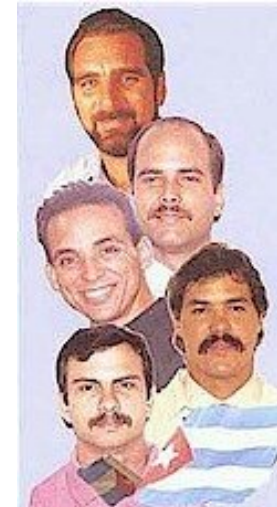
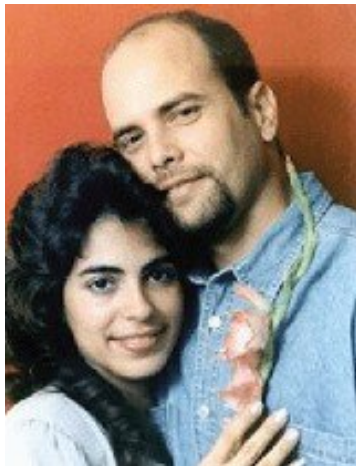


Cuban 5 – Legal Issues



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Some examples of terrorism against Cuba

- 1968: Orlando Bosch fired a bazooka at a Cuba-bound ship in Miami's harbour
- 1976: Bosch and Posada Carriles involved in blowing up Cubana de Aviacion flight killing 73 people
- 1997: Posada Carriles masterminds a series of bombings in Havana targeting tourists destinations causing death and destruction. He was trained in explosives by CIA.
- Posada Carriles states on TV that the 1997 bombings were paid by the Cuban American National Foundation, based in Miami.
- Chemical and biological warfare against Cuba.
- Brothers to the Rescue (para-military organization) violates Cuban air space
- Bosch and Posada Carriles seen in Miami as freedom fighters. Both free

Influence of Anti Castro Cubans in Miami (examples)

- Miami Cuban American National Foundation (ANF) provided funds to cover Posada Carriles' legal defence in migration case.
- ANF supported presidential campaigns of father and son Bush, and the campaign of Florida's former governor J. Bush (G.W. Bush's brother).
- 1989: Justice Department orders Bosch to be deported: "*he has repeatedly expressed and demonstrated a willingness to cause indiscriminate injury and death*". President Bush (father) overrode the order.
- 2001: George W. Bush stopped deportation of Cubans Virgilio Paz & Jose Dionisio Suarez, who killed Chilean Minister Orlando Letelier in 1976.
- Raoul Cantero, lawyer and grandson of Cuban dictator Fulgencio Batista, overthrown by Fidel Castro, appointed by former governor Bush to Florida's Supreme Court.
- George Bush friendly with Miami terrorist, El Chino Aquit. In 1994 El Chino tried to firebomb a Miami warehouse belonging to Pastors for Peace.

Cuban 5 - Legal Process

The Cuban 5: Gerardo Hernández, Ramón Labañino, Antonio Guerrero, Rene Gonzalez and Fernando González (also known as Ruben Campa)

- Arrested in Florida in September 1998. They infiltrated Miami terrorist organisations working against Cuba.
- Tried before the US District Court for the Southern District of Florida in Miami: Strong Anti Cuban and Anti Castro sentiment.
- The 5 were convicted on 8 June 2001 of **conspiracy to commit espionage** and acting as unregistered Cuban agents in the United States.
- Gerardo was also convicted of **conspiracy to commit murder** (deaths of 4 Miami-based 'Brothers to the Rescue' pilots, shot down by Cuban fighter jets in 1996 in Cuban airspace).

The Defence

- The Cuban 5 were involved in monitoring the actions of Miami-based terrorist groups to prevent terrorist attacks on Cuba.
- Their actions were not directed at the U.S. government. They never harmed anyone nor ever possessed nor used any weapons while in the US. No classified documents of the U.S. government was obtained or transmitted by the Cuban 5. This was accepted by the prosecution.
- The Cuban 5 were not spying. Their efforts were aimed at infiltrating and averting plots by the CIA-backed groups based in Miami and intent on assassinating Fidel Castro.
- They could not have a fair trial in Miami (Elian fiasco, anti Cuban sentiment, etc) and the trial should be moved to another court.

