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Posada Carriles Charges Dropped; Terrorist Goes Free In Us

by Mike Leffert

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All charges have been dropped against Luis Posada Carriles. The accused and admitted terrorist faced only charges of immigration fraud. The US has refused to indict him on the more substantial charges stemming from the 1976 downing of a Cubana de Aviacion passenger plane that killed 73, the bombing of a Havana hotel, the conspiracy to assassinate Cuban President Fidel Castro, or any of a number of crimes allegedly committed while in the employ of the CIA.

In her lengthy decision, Judge Kathleen Cardone of the US District Court for the Western District of Texas El Paso lashed out at the US government. "In addition to engaging in fraud, deceit, and trickery, this court finds the Government's tactics in this case are so grossly shocking and so outrageous as to violate the universal sense of justice. As a result, this Court is left with no choice but to dismiss the indictment," read the decision.

The judge reiterated (see NotiCen, 2007-04-26) the narrowness of the charges the government leveled in the first place and upon which she released Posada on bail weeks ago, saying, "The realm of this case is not, as some have suggested, terrorism. It is immigration fraud. Terrorism, and the determination of whether or not to classify an individual as a terrorist, lies within the sound discretion of the executive branch. It does not lie with this Court." The decision left no room for the argument that convicting Posada on immigration fraud would be something like convicting Al Capone for tax evasion, the right thing for the wrong reason in the cause of justice.

She concluded, "A typical defendant convicted of all seven counts with which Defendant is currently charged would receive a maximum sentence of six to twelve months under the United States Sentencing Guidelines. In addition, any time that such defendant served in federal incarceration would more likely than not qualify such defendant for time served, or at the very least, probation." That is to say, even if the government had prevailed, Posada would still be free.

As a parting shot at the Justice Department, Cardone wrote for the record, "This Court's concern is not politics; it is the preservation of criminal justice." Attorney General, Justice Department unresponsive Seeking to reorient the department away from the politics with which this case is infused, Rep. William Delahunt (D-MA) questioned Attorney General Alberto Gonzales during a congressional hearing on political interference in the Justice Department.

He made little headway as the AG dissembled, telling the panel, "What I would like to do is go back and look at this case to be able to give you an answer." Gonzales told the congressman that he was not informed of the "various aspects of the case," but he was informed of the Cardone decision and "obviously, we disagree." Gonzales continued to dodge the congressman, who declared, "But this is your responsibility." Gonzales replied, "I want to be careful about what I can say publicly." Asked if he had investigated the case, the AG said, "I'm informed of the circumstances, but I'm also informed

that there are continuing subjects and activities within the department that haven't been completed and I don't want to say anything that could interfere...."

Delahunt asked directly if any consideration had been given to arresting Posada on terrorism charges. The chief law enforcement officer of the United States again replied with a non-answer. Delahunt asked again, after Gonzales indicated he had forgotten the question, "Why have you not taken measures to designate Luis Posada Carriles a terrorist, taking into account the enormous quantity of information that exists today in the public sphere?" No comprehensible answer. The congressman finally appeared to give up, and, returning to the text of Cardone's decision, Delahunt, a former federal prosecutor, left it at, "I have never read, in the 22 years that I was a prosecutor, this kind of language from a court." Gonzales admitted, however, that the decision to declare Posada a terrorist was exclusively his under the terms of the controversial Patriot Act that, among other things, grants extraordinary powers to security and justice forces.

After the frustrating exchange, Delahunt made known his intention to pursue the matter. "The world will conclude that this administration has a double standard when it comes to fighting terrorism unless President [George W.] Bush takes swift action to detain Posada," he said. On May 3, Delahunt wrote to the attorney general insisting that he take action under applicable provisions of the law and later said, "If the administration does not avail itself of all legal avenues to detain this terrorist and bring him to justice, it will send the message to the world that President Bush believes in the old adage that 'one man's terrorist is another man's freedom fighter.' The consequences for our efforts to rally other nations to fight al Qaeda especially in the Muslim world where some view Osama bin Laden as a similar hero could be catastrophic."

The elements of Delahunt's catastrophe are already in place. "It's a very odd situation," said Philip Peters, Cuba expert at the Lexington Institute, a federal-policy think tank with an emphasis in security matters. "This is an administration that is running a global war on terror, they have a guy in custody who they described as a terrorist, yet they have not treated him as a terrorist in the legal system."

The world reacts

Led by the most aggrieved parties in the case, the international reaction has been outrage. "The United States makes a mockery of international organizations, international law, and the world's conscience about this case," said Venezuela's Foreign Minister Nicolas Maduro. His country has renewed its request for extradition of Venezuelan-born Posada. An earlier request was turned down in 2005 after a court bought into the US assertion that the defendant might be tortured in his home country (see NotiSur, 2005-06-10 and NotiCen, 2006-10-12).

