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How U.S. gov't framed Cuban revolutionary

Facts of Cuba's '96 downing of rightist planes

(feature article/Sixth in a series)

BY MARTÍN KOPPEL

What happened on Feb. 24, 1996, off the coast of Havana? The facts help expose the U.S. government's frame-up of Gerardo Hernández, one of the five Cuban revolutionaries serving long sentences in U.S. prisons.

Hernández was sentenced to a double life term plus 15 years on false charges, including "conspiracy to commit murder." In an unprecedented accusation, U.S. prosecutors held Hernández responsible for the sovereign act of the Cuban government in shooting down two hostile planes that invaded its territory.

On Feb. 24, 1996, three planes left Opa-locka airport near Miami and flew well into Cuban airspace. The planes were piloted by members of Brothers to the Rescue (BTTR), a counterrevolutionary Cuban American group that for years had organized provocative flights over Cuban territory despite Havana's repeated warnings to Washington. This time, after they defied warnings by Cuban air traffic controllers, two of the planes were shot down by Cuba's air force.

U.S. officials, however, have tried to turn the victim into the criminal and the criminal into the victim. They claim Brothers to the Rescue was on a "humanitarian" mission to rescue Cubans drifting on rafts toward U.S. shores. They assert the planes were downed in international, not Cuban, airspace. And they allege Hernández knew beforehand of a plan to shoot down the planes that day.

What are the facts?

Basulto's record: CIA-trained thug

Far from being a humanitarian, José Basulto, the founding leader of BTTR, is a CIA-trained counterrevolutionary. Questioned during his March 2001 testimony in the federal trial against the five Cuban revolutionaries, Basulto proudly acknowledged his decades-long record.

Basulto testified that after the victory of the Cuban Revolution he had been trained by the CIA in Panama, Guatemala, and the United States “in intelligence, communications, explosives, sabotage and subversion,” reported the March 13, 2001, *Miami Herald*. The CIA infiltrated him into Cuba, under the identity of a physics student at the University of Santiago, to help prepare the ground for the 1961 U.S.-organized mercenary invasion at the Bay of Pigs, which Cuban working people crushed in 72 hours.

In August 1962, Basulto and other counterrevolutionaries took a speedboat mounted with a 20-mm cannon off Havana’s shores and fired on the Sierra Maestra Hotel and a nearby theater. In the 1980s he flew supplies to the U.S.-organized contras seeking to overthrow the Nicaraguan revolution.

Basulto, who became a well-off Miami businessman, said in the trial testimony that he launched Brothers to the Rescue in 1991 as a “humanitarian rafter-rescue group.” That was the cover under which the outfit carried out numerous provocative operations off Cuban shores—and reeled in millions in “nonprofit charity” donations. BTTR shifted its tactics, however, after the 1994 and 1995 Cuba-U.S. migration accords, under which U.S. authorities returned sea-borne Cubans to the island. “Without rafters, the money dried up,” Basulto acknowledged in his testimony, the *Miami Herald* reported.

Provocations against Cuba

Emboldened by Washington’s lack of action, BTTR stepped up its provocative flights over Cuba in 1994. On November 10 that year the group flew two planes from the U.S. naval base at Guantánamo and dropped leaflets calling on people to revolt. The outfit publicly acknowledged that in July 1995 and twice in January 1996 it organized flights directly over Havana, dropping antigovernment leaflets.

Cuban officials reported that over a 20-month period, BTTR carried out 10 violations of Cuban territory. Havana repeatedly demanded that Washington prevent them. After a July 13, 1995, low-altitude incursion over the capital city, Cuba issued a public statement that “any boats from abroad can be sunk and any aircraft downed” if they entered Cuban territory for hostile reasons. Yet Washington did nothing to stop these escalating provocations—not even revoke the pilots’ licenses.

On Feb. 24, 1996, two hostile incursions into Cuban airspace took place, Cuban authorities reported. In the first, three Cessna planes retreated after being intercepted by Cuban MiG fighters jets.

In the second incursion that day, the Havana air traffic control center detected one of the three Cessnas again heading toward Cuban airspace north of Havana. It warned the pilot, who, according to a Cuban foreign ministry statement, “said it was clear he could not fly in that zone but he was going to do it anyway.”

A transcript released by Washington, based on U.S. intelligence recordings, contains the following radio exchange between the Havana air control tower and Basulto.

Havana: “We inform you that the area north of Havana is activated. You are taking a risk by flying south of 24 [the 24th parallel].

Basulto: “We are aware that we are in danger each time we fly into the area south of 24, but we are willing to do it as free Cubans.”

