from fulfilling its true potential. Instead of lifting the embargo, our focus should be seeking stronger measures to ensure that any transactions authorized by President Obama's recent Cuba policy changes aren't funneled through the Cuban military and intelligence services. The Cuban Military Transparency Act that I introduced in the Senate would ensure that any new resources sent to the island truly reach the Cuban people.

Throughout the years, the United States has eased many aspects of the trade embargo, as well as travel restrictions to the island, and each time the Cuban dictatorship has manipulated these unilateral policy changes to its benefit. It is well past time for the Cuban government to change its repressive policies, without any further rewards.

TIME FOR CHANGE



TIME FOR CHANGE

TIME FOR CHANGE



HOW MUCH LONGER WILL WE BE STUCK IN TIME?

By: Patricia Vila,
Founder of CNN Havana Bureau

“The Present Moment is Time”

The 800 pound gorilla in the room regarding Cuba is the U.S. Embargo—or El Bloqueo—as in “el Cubano de pie,” as Cubans on the island refer to it.

In today’s world, do world leaders understand this outdated policy? Do Americans understand it? How can they? Especially if they don’t even understand the story about that little boy who captured and captivated us, now a young man - named “Elian”. In great part, due to the Pope’s recent visit to the island, the question has never been more relevant: Is it time for change? Will lifting the Embargo help the Cuban government or the Cuban people?

Is it time for change? To provide some history, the United States Embargo against Cuba is a commercial, economic, and financial embargo first imposed by the United States on October 19, 1960, nine years before I was born.

My passion and love for the largest island of the Antilles started when I was eleven years old during the Mariel Boat lift. Fast forward to 1997, my perspective changed when I found myself in Havana, based there for four years as the founder of the CNN Havana Bureau.

Here is my story. Call it a premonition, but exactly one year before the rafter crisis, while working for CNN, I asked my boss, CNN Miami Bureau Chief, John Zarrella, If I could cover anything “BIG” that happened in Cuba. As it turns out, in August of 1994, the rafter crises unfolded and sure enough, I covered the story from Miami, focusing on the thousands of people arriving at the

Krome Detention Center daily, looking for their migrant relatives. Meanwhile, CNN had boots on the ground in Cuba. In the midst of all the chaos, just nine days after the rafter crises started, I received a call from my Assignment Manager. He said, “Patty, I need your passport number. You are going to Cuba with 50 thousand dollars in cash, edit gear and a camera”. I was nervous and excited, thinking my big opportunity had arrived. The crew on the ground in Cuba was running out of money, and the way they paid bills in Cuba was hand-to-hand, carrying the cash into the country. The crew also needed new gear because the humidity was ruining the equipment. It also helped that I spoke Spanish. (During the years I worked for CNN, only two percent of its ten thousand employees were Hispanic.) The story just grew from there.

I was a supporter of the Embargo. I will admit, before I had the opportunity of a lifetime to travel to Cuba to cover one of the biggest stories of my life, I was a supporter of this policy. I was a supporter because as a young woman I was constantly listening to a community of older Cubans that were adamantly against any and all engagement. My parents were not political people so the Embargo was not a subject we spoke about at home. Nonetheless, looking back I feel that many people, in those years, would do anything to ostracize or even hurt you if you did not agree with their thinking. This I know for sure. When I worked for CNN in Havana we were called the Community News Network. Our office was threatened. We were informed by the General Manager of the Habana Libre that he

had received calls threatening that they would bomb our office. During that very time, in which we were receiving our bomb threats, was when a few bombs were set off in Havana, killing a tourist that was visiting from Italy. I covered every bombing, while at the same time thinking it could have been me or that I could be next. In Miami one summer we had to hire a private security guard to watch our office and protect us. We had threats there as well. Why? Simply because we were airing stories about Cuba. I ask you, is that not what those same people want for the Cuban people, the freedom to express themselves without fear of retribution or harm?? With all that being said, as we all know, the Embargo, which limits American businesses from conducting business with Cuban interests, is still in effect and is the most enduring trade embargo in modern history. In spite of the Embargo, the United States is the fifth largest exporter of agricultural products to Cuba. However, since the Embargo prohibits U.S. companies from extending credit to Cuba, the country must pay cash for all imports from the United States. This makes trade with China, Brazil and Venezuela more sensible for Cuba. The exclusion of American trade, being just a few nautical parallels away, further blocks the potential for Cuba to grow its economy, thereby affecting the Cuban people. One must ask, isn’t it ironic that the U.S. trades and has relations with China, Venezuela and Vietnam?

I believe the moment has arrived for change. Reflecting on the last twenty years, the logic behind the Embargo has eroded, and its goals have not been served.



Photo credit: Alison J. Leonard

What does it continue to accomplish? Politically, it has failed to remove the Castro regime from power. Maintaining the Embargo has only prompted the Cuban government to master the art of public relations spin by portraying Cuba as the victim, bullied by the superpower of the world - an argument most of the world has embraced. At this point, most American allies think the Embargo is counterproductive, at best, and vindictive at worst.

In July 2015 a Pew Research Center poll showed that 72 percent of Americans, including 55 percent of conservative Republicans, favor ending the embargo. A recent poll by Univision found that 40 percent of Cuban-Americans said they would back a candidate who favors completely normalizing relations.

At this moment U.S. policy needs to take into account the leadership change in Cuba since 2008 when Raul Castro took power. Let me make clear Raul is not Fidel. Raul, despite what one may think of him, has brought unprecedented

changes to Cuba. One thing I know for sure is that with a highly educated population eager to enter the era of information and with the revolutionary guard almost fully disappearing, the Cuban government will be forced to become more flexible in order to adapt to the globalized international system. This can be seen in the way that a small and increasing group of Cubans on the island are having access to internet service. Also, Cuban diplomats around the world are increasingly engaging in social media. I am a firm believer that the U.S. should do the right thing and lift the embargo, and shape its policies towards cooperation and engagement with the island for the sake of the Cuban people.

Pragmatically, the Embargo is simply inhumane. If strategic arguments cannot persuade folks that it's time to end the Embargo, then perhaps humanitarian arguments will. As most who have traveled to Cuba recently know, there is a small,

capitalistic system and spirit morphing, and in some cases, flourishing. The Cuban government has opened more than 200 private business classifications, allowing Cubans to have private businesses. Since 2011, Cubans have been experimenting with a free-market system in many sectors of the economy, which in turn have generated unintended social and political consequences that should not be overlooked by the U.S.

One can argue that the humanitarian problem in Cuba stems from its poor domestic policies, rather than the Embargo, but that distinction is not clear to many Cubans. Watching visitors at the airport disembark with tons of medical supplies, clothes and basic necessities and seeing them hand those basic supplies over to their Cuban friends and family, it is hard to argue that the U.S. policy is not perpetuating a social and humanitarian injustice. I believe that the embargo is not only being placed on Cuba and its people, but it is also being placed on you and I. I feel very strongly about this. I am a woman that is curious about the world. I have been fortunate enough to travel to 84 countries. Cuba is one of the most complicated places to travel to in the world if you are an American. However, people do it anyways. So many Americans are circumventing or breaking the law. It was happening in the 90's and it is happening now. America promotes freedom of the press, freedom for all. What freedoms, exist for the American people when it comes to Cuba? Yes, the travel ban has been relaxed and now many can travel under twelve points that President Obama has put in place. Now credit cards will be able to be used on the island. Will the change take time? Of course. Things don't change overnight, especially not in Cuba.

Health Care - Americans are hungry for better health care. Cuba has one of the most advanced medical biotechnology industries in the world. According to the World Health Organization, the Cuban biotech industry holds around 1,200 international patents and markets pharmaceutical products and vaccines in more than 50 countries but not in the U.S. Currently, we have significant trade with Cuba under a clause allowing the



sale of some pharmaceuticals. However, ending the embargo on all products could make life better for millions of Americans suffering from a range of diseases. Overall, the embargo harms the U.S. economy. The U.S. Chamber of Commerce opposes the embargo, saying that it costs the United States \$1.2 billion annually in lost sales of exports

What Next? By ending the embargo, the United States can stop adding to the Cuban people's problems and instead become a positive influence by renewing Cuban and American relations. It is time for the Embargo to go. Congress must act, and act now, rather than continue a failed policy that is an embarrassment to our country in the eyes of the community of nations. The main obstacle in Congress is a small contingency of Cuban-American politicians whose goals have been simply to block any progress in relations between the U.S. and Cuba. It is time for these politicians to understand that the train of U.S.-Cuba normalization, in light of the new developments, has left the station and cannot and should not be stopped nor be forced to reverse its course.

Recently at the United Nations the international community voted nearly unanimously for an end to the 50-year-old commercial, financial and economic embargo against Cuba. One hundred ninety-one members called

for Washington to end the measures put in place during the height of the Cold War. This was the strongest support, to date, that the world body has expressed for ending the embargo in the 24 consecutive years that it has taken up the issue. Even Pope Francis expressed his desire that the United States will lift its long standing trade embargo on Cuba. Let us remember that Pope Francis played a crucial role in facilitating back channel discussions and negotiations between Cuba and the United States, that helped bring about restoration of diplomatic ties this past July. After more than five decades, the U.S. needs to re-evaluate the policy and consider effective engagement with the island instead of fruitless isolation that is harming the Cuban people.

In Closing. On a very personal note, the future is in Cuba, but the past is everywhere. Everyone knows change is coming. They can "FEEL" it. Let us help the Cuban people garner victory. Some of you may desperately want to go visit Cuba with your parents, grandparents, or significant others but feel handcuffed by overwhelming local social peer pressure. The best gift I gave my parents and my sister was the opportunity to visit me while I was based in Havana. My father passed away this past December. He was so happy that he got to connect

with family he had not seen in 40 years when he came to see me. My parents always supported every dream I have ever had. I realize now, in my mid 40's, that it took guts to move to Cuba and embrace my life there. My parents always supported it because they knew that was my passion. The excitement of learning about the country they fled, meeting my family and making new friends taught me about the world and about life. No amount of money can pay for the life experience I had. Now, I want all of you to experience that same joy and open up to Cuba. This is what the Cuban people need and want us to do. Always remember.



In 1994 **Patricia Vila** traveled to Cuba to cover the rafter crisis for CNN. In March of 1997 she moved to Havana and founded the CNN Havana Bureau. This would become the first American news agency in Cuba since 1959. Among her accomplishments, she is a Knight Wallace Fellow from the University of Michigan and a graduate from Barry University. Patricia continues to be very involved in the Cuba issue and was recently in Havana, where she attended many off the record meetings with various sources. Patricia appears on numerous TV programs as an expert discussing Cuba. Some of her most recent commentary has been regarding Cubans that are coming to the United States from Costa Rica and how that will impact the city of Miami.

