

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Criminal Case No. 98-721-Cr-LENARD

GERARDO HERNANDEZ,
Movant,

v.

UNITED STATES,
Respondent.

**AFFIDAVIT OF MARTIN GARBUS IN
SUPPORT OF THE MOTION TO SET
ASIDE THE CONVICTION AND, IN THE
ALTERNATIVE, IN SUPPORT OF
MOVANT’S MOTION FOR DISCOVERY
AND ORAL ARGUMENT.**

TABLE OF CONTENTS

1. Introduction.....p. 3

The integrity of the domestic American trial process cannot be destroyed by a propaganda machine ostensibly built for national security.

2. The Government’s Response.....p. 4

The Government’s secret program of millions of dollars of illegal payments and more than one thousand articles, radio broadcasts, and television programs released over a six year period wrongfully influenced the jury to convict Movant.

The Government’s Response to this motion, factually barren and legally incorrect, shows that no further hearing is required and the conviction must be now vacated. The Courts cannot permit the integrity of American criminal trials to be made vulnerable to prosecutorial manipulation directed specifically to the trial’s outcome that is then shielded from examination by assertions of classification and national security privilege.

3. The journalists who received the monies.....p. 7

Characteristics and backgrounds of some of the Government paid journalists, television, and radio employees who received funds, and examples of some of the relentlessly published propaganda that made a fair trial impossible. The Government is not allowed to try to prove that the Government’s illegal actions did not lead to a wrongful conviction.

4. The Government agencies that paid the monies.....p. 25

Government agencies deliberately hired and paid propagandists falsely described as independent journalists in the independent media to convince the Miami jury to convict Movant.

5. To allow the Government’s international propaganda machine to be turned on the environment of an American trial insults both the integrity of the trial itself and the integrity of the community for whom the jury speaks. Both the 2006 investigations that exposed the Government’s secret operation and the Government Accountability Office opinions prove that the propaganda negated the concept of a fair trial as the Government created an intolerable influence on the trial. The September 8, 2006 *Miami Herald* article, and the September 9, 2006 *New York Times* article, and subsequent investigations contradict the Government’s argument that these facts were known prior to either the trial or the Eleventh Circuit’s En Banc August 9, 2006 opinion.....p. 34
6. The secret, wrongful actions and patterns of paid covert journalists investigated by the Church Committee, and the acts committed by the Government in Miami from 1996 to 2001, violated the integrity of the trial and the Due Process Clause of the Constitution.....p.41
7. The Government’s discovery obligations.....p. 72

Because of the Government’s admission and the facts developed in this matter, Movant’s case does not need further discovery to succeed. The Government has resisted every attempt to uncover the facts. The Government has failed to fulfill its constitutionally mandated discovery obligations. The Government’s objection to exposure of the Government’s secret program contradicts the purpose and intent of the new 2010 discovery requirements set forth by Attorney General Eric Holder Jr.

8. Conclusion.....p. 77

Gerardo Hernandez, facing two life sentences, has now been imprisoned for 13 years and 11 months. The Government’s successful secret subversion of the Miami print, radio, and television media to pursue a conviction is nearly incomprehensible. It is unprecedented. There should now be an immediate dismissal of the indictment; otherwise, this case will be permanently memorialized in American legal history as a landmark of ghastly and secretive injustice.

(State of New York)
()ss
(County of New York)

1. INTRODUCTION

Martin Garbus, one of the attorneys for the Movant, being duly sworn, deposes and says:

1. We seek to set aside the conviction on the grounds that it was unconstitutionally obtained by illegal governmental misconduct, which interfered with the trial and persuaded the jury to convict Movant.

2. The Courts cannot permit the integrity of American criminal trials to be made vulnerable to prosecutorial manipulation directed specifically to the trial outcome, which is then shielded from examination by assertions of classification and national security privilege.

3. We will show that the Government's misrepresented, clandestine paid journalists were totally committed to do whatever they could to secure the conviction of Movant. They were hired and kept their employment because of their agreement to work for Movant's conviction. We will show the Government's selection process, the motivation of those who were paid, and the motivation and practices of those who hired and made the payments.

4. The narrative elements in the propaganda articles, radio, and television transmissions to Miami were predetermined, and all were consistent with each other. The Government paid these propagandists large sums of money, day after day, year after year, because the Government believed monies were being successfully used to convince the jury to convict. The six-year propaganda effort, with far more than a thousand articles, television, and radio shows, was relentless. We believe many of the Government assets were secretly used to support illegal activities to do far more than just propagandize.