The three planes penetrated Cuban airspace. After they ignored warning passes by the air force planes, two of the planes were shot down, well inside the island’s 12-mile territorial limit. The third plane, piloted by Basulto, left the other two behind and headed back into international airspace.

Cuban authorities provided evidence that the two planes had been shot down over Cuban waters, including personal items from the four downed pilots and debris from the wreckage. After that decisive action, the hostile flights over Cuba ended.

Sovereign action in Cuban airspace

Washington has maintained that the shutdown took place in international airspace, although it acknowledged that Basulto briefly violated Cuban territory. This position was echoed by the International Civil Aviation Organization, which relied heavily on data provided by the U.S. government.

The Clinton administration used these claims to justify passage of the Helms-Burton Act, a major tightening of the U.S. economic embargo against Cuba. And in January 2001 Clinton signed an executive order giving \$96 million in frozen Cuban funds to families of the rightists killed in the shutdown. The money was seized from payments owed to Cuba’s telephone company for phone services between the two countries.

The U.S. government’s assertions, however, were contradicted during the trial by retired U.S. air force colonel George Buchner. Testifying as a defense witness on March 21, 2001, he said the evidence showed the BTTR pilots were well inside Cuba’s airspace when they were downed.

Buchner, a former commander of the North American Air Defense Command (NORAD), said he had reviewed transcripts—provided by the U.S. National Security Agency—of conversations between the MiG pilots and a Cuban commander on the ground. He concluded the two planes were shot down about six miles and 5.5 miles, respectively, off the Cuban coast.

“The trigger was when the first aircraft crossed the 12-mile territorial limit,” he testified. “That allowed the government of Cuba to exercise their sovereign right to protect its airspace.”

In fact, Buchner said, the Cuban air force pilot “showed restraint” by breaking off pursuit of Basulto’s plane as it headed toward international airspace.

Moreover, the *Miami Herald* reported, “Buchner said the Cessnas had given up their civilian status because they still carried the markings of the U.S. Air Force and had been used to drop leaflets condemning the Cuban government.”

Over the years, in fact, U.S.-based counterrevolutionaries have used Cessnas and other “civilian” aircraft to unleash biological weapons on Cuban canefields and other crops, drop firebombs, and introduce saboteurs and spies on the island.

Shutdown not a ‘plot’

Gerardo Hernández was charged with murder conspiracy for allegedly giving Cuban authorities information on the BTTR flight plan for Feb. 24, 1996, as part of a supposed plot to shoot down the group’s planes.

In fact, BTTR itself had reported its flight plan to the Federal Aviation Administration (FAA), which then transmitted that information to the Havana air control authorities.

After months of escalating BTTR provocations and Cuba’s warnings that these would not be tolerated, both Washington and Havana were anticipating an incident. The day before the shutdown, an internal FAA memo warned that “it would not be unlikely that the [BTTR would] attempt an unauthorized flight into Cuban airspace tomorrow, in defiance of the government of Cuba and its policies” and that Havana “would be less likely to show restraint this time around.”

Nor was the shutdown a surprise to BTTR leaders. Juan Pablo Roque, a former Cuban air force pilot who had gone to Miami in 1992 and, posing as a counterrevolutionary had entered Brothers to the Rescue to monitor its actions, returned to Cuba the day before the shutdown. Appearing on Cuban TV three days later, Roque exposed some of the group’s activities. This included, he said, plans to introduce antipersonnel ammunition into Cuba and blow up high-tension pylons to disrupt the energy supply.

In a Feb. 27, 1996, CNN interview, Roque said he had told Basulto that Cuban authorities were expecting a provocation and were ready to shoot down intruding U.S. aircraft.

“I tried to persuade Brothers to the Rescue not to continue their flights,” he said. “But they would not listen. My opinion did not count, because they wanted martyrs to boost their anti-Castro industry.”



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Frame-up case against Cuban 5: A travesty of justice

Prosecution based on secret evidence, searches;
Miami trial marked by biased atmosphere, intimidation
(feature article / Seventh in a series)

BY MARTÍN KOPPEL

The federal trial in Miami of five Cuban revolutionaries that led to their convictions in June 2001 on frame-up charges was a travesty of justice from beginning to end. Defense requests to change the trial venue were repeatedly denied. The court restricted defense access to evidence. Although the prosecution failed to prove its allegations of espionage and other false charges, the five men were convicted and given long sentences.

They had been monitoring the actions of right-wing Cuban American groups that have carried out murderous bombings and other armed attacks against Cuba, acting with the complicity of the U.S. government.

