

**Concerns to be brought to the United Nations Human Rights
Committee Meetings March 13, 2006 in New York prepared by
Judge Claudia Morcom**

**INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS**

Article 9

**1. Everyone has the right to liberty and security of person. No
one shall be subjected to arbitrary arrest or detention. No one
shall be deprived of his liberty except on such grounds and in
accordance with such procedure as are established by law,
*and 2, 3, 4, 5,***

and Article 10 – 1, 2, 3

Article 14

**1. All persons shall be equal before the courts and tribunals. In
the determination of any criminal charge against him, or of his
rights and obligations in a suit at law, everyone shall be
entitled to a fair and public hearing by a competent,
independent and impartial tribunal established by law. . . .
*and 2, 3, (a), (b), (c), (d), (e), (f), (g), 5, 6, 7***

On 27 May 2005, the opinion of the Working Group on Arbitrary
Detention (U.N. Human Rights Commission) was adopted and
their opinion No. 19/2005 United States of America was addressed
to the Government of the United States on 8 April 2004 concerning

Mr. Antonio Guerrero Rodriguez
Mr Fernando Gonzalez Lloret
Mr. Gerardo Hernandez Nordelo
Mr. Ramon Labanino Salazar, and
Mr. Rene Gozalez Schweret,

known by Human Rights activists as The Cuban Five.

The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2003/31.

The Working Group received information about the arrests, detention and trial of the Cuban Five from their attorneys, the government and the families of the "Five". To reach their conclusions that: "The deprivation of liberty of the Five Cubans is arbitrary, being in contravention of Article 14 of the International Covenant on Civil and Political Rights to which the United States of America is a Party.

Who are the Cuban Five and what were they charged with and convicted of?

The Five Cuban men were arrested in Miami, Florida in September 1998 and charged with 26 counts of violating the Federal laws of the U.S. Twenty four of the charges were relatively minor and technical offenses, such as the use of false names and failure to register as foreign agents. None of the charges involved violence in the U.S., the use of weapons or property damage. The Five had come to the U.S. from Cuba following years of violence perpetrated on Cuba by a network of exiled Batista terrorists and mercenaries living in Miami, Florida. These exiled terrorist groups have been tolerated and even hosted by successive U.S. Governments. In the meantime for over 40 years they have been engaged in a violent campaign against the Cuban Government and Fidel Castro through bombings of tourist buses, hotels, boats, traveling to Cuba and planting of a bomb on Cubana Airlines. In 1976, which exploded in mid-air killing 73 people, including the young Cuban fencing team. The violence and murders, threats and bombing were also carried out in Miami against any one who spoke out in favor of Cuba and President Castro. There were over 600 assassination attempts against President Castro. Planes coming

from Miami flew over the Cuban air space spraying crops and people with chemicals and propaganda messages.

The mission of the Five was not to obtain U.S. military secrets but was to monitor the terrorist activities, mercenaries and report their planned threats back to Cuba. The arrest and prosecution of the Five men for their heroic attempts to stop the terror was not only a violation of all the human rights treaties and was unjust, but most importantly it exposed the duplicity and hypocrisy of the U.S. claim to fight against terrorism (evidently only on U.S. soil or against U.S. citizens).

Two men who were the leaders of the Miami terrorists cell were self confessed terrorist, Orlando Bosch and Luis Posada Carriles. Their activities were known to the U.S. and condoned, and as it later came out in an interview of Posada Carriles he stated he was the freedom fighter responsible for a series of hotel bombings and that: "The CIA taught us everything --- everything. They taught us explosives, how to kill, to bomb and make bombs, trained us in acts of sabotage. When we were working for the CIA we were called patriots."

Following the arrest of the Cuban Five, without incident, they were placed in solitary confinement for 17 months, with little access to their attorneys time to prepare for a defense or see family. The U.S. Government classified the case as one of National Security and limited the attorneys access to evidence. During jury selection and the voir dire many jurors answered they wouldn't be able to bring in a not guilty verdict for fear of reprisals and community anger and for their own and family's safety. Numerous motions for change of venue were denied many times by the trial judge of the Eleventh Circuit District Court. The atmosphere in the community and in Miami in general was not conducive to a fair trial by an impartial jury.

