

# Spy vs. Spy

In a South American caper, one agent turns in another and claims \$5 million bounty

BY SIOBHAN MORRISSEY

**F**ORMER PERUVIAN SPYMASTER VLADIMIRO Lenin Montesinos Torres earned the sinister nicknames of Torquemada, Rasputin and Darth Vader. While working with disgraced Peruvian President Alberto Fujimori in the 1990s, Montesinos got involved in arms trafficking, drug dealing, money laundering, extortion “and more than a few murders,” according to a federal lawsuit in Miami.

In the fall of 2000, Montesinos fled Peru after videotapes he made of his activities became public. One showed him handing a bribe to a newly elected official. The resulting furor prompted Fujimori to step down and disband the intelligence agency that Montesinos headed.

That’s when Montesinos decided to board a yacht bound for the Galapagos Islands, continue the voyage to Venezuela, get a little plastic surgery on his face—and vanish.

Unable to find the fugitive, the Peruvian government asked the FBI for help and offered a \$5 million reward for information leading to his capture.

In June 2001, FBI agents in Miami detained Jose Guevara, a former Venezuelan intelligence officer who helped hide Montesinos. They threatened him with criminal charges unless he turned in the fugitive spymaster. They also reminded him of the reward.

It didn’t take long for Guevara to make up his mind. He told authorities where they could find Montesinos.

When Guevara sought the reward money, the Peruvians balked, claiming he was Montesinos’ accomplice and shouldn’t get a penny.

So Guevara did what any spy who came in from the cold would do: He sued.

In September, U.S. District Judge Marcia G. Cooke in Miami agreed, in *Guevara v. Republic of Peru*, that Guevara was owed the bounty.

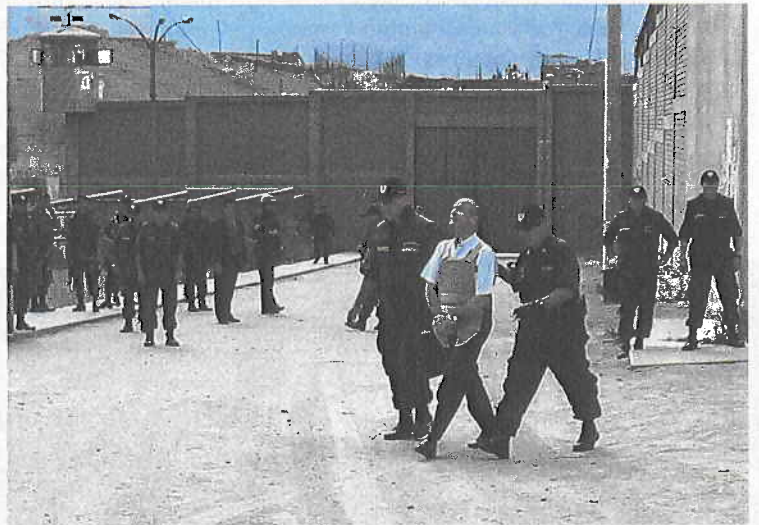
It was the second time Cooke had ruled in the case. When Guevara’s claim first came before her in 2005, she dismissed it, holding that Peru had immunity under the Foreign Sovereign Immunities Act, which excepts foreign governments from jurisdiction in U.S. courts.

But in 2006, the Atlanta-based 11th U.S. Circuit Court of Appeals reversed, ruling that reward offers fall under the FSIA’s “commercial activity” exception, which makes it possible to sue foreign countries in a U.S. court over a private contract—in this case, the

promised reward money. It’s as if the foreign government had reneged on a business deal, the court said.

Aside from the international intrigue and a plot worthy of a John le Carré novel, government officials are keeping a close watch. The Montesinos case could leave a lasting impact on government offers of rewards for dangerous criminals and international terrorists.

The appellate court noted that the U.S. has paid out \$47 million in reward money since the Sept. 11, 2001, terrorist attacks. “Success stories include the location



Police escort Vladimiro Montesinos after the second day of his 2003 trial.

and capture (killing) of Saddam Hussein’s sons, Uday and Quasay Hussein, and the capture of Ramzi Yousef, one of the 1993 World Trade Center bombers,” wrote Judge Ed Carnes.

It makes good public policy to ensure that governments keep their promises to pay reward money, Judge Cooke wrote in her Sept. 9 opinion. “Anything that makes it easier for countries to waltz on their promises to pay for information decreases the real value of any reward they offer and makes it less likely that an offer will be accepted.”