Unprecedented Sentences

- **Gerardo Hernandez:** 2 life sentences plus 15 years, to be served consecutively,
- **Ramón Labañino:** Life sentence
- **Antonio Guerrero:** Life sentence
- **Fernando González:** 19 years imprisonment.
- **Rene González :** 15 years imprisonment

Life sentences based on having been convicted of **conspiracy** charges (i.e. the Cuban 5 **agreed** to commit conspiracy, they did **not** do so). **Prosecution did not prove that the crimes of espionage and murder had actually occurred.**

Never before had a criminal charge been based upon the act of a sovereign state (Cuba) defending its own territory. Gerardo Hernandez was not involved in the shooting down of the Brothers to the Rescue planes. **The US government agreed it could not prove the case against Gerardo. The jury found him guilty nonetheless**

Normal sentences for conspiracy to commit espionage in US are 6-7 years.

Sentence for committing espionage: maximum 14 years.

Breach of legal rights (1)

If the trial had taken place in any other country, the US would have criticised it as being in breach of fundamental legal and human rights:

- The Cuban 5 were removed from the general population and placed in solitary confinement in separate prisons
- Denied access to legal materials and personal effects
- Deprived of their Fifth Amendment right to due process of law; Sixth Amendment right to the effective assistance of appellate counsel, and Eighth Amendment protection against cruel and unusual punishment

Breach of legal rights (2)

- **The investigation was constitutionally flawed**
 - Entering of residences of the Five without informing the occupants,
 - Downloading their computers pursuant to warrants issued by a secret court (Foreign Intelligence Surveillance Court) which works outside the parameters of the U.S. constitution
- **The discovery process prior to trial and the handling of evidence during trial was constitutionally flawed.**
 - Seized over 20,000 pages of documents (**none classified**),
 - Classification by the government of each and every page as “Top Secret” (as if they were secret documents of the government),
 - Reliance on the Classified Information Procedures Act restricting the access of the Defence to their own documents, thus controlling the available evidence at trial.

Breach of legal rights (3)

- **Placing the trial venue in Miami, Florida:**

Breach of the fundamental and constitutional right to be tried in a venue **free of bias and prejudice**.

- More than 600,000 anti-Castro Cubans live in Miami.
- State of war mentality against the Cuban government.
- Verdict of the jury, guilty on all 26 counts, was unavoidable and predictable. Trial went on for over 6 months. Complex evidence presented but the jury had no question for the judge during its deliberations.
- A year later on 25 June 2002 the same U.S. Attorney which convinced the Miami judge to continue with the trial, in a pretrial motion in another case, argued that it was “virtually impossible” for a fair trial to be held in Miami in a case that touched upon Cuban issues. The US government won that argument and trial moved.

Breach of legal rights (4)

- **The conduct of the prosecuting attorneys:**

- Pattern of objections prevented the Defence from presenting its evidence on the need for Cuba to protect itself against 40 years of aggression from CIA backed Miami based groups,
- The prosecutors insisted to the jury that the purpose of the Cuban 5 in going to the US was “*to destroy the United States of America*”. But no action against the US, only infiltration of Miami groups operating against Cuba.

Prison conditions:

- No bail; kept in solitary confinement cells for over 17 months and for further periods thereafter, when preparing for appeals, despite their exemplary conduct
- Not able to communicate with each other.
- Very limited access to their Defence lawyers, access monitored and restricted

Appeal by the Cuban 5

9 August 2005: Appeal to the US 11th Circuit Court of Appeals

- Defence argument: *"The pervasive and violent anti-Castro struggle of the Miami community would not only infect the jury with hostility but would cause jurors to fear for their (and their families') safety, livelihoods, and community standing if they acquitted"*
- A 3-judge panel of the Federal Appeals Court, Atlanta, **reversed the convictions**, agreeing with the defendants that the trial should have been moved from Miami.
- The Court agreed that the pervasive community prejudice against Cuba and its government and the publicity before and during the trial combined to create a situation where the Cuban Five were unable to obtain a fair and impartial trial in Miami. It recognized also the right of the Five to be tried fairly in a non coercive atmosphere and to have a fair trial as contemplated in the US Constitution.
- It ordered new trials for them to be held outside Miami.

Appeal by the US government

Appeal to the full U.S. 11th Circuit Court of Appeal

- In August 2006 the full 11th Circuit Court reinstated all convictions.
- The appeals court however ordered that Ramon Labañino, Antonio Guerrero and Fernando González were to be **resentenced**.
- Re sentencing process to take place at the original Miami District Court.

