



# CUBAN AMERICAN BAR ASSOCIATION

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Mimi Whitefield  
Miami Herald  
mwhitefield@miamiherald.com

***RE: August 30, 2018, Article Entitled "This Florida murder case was tried in Cuba. And local prosecutors got to watch"***

Dear Ms. Whitefield:

On behalf of the Cuban American Bar Association, I write you regarding your article in the Miami Herald on August 30, 2018, entitled, "This Florida murder case was tried in Cuba. And local prosecutors got to watch." The article reports on a unique criminal trial in Cuba, where the Cuban government pursued murder charges against Marcos Yanes Gutierrez, a Cuban national, based on allegations that he murdered someone in Florida and fled back to Cuba.

We are encouraged that, as you reported, the Cuban government worked alongside Florida prosecutors in bringing criminal proceedings in Cuba against Yanes, who was charged with first degree murder by the Palm Beach County State Attorneys' Office. Of course, this extraordinary trial was only made necessary because the Cuban government did not extradite Yanes to Florida, as was requested. And we are also encouraged that a Florida prosecutor who observed the trial found it "resembled our courtroom process."

We were, however, somewhat troubled by the net impression of your article regarding Cuban criminal legal proceedings. While it noted that certain aspects of Yanes's trial were "quite different" from a U.S. criminal trial, an uninformed reader could have been left with the impression that the American and Cuban legal systems are largely similar. That could not be further from the truth. The differences between the two systems are stark. The American criminal justice system, while imperfect, affords criminal defendants with due process and various safeguards and rights. Meanwhile, the Cuban criminal justice system is an instrument of the Cuban Government's repressive political apparatus and violates basic, fundamental concepts of due process and fairness. Your readers were not provided this important context. We believe they should be.

For starters, the Cuban judiciary is subordinate to Cuba's legislative body, the Cuban National Assembly. As a consequence, Cuban courts are not truly independent and do not possess the power of judicial review—the ability to adjudicate the constitutionality or validity of a legislative act. Cuban courts are thus vassals of the Cuban National Assembly, required to accept and enforce its invalid laws and decrees that violate the universal rights of Cuban citizens. In comparison, the U.S. judiciary is truly independent and acts as a bulwark against legislative intrusions into the fundamental rights of American citizens.

In Cuba, the criminally accused do not receive, and are not entitled to, any Miranda-type warning, notifying them of their various rights, including the right to remain silent or to counsel. That is because in Cuba many such rights do not exist. The Cuban Government can arrest and detain Cubans without an arrest warrant or equivalent order. And once detained, the Cuban people do not have the right to immediately seek legal counsel, or to any court process requiring the Cuban Government to provide evidentiary support for its arrest. Indeed, Cubans are regularly detained and interrogated for prolonged periods without any protections. Thus, they are held as prisoners, without knowing the charges brought against them, without access to legal counsel, and without any judicial intervention to safeguard their rights. Such is tyranny.

In addition, Cuban political dissidents who are arbitrarily detained because they have engaged in political speech or conduct critical of the Cuban government are often provided official “warnings” after they are released, without due process or any court proceedings. Those warnings are then used by the Cuban government in future criminal trials against those persons to show a pattern of “delinquent” behavior. In other words, prior arbitrary arrests without due process are accepted by Cuban courts as evidence probative of a crime in criminal proceedings. This is how political dissidents are tried and prosecuted—in a system designed to suppress their free expression and strip their liberty.

The Cuban judicial system also does not allow a trial by jury. Trial by jury is a crucial safeguard for the liberty and due process of the criminally accused. Thus, in the U.S., the criminally accused are adjudged by a jury of their peers, who must vote unanimously in favor of a conviction. In Cuba, however, as you noted in the article, criminal trials are adjudicated by a panel of judges, comprised of professional judges and so-called lay judges. This is no jury of your peers. The professional judges are appointed by the corrupt Cuban National Assembly, and thus beholden to it. And the lay judges are not selected at random, like in a jury selection in the U.S., which ensures an unbiased panel. Rather, the lay judges in Cuba are nominated by workplace collectives and community associations, ensuring that strident adherents of the Cuban Government will serve and judge the criminally accused. And, as your article points out, for a conviction, no unanimity of this panel is required—only guilty votes from two of the professional judges and one lay judge. This type of system does not protect against the encroachment of the Cuban state into the liberties of the Cuban people; it is but a rubber stamp for a dictatorial regime.

Moreover, the intricacies of Cuban trials run counter to established notions of fairness and due process. In Cuba, the judges call witnesses and direct questioning, unlike in the U.S. Indeed, Cuban courts can elect to proceed in criminal cases without live witnesses and instead base their rulings solely on written reports, violating the fundamental precept that an accused has the right to confront his accuser through cross-examination.

Finally, Cuba does not recognize the principle of double jeopardy. In the U.S., a criminal defendant cannot be subject to prosecution on the same charges if he or she is acquitted. Not so in Cuba. If the Cuban government fails to obtain a guilty verdict, it can retry the criminal defendant until it obtains its desired result. This severely undercuts the rights of Cuba’s criminally accused, for they are susceptible to multiple prosecutions even if they are acquitted.

These are just a few of the notable differences in the two systems. There are several additional examples of why the Cuban criminal justice system denies the criminally accused a fair, just proceeding.

In sum, unlike in the U.S., the Cuban justice system is distinctly not an independent branch of the Cuban government that affords the Cuban people due process and that seeks to attain fair and just outcomes. It is, instead, a cog in Cuba’s dictatorial machinery responsible for enforcing the Cuban Government’s repressive measures and for cracking down on political dissidents and Cuban civil society. It is for that reason that thousands of Cubans are arbitrarily imprisoned without due process every year; that Cuban prisons presently hold dozens of political prisoners tried in bogus criminal proceedings; that Cuba remains one of the

worst human rights violators in the world; and that the Cuban people continue to be denied their basic, undeniable rights.

The Cuban justice system is a sham. There is, frankly, no true similarity between our judicial system and Cuba's. Your readers should be made aware of this and we call on you to do so. Otherwise, you do your readers a disservice by writing an inaccurate story and you distort the plain facts here — namely, that there is no real justice for the Cuban people in the Cuban justice system.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Piedra', with a stylized flourish at the end.

Jorge L. Piedra  
President