



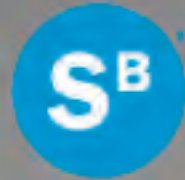
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BRIEFS

Inside this Edition:
CABA Gala 2017 Sneak Peek



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Featured on the cover is artwork by Alvaro Diaz-Rubio. Born and raised in Miami, Alvaro Diaz-Rubio expresses himself through his wonderfully colorful and unusual creations. As an internationally published illustrator and award-winning graphic designer, he creates unique worlds and plays with character designs that verge from the unconventional to the surreal.

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CABA Briefs is published quarterly by the Cuban American Bar Association, Inc. ("CABA"). CABA is a non-profit voluntary bar association founded in 1974 by lawyers of Cuban descent. CABA's members include judges, lawyers, and law students of all backgrounds interested in issues affecting the Cuban community, as well as broader legal and human rights issues impacting minority communities as a whole. CABA's mission is to promote equality of our members; increase diversity in the judiciary and legal community; serve the public interest by increasing awareness to the study of jurisprudence; foster respect for the law; preserve high standards of integrity, honor, and professional courtesy among our peers; provide equal access

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. 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



Dear CABA Family,

When looking at CABA's prestigious list of previous presidents, I am humbled to be given the opportunity to lead such an amazing organization that for 43 years has fought all types of discrimination and has vigorously stuck to its mission, even when not so popular. It is an honor to take the reins of CABA during such a delicate time in US-Cuban policy. There is no question this will be a transcendental year between CABA and Cuba and you can rest assured that CABA will be at the forefront of this most important mission. Castro may have died, but the political oppression and human rights violations remain very much alive.

CABA will be taking a very direct approach in advancing change on the island by proactively engaging not only with our leaders in Washington D.C., but with those on the island with whom we have disagreed for so long. Change on the island must come from within, and we must be there to assist that change. As diplomatic relations with Cuba have opened, we have seen a lack of priority on the regime's imprisonment of political dissidents, arbitrary detention of

activists, restriction of internet access and the list continues. It is our moral obligation to all political prisoners and the rest of the 11 million Cubans who remain oppressed on the island, to always stand with them in their fight for freedom. And it is during this time, that we must be most vigilant because economic interests seem to clearly outweigh these concerns. This discrimination is not only something that is happening on the island, but in our very own backyard. Only six months ago, we saw a US company carry out a Cuban Government mandate to disallow Cuban-born American citizens from embarking on a cruise ship for the sole reason of where they were born. CABA and I fought hard in Federal and State courts to prevent this discrimination. Justice happened swiftly, both here and in Cuba. For the first time in 60 years, the Cuban Government explicitly changed a discriminatory law against Cuban exiles. CABA will not only fight for discrimination based on national origin, but for any other type of discrimination including race, religion, and sexual orientation.

CABA's Pro Bono Project has been a beacon of hope for so many in this community. On a daily basis, the Pro Bono Project fights against the nasty underbelly that we have in this very community of unaccompanied minors and sex trafficking. In 2014, the Project coordinated thousands of hours of legal service to the poorest of our community and it has only increased since then. However, our resources cannot begin to satisfy the unfortunate demand for help, which we have in our community.

The only reason all of this is possible is because of people and sponsors like you who have given so generously to make a difference. This year, we will be setting a banner year in raising funds which will allow us to continue our work in the community. My pledge as President is that we will not be "business as usual." We will add even more value to our members and sponsors, and we will be a part of the conversation between the US and Cuba. As my late father, best friend, and hero would tell me, "Para atrás, ni para coger impulso." ("Never go backwards, not even to gain momentum.").

I look forward to working hard this year to make CABA shine brighter than ever in 2017.

Un Fuerte Abrazo,

A handwritten signature in black ink, appearing to read "Javy Lopez". The signature is stylized and fluid, written over a light-colored background.

Javy Lopez
President, CABA

Past-President's MESSAGE



CABA Colleagues & Friends,

What a truly humbling experience it was to lead CABA in 2016! I am truly grateful for the amazing opportunity you afforded me.

As I had been told by many past presidents who preceded me, the year flew by; it seems like just yesterday that I was standing before you recounting my “six-degrees of CABA” stories. This past year was a truly amazing year for me, both professionally and personally. As most may know, a few weeks after being installed as your 42nd President, I became a wife and stepmother of two. That alone was a significant life change and blessing that has kept me on my toes. CABA, however, does not fall far behind on that life-changing, affirming, and time-consuming list.

Last February, I mentioned to you that I intended on bringing back CABA to its “Cuban” roots. Well, as some may say, “be careful what you wish for.” Cuba certainly seemed to be CABA’s focal point in 2016. Just before I left

on my honeymoon, President Obama’s historic trip to Cuba was announced. CABA quickly reacted and sent President Obama a letter to remind him of the importance of the Cuban people and the restoration of their human rights. While we were somewhat skeptical of the impact of his visit, ultimately, President Obama delivered a speech that resonated with many on the island, and for us, here at home—no matter what our personal politics are. That was followed up with Carnival Fathom’s policies on Cuban-born American citizens’ ability to cruise to Cuba, and our swift action to make sure this story was not just local news, but national news. Thankfully, those policies were revised once our very own President, Javier Lopez, and his firm got involved. Throughout the year, CABA continued to respond and react to news of various planned “cultural” trips to Cuba to ensure that all those who wish to personally view the beauty of the island, do not forget the daily atrocities that are committed against its people.

In mid-September, I delivered on my promise and hosted a day and a half-long conference at FIU College of Law that served to educate, inform, and initiate a necessary dialogue and discussion on all of the changes that have occurred on the island and in the U.S. since the “normalization” of U.S.-Cuba relations, as well as all of the changes that have yet to occur. We were fortunate to have many learned professors, lawyers, and writers address the large, fired-up, and inquisitive audience that traveled from near and far to hear all they had to share. The panels provided historical and political context; advised on regulatory changes; spoke of opportunities on the island that may positively affect the lives of the millions there; and, we had an impassioned discussion on the future of Cuba and its people. Most important to these discussions were the Cuban dissidents who joined us and shared their personal stories of oppression and hope, as well as the perspective of the Cuban dictatorship with the participation of a former Cuban diplomat. The conference was truly the highlight of my year, and something I hope CABA will repeat in the years to come.

As the year drew to a close, we received the long-awaited news that Cuba’s ultimate despot had finally passed; news that, sadly, many of our parents, grandparents, aunts, and uncles did not live to hear. CABA, once again, was there to make sure the voice of Cuban Americans was heard, and to lend our support and encouragement to those who continue to live without the daily freedoms we so often take for granted.

I am so greatly appreciative of all the support and feedback (both positive and negative) I received from each of you throughout 2016; my leadership would have been lacking without it. I look forward to my continued involvement as President of CABA’s Foundation. Thank you for trust.

Your faithful servant,

A handwritten signature in black ink, appearing to read "Anna Marie Gamez".

Anna Marie Gamez
Immediate Past President, CABA

Editor-In-Chief's MESSAGE



Dear CABA Members:

I am happy to share with you the Winter Edition of CABA Briefs and I hope you enjoy it. The Winter Edition includes a review of our events, as well as articles that touch upon the changing judicial and political landscape. I want to thank all of the authors who volunteer their time to share their inspiring and informative articles.

The cover image is the work of a local artist, Alvaro Diaz. The satirical emoji reflects a historic moment in every Cuban American's life, deservedly mocking the death of a dictator who oppressed a country for over fifty years. The articles in this edition include interviews with our newest additions to the Dade County Circuit and County Court bench and the story of one Cuban American family's experience before and after the death of Fidel Castro. I would like to extend a big thank you to Candice Balmori and Daniel Balmori for sharing their grandfather's touching story with all of

us. Another article addresses the potential ramifications on the real estate market after implementation of the new policy of normalization with Cuba. The edition also tackles the history behind Che Guevera.

The events section covers the latter half of 2016, from the Judicial Luncheon to the end-of-the-year Elections in November. Thank you to the CABA committee chairs and members who work tirelessly to organize these events for the members to enjoy.

In closing, I share one of my favorite quotes: "I keep my ideals, because in spite of everything I still believe that people are really good at heart."—Anne Frank. In this time of conflict and disagreement, I hope we all can remember to treat each other with kindness, dignity, and respect, regardless of our differences of opinion on social, political, or religious views.

A handwritten signature in black ink that reads "Frances De La Guardia". The script is elegant and cursive, with a large initial 'F'.

Frances De La Guardia
Editor-in-Chief



We are a proud supporter of the Cuban American Bar Association

As one of the top firms for Hispanic attorneys, we are committed to CABA's mission and firmly believe that greater diversity enhances the strength of our legal team.

