

A History of US Terrorism against Cuba

By Marjorie Cohn

The Cuban Five's campaign against terrorism

For nearly 50 years, anti-Cuba terrorist organizations based in Miami have engaged in countless terrorist activities against Cuba. These groups, including Alpha 66, Omega 7, Comandos F4, Cuban American National Foundation (CANF), Independent and Democratic Cuba (CID) and Brothers to the Rescue (BTTR), operate with impunity in the United States - with the knowledge and support of the FBI and CIA.

In the face of this terrorism, Gerardo Hernández, Ramón Labañino, Antonio Guerrero, Fernando González and René González - the Cuban Five - peacefully infiltrated criminal exile groups in Miami to prevent terrorism against Cuba. The Five turned over the results of their investigation to the FBI. But instead of working with the Five to prevent terrorism, the US government charged them with acting as unregistered Cuban agents in the United States and of conspiracy to commit espionage for attempting to penetrate US military bases; Gerardo was also charged with conspiracy to commit murder for the deaths of four Miami-based pilots from BTTR, shot down by Cuban jets in 1996.

The Cuban Five were placed in solitary confinement for 17 months, in tiny cells where they could barely stand, until the start of their trial. Two have been denied visits from their wives in violation of US laws and international norms.

On June 8, 2001, after a 7-month trial, the Cuban Five were convicted of criminal charges in US district court in Miami. They are serving four life sentences and 75 years collectively.

"Conspiracy has always been the charge used by the prosecution in political cases," said noted National Lawyers Guild attorney Leonard Weinglass, who represents Antonio. "In the case of the Five, the Miami jury was asked to find that there was an agreement to

commit espionage. The government never had to prove that espionage actually happened. It could not have proven that espionage occurred. None of the Five sought or possessed any top secret information or US national defense secrets," Weinglass added. "The sentence for the conspiracy charge is the same as if espionage were actually committed and proven. That is how three got life sentences. The major charges in this case were all conspiracy related, the most serious being conspiracy to commit murder levied against Gerardo Hernández."

Convictions overturned

On August 9, 2005, in a 93-page decision, a three-judge panel of the 11th Circuit US Court of Appeals unanimously overturned the Five's convictions, because the anti-Cuba atmosphere in Miami, extensive publicity, and misconduct by the prosecutor denied them the right to a fair trial.

The three-judge panel said that its review of the evidence at trial was "more extensive than is typical for consideration of an appeal involving the denial of motion for change of venue ... because the trial evidence itself created safety concerns for the jury which implicate venue considerations."

Ruben Dario Lopez-Castro, associated with a number of anti-Castro organizations, and Orlando Bosch, who planted a bomb on a Cubana airliner in 1976, killing all 73 persons aboard, "planned to ship weapons into Cuba for an assassination attempt on Castro," one witness testified at the trial.

The panel noted that "Bosch had a long history of terrorist acts against Cuba, and prosecutions and convictions for terrorist-related activities in the United States and in other countries."

Luis Posada Carriles, the other man responsible for downing the Cubana airliner, has never been criminally prosecuted in the United States.

Percy Francisco Alvarado Godoy and Juan Francisco Fernandez Gomez described in depositions attempts between 1993 and 1997 by affiliates of CANF to recruit them to engage in violent activities against several Cuban targets. They both said they were asked to place a bomb at the Caberet Tropicana, a popular Havana nightclub and tourist attraction.

The panel found:

Alpha-66 ran a paramilitary camp training participants for an invasion of Cuba, had been involved in terrorist attacks on Cuban hotels in 1992, 1994, and 1995, had attempted to smuggle hand grenades into Cuba in March 1993, and had issued threats against Cuban tourists and installations in November 1993. Alpha-66 members were intercepted on their way to assassinate Castro in 1997. Brigade 2506 ran a youth paramilitary camp. BTTR flew into Cuban air space from 1994 to 1996 to drop messages and leaflets promoting the overthrow of Castro's government. CID was suspected of involvement with an assassination attempt against Castro. Comandos F4 was involved in an assassination attempt against Castro. Commandos L claimed responsibility for a terrorist attack in 1992 at a hotel in Havana. CANF planned to bomb a nightclub in Cuba. The Ex Club planned to bomb tourist hotels and a memorial. PUND planned to ship weapons for an assassination attempt on Castro.

