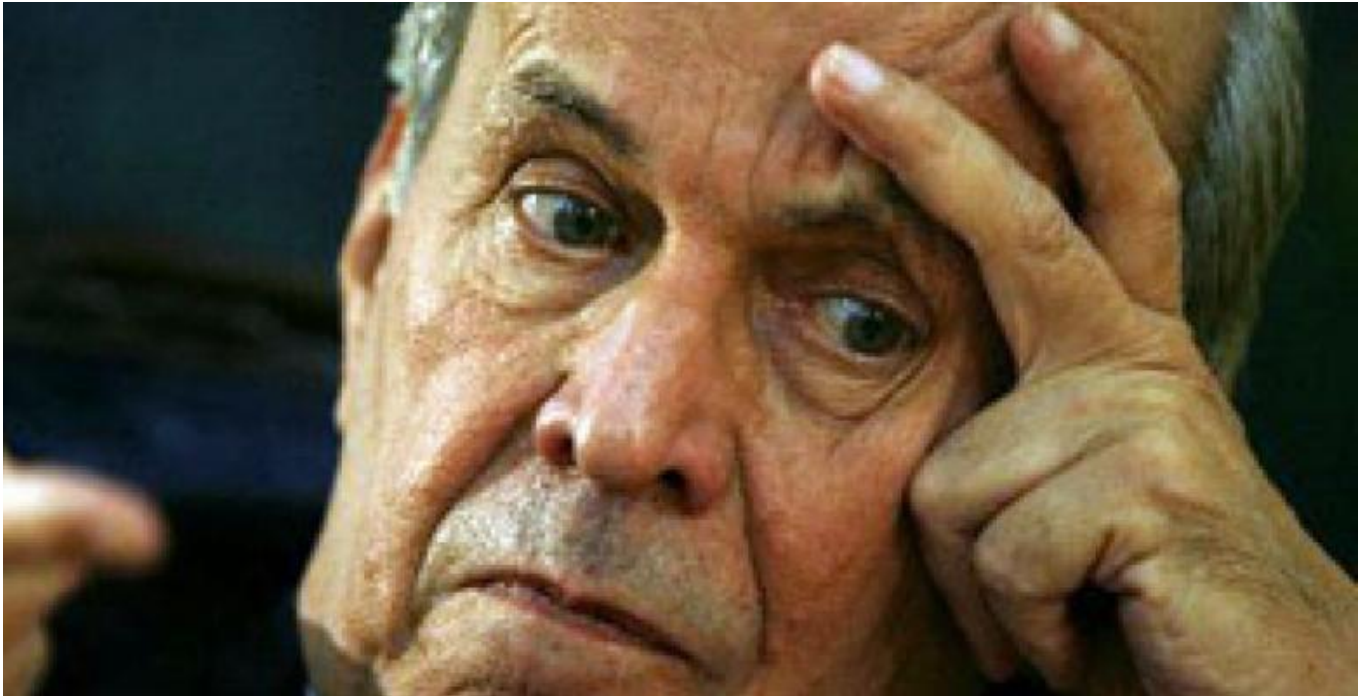

The Innocence of Gerardo

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It forms the basis of his sentence, in which he must die two times in prison. He is falsely accused of having participated in the shoot-down of the two planes of the terrorist group that calls itself "Brothers to the Rescue."

From a legal point of view, for it to have standing in a United States court, the deed in question had have had to occur in international airspace, outside of Cuban jurisdiction. Otherwise, no court of the United States would have been able to take it up.

That is why in the Miami trial the exact location of the incident was discussed at length, repeating what had taken place before in the Security Council of the United Nations and in the International Civil Aviation Organization (ICAO). In those discussions, the contradictions between the Cuban radar and those of the United States arose continuously. There is certainly a great deal to write about the U.S. data, for example, the delay of several months in handing it over, which forced a delay in the work of the ICAO and the suspicious destruction of some records, all of which is stated in the ICAO report.

In order to try to resolve the discrepancy in the radars, the ICAO asked the United States to submit the images from its space satellites, a request that was rejected in 1996. Washington also refused to permit the Miami Court to view them. For a long time now it has been opposing the repeated requests by the Center for Constitutional Law and Human Rights of California and has litigated in the Courts of that State in its effort to keep the images from being seen. Soon it will be 20 years of obstinate censorship.

Only the United States has been able to examine what its satellites filmed, but no one else is permitted to see them. Not the UN Security Council, nor the ICAO, nor the United States courts. Why?

There is only one answer. Washington knows that the incident occurred inside Cuba's territorial waters, very close to the Havana coast and consequently, it never had legal jurisdiction over it. Since the satellite images are irrefutable proof of the Yankee lie nobody, but the United States authorities, will ever be able to see them.

But the issue is not whether the satellite images exonerate Gerardo. They were not necessary because to convict him the Prosecution had to prove that he personally participated in the incident, something totally absurd, impossible to sustain regardless of where the shoot-down of the invading planes occurred. That problem was and is for Washington.

A problem, because the images prove that the United States, its authorities and its courts had no right whatsoever to try an incident that took place outside its territorial jurisdiction. It should be pointed out, that according to the U.S. radars, the planes flew together the whole time in a southerly direction and at least one of them, according to the U.S.'s own version, had penetrated Cuban territory. Indeed, if one accepts the United States theory about the planes' location, they were in the vicinity of the Cuban capital, very close to its most central and populous part. In a few minutes they would have flown over it and would have been able to cross the island to the southern coast.

