

SUMMER 2011



HUMAN RIGHTS
VIOLATIONS
IN **CUBA**

Are we doing enough?

BRIEFS



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14

Bay of Pigs Event

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CABA's Newly Reestablished
Human Rights Committee

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CABA
BRIEFS



Victoria Méndez
President

PRESIDENT'S NOTES

SUMMER 2011

In welcoming the Summer months, and reaching the mid-year point of my Presidency, I am working to ensure that I am on track to fulfilling many of the goals that I spoke about at the Installation Gala, *i.e.*: remembering our roots as an organization, mentoring our young law students and lawyers to create incredible future leaders, encouraging diversity and community outreach, and focusing on the human rights violations taking place just 90 miles away from Florida.

I believe we can say with pride, that we are well on our way this year to further many of the goals that we set out to accomplish. Much of our event programming this year has focused heavily on our themes, as mentioned above. We have remembered our heroes from Brigade 2506. We have lobbied extensively to maintain our Court funding intact. We have had great Young Lawyer Events and a Mentoring Luncheon. We have celebrated our "Abogados" with our very own founding father Mario P. Goderich. We collected items for the poor and continue to provide pro bono legal services. We even spoke at the ABA Hearings on Hispanic Rights and Responsibilities and held a Diversity Summit with DCBA, FAWL, and other local bar associations. But most importantly, this issue of CABA Briefs gets us one step closer towards raising awareness for the ongoing abuses in Cuba.

CABA's *CABA on CUBA* Committee and our newly recreated Human Rights Committee are showcased in this issue. These committees' efforts are invaluable in bringing awareness to a forgotten people: those who suffer each day on an island that does not believe in basic human rights. Cuba is an island without freedom of speech or freedom of choice. Cuba is an island plagued with atrocities. And while as Americans we see other parts of the world freed of tyranny and terrorism, all we can do is see the former "Pearl of the Antilles" eaten away by the sands of time.

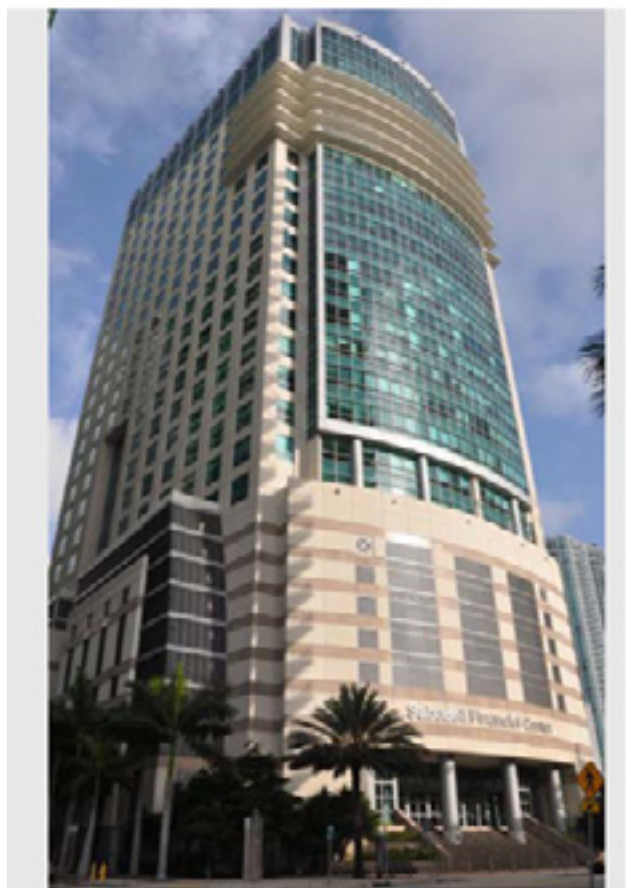
We hope you will take to heart this issue of *CABA Briefs* and share in our history and present day struggles.

Warm regards,

Victoria Méndez



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Yara Lorenzo
Editor-in-Chief

EDITOR'S NOTE

SUMMER 2011

Dear Friends,

After completing work on our last issue of CABA Briefs, dedicated to the 50th Anniversary of the Bay of Pigs, I, along with so many other members of CABA, felt that there was more we could be doing. Documenting the heroism of the Bay of Pigs veterans was inspiring. Even more touching was how many of the veterans continued to dedicate their lives to fighting for a free and democratic Cuba while becoming successful Americans, raising beautiful families, and never forgetting their beloved island. But as an organization, and as individuals, what's next for us?

In seeking an answer to that question, I focused this issue entirely on the status of human rights violations in Cuba. While our fight is undoubtedly different than the one the Bay of Pigs veterans faced, we share a common mission: to fight for a free and democratic Cuba. In that vein, I am grateful to CABA's leadership for allowing Raúl Chacón Jr. and I to reestablish CABA's Human Rights Committee. As you will read, through this committee, we will carry on the work of past CABA members who gave countless hours to fight for political prisoners in Cuba, including Dr. Oscar Elías Biscet, a recently freed prisoner of conscience.

The Human Rights Committee's mission is three-fold: to raise awareness for the ongoing human rights violations on the island; to support dissident attorneys in their fight to implement rule of law and an independent judiciary; and to hold the Cuban regime accountable through any available means for their blatant human rights violations. We will do this by holding an annual briefing in Washington D.C. on the status of human rights in Cuba and by releasing an annual report documenting the same on December 10, 2011, International Human Rights Day.

Supporting the cause of freedom for all in our imprisoned island is not a generational or partisan issue – it is a moral imperative. And it is one that CABA will continue fighting for until our brothers and sisters in Cuba share in the same liberties that we take for granted. Please contact me or Raúl to get involved.

Warm regards,

A handwritten signature in black ink that reads "Yara Lorenzo". The signature is fluid and cursive, with the first letters of "Yara" and "Lorenzo" being significantly larger and more stylized than the rest of the letters.

Yara Lorenzo

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LEGAL

ROUNDUP

What's happening in the Courts?

By Jane W. Muir and Lana Naghshineh Aponte

Arbitration
Attorneys' Fees
Criminal Defense Law
Employment Law
Insurance
Matrimonial Law
Professional Licensure
Regulatory Law

Arbitration

AT&T Mobility v. Concepcion, 131 S. Ct. 1740 (2011)

The U.S. Supreme Court abrogated a decision by the California Supreme Court in *Discover Bank v. Superior Court*, 36 Cal 4th 138 (Cal. 2005), where the court found class arbitration waivers in consumer contracts unconscionable. In reversing *Discover Bank*, the U.S. Supreme Court held California law is preempted by the Federal Arbitration Act ("FAA") because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" under the FAA. The FAA provides that the act does not preempt generally applicable contract defenses under state law. However, because allowing class-wide arbitration would frustrate the purposes of the FAA, California's judicial rule regarding the unconscionability of class arbitration waivers in consumer contracts was preempted. The implications of this decision are far reaching and will require arbitration of consumer issues on an individual basis.

Attorneys' Fees

Wagner, Vaughan, McLaughlin & Brennan v. Kennedy Law Group, No. SC08-1525 (Fla. 2011)

According to the Florida Supreme Court's recent decision in *Wagner*, the attorney's fees provision of the Wrongful Death Act, Fla. Stat. § 768.26, applies to a wrongful death action settled before suit was filed and in which the survivors were represented by separate counsel. The opinion is consistent with legislative intent and furthers public policy favoring settlement of disputes without litigation where possible. The opinion disapproves of the Third DCA's holding in *Perez v. George, Hartz, Lundeen, Flagg & Fulmer*, 662 So. 2d 361 (Fla. 3d DCA 1995), where the court found the statute would not apply where no action for wrongful death had been filed or litigated. When survivors are represented by separate counsel, the personal representative's attorney should be compensated out of the total settlement proceeds, reduced by the amount necessary to reasonably compensate the other firm(s) for any work they performed. Those firms must show what they have done to effectuate settlement.

Criminal Defense Law

Marrero v. State, No. SC09-2390 (Fla. 2011)

continued on next page...

The dollar value of damages is an essential element of felony criminal mischief. Based on a plain reading of Florida's felony criminal mischief statute, the Florida Supreme Court held in *Marrero v. State* that evidence of the exact dollar amount of damages must be presented at trial because "the only difference between second degree misdemeanor mischief and third-degree felony mischief is the value of the damaged property. Felony criminal mischief requires proof of the amount of damages, whereas second-degree misdemeanor mischief does not. Absent proof of the amount of damages, an act of criminal mischief, as defined by the criminal mischief statute, is a misdemeanor of the second degree. The value of damages, therefore, is clearly an essential element of felony criminal mischief." According to the opinion, the trier of fact may not use the severity of the crime, or its estimation of the damages based on life experience, to determine whether a defendant is guilty of felony criminal mischief.

Employment Law

Myers v. Toojay Management Corp., No. 10-10774, 2011 WL 1843295 (11th Cir. May 17, 2011)

According to an opinion issued by the Eleventh Circuit Court of Appeal affirming a ruling from the Middle District of Florida, subsection (b) of 11 USC § 525, which provides that a private employer "may not terminate the employment of, or discriminate with respect to employment against" an individual on the grounds that he/she has been or currently is in bankruptcy, does not prohibit a private employer from denying employment to an applicant based on those grounds. The Court's opinion is based on the fact that subsection (b) states nothing about a private employer denying employment to an applicant if the applicant has been or currently is in bankruptcy. However, if the government is the employer, it may not deny employment based on the fact an individual has been or currently is in bankruptcy.

Insurance

Swan v. State Farm Mut. Auto Ins. Co. No. 3D10-107, 2011 WL 1563934 (Fla. 3d DCA, 2011).

University of Miami Law Professor Alan Swan, who was tragically killed by an uninsured motorist, had uninsured motorist ("UM") coverage denied. The family had two vehicles insured under separate State Farm policies. They had stacked UM coverage under the policy for the car involved in the crash but

had rejected UM coverage in the policy covering their other car. Despite the fact that they purchased stacked coverage for one vehicle, they were not entitled to stack UM coverage with the other vehicle because they paid no premium for UM coverage on that vehicle. In *Swan v. State Farm*, the court held that UM coverage is based on the number of premiums paid, explaining that "[w]hile the policy premium for non-stacked coverage is at least twenty percent less than the premium for stacked coverage, non-stacked coverage is subject to numerous coverage limitations that are not applicable to stacked coverage. See § 627.727(9)(a)-(e), Fla. Stat. (2010). These limitations include not just the inability to add together (or "stack") the UM liability limits of two or more motor vehicle policies—which is the primary focus of the appellants—see § 627.727(9)(a), Fla. Stat. (2010), but also the



restriction that non-stacked coverage does not apply to an insured who is injured 'while occupying any vehicle owned by such insured for which uninsured motorist coverage was not purchased.' 627.727(9)(d), Fla. Stat. (2010). Unlike stacked coverage, non-stacked UM coverage does not provide coverage for every vehicle that the insured owns— it only provides coverage for the vehicle on which the UM premium was paid."