Nicaragua has also said it will seek Posada's extradition to answer for his activities during the US-sponsored contra war. A release from the government there announced it would seek "the formal petition of extradition of Posada Carriles, in order that he be tried in Nicaragua for operations of terrorism in our country during the years of the 1980s."

In Cuba, the outrage was mitigated by a degree of relief. Said Cuban parliament president Ricardo Alarcon, "The issue is now very simple. I think that the situation is now more clear.... Now, it is up to the US administration to abide by its obligations, according to international treaties, according to American law, to prosecute a terrorist or allow him to go free. I think that the issue is now more clear than it was before, due to the maneuvering of the administration." Alarcon explained, "After 9/11, the US promoted a resolution that is mandatory at the Security Council that, among other things, establishes that arguments of a political nature may not be admitted to deny extraditions to individuals associated with or allegedly associated with terrorist actions. And that is exactly what the US is doing at this moment. They do not have any option, according to international law, either to extradite Posada to Venezuela to continue the trial he was going through there twenty years ago or to prosecute him and present him to an American court of law."

Alarcon, speaking to a US radio audience from Cuba, went on to say that recently declassified documents in the hands of the Washington-based nongovernmental research organization National Security Archive (NSA) from Trinidad and Tobago, as well as from Barbados, implicate Posada in bombings in those countries and in Jamaica. "In other words", said the third-highest-ranking official of Cuba, "what the US is doing by not prosecuting Mr. Posada is not only a bilateral matter with Cuba or with Venezuela, it's also an insult to the Caribbean nations, which together we worked, we cooperated in the 1970s, and we collectively decided at an international conference that was held in Port of Spain, the capital of Trinidad and Tobago, that Venezuela will prosecute and have the trial."

Beyond these materially involved countries, the 118 nations of the Non-Aligned Movement (NAM) reiterated its call after the dismissal of the charges, issuing a statement calling for the US to meet its obligations under the UN charter. Even in the United Kingdom, a war-on-terror stalwart of the US, the failure to extradite Posada is causing ripples in a case in which the US is requesting the extradition of a Scotsman in a far-less-serious case of computer hacking into the Pentagon. After recapping the Posada story, The Guardian of London chided, "Since the magic phrase 9/11 has been mentioned in connection with the timing of his hacking activities, it seems unlikely that McKinnon [the alleged perpetrator] will be told that there has been a technical error in his prosecution and he is free to go."

Indictment on terrorism still possible

Withal, the possibility of relevant legal action against Posada is not entirely closed in the US. The Federal Bureau of Investigation (FBI) has recently taken the unusual, but not unprecedented, step of going to Cuba to document the case related to the 1997 bombing campaign in Havana. Documents contain evidence placing Posada at the center of the conspiracy. There is also evidence of Cuban exiles in New Jersey sending US\$19,000 in wire transfers to Guatemala and El Salvador, where the terrorist was residing on a Salvadoran passport. It has also been reported that a grand jury has been convened in New Jersey related to the investigations. "We've provided American authorities with a lot of information," said Lt. Col. Roberto Hernandez Caballero, who gave depositions to the visiting FBI in 1998. He did not meet with them on the most recent trip, but said US prosecutors would not want for evidence.

In Havana, the official newspaper Granma helped things along by publishing excerpts of tapes of phone calls made by Posada to several accomplices. In one, he admits to the hotel bombing. "And now two more explosions, one we put in the Hotel Sol Palmeras of Varadero [in which the Italian businessman Fabio Di Celmo was killed], one of the new ones, from the Spaniards, and the other in a discotheque right in Havana," said the taped voice of Posada. Other conversations have Posada talking about financing these acts, bombings in Mexico of travel agencies engaged in Cuba tourism, and contracting assassins in Central America to carry out the bombings.

The evidence implicates the Cuban American National Foundation (CANF) in Miami and money sent from the offices of Alberto Hernandez, at the time CANF vice chairman. In addition to the tapes, Cuba has physical evidence including some of the explosives, smuggled onto the island in shampoo bottles and boots, and the detonating devices. These artifacts are on public display in Havana.

The FBI's latest foray into Cuba infuriated several Cuban-American members of Congress. Reps. Lincoln Diaz-Balart (R-FL), Mario Diaz-Balart (R-FL), and Ileana Ros-Lehtinen (R-FL) issued the statement, "By asking a state sponsor of terrorism for 'evidence' regarding terrorism, the Bush administration Justice Department demonstrates a shockingly profound ignorance of the nature of terrorism, of its origins, and its state sponsors." The reference was to Cuba.

Throughout the long history of the Posada case, repeated reference has been made to the damage he could do the US government by revealing the extent of his activities while in the employ of the CIA. This threat looms as the government decides how to proceed in New Jersey. In the meantime, Posada, a free but hidden man in Miami, is not talking. His lawyer Arturo Hernandez told the media he "is not going to make any public statement as long as pending matters are not cleared up."

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