AN INTERVIEW WITH JUDGE DIANA VIZCAINO



Discussing her humble upbringing as a student who also worked through high school and college until starting law school, it's easy to quickly discover how new Miami-Dade County Court Judge and Cuban American Bar Association member Diana Vizcaino has ascended so quickly in her young legal career.

Surrounded by evidence of her diverse experiences in her new Chambers at the North Dade Justice Center on Biscayne Boulevard, Vizcaino proudly reflects on keepsakes from past stops in her career, including pictures with old colleagues, awards from different organizations, and interesting artwork including an elaborate painting of a relic City of Miami manhole cover.

A proud native of Hialeah and the first generation of her family born in the United States, she now resides with her husband in Miami Lakes, Vizcaino is a double St. Thomas University graduate, earning her Bachelor's Degree in 1996 and Juris Doctorate in 2000.

She got her start as an Assistant State Attorney at the Miami-Dade State Attorney's Office as part of the Class of 2000, and she now proudly displays a picture of the whole class in her Chambers. Her most recent post was as an Assistant City Attorney for the City of Miami where she practiced since 2008 and was the Chief of the Labor & Employment Division and the Internship and Recruitment Coordinator.

Vizcaino also served as an attorney for the U.S. Equal Employment Opportunity Commission from 2007-2008, where she quickly gained federal trial experience within her first few weeks at that agency, and got experience in the private sector at Boyd, Mustelier, Smith and Parker.

Always a very active member of the Cuban American Bar Association, Vizcaino easily lists memories she has from the organization. "I was always active in the Pro Bono Committee, helping with the Art in the Tropics event and the Inaugural 5K Committee. I loved it," said Vizcaino, who received the Outstanding CABA Member award in 2011.

Vizcaino's appointment to the bench was not on a whim. She had aspirations to be a judge since her first days at the State Attorney's Office.

"I knew from the first few weeks at the State Attorney's Office that I wanted to be a Judge, Vizcaino said. "It came from the interaction with the Judges I was before." Vizcaino said.

"I made a goal and commitment to pave my legal career to be well rounded, qualified and experienced in different areas of the law . . ."

"This is my home. I take great pride in where I come from. I'm proud to say I was born and raised in Hialeah," Vizcaino said. "I have proudly represented the State of Florida as an Assistant State Attorney, the United States of America at the EEOC, and the City of Miami at the City Attorney's Office. Driving down I-95, seeing the Miami Skyline gave me the chills."

With that goal in mind, Vizcaino knew she had to acquire a variety of skills so she could one day serve the judiciary and community the best way possible.

“I made a goal and commitment to pave my legal career to be well rounded, qualified and experienced in different areas of the law such as the public sector, private sector, and criminal and civil arenas so I could be prepared for the day I began seeking a judicial appointment,” she said. “And I gained it with five years at the State Attorney’s Office, two years in private practice getting federal trial experience at the EEOC, and then getting a wide range of experience at the City Attorney’s Office working with the administration and clients on issues dealing with unions, arbitrations, collective bargaining issues, and with all forms of employment litigation in state and federal courts and before administrative agencies.”

The time arrived, and Vizcaino vividly recalls the substantial application and appointment process.

“The process was challenging and a great deal of work. Just the application in and of itself was quite a task because you are attempting to summarize your life and career,” said Vizcaino. “It’s all your years of practice included in one application. You must be thorough, honest, and have no typos. That’s the first level of review, which may or may not lead to you getting an interview with the JNC,” Vizcaino said. “I thank the members of the Judicial Nominating Commission for their countless hours of service, including during Superbowl weekend. The Judicial Nominating Commission’s hard work and public service should be recognized and should not go unnoticed.”

Even more than her desire to be a Judge, the overarching theme from Vizcaino’s journey so far has been serving others.

“I think you have to have a calling to be a public servant. The majority of my legal career has been in public service. It’s been rewarding and worthwhile,” said Vizcaino.

For a true public servant, there is no better place to impact others from the bench than County Court.

“This is truly the people’s court,” Vizcaino said. “It’s important to give parties the time they need to be heard. It is often the first and last time an individual may have interactions or involvement with the justice system.”

Vizcaino has also enjoyed the opportunity to interact with the multiple fields of law the Court has jurisdiction over. “It’s exciting, it’s interesting, and it’s diverse. We will handle anything from a, landlord tenant case, PIP, small claims, uncontested divorces and domestic violence injunction cases where we serve as acting Circuit Judges,” said Vizcaino.

While already a judge for a number of months, it still hasn’t quite sunk in for the very humble and approachable Vizcaino.

“When I walk into a courtroom and they call me judge, I still have to pause and ask ‘me?’” Vizcaino said. “I smile because I still can’t believe it. It is truly a dream come true.”

Vizcaino jokes that she almost didn’t answer the unidentified call appointing her to the bench after hectic morning. “I’ll never forget that day, receiving a call from the Governor and him saying I’m calling to appoint you to the County Court bench. Vizcaino said. “I was silent, there was a long long pause, and then I said thank you about twenty times in a row.”

Vizcaino holds herself to a high standard when presiding over cases. “Being prepared, being courteous, and being professional are key and essential elements and criteria. I’ve learned from other judges and that’s what I try to emulate,” she said. “I take pride in always being prepared, and never hearing motions that I haven’t prepared for. You owe it to yourself and to the profession to be prepared, courteous, professional, and patient.”

Vizcaino has similar advice for those litigants appearing before her. “I expect all parties to be prepared, to be courteous with each other and to be professional,” said Vizcaino. “I’m going to know the issues before me and I think that’s what lawyers should expect from the judge they are before.”

When thinking back about her journey this far, Vizcaino took time to thank all of those who have helped shaped her life and career to this point.

“Like I said at my investiture, while there are so many people to thank, I can say I have learned something from every person who I worked with. At the the State of Florida, such as Katherine Fernandez-Rundle and my other colleagues there, at the City of Miami, and from opposing counsels as well,” Vizcaino said. “I have learned new techniques, strategies, and the overall way of being. You learn something from everyone you interact with. That is the beauty of interacting.”

It is easy to tell Vizcaino is relishing the opportunity. Her enthusiasm and work ethic is contagious.

“I work hard. I’ve always worked hard and I truly enjoy what I’m doing,” she said. “It’s truly a dream come true. It may sound cliché but it’s not.”

It’s clear Vizcaino knows the point where she is and where she is going, while certainly not forgetting the incredible journey and people that have gotten her to this point.

“That’s what life is about, that’s the beauty of getting to know people and living,” Vizcaino said. “It took a village for me to achieve my dream and I’m very thankful to that village.”



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The Intersection of Law and Religion in Cuba: A Prayer for Free Exercise

By: Candice Balmori, Esq.



On September 19, 2015, His Holiness, Pope Francis followed a recent trend by his Vatican predecessors when he arrived in Cuba for a visit. Since 1998, three papal visits to the island nation have sought to cultivate and improve relations between the Church and the Cuban people in a country for which religion, as a whole, has been subjected to calculated regulation. This regulation is largely the result of Revolutionary policies and legal reforms initially implemented in an effort by Cuba's totalitarian government to occupy areas of the nation's civil society otherwise typically reserved for collective activity beyond the state's control. Despite several revisions to law related to religion over the years, mechanisms for control exerted by the government persist over its free exercise.

Religion in Early Post-Revolutionary Cuba

When Fidel Castro ushered Soviet-style communism into Cuba following the 1959 Cuban Revolution, relations between the Catholic Church and the then-declared atheist state began to deteriorate. As priests increasingly denounced communism for its anti-Christian values, the Cuban regime, consolidating its power, quickly added religion to the running list of public spaces within Cuba's civil society to co-opt and ultimately occupy. Religious organizations with international support, resources, and open opposition to communism ranked high on the list of institutions that threatened the Revolutionary regime's aspiration for absolute social and

political hegemony. As Fidel Castro stated in a speech in 1961, "[W]ithin the Revolution everything, outside of the Revolution, nothing."

In the early fall of 1961, the Cuban regime physically expelled scores of clergy by way of a freighter bound for Spain. Additionally, through the Agrarian Reforms implemented from 1959 through 1964, the Cuban government nationalized Church property, stripping it of its schools and depriving religion of its most influential method of sustained support. After all, the Catholic curriculum was inconsistent with the regime's Marxist-Leninist educational doctrine. Many priests, including current Cuban Cardinal Jaime Ortega, were also involuntarily sent to military-run agricultural work camps, also known

as Military Units to Aid Production, allegedly for counterrevolutionary activities.

The Revolutionary regime's eradication of alternate doctrine in its early years of power was swift, effective, and integral to its maintenance of control thereafter. By effectively foreclosing other avenues of assembly and organization, the government itself sought to occupy the empty spaces left by shepherds whose flocks were now without an alternative for moral, spiritual or social leadership.

Constitutional Revisions & Religion

Since the earliest years of the Revolutionary regime's assumption of power, Constitutional provisions relating to religion have undergone a series of revisions, ultimately granting religious freedom in rhetoric, while carving out only small, narrow spaces for its exercise in practice.

The First Cuban Educational and Cultural Congress held in 1971 set forth the Revolution's formal policy with respect to religious activity. It was primarily centered upon constructing a Socialist society to guide and define the steps that the Revolution must take in its ideological battle, and to, among other items, unmask and fight the obscurantist and counter-revolutionary sects. Shortly thereafter, a revised Article 54 of the 1976 Cuban Constitution guaranteed freedom of religion—with restrictions—as this Article made it illegal and punishable by law to “oppose one's faith or religious belief to the Revolution, education or the fulfillment of duty or work, defense of the homeland with arms, showing of reverence for its symbols, and other duties established by the Constitution.” Understandably, such a constitutional provision made it difficult for the faithful to openly practice religion.

The juxtaposition of the regime's rhetoric towards religion with the practice of its policy initiatives exemplified two very incongruent concepts. For example, despite a 1977 speech to the Jamaican Council of Churches wherein Fidel Castro stated that there were no contradictions between the objectives of religion and

the objectives of socialism, the Cuban regime in practice continued to oppose giving churches access to public radio, television and the press. Further, atheism remained a prerequisite for membership to the Cuban Communist Party, through which political, social and economic opportunities were primarily, if not exclusively, afforded to the general Cuban populace. Cuban citizens were thus forced to choose between material and spiritual sustenance.