Matrimonial Law

Kaaa v. Kaaa, No. SC09-967 (Fla. 2011)

The Florida Supreme Court has decided that a non-marital home's passive appreciation is a marital asset when marital funds pay the mortgage. Specifically, it held that when a marital home constitutes non-marital real property, but is encumbered by a mortgage that marital funds service, the value of the

passive, market-driven appreciation of the property that accrues during the course of the marriage deemed a marital asset is subject to equitable distribution under section 61.075(5)(a)(2), Florida Statutes (2007), according to the Florida Supreme Court. The court found that the value of the passive appreciation of the property that accrued during the marriage is a marital asset because: (1) the value of the home appreciated during the marriage while marital funds were being used to pay the mortgage; and (2) Katherine Kaaa made contributions to the home. Because paying the mortgage is a prerequisite to enjoying the appreciation in value of the marital home, the court concluded that principles of equity do not allow an owner spouse to receive the full benefit of the passive appreciation when the non-owner spouse contributed to the property and marital funds were used to pay the mortgage. Therefore, the passive appreciation of the property is deemed a marital asset subject to equitable distribution.

Professional Licensure

Florida Bar v. Kivisto, No. SC07-2281 (May 12, 2011)

In *Florida Bar v. Kivisto*, Kivisto filed a petition for review of a Florida Bar referee's report that recommended he be disbarred. During the course of the proceeding, Kivisto filed 120 motions and writ petitions. The court found these filings to be meritless. Also, Kivisto never filed an initial brief on the merits but instead, continued to file motions, petitions, and requests for oral arguments. The Florida Supreme Court ordered Kivisto to show cause as to why the Court should not direct the clerk to reject any of his further filings. Kivisto did not comply with the order. Rather, he continued to file documents, which should have been included in the initial brief, containing arguments regarding the disciplinary case. Because Kivisto did not show good cause for the filings, the Florida Supreme Court sanctioned him, finding that Kivisto had wasted the Court's time and resources and rejected any future filings made by Kivisto in regard to the disciplinary action. Kivisto was disbarred for five years with the eligibility to resubmit a bar application. All future filings by Kivisto after the five-year period must be signed by a member of the Fla. Bar in good standing.

Regulatory Law

Miami-Dade County v. Malibu Lodging Invest., LLC No. 3D09-3218 (Filed June 1, 2011).

City Inn is a multi-story hotel abutting

Interstate 95 and located within Miami-Dade County. For some time, the hotel has sold space on the north, south and east sides of the building for signage. The County determined that the signage violated several provisions of Chapter 33 of its Code of Ordinances and filed suit against the Inn. The lawsuit, however, was dismissed by the trial court with prejudice for lack of jurisdiction, lack of standing, failure to state a cause of action entitling the County for injunctive relief and finding the ordinances unconstitutional. In *Miami-Dade County v. Malibu Lodging*, the Third District Court of Appeal reversed the trial court holding that the police power and Article VIII, § 2(b) of the Florida Constitution entitle the County to exercise the power to, “[e]stablish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public. § 125.01(1)(h), Fla. Stat. (2008). More specifically, section 125.0102 provides that “[n]othing in chapter 78-8, Laws of Florida, shall be deemed to supersede the rights and powers of municipalities and counties to establish sign ordinances; however, such ordinances shall not conflict with any applicable state or federal laws.” **CB**

Jane W. Muir is a civil trial attorney, who practices in Coral Gables with Grinberg & Muir, PLLC. She earned her J.D. from the University of Miami and B.A., magna cum laude, from the University of Florida.

Lana Naghshineh Aponte is a law clerk at Grinberg & Muir, PLLC and a J.D. Candidate for the Class of 2012 at the University of Miami School of Law. She earned her B.A. in Communications and Media Studies, cum laude, from Fordham University.

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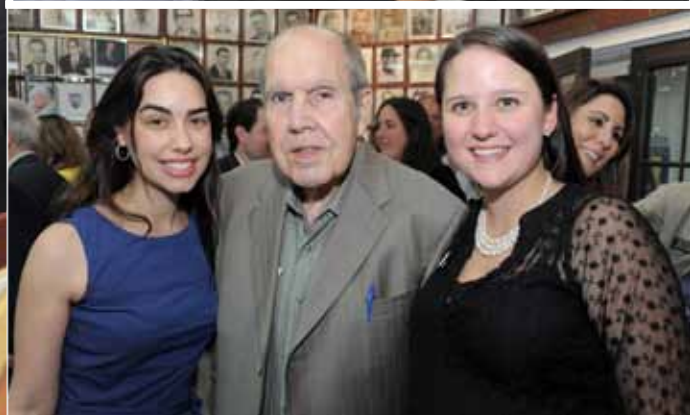
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BAY OF PIGS

50th ANNIVERSARY COMMEMORATIVE EVENT

The Cuban American Bar Association honored the veterans of La Brigada 2506 on the 50th Anniversary of the Bay of Pigs invasion. CABA held a commemorative event at the historic Bay of Pigs Museum in Little Havana, on Friday, April 15, 2011 (two days before the actual anniversary of the April 17, 1961 invasion). The event was attended by City of Miami Mayor Tomas Regalado, many of La Brigada's veterans, CABA members, judges, and other public figures. Through this event, CABA helped raise awareness of the museum's needs. Due to federal budget cuts, the museum has lost federal funding, making day-to-day operations difficult for the veterans.

At the event, the now silver haired veterans reflected back on the days when they were in their late teens









and early twenties, a time in which their main objective was to free their recently captured homeland. Veterans in attendance included special forces, pilots, paratroopers, armory and infantry. The tales of tragedy, betrayal and survival resonated in the hearts of those in the crowd. In closing, the underlying theme as seen on their faces, and heard in their voices, but not necessarily spoken through their words was:

help us continue telling our story.

CABA will continue to celebrate their legacy and more importantly, support their work.



ARE WE DOING

ENOUGH

By Yara Lorenzo



Eleven Cuban prisoners of conscience from the 2003 Black Spring. Their faces to the right and names listed below:

Pedro Argüelles Morán
Oscar Biscet González
Eduardo Díaz Fleitas
José Daniel Ferrer García
Diosdado González Marrero
Iván Hernández Carrillo
Librado Linares García
Héctor Maseda Gutiérrez
Ángel Moya Acosta
Félix Navarro Rodríguez
Guido Sigler Amaya



The Cuban American Bar Association was founded in 1974 based on the conviction that as Cuban-American lawyers we have a unique responsibility to use our knowledge and experience to influence the process of reestablishing rule of law in Cuba. Nearing our 40th anniversary, two things have not changed: our convictions as an organization and the malice of the Cuban regime. While we have accomplished a tremendous amount by integrating ourselves into the fiber of American life, so long as the Cuban people continue to be denied of their God-given rights, work remains to be done. Today grounds in Cuba are more fertile for change than ever—our efforts therefore, more necessary than they have ever been.

In the Fall of 2003, CABA members Aldo Leiva, Tony Castro, and Judge Gladys Perez, dedicated months to representing the imprisoned political dissidents of what has become known as the black Spring of 2003. The team of CABA attorneys filed a petition before the Inter-American Commission of Human Rights on behalf of more than 70 peaceful pro-democracy political and human rights activists arrested by the Cuban Government for promoting civil change and democracy within the island. Through the efforts of Leiva, Judge Perez, Castro and others, the commission issued a lengthy report condemning the Cuban government for its actions. That report has been cited to, and used by, European countries as support for sanctions against Cuba.

One of the better-known dissidents in that group is Nobel Peace Prize Nominee, Dr. Oscar Elías Biscet, who was released earlier this year. Biscet, unlike other dissidents released with him, refused exile in Spain and remains in Cuba fighting for his people. He needs our support. In the coming pages you will read an article by an attorney at the Inter-American Court for Human Rights explaining the various mechanisms there are for holding Cuba accountable through the Inter-American system, and an interview with Dr. Biscet, on paper, directly urging CABA members for support in his continued fight for a free and democratic Cuba.

Another extraordinary advocacy effort was led by former CABA board member, Eugenio Hernandez. In 1994, he led a group of CABA attorneys who traveled to Cuba to expedite the legal rights of detained Cuban rafters caught in political limbo. That group gave more than 5,000 hours representing refugees, making their cases before U.S. government authorities and ensuring that they were being treated properly.

CABA has also gone beyond direct advocacy and written out its vision for Cuba's transition to democracy. CABA's Cuba on Cuba Committee took on the task of drafting the Fundamental Transitional Law of the Republic of Cuba. The law sets out a proposed legal framework to reestablish the rule of law and democracy in Cuba. The most significant aspect of that project was the coalition that came together to make it happen. It was perhaps the first time that all known groups of Cuban lawyers in exile from around the world, including lawyers in the United States and Europe, came together with a common purpose of working to draft a plan of action for Cuba's transition. Until the day comes when we can implement the transitional law however—a lot of work lies ahead.

What makes our efforts more necessary and pressing than ever is

One of the better-known dissidents in that group is Nobel Peace Prize Nominee, Dr. Oscar Elías Biscet, who was released earlier this year. Biscet, unlike other dissidents released with him, refused exile in Spain and remains in Cuba fighting for his people. He needs our support.

HE NEEDS OUR SUPPORT!

that despite the regime's monstrous efforts, the Cuban people have proved resilient. Today, thanks in large part to the support made possible by our community, the Cuban people can look forward to a brighter tomorrow thanks to the leadership provided by the island's growing dissident movement. Where before there was darkness, today Cuba's youth can see the light at the end of the tunnel.

