

THE
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SPIES, THE FBI AND PURSUIT OF
PERU'S MOST INFAMOUS FUGITIVE

MARK A. CYMROT



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*The Case of the Welched Reward:
Spies, the FBI and Pursuit of Peru's Most Infamous Fugitive*

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A True Story
Jose Guevara v. Republic of Peru

“Anything that makes it easier for countries *to welch* 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 ...”.

U.S. Court of Appeals for the 11th Circuit

“Welch”

1. informal + *sometimes offensive*: to avoid payment—used with *on*
2. informal + *sometimes offensive*: to break one’s word: RENEGE

Miriam Webster Dictionary

*Dedicated
to my wife Janinne
for her unwavering support*

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CAST OF CHARACTERS

(IN ALPHABETICAL ORDER)

Abramovitz, Jose – Senior advisor to Peru’s Minister of the Interior who retained the author as counsel for Peru

Almon, Thomas – Jose Guevara’s criminal lawyer who submitted his claim for the reward

Anderson, Danilo – Venezuelan prosecutor murdered, allegedly by Otoniel Guevara and other family members

Boloña Behr, Carlos – Peru’s Minister of Economy and Finance, 1991–93, 2000

Camet Dickman, Jorge – Peru’s Minister of Economy and Finance, 1993–98

Castro, Luis Alva – Peru’s Minister of the Interior, 2007–08

Chavez Frias, Hugo – President of Venezuela, 1999–2013

Cooke, Marcia G. – U.S. District Judge for the Southern District of Florida who heard the *Guevara* case

Costa Santolalla, Gino – Peru’s Minister of the Interior, 2002–2003, chair of Special Committee to investigate reward claims; Vice Minister of the Interior, 2001–2002

Currier, Kevin W. – FBI Supervisory Special Agent (SSA) stationed in Santiago, Chile for international coordination

Fujimori, Alberto – President of Peru from 1990 to November 22, 2000

Garcia Perez, Alan – President of Peru from 1985–1990, 2006–2011

Garcia, Gonzalo – Alias for Venezuelan businessman who helped Montesinos in Venezuela

Guevara Chacon, Jose – Member of the Venezuelan spy service, DISIP (General Sectoral Directorate of Intelligence and Prevention Services) and plaintiff in his lawsuit against Peru

Guevara, Otoniel – Commandant in DISIP and cousin of plaintiff, Jose Guevara

Guzman, Abimael – Leader of the Shining Path terrorist group captured by police squad headed by Antonio Ketin Vidal in 1992

Hamilton, John – U.S. Ambassador to Peru, 1999–2002

Laufer, Orlando – Investigator and former DEA agent in Venezuela who identified an alleged Montesinos hideout

Lizier Corbetta, Jose – Owner and captain of the *Karisma*, the sailboat on which Montesinos fled Peru

Longa, Waldo – FBI Special Agent (SA) in Miami

Mejia Guzman, Emma Aurora – Self-styled journalist and Montesinos companion from Isabela Island to Caracas

Miquilena Hernandez, Luis – Venezuelan Minister of the Interior, 2001–2002

Montesinos Torres, Vladimiro Lenin – Fugitive from Peru, advisor to President Fujimori, and head of Peru's National Intelligence Service (SIN), 1990–2000

Omana, Arturo – Alias Jose Guevara used when approaching bank in Miami

Nuñez Perez, Jose Luis – Jose Guevara's driver, companion, and recipient of his telephone call from FBI custody

Paniagua Corazao, Valentin – Interim President of Peru, November 22, 2000–July 28, 2001

Percovich Bambaren, Luis – Bank officer at Pacific Industrial Bank in Miami threatened by Jose Guevara

Percovich Mallea, Carlos – Uncle of the Pacific Industrial Bank officer who was mistakenly contacted by Montesinos

Perez de Cuellar, Javier – Prime Minister of Peru, 2000–2001, and UN Secretary General, 1982–1991

Perez Rangel, Carmen Yolanda – Alias for Emma Mejia when entering Venezuela

Poleo, Patricia – Venezuelan journalist working with Orlando Laufer in Venezuela and former director of *El Nuevo Pais*

Rangel, Jose Vicente – Venezuelan Minister of Foreign Affairs, 1999–2001, and Minister of Defense, 2001–2002

Rodríguez Perez, Manuel Antonio – Alias for Montesinos when entering Venezuela

Rospigliosi Capurro, Fernando – Peru's Minister of the Interior, 2001–2002, 2003–2004, chair of Special Committee to investigate reward claims, and defendant in Guevara's lawsuit

