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BRIEFS

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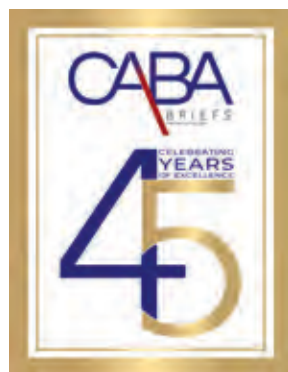
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to and adequate representation of all minorities before the courts; facilitate the administration of justice; build close relationships among our members; provide mentoring and scholarship to law students nationally; and support the indigent community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

President's MESSAGE



Dear CABA Friends,

It has been an amazing year for CABA! I am truly honored and grateful to have served as your 2019 President. I joined the CABA Board of Directors in 2010; and it has been an instrumental part of my life ever since. As we celebrated CABA's 45th anniversary this year, we focused on a variety of goals, and we were able to meet them through a consistent team effort with our wonderful CABA Board of Directors and all our members who committed to various projects and gave their time to our organization. Here is a summary of our major accomplishments for our members.

1. We obtained *record* funding from the State of Florida for CABA Pro Bono, and we reached *record* fundraising at our annual CABA Art in the Tropics and Marlins Night raising over \$100,000 for CABA Pro Bono.
2. We also raised approximately \$450,000 at 45th Anniversary CABA Gala for our Foundation and CABA Pro Bono.
3. Membership increased by 16% this year.
4. CABA continued to develop as a voice for Cuban human rights issues:
 - We held 4 successful CABA on Cuba Panel Discussions for our members and the community:
 - Panel Discussions on: (1) The International Trade of Cuban Medical Professionals, (2) The Cuban Constitution: Past, Present & Future, (3) The Nexus Between Regimes: Cuba, Venezuela & Nicaragua.
 - We also held our First-Ever CLE Webinar: CABA on Cuba Webinar on Title III of the Helms-Burton Act.
 - We drafted CABA's 2019 Written Update on Recommendations for Consideration by the OAS Inter-American Commission on Human Rights (IACHR).
 - On September 24, 2019, we presented our findings from our Written Update to the IACHR in Washington, D.C.
 - We worked with various Cuban-American groups, and Florida Senators Marco Rubio and Rick Scott responded to CABA's concerns as to Che Guevara's portrait touring U.S. universities' museums.
5. We held our First Annual CABA Membership Awards Reception, where we honored members for their lifetime achievements and work with CABA.
6. We increased the number of membership events and held receptions with Florida Lieutenant Governor Jeanette Nunez, Florida Attorney General Ashley Moody, U.S. Attorney for the Southern District of Florida Ariana Fajardo, and Federal Judge Rudy Ruiz.
7. We established a CABA Law School Chapter at Cornell University, and we are currently working with the University of Miami as well. We also continued to develop our law school chapters at Florida International University (FIU), Florida State University (FSU), University of Florida (UF), St. Thomas University, and Nova Southeastern University. We are proud of all our student members' work.

If you ever have any questions/comments regarding our efforts, please do not hesitate to contact me. I am always available to meet with our members. Thank you for all your continued support of CABA.

Yours in service,

Maria D. Garcia
CABA 2019 President

Editor-In-Chief's MESSAGE



Dear CABA Readers:

It is hard to believe that this will be my last edition of CABA Briefs as Chief Editor. I hope you have enjoyed reading it for the last five years. It has provided me many learning opportunities and happy moments. I thank you for your patronage. This, however, is not a one-person job and I've had the privilege of being blessed with two assistant editors that are gifted, tireless, and dedicated. The compilation and production of CABA Briefs requires time (lots) and patience (lots more) all of which I would not have been able to do without my editors and committee members. Therefore, I want to thank my assistant chief editors, Kristi Prieto and Candice Balmori, from the bottom of my heart: thank you, thank you, thank you! Your professionalism, commitment and work ethic are unmeasurable and I will be forever grateful to you both. Special thanks to CABA director of operations, Danny Espinosa, for always being there and helping out wherever and whenever he was needed. Thank you, as well, to all the committee members that have served the last five years, they have changed year to year, but always lent a helping hand to

produce a product we could all be proud to call CABA Briefs.

In this edition of CABA Briefs we have divided the articles' section into areas of interest with the College Corner, the Mental Health Awareness Corner, The Cuba Corner and the Legal Corner. We have also included the CABA events section which features all the events held throughout the year which include our sponsors that make it possible for us to host our members. My next big adventure is to serve as your 2020 CABA President. I hope to lead CABA into the new decade with new ideas and more networking opportunities for our members and sponsors. We open the new decade with the 46th Installation 2020 CABA Gala at Intercontinental Hotel. This year we will celebrate the beginning of 2020 by stepping back in time to the roaring 20's with all sorts of fun and surprises, including a speakeasy and a charity casino! Please join us as we raise funds for CABA Foundation which provides scholarships to minority students and CABA Pro Bono.

Thank you,

A handwritten signature in black ink that reads "Frances De La Guardia". The script is elegant and cursive.

Frances De La Guardia
Editor-in-Chief



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I AM ABLED, NOT DISABLED

By Michelle DeVos, Esq

If our lives were to be defined by our differences, past experiences, and/or failures, then I would not be who I am and where I am today.

I am Michelle DeVos. I am an attorney at Holland & Knight, and I have Asperger's, which is a high functioning form of Autism. In scientific terminology, it is a neurobiological pervasive developmental disorder. In simple terms, it is a disability that affects an individual's ability to socialize and communicate with others. I refuse to see it as a disability. Rather, it is an ability to see the world in a unique way. As such, I consider it my superpower. Almost all superpowers, though, can act as a double-edged sword, especially upon its discovery when the detriments seem to substantially outweigh the benefits. For me those detriments were most apparent when I was younger.

I grew up in a world where I felt I did not belong. I did not know how to communicate with others, nor did I desire to do so. Others thought of me as a mute and a robot because of my quirky movements, monotone voice, and my inability to express my feelings. That inability caused me to be more susceptible to abuse because people thought that I did not care, or have the voice to speak up for myself. As such, I was an easy target for bullying. I was bullied throughout middle school and high school. The bullying varied from physical bullying, where others either kicked me, shoved me, punched me, or threw balls at me, to social bullying, where I would be excluded from either a lunch table, school project, etc. For me, the worst and most common form of bullying was the verbal

bullying. At first, I failed to pick up on the fact that I was actually being bullied. I thought that the derogatory names were just names, and that I was actually those names. I could not read the fact that they were directed towards me to insult me. I did not realize this until those names became coupled with either physical bullying or comments to the effect that I should kill myself. The bullying got to a point where I almost quit school all together. I would constantly question myself as to why I could not be normal. After my first semester in high school, I started Broward Virtual School. Even though I was free from the bullying, the scars remained and I still did not know how to communicate with others. During that time music found me. I taught myself piano and guitar by ear because I became obsessed with learning every key play on the piano and every string played along different frets of a guitar. Through music I found an outlet where I could convey my feelings with ease, rather than difficulty.

As for my motivation to go to college and later to law school, I derived most of my motivation from those who told me that I can't. I turned that can't into I can, I will, and I did. There were many people who thought that I would not graduate from high school, but I did graduate and I earned a scholarship to college. In college, I majored in Finance and later decided to go to law school. However, I was told that it would be impossible for someone like me to go to law school because it would involve me communicating with others. I wanted to go to law school because I wanted to deviate from the norm of what society expects from someone like me, and I wanted to be a voice for those who

did not have a voice of their own. Even though I wanted to be a voice for others, I failed to realize that I did not have a voice of my own at the time. I did not know who I was as a person.

One of the most beautiful things about life is that we are all capable of change, even in the unlikeliest of places. For me, Law school not only changed who I was as a person but, in essence, it saved me. It was the first place that I was accepted for being myself, and not just someone society expects me to be. Who would have thought that I would find myself in the place where some lose themselves? I found myself when I finally felt comfortable opening up to tell someone else that I had been bullied. By opening up, I realized that my past does not define or limit me. It just makes me a stronger person because I chose to be a survivor, rather than to remain a victim. I found this newfound voice and confidence that allowed me make friends, allowed me to be happy, and allowed me to share my story to over 1,300 high school students through Miami Law's STREET Law program, which is an educational outreach program that teaches high school students in inner city communities.

According to the CDC, one in every 59 children are diagnosed with some form of Autism.¹ In the work force, those on the spectrum are more likely to face unemployment.² The legal profession is one of the least diverse professions in the nation. Only about 5% of attorneys identify as African American³, about 5% of attorneys identify as Hispanic⁴, 2.86% of attorneys identify as LGBT⁵, and less than 1% (0.53%)⁶ of attorneys identify as having a disability.

As the famous saying goes, actions speak louder than words. The words “Diversity and Inclusion” mean more than just saying a particular profession embraces them. In order for a profession to be diverse and inclusive, the workplace must treat those who are different the same way they would treat anyone else. A workplace should accept rather than judge those who are diverse. I am very grateful that I found a workplace that does just that. Holland & Knight accepted me for who I am. Through working here, I do not feel as if I need to conform to that which society expects me to be.

Over the course of my academic career, Miami Law’s STREET Law program has provided me with the most invaluable experience in my life. I shared my story by giving an anti-bullying lesson, throughout each of the schools in the program (I-Tech High School, Carol City High School, AMI Kids, Miami Senior High School, Miami Northwestern High School, Braddock High School, Hialeah Gardens Middle School, Hialeah High School, and Coral Gables High School). My main message in sharing my story is for the students to realize that they are not alone, and that it is okay to open up. This initiates a healing process where they are able to realize that they are not at fault for what they are going through. It should not

limit what they want to pursue in the future.

STREET Law is more than a course taken in law school. It is a platform to inspire high school students to believe they can do anything they want, despite the limitations that society may place on them. I am very grateful to be able to continue sharing my story at the schools, and I am currently working on expanding my audience to share my story and teach to those with special needs. There is a stigma that needs to be broken by showing those that are neurodiverse that they are just as capable of doing the same things that a neurotypical can do.

While the stigmas and stereotypes may still exist, my hope is that every profession appreciates the value in accepting those that are diverse.