Finally, in this issue of Briefs you will hear about the situation in Cuba from the ultimate authority: from the perspective of dissidents on the island, struggling for their rights. It is important that our membership get these perspectives because we are in the unique position to take action for our own. You will meet an incredibly inspiring young blogger named Laritza Diversent. She is one of Cuba's many young and brave dissident attorneys, tired of censorship. In her blog you can find a treasure trove of writings documenting her experiences and hardships on the island. Knowing Laritza is fighting in Cuba, should give us the inspiration to support her efforts. If we, as Cubans and Cuban Americans do not, we cannot expect for others to do so. Laritza provides us with an understanding of the legal system in Cuba and that there are courageous independent attorneys on the island fighting for the ability to use their voice. They are working within the worst constraints to do the impossible.

As CABA reestablishes its Human Rights Committee, our work is ready to be greeted by a vibrant civil society. Our work has been made possible, not by the work of a single individual, but rather by the collective efforts of an organization committed to its principles and realizing its vision of a free and democratic Cuba. As you read through the next several articles, we hope you will join CABA's human rights committee in reasserting CABA's commitment to helping those in Cuba who thirst for freedom made possible by the rule of law. Most importantly, I urge you to join me in asking yourself "What more can we do?" **CB**

LAWVA

YOUNG
LAWYERS



YEERS

On Thursday, March 31, 2011, CABA's Young Lawyers Committee hosted its first networking happy hour of the year at Fado's Irish Pub, in Mary Brickell Village, sponsored by Northwestern Mutual. Guests enjoyed complimentary appetizers and cocktails. The night was a great success with over 150 law students, attorneys and judges in attendance. The Young Lawyers Committee adds to the mission of CABA by connecting younger members to the general legal community and encouraging them to serve as future leaders in the organization. It was the perfect opportunity for young attorneys to meet and interact with seasoned attorneys and judges in our community. Events, such as this networking happy hour, also serve to help young attorneys and law students become more familiar with CABA and its mission.



DR. OSCAR ELÍAS BISCET INTERVIEW

In one of Dr. Oscar Elías Biscet's first Interviews he shares with us his experiences in Castro's prisons and sends a message to the members of the Cuban American Bar Association

Dr. Oscar Elías Biscet, a Cuban medical doctor and human rights activist was released on March 11, 2011, after serving eight years of a 25-year sentence for committing crimes against the sovereignty of Cuba. This was not the first time he was detained however; prior to that, he was detained 26 times and served a three-year sentence in 1999. He was awarded the Presidential Medal of Freedom by President George W. Bush in 2007 and he is, in the eyes of many, our modern-day Jose Marti. In 1997, he founded the Lawton Foundation for Human Rights (Lawton being the neighborhood in which he lived) (www.lawtonfoundation.com) with the main objective of advocating for the rule of law in Cuba. He is currently nominated for the Nobel Peace Prize.

Interview by Yara Lorenzo & Raúl J. Chacón Jr.

Why were you imprisoned twelve years ago and why do you think you were released on March 11?

In Cuba there exists a totalitarian dictatorship that finds itself in its final phase, it is going through a severe economic, political, social, and moral crisis. The socialist regime failed and it is without viable solutions to offer the Cuban people. Under these emerges a movement in favor of its democracy and liberty. This plural movement is known popularly as the people for human rights and throughout the course of the years it has steadily developed, reaffirming its purpose within the Cuban community, and gaining international sympathy.

At this juncture, I promote a new scientific method, which has produced excellent results in other countries. It is called civil disobedience or civic fight, not violent, but peaceful resistance. Described by Henry Thoreau, taken to practice by Mahatma Gandhi and Martin Luther King, carried out didactically and scientifically, by Gene Sharp.

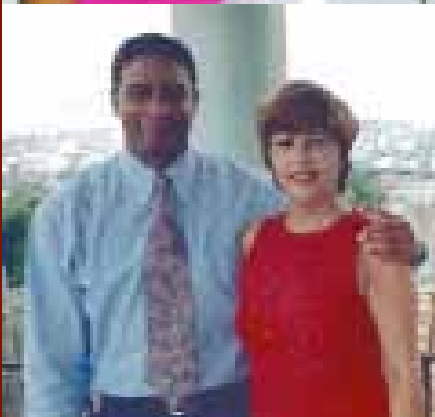
As the human rights movement is endowed with a solid intellectual base, its followers were able to understand its strategies and tactics in conquering their inalienable human rights. Being associated with a growing number of followers, the regime, timid in fear of losing its privileges ordered my unjust imprisonment.

It was a grave political error to have ordered the incarceration of a large group of peaceful dissidents in what become known as the Black Spring of 2003. This group quickly gained the sympathy and world-wide recognition that brought political discredit to Castro's government.

In 2008, through succession, there is a new direction in the regime's governance-Raul Castro takes over as the leading expert of the deep crisis the system found itself in.



From the grave mistakes that have been made he tries to sweeten the regime in order to obtain financing from democratic countries and save his system. Due to internal pressures from the human rights movement, as well as international pressure he decides to banish political prisoners and prisoners of conscious to Spain and without much choice, except a group of them who refused a life in exile.



What was it like in Castro's prisons?

Castro's regime is an anti-American dictatorship, anti-semitic, and anti-black. These arbitrary biases are reflected in every day society, and especially in the prisons because of what we can see by way of observing cruel and inhumane treatments, even torture. I was able to perceive those fragrant violations, systemic and continuous of our human rights. A few examples are as follows:

People thrown to the ground, decubitus, handcuffed at their hands and their feet, their four extremities tied together. This is the very sad method called "the chair" used by military officials. They make the process of affliction worse by adding water to the ground, taking off the clothes of the recluse if it is winter, or by simply leaving them in that position for 24 hours or more.

Using electric guns as coercion or applying electrical current to the prisoners for banal acts.

The denial, by authorities, of medical attention as a means of retaliation. I observed one person who had self-mutilated himself, he had pierced himself with a metal object in his pelvis and was kept in the dungeon of isolation for two days without attention, despite our protests. After battling for his medical assistance he was taken to the hospital and operated for a chemical peritonitis.

Despite those circumstances, how were you were able to continue your work advocating for human rights in Cuba?

The dictatorship is the same in society, as it is on the island, but in the latter it is a closed system that hides any complaints. My job as a human rights activist is to make public the arbitrary actions of the military, of government insiders and most of all, avoid these violations to human dignity. Of course, fighting for those liberties was a great sacrifice and it hurt me a great deal; I suffered being jailed in prisons and isolation, family visits were suspended, I was denied the right to receive food brought by my family and the letters of my loved ones and supporters. I suffered physical and psychological abuse. On various occasions I was near death. And all of that a sinister plan so I would refuse my ideas and principles.

My deep love for mankind the consequence of the presence of God in each individual; that is why I persevered, because of the force of agape love I found in each one of my humane activities. And when I found myself mentally breaking down because of the torture I was enduring, I prayed from the deepest, most pure place in my heart, to our heavenly father to stop the torture, and if it was necessary to go through such suffering, that my values emerged intact.

What are you plans now that you are a free man?

Ever since I met our Biblical God, I have always been a free man and have maintained that quality without regard to the place I may find myself in, be it in a dirty dungeon, or in this tyrannical society. My only objective is that my country is able to enjoy freedom as soon as possible.

Financial aid to support pro-democracy work in Cuba is essential. How can attorneys in Miami and across the U.S. support your work in the fight for a free and democratic Cuba?

During the American Revolution in 1776, the citizens of the Union had the material and moral support of other villages. Many of them shed blood on the battle field. The Spanish, in their war for independence, with the support of its citizens, achieved their patriotic objectives. On the same note, the Germans were able to liberate themselves from Hitler. What can we say about President Ronald Regan, who is held as an icon of liberty for freeing European countries from communism. We Cubans are also appreciative of the American people for their support for Cuba's in Cuba's fight for independence. Solidarity for the liberty of a country is a duty that should be a moral imperative of any person, group, or country.

The Cuban reality is that our exiled compatriots and Americans are both necessary strongholds so that Cuba can be free and democratic on day and should take necessary

continued on next page...

actions so that this goal can become a reality, just like the international community did so with racist South Africa and Honduras in 2009.

There are measures that can be bereaved, but are inevitably vital. It is better to have some limited pain than to permit a civil war like in Libia or Siria wherein their dictators mascaraed their own people, to then take tardy actions before the International Court and the United Nations.

The Castros would have the world think that there has been progression in Cuba. What is the state of respect for basic civil liberties, such as the respect for freedom of religion and expression?

The Castro brothers, like any other tyrant maintain their power through fear of state and through lies. That is why we live in a state of fear that deeply affects the psyche and wellbeing of the community. This causes that people hide their personality, because there exists a number of dissidents, but they are two-faced. This vicious attitude happens in some free countries that prefer to have a neighboring country, than to enjoy liberty, despite having some moments of instability. Liberty is always so much better because it dignifies each human being and invariably induces national stability through solid and prolonged compromises.

According to Nathan Sharansky, “a state of fear is characterized by an inexorable process:

- 1. Stagnation**
- 2. Regression**
- 3. Sinking**

The only way to slow it down is to seek external help.”

Like all communist regimes, curtailing human rights is the main characteristic of those systems- the violation of the thirty articles in the Universal Declaration of Human rights are the negative foundations that sustain Castro’s regime, where open violations of inalienable rights are visible. The basic liberties: freedom of speech, expression and thought; freedom of religion, freedom of association, equal protection under the law; due process and fair trials. All of these rights are abrogated in this country, even within in Castro’s communist party.

That is why it is necessary that the international community,



Front view of prison isolation cell, as described by Dr. Biscet. There is one small ventilation shaft and another small opening near the floor where food is inserted.

an especially freedom lovers, not support Castro’s Stalinism totalitarian regime—but rather help the Cuban people be free.

How can we free the other political prisoners and prisoners conscious in Cuba?

Political prisoners and prisoners of conscious are growing in Cuba;



President George W. Bush presents the Presidential Medal of Freedom to Yan Valdes Morejon and Winnie Biscet in honor of their father Oscar Elías Biscet during a ceremony Monday, Nov. 5, 2007, in the East Room. "Oscar Biscet is a healer — known to 11 million Cubans as a physician, a community organizer, and an advocate for human rights," said the President about the imprisoned physician. "The international community agrees that Dr. Biscet's imprisonment is unjust, yet the regime has refused every call for his release."

our hope and thirst for liberty. Many political cases are masked through crimes like dangerousness (when a person is punished because they might commit a crime in the future). In May and June of this year, there were seven young people imprisoned and deprived of their liberty, for 2 to 5 years, only because they sang rap music that was critical of the regime and others for distributing leaflets demanding liberty. You can help these individuals by raising awareness of their cases to the various international organizations, governments and non-governmental organizations, and through the various means of communication in order to pressure the Castro regime into releasing them.

