

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-21957-Civ-LENARD
(98-721-Cr-LENARD)

GERARDO HERNANDEZ,

Movant,

v.

**AFFIDAVIT OF
MARTIN GARBUS**

UNITED STATES,

Respondent.

Martin Garbus, one of the attorneys for Gerardo Hernandez, being duly sworn and deposed says:

1. I submit this affidavit in reply to the Government's Consolidated Response (DE 73), particularly to the Government's statement in the Response that the media did not have the names of the jurors. The purpose of that response is to show that the jurors, being unknown, were insulated from community pressure. The Government's response is not true.
2. This is a critical issue – the implications run throughout the case. The jurors gave their names during the voir dire when the media was present. The jurors were “interviewed” by the Government paid media. They were spied upon by the Government paid media. Submitted herewith, as Attachments A to E are parts of the trial transcript that conclusively prove the Government is wrong and the Government knew the facts were otherwise when they

wrote the Consolidated Response.¹

3. Covertly paid journalists worked for Channel 23, who on the date of the jury deliberations, showed the faces of all, or nearly all of the jurors throughout Miami. We have obtained the names of two more journalists, Ronald de Souza and Omar Claro (both from Channel 23), the station that taped and exhibited the faces of jurors. With these journalists, as with so many other witnesses we have attempted to interview, we have been unsuccessful. Ronald de Souza is dead.
4. Ronald de Souza, who covered the trial, as well as Omar Claro, received Government money working for WLTV Channel 23 on June 5, 2001, the day of the deliberations. The Government's timing was exquisitely designed to create maximum pressure on the jurors just as the deliberations were beginning. This comes within the definition of "dirty tricks". The jurors had also been taped for television before that. The Ch. 23 tapings during the jury deliberations were shown a number of times. It is possible they were shown on other channels but we do not have access to those stations' recordings.²
5. Ronald de Souza, as well as Omar Claro and the other allegedly "independent journalists" who received Government monies, presumably passed a Government background check.
6. At the same time that the Government was aware of the Gag Orders and the Court's concern for the security of the jurors and the need to insulate the

¹ See also the Affidavit of William Norris, dated January 7, 2013, a former United States attorney who was trial counsel for one of the defendants.

² We are sure there were other "dirty tricks".

jurors from community pressure, the Government was secretly taping jurors (as well as getting their license plates and other private information), probably throughout the trial, and putting their faces on television so that the entire Miami community, including the jurors' employers, neighbors, co-workers, friends and relatives, could know who they are. Although the Court learned about the taping and what was shown, the Court did not know some of its Channel 23 reporters were receiving Government funds.

7. The detail of Government wrong doing is in the Government's file and in the testimony of the Government witnesses. This is the fear that drives the Government's resistance to this motion. That is why the Government is saying every document we want may be "classified" because of National Security concerns.
8. This tiny new bit of withheld information is significant; not only for what it tells us, but as an indicator of what other "facts" and dirty tricks are out there that we do not know. There is little the Government would not do to prejudice this jury. There is little the Government would not do to get a conviction. There is no length to which the Government will not go to hide the facts from Gerardo Hernandez and the Court.³
9. We now have more information about those who we previously mentioned. Alejandro Armengol was an editor of El Nuevo Herald, along with Helen

³ Omar Claro received over \$3,800 from the Government; Ronald de Souza received over \$6,000. Attachment G to the brief, a January 9, 2013 email from the FPDS shows how it is nearly impossible to get information for the trial period. The Government states that the agencies were not required to account before 2003. The Ch. 23 taping is before that date.

Ferre, editorial-page editor of Diario Las Americas and daughter of the owner. These media entities believed that those they published were great American patriots and Cuban experts, such as Orlando Bosch (seen differently by the former United States Attorney General, Richard Thornburg, who, characterized him as an “unrepentant terrorist”) Luis Aguilar Leon, and scores of others unknown to Movants.