¹ <https://www.cdc.gov/ncbddd/autism/data.html>

² In June 2014, only 19.3% of people with disabilities in the U.S. were participating in the labor force—working or seeking work. <https://www.bls.gov/news.release/empsit.t06.htm>

³ American Bar Association, ABA National Lawyer Population Survey, 10-Year Trend in Lawyer Demographics: https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf

⁴ American Bar Association, ABA National Lawyer Population Survey, 10-Year Trend in Lawyer Demographics: https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf

⁵ NALP 2018 Report on Diversity in U.S. Law Firms: https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf

⁶ NALP 2018 Report on Diversity in U.S. Law Firms: https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf



Michelle DeVos is an Attorney at Holland & Knight, LLP. She is a graduate of the University of Miami School of Law, where she received her Juris Doctor, an LL.M in Entertainment, Art, & Sports Law, and an LL.M in Taxation.

Leading the Effort To Restore Voting Rights

By State Attorney Katherine Fernandez Rundle, Esq



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As Americans and Cuban Americans, we believe that democracy depends on citizens having the right and opportunity to vote. This right is not only guaranteed to all U.S. citizens under our Constitution but is a moral imperative in a free and democratic society like ours.

In November 2018, over 5 million Florida citizens voted in favor of Amendment 4, which restored voting rights to convicted felons who had completed their sentences. Before then, Florida was only 1 of 4 states that prevented convicted felons from voting. After

the people of Florida spoke, the Florida Legislature passed, and the Governor signed, an implementing statute, FS. 98.0751, which became effective on July 1, 2019. I thought it imperative to create a process that followed the new law and to also make implementation of Amendment 4 a reality.

I worked with the key stakeholders, including Desmond Meade, the President of the Florida Rights Restoration Coalition (FRRC) who championed Amendment 4 for over a decade, Public Defender Carlos Martinez, Clerk of Court Harvey Ruvin, and our local judiciary to

construct a way to make this voting legislation work. State Senator Jason Pizzo and State Representative Kionne McGhee also provided great support to us. We believe we have accomplished that goal.

The new law requires that individuals seeking reinstatement of their voting rights complete all of the terms contained in the four corners of their sentence. In Miami-Dade County, the standard Sentencing Order contains all the elements of the Defendant's punishment. It includes things like jail or prison, community control, probation, victim restitution

and fines. Once the sentence is completed, an individual would be able to request restoration of their voting rights. Fees and costs are not part of the Sentencing Order, but are part of the Judgement, a separate court action.

After much collaborative discussion, all the involved criminal justice stakeholders and scholars read Florida Statute 98.0751 as not requiring a person to pay fees and costs before having their voting rights restored. We are facilitating the restoration of former felons' voting rights with a variety of approaches depending on the nature of each individual's case and situation.

Many believe that one should be held accountable for his/her acts. Of particular note, any unsatisfied financial obligations, such as any unpaid fees and costs, remain outstanding. They are not being waived in this process.

Further, since fees and costs are not part of a person's sentence, individuals will be allowed to register to vote even when these items remain outstanding. However, our criminal courts have the discretion to convert fines to community service hours for those individuals who cannot afford to pay. Many also believe that being indigent or unable to pay the costs of processing their case should not prohibit the precious right to register to vote.

However, there are some very important points to recognize:

- Any convicted felon who wants his or her voting rights restored must start the process.

- Miami-Dade courts may only provide relief for felony convictions entered in Circuit Courts of Miami-Dade County.
- Federal convictions and convictions from other counties or other states cannot be remedied here in the courts of Miami-Dade County.
- There is no need to seek restoration of voting rights in cases that were Dismissed, Nolle Prossed or Closed to a Withhold of Adjudication.

There are 3 different approaches for 3 different scenarios:

- One for individuals who have paid all their financial obligations, such as restitution to victims;
- Another track is for those persons who have outstanding financial obligations, but have already worked out a payment plan with the Clerk of the Court;
- And the third track is for those with outstanding financial obligations who have not worked anything out with the Clerk of the Court.

Desmond Meade and the Florida Rights Restoration Coalition (FRRC) will play a key role in acting as an initial starting point for those seeking assistance and needing information on this process.

In 2017, the Miami-Dade Grand Jury investigated the potential effects of Amendment 4 and recognized that former felons whose civil rights are restored, reoffend at a dramatically lower rate than those whose rights are not restored: an 11% rate rather than a 33% rate.

This means that the restoration of voting rights benefits all of us by potentially making our community safer and saving tax dollars, all while allowing more citizens' voices to be heard. Restoring the right of eligible felons to vote is not only the law, but it is the right and just thing to do.

We are partnering with local voluntary bar associations, including CABA, who want to work with unrepresented returning citizens. We have standardized all of the motions and legal documents to make this process uniform and efficient. If you would like to become involved or learn more, please contact Chief Assistant State Attorneys Deisy Hernandez DeisyHernandez@miamisao.com or Stephen K. Talpins StephenKTalpins@miamisao.com



Katherine Fernandez Rundle is Miami-Dade County's and Florida's first Cuban-American State Attorney

LEGAL CORNER

LEGAL ROUND UP

By: Elliot B. Kula, Esq & W.Aaron Daniel, Esq & William D. Mueller, Esq

You've Got a (Facebook) Friend in Me—So What?

Law Offices of Herssein and Herssein, P.A. v. United Servs. Auto. Ass'n., 271 So. 3d 889 (Fla. 2018)

In 1995, Randy Newman defined true friendship with his now-classic song “You’ve Got a Friend in Me” from the Toy Story soundtrack, in which he explored the nuances of a boy’s relationship with his toys, and the toys’ relationships with one another. Following in Mr. Newman’s footsteps, the Florida Supreme Court has defined Facebook “friendship” with its recent decision in *Law Offices of Herssein and Herssein, P.A. v. United Servs. Auto. Ass'n.* And, according to the Court, you probably have a closer connection to your toys.¹

Past readers of the Legal Round Up will recall earlier issues discussing the conflict between the Third and Fourth District Courts of Appeal on whether counsel’s status as Facebook “friends” with a judge is a sufficient basis for disqualification.² The Third District rejected the “assumption that all Facebook ‘friends’ rise to the level of a close relationship that warrants disqualification” explaining that such “simply does not reflect the current nature of this type of electronic social networking.”³ But the Fourth District held that being Facebook friends is sufficient grounds for disqualification by focusing not on the closeness of the relationships, but on the judge’s “active role in accepting or rejecting potential friends,” as the act of accepting a “friend request” may convey the impression that the lawyer is in a special position to influence the judge.⁴

The Florida Supreme Court resolved this inter-district conflict.⁵ The majority opinion (authored by Chief Justice Canady, in which Justices Polston, Labarga, and Lawson concurred) approved of the Third District’s opinion and largely tracked its rationale. A dissenting opinion (authored by Justice Pariente, in which Justices Lewis and Quince joined) adopted the Fourth District’s rationale.

The majority opinion began with the premise that traditional friendships between judges and attorneys appearing before them, standing alone, are not sufficient to warrant disqualification.⁶ If you thought Randy Newman’s definition of traditional friendship was insufficiently comprehensive, the majority opinion has you covered. The majority retrieved definitions of the word “friend” and “friendship” from three English dictionaries, three separate editions of Black’s Law Dictionary, and (interestingly) a 1926 New Hampshire supreme court case.⁷ The upshot being that, while a “friend” may be someone “attached to another person by feelings of affection or esteem,”

¹ *Law Offices of Herssein and Herssein, P.A. v. United Servs. Auto. Ass'n.*, 271 So. 3d 889 (Fla. 2018).

² See *Legal Round Up*, CABA Briefs (Cuban Am. Bar Ass'n, Miami), Spring 2018.

³ *Law Offices of Herssein and Herssein, P.A. v. United Servs. Auto. Ass'n*, 229 So. 3d 408, 412 (Fla. 3d DCA 2017).

⁴ *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2012).

⁵ *Law Offices of Herssein and Herssein, P.A.*, 271 So. 3d at 891 (citing Art. V, § 3(b)(3), Fla. Const.).

⁶ *Id.* at 894.

⁷ *Id.* at 894.





LEGAL ROUND UP

“some friendships are close and others are not.”⁸. For that reason, mere friendship, standing alone is not sufficient grounds for disqualification.

Then, the majority opinion dropped a bombshell: “Facebook ‘friendship’ is not — as a categorical matter — the functional equivalent of traditional friendship.”⁹ (Sorry, after all this time, it turns out you really *aren’t* friends with Nicki Minaj.) According to the majority, it’s possible for Facebook “friendships” to be even less intimate than real friendships. Ergo, if traditional friendships are insufficient grounds for disqualification, then Facebook “friendships,” which “exist[] on an even broader spectrum” of intimacy, including “virtual stranger[s],” likewise cannot be grounds for disqualification.¹⁰

Justice Pariente’s dissent criticized the majority’s approach of comparing traditional friendships to Facebook user connections, urging that the level of closeness between Facebook “friends” is irrelevant to determining whether a party would have a “well-founded fear of not receiving a fair and impartial trial.”¹¹ Rather, it is the public nature of the Facebook connections that can cause an appearance of impropriety, in a number of ways. Not only can connected users view personal information posted to each other’s profile pages, but the mere “existence of a judge’s Facebook page might exert pressure on lawyers or litigants to take direct or indirect action to curry favor with the judge.”¹² And, the dissent continued, the ability of judges to select or reject friendship requests inherently “causes the potential for the appearance of impropriety.” This selection of friends “conveys or permits others to convey the impression that they are in a special position to influence the judge,” thereby violating Canon 2B of the Florida Code of Judicial Conduct.¹³

Justice Labarga, in a special concurrence, staked out the middle ground, agreeing with the majority opinion that a bright-line rule for judicial disqualification based on a Facebook relationship is unnecessary, but strongly imploring members of the bench to refrain from participating in social media.¹⁴ That is, Justice Labarga urged, social media is simply too fraught with the potential for the appearance of impropriety.

Now that the Florida Supreme Court has answered the existential question of our time (you really aren’t friends with your Facebook “friends”), judges can accept your nagging friend request without worry. Just be careful what you choose to post on that judge’s page. As Judge Gross so eloquently noted in his special concurrence in the Fourth District opinion, “an electronic blip on a social media site can become eternal in the electronic ether of the internet.”¹⁵

So, it appears Randy Newman’s lyrics do ring true, after all:

And as the years go by
Our [social media] friendship will never die
You’re gonna see it’s our destiny
You’ve got a friend in me.¹⁶

⁸ *Id.*

⁹ *Id.* at 896.

¹⁰ *Id.* at 896–97.

¹¹ *Id.* at 900–02.

¹² *Id.* at 900.

¹³ *Id.* at 902.

¹⁴ *Id.* at 899–900.

¹⁵ *Id.* at 900.