What does the future hold in store for you?

What I wish I the immediate future is that we can establish a democratic and free republic in my country, with a constitution that prioritizes human rights; especially the inalienable rights. This guarantees peace and prosperity for all Cubans; to establish good relations with our neighboring countries, in particular with you, Americans, and to become a part of the North American Free Trade Agreement. **CB**

DR. OSCAR ELÍAS BISCET ENTREVISTA

En una de las primeras entrevistas del Dr. Oscar Elías Biscet, comparte con nosotros sus experiencias en las prisiones de Castro y envía un mensaje a los miembros de la Asociación de Abogados Cubanos Americanos.

Entrevista Por Yara Lorenzo & Raúl J. Chacón Jr.

¿Por qué fue encarcelado doce años atrás? ¿Por qué crees que Castro te dio la libertad el 11 de marzo?

En Cuba existe una dictadura totalitaria que se encuentra en su fase final, está atravesando por una profunda crisis económica, política, social y moral. El régimen socialista fracasó y no tiene soluciones viables que ofrecerle al pueblo cubano. Bajo estas circunstancias surge del pueblo un movimiento a favor de su democracia y libertad. Este movimiento plural es conocido popularmente como la gente de los derechos humanos, con el transcurso de los años ha mostrado un desarrollo ascendente, reafirmando entre los cubanos y gozando de intensa simpatía internacional.

En esta situación promuevo un método científico con excelentes resultados prácticos en otros países. Llamado Desobediencia Civil o, Lucha Cívica no Violenta o, Resistencia Pasiva. Descrito por Henry Thoreau, llevado a la práctica por Mahatma Gandhi y Martin Luther King; desarrollado didáctica y científicamente por Gene Sharp.

Al dotar al Movimiento de Derechos Humanos de una base intelectual sólida, sus seguidores pudieron comprender su estrategia y táctica en la conquista de sus derechos inalienables, asociado a un incremento del número de sus adeptos, la cúpula del régimen temió perder sus privilegios y ordenaron mi injusto encarcelamiento.

Fue un error político haber ejecutado la encarcelación de un grupo numeroso de disidentes pacíficos en la llamada Primavera Negra de 2003. Este grupo rápidamente ganó la simpatía popular y el reconocimiento internacional que desencadenó descrédito político en el gobierno castrista.

En el 2008 surge por sucesión un nuevo gobierno en la dirección del régimen, Raúl Castro como primer mandatario y conocedor de la profunda crisis que vive el sistema. De los graves errores cometidos trata de edulcorar su tiranía para obtener el financiamiento de los países democráticos y salvar su sistema. Asociado a las presiones internas del movimiento de derechos humanos y las internacionales decide desterrar a los prisioneros políticos y de conciencia a España y aceptar de mal gusto a un grupo de ellos que se negó a exiliarse.

¿Cómo eran las condiciones en la cárcel?

El régimen de Castro es una dictadura antiamericana, antisemita y antinegra. Estas arbitrariedades se reflejan en toda la sociedad, en especial en sus cárceles por lo que podemos observar desde los tratos crueles e inhumanos hasta las torturas. Pude percibir estas violaciones fragrantemente, sistemáticas y continuas de los derechos humanos. Ejemplos de algunas de ellas:

Personas echadas en el piso en decúbito prono esposadas las manos y los pies y unidas las cuatro extremidades. Este es el muy tristemente célebre método de "la sillita" utilizado por los militares. Pueden incrementarse la aflicción del proceso a la adición de agua





en el piso y quitarle las ropas al recluso si es la temporada invernal, o simplemente dejarlo en esa posición durante 24 horas o más.

Usar pistolas eléctricas como coerción o aplicarles corriente a los internos por hechos banales.

Negación por las autoridades de los servicios médicos como represalias. Observe a una persona que se auto agredió, se introdujo un punzón metálico en la pelvis y estuvo en el calabozo de aislamiento por dos días, a pesar de nuestras protestas y después de tanto batallar por la asistencia médica fue llevado al hospital y operado de una peritonitis química.

¿A pesar de esas circunstancias, como fue capaz de continuar su trabajo de defensa de los derechos humanos en Cuba?

La dictadura es la misma en la sociedad que en la cárcel pero esta última es un sistema cerrado que propicia las violaciones y frena las denuncias. Mi labor como activista de derechos humanos fue hacer públicas las arbitrariedades de los militares de los miembros internados y, sobre todo evitar se cometieran estas violaciones a la dignidad humana. Por supuesto, esta defensa de los derechos humanos me costó sacrificio y dolor; padecí castigos de aislamiento en celdas tapiadas, suspensión de visitas familiares y matrimoniales, me negaron el derecho de las bolsas alimentarias traídas por mi familia y las cartas de mis amigos y simpatizantes, me aplicaron torturas físicas, psicológicas, en varias ocasiones estuve en peligro de muerte; todo este siniestro plan fue para que rehusara a mis ideas y principios.

Mi profundo amor por el ser humano es consecuencia de la presencia de Dios en cada uno de ellos, por eso perseveraré por la fuerza del amor ágape en mis actividades humanistas. Y cuando por fuerza de las torturas estuve a las puertas del desequilibrio mental, ore desde lo más hondo y puro de mi corazón al Padre Santo por revertir tal situación pero que si era necesario de padecer dicho sufrimiento al menos pudiera conservar mis principios.

¿Cuáles son sus planes ahora que usted es un hombre libre?

Desde que conocí al Dios Bíblico siempre he sido un hombre libre y he mantenido esta cualidad sin importar el lugar donde me encuentre, sea en un calabozo inmundo o en esta sociedad tiránica. Mi único objetivo es lograr que mi pueblo disfrute de la libertad lo más pronto posible.

El sostén financiero para ayudar el trabajo prodemocrático en Cuba es esencial. ¿Como puede procurar en Miami y a través de EU para apoyar su trabajo en la búsqueda de la libertad y la democracia en Cuba?

Cuando la Revolución americana de 1776, los ciudadanos de la unión tuvieron el apoyo moral y material de otros pueblos; incluso algunos derramaron su sangre en el campo de batalla. Los españoles en su guerra de independencia con el sostén de otros ciudadanos alcanzaron sus objetivos patrios; de la misma forma los alemanes pudieron librarse de Hitler. Que podemos decir del presidente Ronald

Reagan, que es tenido como un ícono de la liberación de los pueblos europeos del comunismo. Nosotros los cubanos también agradecemos al pueblo americano su aporte a la independencia de Cuba. La solidaridad por la libertad de un pueblo es un deber moral imperecedero de cualquier persona, grupo de persona o gobierno.

En la actualidad cubana los compatriotas exiliados y los estadounidenses son baluartes necesarios para que el pueblo cubano sea libre y democrático, deben tomar las medidas ineludibles para este fin como hizo la comunidad internacional con Sudáfrica racista y Honduras en el 2009. Hay medidas que pueden ser apesaradas pero inevitablemente vital, mejor es un poco de dolor limitado a permitir el desarrollo de una guerra civil estilo Libia y Siria en que sus gobernantes masacran a sus pueblos, para entonces tomar las medidas tardías en la Corte Internacional y las Naciones Unidas.

Los Castros quieren dar la impresión que en Cuba ha habido progreso con respecto a los derechos civiles. ¿Cuál es el estado de los derechos humanos con respecto a las libertades básicas y la libertad de religión en Cuba?

Los hermanos Castro como cualquiera de los tiranos sostienen su poder por el terror de estado y la mentira. Por esto se vive en una sociedad del miedo, que afecta profundamente la psiquis de las personas y su bienestar. Esto hace que las personas desdoble su personalidad y se cosifiquen por lo que existe un número creciente de individuos disidentes, pero doble-pesadores. También esta actitud viciosa ocurre en algunos países libres que prefieren tener un pueblo esclavo vecino “estable”, que permitir el disfrute de la libertad aunque pase por momentos de inestabilidad. Siempre la libertad va a ser mucho mejor porque dignifica al ser humano e invariablemente induce a la estabilidad de la nación con sólidos y prolongados compromisos.

Según Natan Sharansky, la “sociedad del miedo se caracteriza por un proceso inexorable:

Estancamiento;
Regresión;
Hundimiento.

La única manera de ralentizarlo es buscar ayuda externa”.

Como todo régimen comunista, cercenar los derechos humanos es lo característico de este sistema social, las violaciones de los treinta artículos de la Declaración Universal de Derechos Humanos son los cimientos negativos del sustento del gobierno castrista, por lo que podemos constatar una violación franca de los derechos inalienables de las personas humanas. Las libertades básicas: libertad de palabra, de expresión y de prensa; libertad religiosa; libertad de reunión y asociación; derecho a recibir la misma protección de la ley; derecho al debido proceso judicial y aun juicio justo. Todos estos derechos están abrogados en el país, incluso dentro del Partido Comunista cubano.

Por eso es necesario que la comunidad internacional en especial los amantes de la libertad, no apoyen más a la dictadura totalitaria castro-estalinista sino que ayuden al pueblo cubano a ser libre.

Los prisioneros políticos y de conciencia van creciendo en el país, encarcelar es el método disuasivo para frenar las ansias de libertad de los cubanos. Muchos casos políticos son enmascarado por delitos comunes como el estado pre-delictivo de peligrosidad (la

persona es sancionada por la posibilidad de cometer un delito en el futuro). En los meses de mayo- junio del año corriente fueron sancionados siete jóvenes entre 2 a 5 años de privación de libertad solo por cantar música rap de crítica social y otros por distribuir octavillas exigiendo libertad. Se puede ayudar a estos prisioneros dando a conocer sus casos a las distintas instancias internacionales, gobiernos, organizaciones no gubernamentales y por los medios de comunicación para hacer presión sobre la administración castrista y sean puestos en libertad.

¿Qué opina usted del futuro?

