

## Former CIA Asset Luis Posada Goes to Trial

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On January 10 one of the most dangerous terrorists in recent history will go on trial in a small courtroom in El Paso, Texas. This is not the venue the Obama administration has finally selected to prosecute the perpetrators of 9/11; it is where the reputed godfather of Cuban exile violence, Luis Posada Carriles, may finally face a modicum of accountability for his many crimes.

In the annals of modern justice, the Posada trial stands out as one of the most bizarre and disreputable of legal proceedings. The man identified by US intelligence reports as a mastermind of the midair destruction of a Cuban airliner—all seventy-three people on board were killed when the plane plunged into the sea off the coast of Barbados on October 6, 1976—and who publicly bragged about being behind a series of hotel bombings in Havana that killed an Italian businessman, Fabio Di Celmo, is being prosecuted for perjury and fraud, not murder and mayhem. The handling of his case during the Bush years became an international embarrassment and reflected poorly on the willingness and/or abilities of the Justice Department to prosecute crimes of terror when that terrorist was once an agent and ally of America. For the Obama administration, the verdict will carry significant implications for US credibility in the fight against terrorism, as well as for the future of US-Cuban relations.

Posada's trial gets under way almost six years after he brazenly appeared in Miami and announced that he would seek political asylum in the United States. Here was a fugitive from justice in Venezuela—Posada escaped from prison there in 1985 while on trial for the plane bombing—who had been imprisoned in Panama from November 2000 to August 2004 for trying to assassinate Fidel Castro with more than 200 pounds of dynamite and C-4 explosives. Despite an outstanding Interpol warrant for his arrest, for two months the Bush administration permitted him to flaunt his presence in Miami, where he is still considered a heroic figure in the hardline anti-Castro exile community. Confident of his welcome, Posada even filed an application to become a naturalized US citizen. Only after the media turned their attention to the hypocrisy of a White House that claimed to be leading a war on international terrorism while allowing a wanted terrorist to flit freely around Florida did agents from the Department of Homeland Security finally detain Posada, on May 17, 2005.

Initially Posada was incarcerated in El Paso for illegal entry into the United States. Immigration and Customs Enforcement (ICE) went through the motions of trying to deport him, but no country would take him. At the same time, the United States refused to extradite him to the one country that had a legitimate claim to him—Venezuela. Only after the immigration court decided to release him on bail did ICE officially identify him as a terrorist: Posada's "long history of criminal activity and violence in which innocent civilians were killed," ICE wrote, meant that his "release from detention would pose a danger to both the community and the national security of the United States" [see Kornbluh, "Test on

Terrorism," Oct. 16, 2006].

To its credit, the Justice Department did quietly empanel a grand jury in New Jersey to weigh an official indictment of Posada for masterminding the hotel bombings in Havana. (Evidence gathered by the FBI indicates that Posada raised funds for that operation from Cuban-American benefactors in Union City, New Jersey.) In April 2006 government lawyers decided to hold a naturalization interview with Posada while he was in jail, surreptitiously gathering self-incriminating evidence against him in the hotel bombing case.

But, for reasons that remain under seal, the New Jersey grand jury proceedings stalled. Initially, as a senior State Department official confided, prosecutors were unable to secure a key piece of evidence—the tape recordings of an interview Posada had given to then-New York Times stringer Ann Louise Bardach in 1998, in which he appeared to take full responsibility for the hotel bombings. “The Italian was in the wrong place at the wrong time, but I sleep like a baby,” Posada proclaimed, according to his statements published in the Times. Under subpoena, Bardach turned over the tapes to the grand jury on December 15, 2006. But no indictment was ever handed down.

Instead, on January 11, 2007, Posada was indicted in El Paso on six counts of making “false statements” and one of fraud about how he came to the United States and for his use of false names and false passports—charges that carry an maximum sentence of five to ten years each. To make matters worse for the credibility of the US legal system, four months later Judge Kathleen Cardone dismissed all charges against Posada. The government, she ruled, had engaged in “fraud, deceit and trickery” in obtaining evidence against Posada under the guise of conducting a naturalization review. The court, she declared, could “not set aside [Posada’s legal] rights nor overlook Government misconduct [just] because Defendant is a political hot potato.”

A free man, Posada took up residence in Miami. Since he is on the government’s no-fly list, Posada was forced to drive back to Florida, where he has lived openly for the past several years, attending right-wing exile fundraisers and even participating in public protests against Castro’s Cuba.

But in August 2008 the US Court of Appeals for the Fifth Circuit overruled Cardone’s decision and ordered Posada to proceed to trial. In another positive turn of events in this long, twisted legal saga, in April 2009 the new Obama Justice Department used the New York Times tapes of Posada’s interview with Bardach to file several additional counts of perjury and fraud relating specifically to lying about “soliciting other individuals to carry out...[the hotel] bombings in Cuba.” To be sure, Posada is still not being charged with actually perpetrating those terrorist operations, only with lying about aspects of his involvement in orchestrating them. But for the first time in a US court, a team of lawyers from the Justice Department’s Counterterrorism Division will present concrete evidence to prove that Posada was indeed behind a series of terrorist attacks on Cuban soil.

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Obtaining a conviction will not be easy. Posada will turn 83 on February 15; he suffers from a variety of physical ailments and does not fit the image of a “terrorist alien,” as government records describe him. Posada’s lawyers have charged that the key evidence against him—the Bardach tapes—contain unexplained gaps and erasures. Bardach, who will

be called as a witness to authenticate the tapes, has publicly decried their use in the trial as a government violation of freedom of the press and an assault on the rights of the Fourth Estate.