Despite the fact that the terrorist ring leader, Bosch, had a 30 year history of terrorist attacks, he applied for and was granted residence in the U.S. by then U.S. President George Bush, Sr. Posada was similarly granted special treatment by the U.S. and hosted by the American authorities, not in prison, but a special residence inside a detention facility. The U.S. has thus far refused to extradite him to Venezuela where he is facing charges related to terrorism.

The trial of the Cuban Five lasted 7 months and there were 800 exhibits and over 70 witnesses, 119 volumes of transcript and 15 volumes of pretrial testimony and arguments. The Jury came back with a guilty verdict after only a few hours, never asked a question or asked to review an exhibit. The judge handed down excessive and unfair sentences, applying the maximum sentence in each and every case and even despite the fact that the main charges were never proven. Her rulings are blatant violations, among others, of Article 14 of the United Nations International Treaty on Civil and Political Rights that says, "... every person will have the right to be publicly heard and with all due legal warranties by a competent, independent and impartial jury...."

The Five were separated into maximum security prisons, hundreds of miles from each other, where they remain today. Two have been denied visits from their wives and children for the last seven (7) years in violation of U.S. Laws and International Law.

The conviction of the Five was appealed to the Eleventh Circuit Court of Appeals sitting in Atlanta, Georgia. On August 9, 2005 the three judge panel reversed the conviction and sentences on the basis of the Five not receiving a fair trial in Miami. In releasing the 93 page opinion for the first time in American Jurisprudence, the panel acknowledged that the evidence produced by the defense at trial revealed that terrorist actions emanating from Florida against

Cuba had taken place, even citing in a footnote the role of Mr. Posada Carriles and correctly referring to him as a terrorist.

The panel decision stunned the Bush administration. Miami, with its 650,000 Cuban exiles who provided the margin of Victory for Bush in the 2000 presidential election, was officially found by a federal appellate court to be so irrationally hostile to the Cuban government, and supportive of violence against it, as to be incapable of providing a fair forum for a trial of these five Cubans. Moreover, the behavior of the government prosecutors in making exaggerated and unfounded arguments to the twelve members of the public who heard and decided the case, exacerbated that prejudice, as did the news reporting both before and during the trial.

In this case a new trial was mandated by the perfect storm created when the surge of pervasive community sentiment, and extensive publicity both before and during the trial, merged with the improper prosecutorial references. The Court specifically ruled, "The pervasive community prejudice against Fidel Castro and the Cuban government and its agents, and the publicity surrounding the trial and other community events combined to create a situation where they were unable to obtain a fair and impartial trial. We agree and reverse their conviction and remand for a retrial."

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The Attorney General of the U.S. Albert Gonzales, George W. Bush's former Counsel then filed an unusual appeal to have all Judges of the 11th Circuit Court to review the three person panel decision of August 9th. The hearing on that appeal was argued on February 14, 2006 at the court of Appeals in Atlanta, Georgia with thirteen (13) of the fourteen (14) Judges sitting.

The International Association of Democratic Lawyers (IADL) sent lawyers and Jurists from around the world to observe those proceedings. In addition to this writer from the U.S. there were IADL members from Italy, Germany, the Flemish Parliament, Belgium, Argentina, a videographer from Ireland and a priest from Britain. When a decision will be forthcoming is uncertain at this time.

As Leonard Weinglass, one of the attorneys for the Five observed,
“The Case of the Five is one of the few cases in American jurisprudence that involves injustice at home as well as injustice abroad. Like the trial of the Pentagon papers, concerning the War in Vietnam, it derives from a failed foreign policy, which it exposes. In order to achieve a political end, the criminal justice system was manipulated by the government which consistently violated legal norms. The Five were not prosecuted because they violated American law, but because their work exposes those who were. By infiltrating the terror network that is allowed to exist in Florida they demonstrated the hypocrisy of Americas claimed opposition to terrorism.”

Judge Claudia Morcom of the Wayne County Circuit Court in Michigan (ret)