

U.S. Denies Knowing of Shoot-Down Threat Messages Decoded Later, Lawyers Say

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Coded communications between the Cuban government and its South Florida intelligence agents that forecast the 1996 Brothers to the Rescue shoot-down were intercepted—but not interpreted—by the FBI before the shutdown took place, according to a government court filing Wednesday.

It wasn't until "at least six months after the shoot-down" that the FBI obtained the "decryption" materials it needed to decode the shortwave radio messages, prosecutors said in a motion filed Wednesday in U.S. District Court.

The motion seeks to enforce a judicial gag order on witnesses in the Cuban spy trial. It was filed in response to an article in The Herald that quoted Richard Nuccio, who was President Clinton's Cuba advisor at the time of the Feb. 24, 1996, shoot-down.

Nuccio has been listed as a potential defense witness but has not been subpoenaed.

The Saturday article said that the FBI had intercepted the coded radio communications more than a week before the Brothers shoot-down but apparently had not shared what it gleaned with the White House's top advisors on Cuba.

Nuccio was quoted in the article responding angrily, saying he was not told about the FBI intercepts, which he called "significant."

The government's motion—filed by Assistant U.S. Attorneys Caroline Heck Miller, David Buckner and John Kastrenakes—said The Herald article and Nuccio's comments were "incorrect" and unfair to the government because jurors might read them.

Contacted Thursday, Nuccio initially expressed skepticism about the government's filing.

"It's possible that it's true, but who knows?" he said of the reported six-month decoding delay. "Sometimes [intelligence people] tell the truth, sometimes they don't. You're always working with some version of what might be true. You're never working with all of the information."

He later softened his stance.

"I accept at face value the explanation that these intercepts were not decipherable until decoding information was discovered," he said. "That would be an explanation as to why the information wasn't provided to anyone.

"As to whether the intelligence agencies were providing to the key people at the

White House the information they needed to do their job on Cuba, I still have great skepticism about that," Nuccio said.

NO WORD FROM FBI

Miami FBI spokesman Carlos Zaldivar said the agency had no comment.

The entire story about the Brothers shoot-down—in particular, who knew what and when—is unclear. The government has yet to call any witnesses with knowledge of the incident.

Witnesses in the trial have testified that communications between Havana and its South Florida agents were encrypted and could only be deciphered after the FBI broke secret codes and translated the messages from Spanish.

The shortwave radio messages were even more complicated to interpret. They first had to be translated from Morse code into alpha-numeric characters—a process completed within a day or two, witnesses said.

Some encryption programs were obtained when FBI agents copied or seized computer disks from the apartments of some of the defendants, according to testimony.

The agents copied disks during clandestine searches of the apartments starting in August 1996—six months after the shoot-down. They seized more disks when the defendants were arrested in September 1998.

DEFENSE ALLEGATION

Defense lawyer Paul McKenna told jurors in his opening statement that numerous U.S. government agencies had advance knowledge that a shoot-down was imminent.

McKenna—who has listed Nuccio as a possible witness—declined to comment.

He represents accused spy Gerardo Hernandez, who is charged with conspiracy to murder in the shoot-down.

U.S. District Judge Joan Lenard has instructed jurors not to read the paper or watch television coverage of the trial.

While there is "no reason to believe" that jurors are breaking the rules, the prosecutors' motion said, "unbridled comment" by potential witnesses "poses risks to the process that none of the parties should have to endure."

The judge also told lawyers for the five men on trial to "instruct their witnesses they are not to talk to each other or to the media."

Lawyers have listed some 200 potential witnesses, but many of them have not been subpoenaed.

The government's motion asks Lenard to "conduct an inquiry" into "the nature, degree and reasons for the apparent violation of the pre-trial directive regarding public comment by witnesses."

Prosecutor Heck Miller declined to comment.

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Section: Front

Page: 1A

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