She added: “The holding Peru asks us to reach would jeopardize not only its vital interests but those of every country that offers rewards for information, including this country.”

George Washington University law professor Stephen A. Saltzburg agrees with the ruling. “The court of appeals opinion seems right to me and consistent with what most lawyers and nonlawyers would consider to be commercial activity,” says Saltzburg, a past chair of

the ABA Criminal Justice Section. "In many respects Peru was enlisting any person, including Jose Guevara, to be its investigator and to obtain accurate information that would enable the location and capture of Montesinos. The fact that no contract was signed is unimportant."

Florida Statewide Prosecutor William N. Shepherd says his office began offering rewards on its website this year, resulting in four criminals being caught within the first six months.

#### REWARDS AS COMMERCE

"THE REPUTATION YOU HAVE WITHIN the community for sticking true to your word on these sorts of things is key," says Shepherd, a vice-chair-at-large for the Criminal Justice Section. "The Peruvian government, should they not pay out on this reward—and I don't know the facts other than what's in the case—but I think they're going to have a hard time getting people to come forward in future situations."

But a former high-ranking FBI official who asked not to be identified says he agrees that in these cases one's

word is one's bond. However, he takes exception to the resolution of the civil case against Peru. He believes the court is mistaken when it comes to categorizing rewards as contracts.

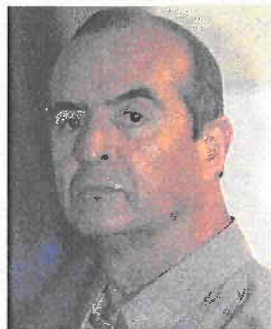
"We don't consider them contracts," he says. "We consider them obligations in order to continue to get that kind of information. So their equating this to commercial activity, I think, is completely wrong."

"The whole idea of trying to capture somebody who has committed a crime is completely a governmental activity, vested in the government, cannot be given to anybody but the government. I think the court got it wrong."

So does Michael P. Scharf, who teaches international law at Case Western Reserve University and directs the Cox Center War Crimes Research Office.

The controlling case, he says, is 1993's *Saudi Arabia v. Nelson*, in which the U.S. Supreme Court stated that the "exercise of the powers of police and penal officers is not the sort of action by which private parties can engage in commerce."

Says Scharf: "From sheriff bounties in the Old West



Vladimiro Montesinos

to the present U.S. offer of \$25 million for information leading to the capture of Osama bin Laden, this is a quintessential public, governmental act which should be immune from suit under the Foreign Sovereign Immunities Act."

#### PERU'S POSITION

WASHINGTON, D.C., ATTORNEY MARK A. CYMROT, WHO represents Peru, maintains that Guevara sheltered Montesinos for money. Montesinos had reportedly moved more than \$1 billion out of the country, and he is now serving time in a Peruvian prison he built.

"[Peru's] counterclaim says Mr. Guevara allegedly joined the conspiracy of Vladimiro Montesinos and he's liable for the damages of that conspiracy, which was a large amount of money misappropriated from the Peruvian government," Cymrot says. "Mr. Guevara was his self-proclaimed head of security for seven months while Montesinos was on the lam."

The FBI arrested Guevara after a June 2001 attempt to obtain money from one of Montesinos' frozen bank accounts. Guevara presented a note from Montesinos to the banker, says Guevara's Miami attorney, Michael Diaz Jr. It turned out to be a very thinly veiled threat.

"The note was actually shown to my client afterward," Diaz says. "He did not read the note."

FBI agents charged Guevara with extortion, but agreed to drop the charge if he cooperated by revealing where Montesinos was hiding, Diaz says. After they told him about the \$5 million reward, Guevara called Montesinos while the FBI listened in. Guevara had been harboring Montesinos since the previous December, when a relative showed up in Venezuela with the spymaster.

"My client's relative, who is also in the intelligence in Venezuela, dropped him off at my client's house," Diaz says. "He used a different name for Montesinos. He showed up at my client's house with bandages on his face. He said he had been in an accident."

Even after Guevara learned Montesinos' real identity, Diaz says, his client agreed to help protect the spymaster because he viewed what was happening to him "as a typical Latin American political persecution."

"Sure, there is a little bit of Judas," Diaz says of his client's duplicity. "But, you know, it's me or you. I'm here. You sent me up to do this. I didn't know what your note said, and here I am being arrested."

As of late October, Peru had not decided whether to appeal the decision. ■