In the late 1980s and early 1990s communism was visibly collapsing worldwide, signifying a crisis for any political regime built and sustained by its ideological principles and subsidies. By 1991, Soviet subsidies to Cuba ended and Cuba lost its primary economic trading partner. As a result, the Cuban government found itself unable to provide for its populace as it previously had through subsidized international aid. The “Special Period” of severe economic austerity, mandated thereafter by the Cuban government, reflected a crisis of basic humanitarian needs. Accordingly, the Cuban regime found itself entertaining alternate avenues to sustain a populace growing increasingly disillusioned with its daily shortages. In addition to the economic crisis confronted during this time period, the discrediting of spoon-fed communist/socialist ideology reflected by the fall of the Soviet Union served only to delegitimize the ideological policies incorporated in Cuban law and to foment the possibility of dissent.

Instead of waiting for the gaps left in Cuba's civil society to be filled once again by non-government agents, like religious organizations, willing to provide ideological and actual sustenance on their own terms where the regime had become deficient, the Cuban government swiftly acted to officially recognize these actors by facilitating their more substantive re-entry in society. Thus, the government undertook a series of revisions to its Constitution. In 1992, Articles 41, 42 and 54 of the Cuban Constitution were modified to eliminate popular discrimination against religion. The 1992 revisions to the Cuban Constitution further declared Cuba to be a secular state, rather than an atheist

state. Religious institutions thereafter assumed social welfare functions that the state was then ill-equipped to undertake. Since then, international religious humanitarian aid has supplied substantive material aid to Cubans by way of medicine, clothing, basic supplies, and religious tourism. The regime's quick action to allow other actors to perform these functions by de-vilifying religion in the rhetoric of its Constitution was advantageous, as it decreased the risk of political instability.

Today's Tightly-Controlled Space

Despite the expanded Constitutional rhetoric of religious freedom initiated in the 1990s, the Cuban regime has implemented a number of domestic mechanisms over the years to ensure that the space within which religious organizations operate remains tightly-controlled and highly-dependent upon the government. The Ministry of Justice, Office of Religious Affairs, and the Cuban Council of Churches are just three bureaucratic mechanisms specifically engineered to maintain control over the exercise of religion.

As with entity formation within most bureaucratic systems, religious organizations in Cuba today must meet various prerequisites for operation. However, unlike entity formation in most free nations, the prerequisites for religious organization in Cuba are designed to limit and contain organizational potential. The Cuban government requires religious groups to apply to the Ministry of Justice for recognition, without which they cannot operate legally. The application process requires groups to identify the location of their activities and their source of funding. Once received, official recognition may allow church officials to travel abroad, receive foreign visitors, and hold meetings in approved locations. Without this recognition, such undertakings are prohibited. Further, once the Ministry of Justice grants recognition, “the religious group must request permission from the Office of Religious Affairs to conduct activities such as hold meetings in approved locations, publishing any decisions or minutes from internal

meetings, receiving foreign visitors, importing religious literature, purchasing and operating motor vehicles, and constructing, repairing or purchasing places of worship.”

Through its Office of Religious Affairs, the Cuban government monitors and regulates almost every aspect of religious life. In addition to the numerous regulations applicable to all religious groups in Cuba, “house churches” are subject to additional regulations that limit hours of use and restrict permissible locations. For a legal structure that rhetorically embraces freedom of religion, the cumbersome bureaucratic process of obtaining the state-recognition necessary to exercise religious freedom tightly restricts the practice of religion as a whole.

There are also physical restrictions to the expansion of religious freedom. Although Cuban law allows for the construction of new houses of worship, the government rarely grants authorization, instead usually granting permission mainly to repair or restore existing churches. Thus, the expansion of the number of religious houses of worship remains tightly controlled and heavily regulated. Even holding religious processions or other events outside of religious buildings requires permission from the Ministry of Justice.

Other restrictions on the recognition of religious groups serve to undermine the strength of any one religion, while curtailing the establishment of many small organizations that could otherwise grow too numerous to regulate. The Cuban Council of Churches, for example, is the officially sanctioned umbrella organization that includes well over twenty religious organization (mostly Protestant) members. This Council plays an influential and advisory role, providing information and recommendations about applicants to the Ministry of Justice and the Office of Religious Affairs. Further, and with few exceptions, the Cuban Council of Churches imports and distributes printed religious materials for all recognized Protestant churches. This religious literature and material may only be imported through a recognized religious group that has obtained a license from the Office of Religious Affairs. Those without a

license to import religious literature and material from abroad rely directly on the government which owns nearly all printing equipment and supplies only tightly regulated printed materials, including religious literature.

Further, the Office of Religious Affairs authorizes the Cuban Council of Churches to host a monthly radio broadcast; without authorization, the public broadcast of any religious message would be essentially impossible. Thus, the individual members of the Cuban Council of Churches seem limited to working within the joint confines of the Council in order to effectively reach their constituencies, rather than exerting any substantial degree of independent religious initiative. This limits the autonomy of these organizations and subjects them to collective bargaining within the political system, rather than from outside of it.

In its 2014 International Religious Freedom Report on Cuba, the Department of State’s Bureau of Democracy, Human Rights and Labor recounted that many religious groups reported that the Office of Religious Affairs tightened controls on financial resources for churches, with new restrictions on their ability to receive donations from overseas. “They cited a new measure that prohibited churches and religious groups from using individuals’ bank accounts for their organizations, and requiring existing individual accounts to be consolidated into one per denomination or organization. According to religious leaders, the new regulations allowed the government to curb the scope and number of activities of individual churches and to single out groups that could be held accountable for withdrawing money intended for purposes not approved by the government.” Thus, while the rhetoric of freedom of religion is often cited by the Cuban regime, the reality in practice is that the exercise of religion operates solely from within very small, highly-regulated spaces.

Religious Relevance

Pope Francis’s visit to Cuba in September of 2015 exemplified the

relevance of religion in the lives of the Cuban people. One event, drawing international pilgrims, media reporters and brief economic incentive to cater to commemorators is not, however, enough to sustain a populace. Religious organizations can play an integral role in Cuban civil society if permitted to flourish. But, as the Cuban government has realized, unrestricted religious liberty creates an extra-governmental marketplace among the Cuban populace—not only of institutions that wield independent power, but of ideas. Thus, to-date, constitutional religious reform has remained rhetorical in breadth and highly-regulated in practice. As with most endeavors in a totalitarian society, religion’s current status remains exclusively dependent upon the calculated spaces allocated by the government. For now, the faithful continue to pray for the true exercise of religious freedom.



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¹ Pope John Paul II and Pope Benedict visited the island nation in 1998 and 2012, respectively.

² Fidel Castro, Speech to Intellectuals (June 30, 1961) (transcript available in the Latin American Network Information Center’s “Castro Speech Data Base,” LLILAS Benson Digital Collections at the University of Texas Library).

³ The freighter bound for Spain upon which the priests, brothers and bishop were ferried away was called the Covadonga. See Deborah Ramirez, *Priests Recall Forced Voyage Out of Cuba*, SUN SENTINEL, December 28, 1997.

⁴ In 1961, Fidel Castro officially declared that the Revolution was Marxist-Leninist. Further, Chapter V, Article 39 (c) of the Cuban Constitution of 1976, as amended in 1978, 1992 and revised by the Ley de Reforma Constitucional 2002 states, in part, that “the state promotes the patriotic and communist education of the new generations and the training of children, young people and adults for social life.” (Translated).

⁵ *Cardenal Ortega ‘Las UMAP fueron una experiencia unica en la vida para un sacerdote,’* DIARIO DE CUBA, Aug. 15, 2014.

⁶ The First Cuban Educational and Cultural Congress, held in 1971, also declared the complete separation of State and Church, of school and Church, in all fields; no encouragement, support or help to be given to any religious group, nor any favors asked of them; and that the Revolution respects religious beliefs

and cults as an individual right and does not impose or persecute or repress anyone for religious beliefs. See Margaret E. Crahan, *Catholicism in Cuba*, CUBAN STUDIES 19, Jan. 1, 1989, at 3-24.

⁷ The Cuban Constitution, Chapter VII, art. 54. (1976).

⁸ Marx wrote that religion “is the opiate of the masses.” Karl Marx, *A Contribution to the Critique of Hegel’s Philosophy of Right*, Deutsch-Französische Jahrbucher, 7 & 10 February 1844, introduction.

⁹ Margaret E. Crahan, *Catholicism in Cuba*, CUBAN STUDIES 19, Jan. 1, 1989, at 18.

¹⁰ In 1991, the Cuban Communist Party removed atheism as a prerequisite for membership.

¹¹ THE CUBAN CONSTITUTION, at Chapter VI, arts. 41, 42, and Chapter VII, art.54. (2002).

¹² THE CUBAN CONSTITUTION, at Chapter 1, art. 8. (2002).

¹³ DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM,

INTERNATIONAL RELIGIOUS FREEDOM REPORT 2014-- CUBA, (2014).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010-- CUBA, (2010).

¹⁸ *Id.*

¹⁹ Other officially recognized groups, such as the Catholic Church and the small Jewish and Muslim communities, do not belong to this Council.

²⁰ DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2014-- CUBA, (2014).

²¹ *Id.*

²² *Id.*

²³ *Id.*

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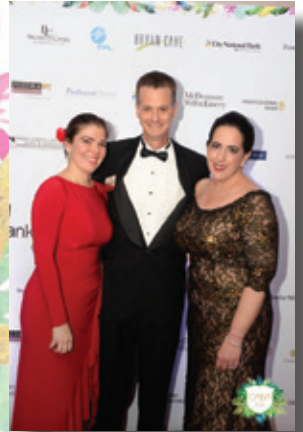
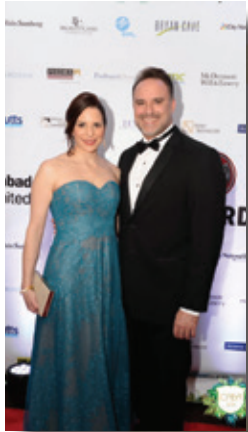
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Guantánamo Journal: A Visit to the Cuba Border

By: Christina M. Frohock



On the third Friday of every month, Marines at the U.S. Naval Station Guantánamo Bay offer a tour of the Northeast Gate at the border between the naval station and sovereign Cuba. The name “Northeast Gate” is both geographically accurate and a linguistic artifact. It refers to a remote site at the northeast corner of the Guantánamo boundary fence that still contains a gate, though the gate is little used now, and its heyday long past. The Northeast Gate is the only crossing point between GTMO and the rest of Cuba, and, while calm these days, was once a flashpoint of tension during the Cold War. Just beyond the fence are live landmines, reportedly laid many years ago by both Cuba and the U.S.