Several terrorist acts in Havana were documented in the panel's decision, including explosions at eight hotels and the Cuban airport. An Italian tourist was killed, people were injured and all locations sustained property damage. Posada has twice publicly admitted responsibility for these bombings.

The panel characterized Posada as "a Cuban exile with a long history of violent acts against Cuba."

In the face of this terrorism, the Cuban Five were gathering intelligence in Miami in order

to prevent future terrorist acts against Cuba. Former high-ranking US military and security officials testified that Cuba posed no military threat to the United States. Although none of the five men had any classified material in their possession or engaged in any acts to injure the United States, and there was no evidence linking any of them to Cuba's shooting down of two small aircraft flown by Cuban exiles, the Cuban Five were nonetheless convicted of all charges.

A survey conducted before trial showed that 69 percent of all respondents and 74 percent of Hispanic respondents were prejudiced against persons charged with engaging in the activities alleged in the indictment.

Legal psychologist Dr. Kendra Brennan characterized the results of a poll of Miami Cuban-Americans as reflecting "an attitude of a state of war ... against Cuba" which had a "substantial impact on the rest of the Miami-Dade community." She found that 49.7 percent of the local Cuban population strongly favored direct US military action to overthrow the Castro regime. Dr. Lisandro Pérez, Director of the Cuban Research Institute, concluded that "the possibility of selecting twelve citizens of Miami-Dade County who can be impartial in a case involving acknowledged agents of the Cuban government is virtually zero ... even if the jury were composed entirely of non-Cubans, as it was in this case."

One prospective juror stated that he "would feel a little bit intimidated and maybe a little fearful for my own safety if I didn't come back with a verdict that was in agreement with what the Cuban community [in Miami] feels, how they think the verdict should be." A banker and senior vice president in charge of housing loans was "concern[ed] how ... public opinion might affect [his] ability to do his job" which could "affect his ability to generate loans." David Buker stated he believed that "Castro is a communist dictator and I am opposed to communism so I would like to see him gone and a democracy established in Cuba." Buker became the foreperson of the jury.

During deliberations, "some of the jurors indicated that they felt pressured." They

"expressed concern that they were filmed 'all the way to their cars and [that] their license plates had been filmed,'" according to the panel's opinion.

The change of venue motion occurred during the Elian Gonzalez matter. "It is uncontested," wrote the panel, "that the publicity concerning Elian Gonzalez continued during the trial, 'arousing and inflaming' passions within the Miami-Dade community." The panel noted "the various Cuban exile groups and their paramilitary camps that continue to operate within the Miami area." It concluded, "The perception that these groups could harm jurors that rendered a verdict unfavorable to their views was palpable."

The panel found: "Despite the district court's numerous efforts to ensure an impartial jury in this case, we find that empanelling such a jury in this community was an unreasonable probability because of pervasive community prejudice."

The US government's 48-year economic blockade of Cuba was mirrored by the US media's blockade of press coverage of the trial. In spite of the avalanche of coverage in Miami, it was hardly mentioned in the national media. Weinglass declared, "It is inexplicable that the longest trial in the United States at the time it occurred, hearing scores of witnesses, including three retired generals and a retired admiral, as well as the President's Advisor on Cuban Affairs (all called by the defense) and a leading military expert from Cuba, all the while considering the dramatic and explosive 40-year history of US-Cuba relations, did not qualify for any media attention outside of Miami."

Convictions reinstated

US Attorney General Alberto Gonzales appealed the decision of the three-judge panel. In August 2006, the full 11th Circuit court upheld the convictions of the Five. It rejected claims that their federal trial should have been moved out of Miami because widespread opposition to the Cuban government among Cuban-Americans made it impossible to get a fair and impartial jury.

The Five then challenged rulings on the suppression of evidence from searches conducted under the Foreign Intelligence Surveillance Act, sovereign immunity, discovery procedures, jury selection, prosecutorial and witness misconduct, jury instructions, sufficiency of the evidence to support their convictions, and sentencing.