Deseo para el futuro inmediato que se funde una república democrática y libre en mi país, con una constitución que priorice los derechos humanos; en especial las libertades inalienables. Esto garantiza la paz y la prosperidad de todos los cubanos; estrechar buenas relaciones con los países vecinos en particular con ustedes los americanos e integrarnos en el Acuerdo de libre Comercio del Norte. **CB**

NOT JUST A CITY, A COMMUNITY.
NOT JUST A COMMUNITY, A NEIGHBORHOOD.
NOT JUST A NEIGHBORHOOD, OUR HOME.

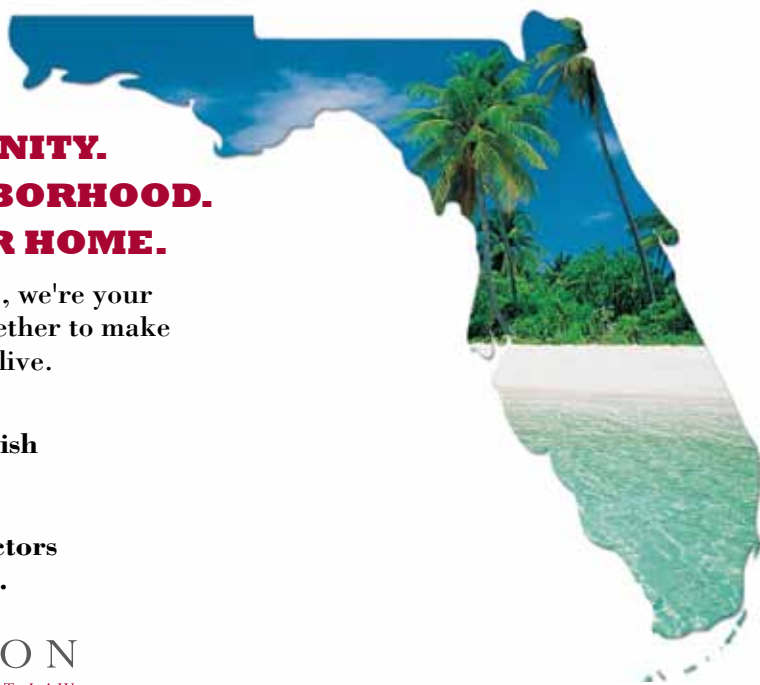
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Victoria Méndez
and the
2011 CABA Board of Directors
the best of luck in 2011.**

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Thank You!

We would like to thank the
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JUDGES' FORUM ON COURT FUNDING

As members of the Florida Bar, we must work to protect our third branch of government: the judiciary. Budget cuts during the last two years have left the court system in a severe crisis. On Friday, April 1, 2011, the Cuban American Bar Association teamed up with the Beacon Council, The Florida Chamber of Commerce, and the Latin Builders Association in organizing a panel of leaders in our community to address the issue. The event was held at the Bank United Center, and speakers included former CABA President and community leader Ray Abadin, Barney T. Bishop, III, Chief Judge Joel H. Brown, State Senator Anitere Flores and State Representative Jose Felix Diaz.





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EL EJERCICIO DE LA ABOGACÍA EN CUBA

Por Laritza Diversent

Tradicionalmente, se llama abogado a la persona conocedora de las leyes de su país y que asume con profesionalidad la dirección y defensa de las partes, en toda clase de procesos o en el asesoramiento legal. Sin embargo, en el sistema jurídico cubano, se considera abogado, el jurista que es admitido dentro de la Organización Nacional de Bufetes Colectivos (ONBC).

En Cuba, los Bufetes Colectivos se instituyeron en la década de los 70, época en que también se estableció el ejercicio de la abogacía como una categoría específica dentro del sistema legal. La ONBC, actualmente es una entidad de carácter nacional, interés social y profesional ¹. Está integrada por juristas y su actividad está reglamentada legalmente por el Ministerio de Justicia, quien además la inspecciona, supervisa y controla ².

Para pertenecer a los Bufetes colectivos el profesional del derecho, entre otras exigencias, debe tener condiciones morales acordes con los principios de la sociedad socialista y no pueden hallarse en el desempeño de funciones judiciales, fiscales, administrativas o de arbitraje ³.

El estado también estableció legalmente los casos en que permitiría, a un letrado, ejercer la abogacía, sin ser admitido por la ONBC. En ese supuesto se encuentran los juristas que reciban autorización expresa del Ministerio de Justicia o representen a una entidad estatal, cooperativa, organización social y de masas, sociedades civiles donde presten sus servicios; o sus dirigentes cuando se trate de hechos relativos a las funciones de su cargo ⁴.

También se puede ejercer la abogacía sin ser parte de los ONBC, cuando el letrado asuma la representación de asuntos relacionados con sus propios derechos, de su cónyuge o parientes hasta el cuarto grado de consanguinidad o segundo de afinidad. Se incluye en estos casos los profesionales que ejerzan la docencia en facultades de derecho ⁵.

Los usuarios de los bufetes colectivos pueden designar y contratar al abogado de su preferencia. Aunque, legalmente, están regulados los diferentes servicios jurídicos que prestan los letrados, así como el pago de sus honorarios y los casos en que podrá rebajarse dicha tarifa o eximirse al cliente totalmente de ella ⁶.

Cada bufete colectivo tiene un Director, que entre otras funciones, da su visto bueno a los contratos de servicios jurídicos y autoriza la prestación gratuita de servicios. También está legalmente reguladas las causas que pueden alegar los abogados para excusarse o renunciar la atención de asuntos, pero su jefe decide si procede o no ⁷.

Los abogados, de forma general, ejercen su función jurídica en todo el territorio nacional, independientemente del bufete al que pertenezcan. Asesoran y representan a las personas o entidades, en cuanto a sus derechos y obligaciones, y en procesos judiciales. También evacúan consultas legales, emiten dictámenes y redactan documentos de carácter técnico-jurídico y ejercer las defensas penales de oficio de acuerdo a la legislación ⁸.

La práctica de la abogacía en el sistema judicial se divide en procesos penales, civiles, administrativos, económicos y laborales. En cuanto a la actividad asesoran y representativa de los individuos, específicamente en el tema del ejercicio y defensa de sus derechos y obligaciones, poco puede hacer los abogados, debido a las complejidades del sistema



¹ Ley No. 1250 "De Organización del Sistema Judicial" dictada el 23 de junio de 1973, que fue derogada por la Ley No. 4 de 10 de agosto de 1977, pero se ratificó la institución de los Bufetes Colectivos y la categoría específica de los abogados.

² Decreto-Ley No. 81 "sobre el ejercicio de la abogacía y la organización Nacional de Bufetes Colectivos" de 8 de junio de 1984.

³ Artículo 16, ídem.

⁴ Artículo 4, ídem.

⁵ Ídem.

⁶ Artículo 20 y 22, ídem.

⁷ Artículo 14 y 23

⁸ Artículo 14 y 23



jurídico cubano.

Para entenderlo debemos comenzar por su fuente fundamental, la Constitución Estatal, promulgada el 24 de febrero de 1976 y que de forma general, define al país como un Estado unitario y centralizado, sistema político monopartidista e irrevocable y de economía socialista.

La Constitución cubana trata el tema de los derechos ciudadanos parcamente. Preceptos que deben estar incluido en la parte dogmática, el capítulo dedicado a los derechos fundamentales ⁹, se dispersan por otras secciones del texto como la de 'Igualdad', 'Familia' o "Educación y Cultura". En esa situación se encuentra el derecho al voto ¹⁰, a exigir cuenta a los representantes populares ¹¹, a poder revocarlos en todo momento ¹², etc.

Esta dispersión jurídica reduce legalmente los espacios vitales de desenvolvimiento de los ciudadanos en la vida sociopolítica, y subvaloran los derechos que determinan las relaciones de los individuos con el Estado, principalmente los derechos políticos. Luego, estos temas están totalmente ausentes en las agendas de los abogados de bufete. De hecho es difícil encontrar, un individuo u organización social interesada en ese tópico.

En la Constitución cubana tampoco se reconoce el conjunto de prerrogativas que conforman el Corpus Normativo Internacional de los Derechos Humanos, ni contiene una cláusula que permita interpretar que las libertades no reconocidas expresamente en el texto, tengan vigencia en el ordenamiento legal.

Significa que ningún abogado puede, en defensa de un individuo que el Ministerio del Interior le negó el permiso para salir del país, alegar violación del derecho de libre circulación, porque no está reconocido constitucionalmente. Por otra parte, en el texto supremo del Estado cubano, tampoco se regula ninguna garantía judicial, como recurso ante un tribunal, que ampare a los ciudadanos contra actos violatorios de sus derechos.

Estas insuficiencias provocan indefensión y un total desconocimiento de los individuos sobre las prerrogativas que disfrutan. Sin embargo, lo más preocupante en el tema del ejercicio y defensa de los derechos fundamentales de los cubanos, es el carácter de ley política que posee la Constitución Estatal. Una característica

⁹ Capítulo VII, artículos del 45 al 66 de la Constitución de la República de Cuba.

¹⁰ Artículo 132, idem.

¹¹ Artículo 114, inciso c, idem.

¹² Artículo 112, idem.

¹³ Artículo 3 y 69, idem.



que se traduce en la imposibilidad de interpretarla, y en consecuencia, aplicar sus preceptos directamente.

Significa que la eficacia constitucional depende de la promulgación de leyes que amplíe su contenido. Sus preceptos son normas principios que se aplican indirectamente por medio de la puesta en vigor, de disposiciones normativas emitidas por la Asamblea Nacional del Poder Popular, a quien la propia Constitución, reconoce y atribuye la soberanía parlamentaria ¹³.

Consecuentemente se impone la vigencia del principio de legalidad dentro del sistema. Luego son objeto de interpretación judicial, solo las leyes emitidas por el Parlamento, las normas de mayor rango y fuerza normativa dentro del ordenamiento jurídico. El texto constitucional no se interpreta, pero muchos de sus principios constitucionales bases, no se han instrumentados jurídicamente, sobre todo, los relacionados con los derechos fundamentales de los isleños.

Las expresiones "serán regulados por la ley", "la ley regulará" en la Carta Magna ¹⁴, constituyen un mandato de acción para el legislativo. Sin embargo, el Parlamento Cubano ignora las referencias, incumpliendo su obligación de regular los espacios sociales, económicos y políticos de los individuos, sobre los cuales la Constitución determinó principios y dejó sus detalles a las leyes de desarrollo, produciéndose una inconstitucionalidad por omisión.