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Meet Judge Mark Blumstein—one of Miami-Dade County’s newest elected Circuit Court Judges



Running because of a desire to continue to serve and make a positive impact in the community, Mark Blumstein is excited to begin the next chapter of his legal career as a Circuit Court Judge.

What stood out to Blumstein from the campaign that lasted through November was the great people and rich diversity all throughout Miami.

A Miami native, he is a product of the Dade County Public Schools and has a strong relationship with the Cuban community.

“I am a first generation American and son of Cuban-born parents whose parents fled oppression in Europe,” Blumstein said.

Becoming a Judge was not his first foray with public service. “I am

Nonetheless, I set out to prove my case, establish the elements of the crime and anticipate likely defenses to ultimately convince a jury that the accused was guilty of the crime charged. This case early on in my career reinforced my desire to serve as a trial attorney and advocate of the law,” said Blumstein.

After serving in the United States Navy, Blumstein will use his success with his family life and time working as a private practitioner, to help him on the bench. “I am a husband and father of three children. I am an attorney of over 20 years, having practiced criminal law, civil law, commercial law, family law, international law and military law with lawyers from across the globe,” he said.

“These experiences and background will help me be a fair, impartial and respectful Judge.”

Blumstein has a simple expectation for the type of experience litigants will have when before him. “I would like lawyers to feel welcome and respected in my courtroom,” he said.

Blumstein also has an interesting track record of success as a runner and will be taking on the Miami Marathon this year. “My hobby is physical fitness, specifically running. I have completed several races, including 5Ks, 10Ks and a Half Marathon, and hope to complete the Miami Marathon in 2017,” he said.

Blumstein also appreciates and looks forward to working with The Cuban American Bar Association in the future. “I endeavor to maintain a good relationship with CABA and other voluntary bar associations who have as part of their mission a respect for the law and the administration of justice.”

Dade County is fortunate to have Mark Blumstein taking the bench this January because of his experience in both public service and private practice.

“I am a husband and father of three children. I am an attorney of over 20 years, having practiced criminal law, civil law, commercial law, family law, international law ...”

a Navy Veteran, having served in the U.S. Armed Forces for over 20 years. I am a former elected official and Commissioner of the Town of Surfside, Florida,” Blumstein said.

The Navy is where he first learned lessons in life and the practice of law serving as a Judge Advocate practicing criminal law.

“My first legal job was as a Prosecutor. I remember prosecuting a case against a very seasoned, civilian defense counsel that nobody expected me to win.

Meet Judge Linda Luce—one of Miami Dade County’s newest elected Circuit Court Judges.



As someone who started her career in public service as a case manager for the Department of Children and Families 25 years ago, Linda Luce finds the return to public service as a judge to be ideal.

A first generation woman to go to college, Judge Luce is a Philadelphia-native, born to Puerto Rican parents. She attended high school in California and graduated law school from the Interamerican University of Puerto Rico School of Law. She now is the judge for the Group 15 seat in Miami-Dade, having won the seat in the primary election on August 30, 2016.

Much of what has contributed to Judge Luce’s career is her work with children, and the lessons she has learned in the process. “I served as a Guardian Ad Litem for many years. I learned that

believe that being even-tempered is so important when having a position of great power and responsibility,” Judge Luce said.

“My experience both as a public servant and in the private practice have given me the opportunity to work with a diverse community in highly emotional conflict areas of the law such as foster care, juvenile delinquency and family law.”

She also is ready to help improve any facet of the court system that she can. “I walk into this phase of my life with an open mind. This is a new venture that I hope I can make a positive contribution to,” Judge Luce said. “If there is anything within the system that I could impact in a positive way, I will surely be up to the challenge,” she said.

Judge Luce is very familiar with and a long-time supporter of the Cuban American Bar Association. “CABA is an organization that has empowered a minority group and given a voice to their desires, ideals and concerns. Embracing those ideals and being part of a group that can impact your legal career in such a powerful way is priceless. That is what it means to me and I am proud to be a member of it.”

Litigators who appear before Judge Luce will encounter a fair judge who will read what is presented. “I would hope that they leave my courtroom knowing that I am punctual, that I listen, that I read everything they put before me, and that even if I disagreed with them in applying the law that I did so in a fair and respectful manner.”

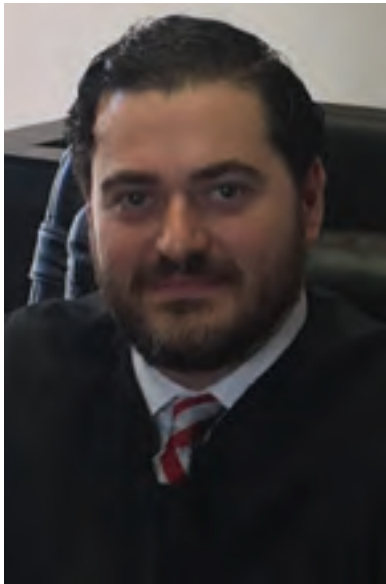
As someone who already has succeeded in multiple practice fields in different parts of the world, Judge Luce has an inspiring message to those who are considering trying to become a judge: “Go for it. Follow your dreams. But do it for the right reasons for you, and not to impress anyone else.”

“If there is anything within the system that I could impact in a positive way, I will surely be up to the challenge.”

children are the most honest individuals in this world,” she said. “I learned that their parents’ behavior impacts them in more ways than parents today realize. I thought I was helping these children out while serving the court at the same time. The truth is that they helped *me* tremendously in learning how to be a parent myself.”

Judge Luce believes her past experiences in both private and public law practice, together with helping others, has provided her with a perspective that will serve her well in her new position. “I always talk about temperament. I

Meet Judge Alexander Bokor—one of Miami-Dade County’s newest County Court Judges.



When one learns about Alexander S. Bokor, it is easy to see why he was recently appointed by the Governor to be one of Miami-Dade County’s newest county court judges.

Bokor, who is no stranger to Miami’s legal community, has served as an Assistant County Attorney in Miami-Dade since 2008. He was an associate with Kozyak Tropin & Throckmorton, P.A., and clerked for United States District Judge Steven Merryday of the Middle District of Florida.

He began his career at Jones Day practicing international law. Bokor humbly recognizes those who have mentored him and taught him the how to practice law. “My mentors at the County Attorney’s Office, Kozyak Tropin & Throckmorton, and Jones Day taught me the importance of practicing the right way. Obtaining a great result for our clients is the goal but it means nothing if we erode the public’s respect for the judicial system,”

Bokor said. Among many mentors, the polestar is Chief Judge Steven D. Merryday of the Middle District of Florida. He is a brilliant judge and more importantly, a wonderful husband and father. “I pursue this service on the bench because of his example and the hope that I can apply the law justly and fairly, as he does every day.”

He remembers the judicial application process because of its unique facets. “I applied because I wanted to serve, and I knew it would be a difficult process. What stood out for me was how humbling—almost spiritual—the process was,” said Bokor.

“It isn’t like a job interview in any traditional sense. Everyone seeking the position has strong convictions and a desire to serve the community and be a servant of the law, but it is really difficult to put that desire and that conviction into words. It really made me reach deep and find the essence of what public service and being a judge meant to me.”

Bokor fits in the Miami-Dade community, which will instantly help provide him the context and understanding needed to preside in County Court. “As a person, I have a multicultural background, I speak Spanish, and I am always curious and ready to engage and interact with the community,” he said.

“I learned from my grandparents and parents the importance of education and hard work. I learned from the generations before me, and my wife, who came with her family from Latin America when she was 16, that no matter our history we are all here for a better life and to pursue the American Dream. Nowhere else in the country is that better exemplified than Miami and I want to do my part for the community,” said Bokor.

He is also no stranger to the Cuban American Bar Association. “The Cuban American Bar Association was the first association that gave me an *abrazo* when I moved to Miami over ten years ago. As a young lawyer I was embraced right away and met incredible lawyers, community leaders, and public servants,” said Bokor.

“I have continued to be involved by consulting the leadership on legal and other matters of import, and I am honored that I have the support of many great past and present leaders in my professional endeavors. CABA, through its advocacy and its charity, is an important cornerstone of justice and accessibility to justice for all in the community, including but certainly not limited to the Cuban American community. The entire community is better for the diversity and perspective CABA brings and the organization does a wonderful job fulfilling the commitment of the founders to pursue justice, freedom and access to fair and impartial courts for all,” Bokor said.

Bokor will be ensuring everyone gets their fair chance to be heard before him when he is on the bench. “I insist on professionalism and treating all parties with respect and dignity. Everyone deserves their day in court and everyone deserves justice under the law. I ask that the lawyers be prepared, be professional, and follow the law.”

It is safe to say Bokor comes to the bench with strong experiences, and the highest level of enthusiasm, passion, and drive to serve the community the best way he can. “I can’t begin to list or give proper appreciation to how many others have shaped me or given me something that I take with me every day. I just say that I stand on the shoulders of so many and my goal on the bench is to do you all proud.”