I took the tour during my second visit to GTMO on a typical day of blazing sun and oppressive heat. After a bumpy ride out of the base town, along miles of white salt flats and brown hills, our buses arrived at the Northeast Gate. An unsmiling Marine stood with perfect posture on tiered steps leading up to a watchtower. We exited the double yellow doors and

gathered around the steps, as our host addressed the crowd from on high. He introduced himself with a name I did not catch, and he did not seem the type to linger on pleasantries nor to repeat himself for the benefit of one note-taking visitor. Even squinting and leaning forward, I was too far away to read the name on his uniform. *Whalley? Watson?* But I was plenty close to see he had a gun strapped to his right thigh.

This was the only weapon I saw in two trips to GTMO. Guns are prohibited except as necessary. For example, a Marine border guard herding a crowd of curious tourists just inside the perimeter fence dividing territory between the U.S. and Castro-controlled Cuba, and several feet from a minefield, might need ready access to a firearm on his leg. No other guns are permitted within the naval station confines. Drugs are prohibited altogether. There also are no homeless people, no vagrants, no idlers, no one without assigned duties and tasks. Everyone has a purpose and is accounted for. Most threats come from inside and are dealt with directly. I happened to visit GTMO during

sexual assault awareness month, and commercials ran frequently on Armed Forces Network assuring “You can say no.” The naval station is a controlled and focused environment, where the hierarchy is top-down, the mission is common, and all dangers are narrowed, identified, and handled. Base police keep most infractions and consequences in-house. It is a right-wing dream town, except for the strict gun control.

Standing on the watchtower steps, our host gave a brief history lesson as we shaded our faces and fanned ourselves at his feet. He recounted the Marines’ presence in Guantánamo dates back to 1898 during the Spanish-American War and especially the Battle of Cuzco Well. A Marine standing at ground level added that, in the Battle of Cuzco Well, two Marines won Medals of Honor for “escaping friendly fire and pulling others to safety,” and trailer-shape barracks near the main galley are now called the Cuzcos in their remembrance. The Marine on the steps then explained that after the Spanish-American War, the Marines stayed at GTMO, and the U.S. and Cuba signed a lease for the naval station territory in 1903, paying \$2,000 in gold coin annually as rent. The amount inflated to \$4,085; the gold turned into checks; and the Cuban republican government turned into the Castro regime.

“The U.S. government takes the view that Castro ratified the lease by cashing that first check,” said the Marine. He then described the lease as lasting one-hundred years. *A common mistake*, I thought. The Guantánamo lease has no termination date, but often is misunderstood as terminating after ninety-nine or one-hundred years. “Now we’ve been here over a hundred years, and Cuba wants Guantánamo Bay back. As for the legality of the base . . .” He trailed off, and the crowd laughed. For the first time, our host cracked a smile. “Well, I’ll stop there.”

As the crowd quieted, he pointed to his left. Next to the watchtower is a tin-roof barracks building, appearing no more than 300 square feet in size, where Marines sleep and relax when not on sentry duty in the watchtower. Their Cuban counterparts used to throw rocks over the fence onto the tin roof to keep the Marines awake. “If they’re not sleeping off watch, they’ll be sleeping on watch,” he explained. “That’s gamesmanship.”

So the United States built a higher fence, and the Cuban soldiers hung wire hangers dangling broken glass on the higher fence, and these makeshift wind chimes kept the Marines awake. Our host pointed to two wire hangers still hooked to the fence. “Right there, between the sixth and seventh poles. Notice they’re hanging from the Cuban side.”

As another provocation intended to disrupt Marines’ sleep patterns, the Cuban soldiers shined a spotlight on the barracks during the night. The U.S. responded by painting the Marine Corps symbol across the full hillside. A massive circle displaying a gold and red eagle, globe, and anchor lit up in the spotlight. The Cubans stopped shining the light.

Where we stood was also the site of a famous water story that circulates often in GTMO. Before Fidel Castro took power and during the first few years of his regime, a pipe pumped fresh water approximately five miles from the Yateras River in sovereign Cuba to the northeast corner of the Guantánamo naval station. In February 1964, Castro cut off the water supply in retaliation for American fines levied against Cuban fisherman. Castro then accused the U.S. of stealing fresh water through the pipes he had ordered emptied. The commanding officer at the time, Rear Admiral John D. Bulkeley, sliced open the water pipe to show it was dry. He photographed the gap in the pipe as proof the U.S. had not stolen water and, in fact, had ceased all reliance on Castro for supplies. A black-and-white photograph of Rear Admiral Bulkeley standing astride the dry, open pipe now hangs at the slicing point.

Ending his talk, the Marine invited us to walk passed the barracks and downhill to the fence gate. But he admonished us not to make any gestures toward

Cuba that could be deemed offensive. “Not even joking,” he said, clearly not joking. “Because if you do, we’ll hear about it next month.”

Monthly meetings of the countries’ commanding officers rotate between Cuban soil and American soil. This month’s meeting had taken place that very morning on the Cuban side of the fence. “And one of our Marines here was a few feet into Cuba.”

I took out my camera as the crowd dispersed, heading toward the fence. There was almost no breeze by the Northeast Gate, probably due to the hill

... “República de Cuba.” You are now leaving the U.S.—*Thanks for visiting!*—and entering Cuba—*¡Bienvenido!*

we had walked down to reach it. Or due to the border we were walking toward, as one visitor remarked that “the closer we get to Cuba, the hotter it gets.” A tall flagpole on the American side of the fence waves our flag, and a shorter flagpole on the Cuban side, waves nothing. Cuba prefers to fly its national colors atop a mountain in the distance, just to the northwest of the boundary corner and the Marines’ watchtower. The Cuban flag is farther from the Gate but, critically, higher than the American flag. The wind blowing those adversarial flags was strong enough to keep each in taut, rectangular exposure against the blue sky, only occasionally flicking the corners of the fabric.

Those of us milling about the fence were not so fortunate, with hills all around and no wind to leaven the heat at ground level. Sweat beads arose on my forehead. I took off my sunglasses, wiped my skin, and stared through a diamond-shaped opening in the chain links, the fence reaching several feet above my head and capped by barbed wire. A white line was a few feet away, and beyond that, another fence. The near fence belongs to the U.S., and the far fence belongs to Cuba. The white

line, according to our Marine host, “marks the border between Cuban soil and American soil.” I scanned the hills for evidence of landmines, but could see only semi-parched shrubs.

A few feet beyond the white line, atop the Cuban fence, stands a sign marking the land as “República de Cuba.” You are now leaving the U.S.—*Thanks for visiting!*—and entering Cuba—*¡Bienvenido!* The same sign declares the land beyond the fence to be “Territorio Libre de America.” The República de Cuba no doubt intends that declaration in a defiant sense: “Territory Free from America.” But the Spanish phrase

also admits a contradictory translation. Depending on context, it may mean “Free Territory of America.”

I read it both ways at once. The sun was getting to me.

This article is excerpted from the author’s forthcoming book, *Small-Town GTMO: The Layers of Estate, Sovereignty, and Soil in U.S. Naval Station Guantánamo Bay* (Carolina Academic Press 2016).



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Keeping Pace with the Future

By: Jonathan Torrens

Technology is raising new issues that do not fit comfortably within existing precedent. It also is encountering the unanticipated application of laws crafted in a pre-digital era, in circumstances rife with unintended consequences. Modern legal systems are struggling to keep up and clever jurists are pioneering this terrain in search of new opportunities and novel legal theories.

A race is afoot between tech companies offering new products and services, and litigants, regulatory bodies, and law enforcement, seeking to protect their interests against encroachment and abuse. Regardless of which side of the milieu a practitioner finds himself, these are exciting times. Below is a brief survey of several issues at the forefront of the tension between law and technology. This list is hardly exhaustive. It may, however, provide a

glimpse into the vast ocean of issues confronting existing legal systems and the relentless pace of change that is sweeping over them.

Privacy:

Privacy is a predominant concern that already dominates the tech field. The challenges presented by an increasing variety of interconnected devices is growing at an exponential pace. Individuals who, as citizens, remain guarded about submitting to government surveillance, as consumers, routinely acquiesce to contractual terms and conditions granting invasive access to their most intimate affairs.

Every phone provides real-time location tracking that may be recorded and analyzed by any company authorized to access the device's GPS information.

It is common practice to aggressively track every web search, and often every keystroke and swipe gesture performed on a mobile device. These analytical tools have become so precise and granular, that it is possible to establish reliable biometric identification based solely on touchscreen gesture patterns.

Apps can determine how well one sleeps using vibration sensors while lying in bed. Browsing patterns, online purchases, video streaming selections, and social media activity are linked together on marketing platforms shared across major apps and websites, giving companies an expansive window into a person's private thoughts at any given moment.

This presents numerous challenges from a legal perspective. Companies exploiting these sophisticated tracking methods assume a substantial burden of liability to keep that information safe. Moreover,

once that information is collected by private entities, it becomes subject to search and seizure by any government with relevant jurisdiction over those companies. In a post-Edward Snowden world, tech companies have taken deliberate strides to assure consumers and wary foreign governments that they will safeguard consumer data from unwitting surveillance.

Microsoft, for example, has taken the extreme step of relinquishing control of its data centers in Germany, handing ownership and administration to a third-party trustee that is not subject to U.S. law. Under this arrangement, Microsoft can truthfully assert to U.S. courts and law enforcement agencies that it does not have access to the data they are demanding about foreign nationals.

This is one small example of the legal contortions companies are being required to perform in order to abide by a patchwork of international privacy laws with disparate and constantly changing requirements around the world.

And still these are only early days. Artificial intelligence and data science remain constrained by the physical limits of modern computing and storage capacity, which while impressive, are set to grow by orders of magnitude in coming years. Moreover, the number of interconnected devices is set to explode in the very near future. The so-called "Internet of Things," where every device, including thermostats, cars, microwaves, and refrigerators, has an IP address, already is on the horizon.

Legislators, litigators, and regulators will be on the front lines of the struggle to balance privacy rights against the pace and benefits of innovation in this increasingly complex world. They will have to play catch up with an industry of incredibly talented people who have the first mover advantage. One hopes, however, that this race will be one of mutual benefit, as the two fields support each other as responsible custodians of human information.

Bitcoin and Crypto-Currencies:

Crypto-currencies, of which Bitcoin is currently the best known, are challenging traditional government monopolies on

fiat currency. Although they have not yet achieved mainstream adoption as a form of payment and wealth transfer, major investment firms and government regulators are recognizing the potential for these digital currencies to disrupt traditional notions of taxation, financial regulation, and monetary policy. It is not uncommon in the tech industry for corporate reimbursement forms to include Bitcoin as a repayment option, along with direct deposit and a physical check.