Toledo Manrique, Alejandro – President of Peru, 2001–2006

Ugaz Sanchez-Moreno, Jose – Ad hoc prosecutor of Fujimori and Montesinos, 2000–2002, and partner in the law firm Benites, Vargas & Ugaz in Peru

Vargas Valdivia, Luis – Ad hoc prosecutor of Fujimori and Montesinos, 2002–2004, and partner in the law firm Benites, Vargas & Ugaz in Peru

Vidal Herrera, Antonio Ketin – Peru's Minister of the Interior 2000–2001, head of the police teams that captured terrorist Abimael Guzman in 1992 and Montesinos in 2001, and defendant in Guevara's lawsuit

CHRONOLOGY

THE FUJIMORI-MONTESINOS ERA IN PERU

July 28, 1990 – Alberto Fujimori sworn in as President of Peru

September 12, 1992 – Antonio Ketin Vidal leads a police squad in the arrest of Shining Path leader, Abimael Guzman

September 14, 2000 – First “Vladivideos” leaks to the media showing Montesinos bribing a congressman to switch party affiliation

September 15, 2000 – Fujimori asks Montesinos to quit and dissolves the National Intelligence Service

September 24, 2000 – Montesinos seeks political asylum in Panama

October 23, 2000 – Montesinos flees Panama, returning to Peru and disappearing into hiding

October 29, 2000 – Montesinos escapes from Callao, Peru, on the sailboat *Karisma*

November 2, 2000 – Swiss government announces a freeze on accounts held by shell companies owned by Montesinos and his family

November 4, 2000 – Fujimori appoints Jose Ugaz ad hoc prosecutor to investigate Montesinos

November 4–5, 2000 – Montesinos on *Karisma* arrives in Isabela Island, Ecuador, and Emma Mejia joins the group

November 13, 2000 – President Fujimori flees Peru, flying through the United States to Japan where he is given asylum

November 18–19, 2000 – Montesinos, on *Karisma*, arrives in Cocos Island, Costa Rica

November 21, 2000 – Peruvian congress rejects Fujimori's resignation and impeaches him as president

November 22, 2000 – Peruvian congress appoints Valentin Paniagua as interim president

November 25, 2000 – Ad hoc Prosecutor Jose Ugaz opens a formal investigation into former President Fujimori

November 25, 2000 – Antonio Ketin Vidal appointed Peru's Minister of the Interior in charge of locating Montesinos

December 7, 2000 – Montesinos and Mejia fly into Caracas on a private plane

December 14, 2000 – Mejia turns herself in to the Peruvian embassy in Caracas, returns to Peru and discloses Montesinos' last location

December 14–15, 2000 – Otoniel Guevara brings Montesinos to the home of Jose Guevara, who moves him to the home of Ismelda Perez, his driver's sister

December 15, 2000 – Vidal flies to Caracas and organizes an unsuccessful raid on the clinic where Montesinos had plastic surgery

April 16, 2001 – Ketin Vidal flies to Caracas to meet with Venezuelan Minister of the Interior Miquilena seeking cooperation

April 20, 2001 – Ketin Vidal flies to Valencia, Venezuela on a tip from Orlando Laufer and Patricio Poleo that Montesinos is at Hato Piñero

April 21, 2001 – Venezuelan police raid Hato Piñero but fail to find Montesinos

April 22, 2001 – Peru issues Emergency Decree No. 049-2001, Establishing a Financial Reward for Accurate Information Leading to the Location and Capture of Vladimiro Montesinos

May 28, 2001 – Guevara moves Montesinos from Ismelda Perez's home to his mother's home

June 21–22, 2001 – Jose Guevara arrested in Miami and calls Jose Luis Nuñez from FBI custody

June 23, 2001 – Venezuelan President Hugo Chavez announces Montesinos' capture and extradition to Peru

July 28, 2001 – Alejandro Toledo sworn in as President of Peru

August 2001 – Ketin Vidal meets with Jose Guevara in FBI offices in Miami

September 6, 2001 – Peru's Minister Rospigliosi's letter to FBI SSA Currier asking for a written report on Guevara's reward claim

October 29, 2001 – FBI SSA Currier's letter to Minister Rospigliosi supporting Guevara's reward claim

August 5, 2002 – Special Committee resolution accepting Guevara's claim for consideration

September 2, 2002 – Peru's Interior Minister Costa's letter to FBI SSA Currier asking for additional details regarding Guevara's reward claim