Meet Judge Gina Beovides—one of Miami-Dade County's newest County Court Judges



Already a leader in helping others through pro bono work, Judge Gina Beovides is a young and energetic new member of the Miami-Dade County Court bench judge who is already making an impact in the County Court Civil Division at the Coral Gables Branch Courthouse.

Beovides most recently served as a Senior Staff Attorney at Dade Legal Aid since 2006 and gained experience as a decision maker in a court setting presiding over Civil Traffic Infraction Hearing Officer since 2011.

She received her bachelor's and law degrees from the University of Miami and is an avid Hurricanes fan who doesn't miss a football game and even tries to attend away games.

A passionate leader within the Cuban American Bar Association, Beovides served as an elected member of the Board of Directors for years and continues to advocate for CABA's

of it," Beovides said. "I served on the board for about five years and because I was passionate about the mission of CABA, the work they do through the pro bono side, its focus on the integrity of our legal system, and the emphasis on diversity. It's no secret about the work it does to promote Cuban issues and issues important to the Cuban American community and Cuban lawyers. It's gone beyond that and now it's the legal system and community as a whole. I probably wouldn't be where I am if not for CABA."

A rising star in Miami's legal community, Beovides aspired to be a judge well before being appointed by the Governor in February of 2016.

"I've wanted to be a judge for quite some time. Since early on in my career I had it in the back of my mind," Beovides said. "I remember I was in court a lot talking to my clients when I was with Legal Aid and the judge was doing what I was saying I thought the Judge would do so I thought this was something I could be good at," she said.

Her experience as a traffic hearing officer only solidified her desire to become a judge. "After five years of practicing, I applied to be a traffic hearing officer and it was a great interview. I honestly knew from my day one at the traffic court when I said 'good morning everyone' it was what I wanted to do. It never felt like work," Beovides said.

She is also quick to recognize her mentors and those who have inspired her.

"I've been blessed. Honestly, I've had some excellent people around like Judge Victoria del Pino, Judge Rosa Figarola, Judge Bertila Soto and Judge Ariana Fajardo," she said. "It's hard to

"I remember I was in court a lot talking to my clients when I was with Legal Aid and the judge was doing what I was saying I thought the Judge would do so I thought this was something I thought I would be good at,"

widespread positive impact in the community. "I've been a CABA member pretty much since I graduated law school. I think I was in the mentoring program since the first year

say those are the only one[s]. Judge Frank Shepherd is a person who I turn to for his wisdom and am happy he has taken me on as a mentee,” said Beovides.

“To the extent I can be anything close to the judges I mentioned that would [make me] more than happy.”

Beovides doesn’t take her role for granted and considers the application process a serious one that taught her a great deal. She has interesting advice for lawyers after going through the process.

“The application process, when I was filling out the application, I firmly believed every lawyer should look at that application and fill it out at one point. It shows you a lot about your career and yourself,” said Beovides. “As

She is fortunate to be able to draw on her experience from Dade Legal Aid and as a Civil Traffic Infraction Hearing Officer, which have helped her quickly fit into her role as a judge.

“The ability to relate to people. I think it came from Legal Aid, being able to explain to pro se litigants ‘this is what you are here for.’ Whether it’s a claim of exemption to a landlord tenant case, for ten years I have been explaining the legal process. That part has been an easy transition for me,” she said. “The five years I did as a hearing officer also helped me handle volume work, hearing cases and managing cases and dockets. People came in having strong feelings about their ticket so I had experience talking with someone who was not happy with a decision.”

“They want to know that you heard them. Sometimes people feel the judge didn’t hear them but you want people to feel that you heard what they had to say and that you explained it to them ‘this is what the law is and why I ruled this way.’ When judges give a person their day in court, when you [show] them respect and you treat them fairly, it promotes faith in our system and confirms people’s trust in the system.”

Although still new to the bench, Beovides is excited to already be taking a leadership role in the Eleventh Circuit as Judge Soto has appointed her to be one of two chairs of the Eleventh Judicial Circuit’s Pro Bono Committee along with Judge Samantha Ruiz-Cohen.

“I’m extremely grateful to have been appointed to that [committee]. That’s another way I can improve and continue to work, given my background, with Legal Aid and CABA. I keep in touch with the work that voluntary organizations do with regards to pro bono and will help oversee that in an effort to make the courts accessible to everyone,” said Beovides.

Just like her successful career as a litigator helping those in need, Judge Beovides has not wasted any time making a major positive impact to Miami-Dade’s judiciary. There is no doubt she will continue to do so by working hard to give every litigant their day in court and bolstering Miami’s pro bono legal community and its capabilities to help those in need.

“The goals are one, to make sure people follow the law, two, to make sure when someone walks out, win or lose, they understand what the law was, that they understood the case, and that they got their day in court,”

difficult as it is to go through all the questions, they will hopefully inspire you to think and it will ultimately reveal something about yourself.”

She will always remember the unexpected phone call from Governor Scott appointing her to the position while she was going over Miami Hurricanes’ football recruiting signing day results after a tough hearing she had earlier in the day.

“In terms of the phone call it’s the most surreal experience ever. You don’t know when and if it’s going to happen,” she said. “I blanked out. All I remember telling him was thank you so much, you have made my dream come true and I promised I wouldn’t let him down. I hung up, was alone in my office, and almost thought about calling back and immediately started crying and called my parents,” Beovides recalls.

At the same time, Beovides is working hard to improve on the job. “My fun hobbies have gone by the wayside. It’s like being a first year law student or being an associate,” she said. “The first year, it’s a learning curve. You want to make an impression and be more prepared than the parties coming before you to litigate and be passionate about your role,” she said.

A major goal for Judge Beovides is to make sure every person who appears before her, whether it’s an attorney or non-represented litigant, feel like they had their day in court.

“The goals are one, to make sure people follow the law, two, to make sure when someone walks out, win or lose, they understand what the law was, that they understood the case, and that they got their day in court,” she said.”

Ernesto "Che" Guevara

By Ricardo Martínez-Cid

As has been acknowledged and apologized for, the Florida Justice Association recently allowed a quote from Ernesto "Che" Guevara to be included in one of its publications. To our association's credit, the error was immediately recognized and steps have been taken to ensure that a similar one does not occur in the future. Part of the problem is how prevalent misconceptions about Che are. This should not be surprising, as Cuba's totalitarian regime has made him the subject of extensive propaganda and virtual martyrdom. Che Guevara has been idolized and marketed extensively such that, to many, he's become a symbol of the fight against oppression. In truth, his legacy is much more barbarous and should be abhorrent to those who value civil liberties.

He should be particularly reviled by members of our organization. Che Guevara had no respect for the civil justice system. He engineered the "revolutionary justice" system in Cuba and earned the nickname "the Butcher of La Cabaña." La Cabaña is a colonial fortress where political prisoners in Cuba were incarcerated, tortured, and too often executed without due process. El Che heard the appeals from the show trials that were sometimes carried out, but was guided by political expediency rather than by whether the accused was guilty or not.

Che Guevara recognized that "[w]e have imprisoned many people without knowing for sure if they were guilty. At the Sierra Maestra, we executed many people by firing squad without knowing if they were fully guilty." This did not trouble the oft-admired revolutionary. He believed that "[t]o send men to the firing squad, judicial proof is unnecessary. These procedures are an archaic bourgeois detail."

Che Guevara oversaw the creation of forced labor camps—the Cuban

Gulags where citizens could be sent for a variety of crimes such as practicing religion, homosexuality, political speech, or even playing rock music too loud.

Although he is credited for having expanded literacy on the island, it is worth questioning how this benefitted a Cuban people who could no longer read anything that was not approved by the state—including their bibles. Che Guevara was adamant that "[w]e must eliminate all newspapers; we cannot make a revolution with free press."

And Che is often quoted or admired for speaking out against racial injustice. He chastised the United States for its mistreatment of blacks in a speech at the United Nations in 1964 (where he admitted "yes, we have executed, we are executing, we will continue to execute"). And he spoke out against apartheid and racism in Africa and other parts of the world. These positions, however, were politically advantageous as he felt they advanced the cause of Marxism and the overthrow of the bourgeoisie.

Che's diaries leave no doubt about his true beliefs regarding racial equality. He referred to blacks as "those magnificent examples of the African race who have maintained their racial purity thanks to their lack of an affinity with bathing." And believed that "[t]he black is indolent and a dreamer; spending his meager wage on frivolity or drink; the European has a tradition of work and saving, which has pursued him as far as this corner of America and drives him to advance himself, even independently of his own individual aspirations."

