

15th September 2010

Bernie Dwyer (RHC): It's hard to believe that twelve years later we are still discussing the case of the Cuban Five, that they are still incarcerated in prisons all over the United States and that we are still looking for legal avenues and different ways for the campaigns to bring their case to the notice of US President Barack Obama for a resolution. Could you give a brief outline of the timeline since they were arrested twelve years ago on the 12th of September 1998?

Leonard Weinglass: It's a timeline that reflects the injustice in this case. The Five should have been returned to Cuba shortly after their arrest, as is the custom when foreigners are arrested in the United States on missions for their home countries and their activities here caused no harm. There are numerous examples, most recently the Russian agents who were sent home this year after being held in custody for less than thirty days. In this particular case, where the Five not only did no harm, but were in the US to thwart terrorist activities directed against Cuba, they clearly should have been returned.

Instead they were been subjected to cruel conditions of confinement, unjustly prosecuted in a venue that could not afford them a fair trial years, victimized by the misconduct of their prosecutors, and excessively and illegally punished with life sentences.

It took 7 years after their arrest for a 3 judge appellate panel to finally rule that their trial in Miami was a fundamental violation of their rights, only to be overruled by a politically motivated appeal by the government.

It took 10 years for a panel to rule that the life sentences meted out by the trial judge violated customary norms of sentencing in the US., leaving the same embarrassed judge to lessen Antonio's sentence to 21 years, Ramon's to 30 years and Fernando's to 19, while Gerardo remains with two life sentences.

And it took 10 years before a senior federal judge, in a dissent, to finally acknowledge what had been true all along: that Cuba had the right to defend its airspace, while reviewing Gerardo's conviction and that he was, by any reasonable view of the evidence, innocent of the charges.

Following the Supreme Court's rejection of their appeal in 2009, despite an unprecedented outpouring of support, including ten Nobel prize winners, the bar associations of many countries, the entire Mexican Senate, two former presidents of the European Union, we are now, in 2010, filing what is called the collateral attack or habeas corpus review for Gerardo on his conviction.

We filed on June 14th 2010 and will be filing a Memorandum of Law on October 11th. The government will be given 60 days to respond and then presumably at the end of this year or in

early 2011, we will have a hearing on Gerardo's claims in Miami. If we lose there we go to the 11th Circuit Court on appeal and if we lose there, we then, once again, and ask the Supreme Court to review the case. So we still have legal avenues to pursue.

Bernie Dwyer: Could you give more detail on what is the basis of the on-going legal process on behalf of Gerardo Hernandez?

Leonard Weinglass: There are essentially three claims that we are making. One is that the United States government engaged in misconduct by paying a certain number of high-profile reporters in Miami to write articles of a propagandist nature against the government of Cuba for Radio and TV Marti and at the same time these reporters during the day were also writing articles and speaking about the Five in the local media. Those articles and commentary were amongst the most prejudicial and inflamed the hostility of that community.

The government, which has a legal obligation to assure all accused a fair trial in a fair venue, was actually paying reporters who were reporting the most scurrilous material that prejudiced the case. To anyone's knowledge this has never happened before. That, we argue, is a violation of due process and we are asking the court to overturn the conviction and to once again either free Gerardo or remove his case to another venue to receive a fair trial. There is even a strong argument that, if what happened is demonstrated, Gerardo cannot be retried, but must be freed outright since he was wrongly put in jeopardy through government wrongdoing the first time.

The second claim is rather technical. The government has a strict obligation to turn over anything in its records that could have helped Gerardo defend his case. This it did not do. Instead, they withheld evidence that would have demonstrated his innocence. They also withheld, and we are making this claim, satellite imagery which would have shown where that the shoot down on February 24th 1996 occurred in Cuban airspace and not in international airspace. The key agency of the United States government which maintains satellite data has, up to now, refused to admit or deny that they are holding such data.

Lastly we are claiming that there was a misperception on the part of Gerardo's attorney about the principles of international law which should have governed the case and a failure to take effective measures to assure Gerardo a fair trial. This was the first case in history where an individual residing at the time in the United States was charged with a co-called conspiracy with pilots of another country's air force who were doing their duty in defending their country's airspace. Such a prosecution was outside the realm of anything any trial lawyer in the US had ever faced.

There should have been a complete and thorough examination of the principles of international law which could have afforded Gerardo a clear-cut defense to the charge of conspiracy to commit murder. We are now providing the Court with a 15 page Declaration by an eminent international law professor who explains in detail precisely how the court and the defense should have approached this unprecedented case. Even beyond that, as Judge Kravitch found, the government's case failed to establish that Gerardo had anything to do with what occurred on that day; and, under any scenario, he should have been found not guilty.

Bernie Dwyer: Let's now move to the cases of the other four and where they stand legally. We could begin with Antonio who was serving a life sentence plus 15 years?

Leonard Weinglass: Antonio is serving a twenty one year sentence which means that he should be free to return home in approximately seven years and maybe even sooner. However Antonio was also the victim, as was Gerardo, of the fact that the government committed misconduct by paying reporters who were writing the most prejudicial articles against all the Five. So Antonio has the same claims on that issue as Gerardo and so have Ramon and Fernando. Antonio will be filing his habeas papers in the first week of November making the same arguments as well as the arguments on the wrongful withholding of information. I assume that Ramon and Fernando will do the same.

Rene is so close to being released in 2011 that it remains to be seen whether he will even have to file.

Bernie Dwyer: What would be the result if this process is successful? Could they be freed?

Leonard Weinglass: Unfortunately it will go to a trial judge in Miami, the same judge who sat on the original case. However, the interesting aspect is it might be that, if it is found that the US government committed misconduct by paying these reporters, the Five could not be tried again because under the doctrine of what's called double jeopardy, their rights were wrongfully violated by the government in the first instance. Since the government put them in jeopardy they government cannot come back now and seek a second trial. That's an issue we will be arguing and I personally feel that we will be successful, assuming a finding of government misconduct.

Bernie Dwyer: And all these cases are going to take part in the courts in Miami towards the end of this year?

Leonard Weinglass: Yes, it will either be towards the end of this year or possibly over into next year, 2011. And it will take place in Miami initially and if we lose there, then we will return to Atlanta before the 11th Circuit Court of Appeals where we have the right of appeal.

Bernie Dwyer: Do you think that the campaigns that are being run worldwide for the release of the Five are having any effect?

Leonard Weinglass: Absolutely, it should be continued and if anything increased. There's no doubt that it does have an effect. Recently, both Russian and Chinese agents have been arrested in the United States for espionage and, in all cases they were either sent home or given much lighter sentences. No question of politics, not principles of law or justice, influences the result. Even if you accept the governments claim that the Five were involved in espionage, and not the more realistic sense that they were attempting to end terrorism, their punishments are way out of line with what any civilized country would be likely to administer. Like few other cases on the international stage this case calls out to the conscience of people worldwide.

Bernie Dwyer: So you would you encourage all of us who are working both nationally and internationally to free the Five to increase our work and look for different ways to bring more

attention to this case?

Leonard Weinglass: Yes, I would definitely encourage that. None of us can be sure of how the Obama Administration would react to pleas to free the five. However, history has shown in a number of cases, like those of the Puerto Rican patriots, that freedom can be attained for political prisoners in the US through the sustained efforts of those who believe in justice.