October 30, 2002 – FBI SSA Currier's response to Minister Costa supporting Guevara's reward claim

May 31, 2005 – Special Committee rejects the eight reward claims including Jose Guevara's

JOSE GUEVARA LAWSUIT CHRONOLOGY

December 27, 2004 – Guevara files lawsuit against Republic of Peru and former Interior Ministers Vidal and Rospigliosi

October 6, 2005 – Order by U.S. District Judge Cooke dismissing Guevara's lawsuit against Peru on grounds of sovereign immunity

November 7, 2005 – Notice of Appeal by Jose Guevara

August 18, 2006 – Peru's lawyer fails to appear at oral argument before U.S. Court of Appeals

December 5, 2006 – Opinion by U.S. Court of Appeals reversing Judge Cooke's order of dismissal and reinstating Guevara's lawsuit

April 27, 2007 – Order granting Peru's lawyers' motion to withdraw as counsel

June 28, 2007 – BakerHostetler and author appear as new counsel for Peru and two former ministers in Guevara's lawsuit in Miami

August 10, 2007 – Peru files a motion to transfer the case to a Peruvian court under the inconvenient forum doctrine (*forum non conveniens*)

August 10, 2007 – Defendants Vidal and Rospigliosi file a motion to dismiss Guevara's lawsuit for lack of personal jurisdiction over them

March 20, 2008 – Order by Judge Cooke setting trial date for June 23, 2008

March 28, 2008 – Order by Judge Cooke deferring ruling on Ministers Vidal and Rospigliosi's motion to dismiss Guevara's complaint

March 31, 2008 – Order by Judge Cooke denying Peru's motion under the inconvenient forum doctrine

April 14, 2008 – Guevara files motion for partial summary judgment to win the lawsuit against Peru

May 22, 2008 – Deposition of defendant, Fernando Rospigliosi in Lima, Peru

May 23, 2008 – Deposition of defendant, Antonio Ketin Vidal in Lima, Peru

May 29, 2008 – Peru files answer, offsets, and counterclaims

June 17, 2008 – Order by Judge Cooke resetting trial date for September 15, 2008

July 23, 2008 – Deposition of plaintiff, Jose Guevara in Miami

August 28, 2008 – Order by magistrate judge granting Guevara's motion to compel trial testimony of FBI agents, Waldo Longa and Kevin Currier, and denying Peru's motion to take their depositions

September 8, 2008 – Order by magistrate judge requiring a Peruvian representative to appear for a deposition in Miami

September 9, 2008 – Order by Judge Cooke granting Guevara's motion for partial summary judgment against Peru, awarding Guevara \$5 million plus interest. Case proceeds against Ministers Vidal and Rospigliosi and on Peru's offsets and counterclaims.

September 11, 2008 – Deposition of FBI SA Waldo Longa in Miami

September 19, 2008 – Luis Percovich, Miami banker, files a motion to intervene in Guevara’s lawsuit to claim Peru’s reward

September 22, 2008 – Order by magistrate judge to compel the deposition of Peru’s representative within five days in Miami and giving notice that failure to appear would subject Peru and its counsel to sanctions

September 26, 2008 – Deposition of Peru’s former Interior Minister, Gino Costa, as Peru’s representative in Miami

September 29, 2008 – Order by magistrate judge limiting questions by Peru of its representatives to questions related to Peru’s counterclaims

September 29, 2008 – Deposition of Peru’s former ad hoc prosecutor, Luis Vargas, as Peru’s representative in Miami

October 20, 2008 – Order by magistrate judge denying Peru’s request to retake the deposition of Jose Guevara or bar him from testifying on questions he refused to answer and denying Peru’s motion to compel the FBI to produce documents and witnesses

October 21, 2008 – Order by Judge Cooke denying motions by former Ministers Vidal and Rospigliosi to dismiss the complaint for lack of jurisdiction and ordering them to file motions for summary judgment

October 23, 2008 – Deposition of FBI SSA Kevin Currier in Washington, D.C.