When the rest of the world breathed a sigh of relief at the peaceful conclusion of the Cuban Missile Crisis, Che was furious. In an interview with the London Daily Worker, a Socialist periodical, he explained that "if the rockets had remained, we would have used them all and directed them



against the very heart of the United States, including New York, in our defense against aggression." El Che believed that nuclear war and the death of millions was a price worth paying to advance the overthrow of the status quo and facilitate his Marxist revolution. He advocated for "two, three ... many Vietnams."

He taught "[h]ate as a factor in the struggle, intransigent hatred for the enemy that takes one beyond the natural limitations of a human being and converts one into an effective, violent, selective, cold, killing machine." And he trained thousands of soldiers throughout the world to operate as these amoral engines of death.

Che, the man, could not be further from Che, the pop icon. Recognizing mass-murdering megalomaniacs is the first step in ensuring we don't quote them favorably in the future.



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La Jícara: An Artifact of Fidel Castro's Legacy

By: Candice Balmori, Esq. and Daniel Balmori, Esq.

Leaning against a countertop while recounting stories and events over a sip of hot espresso is a distinct cultural practice so naturally integrated into the daily lives of Cubans and Cuban-Americans that its social significance is easily overlooked. The afternoon Cuban *cafecito*, like an intensified English high tea, beckons the community to a sort of old-fashioned public square participation. We congregate around ubiquitous street-facing café windows on *las esquinas*, raising and dropping our cups amidst animated chatter in what often looks like a choreographed sequence. Naturally, during moments of profound social and political importance, these *esquinas* become more populated and their conversations bear witness to heightened emotion. On November 25, 2016, *las esquinas* were abuzz with the news that Fidel Castro was dead.

As the funeral procession for the deceased dictator traced its way between La Habana and Santiago, media outlets and political pundits alike marched back along a more than fifty-seven year-old route to muse over his legacy. Microphones and keyboards scrambled to articulate an accurate image of the bearded orator and looked first to the (extensive) video reels of his boisterous discourses; to his distinctive profile on propagandized posters; to the haphazard schematics of his command-engineered social experiments; and even to the footnotes of his personal biography. Yet, the legacy of Fidel Castro finds its most credible testimony in the incredible experiences of the Cuban people on the island and in exile, who have, for decades, propelled themselves forward not because of Castro's revolutionary leadership, but in spite of it.

The true legacy of Fidel Castro is found in the stories of patience, endurance, and triumph borne by the Cuban people in the face of the deprivation, separation, and repression that Cuba's self-appointed head of state imposed. It is best discerned as a collection of moments of profound impression on all Cuban lives. Every Cuban family, on the island and in exile, carries with it a series of vignette impressions, sometimes tucked away silently in reflection and other times brought forth vociferously in discussion. These moments are handed down generationally. Among perhaps the most profound impressions shared are those of monopolization of the press and airwaves, expropriation of real property, confiscation of personal property, engineering of apartheid social conditions, exportation of violence and terrorism, desperate emigration of small children without their parents, televised sham-trials, summary executions by firing squad, names and faces of prisoners of conscience, lives lost crossing the Florida Straits, and Sunday beatings of defenseless women, among others.

More than five and a half decades of impression certainly lends itself to a great many legacies when disassembled moment by moment.

As the world deliberates the legacy of Cuba's longest-serving dictator, it seems a particularly appropriate time to reflect upon the uniquely palpable personal stories of many other Cuban-born men and women who, as a direct result of Fidel Castro's actions, merit personal admiration in ways that no news report, documentary, or socio-political commentary can ever hope to ascribe to Cuba's deceased Comandante himself.

The following reflection represents merely one personal experience of a shared Cuban history and is proffered in contribution to an ongoing conversation about the legacy of a dictator who forever changed the course of history for the Cuban people. This is a story from our grandfather, who, as it happens, was also an attorney.

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Subsequent to his arrival in Havana on January 8, 1959, Fidel Castro quickly began implementing his revolutionary policies. By the mid-1960s, Castro's Revolution permeated nearly every inch of Cuban civil, political and economic life. On one particular day, it reached beyond the propaganda-peppered radio waves and televised images, stretched further than the lines for sustenance rations, and grabbed ahold more tightly than the shackles that bound its political prisoners. Ushered in by the commentary of emboldened neighborhood Committees for the Defense of the Revolution, the Cuban Revolution forcibly entered our grandfather's home by way of the mail slot. Correspondence arrived which included a Resolution executed by the municipal arm of the government that stated, in part, as follows:

Resolution No. 27—WHEREAS Mr. . . . communicated to this Body his decision to abandon our Homeland, which by way of the work of our glorious socialist revolution has been converted in the Beacon of America, to go and reside within the imperialist Yankee monster, enemy of the working classes and of the people of Latin America.

WHEREAS the decision expressed by Mr. . . . to forge alliance with Yankee imperialism and its lackeys, cannot pass unnoticed by our workers, whose



mutual participation in the construction of our new socialist society shows their repulsion of everything that signifies an alliance with the traditional enemy of their achievements and the struggle of classes.

WHEREAS for the foregoing reasons we proceed to rescind the employment contract that maintains said man and, as a consequence, declare his dismissal from the position he holds.¹

Having grappled with the decision to physically part from his homeland, his family, and the life he labored to build, it was with extreme heartache that our grandfather painstakingly applied for a visa to leave Cuba in the mid-1960s. Like many other Cubans at that time (and so many Cubans still today), he sought to flee the only country his young family had ever known. A place that by then had become a totalitarian dictatorship shrouded in socialist rhetoric. And in January of 1966, the Revolution sought to do something about it.

The language of the resulting Resolution is striking to read today. The rhetoric employed was combative in nature

and like the Revolution itself declared war on those who were not fervent supporters. Even then, as he witnessed the military state usurp liberty and the economy decay, our grandfather contemplated the tragic irony of these apostles of the “glorious socialist revolution.” In correspondence to his brother referencing the Resolution he wrote, “As you can see, it is almost laughable; but, no, they are to be pitied. Poor souls.”² By way of this Resolution, our grandfather’s employment, way of life, and the only viable manner of providing for his family was stripped from him within the series of a few typed lines.

By this time in Cuba’s history, there was little doubt that the Revolution had not only waged war against its traditional political enemies, but actively pursued segments of its population disillusioned enough with its repressive hand to intend to leave everything behind and start anew elsewhere. Under a government desperate to maintain power, order, and the submission of its people, the mere request of a visa was an act against the State itself.

After receipt of the Resolution, and subsequent unemployment as a direct result of state policy, our grandfather found himself led by armed soldiers, obligatorily corralled together with other men on short notice, forced onto a military truck, and carried away from his neighborhood to cut sugarcane in support of the Revolution at an unknown location for an indefinite amount of time. Once an intent to emigrate was manifested, compulsory support of the Revolution was comprised of forced manual labor, isolation from his family, restriction of movement of any kind (including needing permission for use of the facilities), and bare barrack accommodations. Any deviation from the rules would result in severe punishment. The Cuban Revolution first called such labor camps “Military Units to Aid Production” (UMAP); their laborers refer to them as concentration camps.

Canadian journalist Paul Kidd, who was expelled from Cuba on September 8, 1966 after tracking down a forced-labor camp hidden in the sugar fields of central Cuba, conducting interviews,

and obtaining the first uncensored pictures taken therein, provides one of the few third-party testimonies to Castro's labor camps. He wrote that nearly 200 forced labor camps were hidden among tall, lush sugar fields in central Cuba. "Inside behind barbed wire fences, an estimated 30,000 Cubans live[d] under armed guard."³ Kidd's account described the conditions of the camps: "[T]he two long white concrete buildings where the inmates slept resembled cattle pens. Strips of sacking slung between wooden posts served as beds. On the outside wall of a large, bare building just inside the camp entrance, a picture of Lenin glowered."⁴ He continued, "the nightly two hours of ideological indoctrination and Communist propaganda were designed to help develop a 'correct attitude toward the revolution.' Providing a ready-made source of cheap—almost slave—labor, UMAP camps were being used to develop big areas of land in remote regions. Virtually anyone could be drafted into UMAP, ages of inmates ranged from sixteen to more than sixty."⁵ Mr. Kidd went on to say that "this, then is the type of device used to keep the Cuban population in line."⁶

In notes kept during the time of his internment, our grandfather described the strips of sacking slung between wooden posts in which he and the other forced laborers slept each night. He noted the scarcity of food among the internees, particularly those last in line at mealtime. Ever the attorney, he kept an accounting of the volume of sugar his unit cut each week. And perhaps most heart-wrenching were the notes in which he wondered why he was kept from receiving correspondence from his wife. While interned, during sleepless nights at his labor camp, our grandfather carved a *Jícara* (a drinking vessel) from a gourd distinctly found in the Cuban countryside. Not otherwise a craftsman of any kind, the *Jícara* was an undertaking to divert his attention from his circumstances.