¹⁶ Randy Newman, *You’ve Got a Friend in Me*, on *TOY STORY, AN ORIGINAL WALT DISNEY RECORDS SOUNDTRACK* (Walt Disney Records 1995).

CABA BRIEFS

Law Offices of Herssein and Herssein, P.A. v. United Servs. Auto. Ass’n.

LEGAL ROUND UP

Rules of Judicial Engagement: No Pre-Emptive Strikes

Real State Golden Invest. Inc. v. Larrain,
No. 3D19-1369 (Fla. 3d DCA Aug. 21, 2019)

Litigants want judges to make rulings. Sometimes, though, it's possible for judges to rule too quickly; as in, **before** the motion is even filed.

In *Real State Golden Investments, Inc. v. Larrain*, the trial judge denied a would-be intervenor's motion to intervene, and then immediately proceeded to deny "a non-existent motion to stay the proceedings."¹⁷ Reasoning that the would-be intervenor was bound to appeal and sure to eventually seek a stay, the trial judge announced his ruling on that inchoate motion, stating there was no "reasonable chance of success on appeal now that we have conducted this full analysis and identified the different issues"¹⁸

The would-be intervenor moved to disqualify the judge, and then petitioned for a writ of prohibition after the disqualification motion was denied. The Third District Court of Appeal held that the pre-emptive ruling on the non-existent motion to stay was "sufficient to leave Petitioners with an objectively reasonable fear they will not receive a fair trial."¹⁹ The Third District reasoned that ruling on a yet-to-be-filed motion is tantamount to "pre-judg[ing] the case."²⁰ A judge is allowed to form mental impressions of a case, said the Third District, but announcing the intention "to make a specific ruling, regardless of any evidence or argument to the contrary, is the paradigm of judicial bias and prejudice."²¹

The Third District has laid down a clear line in the sand: a judge cannot rule unless a motion is filed.

The Trial Court Says Nothing, You Get Reversed!

Sky Zone LLC v. Weekly,
259 So. 3d 890 (Fla. 4th DCA 2018)

Judges can be reversed for many reasons: applying the wrong law, applying the correct law incorrectly, abusing their discretion, drawing factual conclusions without an evidentiary predicate. And sometimes, even doing nothing will result in reversal! In *Sky Zone LLC v. Weekly*, the Fourth District Court of Appeal reversed an order that summarily denied a motion to compel arbitration.²² The order contained no factual findings or legal conclusions. And, although there was a hearing, the trial judge failed to announce any rulings on the record.

Because the order was utterly unelaborated, the Fourth District held "[e]ffective review of the circuit court's order [was] impossible."²³ Ordinarily,

¹⁷ No. 3D19-1369, at *2 (Fla. 3d DCA Aug. 21, 2019)

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Sky Zone LLC v. Weekly*, 259 So. 3d 890 (Fla. 4th DCA 2018).

²³ *Id.* at 890.



LEGAL ROUND UP

when faced with such a black box, the remedy is to “remand the case to the circuit court to enter an amended order containing factual findings and legal conclusions to support its decision.”²⁴ But in *Sky Zone*, the trial judge had retired, and so the Fourth District remanded for a brand new hearing, after which the successor judge could articulate a basis for his or her ruling that would allow meaningful review in the district court.

Practice Pointer: Make sure that any favorable order contains a basis for the court’s ruling, or you may end up with a detour to the district court!

Trial Courts Can’t Concur with Concurrences

Benzrent 1, LLC v. Wilmington Sav. Fund Soc’y, FSB,
273 So. 3d 107, 108 (Fla. 3d DCA 2019)

We’re all familiar with the concept of “binding” precedent. A circuit court, of course, in the absence of a Florida Supreme Court decision directly resolving the issue, is bound by the decisions of the district court that has geographic jurisdiction over it. But what happens when that circuit court’s controlling district court has yet to speak to the precise issue? And what about when that circuit court’s district court hasn’t spoken, but another other district court (or two) addressed the issue? How do you assess the precedential value of those other district courts’ decisions when one is a majority and the other only a concurrence? In that specific situation, which district court’s decision must the circuit court follow? Here you have it.

The Third District Court of Appeal has provided a comprehensive answer to these more nuanced aspects of precedential value in *Benzrent 1, LLC v. Wilmington Savings Fund society, FSB*. The Third District reviewed an order from the eleventh circuit striking a defendant’s affirmative defense in a mortgage foreclosure action, ruling that the defendant lacked standing to challenge the plaintiff’s own standing to foreclose. The circuit court relied on a concurrence from the Second District that opined a successor-in-interest cannot challenge a bank’s standing. And the circuit court rejected a contrary decision of the Fourth District, which held that the successor-in-interest could indeed challenge a foreclosing bank’s standing.

The Third District held that, even in the absence of a decision from the Third, the Second District’s concurrence had “no precedential value.”²⁵ Thus, because the Fourth District’s decision was not in conflict with any other district, it bound “all Florida trial courts.”²⁶

Following the Third District’s analysis, when assessing the precedential value of decisions, first determine whether the district court with geographic jurisdiction over the circuit in which you are litigating has spoken on the issue. Then, if that district is silent, determine if an inter-district conflict exists between other district courts’ decisions. A concurrence from one district, lacking precedential value, cannot be in conflict with a majority opinion from another district. If an inter-district conflict does exist between majority opinions of different districts, the circuit court is free to analyze the competing decisions and apply the one it determines to be correct. But if

²⁴ *Id.*

²⁵ *Id.* at 110.

²⁶ *Id.*

CABA BRIEFS

Real State Golden Invest. Inc. v. Larrain

Sky Zone LLC v. Weekly

Benzrent 1, LLC v. Wilmington Sav. Fund Soc’y

LEGAL ROUND UP

there is no inter-district conflict, the decision of one district binds all Florida courts.

The Horrors of Filing Your Notice of Appeal on the 30th Day (Don't Do It!)

Burns v. Burns,
Case No. 4D19-0124 (Fla. 4th DCA June 5, 2019)

The nightmare. It's the thirtieth day after entry of a final judgment. You log into the Florida Courts E-Filing Portal to upload your notice of appeal, but there's an error and your notice is not docketed that day. And there are no days left!

That was the situation in which the appellant found himself in *Burns v. Burns*.²⁷ And the E-Filing Portal "error" was actually caused by the St. Lucie County Clerk's internal policy requiring the filing fee to be paid contemporaneously with the notices of appeal (and apparently, a predicate for docketing). Despite not having paid the filing fee at the time of uploading the notice of appeal, the appellant's trial attorney thought the E-Filing Portal would create an electronic file-stamp indicating the notice was filed on the 30th day. But the notice of appeal was actually stamped on the 31st day, the day payment was received.

The Fourth District Court of Appeal issued an order to show cause why the appeal should not be dismissed as untimely, and upon the appellant's response explaining the E-Filing hiccup, relinquished jurisdiction to the trial court for a full evidentiary hearing involving the clerk and counsel. The clerk confirmed that, yes, the office required payment of the filing fee before it would accept the notice of appeal for filing.

The Fourth District expressly disapproved this practice, recalling the well-established law that a notice of appeal acts to vest jurisdiction without the accompanying filing fee.²⁸ The trial clerk is without power to sanction a party for failing to pay the fee, as that decision is left to the appellate court's discretion. The Fourth District held that "[c]lerks of the circuit courts must accept notices of appeal with or without an accompanying filing fee or application for determination of indigent status, whether filed in-person, through the mail, or electronically through the portal."²⁹

While a timely attempt to file the notice of appeal without the filing fee does act to vest jurisdiction in the appellate court, don't go there. Filing errors of all kinds happen, and when it comes to jurisdictional deadlines rarely are they excusable. The better practice is to file a day or two ahead of the 30-day jurisdictional deadline. You'll sleep better, and you'll save your clients the expense of litigating the timeliness of your notice!

¡Ojo! The Summary Judgment Standard Is Up For Review



LEGAL ROUND UP

Wilsonart, LLC v. Lopez,
Case No. SC19-1336 (Fla. October 15, 2019)

Keep an eye out on this developing story. The Florida Supreme Court recently accepted jurisdiction of a case based on a certified question by the Fifth District Court of Appeal that may upend summary judgment law as we know it.

In *Lopez v. Wilsonart, LLC*, a freightliner truck driver was driving in Osceola County, Florida, when he was struck from behind by pickup truck.³⁰ The impact forced the freightliner forward into another vehicle, causing a second collision.³¹ The truck driver moved for summary judgment arguing that the pickup truck driver was solely responsible for the two collisions. In support of his motion, he offered his dashcam camera footage, which confirmed that the freightliner had been driven reasonably safe until it was struck by the pickup truck.³² In response, the estate of the pickup truck driver filed an eyewitness account that had reportedly seen the freightliner abruptly change lanes prior to the first crash.³³

The trial court, and the Fifth District, were faced with a difficult scenario. Applying Florida's summary judgment faithfully would require accepting the factual dispute between the parties at face value and ordering a trial. But, the dashcam footage from the freightliner seemed to clearly demonstrate the freightliner had been driven carefully and had not changed lanes at all prior to the initial impact with the pickup truck. The trial court could not resist the video. It granted summary judgment because the "clear, objective, neutral video evidence [was] so contradictory to the opposing party's evidence so as to render that evidence incompetent."³⁴

But the Fifth District was not so easily swayed. Reversing the trial court's decision, the Fifth District held that "by finding that the video evidence, as compelling as it was, completely negated both the independent eyewitness testimony as well as the Estate's expert opinion, the trial court improperly weighed competing evidence on material facts."³⁵ That was contrary to established Florida summary judgment law, and "improperly encroached into the jury's province."³⁶

It's not over yet, though. The Fifth District certified the issue to the Florida Supreme Court, as a question of great public importance. The question certified read as follows:

Should there be an exception to the present summary judgment standards that are applied by state courts in Florida that would allow for the entry of final summary judgment in favor of the moving party when the movant's video evidence completely negates or refutes any conflicting evidence presented by the non-moving party in opposition to the summary judgment

³⁰ *Lopez v. Wilsonart, LLC*, 275 So. 3d 831, 832 (Fla. 5th DCA 2019)

³¹ *Id.* at 832.

³² *Id.* at 833.

³³ *Id.* at 833.

³⁴ *Id.* at 834.

³⁵ *Id.* at 834.

³⁶ *Id.* at 834.

CABA BRIEFS

Burns v. Burns

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LEGAL ROUND UP

motion and there is no evidence or suggestion that the videotape evidence has been altered or doctored?