Motion to review to Supreme Court

- 30 January 2009: Defence filed a writ of certiorari (for miscarriage of justice) with the US Supreme Court, petitioning the Court to examine the case due to the original trial having been held in Miami. They also sought a review of the sentences.
- Ten Nobel Prize Winners and dozens of foreign parliamentarians and human rights advocates filed “Friend of the Court” briefs (Amicus Briefs) in support of the Cuban Five’s petition for a review by the Supreme Court.

Decision of the Supreme Court

- May 2009: US Solicitor General, on behalf of President Barak Obama, filed a motion asking that the petition for a writ of certiorari be denied.
- 15 June 2009: U.S. Supreme Court stated that they would **not** review the convictions of the Cuban 5. They gave **no reasons** for their refusal to review.
- The Obama administration argued that the convictions were fairly won, and that high court review was unnecessary.

The future of the legal process

- The direct appeal process has concluded. The post conviction judicial process is commencing.

- Defence Lawyers:

“The efforts on behalf of the Five have not concluded. There are three efforts underway now: First, the legal team is preparing for the resentencing of three of them. The second does very much involve Gerardo: the post conviction legal filings. Third, there is also a political effort, since this case has always been a principal concern of the Cuban government and the international community.”

The high court’s decision means that **international and diplomatic efforts are essential to prevent the Cuban 5 from languishing in US Prisons**. President Obama has the discretion to pardon them.

Legal actions prior to resentencing

- **13 October 2009** was fixed as the preliminary date for resentencing.
- **September 2009, Freedom of Information:** Petition by the Partnership for Civil Justice Fund to U.S. District Court for the District of Columbia, on behalf of the US National Committee to Free the Cuban Five, against the Broadcasting Board of Governors (BBG).
- The Fund sought copies of contracts between the U.S. government and paid journalists of the Miami press under the Freedom of Information Act. The US government refused to produce those documents. This petition is outstanding.
- **Security damage assessments:** During the trial US prosecutors referred to security damage assessments to seek unprecedented sentences. The Defence petition the courts and the US District Attorney was ordered to search for and produce those assessments. The Defence argues that if no damage assessment exists, then the US cannot justify seeking long prison terms for Guerrero, Labanino and Gonzalez. The Prosecution appealed the order.
- **2.10.09:** US District Judge Joan Lenard, who originally sentenced the Cuban 5, issued a stay on that order and directed the Defence to file more arguments on the damage assessment issue by 16.10.09.

Legal actions prior to resentencing

- Resentencing of Antonio Guerrero due to proceed on 13.10.09.
- Resentencing of Fernando Gonzalez and Ramon Labañino to be reset on an unspecified date.
- The 3 of them (Labañino, Guerrero and González) will be resentenced facing a new set of sentencing rules.
- It is hoped that Antonio Guerrero and Ramón Labañino will not face a life sentence any longer. It is not known what range of years they will receive. They may go to a different type of prison.

Post conviction

- René Gonzalez will not be taken into consideration for resentencing. His sentence is due to expire in little more than two years. His release date is 11 October 2011. Upon release, René will have three years of supervised release (“*probation*”). The Defence will ask that he be allowed to return to Cuba.
- Gerardo Hernandez will not go back for resentencing.
- Petitions and submissions on their behalf must be lodged by June 2010 or sooner. The legal team intends to press the argument that the convictions are entirely invalid, and the absurdity of the conviction of Gerardo for conspiracy to commit murder.
- If the Defence succeeds in eliminating the conspiracy to commit murder charge against Gerardo, then Gerardo should be sent back for re-sentencing.

International role – what can we do?

- The trial along with the charges and convictions have generated a storm of protest over the world.
- Only judicial proceeding in U.S. history condemned by the U.N. Human Rights Commission.
- No criminal trial in modern US history has been condemned in such a fashion.
- Letters of condemnation must continue to be written to President Obama and his ministers.
- Local actions (resolutions in support of the Cuban 5 by community and legal organisations, trade unions, local governments, state governments, etc) are needed
- International solidarity should be stronger than ever.

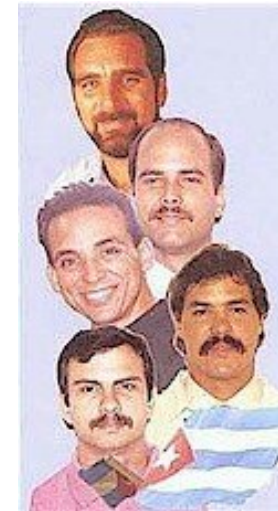
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For further information, refer to web site:

Antiterroristas.cu

(English and Spanish articles).

This presentation is based on materials posted in that website and is current as at 10.10.09.



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