Moreover, in a pretrial ruling, Judge Cardone denied a Justice Department motion to “exclude all testimony, evidence, questioning and argument concerning defendant’s relationship with the Central Intelligence Agency.” Posada’s past agency associations were “irrelevant to the charges,” prosecutors submitted in court filings; introducing his CIA connection in court would “divert the jury’s attention away from the basic charges in the indictment.” But the judge ruled that Posada could offer the existence of his relationship with the CIA “to show his state of mind” when he allegedly made false statements to authorities—as long as he used only unclassified information.

The government has introduced into the court record an “Unclassified Summary of the CIA’s Relationship with Luis Clemente Posada Carriles,” which states that he first joined the agency as part of its Bay of Pigs operation in 1961. “Posada was a paid asset of the CIA from 1965 to 1967,” when he left the United States to set up operations in Caracas as an intelligence official of the Venezuelan secret police, DISIP, “and again from 1968 to 1974,” states the summary. “From 1974 to 1976, CIA had intermittent contact with Posada.” The document reveals that in 1993, when Posada was an escaped fugitive wanted by Interpol for the Cuban airplane bombing, the agency intercepted intelligence on an assassination plot against him and surreptitiously “contacted him in Honduras by telephone to warn him about a threat to his life.”

CIA documents, obtained and posted by my organization, the National Security Archive, show that in the mid-1960s Posada worked at a salary of \$350 a month as an instructor in sabotage and demolition for the CIA’s Maritime Training Section. The declassified records, which identify Posada using his CIA cryptonym, AMCLEVE/15, also reveal his work as an active snitch on other violent Cuban exile groups. “I will give the Company all the intelligence that I can collect,” Posada promised his CIA handlers in 1966. “A/15 is dedicated to the overthrow of Castro,” his “Company” supervisor Grover Lythcott noted in one secret report on Posada, but he “is not a typical ‘boom and bang’ type of individual. He is acutely aware of the international implications of ill planned or over enthusiastic activities against Cuba.” In an observation that proved to be wholly inaccurate, Lythcott noted that Posada would “discourage activities which would be embarrassing to WOLADY”—the CIA’s codeword for the United States.

Ironically, it is now the legal proceedings against Posada that could be embarrassing to, and carry significant implications for, WOLADY. In the six years Posada has been in the United States, his case has become a spectacle around the world. Now, if he is found guilty and in effect proven to be a mastermind of terrorism, the US government will have to address the scandalously short sentence the perjury charges carry. If he is found innocent and released, the Obama administration will have to confront the fact that the US legal system is inadequate to hold Posada even minimally accountable for his violent crimes, and that the United States is, in the end, harboring an international terrorist.

For Havana, where officials routinely refer to Posada as “the Osama bin Laden of Latin America,” the case remains a particular sore point in US-Cuba relations. The Cubans have readily assisted the Justice Department by welcoming teams of FBI agents and US prosecutors, turning over more than 1,500 pages of documents as evidence from the hotel bombings and making Posada’s alleged accomplices in Cuba available for depositions. But

even as the US government allowed Posada to live freely in Miami, it has kept Cuba on its terrorism list because, the State Department claims, Cuba has not done enough to support the international effort against terrorism. To add insult to injury, in the wake of the Christmas 2009 terrorist attempt aboard a Detroit-bound plane, the Obama administration put Cuba on the list of fourteen countries, including Iran and Syria, whose citizens receive extra security screenings when traveling to the States—escalating tensions between Havana and Washington to their highest level since Obama took office.

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As the Posada case illustrates anew, the danger of terrorism relating to Cuba has emanated not from Cuban territory but from the shores of the United States. Just five years ago, Posada's ally and benefactor, Santiago Álvarez, was busted in Miami by the FBI for illegally accumulating a warehouse of war-grade armaments, presumably for use against the island. Indeed, the Cubans are incensed by the contrast between how the US legal system has treated Posada and the severe treatment meted out to five Cuban counterterrorism agents sent to the United States in the mid-1990s as part of La Red Avispa (Wasp Network)—an espionage operation to gather intelligence on the activities of Posada's supporters and other violent exile groups in Florida. (It was Cuban agents spying on exile groups who ferreted out information that led to Posada's November 2000 arrest in Panama for the attempted assassination of Castro.) The so-called Cuban Five—Gerardo Hernández, Antonio Guerrero, Ramón Labañino, Fernando González and René González—were arrested in 1998, thrown into solitary confinement, prosecuted on maximum charges of conspiracy and even homicide, and given sentences from fifteen years to life. A court has reduced the sentences of two of them, but the Cuban government continues to make their release a top priority in communications with the Obama administration.

A guilty verdict in the Posada case, and a determination by the Justice Department and the Department of Homeland Security that Posada should be imprisoned indefinitely as a perpetrator of terrorism, could still contribute to conditions for better US-Cuban relations. As the trial starts, however, the last word on its significance belongs to Posada's victims. "He is not being charged as a terrorist but rather as a liar," says Livio Di Celmo, whose brother, Fabio, was killed in one of the hotel bombings in Cuba. "My family and I are outraged and disappointed that a known terrorist, Luis Posada, is going to trial for perjury and immigration fraud, not for the horrific crime of masterminding the bombing of a civilian airliner," Roseanne Nenner, whose 19-year-old brother, Raymond, was aboard the Cuban plane, told The Nation. "Our hope is that the US government will designate Posada as a terrorist and hold him accountable for the pain, suffering and loss he has caused to us and so many other families."

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