But there's more. The certified question unquestionably caught some "ojos" in the Florida Supreme Court because on October 15, 2019, the Court accepted jurisdiction of the case to answer the certified question and added a second question to boot:

Should Florida adopt the summary judgment standard articulated by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)? If so, must Florida Rule of Civil Procedure 1.510 be amended to reflect any change in the summary judgment standard?³⁷

That's right. The Florida Supreme Court will soon consider whether to officially adopt the federal summary judgment standard which would bring a host of changes to summary judgment cases -- and appeals. Perhaps, by the next CABA Briefs we'll have kissed our Florida summary judgment standard goodbye. Stay tuned. In to the next edition of CABA Briefs, if it goes as it seems to be going, we'll provide a primer on the differences between the Florida and federal summary judgment standards, giving what you need to do to ace your next summary judgment, and answer the age-old question of "ñoooo how many of those *Celotex* cases are there?"

³⁷ *Wilsonart, LLC v. Lopez*, Case No. SC19-1336 (Fla. October 15, 2019)

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Como Conocer a Un Pueblo: Exploring Archival Collections

By: Candice Balmori, Esq

I have never set foot on the island of Cuba, but I carry it with me daily. At times, my satchel is light, effortless, and smells of the *azucena* flowers that my grandmother carried in her wedding bouquet. On other days, my basket is heavy, weighed down by rationed garbanzos hustled by way of *La Libreta*.

I was born in the United States of America a little more than a decade and a half after my family was exiled from Cuba. Nonetheless, pre-revolutionary memories once captured by my grandparents on film fill the hollows of picture frames meticulously placed around my home. Stories from a childhood that was never mine are recounted at the dinner table with such frequency that I know them as if they were my own. I absent-mindedly whistle *El Manicero* and often comment in *refranes*. I can recite the Cuban National Anthem thanks, in part, to the weathered, yellowing paper upon which my grandfather once so precisely typed its lyrics and taped to the wall of his home office. And occasionally, it is as if I can hear the melody of a *danzón* in the spaces between Jose Marti's poetry verses. I have my family to thank for all of these things.

As with many exiles, my parents and grandparents have carefully stewarded their archive of sentimental moments from a life that was interrupted by abrupt political turmoil and uncertainty at a formidable time. The swiftness with which change so unexpectedly occurred in their lives has caused them to find value in moments from the past that would otherwise be easily obscured and forgotten throughout the years. These

archives of memories, names, faces, streets, recipes, sounds and smells are always at hand for me with just the hint of an inquiry and, more often than not, without it.

But, beyond my family and perhaps your own, the Cuban-American community and several significant research institutions in South Florida have done a world-class job of assembling and preserving the collective Cuban memory. Shelves of books and documents, rolodexes, micro-fiches, file cabinets of tangible artifacts, touring documentaries, literature, photographs, yearbooks, magazines, and other ephemera have been thoughtfully curated and preserved outside of the island of Cuba in the careful manner that only expertise driven by passion can prescribe. These archives provide a wealth of primary sources, a scholarly treasure trove protected from the window-dressing and clean-scrubs that are characteristic of regimes known to censor texts and to doctor statistics. Below are just a sample of such collections.

Cuban Heritage Collection at the University of Miami Libraries

The Cuban Heritage Collection at the University of Miami Libraries is home to one of the largest repository of materials on Cuba outside of the island, with one of the most comprehensive collection of resources about Cuban exile history and the global Cuban diaspora experience. It includes published works like rare and contemporary books, journals, artists books, and newspapers, as well as archival materials including personal papers, organizational records,

correspondence, manuscripts, photographs, maps, works on paper, and audiovisual content. It continues to grow its digitized collections as well.

Many of the materials in this collection do not circulate, due in large part to their condition and uniqueness, and often times require special handling by the reference librarian. If you visit, be prepared to spend time on-site in the Reading Room. Some of the most exciting archival and manuscript materials held in this collection include photographs spanning time from the late 19th-century to the 1960s. Some of CABA's own documents can be found in the Collection too. One of the most interesting projects that has been undertaken is the Luis J. Botifoll Oral History Project, a project launched in 2008 for a digital collection of videos, outlines and selected transcripts of oral history interviews conducted with members of the first generations of Cubans to leave the island after the Cuban Revolution. It includes interviews with entrepreneurs, civic leaders, former political prisoners, community activists, artists and writers.

The Cuban and Cuban American Collections at Florida International University's Special Collections and University Archives

Florida International University offers various Special Collections, inclusive of the Cuban and Cuban American Collections. Generally, these Special Collections acquire, arrange, describe, preserve and provide access to rare, unique and often times out of print materials



pertaining to Cuba and Cuban Americans. There are some twenty collections enumerated within the Cuban and Cuban American Collections at FIU, inclusive of The Cuban Living History Project, the Guantanamo Bay Collection, and the Enrique Hurtado de Mendoza Collection of Cuban Genealogy, among others (some which also include collections of music, magazines, and memorabilia such as restaurant menus, travel brochures, and even cocktail swizzle sticks).

The Cuban Living History Project includes three documentaries and 114 personal interviews. The documentaries are based on personal interviews conducted between 1990 and 1997 with Cuban exiles who played prominent roles in the creation of Cuban Miami, most of whom are now deceased, but who were well-known figures in the cultural, political, and intellectual life of the Cuban Republic. The Guantanamo Bay Collection is a collection of some 433 digitized photographs taken by Kenneth (Allegro) Shartz aka Fr. Cyril Shartz between 1994 and 1996 in Guantanamo Bay, Cuba, where he worked as an English teacher through the World Relief Organization. These images detail the daily life of the refugees and include pictures of the refugees, humanitarian workers, the detention camps, the wildlife and

the naval base itself. The Enrique Hurtado de Mendoza Collection of Cuban Genealogy consists of thousands of books, handwritten and typed letters, photographs and other primary documents relating to Cuba and Cuban genealogy, collected over four decades by Felix Enrique Hurtado de Mendoza. This collection includes rare 17th and 18th century books, long out of print publications and periodicals, and thousands of unpublished family genealogies and manuscripts.

The Special Collections at FIU are increasing access to their resources through digitization, but scheduling an appointment to review any unique primary source documents is preferred, particularly for review of audio media, video, and photograph collections. All primary source materials are available to review in the reading room.

Additionally, FIU's Cuban Research Institute boasts the Mario Diaz Cruz Library, which the FIU Law Library acquired in 2007. Mario Diaz Cruz was a well-known Cuban lawyer who practiced law in Havana from 1915 to 1958. When he died in 1958, the collection had approximately 6,000 volumes and was transferred to his son, who brought it to Miami in 1959. The main emphasis of the collection is private law, including commercial law, property, wills and trusts, banking, contracts, and

constitutional law. Handwritten annotations by Dr. Diaz Cruz among the Cuban civil code reference journal articles and treatises, court decisions and related legislation, and give an incredibly personal view of law from the practitioner's perspective.

The Cuban Legacy Gallery at the Freedom Tower & The Exile Experience at Miami-Dade College Special Collections

The Cuban Legacy Gallery at the Freedom Tower honors the Cuban exile experience and provides an incredibly appropriate site for its collections, given that the Freedom Tower plays a significant historic role as *El Refugio*, which welcomed the early Cuban exile community during the 1960s and assisted them with processing and integration into the U.S. community. It has hosted an exhibit called "The Cuban Exile Experience: A Journey to Freedom," which is a historical collection of photos and stories that illustrated the struggles of the Cuban exile community and boasted of their successes and achievements in the United States. The Cuban Legacy Gallery also periodically entertains various exhibitions, many of which cater to artistic commentary.

Additionally, as recently as October 2019, The Exile Experience at Miami Dade College Special Collections launched a series called "Exile Today," which reflects on the unique cultural impact of Miami's exile Community. This collection is a conversation series that was curated and moderated by the prolific Cuban author, speaker and intellectual, Carlos Alberto Montaner, and subsequent programming for this collection has been announced for 2020. The Exile Experience at MDC Special Collections is a program presenting interdisciplinary lectures and discourses that explore the diverse experiences of exile communities, considering forced displacements, diasporic movements, memory, and cultural identity.

San Carlos Institute

The San Carlos Institute is a Cuban heritage center and museum located in Key West, Florida that was founded in 1871 by members of the Cuban exile community who had taken refuge in Key West during the Ten Years' War with the goal of preserving and promoting the language, cultural values and patriotic ideals of the Cuban people. Among its most notable speakers was Jose Marti, the revered Cuban poet and apostle of Cuban liberty.

Today, it maintains several permanent installations related to Cuban history and hosts a number of popular cultural and artistic events. Among its permanent exhibits are a collection of photographs and documents that celebrate Jose Marti's life and contributions to the Cuban Independence movement, a portrait collection of Cuba's constitutional presidents from 1902 to 1952, and an exhibit of documents from the history of the San Carlos Institute itself, from its inaugural opening in 1871 to the opening year of the exhibit in 2008. Additionally, and most interestingly, "The Roberto Pichs Collection: Exploring Cuba's Postal History" is an online exhibit and joint project with the Smithsonian Institution's National Postal Museum, that explores the various faces of Cuba's history through its postal stamps. It explores Cuba's postal history from the pre-philatelic period to 1939.

Other Collections and Organizations

The archives and resources highlighted herein are by no means an exhaustive list of the resources available outside of the island of Cuba. For example, in 2018, Harvard University announced that the Harvard Library had begun the important process of digitizing some of its most important Cuba-related resources, such as the José Augusto Escoto Cuban History and Literature Collection, ca. 1574-1920. Harvard Library houses the

largest collection of unique Cuban monographs in the United States and ultimately plans to make them freely accessible. The Escoto Collection comprises autograph manuscripts, correspondence, historical documents, printed items, and includes 63 boxes of clippings, drawings, lithographs, portraits, sketches, individual issues of journals, newspapers, decrees, orders, obituaries, pamphlets and leaflets. Some of the subjects covered in the materials are: censorship, religion, commerce, industry, conspiracy and independence, laws and legislation, military, piracy, political parties and elections, printing and publishing, public finance and taxation, schools and education, slavery and the slave trade, statistics, and theater. By digitizing this collection, Harvard University will contribute to the *Cuba Libro Project*, which involves the libraries of the University of Florida, Harvard University, UCLA, the University of Miami, Duke University, the University of North Carolina at Chapel Hill, Florida International University and the New York Public Library in a collaborative effort with the Biblioteca Nacional Jose Marti to provide greater knowledge of, and access to, Cuban bibliographic history held in libraries in the U.S. and Cuba.

