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## **Cuba Claims Vindicated As Court Overturns Convictions Of The Cuban Five**

*by LADB Staff*

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A three-judge panel of the 11th US Circuit Court of Appeals in Atlanta, Georgia, vacated the 1998 conviction of five Cubans charged with serving as unregistered agents of a foreign government, in effect, espionage (see NotiCen, 2001-06-21). The judges have been mulling the conviction since hearing the appeal in March 2004. Their decision to reverse the lower court was unanimous.

The defendants, Gerardo Hernandez, Rene Gonzalez, Ramon Labanino, Antonio Guerrero, and Fernando Gonzalez, will very likely now be tried anew, but not in Miami, where the judges determined they did not get a fair trial the first time around. Hernandez had been given a double life sentence plus 15 years, Rene Gonzalez 15 years, Labanino life plus 18 years, Guerrero life plus 10 years, Fernando Gonzalez 19 years.

Speaking in 2004, six months after the March hearing, Leonard Weinglass, attorney for Guerrero, said the long wait for this decision owed largely to the size of the record to be examined, "over 118 volumes of testimony and 800 exhibits." Weinglass said then that the most important issue was the venue, "because if the court finds that the trial should not have occurred in Miami all the charges will be thrown out and the five might get a new trial in a different city. That, of course, is the main objective." That objective has been achieved.

In the 93-page decision, the judges wrote, "The entire community is sensitive to and permeated by concerns for the Cuban exile population in Miami. 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." The case of Hernandez has particular importance because he had been charged with conspiracy to commit murder in connection with the 1996 shutdown by the Cuban military of *Hermanos al Rescate* planes flying leafleting sorties over the island in violation of Cuban airspace (see NotiSur, 1996-03-01).

Weinglass said in 2004 that the charge had no merit in law and that he believed the court would have a hard time approving it. But now, Hernandez's lawyer Paul McKenna says the future is unclear. "My client is an innocent man today," he said, but "the question of future prosecution has to be addressed by the US attorney's office." McKenna said he would seek his client's release while the future is being determined, but he acknowledged that such a move would be difficult since his client has no legal status in the US.

### *Joy and vindication in Cuba*

In Cuba the court's decision was received enthusiastically. On the island, the men are regarded as heroes whose work was to monitor the threat from Miami-based terrorists intent on overthrowing

Cuba's government, political system, and way of life. Adriana Perez, wife of Gerardo Hernandez, said, "It's the first happy news we've received in seven years." Rene Gonzalez's wife, Olga Salanueva, echoed, "It's been many years since I've received such good news. We've obtained a victory."

"This is a victory against those who promote terrorism and jail young men who only acted to oppose terrorism in the United States," said National Assembly speaker Ricardo Alarcon. He called upon the US government to release the five. "What the US government should do is grant them freedom immediately," he said. "If they want to accuse them of something else, then accuse them, present evidence, and search for an impartial tribunal." The Cuban government has been waging an intense campaign for the five, and Alarcon said the court's verdict vindicated his government's position. "No one can say any longer that our claim that the judicial process was filled with prejudice has no basis," he said (see NotiCen, 2002-12-12).

A fair reading of the 93-page ruling would bear Alarcon out. The court took the conduct of the original trial to task for failing to acknowledge the depth of prejudice against the defendants in the Miami area and for a variety of improprieties on the part of the prosecution in fanning those flames.

Only in its conclusion did the decision soften in its finding that Miami citizens could not have rendered a just verdict. It said, "The court is cognizant that its judgment today will be received by those citizens with grave disappointment, but it is equally confident of our shared commitment to scrupulously protect our freedoms. The Cuban American community is a bastion of the traditional values that make America great. Included in those values are the rights of the accused criminal that insure a fair trial. Thus, in the final analysis, we trust that any disappointment with our judgment in this case will be tempered and balanced by the recognition that we are a nation of laws in which every defendant, no matter how popular, must be treated fairly. Our Constitution requires no less."

-- End --