November 7, 2008 – Order by Judge Cooke granting Guevara’s motion for summary judgment against Peru’s counterclaims

December 1, 2008 – Order by Judge Cooke denying Luis Percovich’s motion to intervene in the lawsuit

December 16, 2008 – Order by Judge Cooke dismissing Guevara’s lawsuit against former Ministers Vidal and Rospigliosi

December 17, 2008 – Final Judgment against Peru entered by Judge Cooke

January 9, 2009 – Notice of Appeal filed by Peru

January 13, 2010 – Oral Argument before the U.S. Court of Appeals for the 11th Circuit

June 28, 2010 – Opinion of the U.S. Court of Appeals reversing judgment entered against Peru

July 27, 2010 – Order by Judge Cooke dismissing Guevara's lawsuit

December 7, 2010 – Order by U.S. Supreme Court denying Guevara's petition for writ of certiorari seeking to appeal U.S. Court of Appeals decision

PROLOGUE

At dawn on October 29, 2000, a 60-foot, two-masted schooner with tall, white sails slipped out of Callao, the port city of Lima, Peru. The *Karisma* was supposed to be heading to a regatta off Ecuador and on to scuba diving off the Galapagos Islands. It seemed like a superb day to sail, mild temperatures, sun rising, and a light wind. Shortly before raising anchor, the owner went ashore to greet the passengers he thought were joining him for the regatta. When he entered the Yacht Club, he encountered a tall, slim, dark-complexioned man wearing a wig. He quickly recognized Vladimiro Lenin Montesinos Torres, Peru's infamous spymaster. A petite woman and three army commandos were accompanying Montesinos. The group—toting Montesinos' suitcase full of cash—hurried onto the *Karisma*. Once out to sea, the *Karisma* disappeared. The shipowner later wrote that he had been extorted by threats from Montesinos and his commandos. They had been keeping watch on his wife and children and knew about his tax problems. "They told me that they needed a fishing nylon to get rid of me. They were going to force the crew to make the trip."

Montesinos was in full flight from arrest. For a decade, he had been the secret power behind Peru's President Alberto Fujimori, but now Fujimori had Peruvian TV viewers mesmerized by personally supervising a frantic land, sea, and air search for him. Montesinos was accused of numerous crimes, which later grew to include extrajudicial killings, arms and drug trafficking, torture, money laundering, bribery, extortion, and the misappropriation of \$1 billion in government money. When Montesinos was not immediately located in Lima, the authorities issued international arrest warrants and sought Interpol's assistance. A long, frustrating international manhunt had begun.

After six months of a fruitless international search, the Peruvian cabinet issued an emergency decree offering a \$5 million reward to any person who provided “accurate information that will directly enable locating and capturing [Montesinos].” The cabinet hoped the reward would increase the price Montesinos had to pay for protection and force him to surface. The reward decree prompted thousands of responses but few solid leads. The frustration continued.

Sunday, June 24, 2001, brought the dramatic end to the eight-month search. Venezuelan President Hugo Chavez took the podium at a meeting of Andean presidents in Valencia, Venezuela, triumphantly announcing, “Last night, fortunately, and I thank God for it, we have captured Vladimiro Montesinos alive.” He said he was sending Montesinos back to Peru *más rápido que inmediatamente*—more quickly than immediately. A surprised and delighted Peruvian Prime Minister Javier Perez de Cuellar (former UN Secretary General) sitting on the podium joined in thunderous applause. The next day, Montesinos was loaded in handcuffs on a Peruvian police jet for a flight back to Lima. He was deposited in the maximum-security prison at Callao Naval Base that he had helped design and built for terrorist leaders. Montesinos has spent the ensuing decades traveling between prison and courtrooms, responding to a long list of serious felonies.

A tripartite diplomatic flap ensued among Venezuela, Peru, and the United States. Chavez and Perez de Cuellar exchanged public statements that turned heated. Perez de Cuellar congratulated Venezuela on “brilliant cooperation” in arresting Montesinos. The Bush administration’s ambassador in Lima issued a statement saying, “We’re extremely pleased that Vladimiro Montesinos has finally been caught,” and that the United States’ support over the course of the manhunt “played a vital role in Montesinos’s capture.” Chavez objected insisting that the Venezuelans had done it alone. In competing press conferences, Peru’s Interior Minister accused the Venezuelan police of interrupting his secret joint operation with the FBI. Chavez was outraged. “Venezuela is a sovereign country,” he said. “No police organization can come here and mount an operation behind the back of our government.” An FBI spokesman said what Peruvians and U.S. authorities were thinking, “It’s the FBI’s opinion, as well as the Peruvian government’s that Mr. Montesinos was being kept in Venezuelan territory, and it is also our belief that the Venezuelans were aware of that fact long before his arrest.” After successive days exchanging verbal zingers, Venezuela withdrew its ambassador to Lima, accusing Peru of “unfriendly acts” by attempting to snare Montesinos on its soil. Perez de Cuellar responded by

recalling Peru's ambassador in Caracas, saying: "We were victims of real verbal aggression."