While still in their infancy, these nascent currencies and their next generation incarnations provide a glimpse into issues that jurists will confront with increasing regularity. Even less controversial payment systems, such as Apple Pay, Paypal, Venmo, Square, and Google Wallet, are changing the means and velocity by which wealth can change hands and flow across numerous jurisdictions, with all the consequent legal ramifications of those transfers. They also are creating their own increasingly complex internal economies that operate outside traditional financial systems and regulation.

Pandora's Box of Legacy Law:

Not all tech law issues are new, however. Some in fact, are rather antiquated. Such was the case for music-streaming service Pandora, appropriately named for demonstrating the pernicious consequences which may lie ahead as legacy legal principles are applied in contexts which were never contemplated at the time of their creation.

Pandora's woes stem from the 1976 Copyright, which set forth royalty payments owed to musicians when their music is played on the radio. Generally speaking, under the law, broadcasters may play musical recordings as long as they pay stipulated royalties to the artist. Critically, the statute consolidated all post-1972 recordings under federal jurisdiction, but for reasons lost to history, was silent on royalty rights for recordings pre-dating 1972. These recordings thus remained governed by "a patchwork of state statutory and common law," as described by the U.S. Copyright Office.

Undeterred, Pandora and other digital music services moved ahead, operating

on the premise that they were not required to pay royalties for pre-1972 recordings that were excluded under federal law. This ambiguity lay dormant for years, until streaming services grew sufficiently popular and successful that enterprising litigants realized a gap existed which might allow royalty claims to be asserted under individual state law. The tactic proved successful, and Pandora recently settled litigation with a single recording company for over \$90 million.

This result stemmed from poorly-crafted federal legislation that buried a legal landmine which Pandora stepped on four decades later. It is likely that other landmines await, buried in the statutes and common law of fifty states, plus the federal courts, to say nothing of international jurisdictions.

Conclusion:

The upshot of the foregoing is that tech law is a burgeoning field which is growing as quickly and creatively as the innovations which it seeks to regulate. The legal sector needs to keep pace, not only ensure the safe and efficient regulation of these advances, but also to benefit from the unique opportunities that the tech industry provides to nimble jurists who can navigate these swiftly moving waters.



Jonathan Torrens received a B.A./B.S. in Computer Science and Economics from Duke University in 2002 and a J.D. from Northwestern Law School in 2006. He clerked for the Florida Supreme Court and practiced commercial litigation for several years before moving to Silicon Valley to focus on software development. He currently works for Upthere, Inc., a cloud computing startup based in Palo Alto, California. jonathantorrens425@live.com

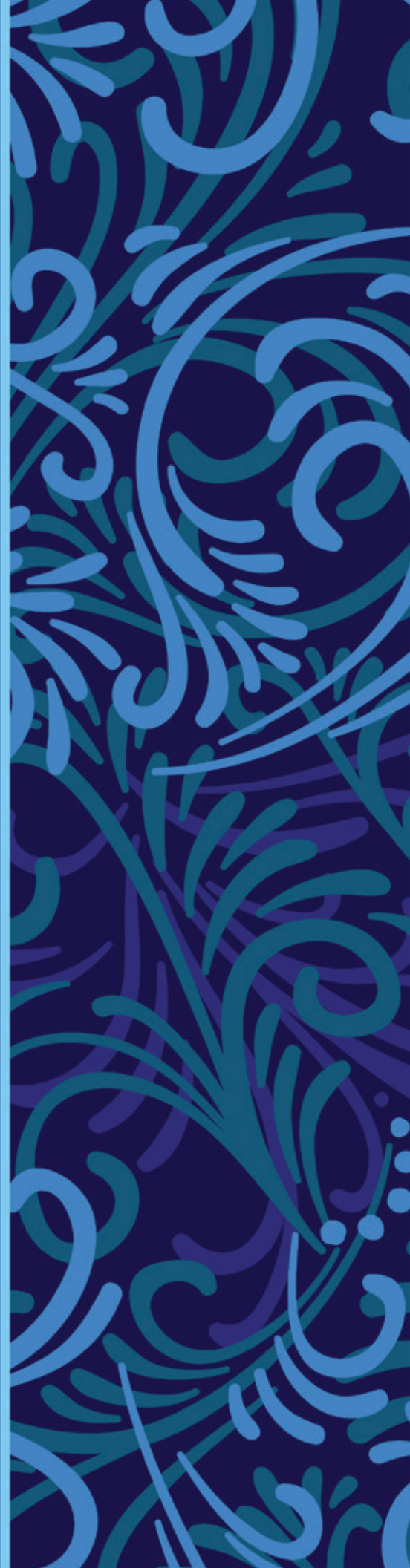
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The 2014 Surge of Unaccompanied Immigrant Children: Lessons Learned, Successes and Remaining Challenges

By: Lesley Mendoza and Elizabeth Sanchez

During the summer of 2014, tens of thousands of unaccompanied immigrant children, mainly from Guatemala, El Salvador and Honduras, migrated to the United States. Many of these children were fleeing abusive and neglectful caretakers and violence from organized criminal enterprises. In accordance with United States Law, these children were placed in deportation proceedings, but were not provided with an attorney. The Miami Immigration Court received the 4th highest number of children in the country from the

2014 surge. Realizing many of these children had a legal right to remain in the United States and could not afford legal representation, the Cuban American Bar Association Pro Bono Project (CABA Pro Bono), Catholic Legal Services and Americans For Immigrant Justice (AIJ) immediately met, developed and implemented a collaborative plan, a “friend of court” model, to ensure no child would have to make their initial appearance in front of the Immigration Judge alone, without legal representation. CABA Pro Bono Board President at the

time, Manuel Crespo, stated it perfectly when he said, “No matter your politics, no matter the administration, putting innocent children in the crosshairs of conveyor belt justice is wrong.”

Now, as 2015 has come to an end and it is well over 1 year since the surge, CABA Pro Bono, Catholic Legal Services and AIJ continue to work tirelessly on behalf of these vulnerable children and already have provided legal representation to thousands. Elizabeth Sanchez Kennedy, Supervising Attorney for Catholic Legal Services, points out that working



with these children is very personally rewarding. Sanchez Kennedy states, “[a]lthough all of the children are unique, the vast majority are extremely appreciative of everything that is done on their behalf.” Additionally, as Lesley Mendoza, CABA Pro Bono Director, notes, “[f]rom a legal perspective, it is important to understand that a child may enter the United States illegally and still have a legal right to remain in the country under current US Immigration law. It is paramount to provide legal representation to ensure due process of law.”¹

The “friend of court” model implemented by the three organizations in 2014 remains in effect and has not only achieved its original objective of ensuring children are not unrepresented for their initial appearances in court, but has surpassed all expectations. All unaccompanied immigrant children in deportation proceedings at the Miami Immigration Court are screened for legal relief and human trafficking. Following the screening, the vast majority of children eligible for relief are then either provided with free direct representation by staff attorneys from either CABA Pro Bono, Catholic Legal Services or AIJ, or are represented by a trained pro bono attorney in the community. CABA Pro Bono is proud to report that one year post-surge, over 55 children represented through CABA Pro Bono already have received Legal Permanent Residency with many more children in the final stages and at least 40 more expected to receive their Legal Permanent Residency within the next 6 months. Obtaining Legal Permanent Residency is truly life changing for a child. However, through her representation of these children, Mendoza also has learned that for many children, the amount of time spent by the attorney working with the child also positively impacts his or her life more than one would expect. “These

children have been abused, abandoned and neglected by their parents. They feel unworthy and unimportant. When an attorney meets with a child and takes the time to listen to his or her story, it makes the child feel special. The child feels he or she matters, and that feeling can be very powerful,” says Mendoza.

Despite the many successes CABA Pro Bono, Catholic Legal Services and AIJ’s collaboration has achieved, there still are challenges associated with representing these children and obstacles to overcome.

Immigrant children living in Florida who have been abused, abandoned, or neglected by their parents are able to seek protection from the Dependency Court. Once the Dependency Court takes jurisdiction over a child’s case and enters an adjudication of dependency, the child is able to apply for lawful status with immigration authorities. This adjudication provides a pathway to Legal Permanent Residency and can provide safety and stability for the child. In the past year, courts across the state have begun to redefine the longstanding interpretations of abuse, abandonment and neglect in a way that makes it nearly impossible for these children to receive protection from the dependency courts. The legal service agencies and local law schools have joined with private pro bono attorneys to challenge these cases on the appellate level. Several Miami law firms and law schools have represented these children pro bono, arguing their cases at the Third and Fourth District Courts of Appeals. These appeals have not yet been able to reverse the negative decisions. However, the Florida Supreme Court recently accepted jurisdiction to review one of the appeals from the Fourth District, and several more currently are seeking discretionary jurisdiction for review before the high court.

In addition to the legal obstacles described above, these children face more

challenges even after the legal battles are won and they become Legal Permanent Residents. Many of these children are either completely alone or residing with relatives that they just met, barely see and lack the time, knowledge and resources to provide them with the guidance and support that they need. For attorneys from CABA Pro Bono and Catholic Legal Services, this is very frustrating because they know firsthand that many of these children are truly amazing and inspirational. As Legal Permanent Residents in the United States these children have unlimited opportunities available to them and a desire to work and succeed that is second to none, however they lack the support necessary to be able to reach their full potential. “It is extremely difficult being a teenager that not only has to provide for him or herself while going to school and getting to know a new culture, but also that has to do so completely on his or her own with little or no support from an adult,” states Sanchez Kennedy. “The same way that it is impossible for these children to navigate the legal system without an attorney, it is extremely difficult for these children reach their full potential without a caring adult that can provide proper guidance. It is my dream to find mentors for these children that have so much heart and potential for success. They truly just need someone to care,” adds Mendoza.

While great strides were made in 2014 and 2015, CABA Pro Bono and Catholic Legal Services are not complacent and want to continue collaborating to further improve the lives of these very deserving children. However, they cannot do so alone and we are reaching out to the community at large for support and assistance. These children have many needs and there are many ways that individuals can volunteer to help change their lives; including taking a pro bono case, helping with an appeal, helping with intake at Immigration Court, or

mentoring a child. Those who would like to help should contact either Lesley Mendoza at Lesley@cabaprobono.com or Elizabeth Sanchez-Kennedy at esanchezkennedy@cclsmiami.org. We strongly encourage your support and know without a doubt that by volunteering, you will not only make a huge difference in the life of a child, but also gain more than you give and a great deal of personal satisfaction.