10. We are learning these facts 14 years after the jury was selected, and 14 years after the Government created a program to hide the facts. As William Norris’ affidavit and the trial transcript makes clear, the Government was spying on the jurors throughout the trial. The research, in order to get even this tiny bit of information, was exhaustive. It takes lawsuit after lawsuit and endless hours of interviews and studying databases. The Government can produce the information we are seeking with little more than the flip of a switch.
11. The January 9, 2013 FPDS email (Attachment G) makes clear that the databases do not have the information prior to 2003 that they now have for payments after 2003. That is why even the Miami Herald’s investigation could only go back so far. Even bringing Oscar Corral to court in 2006 would not have given the Court sufficient additional information. The Government stonewall might have been more effective then because less was more. The databases often hide more than they disclose. The FPDS database designates payments but hides the recipients. They are most often listed as “Miscellaneous Foreign Awardees” or “Miscellaneous Foreign Contractors.” There are from 2003 to 2012 almost 4,500 such awards. Many payments

originate from the Office of Cuba Broadcasting to reporters. There are codes that distinguish payments to reporters from other expenses. The Government has all that information.

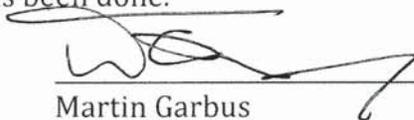
12. A good deal more information about Raúl Rivero (we previously mentioned) and the sources of his payment has been learned. Rivero has been a regular correspondent for El Nuevo Herald since 1996, first when he was living in Cuba, and then later from Spain. The American Government paid journalists living overseas to write and publish in the American press, never disclosing to the American public that the author received government funds. According to his curriculum vitae, which he submitted to the Office of Cuba Broadcasting in 1995, he founded the “Cuba Press” agency, of which he is still the director. Although the BBG documents released indicate that Raúl Rivero received Government payments from Oct. 1, 2008 to April 20, 2010, totaling \$6,200.00, a news story of CNN dated Aug. 12, 1997, describes Rivero’s regular story submissions to Radio Marti, as well as for El Nuevo Herald other U.S. media.
13. Rosa Miriam Elizarde and Luis Baez in the book “Los Disidentes”, write that Rivero regularly received cash payments delivered to him in Cuba for his reporting to foreign media. The conduits of funds to Rivero included Roberto Rodríguez Tejera, who served as director of TV Martí in 1990. Rivero also received monies from Miami-based Nancy Pérez Crespo.⁴ Rivero was

⁴ **Nancy Pérez Crespo** left Cuba in 1965. She has long had regular radio programs in Miami including “En Sintonía con Nancy Pérez Crespo, on WWFE, 670AM (“La Poderosa”). Through her media project in Miami, Nueva Prensa Cubana, she transmits stories from the

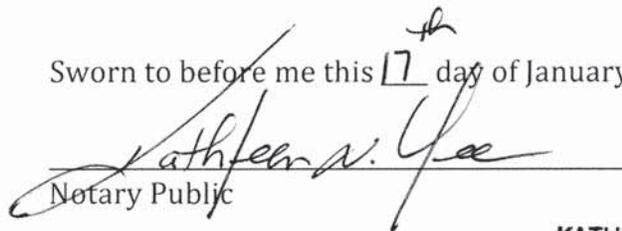
- arrested, tried and sentenced in Cuba to 20 years imprisonment. Getting information about government monies paid overseas to journalists to write articles is very difficult.
14. Yet the Government, in its 51 page factually barren Consolidated Response continues to blame defense counsel (and by implication the Court) for not knowing what was going on at the trial. The Government is withholding the information for to reveal what they did would unearth a mess of awful Government conduct going far beyond what the Court or defense counsel can imagine. Every time we find a new name we find a new Government agency or private company involved. Each time we can make a new connection to potentially new instances of Government wrongdoing.
 15. This matter must be referred to U.S. Attorney General Eric Holder and to the Department of Justice for criminal investigation. Even if the Government did not know in 2000 and 2001 exactly what their money was buying and what was going on, its conduct now in withholding and distorting facts is criminal and contemptuous.

“independent” journalists in Cuba, for her website, some of whom were tried, convicted and sentenced in 2003, including Raúl Rivero. She is the Miami representative for Cuba Press, which is directed by Rivero.

16. The conviction must now be vacated. There is "structural error" that prejudiced these defendants. Nothing proves it more than the Government's latest response. A terrible injustice has been done.


Martin Garbus

Sworn to before me this th 17 day of January 2013.


Notary Public

KATHLEEN N. YEE
Notary Public, State of New York
No. 01YE6088677
Qualified in Westchester County
Commission Expires March 10, 2015