On June 4, 2008, two judges on a three-judge panel upheld Gerardo's conspiracy to commit murder conviction despite the government's lack of evidence. In her 16-page dissent, Judge Phyllis Kravich wrote that the government failed to present evidence sufficient to prove beyond a reasonable doubt that Gerardo agreed to participate in a conspiracy to shoot down planes over international airspace. The panel also affirmed René's 15-year sentence for acting as a non-registered foreign agent and conspiracy to act as a non-registered foreign agent.

The panel, however, vacated the life terms of Ramon and Antonio, agreeing with their contentions that their sentences were improperly configured because no "top secret information was gathered or transmitted." The judges also vacated Fernando's 19-year sentence because he was not a manager or supervisor of the network.

On September 2, 2008 the 11th Circuit Court denied the petitions for rehearing filed by the defense and ratified the June 4, 2008 decision. Fernando, Ramon and Antonio were sent back to Miami for re-sentencing, with the same judge who sentenced them in the first place.

Gerardo's case was not sent to Miami to be re-sentenced because he already has another life sentence. The legal team added a new attorney who is an expert on Supreme Court cases, Tom Goldstein, to file a petition to the Supreme Court.

Bush protected the real terrorists

Since September 11, 2001, George W. Bush made "the war on terror" the centerpiece of

his policy. He used this mantra to justify his illegal wars on Afghanistan and Iraq, his warrantless surveillance of US citizens, and his escalating threats against Iran.

But Bush defined "terrorist" selectively. When it came to Cuba, the Bush administration harbored the terrorists and punished the anti-terrorists. The 700,000 Cuban-Americans in Miami play a critical role in US elections.

Luis Posada Carriles is a Cuban-born terrorist who has accurately been called the Osama bin Laden of the Western hemisphere. He boasted of helping to detonate deadly bombs in Havana hotels 10 years ago. Declassified FBI and CIA documents reveal that Posada was the mastermind of a 1976 bombing of a civilian Cuban airplane that killed 73 people. He escaped from a Venezuelan prison where he was being tried for his role in the first in-air bombing of a commercial airliner. Posada then played a central role in the illegal Iran-Contra scandal.

Posada entered the United States in March 2005 using false papers and was charged in El Paso with lying to Immigration and Customs officials. FBI agent Thomas Rice swore in a June 2005 affidavit that "the FBI is unable to rule out the possibility that Posada Carriles poses a threat to the national security of the United States." Yet on April 19, 2007 Posada was released on bail despite being a flight risk.

This stranger-than-fiction story has a logical explanation. Posada has a long history of ties to the US government. He became a CIA agent in 1961. The US government claims his CIA service ended in 1976. But on April 30, Posada filed a motion in federal court declaring that he continued to work for the CIA for more than 25 years. That puts him on the CIA's payroll when he engineered the terrorist airline bombing. In his motion, Posada asserted the right to present evidence of his CIA work as a defense to the perjury charges. The specter of Posada revealing the dirty deeds committed by the CIA when George H.W. Bush was CIA director was intolerable to Washington.

The government was caught between a rock and a hard place. There had been pressure to

try Posada for his terrorist crimes, as required by Security Council resolution 1373 and three international treaties. Resolution 1373, passed in the wake of the September 11, 2001 attacks, mandates that all countries deny safe haven to those who commit terrorist acts, and ensure that they are brought to justice. The treaties require the United States to extradite Posada to Venezuela for trial or try him in US courts for offenses committed abroad. The Department of Justice elected instead to charge him with perjury for lying about how he entered the United States in 2005.

But the government could not take the risk that Posada might sing like a canary. US District Court Judge Kathleen Cardone dismissed all charges against Posada. She disingenuously claimed, "This Court's concern is not politics; it is the preservation of justice."