¹ CABA Pro Bono Director Mendoza also notes that “From a humanitarian perspective, they are children, many of which have been abused, abandoned and neglected by their parents, and now find themselves alone.”



Lesley Mendoza is the Executive Director of CABA Pro Bono Project. She graduated Cum Laude from the University of Miami School of Law in 2002 and received a Bachelor of Arts in 1998 from the University of Pennsylvania. In 2014, Ms. Mendoza was recognized by the Daily Business Review at its Most Effective Lawyers’ event in the area of Pro Bono. Prior to joining CABA Pro Bono Project, Mrs. Mendoza worked as an attorney for White & Case LLP in their New York office. She was a member of the firm’s litigation department and worked primarily on complex commercial litigation cases.



Elizabeth Sanchez Kennedy—Supervising Attorney, Catholic Charities Legal Services of Miami.

Elizabeth (Chiqui) has been an attorney at Catholic Charities Legal Services of Miami (“CCLS”) since 2011. She is the Supervising Attorney of the Unaccompanied Minors Project at CCLS, which includes being the program director of the justice AmeriCorps program in Miami. At CCLS, Chiqui represents minors and adults before the Immigration Court, US Citizenship and Immigration Services (USCIS), and the Board of Immigration Appeals (BIA). She has a passion for advocating for individuals in need, specifically with adults and minors in immigration proceedings. Chiqui received her J.D. from South Texas College of Law in Houston, Texas and her B.A. from Davidson College in Davidson, North Carolina.



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CITY NATIONAL BANK OF FLORIDA LAUNCHES NEW BRAND IMAGE

Commitment to Community and Superior Client Experience Remain Priority

City National Bank of Florida unveiled its new and modern brand image, featuring a sleek fresh look reflective of the diverse and vibrant communities it serves and representative of the strength and stability that its clients can continue to rely on.

The branding update comes more than a month after the bank was acquired by Banco Credito e Inversiones of Chile. It integrates a Joan Miro inspired hourglass in red, blue, yellow and green with the name of the bank in bold black lettering.

The hourglass is representative of the precision with which City National Bank strives to serve its clients, the value it places on their time and the personal relationships it seeks to establish with them that endure time.

“This modern brand image signals a new chapter for City National Bank and will help us continue to stand apart in the marketplace with our branding like we already do with our performance, client experience and commitment to community,” President and CEO Jorge Gonzalez said. “It is most importantly meant to convey that we are a different kind of bank – one differentiated, among other things, by establishing personal and long-lasting relationships.”

City National Bank remains a South Florida-based community bank operating under the same name with the same value proposition and under the direction of the same management team led by Jorge Gonzalez.

“The new brand underscores that we are now a local bank with a global reach uniquely positioned with the backing of a \$30 billion regional powerhouse,” Gonzalez said. “We remain the same trusted 70-year-old bank with the same commitment to our clients and the communities we serve.”

Bci acquired City National Bank in October, preserving the Miami-based bank’s status as one of the largest financial institutions headquartered in Florida as well as a major employer and an economic driver in the area.



“Bci Financial Group and City National Bank are proud to start a new chapter in our shared stories,” Bci CEO Eugenio Von Chrismar said. “CNB’s new look is a celebration of our bright future together, symbolic of the rich histories of our companies and representative of the strength and stability that clients have always relied on and can continue to rely on.”

City National Bank, the state’s premier private and commercial bank, reported that it surpassed \$4 billion in loans during the third quarter and that it had net income of \$35.9 million for the first nine months of the year. CNB also continued its steady growth trajectory, reaching \$6.2 billion in assets at the end of the third quarter.

“City National Bank will remain the partner our clients have come to trust, but with new capabilities to serve their needs,” Gonzalez added. “For the last 30 years, our logo has largely remained static, while Florida and the bank evolved tremendously. Our new brand is meant to not just convey where the bank has been or is today but of where we want to be in the future.”

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Forgotten History Honored

By: Harley Herman

Celebrating The 40th Anniversary of Florida Bar Admission Program for Cuban Exile Lawyers

FOR THE LOVE OF LAW: Celebrating the 40th Anniversary of the Cuban-American Lawyers Program



"I would have liked to have had that chance. Just once. To stare down a big league pitcher. Make him think you know something he doesn't. That's my wish, Ray Kinsella. And is there enough magic out there in the moonlight to make this dream come true?" Moonlight Graham, Field of Dreams

For Cuban lawyers exiled in Florida in the 1960's, the dream of returning to the practice of law seemed like a wish that would never come true. When the petition of the Havana Bar Association was granted by the Florida Supreme Court in 1973, the lawyers, who became the trailblazers for today's generation of CABA members, enrolled in a two-year program at the University of Florida to gain bar admission. On October 15, 2015, UF honored the graduates of its Cuban Lawyer Admission Program in a 40th anniversary celebration, sponsored by CABA member and former Florida Bar and ABA President, Steve Zack.

Zack's family fled Cuba when he was 13. His imprisonment with his family before leaving Cuba motivated his decision to become a lawyer.

Though many hoped their exile from Cuba would be short-lived, the decision to protect their families from tyranny terminated both legal careers that had spanned decades and access of the Cuban exile community's access to lawyers needed in their new home. As documented in the Court's 1973 opinion, a decade after the exile began, only 40 Florida lawyers spoke Spanish, though Florida's exile community had swelled to over 300,000. The need and desire to seek the aid of the abogados who had represented them prior to the exile was overwhelming. The desire to serve their former clients was ever present.

Cuban lawyers, however, faced several barriers to admission to the Florida

Bar. First, Florida did not recognize the non-ABA law school curriculum of law schools that educated students in the non-common law system of Cuban law. Despite decades of experience, exiled lawyers were allowed to resume their practices only if they were admitted to and attended a three-year, full-time Florida law school where classes were taught in English. This was cost-prohibitive for lawyers whose wealth had been confiscated when they left Cuba and to whom few law-related job opportunities were available.

Lawyers leaving Cuba knew the consequences of their decision to leave their homeland. Law as they once knew it, however, had largely disappeared. Speaking at the University of Florida anniversary event, Jose Villalobos told attendees of edict after edict of the Castro government that removed the rule of law from Cuba's legal system.

"It was not a change of government; it was the beginning of the destruction of our past, of all history . . . of all laws, of all principals, of all justice."

Ordered to swear allegiance to the Castro regime as a condition for practicing law, Villalobos refused and was beaten outside the courthouse for his defiance.

Cuban Judge Adalberto Tosca, now a retired Tampa attorney, resigned his Cuban judgeship because the Cuban government informed him prior to the defendants' trials of the sentences he would be required to impose regardless of the evidence presented during the trials. For many, that sentence would be execution by firing squad assembled behind the courthouse minutes after the trial ended. All lawyers choosing exile also knew if they stayed, their children would be taken away and

indoctrinated in reeducation camps. The Pedro Pan flights, which generated Florida lawyers like U.S. Senator Mel Martinez and 2007 Bar President, Francisco Angones, were used by some prior to exile to ensure their children would be saved from this fate.

Had the exile occurred when Florida still allowed admission through apprenticeships and self-study, the economic hardship of bar admission would have been lessened. If the Embargo had not become necessary, Florida's extensive pre-revolution trade with Cuba would have made these lawyers, many still with contacts on the island, covetable assets to local law firms. Instead, most, like Florida Bar President Ray Abadin's father, had to seek employment requiring no legal skills or training. Their love of the law would inspire their children, but as a 1966 Tampa Times article chronicled, lawyers who had distinguished careers in Cuba were employed in Florida as janitors, salesmen, or working construction, like CABA leader, Jose Villalobos who worked as a roofer for 24 years after leaving Cuba.

In an effort to provide an alternative opportunity for bar admission, lawyers from the Havana Bar Association petitioned the Florida Supreme Court. On July 31, 1973, the court granted some of the requested relief by allowing lawyers with proof of their admission to practice in Cuba, to attend programs at Florida law schools and obtain certification to sit for the Florida Bar exam. The court requested Florida law schools begin operating these programs by September of 1973. The University of Florida and the University of Miami took up the challenge. Florida established a two-year program which met on weekends. Initially hundreds of Cuban lawyers from Miami chartered planes to fly to Gainesville each week. Later, the students and the University agreed that it would be cheaper to fly the professors to Miami each week and South Florida classes were taught

at FIU. Cuban lawyers from Tampa held mid-week study sessions at the law office of Lucius "Jake" Dyal. Florida conducted the program from 1973–1976, graduating the first class on June 14, 1975. Lawyers attending the program ranged in age from 36–74 years old.

At October's celebration, Villalobos told attendees:

"Some of my classmates had been my professors ... judges and scholars, and yet they were sitting there with me listening to professors from the University of Florida."

Noting what he described as these lawyers' "greatness in meeting adversity and conquering it," Florida Chief Justice James Adkins told the 1975 graduates:

"Your struggle to regain your position of legal leadership is near its end, but the valiant efforts of your fellow Cuban-Americans continue. You possess a special responsibility to assert and maintain their legal rights and privileges."

The road from graduation to bar admission posed still more obstacles – passing the bar exam. Explaining his need to retake the bar exam several times and his determination to succeed, Orlando lawyer, Dr. Armando Payas, noted law schools and exams in Cuba did not have multiple-choice questions like the multi-state portion of the bar exam. Competing in the essay portion of the exam with law school graduates who were native English-speakers also affected the Cuban lawyers' ability to pass an exam that is scored on a curve. As such, an imperfect remedy that required sandwiching legal and bar studies in between full time job requirements, did not lead all program participants to Florida Bar admission. The doors opened by graduates who gained admission to the Florida Bar became the entry way for the children and grandchildren of exiled lawyers

who now lead our profession. As noted by CABA members, Frances Gausch-DeLaGuardia, Florida Supreme Court Chief Justice Jorge LaBaraga, and Steve Zach, each now prominent and successful members of the legal community, lawyers like Villalobos, Payas and Tosca became leaders, role models, and inspirations for the members of CABA and regional Hispanic bar associations.


The decision to hold a 40th anniversary celebration instead of a 50th anniversary event was made out of necessity. The youngest student in the program, then 36 years old, is now 76. Many lawyers interviewed prior to the event were too ill to attend. As I met these lawyers, I began to wonder if I would have had the courage to surrender my license and leave my country for an uncertain future. Take a little time talk with and commend these inspiring attorneys. Record an interview with them, so that this history will be preserved for future generations.