Luego la técnica de delegar en el legislativo la responsabilidad de poner en vigor disposiciones jurídicas que amplíen los contenidos constitucionales, en la práctica impide la plena eficacia de la Ley de Leyes y el ejercicio y defensa de los derechos que de ella se deriva. Principalmente porque no

se puede hacer valer frente a un gobierno, que tiene el poder absoluto, sin ningún tipo de límite legal.

La Constitución cubana no tiene reserva de ley que imponga límites a las actuaciones de los órganos superiores estatales (sistema de frenos y contrapesos). Luego las leyes que desarrollan y complementan la preceptiva constitucional, se convierten en el marco legal dentro del cual, los órganos del Estado, deben encuadrar sus actos.

En este sentido cobra gran importancia el poder judicial, que sería el encargado de ejecutar y aplicar imparcialmente las normas, someter a los poderes públicos al cumplimiento de la ley; controlar la legalidad de la actuación administrativa; ofrecer a todas las personas la tutela efectiva en el ejercicio de sus derechos e intereses legítimos.

En Cuba, la función judicial está a cargo del Tribunal Supremo Popular (TSP), pero este no está calificado como un órgano superior del Estado. Significa que no tiene la exclusividad y unidad de la jurisdicción. En otras palabras, otro órgano estatal, que no es un único cuerpo de jueces, ejerce funciones judiciales.

Por ejemplo, la interpretación general y obligatoria de las leyes vigentes, es una atribución del Consejo de Estado. El parlamento decide sobre la constitucionalidad de las leyes que el mismo emite, de los decretos leyes, decretos y demás disposiciones generales y revoca además las disposiciones jurídicas que contradigan la ley suprema nacional.

El Consejo de Estado puede suspender las decisiones del Consejo de Ministro y de las asambleas y órganos locales del Poder Popular, cuando no se ajusten a la Constitución o las Leyes. También Imparte instrucciones a los tribunales y a la fiscalías, lo que convierte al poder judicial totalmente dependiente de un órgano político.

Resulta inadecuado entonces que, un abogado, en su alegato de defensa, argumente violación de un derecho reconocido en la constitución, porque ningún tribunal de justicia en Cuba, puede decidir en materia de constitucionalidad de las leyes, ni puede con su acción jurisdiccional ordinaria, condicionar y orientar las acciones de gobierno y la legislativa.

En otras palabras, el poder judicial está prácticamente anulado y con él, el Estado de Derecho. Implica que los órganos estatales superiores, Asamblea Nacional

y los Consejos de Estado y de Ministros, sean irresponsables ante los excesos de gobierno. En consecuencia, las violaciones de la constitución, y de los derechos ciudadanos en ellas contenidos, no pueden esgrimirse frente al Estado, en un tribunal de justicia.

Frente a esta situación poco o nada pueden hacer los abogados cubanos. Aunque el estado reconoce que el ejercicio de la abogacía es libre y que son independiente y sólo debe obediencia a la ley. Lo cierto es que para ejercer la profesión, dependen totalmente del sistema estatal.

Antes del triunfo de la revolución, en 1909, existía un Registro de Abogados que aprobaba el Tribunal Supremo para ejercer la profesión, pero en 1966, se transfirió al Ministerio de Justicia. En 1989 cambió su nombre por el de Registro General de Juristas y en el 2000, el Estado estableció la inscripción de los profesionales del derecho, como requisito obligatorio para desempeñar un cargo u ocupación, que requiera ser graduado en la especialidad.

A partir de ese momento, los órganos y entidades estatales, se les impuso la obligación de solicitar al letrado que contrataran, una certificación de su inscripción en el registro, además de informar al Ministerio de Justicia los juristas que desempeñen sus funciones en sus instituciones. Desde entonces es difícil ejercer la profesión sin vínculos directos con el sistema estatal.

En Cuba, los profesionales no pueden ejercer el trabajo por cuenta propia en la especialidad que se graduaron. Tampoco está reconocida como una actividad cuentapropista, el asesoramiento y consulta legal, únicas acciones que puede realizar un letrado de forma independiente. Los pocos que toman esa decisión, tienen que hacerlo de forma gratuita. También es difícil que se asocien de forma autónoma. Los trámites exigidos para legalizar una ONG, aseguran al Estado un control absoluto sobre esta.

A estas limitaciones también se suma la dependencia económica. El abogado que no trabaje con el estado tampoco gana. Para sobrevivir, en un sistema donde la crisis económica es permanente, cobran honorarios extra, aun cuando el reglamento del ejercicio de la abogacía, entre otras causales, considera falta grave cobrar honorarios no establecidos o superiores a los aprobados oficialmente, sean en efectivo o en especie. En esas condiciones se impone, en el ejercicio de la abogacía en Cuba, la doble moral y con ella la sumisión total al sistema. **CB**



- ¹⁴ Artículo 29 inciso ch, 32, 33, 42, 53, 55, ídem.
- ¹⁵ Capítulo X "Órganos Superiores del Poder Popular", artículos del 69 al 101, ídem.
- ¹⁶ Artículo 75, inciso c, Artículo 90 Inciso ch, ídem.
- ¹⁷ Artículo 90 Inciso h, ñ y o, ídem.
- ¹⁸ Decreto No. 127 de 27 de enero de 1909 "Ley Orgánica del Poder Judicial"
- ¹⁹ Ley No. 1189 de 25 de abril de 1966
- ²⁰ Decreto-Ley No. 117 de 19 de octubre de 1989
- ²¹ Primer y segundo "Por Cuanto" y Artículo 6 del Decreto-Ley No. 206 enero de 2000, que derogó la Ley No. 1189 de 25 de abril de 1966
- ²² Artículo 45 de la Resolución No. 101 "Reglamento del registro General de Juristas" de 8 de junio de 2000
- ²³ Artículo 59.3 inciso c, Resolución No. 142/84 "Reglamento sobre el ejercicio de la Abogacía y la Organización Nacional De Bufetes Colectivos"

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THE PRACTICE OF LAW IN CUBA



Translation by Patricia M. Lehtinen, second year law student at Georgetown Law

LARITZA DIVERSENT: A LEADER AMONGST CUBA'S YOUNG, BRAVE AND OUTSPOKEN DISSIDENT ATTORNEYS

You may not know this name, but there is plenty to come from Laritza Diversent—she will one day sit on Cuba's highest court of justice. Laritza is a Cuban dissident attorney and human rights activist who is fighting to establish rule of law in Cuba. She graduated from the University of Havana in 2007 with her doctorates in law. Presently, she works daily to share with those in Cuba what their rights are and how to defend them in a system that respects nothing. She blogs about life as an attorney in Cuba and the difficulty of being an attorney in a system that does not respect the rule of law or have an independent judiciary. You can read her blog at: <http://leyesdelaritzaen.wordpress.com> and in Spanish <http://jurisconsultocuba.wordpress.com>. As you'll read in the following piece, Laritza and several other attorneys have founded a non-profit organization in Cuba called Cubalex to advise Cubans of their rights.

Traditionally, the lawyer is a person learned in the laws of his country and who professionally assumes the leadership and defense of all sides, in all types of proceedings, or in legal advice. However, in the Cuban legal system, the lawyer is the jurist admitted to the National Organization of Firms Collective (ONBC).

In Cuba, the Firms Collective was created in the 1970s, a time in which the practice of law as a specific category within the legal system was also established. The ONBC is actually a national entity with social and professional interests¹. It is composed of lawyers and its activities are regulated by the Ministry of Justice, which, along with inspections, supervises and controls the ONBC².

To be part of the Collective, one should, along with other requirements, have morals in line with socialist principles and cannot perform judicial, prosecutorial, administrative, or arbitration functions³.

The state also established legally the cases which will be allowed

for a lawyer to practice the law without being admitted to the ONBC. In this supposition, there are lawyers who receive express authorization from the Ministry of Justice; represent a state agency, cooperative, social or mass organization, civil society where they exhibit their services; or their leaders when the action deals with actions relating to their charge⁴.

The law can also be practiced without being a part of the ONBC, when the lawyer represents affairs related to his own rights or those of his spouse or family members. This extends to the fourth degree of blood relationship or the second degree of affinity. Included in these cases are the professionals who teach the law⁵.

The clients of the firms in the collective can designate and contract with the lawyer of their preference. However, legally, the different legal services which lend the lawyers are regulated, as well as the payment of fees and the cases which can have a reduced fee or be totally exempt from the fee⁶.

Each firm as a Director who, along with other functions, approves contracts for legal services and authorizes pro bono services. The types of reasons that can be used by lawyers to remove himself or renounce attention to matters are legally regulated, but the Director has ultimate approval⁷.

Generally, lawyers practice their juridical function across the whole nation, independent of the firm to which they pertain. They advise and represent people or entities regarding their rights and obligations in judicial processes. They also execute legal consultations, issue reports, and redact documents of a legally technical nature, and defend employment penalties in accordance with the law⁸.

The legal profession in the legal system is divided between criminal, civil, administrative, economic, and labor processes. As for individual advice and representation, specifically with regard to the practice and defense of one's rights and obligations, lawyers



can do little. This is due to the complications of the Cuban legal system.

To understand the system, we should begin with the foundation, the State Constitution, promulgated on February 24, 1976. It gives general form to and defines the country as a unitary and centralized State, with an irrevocable single-party political system and a socialist economy.

The Cuban Constitution sparingly addresses the rights of its citizens. Rules that should be included in the pertinent part, the chapter addressing fundamental rights⁹, are scattered throughout other sections in the Constitution, such as “Equality,” “Family,” or “Education and Culture.” In these areas, one finds the right to vote¹⁰, to demand an accounting of the popular representatives,¹¹ to remove those representatives,¹² etc.

This dispersion of rights reduces vital opportunities for the development of citizens’ sociopolitical lives. It also undervalues the rights that determine the relationship of individuals with the State, principally with regard to political rights. Consequentially, these ideas are totally absent from the agenda of lawyers in the Firms Collective. This makes it difficult to find an individual or social organization interested in citizens’ rights.

The Cuban Constitution lacks a recognition of a joining of the prerogatives that conform to the International Normative Corpus on Human Rights. Absent also is a clause that permits an interpretation that liberties not expressly recognized in the text can be valid in the legal system.