The UMAP camps and system of forced labor implemented by Castro's government are largely glossed-over in summary reflections of Castro's Revolutionary Cuba, but their existence and their effect upon those forced to labor within them is

very much a part of Castro's legacy. Forty-two years after the closure of the UMAP camps, in response to an interview question regarding labor camps established exclusively for "counterrevolutionaries," artists and homosexuals (other targeted groups), Fidel Castro responded simply, "Yes, there were moments of great injustice, a great injustice . . . If anyone is to assume responsibility, it's me."⁷

The Military Units to Aid Production program ended in 1968, the same year that our grandfather was initially interned. After months, he and his family were eventually granted a visa to emigrate to the United States. Leaving his parents behind, he took our grandmother's bare hand, (as she obligatorily left her wedding ring behind), and together they departed from everything they had ever known, including Fidel Castro's revolutionary reach.

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Our grandfather's story, like the stories told by every Cuban on the island and in the greater diaspora, is a small piece of a greater shared journey. Together, these stories best illustrate the true enduring legacy of one man's decades-long dictatorship. As Styrofoam and ceramic cups of *cafécito*—vessels of conversation, memories, and speculation—were raised and dropped rampantly along *las esquinas* this November, we could not help but recall another cup crafted and imbued with meaning: the *Jícara*.

Among the few belongings which Fidel Castro allowed our grandfather to take with him when he left Cuba was the single *Jícara* that had been carved during his internment in the forced labor camp. For years this unassuming cup has been kept in our grandparents' home. Worthless in monetary value, this physical artifact was deliberately and carefully transported across the Florida Straits and preserved as a reminder of a difficult time in Cuba's history, of the struggles still endured on the island today, and as a point of reflection that our family can share over a *cafécito* with those who want to learn about the Cuban people, their resilience, and their unsatiated desire for their nation's freedom.

¹ Personal Correspondence. 30. Jan. 1966. La Habana, Cuba. [Translated to English by Authors].

² Personal Correspondence. 30. Jan. 1966. La Habana, Cuba. "Como vez, es para reirse; pero, no, dan lastima. Pobrecitos." [Translated to English by Authors].

³ Paul Kidd, *The Price of Achievement Under Castro*, THE SATURDAY REVIEW, May 3, 1969, at pp. 23–25.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Carmen Saade, *Soy el responsable de la persecución a homosexuales que hubo en Cuba: Fidel Castro*, LA JORNADA, (Aug. 31, 2010), <http://www.jornada.unam.mx/2010/08/31/index.php?section=mundo&article=026e1mun>.



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FinCEN Targets South Florida's Skyline

By: Andres (Andy) Fernandez and Elena Otero

2016 brought forth much discussion regarding “know your customer,” “customer due diligence,” and beneficial ownership transparency, including the lack thereof, in “all cash” real estate transactions. Last year began with the first Geographic Targeting Orders¹ (the “GTOs”) issued by the U.S. Department of Treasury Financial Crimes Enforcement Network (“FinCEN”) on January 13, 2016. Shortly thereafter on January 31, 2016, CBS’ 60 Minutes aired Anonymous Inc., Part I, which showcased New York lawyers being offered the opportunity to give prospective clients questionable advice in connection with their real estate acquisitions². And just a few months later, the Panama Papers, an unprecedented leak of 11,500,000 files from the database of Panamanian law firm Mossack Fonseca took the world by storm. The Panama Papers included a laundry list of politicians, national leaders, celebrities and high net worth individuals and the myriad of ways in which they used offshore tax regimes to hide assets and purchased real estate under shell companies that did not reveal the true ownership of the entity. While FinCEN later issued a second set of real estate focused GTOs expanding the reach of the January 13th GTOs, the impact has been seemingly minimal,³ and much is left to be desired with respect to the identification of beneficial ownership for entities acquiring real estate in “all cash” transactions⁴.

In particular, the January 13th GTOs temporarily required various United States title insurance companies to identify the natural persons behind companies⁵ used to pay “all cash”⁶ for high-end residential real estate purchased in Manhattan, New York and Miami-Dade County, Florida. The title companies subject to the January 13th GTOs were required to collect data as to the beneficial ownership of entities⁷ purchasing residential real estate in an amount in excess of \$1,000,000 in Miami-Dade County, Florida and \$3,000,000 in Manhattan, New York.

The January 13th GTOs were effective for one hundred eighty days⁸ as of March 1, 2016 and expired on August 27, 2016. The GTOs required that the affected title companies file FinCEN Form 8300 within thirty days from the closing date reporting the identity of the individual primarily responsible for representing the buyer entity and the beneficial ownership of the entity, defined in the January 13th GTOs as the individuals who own, directly or indirectly, 25% or more of the equity interests in the entity.

Subsequently, on July 27, 2016, FinCEN took additional action and issued supplemental GTOs, effective as of August 28, 2016, that expanded the reach of the January 13th GTOs. The July 27th GTOs were directed to all boroughs of New York City, including Manhattan, Miami-Dade, Broward and Palm Beach counties in Florida, Los Angeles, San Francisco, San Mateo, Santa Clara, and San Diego counties in California and Bexar County in Texas. The July 27th GTOs also set monetary thresholds per county ranging from \$500,000 to \$3,000,000. In both the January 13th and July 27th GTOs, FinCEN noted that it remained concerned that “all cash” purchases were being conducted by individuals seeking to hide assets and launder money through opaque entity structures. Notably, FinCEN Acting Director Jamal El-Hindi stated that the information obtained through the January 13th GTOs had provided valuable information regarding possible illicit activity and shell companies. Additionally, the July 27th GTOs noted that the information, thus far, received by FinCEN was already being used by federal and state law enforcement agencies to discover potential assets held by persons of interest to them. Treasury officials quoted in *The Wall Street Journal* justified the expanded reach of the July 27th GTOs citing that “more than a quarter of transactions reported in the original orders involved someone listed in at least one of the 17 million suspicious activity reports filed with the government

by financial institutions since shortly after the September 11, 2001 terrorist attacks.”⁹ And yet, after the January 13th GTOs, the *Daily Business Review* reported in March that the pace of cash acquisitions in Miami-Dade County, Florida had not suffered since such January 13th GTOs were issued, citing brokers and attorneys as saying transactions were continuing and reporting “business as usual.”¹⁰

So, where does all this leave us? There has been much speculation about the reach of these GTOs and whether they will, in fact, be temporary or whether they are the beginning of an expansion of the current regulatory framework covering banks and the nonbank real estate sector. There has also been much talk about the limitations posed by the GTOs. For example, a buyer who is intent on hiding their identity via the use of a shell company can simply forego title insurance or can use an offshore trust to acquire the asset, neither of which would trigger any reporting requirements since the GTOs are limited, at this time, to title insurance companies and their agents and entity purchasers, respectively. Such buyer may also limit their ownership in the entity to less than 25%, which would not trigger the reporting requirements. Lastly, the GTOs do not cover “all cash” transactions where payment was rendered by the buyer via funds transfer, leaving a noticeable gap in what is likely the most commonly used method of payment in “all cash” transactions by buyers.

Based on FinCEN’s comments that the GTOs have provided relevant information, its longstanding concerns related to money laundering through real estate¹¹, and the fact that these GTOs are meant to cover the approximately 22% of real estate purchases nationwide not captured by financial institutions which are required by FinCEN to maintain and implement an anti-money laundering compliance program (“AML Program”)¹², it seems we can accurately speculate that the GTOs will remain in effect in some form permanently and will not be a temporary requirement.

It can also be noted that the reach of the GTOs may be further expanded, since the Panama Papers have led to a debate as to whether lawyers, law firms and realtors should also be subject to “know your customer” and “customer due diligence” requirements to effectively hinder money laundering and provide the “greater clarity”¹³ in real estate transactions sought by FinCEN in issuing these GTOs. We are then left with the question: Will FinCEN seek to impose the requirement of maintaining and implementing an AML Program on more players involved in the real estate sector?

In light of the foregoing, many may feel that this will affect the real estate markets that are the targets of the GTOs, but it seems that the GTOs have not had such an effect, and most buyers who do not have malicious intent will continue to acquire real estate assets in the ordinary course. While it will be interesting to see how FinCEN and any future GTOs/regulations shape real estate transactions, it seems we can now say with certainty that FinCEN and law enforcement will continue to target real estate transactions as they seek greater transparency in such transactions.¹⁴

¹ FinCEN may issue orders that impose recordkeeping and reporting requirements on domestic financial institutions or nonfinancial trades or businesses in a geographic order pursuant to 31 U.S.C. § 5326(a), 31 CFR § 1010.370 and Treasury Order 180-01.