Additionally, local organizations like the Assault Brigade 2506 Museum, which provides museum resources on the events and personalities surrounding the Bay of Pigs Invasion, and Operation Pedro Pan Group, Inc., which periodically exhibits a documentary titled "Operation Pedro Pan: The Cuban Children's Exodus" in various locales, also serve as important primary-source resources for very prominent historical events relating to pivotal periods in Cuban and Cuban American history. Certainly, other exile organizations that have contributed to the wealth of the community's history retain their own independent archives. And let us not forget that tucked into libraries across the nation there is literary, historical and archival information awaiting discovery.

* * *

It strikes me that the persistence with which the archival collections mentioned are assembled, the diligence with which the exhibits are curated, and the care with which the resources are shared is something supremely more special than mere library science. Rather, these archives hold, host, and cultivate resources that resemble that same familiar, beautiful, and heartfelt nostalgia of a displaced community in much the same way that these sentiments are personally reflected among dinner table conversations with family, the familiar melody of a *danzón*, and in the black and white photographs that line our living rooms. Beyond mere personal appreciation, the preservation of and access to this treasure trove of historical resources is especially imperative to our community—lest the truth of their collective memory be irremediably censored, distorted, or lost. "*Para conocer a un pueblo se le ha de estudiar en todos sus aspectos y expresiones: en sus elementos, en sus tendencias, en sus apóstoles, en sus poetas, y en sus bandidos.*" (Jose Marti, 1887). Let's study up.



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Where We Come From, Cuban Constitutions 1812–1897

By: Jose A. Villalobos, Esq

It is somewhat presumptuous to attempt to summarize one hundred years of history in an article of 1,500 words, but I believe it is quite important to present a bird's eye view of the convulsive period of the Eighteenth Century that culminated in the loss by Spain of their American empire.

Background

By 1812, Spain had governed its American empire for over 400 years. It had ruled with firm and oppressive hands the economic and political affairs of their colonies. Spain had created monopolies that only favored the crown. The colonies had seen their population grow to a number that superseded that of Spain. *Criollos*¹ wanted to be more than suppliers of raw materials and taxes, this yearned for some autonomy and representation of their own to Spain.

The Americas were actually the major source of treasury to the Spanish for their European struggles and adventures and were burdened by more oppression and demands for economic contributions.

Early in the 1800's, the first attempts of emancipation flourished in different Spanish colonies in the Americas. This coincided with Napoleon Bonaparte convincing King Fernando II that it would be to the advantage of Spain to allow French armies to cross Spanish territory to attack Portugal which at that time was allied with England, both enemies of Spain and France.

By the time of the signing of the Treaty of Versailles, French troops had crossed the border and invaded Spain. However, much to the dismay

of Fernando II, Bonaparte forced the abdication and incarceration of both Fernando II and of his father Carlos IV, and appointed his brother Jose as King of Spain.

A war of liberations ensued in Spain and Spanish armies, ironically helped by English and Portuguese troops, battled the French invaders. A vacuum of power left the Spanish congress (Las Cortes) to govern what remained of free Spain. In 1812, the first Spanish constitution was drafted much to the delight of Spanish colonies in the Americas. Although it recognized Fernando II as King, the new constitution limited his power and granted many of the domestic and colonial reforms that had been long-demanded by the Spanish people and the *Criollos*. Colloquially it was called "La Pepa," since it was enacted on March 19, 1810, the day of St. Joseph. La Pepa opened a new horizon of hope to the *Criollos* of America.

Fernando II was restored to rule Spain in 1814 by the combined forces of England and Portugal and immediately abolished "La Pepa," arresting liberal leaders and disavowing many of the social reforms. Thereafter, Fernando II positioned himself as the strong King again. The disenchanted *Criollos* continued their struggle for liberation and by 1830 Spain had lost all of its colonies in America except for Cuba and Puerto Rico. As the Spanish armies retreated from South America, Cuba was the natural destiny for thousands of soldiers landing in Cuba. Additionally, since Spain had lost its South American sources of revenue, Cuba became the target of more oppression and taxes.

Constitucion de Joaquin Infante

Almost simultaneously and independently of the enactment of "La Pepa," Joaquin Infante, an attorney by trade who was born in the town of Bayamo, Cuba, authored the first Separatist Constitution project for Cuba, consisting of 100 articles. It proclaimed the inalienable right of independence, the non-retroactive enactment of laws, the emancipation of slavery, abolishment of taxes imposed by Spain and affirmation of freedom of religion among others, established the executive, legislative, judicial and military branches of government.

The legislative power consisted of six deputies. The executive was formed by a triumvirate and the judiciary and military branch were selected by the executive. The military branch of government was justified by the fact of the anticipation struggle with Spain.

Subsequent attempts in drafting constitutions were authored in 1822, 1823 and 1851 by both autonomists who accepted a relationship with Spain but with local forms of governments, and by separatists who wanted absolute liberation from Spain.

Because of its traditional geographic location, Cuba had for centuries been the center of transit between Europe and South America. Cuba was also the focus of North American interests. In 1805, Thomas Jefferson, then the President of the United States of America, entertained the annexation of Cuba. Later, President James Monroe commissioned General Wilkinson to negotiate with

Governor Sumeruelos to purchase the island.

The destiny of Cuba was intertwined with international events, conspiracies, revolts, revolutionary and international war. Between 1812 and 1868, Cuban *Criollos* developed annexionists, reformists, autonomists and independence ideals. However, by 1868, the Cuban *Criollos* had no options left.

On October 10, 1868 Carlos Manuel de Cespedes, an attorney and owner of a sugar mill "La Demajagua," called for the liberation of the island, declared independence (Grito de Yara), liberated the slaves and put his properties to the torch. He and only 36 patriots took to the Maniguas (jungles). On October 10, 1868, they attempted a raid on the town of Yara and were sadly defeated, but we had ignited the hopes of freedom. Cespedes had drafted a Manifiesto that in pertinent part declared...

"Spain imposes taxes and contributions at will, deprives political, civil and religious freedom, the right to peaceful assembly, restricts education, imposes armed forces. Cubans cannot speak, they cannot write, cannot even think. We (the "Revolutionaries") declare services for all and proclaim that the constitution to be drafted would be only transitory."

During the war, the Spaniards had captured his only son, Oscar, and offered to free him if Cespedes renounced his struggle for independence. Cespedes responded that Oscar was not his only son, that he, Cespedes, was then the father of all patriots who had died for the revolution. Oscar was executed on June 3, 1870.

Guaimaro Constitution— April 10, 1869

Simultaneously with the drafting of the Manifiesto of Cespedes, which declared independence, other patriots had already organized against the Spanish dictatorship. Under the leadership of Ignacio Agramonte, a lawyer from Camaguey

province, an insurrectionist assembly gathered on April 10, 1869 to synchronize their common efforts to give cohesiveness to the revolutionary movement. In just three days, a constitution was drafted, authored mainly by Agramonte consisting of 29 articles establishing three branches of government. This constitution gave the legislative branch the power to appoint the executive and the military leaders and the judicial branch, and was subsequently amended in 1869, 1870 and 1872. During its time in effect, three presidents, Cespedes, Salvador Cisneros and Tomas Estrada Palma were subsequently appointed.

Ten ongoing years of deprivation, lack of assistance from the exterior and lack of unity exhausted the revolutionary forces and finally on February 8, 1878, a cease fire was accepted by the legislative branch and the Ten Year War was over by the execution of "El Pacto del Zanjon."

Protesta de Baragua and its Constitution

Not all of the Cuban combatants during the Ten Year War were in accord with the decision of the House of Representatives and the "Pacto de Zanjon." On March 15, 1878, only 35 days after the signing of the surrender in Zanjon, Antonio Maceo, one of the outstanding generals of the revolutionary forces, met with Spanish commanding general Arsenio Martinez Campos to announce that the war would go on.

Guerra Chiquita y Constitucion de Baragua

A new constitution was drafted on March 23, 1878 consisting of only six articles and "La Guerra Chiquita" (The Little War) continued the armed struggle. A counsel of government of six members was headed by President Salvador Cisneros, which subordinated the army to civilian powers but gave the authority to the warriors to conduct the war efforts. This constitution enabled the civilians

to disseminate the ideals of the revolution, raise funds for the rebel army and appoint ambassadors of the rebel republic in foreign nations. It also consolidated and centralized political considerations, and consolidated into one body the executive and legislative powers. On August 26, 1879, the military hostilities ended and many of the Cuban combatants were exiled or deported to far away lands.

Jose Marti

At the onset of "El Grito de Yara," Jose Marti, only a 15 year old student was, however, as others his age, a fervent follower of the revolution. At 16 years old, an article against the Spanish Government is discovered by authorities and Marti was sentenced to six years of forced hard labor as a result. His sentence was commuted, however, and he was deported to Spain. He continued his studies and attained a degree in Civil Law and Canon Law, and a Doctor of Philosophy and Humanities. Marti traveled extensively after the conclusion of hostilities in Cuba, visiting the United States, Mexico, Honduras, Guatemala and other countries as his destinations.

He combined his profuse literary works, being a poet, a writer, a play writer, and a teacher, with conferences given with patriots exiled in those countries, and conjured generals of the big war in 1878 and ultimately formed the Cuban Revolutionary Party. On February 24, 1895 hostilities against the Spanish ruler simultaneously ensued in 35 separate locations throughout Oriente province. This was known as "El Grito de Yara."

Marti traveled to the Dominican Republic and in March 25, 1895 authored the Cuban Declaration of Independence "Manifiesto de Montecristi" and exposed the reasons for the revolutions, declared and exalted the dignity of man, professed reasons not related to revenge but to justice, and proclaimed total liberation from colonial rule. Then, in April 11, 1895,

along with other patriots, Jose Marti invaded Cuba at Oriente province, having organized strategies for war and peace with General Antonio Maceo and Maximo Gomez. On May 19, 1895, Marti was killed in battle at a place called "Dos Rios."

Constitucion de Jimaguayu

On September 13, 1895, General Maximo Gomez called for a meeting of delegates in the town of Jimaguayu, Camaguey to draft a constitution that would, by choice, sunset in two years. This constitution would resolve issues relating to the military and civilian revolutionary authorities that had previously plagued the Baragua constitution. It consisted of 24 articles and eliminated the House of Representatives.

Constitucion de la Yara

As prescribed, the Jimaguayu Constitution sunsetted in 1897. On October 10, 1897, 24 delegates representing all Cuban armies worked to draft a new constitution which consisted of 38 articles declaring that Cuba would demand total independence. The Yara delegates proclaimed, among others, the freedom of education, religion, habeas corpus, right to petition, reunion and political parties. In addition, this new constitution established total separation of judicial branch and added additional representatives to both combatants and civilians. This constitution was the most detailed of the entire war of independence, but it lasted only one year because of the intervention of the United States in the war with Spain.