This means that no attorney can, in defense of an individual against whom the Interior Ministry negated his permission to leave the country, can allege a violation of the right to move freely. This is because this right is not constitutionally recognized. In the supreme text of the Cuban State, no legal rights are regulated which, as a recourse before a tribunal, protect citizens against violations of their rights.

These shortages creates helplessness and a total ignorance among individuals regarding the prerogatives they could enjoy. Regardless, the most worrisome thing in the exercise and defense of Cubans’ fundamental rights is the character of the political law that embodies the State Constitution. One characteristic is that it becomes impossible to interpret and, consequently, directly apply its rules.

This means that the efficacy of the constitution depends on the promulgation of the laws that broadens its content. Its rules are norms applied indirectly via normative laws issued by the National Assembly of People’s Power. The Constitution recognizes the Assembly and ascribes parliamentary sovereignty to the body¹³.

Consequently, validity is imposed on the principle of legality in the system. Only the laws issued by the Assembly, the rules of highest rank and normative force within the legal system are objects of judicial interpretation. The Constitutional text is not interpreted, but many of its principal bases have not been legally implemented, including, above all, the ones related to the islanders’ fundamental rights.

The expressions “they will be regulated by law” and “the law regulates” in the Magna Carta¹⁴ are mandates of action for the legislature. Regardless, the Cuban Parliament ignores the references, and does not comply with its obligation to regulate

continued on next page...

individuals' social, economic, and political spaces. The Constitution determined principles and left the details for the laws implementing the document, creating unconstitutionality through omission.

In practice, the technique of delegating to the legislature the responsibility of putting into force legal regulations that enact constitutional regulations blocks the full efficiency of the Law of Laws and the practice and defense of the rights that it serves. This is principally because it cannot be asserted before a government which has ultimate power, without any type of legal limit.

The Cuban Constitution does not have legal rights that impose limits on the rules of the superior state organs (i.e., no system of brakes and counterweights). Afterwards the laws that develop and complement the constitutional mandate are converted to the legal mark through which the State organs should frame their acts.

In Cuba, the judicial function is in the Supreme Popular Tribunal (TSP), but it is not described as a superior State organ. It is important that it has no exclusivity and unity in its jurisdiction. In other words, another state organ¹⁵, which is not a unique body of judges, exercises judicial functions.

For example, the general interpretation and compulsory of the valid laws, is an attribute of the Advice of the State. The parliament decides the constitutionality of the laws which that same body issues, of legal decrees, of other general orders and reverses legal decisions that contradict the supreme national laws¹⁶.

The Advice of the State can suspend the Ministry of Advice's decisions and those of the local Popular Power assemblies and organs when they do not adjust themselves to the Constitution or the Laws. It also imparts instructions to the courts and prosecutors which completely makes the judicial power depended on a political organ¹⁷.

It becomes inappropriate, then, for a lawyer, in his declaration of defense, argues a violation of a recognized constitutional right, because no Cuban court can decide the constitutionality of the laws or, using its regular judicial power, condition and alter the government's and the legislature's actions.

In other words, the judicial power and, with it, the State of Right, are effectively circular. This implies that the superior state organs, the National Assembly and the Advice of the State and Ministries, are helpless before government excess. Consequently, constitutional violations and citizens' rights cannot be wielded against the State in a court.

Confronting this situation, little for nothing can be done by Cuban lawyers. All this despite that the state recognizes that the legal profession is free and that lawyers are independent and should only obey the law. What is certain is that to practice, everything depends on the state system.

Before the successful 1909 revolution¹⁸, there was a Registry of Lawyers which approved the Supreme Court to regulate the profession, but in 1966 this transferred into the Ministry of Justice¹⁹. In 1989 the name became the General Registry of Lawyers²⁰ and in 2000 the State established the enrollment of professionals of right as an obligation to perform a job or duty. This requires being a graduate in the specialty²¹.

From this moment, the state organs and entities have been imposed an obligation to obtain from the lawyers whom they

accept, a certification of his enrollment in the registry, and inform the Ministry of Justice of the lawyers that carry out their functions for the organizations. From there it is difficult to practice law without direct bonds to the state system²².

In Cuba, professionals cannot do their work without proper accounting of the specialty in which they graduated. Neither is legal advice and consultations recognized as self-employment, the actions which only be performed by an independent lawyer. The few that make decisions have to do so pro bono. It is also hard to associate in any autonomous form. The procedure taken to legalize an NGO assures the state absolute control over the organization.

To these limitations there is also added a dependent economy. The lawyer who does not work with the state does not win. To survive, in a state where the economic crisis is persistent, the charge extra fees, even when the regulation of the legal profession considers it a grave offense to charge fees not established or above those officially approved, be they by cash or in kind²³. Under these conditions, a double standard and, with it, a total submission to the system, and are imposed on the practice of law in Cuba. **CB**

¹ Law No. 1250 "Of the Organization of the Judicial System" given June 23, 1973, which was enforced through Law No. 4 of August 10, 1977, but ratified the creation of the ONBC and the specific category of lawyers

² Decree-Law No. 81 "About the practice of law and the ONBC" of June 8, 1984

³ Article 16, Ibid.

⁴ Article 4, Ibid.

⁵ Ibid.

⁶ Articles 20 and 22, Ibid.

⁷ Articles 14 and 23.

⁸ Article 18, Ibid.

⁹ Chapter VII, articles 45-66 of the Constitution of the Republic of Cuba.

¹⁰ Article 132, Ibid.

¹¹ Article 114, subsection c, Ibid.

¹² Article 112, Ibid.

¹³ Articles 3 and 69, Ibid.

¹⁴ Article 29, subsection ch 32, 33, 42, 53, 55, Ibid.

¹⁵ Chapter X, "Superior Organs of Popular Power," articles 69-101, Ibid.

¹⁶ Article 75, subsection c; Article 90 subsection ch Ibid.

¹⁷ Article 90, subsection h, ñ, and o, Ibid.

¹⁸ Decree No. 127 of January 27, 1909 "The Organic Law of the Judicial Power"

¹⁹ Law No. 1189 of April 25, 1966

²⁰ Decree-Law No. 117 of October 19, 1989

²¹ First and second "Por Cuanto" and Article 6 of the Decree-Law No. 206 of January 2000 which repealed Law No. 1189 of April 25, 1966

²² Article 45 of Resolution No. 101 "Regulation of the general registry of lawyers" of June 8, 2000

²³ Article 59.3, subsection c, Resolution No. 142/82 "Regulation on the practice of Law and the National Organization of Firms Collective"

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MEMBER

Segafredo, in the heart of Brickell, served as a great location to show CABA's gratitude to its members for making CABA the successful voluntary bar association that it is. On May 12, 2011, directors, members, and other guests enjoyed complimentary cocktails and hors d'oeuvres. Members had the opportunity to network and mingle with judges and other elected officials while enjoying South Florida's fabulous spring weather. Despite the informal nature of the event, CABA's duty and ongoing pledge to serve our community was not forgotten. Organizers were on-hand collecting items such as travel-sized toiletries and clothing, which were to be donated to Camillus House.



APPRECIATION

HAPPY HOUR



Holding Cuba ACCOUNTABLE

under the Inter-American System for the Protection of Human Rights

BY JULIE DIANE RECINOS



The Organization of American States is an international organization created in 1948 at the Ninth International Conference of American States held in Bogota, Colombia with the purpose of achieving peace and justice and promoting and consolidating representative democracy in the western hemisphere, among others. In July 1952, Cuba ratified the Organization's Charter and deposited its instrument of ratification at the General Secretariat of the OAS, becoming a Member State and accepting the Charter's provisions.

Under Articles 1 and 2 of the Charter, the American States proclaimed "the fundamental rights of the individual without distinction as to race, nationality, creed, or sex" and affirmed that the "education of peoples should be directed toward justice, freedom, and peace." Additionally, under Article 106, they created the Inter-American Commission on Human Rights and stated that its structure, competence, and procedures would be determined in a formal convention on human rights. The Commission's "principal function" would be "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters."¹ The Charter did not enumerate the "fundamental rights" that were to be protected. However, at the same conference, the American States adopted the American Declaration of the Rights and Duties of Man, which set out what they considered to be the "essential human rights" to be guaranteed at the domestic level until "social and juridical conditions" on the continent were such that the international system of protection that began with the creation of the Inter-American Commission could be strengthened. This Declaration was not considered to be, nor drafted as, a formal treaty.² It was not until 1969 that such a treaty was drafted, and it was not until 1978 that it came into force with the deposit of the eleventh instrument of ratification at the General Secretariat of the OAS in Washington, D.C.

Thus, the human rights obligations of the Member States of the OAS emanate from two different international instruments: the American Declaration of the Rights and Duties of Man³ and the American Convention on Human Rights, which is a formal treaty. While all 34 Member States of the OAS have declared that they will guarantee the rights set out in the American Declaration, only 25 of those Members have signed and ratified the American Convention.⁴ Cuba is not one of those 25; therefore, in fulfilling its mandate, the Inter-American Commission can only review that State's observance of the rights established in the first of these two instruments.⁵

Julie Diane Recinos is a Staff Attorney at the Inter-American Court of Human Rights and has been a Member of the Florida Bar since September 2008. The opinions set out in this article are hers alone and do not represent those of the Organization of American States, nor those of the Inter-American Court of Human Rights or its Secretariat.

¹ Article 106 of the Charter of the OAS.

² See I/A Court H.R., Interpretation of the American declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No.10, paras. 33-34.

³ See I/A Court H.R., Interpretation of the American declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, supra note 2, paras. 41-43. The American Declaration of the Rights and Duties of Man is available at: <http://www.cidh.oas.org/Basicos/English/Basic2.AmericanDeclaration.htm>.

⁴ Trinidad and Tobago withdrew its ratification of the American Convention on May 26, 1998.

⁵ The Commission's Statute, adopted by the General Assembly of the OAS in 1979, states under Article 1.2 that "human rights" are understood to be "those set forth in the American Convention on Human Rights, in relation to States Parties thereto[, and those] set forth in the American Declaration of the Rights and Duties of Man, in relation to the other member states."

