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# Ex-Justice Official Cites 'Coverup' By FBI in '78 Puerto Rico Shootings

By Jim McGee  
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While the federal review of possible civil rights violations in the Rodney G. King case proceeds in Los Angeles, television viewers in Puerto Rico this week learned new details about a 14-year-old police brutality investigation by the Justice Department and the FBI that went badly awry.

Most remarkably, they have heard a formal apology for the Justice Department's role following the 1978 incident from Drew S. Days III, who headed Justice's Civil Rights Division from 1977 to 1980, for what he now believes was an FBI "coverup" in the case.

The episode, which still haunts politics in Puerto Rico, began July 25, 1978, when two members of a pro-independence activist group, and a police undercover officer, commandeered a taxi outside the city of Ponce and ordered its driver to take them to Cerro Maravilla, about 40 miles southwest of San Juan, where they planned to sabotage a television transmission tower as a political protest. Instead, they were met by five police officers, and an ensuing gunfight led to the deaths of the two activists.

An initial police ruling that the officers fired in self-defense was challenged by the taxi driver, who told San Juan reporters that the two men had surrendered after some initial gunfire. He said they were beaten and that minutes later he heard a second volley of shots.

Days acknowledged in testimony before a commonwealth Senate Committee on the Judiciary hearing, conducted during a closed session in late March but televised on tape this week, that the San Juan FBI office had dismissed reports of the driver's account as "nebulous," and refused to interview him. "The local FBI office employed one stratagem after another to avoid doing a full investigation . . ." Days testified after being shown copies of FBI teletypes. "The FBI is part of the Justice Department and, to that extent, what you've shown me does point to a coverup in that part of the Justice Department."

Five years after the shooting, in 1983, the Puerto Rican Senate conducted its own investigation of the incident, using testimony of witnesses who were granted immunity,

and uncovered evidence that the two men were murdered while kneeling. The Justice Department lawyers then returned to San Juan in 1984 and convicted 10 current or former police officers of perjury and obstruction of justice, based on their testimony shortly after the incident.

Asked why his Justice Department lawyers did not take the same investigative steps years earlier, Days said, "If we didn't do what we should have done in terms of immunity, then I am very sorry that we didn't, because to put Puerto Rico through 14 years of this agony is something that the Civil Rights Division ought to try to avoid."

Now, the commonwealth Senate Judiciary Committee is examining why the Justice Department's original review failed. So many years after the fact, the Senate wants to find out why the case went so wrong, to make the American public aware of it, and to make sure that it does not happen again.

But the inquiry has been stymied by the Justice Department's refusal, during eight years of a continuing court battle in Washington, to turn over its internal documents on the Cerro Maravilla case. One reason for the reluctance, chief Puerto Rican counsel Edgardo Perez Viera says, is the possibility that the FBI was in on the undercover operation all along, and that FBI agents were kept apprised of events leading up to the shootings.

The FBI's 1984 internal investigation of its own work in the case found no evidence of a deliberate "coverup," saying the actions of agents involved in the case were shaped by a desire to avoid derailing "the cooperative anti-terrorism effort" with Puerto Rican police. But the review criticized "unsound" judgments by the agents on the scene and lax supervision by headquarters.

In a 1990 letter, FBI Director William S. Sessions conceded, "In hindsight, the eyewitness should have been interviewed and a civil rights investigation initiated" by the FBI immediately after the incident.

In his televised testimony, Days said he should have pushed harder to overcome what he called "unprecedented" FBI resistance to a civil rights investigation.

"I think that certainly an apology is justified with respect to the way the federal government handled its investigation—the FBI, the Justice

Department and my division . . ." Days testified. "It was not done overall in the professional way that it should have been done."

Days is widely viewed as an expert in civil rights law. During an interview he said, "This was a very difficult thing for me to do." He said he agreed to testify at the request of Georgetown University Law School Prof. Samuel Dash, who has been assisting the commonwealth Senate in the case since 1983, and who conducted the questioning of Days. "I felt it was a matter of professional integrity," Days said. "It happened on my watch."

Days testified that he and his aides knew something was amiss at the time and initiated two separate grand jury investigations. "We decided to move to a grand jury proceeding because we didn't feel that the FBI would do the type of investigation that we wanted," Days said.

Without the benefit of meaningful FBI work, however, the inquiries proved fruitless and left behind a contradictory paper trail. A December 1979 Justice Department memorandum, for example, said there were "several unexplained contusions" on one victim's face and that a police officer had "recanted" and said there were "two bursts of firing." A Justice Department news release Jan. 9, 1981, announced the "closing" of the second grand jury investigation even as FBI documents show agents were still checking the story of the police officer who recanted. "It makes absolutely no sense," Days testified.

James P. Turner, a deputy assistant attorney general for the Civil Rights Division, rejected criticism of the prosecutors' work in the case. "Cerro Maravilla, in my opinion, was a great victory for the Department of Justice," he said in an interview. "We prosecuted a tough case. [in 1984] and ended up sending 10 people to jail for 10 years apiece."

## CORRECTION

The name of Studio Theatre's current production is "Falsetoland." The St. Mary's School Spring Fair in Alexandria is May 16. The information was incorrect in yesterday's Weekend section.