² <http://www.cbsnews.com/videos/anonymous-inc-part-i>

³ Former FinCEN Director Jennifer Shasky Calvery touched upon this in her speech to the ACAMS AML and Financial Crimes Enforcement Conference in Hollywood, Florida on April 12, 2016 stating that these GTOs were really “pilot efforts” to “gather information while furthering [FinCEN’s] incremental, risk-based approach to regulating” the real estate industry. <https://www.fincen.gov/sites/default/files/shared/20160412.pdf>

⁴ It is likely obvious that the GTOs discussed in this article only focus on “all cash” transactions as transactions involving institutional financing are already subject to extensive “know your customer” and “customer due diligence” requirements to identify beneficial ownership when an entity is involved.

⁵ The January 13th GTOs define a “legal entity” as a corporation, limited liability company, partnership or other similar

business entity, whether formed under the laws of a state, the U.S. or a foreign jurisdiction.

⁶ “All cash” includes currency, cashier’s checks, certified checks, traveler’s checks, or money orders for any part of the purchase price. Business checks, personal check, and wire transfers do not trigger the requirement under the January 13th GTOs, but business checks and personal checks were subsequently included with the extension of such GTOs on July 27, 2016.

⁷ Natural persons and trusts are not subject to the GTOs.

⁸ GTOs are only permitted to last 180 days, but are routinely extended.

⁹ <http://www.wsj.com/articles/u-s-expands-real-estate-data-targeting-order-1469647229>

¹⁰ <http://www.dailybusinessreview.com/id=1202752553014/Pace-of-Cash-Luxury-Sales-Suffers-Little-After-Feds-Take-Look>

¹¹ Former FinCEN Director Jennifer Shasky Calvery noted this in her speech to the ACAMS AML and Financial Crimes Enforcement Conference in Hollywood, Florida on April 12, 2016. It is also worth noting that since April 2003, when FinCEN issued its first rulemaking in this area, this has been an area of concern for FinCEN and that concern has only increased with time. <https://www.fincen.gov/sites/default/files/shared/20160412.pdf>

¹² As noted by Former FinCEN Director Jennifer Shasky Calvery, the “current regulatory structure covers approximately 78 percent of real estate purchases nationwide”. <https://www.fincen.gov/sites/default/files/shared/20160412.pdf>

¹³ Former FinCEN Director Jennifer Shasky Calvery stated that the reporting stemming from the GTOs in conjunction with regularly filed suspicious activity reports (SARs) were “helping to provide greater clarity on suspicious activity taking place in this sector of the real estate markets” in her speech to the ACAMS AML and Financial Crimes Enforcement Conference in Hollywood, Florida on April 12, 2016. <https://www.fincen.gov/sites/default/files/shared/20160412.pdf>

¹⁴ As this article goes to print, there is uncertainty as to the promulgation of additional regulations in this area in light of the moratorium on further rule-making. However, on February 23, 2017, the GTOs were extended for an additional six months confirming that FinCEN and law enforcement will continue to seek clarity with respect to real estate transactions.



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LEGAL ROUND UP

By Elliot B. Kula, W. Aaron Daniel and William D. Mueller

G4S Secure Sols. USA, Inc. v. Golzar, 2016 WL 6609710
(Fla. 3d DCA Nov. 9, 2016)

Appellate Court takes a Hard Look at Peeping Tom

G4S Secure Solutions, better known as “Wackenhut,” was tasked with providing security for Old Cutler Bay, a residential housing community in Miami-Dade County. In November 2008, Wackenhut hired a new security guard, Eric Owens. Prior to hiring Owens, Wackenhut performed a background check, which revealed that Owens had been convicted in California for disorderly conduct years earlier. But without looking into the nature of the conviction, Wackenhut hired Owens anyway.

Two years later, Owens was assigned to the security detail for Old Cutler Bay. And one evening, while on patrol duty in the neighborhood, Owens illicitly videotaped a high schooler in her bedroom while she was in a state of undress. The girl caught Owens, and alerted the authorities. Owens was convicted of two criminal counts of video voyeurism. And at Owens’ criminal trial, it was revealed that his prior conviction in California was for a similar crime.

The high schooler then sued Wackenhut for its negligent hiring of Owens, the basis of which was that Wackenhut should have known Owens had been convicted of peeking and prowling in California. Following a jury verdict in the high schooler’s favor, Wackenhut moved to set aside the jury verdict and judgment based on Florida’s impact rule. Florida’s impact rule provides that “before a plaintiff can recover damages for emotion distress caused by the negligence of another [such as negligent hiring], the emotional distress suffered must flow from physical injuries the plaintiff sustained in an impact.” The rule actually requires some form of “impact” on the plaintiff, or at least the manifestation of severe emotional distress, such as physical injuries or illness.

The Third District Court of Appeal, in a divided panel, ruled in favor of Wackenhut. It held that without any impact, or rather physical injury, the high schooler could not recover damages for emotional distress. But, recently-retired Judge Shephard of the Court disagreed with the majority, in what was deemed by the two-judge majority to be a “compelling dissent.” Judge Shephard held that though the Florida Supreme Court had not yet enabled recovery for purely psychological damages, that doesn’t mean it wouldn’t in this particular case. And while Judge Shephard said he “appreciate[d] the majority’s reticence to go where our Supreme Court has not yet gone,” he believed the Court’s task was to “divine what the Florida Supreme Court would do if presented with the facts of [this] case.” Based on growing authority in support of an exception to the impact rule, which exception would allow for the recovery of psychological damages in certain negligence cases, Judge Shephard would have denied Wackenhut’s motion to set aside the jury verdict, and tagged Wackenhut for its employ of a known “Peeping Tom.”

LEGAL ROUND UP



De La Osa v. Wells Fargo Bank, N.A., 2016 WL 7232272 (Fla. 3d DCA Dec. 14, 2016) and *Rivas v. The Bank of New York Mellon*, 2017 WL 436297 (Fla. 4th DCA Feb. 1, 2017)

What Would Scalia Do ... with Florida Rule of Civil Procedure 1.540

Following the dismissal of the plaintiff's action when the plaintiff did not receive notice of the final trial, the plaintiff sought to vacate the dismissal order as void. The question that presented itself to the Third District Court of Appeal by virtue of the plaintiff's motion to vacate was whether Florida Rule of Civil Procedure 1.540(b) applies only to a void "judgment or decree" or to a void final "order" as well. The Third District, following a motion for rehearing, ruled *en banc* that Rule 1.540(b) did in fact apply to orders as well as judgments and decrees.

Relying on renowned pillars of textual interpretation, such as Bryan Garner and the late Antonin Scalia, the Third District's majority discussed whether the drafters of the Rule intended to apply a negative implication (*see* "the expression of one thing implies the exclusion of the other") to the phrase "order" in the Rule. After considering the phrase in context of the Rule, and in juxtaposition with Rule 1.530 which the court deemed a "complement" of Rule 1.540, the majority held that Rule 1.540 uses the terms "final judgment" and "order" interchangeably. Returning to Justice Scalia's own tutelage, the majority held that such an interpretation "causes the body of law to make sense."

Judge Scales, on other hand, writing for the dissent, found that the majority was needlessly parsing a Rule that was otherwise "clear and unambiguous." Judge Scales was of the opinion that the majority was abusing its "interpretive power of statutory construction to create a new definition for the term 'judgment or decree' in rule 1.540(b)(4)." Had the drafters of the rule intended for the word "judgment" to encompass the meaning of the word "order," according to Judge Scales, they would have not enlisted each word for separate duty in the Rule. But because the drafters had not, it was improper for the Court to step into the drafters' shoes and rewrite the Rule. From Judge Scales' point of view, what the majority ruled *en banc* was certainly not "What Scalia would do."

Months after the *De La Osa* opinion, the Fourth District Court of Appeal placed its own stamp of approval on the Third District's ruling in consolidated appeals: *Rivas v. The Bank of N.Y. Mellon*. The Fourth District "agree[d] with the Third District's *en banc* decision" and ruled that Rule 1.540 applied to "orders" as well as "judgments or decrees." Absent from the Fourth District's holding, sadly, was any sort of prognostication of what the late Justice Scalia would do.

It is worth noting that the Civil Procedure Rules Committee of the Florida Bar has taken up the task of reviewing the language of Rule 1.540 in light of the recent opinions by the Third and Fourth Districts. In the days soon to come, perhaps Judge Scales' concerns regarding the plain language of the Rule will be assuaged.

CABA BRIEFS

G4S Secure Sols. USA, Inc. v. Golzar

De La Osa v. Wells Fargo Bank, N.A.