Harley Herman is the President of the Plant City Bar Association and the former Chair of the Florida Bar's Equal Opportunity Law Section. As a 1975 University of Florida law student, he saw signs for the Cuban Lawyer Program on the walls of the College of Law. His work interviewing lawyers who attended UF's Cuban Lawyer Program led to a multi-year campaign to organize and hold UF's 40th Anniversary celebration of the program and its participants.



LEGAL ROUND UP



Fiel v. Hoffman, 169 So. 3d 1274 (Fla. 4th DCA 2015) *Revisiting the Slayer Statute*

After more than a quarter century, a Florida appellate court has revisited Florida's Slayer Statute – a provision in Florida's Probate Code, F.S. 732.802 (2012), that precludes a killer from benefitting from the deceased's estate – and reaffirmed that it does not extend to the slayer's relatives. It was back in 1989 that the Second District Court of Appeal, in *In re Estate of Benson*, 548 So. 2d 775, 776 (Fla. 2d DCA 1989), held that it "is the 'surviving person who ... kills' who is prohibited from benefitting from the act of killing" and not the children of the killer. In July of 2015, the Fourth District Court of Appeal was asked to revisit *Benson*, this time faced with the notorious murder of Ben Novack, the heir of the Fontainebleau estate.

Ben Novack's murder was a gruesome tale, which was made into the 2015 Lifetime movie, *Beautiful & Twisted*. Ben was married to Nancy for several years, and when Ben said he wanted to divorce, Nancy embarked on a course that started with her alleged exercise of undue influence and extortion prompting Ben to stay married and execute two wills benefitting Nancy, and her daughter and grandchildren. But then things escalated. Having secured the beneficial wills, Nancy moved on to threats of physical attack and staged home invasions, with brutal assaults on Ben. And she ended it with Ben's murder, and the murder of Ben's mother, who stood to inherit ahead of Nancy. Nancy did all of this, and was convicted of the murders.

Nancy the Slayer, of course, was precluded from inheriting. But the Fourth District was tasked with interpreting Florida's Slayer Statute to determine whether Nancy the Slayer's daughter and two grandchildren should by extension be prohibited from inheriting the Novack estate. Cousins of Ben, the Fiels, who were named in his earlier wills, argued that Nancy the Slayer's daughter and grandchildren should be barred from inheriting because, as alleged, Nancy would in fact directly and indirectly *benefit* from enriching her progenies.

The Fourth District bore into the Slayer Statute, critically analyzing what it meant for a slayer to "[*benefit*] from the act of killing." The Fiels argued that the legislature intended the *benefit* language to include direct benefit, such as taking from a will, and indirect benefit, such as redistributing the decedent's wealth to the slayer's own family. The Fourth District examined the language of different slayer statutes across the country, all of which included the *benefit* language and had at times prevented a slayer's offspring from inheriting. But the Fourth District maintained the Second District's *Benson* analysis, explaining that to interpret Florida's Slayer Statute in such a manner "would require us to add words to the statute, something we cannot do."

But the undue influence presented another story. Delving into the law involving the effect of fraud, duress, mistake, and undue influence on the testator, the Fourth District considered the Fiels' allegations that Nancy the Slayer had spent years assaulting and extorting Ben until he changed his will to benefit her and her kin. That, assumed to be true for motion to dismiss purposes, prompted the Fourth District to remand the case back to the probate court to determine whether Nancy had exercised undue influence in such a way that Ben's wills "were entirely tainted" to the degree that they should be revoked. The final scene of Ben Novack's made-for-TV-story has yet to be written.

LEGAL ROUND UP



Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.,
2015 WL 4926551 (Fla. 4th DCA, Aug. 19, 2015)
The Pretrial Stipulation: It Means What It Says

“Out of respect for and to dignify the use of The Pretrial Stipulation, we have intentionally capitalized the name of this important trial efficiency tool.” So said the Fourth District Court of Appeal in *Palm Beach Polo Holdings*, taking issue with the trial court’s ruling, which refused to accord The Pretrial Stipulation its due regard.

After raising their statute of limitations defense several times during the litigation, the defendants memorialized their defense in The Pretrial Stipulation. Nonetheless, the trial court concluded that because the statute of limitations defense was not framed in the preliminary instructions to the jury, and because the defendants did not argue the issue in their opening statement, defendants waived their defense.

The Fourth District didn’t see it that way. Noting the importance of Florida Rule of Civil Procedure 1.200, which enables The Pretrial Stipulation, and “fully enables a well-run and fair trial,” the Fourth District took this case as an “opportunity to remind judges and litigators that any ... contentious pretrial issues become mostly irrelevant once the parties prepare and stipulate as to ... [what] specific issues [] remain on the table.” The Pretrial Stipulation, the Fourth District commented, is binding upon not just the parties, but the trial court itself.

As a result, the defendants’ failure to include the statute of limitations defense in their preliminary instruction to the jury was inconsequential. The Pretrial Stipulation was the “trump card.”

Fla. Carry, Inc. v. Univ. of Fla., No. 1D14-4614, 2015 WL
6567665, at *1 (Fla. 1st DCA, Oct. 30, 2015)
*Florida’s Campus Gun Ban: The College Dorm Is Your
Home Away From Home, But It’s No Home For Guns.*

Possession of firearms in a home is lawful under F.S. 790.25, but the same statute proscribes possession of firearms on school property. So, what happens when your “home” is college campus housing? Should a college student living in college housing be allowed to keep a firearm in his or her dorm room, for example? It is, after all, the student’s home away from home. The First District Court of Appeal wrestled with this in *Florida Carry, Inc. v. University of Florida*.

The University of Florida places strict regulations on the possession of firearms in university housing, all but prohibiting possession of firearms on school property, including student dorms.

Florida Carry, Inc. (acting in a representative capacity on behalf of unnamed student-members), argued that Florida’s statutes, and specifically F.S. 790.25, and the Second Amendment in the Bill of Rights, should govern and protect the right to carry or possess firearms, even in college student dorms. Otherwise, argued Florida Carry, the law would afford less constitutional protections to students who pay for their own home than persons who receive college subsidized housing.

The First District directed Florida Carry to the Florida legislature. Florida’s Statute, the Court explained, clearly and unequivocally prohibits gun possession on university

CABA BRIEFS

Fiel v. Hoffman

*Palm Beach Polo
Holdings, Inc. v.
Broward Marine, Inc.*

*Fla. Carry, Inc. v.
Univ. of Fla.*

LEGAL ROUND UP

property, and that statute, the Court continued, trumps the general rule allowing possession of firearms in homes.

In his concurring opinion, Judge Makar commented that the record was too thin for the argument. Perhaps, he posited, additional evidence (*e.g.*, the number of roommates, the size and configuration of the rooms, and the degree of familiarity among the roommates) could have aided the Court in considering whether the student housing “can be considered a ‘home’ and thereby receive the right to keep and bear arms.” Perhaps, a Martha Stewart décor would have helped the cause. But for now, until the legislature says otherwise, there will be no firearms allowed in campus housing.

Moradiellos v. Gerelco Traffic Controls, Inc., 40 Fla. L. Weekly D2047 (Fla. 3d DCA 2015)

Simple or Gross Negligence: It’s a “theoretically clear, but sometimes difficult-to-apply, distinction.”

Arturo Moradeillos was working as a subcontractor widening a part of the Florida Turnpike when he was tragically killed in an accident caused by an agent of his employer. It was 3 o’clock in the morning, and Moradeillos was walking along the dimly lit construction zone to determine where to paint the traffic lines. Meanwhile, another employee was recklessly driving a dump truck, and collided with Moradeillos, killing him instantly.

The estate of Moradeillos sued the employer and also sued the subcontractor responsible for repairing and maintaining the street lights around the construction zone. The issue before the Third District Court of Appeal was whether the subcontractor’s failure to properly illuminate the construction zone constituted simple or gross negligence. And as the Third District put it, it is a “theoretically clear, but sometimes difficult-to-apply, distinction.” In theory, simple negligence is conduct which a reasonable and prudent man would know *might possibly* result in injury; whereas, gross negligence is conduct which the same man would know *probably and most likely* will result in injury.

Here, the Third District considered the evidence in light of a summary judgment for the subcontractor. Tricky, because the standard for summary judgment requires no issue of material fact, or in other words, requires that no reasonable jury could conclude that the subcontractor’s actions were grossly negligent. So, the Third District had to decide whether the distinction between simple and gross negligence – seemingly a value judgment to be made by one’s interpretation of the events leading to the accident – could be drawn, indisputably, from the record on appeal. The Third District found that it could.

The Third District noted that the construction zone lighting had been inoperable for almost a year and a half, and there never was never any incident. There had been “no accidents, no near accidents, no work stoppages, no highway closings, and no other specific problems caused by the non-functioning light,” the Third District commented. That is to say, according to the Third District, while the diminished lighting in the area created a *possibility of harm*, it did not create a situation where an accident *would probably and most likely occur*. Of that, there was no dispute in the record; and so, the distinction went against gross negligence and summary judgment was affirmed.

LEGAL ROUND UP



Taylor v. Taylor, Case No. 2D14-3930 (Fla. 2d DCA, October 9, 2015)

Written Findings Can Matter ... Even When You Win

It is often the case in a civil appeal that a party with a favorable judgment in the lower court does not have the judge's findings in writing. And that can be a problem on appeal. Such was the case in the Second District Court of Appeal's recent opinion, *Taylor v. Taylor*. In a marital dispute over alimony, the trial court awarded the former wife durational alimony, but the final judgment didn't include any findings.

Looking to the statutory requirements, provided in F.S. 61.08 (2012), the Second District recognized that alimony is proper upon the trial court's determination of: (i) the requesting party's need; (ii) the other party's ability to pay; (iii) the type of alimony appropriate in the case; and (iv) the amount to be awarded. And in support of its final determination, the trial court must make specific factual findings.

But in *Taylor*, the trial court's final judgment was devoid of findings. The Second District lamented that, given "the level of complexity in this decision, it is important for the trial court to demonstrate on the record or in its order that it has applied the correct law when selecting its choice of alimony." And without those "necessary findings to support the award of alimony," the Second District explained, it could not "assume that the trial court made a proper, implicit finding." Reversal of the trial court's final judgment was compelled, and the former husband, who thought he was relieved of alimony, had to face the music a second time.