This did not take place near the United States airspace, rather it was far below the 24th Parallel which demarcates the zones of aerial supervision of both countries. It was there, within the area under Cuban control where a good part of the flight transpired, southward toward Havana and ignoring the indications and warnings issued by the Air Traffic Control Center of our country.

In any case, Gerardo had absolutely nothing to do with the deed, no matter where it occurred. And the United States authorities knew that perfectly well.

According to the Indictment of September 1998, the FBI had identified Gerardo and knew the mission he was carrying out. From 1994 on they were viewing his communications with Cuba, more than two years before that incident which grievously affected the situation between both countries.

The mobs of the Batista-terrorist mafia called then for war in the streets of Miami. Meanwhile, according to what President Clinton wrote in his Memoirs, the White House was discussing a possible bombardment of Cuba. He opted to promote the Helms-Burton law, accompanied by bellicose threats. Can anyone believe that they would not act against Gerardo if he had been involved? They did nothing precisely because his innocence was clear to them.

It is also the reason they did not charge him when he was arrested together with his comrades in September 1998. In the initial indictment not one word is said about the event of February 24, 1996, nor is anything said about the plane shoot-down or related issues. They did not do that because the FBI, which possessed and had read the messages between Gerardo and Havana, knew he was innocent.

Count 3 ("*conspiracy to commit murder*") was drawn up only against Gerardo. It was more than seven months after the arrest of the Cuban Five, when they were in solitary confinement — the infamous "Hole" — isolated from the world and where it was impossible to defend themselves. To that end the Prosecution presented a Second Superseding Indictment that — as the Miami press described it — was created in meetings openly carried out by the FBI, the Prosecution and the leaders of the terrorist groups.

It was an arbitrary accusation, fabricated top to bottom, with the sole objective of satisfying the criminals, inflaming the hatred against Gerardo and his comrades and guaranteeing beforehand the worst, most illegal and irrational convictions. Count 3 was the focus of the lawless and vulgar media campaign, promoted and financed by the Federal Government. Like a tsunami of lies, it slammed a defenseless community paralyzed by terror. It was five articles per day in the print newspapers, endless commentaries day and night on radio and local television, creating what the panel of judges in the 11th Circuit Court of Appeals in 2005 characterized as a "perfect storm" of hatred, prejudice and hostility.

A major part of the trial centered on Count 3. Inside and outside the courtroom, individuals linked to "Brothers to the Rescue" agitated and made strident statements that the local media amplified. They and the U.S.-paid "journalists" persecuted and besieged the members of the jury who complained to the judge. She, for her part, several times also complained to the Government, of course, to no avail.

In the courtroom, despite all this, the baseless lie of the Prosecution was defeated. The accusers, who were so effectively promoting hatred and prejudice against him, were unable to present one single proof to connect Gerardo to the events of February 24. Not a thing.

So overwhelming and obvious was its defeat that the Government did something highly unusual. At the end of the

discussions, when the judge was about to issue her instructions to guide the jury in its verdict deliberations, the prosecutors objected, surprisingly, to the text that the Judge had prepared, which reflected the Indictment word for word. They proposed changing it radically. The Judge, for good reason, did not accept the request, asserting that they had spent seven months discussing the prosecution's indictment and it was much too late to modify it. That same day the Prosecution rushed to do something even more unusual: In an action that it acknowledged was "unprecedented," the Prosecution appealed to the Court of Appeals with an "emergency writ of prohibition," seeking to overturn the decision of the trial court as well as postpone the trial.

In the strange document the Prosecution maintained that *"In light of the evidence presented in this trial, this [the instruction given by the judge] presents an insurmountable hurdle for the United States in this case, and will likely result in the failure of the prosecution on this count."*

It should be emphasized that, according to the universal principle of Law, a person is innocent unless and until proven otherwise and it is the obligation of the accuser to present the necessary proof or evidence to show the guilt of the accused. The Prosecution certainly faced "an insurmountable obstacle" for the simple reason that it could not show any proof against Gerardo, merely because it does not exist, nor can it exist. They lacked any evidence against him and worse still, they knew — since they possessed all his communiqués of several years with Havana, including the years before the planes' incident — that he had had no relation whatsoever with that deed. In other words, when the Prosecution issued its Second Superseding Indictment, it was fully aware that it was accusing an innocent man and consequently was perverting justice in an unpardonable and gross manner.

Count 3 was a grave violation of the Constitution and law and also the legal and professional duty of the prosecutors. They worked hand in hand with the FBI of Miami as agents and accomplices of a terrorist mafia whom they should be combating, when in reality they were at their service with a scandalous subservience.

The Court of Appeals did not accept the late petition of the Prosecution and from that point on, developments occurred that would be surprising if we were dealing with a case which from beginning to end, has been and is an enormous mockery of justice.

Very quickly, without expressing any doubts, without asking any questions, in a few hours the Jury declared the Cuban Five guilty of each and every one of the Charges lodged against them, including Count 3. It did not matter to them that regarding Count 3 the Prosecution had admitted its failure and persisted in trying to get it withdrawn.

Upon the trial's conclusion in the first week of June 2001, the Judge announced that she would impose the sentences in mid-September. The abominable terrorist act on the 11th of that same month and year apparently made her change her mind. Neither she nor the Government would feel comfortable brutally punishing anti-terrorist heroes while W. Bush joyfully and with great fanfare launched his "war on terrorism" throughout the planet. They would wait three months.

Finally, on December 14, 2001, Gerardo was sentenced to two life sentences plus 15 years.

Everyone in the Courtroom knew they were punishing an innocent man.

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