At their sentencing Gerardo Hernández, Ramón Labañino, Antonio Guerrero, Fernando González, and René González affirmed their determination to keep fighting for justice. In September they will have served 11 years in federal prison. Because of their unwavering record as working-class fighters, the campaign to free the Cuban Five, as they have become known internationally, has won increasing support worldwide.

Previous articles in this series have detailed how FBI agents arrested the five men on Sept. 12, 1998, in raids on their homes in South Florida. Denied bail and kept in solitary confinement for 17 months, they were convicted on all charges, given the maximum sentences, and locked up in five different federal prisons.

The trial, held in the federal court in the Southern District of Florida, lasted nearly seven months, from November 2000 to June 2001. It heard 74 witnesses, including three retired U.S. generals and a retired U.S. admiral. Despite the major issues it posed, from constitutional rights to U.S. foreign policy, the proceedings received little coverage in the U.S. big-business media outside southern Florida.

The men faced 26 criminal charges. Guerrero, Hernández, and Labañino were accused of “conspiracy to commit espionage.” Hernández was additionally charged with “conspiracy

to commit murder.” Both of these charges carried a sentence of up to life in prison. The other accusations included failure to register with the U.S. government as foreign agents and lesser charges such as the use of false names.

The murder conspiracy charge against Hernández was unprecedented. The federal prosecutors held him responsible for an action of a sovereign government—Cuba’s downing in 1996 of two hostile planes flown over its territory by Brothers to the Rescue, a counterrevolutionary U.S. group that had carried out many provocative incursions into Cuban airspace over the previous two years despite Havana’s warnings. (The sixth article in this series, in the August 3 issue, details this incident.)

Secret searches, secret evidence

The government’s case against the Cuban Five was built on “evidence” collected through the secret wiretapping of phone conversations and seizure of computer files and other personal belongings from their homes by FBI agents, using the Foreign Intelligence Surveillance Act. Under that law—which violates the Fourth Amendment’s protections against unreasonable searches and seizures—a secret court was set up inside the U.S. Justice Department to rubber-stamp requests by federal cop agencies to spy on U.S. residents without having to apply for a warrant from a regular court.

U.S. district judge Joan Lenard rejected defense motions to suppress evidence obtained through these secret searches.

In another violation of constitutional rights, the court allowed the prosecution to use secret evidence. After federal agents seized more than 20,000 pages of documents from the five men, the Justice Department stamped every page “top secret.” But not a single one was a secret U.S. government document.

The government then invoked the Classified Information Procedures Act (CIPA), under which the court restricted defense access to the evidence. The prosecutors were allowed to introduce heavily censored documents or “summaries” of documents as “evidence.” The defense attorneys could only review the materials in a special room in the courthouse basement and were prohibited from taking their working notes from the facility.

A large amount of evidence was suppressed. Under the CIPA provisions, prosecutors met privately with the judge to decide what evidence would be kept from the defense and excluded from the trial. This included documents that could have contradicted the government’s case.

For example, the government alleged that Hernández was tied to the Cuban government’s downing of the two Brothers to the Rescue planes. As proof, they asserted that after the shootdown “Hernández wrote to his superiors that he and others took pride in having contributed to an operation that ‘ended successfully’” and that Cuban intelligence commended Hernández for “outstanding results achieved on the job.”

In an April 1, 2009, phone interview for *Progreso Weekly* magazine (reprinted in the July 20 *Militant*), Hernández explained that the “evidence” was manipulated by suppressing documents.

Just before the shutdown, Hernández had helped get Juan Pablo Roque, a fellow Cuban revolutionary who had infiltrated the Brothers outfit, secretly back to Cuba. “The U.S. government wanted to show that Roque’s return was linked with the shutdown. That’s absolutely false,” Hernández said in the interview. “It’s well documented that Roque’s return had been planned for a year before that happened.”

But the prosecution, he said, “cleverly removed from the evidence certain communications referring to Operation Venice—Roque’s return—and made it seem that they referred to Operation Scorpion, the operation to prevent the violation of Cuban airspace.

“One clear example is a message I sent responding to a request from Cuba saying that for me it was an honor to have made a modest contribution to a successful mission. It is super clear in the evidence that this referred to Operation Venice, the one about Roque. The government used it as its sole piece of evidence that I had something to do with the shutdown, although they know it did not refer to Operation Scorpion... . The prosecution mixed the two up purposely.”

In addition, the U.S. government prevented the defense attorneys from adequately preparing for the trial by limiting access to their clients, who were put in solitary confinement for 17 months prior to the trial.