Carta Autonómica

On November 25, 1897, Spain enacted a document granting Cuba and Puerto Rico the right to form a new government that was totally autonomic, at long last giving the Cubans total control of their destinies. However, it was too little, too late.

The Spanish American War

On April 1898, United States Congress declared war upon Spain after the Battleship Maine was blown up in the Havana Harbor on February 15, 1898. The American Navy, battled the Spanish Navy in Santiago de Cuba Bay, sinking most of the Spanish fleet and disembarking troops that mainly fought in the San Juan Hill Battle aided by Cuban troops already in the area. By the time the Americans entered the war, Spain had deployed 185,000 troops in the inland, however, Cuban fighters had invaded the island to the most eastern province in Pinar del Rio and were fighting in the Vedado neighborhood at the outskirts of the city of Havana.

Treaty of Paris

The Spanish government called for peace and an armistice protocol was executed on August 12, 1898. Spain relinquished Cuba and Puerto Rico and assumed a debt of some 400 million dollars. No Cuban was invited to the surrender ceremonies. The United States assumed the government of Cuba for the following four years until the drafting and adopting of the first free Cuban Constitution on May 20, 1902.

Epilogue

It is now 2019, more than a century after the emancipation from the Spanish tyranny. In 1899, a military government was set in place by the United States. On February 21, 1901, a new constitution was adopted and on December 31, 1901, Tomas Estrada Palma is elected the first president of Cuba. Estrada Palma found Cuba devastated and in ruins because of the war. However, from the economic and social upheaval and subsequent political turbulence that followed the war, Cuba was able to emerge as a prosperous and self-sustaining nation. Then, in January 1, 1959, a new dictatorship enslaved the nation, confiscating properties, putting to death by the thousands, those who opposed the

regime, forcing millions of Cubans to exile, forcing Cubans to flee the island in flimsy vessels or rafts, many finding death along the way. Again, Cubans cannot speak, they cannot write, cannot even think. The new despotic regime has lasted 60 years. Despite all of this, the yearning for independence that is reflected in the constitutional ideals of the Cuban nation, however, have not been silenced.

Now, Cubans and their sons and daughters have again taken up the torch and legacy of Infante, Cespedes, Agramonte, Maceo and Marti as they endeavor to forge a new horizon. Even within our own organization, members of CABA continue the legacy of the very ideals that had been enumerated by the Cuban nation's patriots some 100 years ago. In time, and with the toil and efforts of these new Cuban patriots and liberations, Cuba shall emerge free.

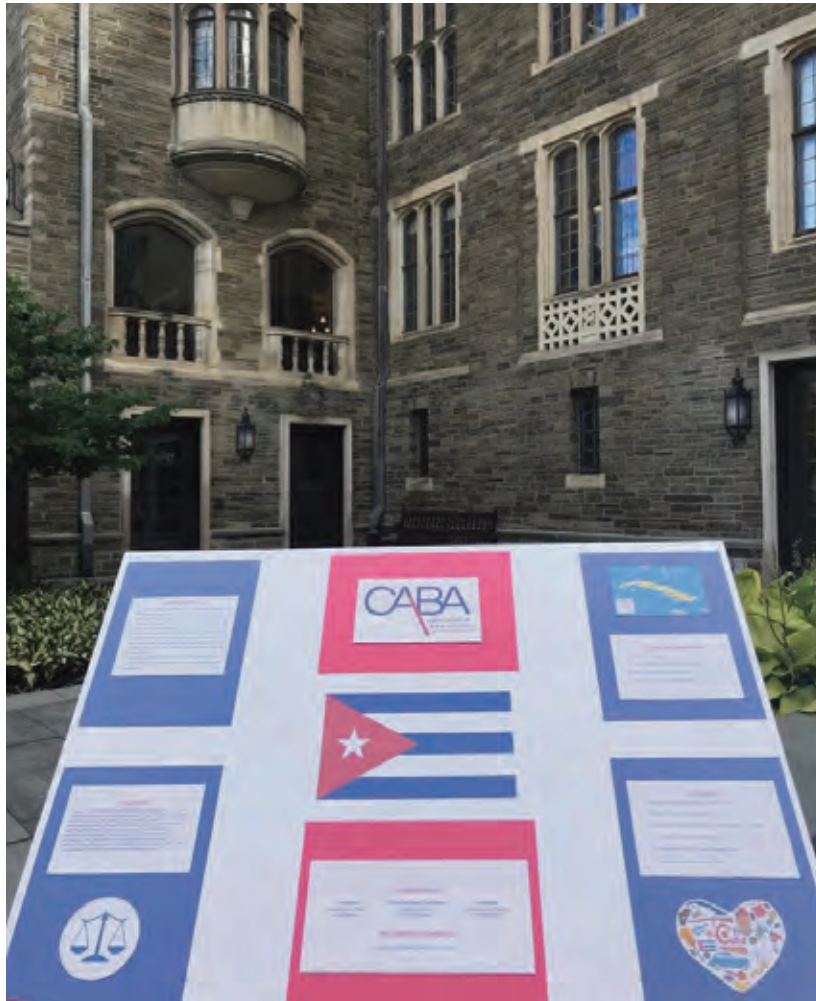
¹ The term Criollo refers to a person of full or near full Spanish descent, who was born in the Americas.



Jose A. Villalobos graduated University of Villanova in 1959, received his Bachelor of Arts from Biscayne College and graduated from University of Florida, School of Law in 1976. Jose's legal career spans more than four decades and his practice includes state and local government affairs, representing cities before governmental entities, counseling clients on a broad array of legal issues, including local government operations. Jose has been the City Attorney for the City of West Miami since 1994 and was appointed a Florida Civil Law Notary by the Florida Department of State.

Cornell University's CABA Student Chapter

Alexa I. Tirse



From an early age, I was intrigued by my family's stories—my great grandmother sending my grandfather to a foreign country alone on the Pedro Pan flights, my paternal grandfather being held as a political prisoner for a year, and my father and his family fleeing their homeland on fishing boats in treacherous waters, through the Mariel Boatlift. My family's sacrifices and struggles were always in the back of my mind, propelling me to do the best that I could do.

For eighteen years, I was lucky to live in the vibrantly cultured City of Miami. As a Cuban American, I grew up a part of the “majority” whether it be in schools or extracurriculars. By high school, I knew this was a privilege, but I did not quite grasp how great an impact this privilege made in my life.

At eighteen, I moved to Gainesville to attend the University of Florida (“UF”). Lucky for me, there was a large Hispanic community for

me to lean on, never allowing me to feel out of place. After taking courses focused on Caribbean and Latin American literature, however, I did feel that there was a lack of Cuban knowledge in the English Department. I took it upon myself, to focus my Honors Thesis on Cuban and Cuban American literature that addressed Operation Pedro Pan. I worked closely with a faculty member who had no experience with the topic but was willing to learn with me. After nearly a year of living in the library stacks, I produced a paper that I am proud of: *A Fairytale Migration: Operation Peter Pan*. This thesis features notable authors and historians, but most meaningfully, it is equipped with a transcript of an interview that I had with my grandfather; a Pedro Pan child himself. Though I was relatively far from home, I managed to use my Cuban American heritage to shape my college experience. After concluding my studies at UF, I knew I wanted to attend law school. It was my goal to go to the best school that accepted me, but I would have never guessed this would lead me to upstate New York to attend Cornell Law School.

At age twenty-one, I felt like a minority for the first time in my life. In Ithaca, I could barely find another Spanish speaker, let alone a place where I could get my *croqueta* and *cafécito* fix. The horrors of the first year of law school are hard enough wherever you go, but being in a tundra so far from home, made it exceptionally difficult. While I was able to do well academically, I really felt like I was missing something huge. At the time, I could not pinpoint it because it was masked by Spanish Spotify playlists on replay and homemade Cuban meals, but it eventually hit me. I was missing my

culture, something that had shaped me and gotten me into the Ivy League law school to begin with.

While working in Miami after my first year, I asked around to see how I could bring some Cuban zest to Cornell for my second year and beyond. This is when I thought to start a student chapter of CABA. With the help of CABA members, especially Dax Bello, I was able to start this chapter in August of 2019.

Cornell CABA has only been around for a few months, and we have already been able to grow to have about twenty members. Our executive board consists of two other Miami-natives, Jessica Clark and Camila Machado, and we have been able to recruit other Cubans and non-Cubans alike. As a new chapter, we have been mainly focusing on logistics this semester, but our first event will be held the first week of November. We will be hosting a Cuban Dinner where we will share delicious food, listen to great music, and learn some more about the history of CABA. Additionally, I am looking for Cuban Americans in the

legal community that would like to speak to our chapter on relatively any topic. It would be amazing to host a CABA member in Ithaca in the coming months. I hope that these events foster a passion in our members to keep Cornell CABA active in the semesters to come.

Cornell CABA will also serve as a refuge for those students, like myself, who do not want to practice law in New York City after law school. While Career Services is great with placing Cornell students in the northeast, students who wish to practice in regional markets, like Miami, have to do most of the heavy lifting on their own. Though it was not impossible to “cold email” and interview with firms in Miami, it certainly was more difficult than it should have been. For this reason, I hope to connect students with alumnus and CABA members in Miami that would be willing to help me mentor students that want to take the route that I am taking.

While Cornell CABA was started to fill a cultural void that I knew I was feeling, it has already started to

serve as a beacon for more students than I could have imagined. I am an extremely proud Cuban American, and I am thrilled to be able to bring such a huge part of home to Cornell. I truly look forward to the new opportunities that this organization will provide.



Alexa I. Tirse is a second-year student at Cornell Law School. In 2018, she graduated magna cum laude from the University of Florida with a B.A. in English and minor in French and Francophone Studies. While at UF, Alexa was inducted as a member of Florida Blue Key. A Miami-native, Alexa will be returning this summer to work as a summer associate at Bilzin Sumberg Baena Price & Axelrod LLC.

