

"OUR" TERRORIST GOES ON TRIAL

Today, Luis Posada Carrilles goes on trial. Posada is, of course, the Cuban-American who was a CIA asset for at least the Bay of Pigs era and almost certainly for years after. Among other things, he orchestrated the bombing of a Cuban plane in 1976, and more recently involved in the bombing of Cuban tourist sites in 1997.

He's not being tried for terrorism. Instead, he's being tried for lying about his terrorism.

Nevertheless, as Peter Kornbluh notes, it'll be the first time evidence of his terrorism gets introduced into trial in this country.

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.

[snip]

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.

Now, it always pays to be skeptical about the possibility the United States will hold its old terrorist, Posada, accountable for later acts of

terrorism that we may not have officially sanctioned. While most of the efforts to avoid trying him have come under Bush (whose father reportedly was tied to the Bay of Pigs invasion, was director of the CIA at the time of the 1976 Posada bombing, was directly implicated in Iran-Contra, ~~and was President during the 1997 bombings in question~~ [pre-coffee f-up]), it's not clear the Obama Administration is any more willing to hold "our" terrorists—or those of our allies—accountable.

Also (as Kornbluh further explains in his article), the government was unable to exclude evidence of Posada's ties to the CIA from trial. Particularly given that DOJ just indicted a former CIA officer who alleges he was ordered to lie in his memoirs, it will be fairly easy for Posada to say he lied about his involvement in terrorism as he was required to to protect the CIA.

And while we're used to American hypocrisy on this front, the trial will be closely watched in Latin America. Even while we're claiming that Posada illegally entered the US, we are refusing to extradite Posada to Venezuela. And the Wikileaks cables reveals our further inconsistency on the treatment of terrorism. While we like to pressure countries like Brazil without great evidence, we treat the claims of Bolivia's government very skeptically. Yet here, the evidence is clear that Posada is a terrorist.

But chances are high that Posada, like Scooter Libby, will never see jail time for his alleged perjury.

But it will be worth watching to see whether the US is willing and able to put one of the Western Hemisphere's most celebrated terrorists in prison.