

Addressing the Cuban Five Injustice

America's hypocrisy on terrorism included the U.S. government prosecuting and imprisoning five Cuban agents who were actually trying to thwart terrorist operations in Miami. President Obama's prisoner swap with Cuba finally addressed that upside-down justice, as Marjorie Cohn reports.

By Marjorie Cohn

In the course of delivering his historic speech dramatically altering U.S.-Cuba policy, President Barack Obama briefly mentioned that the United States released three Cuban agents. These men are members of the "Cuban Five," who were imprisoned for gathering information on U.S.-based Cuban exile groups planning terrorist actions against Cuba.

Without their release, Cuba would never have freed Alan Gross. And Obama could not have undertaken what ten presidents before him refused to do: normalize relations between the United States and Cuba.

On June 8, 2001, Gerardo Hernandez, Ramon Labanino, Antonio Guerrero, Fernando Gonzalez and Rene Gonzalez were convicted of criminal charges, including conspiracy to commit espionage, and conspiracy to commit murder, in a trial in U.S. District Court in Miami. They were sentenced to four life terms and 75 years collectively.

In a 93-page decision, a three-judge panel of the Eleventh Circuit US Court of Appeals unanimously reversed their convictions in 2005, because the anti-Cuba atmosphere in Miami, extensive publicity, and prosecutorial misconduct denied them the right to a fair trial. The decision of the three-judge panel was later overturned by a decision of all the Eleventh Circuit Judges, sitting en banc, so the convictions stood.

But the Cuban Five have steadfastly maintained their innocence and there has been a worldwide campaign to free them. In Cuba, the five men are considered national heroes.

Since the Cuban revolution in 1959, anti-Cuba terrorist organizations based in Miami have engaged in countless terrorist activities against Cuba and anyone who advocated normalization of relations between the United States and Cuba. Terrorist groups including Alpha 66, Commandos F4, Cuban American National Foundation, Independent and Democratic Cuba, and Brothers to the Rescue, have operated with impunity in the United States with the knowledge and support of the FBI and CIA.

One witness at the trial testified that Ruben Dario Lopez-Castro, who was associated with several 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 [Fidel] Castro."

The three-judge appellate panel noted, "Bosch has 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 Cuban airliner, has never been criminally prosecuted in the United States. Declassified FBI and CIA documents at the National Security Archive show that Posada Carriles was the mastermind of the airplane bombing.

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 and people were injured. Posada Carriles has twice publicly admitted responsibility for these bombings.

In the face of this terrorism, the Cuban Five were gathering intelligence in Miami in order to prevent future terrorist acts against Cuba. The men peacefully infiltrated criminal exile groups. The Five turned over the results of their investigation to the FBI. But instead of working with Cuba to fight terrorism, the U.S. government arrested the five men.

Former high-ranking U.S. 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 poll of Miami Cuban-Americans reflected "an attitude of a state of war . . . against Cuba" which had a "substantial impact on the rest of the Miami-Dade community" where the trial was held. Dr. Lisandro Perez, Director of the Cuban Research Institute, concluded, "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."

The appellate panel concluded: "Here, a new trial was mandated by the perfect storm created when the surge of pervasive community sentiment, and extensive publicity both before and during the trial, merged with the improper prosecutorial references." Nevertheless, the five men never received a new trial.

Fernando Gonzales and Rene Gonzales were released and returned to Cuba after serving most of their 15-year sentences. Hernandez was serving two life sentences. Labanino and Guerrero had a few years left on their sentences. The latter three men were released as part of the historic deal.

The Door Is Now Open

In his speech, Obama mentioned the hypocrisy of the U.S. refusal to recognize Cuba while we enjoy normalized relations with Communist China and Vietnam. He announced several other new measures designed to normalize relations between the United States and Cuba. But Obama did not lift the U.S. blockade of Cuba, which consists of economic sanctions against Cuba and restrictions on Cuban travel and commerce.

Every year for 23 consecutive years, the United Nations General Assembly has called on the United States to lift the blockade, which has cost Cuba in excess of \$ 1 trillion.

The U.S. trade embargo of Cuba was initiated during the Cold War by President Dwight D. Eisenhower in response to a 1960 memo written by a senior State Department official. The memo 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 [Castro] government.” As Obama stated, that strategy has been a failure.

During the Clinton administration, Congress passed the Helms-Burton Act, which tightened the blockade. Obama promised to try to work with Congress to repeal this legislation.

Because of the significance of the Cuban exile community in Miami, and the strategic importance of Florida in U.S. elections, no U.S. president has dared to normalize relations with Cuba. As Alice Walker wrote in *The Sweet Abyss*, “Many of our leaders seem to view Florida’s Cuban conservatives, including the assassins and terrorists among them, as People Who Vote.” Obama has taken a courageous step in shifting U.S. policy toward Cuba.

In their simultaneous speeches on Wednesday, both Obama and Cuban President Raul Castro thanked Pope Francis for his efforts in helping to engineer the historic deal. CNN reported that bells were ringing in churches all over Havana. This is a wonderful day indeed.

Marjorie Cohn is a professor at Thomas Jefferson School of Law, deputy secretary general of the International Association of Democratic Lawyers, and a former president of the National Lawyers Guild (NLG). In 2000, she joined 250 members of the NLG in a million-person march in Havana against the US blockade of Cuba.