It is shocking and outrageous that Luis Posada Carriles, whose crimes rival those of al Qaeda, is now walking free in Miami. And Cardone's decision is deeply political. Indeed, the Los Angeles Times said the release of Posada "exposed Washington to legitimate charges of hypocrisy in the war on terror." The editorial criticized the US for holding men at Guantánamo without due process while releasing Posada. "The US government has done many odd things in 46 years of a largely failed Cuba policy," the Times said, "but letting a notorious terrorist walk stands among the most perverse yet."

The illegal U.S. economic blockade against Cuba

Since the Cuban Revolution, every US President from Dwight D. Eisenhower through George W. Bush maintained a cruel economic embargo--now a blockade--against Cuba. The embargo was initiated in response to a 1960 memorandum written by L.D. Mallory, a senior State Department official, who proposed "a line of action that makes the greatest inroads in denying money and supplies to Cuba, to decrease monetary and real wages, to bring about hunger, desperation and the overthrow of the government."

The embargo began as a means to foment unrest among Cubans in the hopes they would overthrow the Castro government. More recently, it has been used as a vehicle to pander to the anti-Castro Cuban-Americans in Florida who wield tremendous political clout in the US electoral system.

No country has the right to change the regime of another. The International Covenant on Civil and Political Rights, a treaty the United States has ratified, recognizes self-determination as a human right and guarantees all peoples the right to "freely determine their political status and freely pursue their economic, social and cultural development."

Successive administrations have honored this embargo, and the Cuban Democracy Act of 1992 was the first Congressional legislation to expand the scope of the embargo. It strengthened further in 1996 with the adoption of the Helms-Burton Act, which empowers the US government to cancel foreign aid to nations that grant preferential treatment to Cuba. According to Richard Garfield, of the Columbia University School of Nursing in New York, the US government used "Mafia-type pressure tactics" to dissuade foreign sales to Cuba of ingredients for making soap and detergents. The United States has extended the reach of the embargo by attempting to force foreign countries and corporations to participate in the economic blockade of Cuba.

George W. Bush tightened travel regulations, and restricted humanitarian, religious and agricultural missions that Clinton had allowed. Bush also limited remittances to Cuba and the travel of Cuban-Americans to see relatives in Cuba.

The economic blockade against Cuba is a crime against humanity, defined by the Nuremberg Principles as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds . . ." For 48 years, the US government has punished the Cuban people because it dislikes their political system.

In spite of the punishing blockade against it, Cuba has the highest literacy rate in the Americas and one of the highest in the world. The life expectancy in Cuba is the longest in Latin America and one of the longest in the world. Cuba's universal health care system puts ours to shame.

Hope under the Obama administration

The Cold War has ended and the US has normal relations with China and Vietnam. Nonetheless, we maintain a blockade against Cuba tighter than any other in the world. Its restriction on the sale of medicine and food is unprecedented.

President Barack Obama has lifted restrictions on travel to Cuba and on sending money from the United States to relatives back home. The Obama administration recently scheduled high-level meetings with Cuba on migration between the US and Cuba. Obama has said, however, that he wants to maintain the embargo as leverage for changes in Cuba.

But US business interests are lobbying Obama to lift the embargo. Several groups, including the US Chamber of Commerce, the National Foreign Trade Council, and the Business Roundtable, wrote to Obama: "The embargo is not having – and will not have – the type of economic impact that might influence the behavior of the Cuban government." The US International Trade Commission estimated in 2001 that the trade embargo cost U.S. exporters as much as \$1.2 billion per year. Embargo opponents in Congress are planning to introduce legislation in 2009.

Florida's Cuban population is becoming younger and less tied to the rigid policies of older Cuban-Americans toward Cuba. A recent poll by Florida International University found that for the first time a majority of them want to end the embargo.

Caricom has urged Obama to end the embargo. Prime Minister W. Baldwin Spencer of Antigua and Barbuda, Caricom's chairman, said, "The Caribbean community hopes that

the transformational change that is under way in the United States finally relegates that measure to history.”

The US government continues to betray the poor in Cuba, who remain under a state of siege in an undeclared war by the United States. Normalizing US-Cuba relations also would help our economy; many American businesspeople are eager to trade with Cuba. We must lift the blockade of Cuba, not just for the Cuban people and US business interests, but for our own humanity as well.

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