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EVENTS CORNER

Membership Awards Reception

On September 18, 2019, CABA held its First Annual CABA Membership Awards Reception at Kozyak Tropin & Throckmorton. CABA took this opportunity to thank its members who have committed their time and efforts to support CABA's mission and initiatives. This year's recipients were the following:

- Member of the Year: Diana Arteaga & Daniel Buigas
- Outstanding Committee Member: Emily Balter & Augusto Perera
- Lifetime Achievement Award: Osvaldo Soto & Jose "Pepe" Villalobos





Membership Awards Reception





Membership Awards Reception





CABA 2019 JUDICIAL LUNCHEON

Cuban American Bar Association

The 2019 Judicial Luncheon: "A View from the Bench" was honored to host Chief Judge Bertila Soto of the 11th Judicial Circuit Court, Judge Monica Gordo of the Third District Court of Appeal, and Judge Adalberto Jordan of the Federal 11th Circuit Court of Appeals as its panelists. This nearly sold out event held at The Ritz-Carlton Coconut Grove gave these judges the opportunity to share their experiences and advice on topics such as why they wanted to be a judge, advice for those looking to be a judge, challenges the judiciary are facing, and the ever important discussion on professionalism. The panel's judicial diversity was key in providing perspectives between state vs. federal courts, elected vs. appointed judges, and trial vs. appellate court levels. At the Luncheon, CABA also recognized Judge Monica Gordo for her recent appointment to the District Court of Appeal.





PAST PRESIDENTS DINNER

IberiaBank hosted CABA's Annual Past Presidents Dinner at Cafe Abbracci Restaurant in Coral Gables. President-Elect Frances De La Guardia welcomed the past presidents and the board of directors to the annual event.





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PAST PRESIDENTS DINNER





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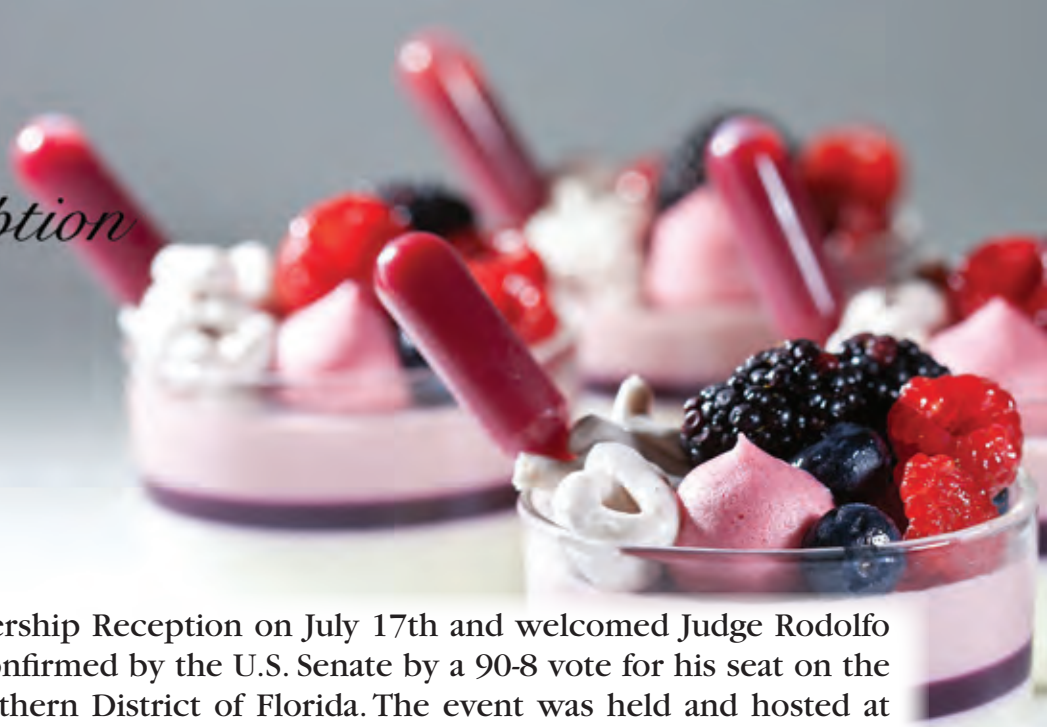
Membership Reception

CABA welcomed Lt. Governor Jeanette M. Nunez to its member reception on April 11, 2019. She was elected as Florida's First Hispanic Female Lieutenant Governor of Florida in 2018 and previously served as a State Representative of the Florida House of Representatives from 2016-2018.

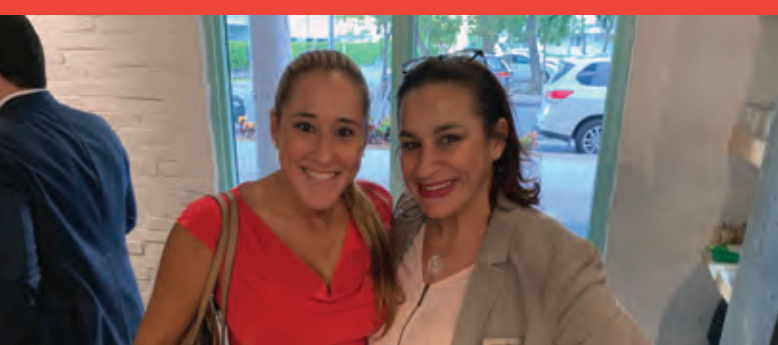




Membership Reception



CABA held its Summer Membership Reception on July 17th and welcomed Judge Rodolfo “Rudy” Ruiz. Judge Ruiz was confirmed by the U.S. Senate by a 90-8 vote for his seat on the U.S. District Court for the Southern District of Florida. The event was held and hosted at Bachour Bakery, with award winning Chef Antonio Bachour.







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CABA ON CUBA

CABA on Cuba Committee Event—May 30, 2019

The International Trade of Cuban Medical Professionals: A Human Rights Perspective

On May 30, 2019, CABA held its second panel discussion of the year titled “The International Trade of Cuban Medical Professionals: A Human Rights Perspective,” which was graciously co-sponsored by Holland & Knight and Mena Law Firm. The panel discussion was organized by the CABA on Cuba Committee and was moderated by CABA on Cuba Co-Chair and Director Candice Balmori. The esteemed panelists for this event included Samuel J. Dubbin, Esq. (Partner at Dubbin & Kravetz, LLP), Omar Lopez Montenegro (Human Rights Director for the Cuban American National Foundation) and Dr. Manoreys Rojas Hernandez (Former Cuban Physician). CABA’s second panel discussion of the year had a great turn-out of attorneys and community leaders, as well as important media coverage by TV Marti on the pressing subject-matter of the panel.

This panel discussion began by exploring the history of the Cuban government’s internationalist “medical mission” programming, whereby its medical professionals undertake contractual labor in healthcare-related missions abroad pursuant to the unilateral negotiation of contractual employment terms on their behalf. It then discussed the implications of this medical mission programming with respect to the express violation of international laws against forced labor, human trafficking, racketeering and conspiracy to commit illegal acts, as well as individual limitations on freedom of movement and fraternization, forced separation from family, withholding of earned wages, intimidation and threat of physical force or imprisonment against program participants or their relatives, unlawful surveillance and detainment, recruitment of employment under threat and coercion, employment under duress, and the lawfulness of negotiating the terms of a professional’s own employment agreement without their informed knowledge or consent. This panel discussion also explored the aforementioned violations with respect to U.S. law, international law, and UN mandates, treaties, agreements and other protocols.

The CABA on Cuba Committee would like to thank each of the panelists who participated in this event and shared thoughtful analysis with our members and event attendees, and Holland & Knight and Mena Law Firm for their generous co-sponsorship of this important discussion.



CABA ON CUBA

CABA on Cuba Committee Event—June 27, 2019

Title III of the Helms-Burton Act: A Look at the Recently Lifted Suspension on Remedies for Claims of Trafficking in Confiscated Property

On June 27, 2019, CABA held its third panel discussion of the year titled “Title III of the Helms-Buton Act: A Look at the Recently Lifted Suspension on Remedies for Claims of Trafficking in Confiscated Property,” which was graciously sponsored by the law firm of Kozyak Tropin & Throckmorton in Coral Gables, Florida. This panel discussion was also CABA’s first ever Webinar. The panel discussion was organized by the CABA on Cuba Committee and was moderated by CABA on Cuba Co-Chair and Director Candice Balmori. The esteemed panelists for this event included Jason Ian Poblete, Esq. (Attorney & Principal at Poblete Tamargo, LLP), and Javier A. Lopez, Esq. (Partner at Kozyak Tropin & Throckmorton).

This panel discussion began with an explanation of Title III of the Cuban Liberty and Democratic Solidarity Act (LIBERTAD or Helms-Burton) and transitioned to exploring the certified claims process, understanding the implications of Title III’s application in enforcement, and examining what practical effect the lifting of Title III’s suspension by the Trump Administration has on clients—businesses seeking to continue or explore the option of doing business with Cuban entities, as well as individuals/entities with standing to bring claims for properties expropriated by the Cuban government against Cuban and foreign companies alleged to have “trafficked” with those properties. CABA’s third panel discussion of the year boasted an impressive turn-out of attorneys and community leaders, both in-person and via real-time participation online during the streaming Webinar.

The CABA on Cuba Committee would like to thank each of the panelists who participated in this event and shared thoughtful analysis with our members and event attendees, and Kozyak Tropin & Throckmorton for its generous sponsorship of this important discussion.



CABA ON CUBA

CABA on Cuba Event—November 5, 2019

The Nexus Between the Regimes: Cuba, Venezuela & Nicaragua

On November 5, 2019, CABA held its fourth panel discussion of the year titled “The Nexus Between the Regimes: Cuba, Venezuela & Nicaragua,” which was graciously co-sponsored by University of Miami School of Law and U.S. Century Bank. The panel discussion was organized by the CABA on Cuba Committee and was moderated by CABA on Cuba Co-Chair and Director Candice Balmori. The esteemed panelists for this event included Former Florida Representative to the U.S. House of Representatives Lincoln Diaz-Balart, Omar Lopez Montenegro (Human Rights Director for the Cuban American National Foundation) and Mr. Hugo Acha (Director of Research for the Foundation for Human Rights in Cuba). CABA’s fourth panel discussion of the year had a great turn-out of attorneys and community leaders, as well as student and faculty/administration participation from the University of Miami.

This panel discussion reviewed and analyzed a wide range of topics based in law and theories of political science, inclusive of: (1) the legal and political systems of Cuba, Venezuela & Nicaragua; (2) international relations by and between Cuba, Venezuela & Nicaragua (including the adherence to international treaties, mandates, protocols, and trade agreements); (3) social policies, human rights obligations and the reported violations thereof by each regime as related to international human rights law; (4) the economic practices, economic interdependence, and the nexus between the legal, political, and the centralized economic systems of the regimes; and (5) the present hemispheric relations, past and potential future nation-building consensus, and present international legal conflicts presented by and between Cuba, Venezuela and Nicaragua.