LEGAL ROUND UP

Ramphal v. TD Bank Nat'l Ass'n, 206 So. 3d 172 (Fla. 5th DCA 2016)

“Eeny, meeny, miny, moe,” a Reasoned Choice, the Trial Court Must Show

On an evidentiary hearing to determine the fair market value of a foreclosed residential property, the homeowner and bank both put forward expert testimony appraising the value of the property. One expert appraised the property at \$890,000, while the other appraised it for nearly two times more, \$1.63 million. Faced with the conflicting opinions, the trial court was “free to determine the reliability and credibility of these competing opinions and to weigh them as the court saw fit.”

The trial court did engage in that analysis and found both experts incredible, and their testimony lacking. But, instead of determining a price point between what the two experts testified, the trial court simply chose between the two expert opinions, stating “that it had no discretion to determine the value of the subject real property outside the parameters of the appraisers.” And so, the trial court adopted the value of whichever expert got closer to the amount that the court had determined was correct.

The Fifth District Court of Appeal reversed, observing that the “trial court is not limited to simply selecting the opinion of one qualified expert over the other,” but rather has the discretion to “find a different value than that provided by either expert,” so long as the trial court provides an articulable, factual basis for doing so. In other words, the trial court, the Fifth District assured, could exercise its own judgment when presented with expert testimony; it was not stuck with the incredible witness testimony. If the expert witnesses did not know, the trial court did not have to ... catch a tiger by its toe.

Bartram v. U.S. Bank, Nat'l Ass'n, 2016 WL 6538647 (Fla. Nov. 3, 2016).

Here We Have It: The So-Called Final Word on the Statute of Limitations in Foreclosure Actions.

The Florida Supreme Court handed the lending industry a huge win at the end of 2016, in *Bartram v. U.S. Bank*. The Court answered, once and for all, the question of how the statute of limitations, section 95.11(2)(c), Florida Statutes, applies to foreclosure actions.

Or did it?

Let's start with the narrow holding: when a first foreclosure action is involuntarily dismissed, a mortgagee is not precluded from filing a subsequent foreclosure action based on non-payment defaults occurring subsequent to the dismissal of the first action — so long as the subsequent default occurred within 5 years of the subsequent action. Op. at 1. In other words, even if a foreclosure action on a specific default date fails, and the statute of limitations runs on the sued-upon default date, the mortgage lien is not cancelled by the statute of limitations.

Now the facts: Lewis and Patricia Bartram purchased a property, but then divorced. Op. at 2. As part of the divorce settlement, Lewis purchased the property from

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Patricia, taking a loan from U.S. Bank's predecessor and giving a second mortgage to Patricia. *Id.* On January 1, 2006, Lewis stopped paying both U.S. Bank and Patricia. *Op.* at 3. And so, on May 16, 2006, U.S. Bank filed a foreclosure complaint against Lewis. *Id.* Nearly five years later, on May 5, 2011, the Bank's action was involuntarily dismissed for failure to attend a hearing. The Bank never appealed or sought to reinstate. Patricia then foreclosed on her mortgage. Lewis cross-claimed against U.S. Bank, seeking a declaratory judgment quieting title and asking for the Bank's mortgage to be canceled for failure to complete its foreclosure within 5 years of the 2006 foreclosure action. *Op.* at 4. The trial court canceled the mortgage. *Id.*

On appeal, the Fifth District Court of Appeal reversed, holding that the statute of limitations did not run on the balance of the note and mortgage, but it certified the question as one of great public importance. *Id.* The Florida Supreme Court agreed, accepting the Fifth District opinion's rationale, as well as that of the later *en banc* opinion of the Third District Court of Appeal in *Deutsche Bank Trust Co. of Americas v. Beauvais*, 188 So. 3d 938 (Fla. 3d DCA 2016).

It all traced back the earlier Florida Supreme Court foreclosure opinion in *Singleton v. Greymar Associates*, 882 So.2d 1004 (Fla.2004). *Op.* at 5.

In *Singleton*, the Supreme Court held that a second foreclosure action based on a default date different from the first action was not barred by res judicata (or, claim preclusion). This was due to the unique nature of mortgages. A mortgage contains continuing obligations for the borrower to both (i) pay **installments** through the life of the loan, and (ii) pay the **balance** of the loan upon maturity. Because of the ultimate obligation for the balance of the loan, the failure to collect a single installment does not preclude collection of later installments. Applying res judicata this way was equitable, said the Court. The borrower is not unjustly enriched in the amount of the entire balance simply because the lender failed to foreclosure on a single installment default.

That equitable principle and the unique nature of mortgages, held the *Bartram* Court, compelled the same result under the statute of limitations. *Op.* at 6–7. That is, the statute of limitations runs from each individual installment claim. And once it runs, and an action based on a single payment default date is dismissed, only a subsequent claim based on that prior default date is time-barred.

The *Bartram* opinion also hinged on the effect of dismissal on the mortgage. *Op.* 8–10. When there is a non-payment default, the mortgage grants the mortgagee the **optional** remedy of accelerating, that is, declaring **all amounts** immediately due under the mortgage and ending the installment nature of the contract. The mortgagee elects to accelerate by affirmatively filing a complaint (after providing notice and a chance to cure to the mortgagor as required by the mortgage).

Lewis argued the act of accelerating the debt swept the entire balance into the statute of limitations window such that the time bar operated on the entire loan, precluding any action once the window closed. The Court disagreed. Dismissal **revokes** acceleration, or decelerates, returning the mortgage to its installment contract status, which status creates individual causes of action for each installment, and thus individual time period for the statute of limitations. *Id.* If acceleration contracts the loan into the space of a single statute of limitations window, then dismissal expands it beyond the window.

The Court, therefore, held that the statute of limitations did not serve to cancel the mortgage lien outright. *Op.* at 11–12.

Justice Lewis, however, issued a concurring opinion that reads more like a dissent. *Op.* at 12–15. For Justice Lewis, the terms of the mortgage itself do not

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provide for any automatic deceleration. Under the terms of the mortgage, Lewis reasoned, acceleration is a nuclear option. There's no going back. The majority, Lewis said, created the concept of deceleration from whole-cloth, improperly relying on a reinstatement provision in the mortgage intended only for the **borrower**, not the lender. *Id.* There was nothing in the mortgage that stated a dismissal would return the parties to their pre-acceleration status.

And even more troubling to Justice Lewis was the majority's use of equity to relax the application of section 95.11(2)(c), Florida Statutes. Res judicata could be relaxed as applied to mortgages because it's a judge-made doctrine. But the statute of limitations is, well, a statute, passed by the legislature. Any relaxation of the statute's application was an impermissible breach of the separation of powers, argued Justice Lewis. Op. at 14. But, in the end, Justice Lewis nonetheless concurred in the result reached by the majority.

Indeed, the effect of *Bartram's* result should not be understated. If the statute of limitations operated to bar suit on an entire debt after dismissal of a foreclosure action on a single installment date, large portions of lenders' portfolios would be wiped clean. In the same stroke, borrowers would have incurred substantial tax burdens because their loans would be, essentially, forgiven.

But *Bartram* left lingering concerns. For example, mortgagees can now refile foreclosure actions after having a previous action dismissed, so long as they base the subsequent action on a default date subsequent to the dismissal. But are the amounts due and owing that are five years beyond the subsequent action forever time-barred? The *Bartram* opinion seems to suggest that such amounts outside the five years are recoverable: "the Bank had the right to file a subsequent foreclosure action—and to seek acceleration of **all sums due under the note**—so long as the foreclosure action was based on a subsequent default, and the statute of limitations had not run on that particular default." But the specific facts of *Bartram* did not include a subsequent action, and so any discussion of what a subsequent action might entail was dicta.

What was expected to be the final word begs the question. And, in fact, the question is pending before the Supreme Court in yet another foreclosure appeal, *Bolletteiri Resort Villas Condo Association v. Bank of New York Mellon*, Case No. SC16-1680. (And, as of the time of this article, rehearing motions were still pending in *Bartram*).

So, here we are, waiting again. The full contours of the statute of limitations in foreclosure actions has yet to be defined.

Appellate Practice Pointers

Nocari Inv., LLC v. Wells Fargo Bank, N.A., 2016 WL 6092069 (Fla. 3d DCA 2016)

Do Not Forgo Filing an Initial Brief without Telling the Court

Nocari Investment decided at the eleventh-hour not to pursue its appeal and informed its appellate counsel not to file an Initial Brief. But no one told the Third District Court of Appeal that the show had been cancelled. After issuing several orders directing Nocari to file an Initial Brief, the Third District required appellate counsel to show cause and explain why its orders had been ignored. Counsel



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explained that its client had decided to abandon the appeal, and “based upon simple oversight,” counsel had forgotten to inform the Third District.

Well, that didn’t cut it. For the “oversight” the Court referred counsel to the Local Professional Panel for Florida’s Eleventh Circuit.