Judge denies change of venue

From the outset, a central issue was the defense request for a change of venue because the accused could not receive an impartial trial in Miami-Dade County. Despite the atmosphere of bias and intimidation, Judge Lenard rejected seven defense motions to move the proceedings to another location, such as Fort Lauderdale in Broward County, just 30 miles to the north.

That atmosphere was promoted by U.S. officials, who from the moment of the arrests whipped up an effort to convict the five in the media, announcing the discovery of a “Cuban spy network” in Florida that “threatens national security.” The capitalist press in Miami did its part with sensationalist headlines and editorials about “Spies among us.”

Thuggish right-wing Cuban American groups, while much weaker than they were in earlier decades, were part of this picture. They organized protests in Miami during the trial, including actions marking the anniversary of the shutdown. In the months before the trial, Miami was also polarized by the controversy over Elián González, with rightists staging street protests opposing the return of the child to his father in Cuba.

During the jury selection, several potential jurors admitted they were concerned about the repercussions if they acquitted the five Cubans. David Cuevas, for example, said he

would “fear for my own safety” if he didn’t return a guilty verdict acceptable to right-wing Cuban Americans. Jess Lawhorn expressed concern about economic reprisals against his business. Prospective juror Glanery said that because of publicity and the volatile atmosphere it would be difficult to follow the court’s instruction not to expose oneself to information about the case.

These concerns were well-founded. On Nov. 27, 2000, the first day of jury selection, right-wing forces organized a demonstration on the courthouse steps, featuring relatives of the downed Brothers outfit pilots. Jurors were exposed to the lunchtime protest and some were approached by the press.

Judge Lenard took a few steps to give the appearance that jurors were insulated from such pressures. She instructed U.S. government officials to talk to the Brothers pilots’ relatives about their improper conduct. She extended a gag order to cover jurors and witnesses in addition to attorneys, and sealed the jury selection questions. She ordered marshals to accompany jurors as they left the building. During the trial she also limited the sketching of witnesses for their protection.

Jurors continued to complain they felt harassed. The judge again modified their guarded transportation to the courthouse and entry and exit from the building.

But during deliberations, right-wing TV stations continued to film jurors entering and leaving the courthouse, all the way to their cars. Even their license plates were filmed.

At one point in the trial, when José Basulto, head of Brothers to the Rescue, was questioned by defense attorney Paul McKenna about that group’s record of armed attacks on Cuba, Basulto shot back, “Are you doing the work of the intelligence service of Cuba?”

This red-baiting, spy-baiting attack was a clear warning to the jurors of how they might be treated if they issued a not-guilty verdict. The judge told the jury to ignore the remark and chided Basulto, but allowed the tainted proceedings to continue.

Double standard

While federal prosecutors insisted that an impartial trial could be held in Miami-Dade County for the five Cuban revolutionaries, just one year later they contradicted their argument in a separate case, *Ramirez v. Ashcroft*. The same U.S. attorney, Guy Lewis, moved for a change of venue in the new case on the basis that a fair trial in Miami-Dade was “virtually impossible” because of media coverage and community “prejudice.”

In *Ramirez*, then-attorney general John Ashcroft and the Immigration and Naturalization Service were accused of employment discrimination against Latinos. In asking for a change of venue, the government cited many of the same facts it had previously dismissed as irrelevant in the case of the Cuban Five, including the right-wing demonstrations over Elián González.

During jury selection for the trial against the Cuban Five, some of the 12 people chosen for the jury—which did not include Cuban Americans—expressed their hostility toward the Cuban government. David Buker, who said he believed “[Fidel] Castro is a communist dictator and ... I would like to see him gone and a democracy established in Cuba,” was seated on the jury and named its foreman.

At the same time, the prosecution used its allotted peremptory challenges (those not requiring a reason) to strike Blacks from the jury. It used nine of its 11 peremptory challenges to strike potential jurors. Seven of the nine were Black. Subsequently, one of the grounds for appeals of the frame-up of the Cuban Five was that the disproportionate exclusion of Blacks from the jury was discriminatory, a violation of the Equal Protection clause of the 14th Amendment to the Constitution.

Federal prosecutors had good reason to try to minimize the number of Blacks on the jury. From experience many Blacks, especially workers, are likely to recognize a frame-up and understand the class-biased role of the government and police. And many have some knowledge of revolutionary Cuba’s outstanding contributions to liberation struggles worldwide.

The next article will take up other issues that came up in the trial.

(To be continued)