There are several ways this may be done. Although the avenues for holding Cuba accountable are few, there is a lot the Cuban American Bar Association (“CABA”) can do. The first option is through the submission of claims by individuals or organizations to the Commission, alleging that Cuba has violated the rights contained in the Declaration. When the Commission receives such a petition, it seeks information from the alleged victims and the State in order to decide whether the latter is in compliance with its international human rights obligations. If the Commission believes that Cuba is not in compliance with its international human rights obligations, it will issue recommendations so that the State may bring its actions or laws into compliance with the American Declaration.⁶ CABA has used this process successfully in the past, resulting in a lengthy recommendation. Because Cuba has not signed and ratified the American Convention on Human Rights, however, the Commission cannot bring a case against Cuba before the Inter-American Court of Human Rights should that State choose not to follow its recommendations. The Court, established in Chapter VIII of the American Convention, can only review cases against States that have ratified the treaty and accepted its contentious jurisdiction. Unfortunately, Cuba has not.⁷

A second way the Commission can hold States such as Cuba accountable is through the preparation of reports on their human rights records.⁸ In its 2010 Annual Report, for instance, the Commission maintained that the State of Cuba merited special attention because of its “failure to observe the political rights set forth in the American Declaration and the persistence of structural situations that have a serious and grave impact on the enjoyment and observance of the fundamental rights enshrined in [that instrument].”⁹ In that report, the Commission applauded “the release of dissidents, opposition figures, human rights activists, and independent journalists who were arrested in March 2003 for exercising their freedom of expression” and encouraged the release of all political prisoners.¹⁰ It also recognized “gains in Cuba in relation to the millennium development goals set by the United Nations.”¹¹ The Commission’s report, however, expressed concerns due to, among other things: “the lack of free and fair elections, based on universal suffrage and secret ballot as the expression of popular sovereignty;”¹² “political repression...and other forms of harassment of opposition activists;”¹³ the criminalization of political ideology;¹⁴ a “structural lack of independence and impartiality of the courts... and the absence of judicial guarantees and due process in the prosecution of persons sentenced to death[...] and of persons considered to be political-ideological dissidents...;”¹⁵ unsanitary prison conditions and denigrating treatment of prisoners;¹⁶ restrictions on the right of residence and movement;¹⁷ and restrictions on the freedom of expression and the use of the internet.¹⁸ According to the

Commission, this report was sent to the Cuban government on February 2, 2002 so that the latter could submit observations thereto. The State did not respond.¹⁹

Finally, the Commission could theoretically oversee Cuba’s compliance with regional human rights standards through on-site visits to that State. However, such visits may only be carried out “with the consent or at the invitation of the government in question [...].”²⁰

It should be noted that in January 1962, the Government of Cuba was excluded from participation in the Inter-American system through Resolution VI, adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs held in Punta del Este, Uruguay.²¹ Since then, the Inter-American Commission maintained that the State of Cuba was “‘juridically answerable to [it] in matters that concern[ed] human rights[.]’” considering that it ‘is a party to the international instruments initially adopted in the Western hemisphere to protect human rights,’” that is, the OAS Charter and American Declaration, “and because Resolution VI [...] ‘excluded the present Government of Cuba, not the State, from participation in the inter-American system.’”²² In its June 3, 2009, “Resolution on Cuba,” the General Assembly of the OAS resolved to once again allow Cuba’s participation in the OAS, which was to “be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”²³ However, the Cuban State has not responded to either of the Inter-American Commission’s annual reports on human rights issued since its participation was reinstated.²⁴ **CB**

⁶ Article 18 of the Statute of the Inter-American Commission on Human Rights.

⁷ Article 62 of the American Convention on Human Rights. The Inter-American Court of Human Rights is an autonomous judicial institution of the OAS; it is independent from the Inter-American Commission on Human Rights.

⁸ Article 18 of the Statute of the Inter-American Commission on Human Rights.

⁹ 2010 Annual Report of the Inter-American Commission on Human Rights, para. 287. Available at: <http://www.cidh.oas.org/annualrep/2010eng/TOC.htm>.

¹⁰ *Id.*, para. 289.

¹¹ *Id.*

¹² *Id.*, para. 311.

¹³ *Id.*, para. 312.

¹⁴ *Id.*, para. 322.

¹⁵ *Id.*, para. 323 and 329. The Commission noted that according to the information available, “the last time that the death penalty was applied in Cuba was in 2003.”

Id., para. 340.

¹⁶ *Id.*, paras. 360-364.

¹⁷ *Id.*, paras. 366-378.

¹⁸ *Id.*, paras. 379-406.

¹⁹ *Id.*, para. 291.

²⁰ Article 18.g of the Statute of the Inter-American Commission.

²¹ Resolution VI, Exclusion of the Present Government of Cuba from Participation in the Inter-American System;” Eighth Meeting of Consultation of the Ministers of Foreign Affairs serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22 to 31, 1962, Organization of American States, OEA/Ser.C/II.8. The Member States of the OAS resolved:

1. That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the communist bloc breaks the unity and solidarity of the hemisphere.

2. That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.

3. That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.

4. That the Council of the Organization of American States and the other organs and organizations of the inter-American system adopt without delay the measures necessary to comply with its resolution.

²² 2010 Annual Report of the Inter-American Commission on Human Rights, *supra* note 9, para. 295.

²³ Resolution on Cuba, AG/RES. 2438 (XXXIX-o/09), adopted on June 3, 2009, at the third plenary session of the Thirty-Ninth Regular Session of the General Assembly of the OAS, June 2-4, 2009, San Pedro Sula, Honduras, Organization of American States, OEA/Ser.P AG/doc.5006/09rev.1.

²⁴ 2010 Annual Report of the Inter-American Commission on Human Rights, *supra* note 9, para. 291 and 2009 Annual Report of the Inter-American Commission on Human Rights, para. 209. The latter is available at: <http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.b.eng.htm>.

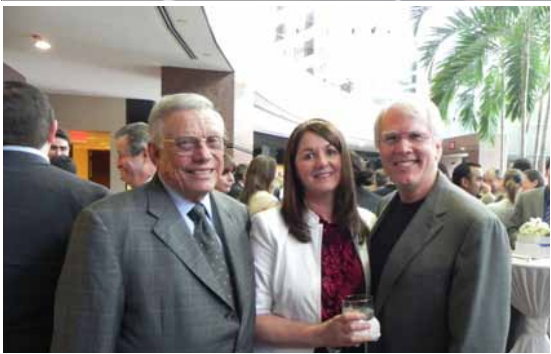




DIA DEL ABOGADO

CABA and TotalBank teamed up to invite all members to celebrate El Dia del Abogado, on June 8, 2011, an annual tradition in Cuba that CABA revived. The Honorable Mario P. Goderich, one of the few attorneys who practiced law in both Cuba, and the United States, spoke about his experiences throughout his varied career. Held in the lobby of Total Bank's Brickell Banking Center, members shared their own experiences with each other, as CABA celebrated this special day for all members of the bar. CABA further ceased this opportunity to announce the newly recreated Human Rights Committee, which will focus on ongoing human rights violations in Cuba.







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ANNUAL SPRING MENTOR LUNCHEON

Touching at the core of one of CABA's most important organizational goals, Mentors and mentees attended CABA's Annual Spring Mentor Luncheon on Thursday, April 7, 2011, at the Hyatt Regency Hotel in Coral Gables. Made possible again by the generous sponsorship of TotalBank, the event illustrates CABA's commitment to supporting young lawyers as they develop their careers in the legal community. A legion of CABA's devoted mentors were recognized for their exemplary service as guiding lights to their mentees.

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MOVING FORWARD

CABA's Newly Reestablished Human Rights Committee

BY RAÚL J. CHACÓN JR.



Raúl J. Chacón Jr. is a shareholder at Houck Anderson P.A. A well respected and AV Rated litigator and trial attorney, Raúl Chacón has over 15 years of experience at state and federal court levels, as well as internationally,

representing numerous clients, including Fortune 500 companies, in Admiralty/Maritime, Products Liability, Insurance Defense and Commercial Litigation matters. He chairs the Human Rights Committee.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.¹

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.²

¹ Article 1 of the United Nations Universal Declaration of Human Rights.

² Preamble to the Universal Declaration of Human Rights, 1948.

Imagine a society without the benefit of the rule of law. Imagine being denied access to the courts. Imagine living in a society where the government denies its citizens basic human rights, including the right to change their government. That society is only 90 miles off of our coast.

Cuba has a long standing history of systemic human rights abuses, including torture, arbitrary imprisonment, unfair trials and extra-judicial execution. Cuban law limits freedom of expression, association, assembly, movement and the press. Black Spring is a perfect example of these abuses. In March of 2003, the government of Cuba arrested, prosecuted in one-day trials and sentenced 75 people, including journalists, librarians and human rights activists. The average sentence was 17 years. The crime: exercising their freedom of speech. The arrests were criticized as constituting a breach of the most elementary human rights, including the freedom of expression and political association. Members of the Damas de Blanco ("Lady's in White"), a group of relatives and supporters of the 75 political prisoners, have been targeted during their yearly peaceful marches by large, state-organized mobs that repeatedly shout obscenities and insults and try to assault them. Most recently, four Cuban dissidents, who distributed leaflets criticizing the Castro government, were sentenced up to five years in prison.

The 2009 Human Rights Report on Cuba listed the following human rights violations: "beatings and abuse of prisoners and detainees, harsh and life-threatening prison conditions, including denial of medical care; harassment, beatings, and threats against political opponents by government-recruited mobs, police and state security officials acting with impunity; arbitrary arrests and detentions of human rights advocates and members of independent professional organizations; and denial of fair trial, including for at least 194 political prisoners and as many as 5,000 persons who have been convicted of potential "dangerousness" without being charged with any specific crime."

Due to these ongoing violations, as an organization, CABA felt the strong need to recreate its Human Rights Committee, which as you have read in this issue, has a rich history of advocacy. CABA is proud to announce the formation of the Human Rights Committee. The committee will focus on three main objectives: 1) raising awareness; 2) indicting Cuba for every human rights violation it commits; and 3) supporting the work of attorneys on the island in their struggle for an independent justice system.

The committee will hold yearly congressional briefings on human rights violations in Cuba, file petitions before the commission as necessary, and support the work of independent attorneys on the island, who fight for the very freedoms we sometimes take for granted here. As attorneys, we know that an independent justice system is the cornerstone of democracy. As attorneys, we know the importance of access to the courts. To join the Human Rights Committee, please contact myself at rchacon@houckanderson.com, or my co-chair, Yara Lorenzo at yara.lorenzo@gmail.com. **CB**

³ U.S. Department of State 2009 Human Rights Report.

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