The CABA on Cuba Committee would like to thank each of the panelists who participated in this event and shared thoughtful analysis with our members and event attendees, and the University of Miami School of Law and U.S. Century Bank for their generous co-sponsorship of this important discussion. Thanks also go to the University of Miami School of Law for hosting the event and our membership and event attendees on its campus.





4th ANNUAL NIGHT WITH THE MARLINS

CABA MARLINS NIGHT—MAY 17, 2019

CABA's 4th Annual Marlins Night took place on May 17, 2019 as hundreds of CABA members and friends arrived at the ballpark to watch the Miami Marlins take on the New York Mets. This fun-filled event brought together people of all ages to watch America's national pastime, listen to some of Miami's upbeat music, and eat the best ballpark food around. This was an exceptionally special night for the CABA Pro Bono Project as a donation was made on behalf of CABA for approximately \$24,000! These funds will be used to assist the poor and indigent community in Miami-Dade County by connecting those in need with attorney volunteers, regardless of race, creed, color, gender, sexual orientation or national origin. This night would not have been possible without the generous contributions of our sponsors:

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We would also like to extend a very special Thank You to the 2019 Marlins Night Committee who, without them, we could not have accomplished all that we did and who worked tirelessly to make this year's Night with the Marlins a huge success:

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Oscar Lombana
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Laura Farinas
Jackie Augusto
Olivia Rodriguez Girado
Daniel Espinosa

CABA

4th ANNUAL NIGHT WITH THE MARLINS

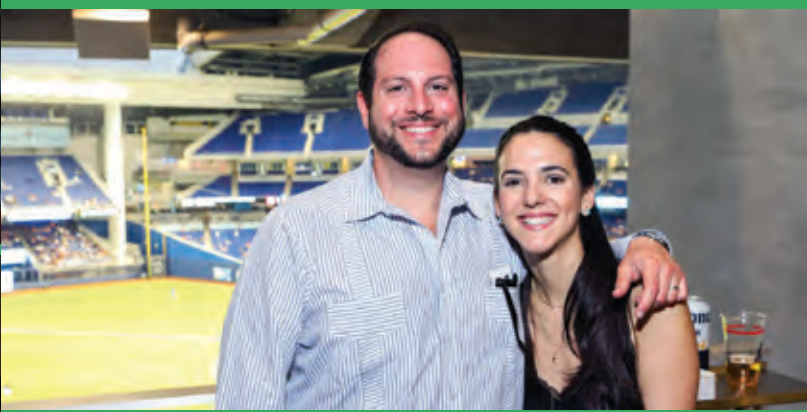




CABA

4th ANNUAL NIGHT WITH THE MARLINS







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YOUNG LAWYERS SUMMER NETWORKER

On October 2, 2019, CABA's Young Lawyers Committee hosted a networking happy hour sponsored by InterMiami FC at Shula's 347 in Coral Gables. The event was attended by several newly admitted lawyers, who had the opportunity to connect with experienced lawyers and judges. Representatives from InterMiami FC and one of their attorneys Richard Perez, of Holland & Knight, provided information about the exciting developments in Miami's soccer world and the plans to transform the Melreese Golf Course in to a world-class destination.



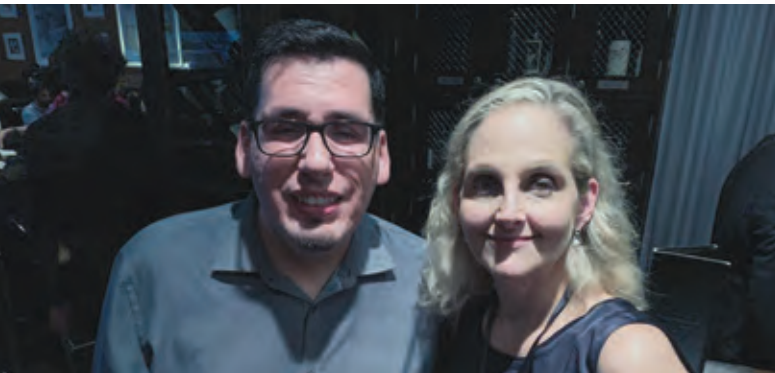




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YOUNG LAWYERS SUMMER NETWORKER





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AIT: *Uncorked*

CABA's 15th annual AIT: Uncorked was held at The Jewel Box at the National YoungArts Foundation on September 28, 2019 and showcased food from 12 local restaurants, wines from around the world, local craft beer, and spirits. The Jewel Box's exterior is covered in stained glass tapestries, providing a beautiful backdrop for this cherished CABA fundraiser focused on culinary arts. The night was topped off by dancing and a "CABA Wine Cellar" raffle, where three lucky winners went home with 20 bottles of wine each. The event raised \$65,000 for CABA Pro Bono Project, which provides free legal services to thousands of indigent South Floridians. Special thanks to our title sponsor of the event, Spiritus Law.







AIT: *Uncorked*



Washington DC Trip

On September 24, 2019, members of the CABA Board of Directors and CABA on Cuba Committee traveled to Washington, D.C. to meet with the Organization for American States (OAS) and the Inter-American Commission on Human Rights (IACHR) to discuss CABA's "2019 Written Update on Recommendations for Consideration." This 2019 Written Update was the result of the CABA on Cuba Committee's efforts to update the IACHR on the status of the Cuban Regime's in compliance with the IACHR's 2006 Report and Recommendations (Report No. 67/06, Case No. 12.476—*Oscar Elias Biscet et al.*) issued in response to the Petition filed by CABA on September 22, 2003 on behalf of numerous victims (the majority of whom are dissidents and independent journalists) of the Cuban Regime. CABA's 2019 Written Update includes an analysis of the current conditions of dozens of Cuban dissidents across the world and of the Cuban regime's continued refusal to abide by the Recommendations enumerated to the Cuban State by the IACHR. CABA is grateful to its members who volunteered to assist with this endeavor, and to the Cuban American National Foundation for its assistance with this project.



Mental Health Awareness Seminar

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CABA held its First Mental Health Awareness Seminar on June 12, 2019 at the University of Miami's Alumni Center. The event's sponsor, Baptist Health Systems, provided panelists in the health care profession with experience in all areas of mental health disciplines. The panelists discussed many topics such as substance abuse, nutrition disorders, stress management, work/life balance, and depression. Additionally, the Florida Bar was represented by attorney Jennifer Falcone, who addressed the issue of mental health reporting and the Florida Bar. A Florida Bar Survey taken in 2015 found that 33 percent believe high stress is a significant challenge within the profession, 32 percent believe balancing family and work is a significant challenge within the profession, 79 percent believe the legal profession is becoming a less desirable career, 36 percent have considered/are considering a different career, 92 percent experience stress.





CABA FOUNDATION

2019 SCHOLARSHIP AWARDS RECEPTION





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2019 SCHOLARSHIP AWARDS RECEPTION





March
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Young Professionals Networker





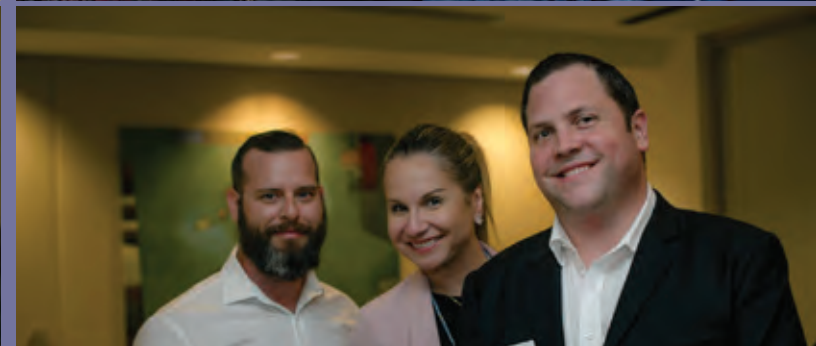


Meet-Your-Match **Happy Hour**

CABA's Mentoring Program was off to a great start on March 7, 2019 as Mentors and Mentees gathered at the offices of Kozyak, Tropin & Throckmorton to "Meet Your Match"! This year, the program was lucky to have a record number of mentor applications, ensuring that all interested students and young attorneys were matched with an experienced attorney committed to helping guide their mentee through their first few years of a fulfilling career.

This year's Meet Your Match event was graciously sponsored by the Kozyak Minority Mentoring Foundation.



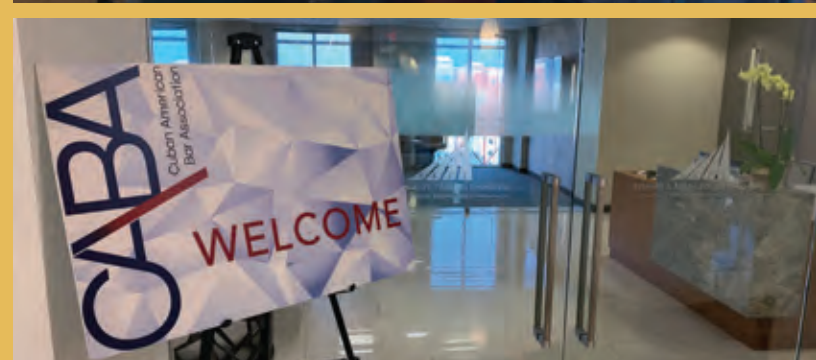
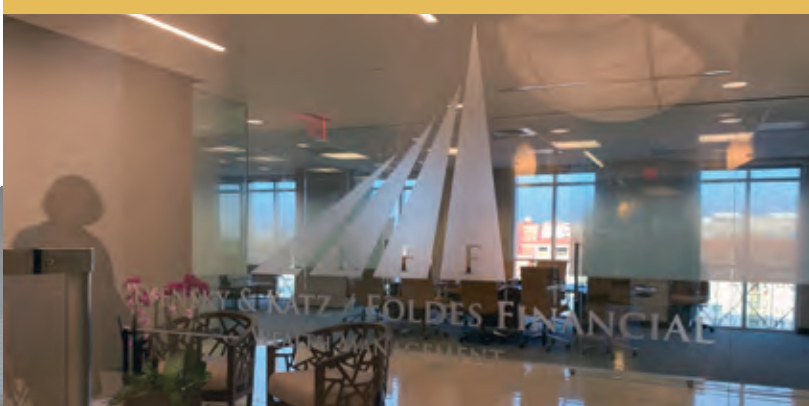




Meet-Your-Match **Happy Hour**



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