


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-721-Cr-LENARD/DUBÉ (s)(s)

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 GERARDO HERNANDEZ, )  
 a/k/a Manuel Viramontez, )  
 a/k/a "Giro," )  
 a/k/a "Giraldo," )  
 JOHN DOE No. 2, )  
 a/k/a Luis Medina III, )  
 a/k/a "Allan," )  
 a/k/a "Johnny," )  
 a/k/a "Oso," )  
 RENE GONZALEZ, )  
 a/k/a "Castor," )  
 a/k/a "Iselin," )  
 ANTONIO GUERRERO, )  
 a/k/a "Lorient," )  
 JOHN DOE No. 3, )  
 a/k/a Ruben Campa, )  
 a/k/a "Vicky," )  
 a/k/a "Camilo," )  
 a/k/a "Oscar," )  
 \_\_\_\_\_ )

CO. ELEC. 126 PM 3:51  
 DEPT. OF JUSTICE  
 ST. J. CT.  
 12-27-00  


UNITED STATES' MOTION TO ENFORCE COURT'S DIRECTIVE  
CONCERNING WITNESS COMMENTS TO NEWS MEDIA

The *Miami Herald* of Saturday, December 23, carried as its Page One, lead article a news story, headlined "Messages May Have Warned of Shoot-down", [copy attached], which centers around the direct quotes and statements of outrage by Richard Nuccio concerning the supposed facts relating to F.B.I. knowledge of the shutdown of the Brothers to the Rescue aircraft.

Mr. Nuccio, described as a former advisor to President Clinton concerning Cuba, has been



designated a potential witness in this case by the defense. *See, e.g.*, Trial Tr. 3:460, 572, and other locations where the Court read to the prospective jury panels names of persons expected to testify in this case. However, the Court has directed that witnesses in this case not talk to the media concerning it, and has further directed that attorneys instruct their witnesses that they are not to talk to each other or to the media.<sup>1</sup>

The United States does not know if Mr. Nuccio was told of the Court's directive, and so does not know where the fault lies for these comments having been made. It does know, however, that it is severely prejudiced by the comments, and by the one-sidedness of the commentary. Government spokespersons solicited for comment by *The Miami Herald* properly declined. *See, e.g.*, quoted statement of F.B.I. spokesperson that "We do not comment on ongoing investigations, including trials." Further, private individuals such as Jose Basulto, whom the United States had apprized of the Court's directive, also declined to comment to the press.

The unfairness to the government is especially great because the factual premise of the article, and of Mr. Nuccio's comments – that the F.B.I. knew and appreciated the content of the encrypted radio messages in advance of the shutdown – is incorrect and inconsistent with the evidence presented at the trial to date. Decryption materials which witnesses testified were used to "break out" the radio messages were not acquired by the F.B.I. until at least six months after the shutdown, but the entire thrust of the news story, and of Mr. Nuccio's impassioned comments ("I'm flabbergasted, furious and not at all surprised,") is that the F.B.I. was reading and decrypting the messages in "real

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<sup>1</sup> On November 26, *see* Tr. Vol.1 at page 119, the Court directed: "I am going to extend the sequestration order that not only must witnesses not talk to each other, they must not talk to the media and I suspect all of the attorneys will instruct their witnesses they are not to talk to each other or to the media." This was at the express request of counsel for Gerardo Hernandez, *see id.* at pages 117 - 119.


time”, as they were broadcast, which is not true.


The jury in this trial has been strictly instructed not to read press accounts of the case, and there is no reason to believe that they have disregarded their instruction. Nonetheless, unbridled comment by persons who are designated witnesses in this matter, contrary to the Court’s clear directives, poses risks to the process that none of the parties should have to endure.

WHEREFORE, the United States respectfully moves that the Court conduct an inquiry into the nature, degree and reasons for the apparent violation of the pre-trial directive regarding public comment by witnesses, and take whatever steps it deems necessary in order to enforce that directive.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was telefaxed and mailed

this 26<sup>th</sup> day of December, 2000, to:

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Operation Scorpion took shape over the next two weeks, the decoded messages indicate.

Between Feb. 14 and Feb. 24, the shoot-down day, Havana repeatedly warned its Miami-based agents who had infiltrated Brothers to the Rescue not to fly on Brothers planes between Feb. 24 and Feb. 27.

Nuccio said no one ever told him of those warnings. In fact, he says, the FBI never told him that it knew Cuba had infiltrated Brothers to the Rescue.

One message stands out. It allegedly was written by Eduardo Delgado Rodriguez, code named "MX," a Cuban general who has headed the Interior Ministry's Directorate of Intelligence (DI), Cuban's main foreign espionage agency.

According to prosecutors, the message was directed to double agents Juan Pablo Roque, code named "German," and Rene Gonzalez, code named "Castor."

Gonzalez is one of five spy suspects on trial in federal court.

It states: "MX instructs that under no circumstances should German nor Castor fly with Brothers to the Rescue or another organization on days 24, 25, 26 and 27, coinciding with celebration of Concilio Cubano [a planned national conference of dissident groups in Havana], in order to avoid any incident of provocation that they may carry out and our response to it."

Nuccio said no one ever told him of that message, which he called "significant" because it appears to foreshadow a violent response -- one that necessitated keeping Cuban agents off the planes.

"No one had ever told me, 'We have these intercepts going on and here's what these guys were planning and clearly they are double agents.' These are all things that would have been crucial to me in my job that the FBI chose not to pass along," he said.

"Unless they told me, they weren't telling the person who was in the best position to judge the significance of that information."

Jill Stillman, spokeswoman for the FBI in Washington, declined to comment.

"We do not comment on ongoing investigations, including trials," she said. "We will not comment on whether we spoke to someone from the White House."

#### FBI INFORMATION

It was unclear whether the FBI shared its intelligence information with Nuccio's boss, Sandy Berger, who at the time was the No. 2 person at the security council. Berger today is Clinton's national security advisor.

"Certainly the White House had no specific information that we were expecting an attack on the Brothers to the Rescue that day, but I can't speak for the FBI," said P.J. Crowley, the White House's National Security Council spokesman.

Basulto declined to comment Friday. He said he was following a gag order on trial witnesses. But Basulto's lawyer, Sofia Powell-Cosio, reiterated his stance: that the White House knew about the shoot-down in advance.

Nuccio, now director of the Pell Center for International Relations and Public Policy at Salve Regina University in Newport, R.I., was so worried about a confrontation between Havana and Brothers that on Feb. 23, 1996, he wrote an