State Farm Fla. Ins. Co. v. Alvarez, No. 3D14-1291, 2015 WL 5438561 (Fla. 3d DCA, Sept. 16, 2015)

A Trial Judge's Common Sense On Review By A Three-Judge Appellate Panel: The Abuse of Discretion Standard

After an insurance claim for damages stemming from Hurricane Wilma was settled, the insured sought reasonable attorneys' fees from his insurer, State Farm Florida Insurance Company. Both sides proceeded in the trial court with expert testimony regarding (1) the hourly rates, (2) the amount of time spent on the case, and (3) the contingency fee multiplier. After an evidentiary hearing, the trial court picked the insured's expert and awarded the insured \$120,000 in attorney's fees.

State Farm appealed and challenged the trial court's findings in all three respects. The Third District Court of Appeal, of course, reviewed the award of attorney's fees for an abuse of discretion. After all, as the Third District commented, the trial court has "first-hand knowledge of the case" and an unequivocally "superior understanding of the litigation." But that's not to say (and this the Third District was sure to point out) that the appellate judges must "abandon what [they've] learned as lawyers or [their] common sense in evaluating the reasonableness of an award." With that in mind, the Third District went on to evaluate each facet of the attorneys' fee award, not only abuse of discretion but for common sense as well.

The hourly rate of the attorneys (\$400) checked out. But the Third District found the amount of time spent on the case to be suspect. There were more than 11 attorneys who had billed the case despite, the Court reasoned, the seemingly

CABA BRIEFS

Moradiellos v. Gerelco Traffic Controls, Inc.

Taylor v. Taylor

State Farm Fla. Ins. Co. v. Alvarez

LEGAL ROUND UP

straightforward issues. And there were duplicative time entries and redundant charges, the Third District observed. That was underscored by the insured's expert testimony, which wholly failed to provide any justification for the amount of time the law firm invested in the case. That led to the conclusion that the trial court had abused its discretion, and abused the appellate court's sense of rationality, by awarding that amount of fees.

At its core, the Third District attacked an evidentiary ruling made by a trial court that heard competing expert testimony, and had "extensive contact with the parties and their counsel" through the five-year-long action. But the abuse of discretion standard of review notwithstanding — and reasonable judges can differ in opinion — the Third District court reversed based on the panel's personal knowledge and experience. Doing so, the Third District appears to have overridden the trial court's discretion, rather than review it for abuse. That's rare. And so while this case may be just about a reversal of one party's attorneys' fees, it may serve to chip away at the armor that the abuse of discretion standard typically provides.



Elliot Kula, board certified in appellate practice, is the principal at Kula & Associates, PA., 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

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FRITAS

La Cocina de Christina

INGREDIENTS:

¾ pound ground chuck (80/20)
¼ pound ground pork
¼ pound chorizo
¼ cup milk
½ cup white bread, cubed, crusts removed (about two slices)
1 tablespoon onion, minced
1 beaten egg
1 tablespoon ketchup
2 teaspoons salt
½ teaspoon paprika
½ teaspoon Worcestershire sauce
¼ teaspoon black pepper

A *frita* is known as a Cuban hamburger, or cheeseburger – depending on your level of sacrilege towards the dish. Traditionalists go without cheese. Modernists go with. Debates around many a domino table have gone on for years about this topic. For me? Well, let's just say it's one of those things you don't discuss in mixed company, along with politics and religion. The other thing we don't discuss in mixed company is whether to chorizo or not to chorizo? Try this recipe and see which you prefer. ¡Buen provecho!



INSTRUCTIONS

1. Measure out the milk in a bowl and add the bread cubes. Mix the bread in well so it can fully soak up the milk.
2. Mix the meats together and add in the soaked bread cubes, the beaten egg, ketchup, salt, paprika, Worcestershire sauce and black pepper.
3. Mix everything well, preferably with your clean hands, and form them into small meatball sizes.
4. Leave in the refrigerator for at least two hours before cooking. Overnight is best.
5. In a hot skillet, fry up the fritos, without added grease.
6. Flatten them out only once on the pan. You only want to render enough fat from the fritos to let them fry up properly but not to release the juices from the meat.
7. Cook on both sides and set aside as you cook them.
8. Open your potato rolls and place them, insides down, on the skillet to toast up and soak up some of the frita juices.
9. Place a frita patty inside a potato roll and top with traditional condiments: ketchup, hot sauce and mini shoestring fries.

Makes about 16 fritos.



FOR MORE RECIPES AND OTHER CUBAN RECIPES FROM THE CRISTINA & NITZA PROJECT, VISIT;

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Retreat



August 7 – 9

The Naples Beach Hotel & Golf Club

CABA members take a time-out from their busy schedules to get together at the Naples Beach Hotel & Golf Club. The Retreat is more than just a fun event, as the Board meets with members to discuss upcoming CABA programming and take stock of what our members are most interested in seeing—be it social or legal issues, or participating in worthwhile causes of interest to the CABA community.



Art in the Tropics



October 3
Coral Gables Museum

The bar is set higher and higher each year for the annual Art in the Tropics event, and this year was no exception. Presented by City National Bank, the 11th Annual Art in the Tropics event, held at the Coral Gables Museum, included delicious bites from over 16 of the area's best restaurants, a cigar roller, domino tables, and a live performance by none other than Lissett Morales—La Mulata del Sabor. As always, 100% of the proceeds from Art in the Tropics go directly to CABA's Pro Bono Project.



Art in the Tropics



Minority Mentoring Picnic

October 31

Amelia Earhart Park

CABA's commitment to mentoring was on display at the KTT Minority Mentoring Picnic. The family-friendly CABA tent was handing out toys and games for the kids and mentoring applications and information for law students. There was also some healthy competition at the domino table for anyone willing to challenge the CABA domino sharks!



Past Presidents' Dinner



November 5
Sabadell Bank

The Cuban American Bar Association continued its yearly tradition of honoring our esteemed "PPs" at the Annual Past Presidents' Dinner, hosted by Sabadell Bank. Board Members and Past Presidents reconnect over dinner and cocktails, taking stock of the events of the past year.



CLE



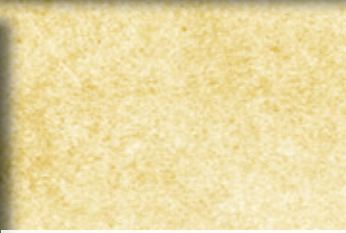
November 8

Kozyak Tropin Throckmorton

CABA and the University of Miami School of Law's Center for Ethics and Public Service offered members a CLE course entitled "Think Twice Before Hitting Send"—focusing on the many pitfalls that modern technology can pose to legal practitioners. New ways of communicating and advertising are continually challenging the established rules regulating attorneys in Florida, and it is crucial to be up to date on the latest cases and Bar advisory opinions in order to effectively put your name out there, yet not run afoul of rules and regulations that were enacted long before e-mails and texting became a part of our daily workdays.



Judicial Luncheon



November 19

Rusty Pelican

This year's Annual Judicial Luncheon featured a candid conversation with Florida Bar President (and CABA Past President) Ramon Abadin, 11th Judicial Circuit Chief Judge Bertila Soto, and Tim Cerio, Counsel for Governor Rick Scott, regarding the current state of the legal profession and the challenges we all face as practitioners and judges.



Judicial Luncheon



Elections



December 1

Professional Bank, 4th Floor Terrace

Taking place at Professional Bank's beautiful outdoor terrace, the CABA elections once again proved to be one of CABA's best attended and most anticipated networking events. The introduction of electronic voting—in place of the traditional paper absentee ballots—did not deter hundreds of lawyers and judges from packing the terrace to vote for the 2016 Board and President-Elect. Members also made a stellar showing of generosity, donating a huge stack of toys for underprivileged children.



Elections



Board and Past Presidents Holiday Cocktail Party



December 15

Casa Juancho

This year's Board and Past President Holiday Party featured a more relaxed, tapas-style menu. Attendees were treated to delicious bites at Casa Juancho, courtesy of Mass Mutual.



Board and Past Presidents Holiday Cocktail Party



DICHOS DE CUBA

By Monica M. Albarello

¡Me tienes hasta el último pelo!—You have me up to my last hair!

As a child, if I misbehaved and my mom was in a good mood, she usually would issue her “final” warning before exploding with frustration: *¡Me tienes hasta el último pelo!* (literally translated “You have me up to my last hair!”). At the same time she was delivering her “final” warning, she would close her eyes and pinch the roots of her hair right above her forehead. This was the point I would realize my mom’s patience was running out. This phrase basically tells someone you are close to being fed up with them because of his/her actions.

Que paquete! and *¡que guayaba!* both mean “there is no way that is true.” These phrases are used to express doubt in someone’s story probably because you already know it’s untrue or it’s over the top. It also is used to describe anything that seems to be exaggerated or impossible. Some blockbuster movies tend to be *tremendo paquete*, like this past summer’s *San Andreas* movie about calamitous earthquakes that hit the Bay Area. Although I enjoyed the movie, it was a first-class *paquete* because his family and friends survived against all odds possible.

Ese huevo quiere sal is used to describe someone who sets his/her sights on a particular objective and is





persistent in trying to achieve it. Although this expression is appropriate for many situations, I have heard it used only to refer to a person who is putting forth notable effort to get close to the person in whom he/she is interested. So if someone calls your friend asking personal questions about you or he/she purposefully continues to run into you to get your attention; it definitely is an "egg desiring some salt."

Tremenda muela ("tremendous teeth") can be used in the same conversation with *ese huevo quiere sal*. For example, "Jose esta metiéndole tremenda muela a Maria. Olvídate, ese huevo quiere sal." ("Jose is talking Maria's ear off. It's obvious he's interested in her.") The person who's doing all of the talking also can be called a *muelero*, a word resulting from this phrase. A "muelero" is someone who likes to talk a lot and is believed to be a smooth talker.

Le ronca el mango ("it snores the mango") may sound funny, but it usually is used by someone receiving some kind of alarming news that has left him/her speechless or in disbelief. My *abuelita* is 84 years young, and she is just in awe with modern day technology. Recently, my *abuelita* and aunt were listening to a song and

driving themselves crazy trying to figure out the artist and name of the song. I offered to resolve their issue in less than a minute, and they sarcastically accepted my help. I took out my iPhone and opened my Shazam app in order to find the information on the song. Immediately, I had their answer and showed my *abuelita* that I also had the option to instantly buy the song and save it on my phone. She sat down on the couch and said "*le ronca el mango*." She simply couldn't believe her eyes.



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Raising the Bar for Our Community.

CABA and Baptist Health South Florida share common values. We promote ethical business practices, equality and diversity. We strive to strengthen our community. That's why we're especially pleased to support CABA in celebrating its 41st Annual Benefit Gala.

Baptist Health commends CABA and its incoming board members for their work on behalf of the Cuban-American community.

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