Eight people quickly made claims to Peru's \$5 million reward offer, insisting they had aided in Montesinos' capture. A Special Committee of the Interior Ministry, after conducting an extensive investigation, determined that none of the claimants had provided information that "*directly enabled* locating and capturing [Montesinos]," the precondition of the reward decree. The committee's decision paralleled the diplomatic flap, deciding that the Venezuelans did not need information from any of the claimants to find and capture Montesinos. The Venezuelans say they did it alone; no one presented evidence that proved otherwise.

On December 30, 2004, Jose Guevara Chacon, a veteran of the Venezuelan spy service, filed a lawsuit in U.S. federal court in Miami against the Peruvian government. He claimed he had earned the \$5 million reward after the FBI arrested him while he was extorting a Miami bank officer to release Montesinos' dirty money. From his holding cell, Guevara allegedly "disclosed Montesinos' hiding place and telephone number, contacted Montesinos via telephone, and while FBI agents monitored the conversations, arranged for Montesinos' capture pursuant to FBI instructions." Guevara's complaint concluded that he "fully performed his end of the contract and is entitled to the Reward that was promised him by Peru." Guevara also sued two Interior Ministers—Antonio Ketin Vidal Herrera and Fernando Rospigliosi Capurro—claiming they had lied to him about the reward. The FBI gave informal support to Guevara's claim despite its close relationship with the Peruvian police.

The lawsuit became its own political and diplomatic saga that drew me back to representing Peru one last time. But before calling me in a panic, Peru had hired a lawyer who had initial success but walked away at a critical moment. The result was a scathing opinion by the U.S. Court of Appeals, insulting Peru by finding it had made "false" arguments and "welched" on the reward. The opinion rejected Peru's best defense, the ancient doctrine of sovereign immunity that protects governments from being sued in another country's courts. This lawsuit—a Venezuelan against Peru—would stay in a U.S. court supposedly to decide for Peru the merits of Guevara's reward claim. However, the outcome was in little doubt because of the words and tone of the appeals court opinion.

How could I win a lawsuit—that was a ticking political time bomb in Lima—when it had already been helplessly lost? With the appeals court decision, I had no choice but to unwind the story of Montesinos' flight, the

mystery surrounding his capture, and the backstory of how Peru had gotten itself into this precarious mess. Nothing was as it seemed. What unfolded was a story that “read like the latest spy thriller,” according to the second opinion of the U.S. Court of Appeals. The twisted tale included much intrigue, millions of dollars, bribes, extortion, and talk of two murder plots. Murder plots in a civil lawsuit, now that was new to me. More harrowing was the district judge’s reaction to the appeal court’s rebuke of Peru and our struggle to craft a strategy that would overcome such a damning opinion. It did not go smoothly.

PART I
A FRIEND IN TROUBLE CALLS

A new technology dilemma was perplexing me. I was not in Washington's K Street crowd when it came to fancy lunches. My clients and cases were elsewhere, and trial lawyers do not live on the conversations and alliances that make Washington run. I often ate lunch at my desk pressed for time by court deadlines. In the early days of a 50-year career, crumbs from my sandwich would get wrapped up and thrown away with the newspaper. I moved on to reading the *Daily Beast* or *Huffington Post* leaning over the keyboard, accumulating crumbs among the keys. That wasn't so easy to clean up. Of course, technology will likely solve this problem someday. We will be able to think and read the words on the screen; the keyboard will become obsolete. But it is hard to imagine unscrambling shooting synapses on a screen. And what if I daydream—that could be embarrassing—especially if the words are accompanied with pictures. Perhaps crumbs were the least of my problems.

This quandary was distracting me from a pile of menacing pleadings when Jose Abramovitz interrupted my lunch one day in June 2007. I had known Jose for more than 20 years. He was Peru's Vice Minister of Energy in the 1980s, assigned to oversee a New York lawsuit about a global conspiracy to manipulate silver prices. I had tried and won \$197 million for Peru's mineral agent. For the next decade, I was Peru's international trial lawyer of choice. My principal role was to defend Peru in \$40 billion of worldwide lawsuits by major international banks and hedge funds seeking to recover unpaid loans from an impoverished country. While Peru restructured its economy, I held its creditors at bay by convincing courts to halt the lawsuits, the beginnings of a bankruptcy stay for countries. In 1997, 179 of 180 international banks signed a debt restructuring that helped to supercharge