Chessler v. All Am. Semiconductor, Inc., 2016 WL 6992409 (Fla. 3d DCA, Nov. 30, 2016)

Do Not Confuse a Departure from the Essential Requirements of Law with Simple Legal Error

David Chessler, and several companies he either owned or controlled, filed a petition for writ of certiorari to quash a non-final order disqualifying their counsel and the counsel’s law firm. Chessler’s attorney, apparently, had represented the other side for many years. But Chessler argued in his petition that the trial court was incorrect in disqualifying the attorney and that such a disqualification amounted to an irreparable injury.

The Third District Court of Appeal agreed that the disqualification of Chessler’s attorney would amount to an irreparable injury and so it accepted jurisdiction of the petition. But Chessler fell short of his mark on the merits. The Third District held that simply alleging the trial court erred did not meet the criteria for a petition for writ of certiorari. Instead, the “required departure from the essential requirements of law means something far beyond legal error.” Chessler was tasked with alleging – and proving – an “inherent illegality,” an “abuse of judicial power,” or an “act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.” Whether the trial court got the ruling wrong is neither here nor there.

Jarrette Bay Inv. Corp. v. BankUnited, N.A., 2016 WL 6992220 (Fla. 3d DCA Nov. 30, 2016)

Do Not Cite the Wrong Appellate Rule of Procedure When Seeking Appellate Attorney’s Fees

BankUnited sought to recover its appellate attorney’s fees as a sanction after prevailing in the lower court under section 57.105. Relying on a set of cases that predated the Florida Supreme Court’s 2010 amendment to Florida Rule of Appellate Procedure 9.410, however, left BankUnited empty handed. It cited the wrong rule! Prior to the 2010 amendment, the rule provided a procedure for the appellate court only, on its own motion, to impose sanctions. But the 2010 amendment specifically implemented and established a detailed procedural mechanism for parties seeking to impose sanctions against opposing parties in appellate proceedings pursuant to section 57.105.

And that procedure requires parties seeking appellate fees as a sanction to proceed under rule 9.410(b), and not the old rule, 9.400(b). BankUnited followed the old model, and as a result, failed to properly allege in its motion for fees that it followed the correct protocol. It was not awarded fees.

CABA BRIEFS

Nocari Inv., LLC v. Wells Fargo Bank, N.A.

Chessler v. All Am. Semiconductor, Inc.

Jarrette Bay Inv. Corp. v. BankUnited, N.A.



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Finkel v. Batista, 2016 WL 5874614 (Fla. 3d DCA Oct. 5, 2016)

Do Not Fail to Object to Verdict Form

Messrs. Finkel and Batista were involved in a fender-bender car accident. Mr. Batista sued Mr. Finkel for the medical costs he incurred as a result of the accident. And at the conclusion of trial, Mr. Batista presented to the jury an “all or nothing” jury form, asking the jury to find Mr. Finkel either completely liable or not liable for his injuries. The jury followed instructions and completed the verdict form, finding Mr. Finkel 100% liable for the accident.

On appeal, Mr. Finkel claimed that it was error to present the jury with an “all or nothing” jury form. The Third District held that because Mr. Finkel did not object to the verdict form that invited the jury to return a verdict on an “all-or-nothing” basis, it could not claim error on appeal. He got what he asked for! And the jury did what it was asked to do. It is well-settled law, the Third District Court of Appeal stated, that “the jury cannot be faulted for doing exactly what it was instructed to do” in those circumstances.



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CROQUETAS

La Cocina de Christina

INGREDIENTS:

4 Tablespoons butter
1 Tablespoon chopped onion
1 cup milk
¾ cup flour
½ teaspoon salt
1/8 teaspoon black pepper
some zested nutmeg
1 teaspoon *vino seco* (dry cooking wine)
2 cups of your *croqueta* ingredient
(ground ham, ground turkey, cooked spinach, ground beef, etc.)

Everyone loves a good *croqueta*. Whether from abuela's kitchen, your local *ventanita*, or at any party, a *croqueta* is one of those treats that can spark up a lively debate. Which is the best one? Whose grandmother makes the best? Ham, chicken, *bacalao*, cheese or spinach? Make this recipe with any ground protein or creative filling and call it your own. In just four easy steps, you'll be on your way to making *croquetas* at home. ¡*Buen provecho!*

INSTRUCTIONS

Croqueta batter, in 4 easy steps:

1. Melt 4 Tablespoons butter and fry 1 Tablespoon chopped onion.
2. In a blender, mix 1 cup milk, ¾ cup flour, ½ teaspoon salt, 1/8 teaspoon black pepper and some zested nutmeg. Add to onions.
3. Mix together, over low heat, until it thickens and pulls apart from the sides, like dough.
4. Remove from heat and add 1 teaspoon *vino seco* (dry cooking wine) and 2 cups of your *croqueta* ingredient (ground ham, ground turkey, cooked spinach, ground beef, etc.) Mix, toss into a bowl and let cool in fridge. Makes about 16 fritas.

Once the batter has cooled, take a spoonful and form it into a *croqueta* shape (cylindrical, about 3" in length and 1" in circumference) with your hands. Roll the *croqueta* in the egg, then Cuban cracker meal (*galleta molida*) and repeat. Fry the *croqueta* for about 3 minutes and set on a towel-lined plate to cool.



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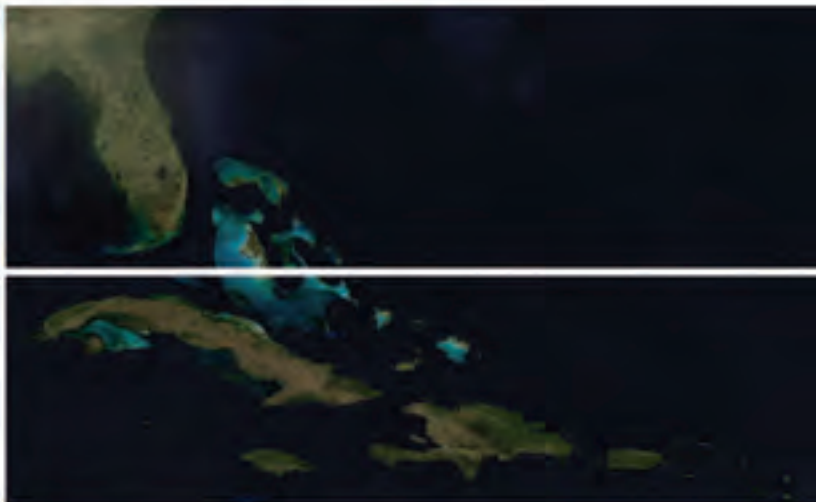
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*"The Beauty of the world
lies in the diversity of its people."*
- Unknown

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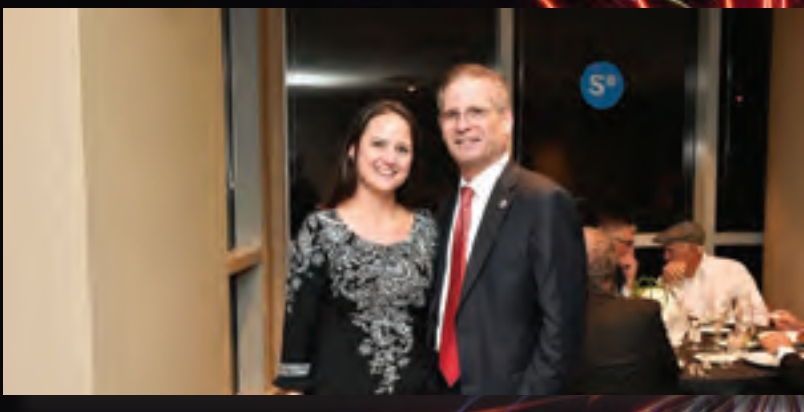
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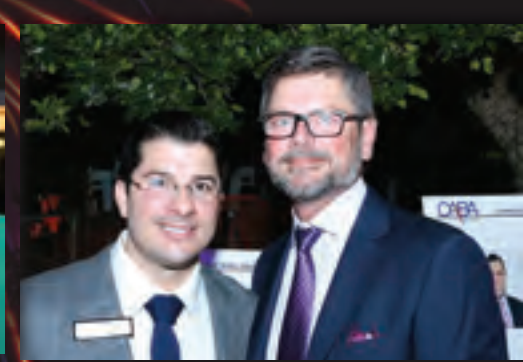
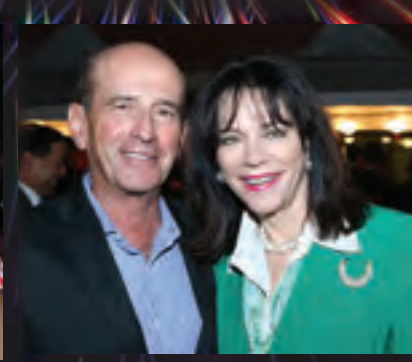
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- 2006** Our own Coralli Lopez-Castro, welcomed as CABA President
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