5. The Government's successful subversion of the Miami print, radio, and television media to pursue a conviction is nearly incomprehensible. It is unprecedented.

6. This case was tried in a Government-created vacuum of ignorance and the Government, which for years was involved in a cover-up, now again refuses to let the Court or Movant pierce that defense. The Government's July 6, 2012 response, like its prior responses in opposition to Movant's application, is devoid of facts – it is solely and merely argument. This affidavit will set forth precise and specific factual allegations and the research in support of those facts where we can.¹

2. The Government, through millions of dollars of illegal payments and at least a thousand articles published over a six-year period, interfered with the trial and persuaded the jury to convict Movant. The Government's Response to this motion is factually barren and legally incorrect. The conviction must now be vacated.

7. The Government's Response argues that this Court's previous opinion and the venue decision of the En Banc Eleventh Circuit Court of Appeals opinion on August 9, 2006 are dispositive. The facts about the covert and secret propagandists were not known by any Court or defense counsel until September 8, 2006, when those facts started to surface as a result of an investigation started by *The Miami Herald*. As the *The Miami Herald*, *The New York Times*, and *Associated Press* investigations confirm, the facts of this propaganda campaign set forth in this affidavit were not known until after the August 9, 2006 En Banc decision of the Eleventh Circuit. The Government's agents, when confronted with the facts unearthed by the media investigations lied, evaded answers, and resisted any attempts to find out the facts. The legal and factual issues before the courts prior to September 8th, 2006 were of a totally different nature.

¹ The Government Response to Ruben Campa's motion (Attachment A to the July 6, 2012 response) cannot be used to respond to this motion which is factually and legally different (see page 8 of the Campa brief). The "burden of proof" issues on the venue motion have nothing to do with this application. This affidavit shows the arguments in the "Attachment A" brief are factually and legally wrong. The Government seems not to understand what this motion is about. To the extent that it is relevant to the discovery motion, it further justifies discovery to further respond to the Government's claim.

8. The Government also argues that the Courts have already decided the discovery issues by virtue of the Court decisions in the FOIA applications. But, of course, the criteria for discovery in a FOIA cases is different than in an application to set aside an unconstitutional conviction.

9. Nonetheless, the Government's Response makes it clear that parties agree on certain issues, and disagree on others. The controverted facts thus far are few.

10. The Government's Response agrees that "some" individuals described as journalists were secretly paid with funds through various governmental agencies and conduits, and that were being employed by the Government during the period of 1996 to 2001. **That agreement, along with the additional facts we have developed, requires the convictions be immediately vacated. This case can be instantly resolved by placing a request to the Government to admit who those journalists were, for what period of time they were paid, and what did they do for those payments. No further discovery or hearing of any kind is required. That entire process need not take longer than one hour.**

11. The Government's Response does not deny that covert paid journalists had contracts with the government. It is clear that those Government agents who pursued the background checks were committed to do all they could to secure convictions. The Government's Response refuses to tell us of all the various duties the "covert paid journalists" had; the Government argues we should be more specific. The Government refuses to be transparent. The Government has the full files on each of these journalists by virtue of having made background checks on each of them. The Government also has access that Movants does not have, to witnesses, to Government background files, and to radio and TV transcripts successfully withheld for over a decade.

12. The Government's Response does not claim that the covert propagandists were not intending to help seek a conviction, were not propagandizing, and did not succeed in influencing the jury. Nor could the Government's response honestly do so. The Government cannot be allowed to try and prove that their illegal actions did not lead to a wrongful conviction. The Government spent millions of dollars relentlessly attacking the integrity of the trial and trying to influence the jury to convict. The Government believed that its paid journalists were persuading the sitting jury. Otherwise, why would the Government have continued to spend millions, week after week, month after month, year after year, to influence the jury if the Government believed it had no effect?

13. The Trial Court's gag order², extending to "all [trial] participants, lawyers, witnesses, family members of the victims," covered all "statements or information which is intended to influence public opinion or the jury regarding the merits of the case." The facts prove that on a regular, continuous, and overwhelming basis, the Government was deliberately violating that Order.

14. The Government's Response claims that these issues cannot now be considered. The Response is wrong. First, it is now clear that the newly discovered past and present conduct of the Government violates the existing and present statutory law³ as well as the Constitutional rights of the defendants. Secondly, the Government violated the integrity of the trial in a covert fashion, then lied about it, and then tried to cover it up, and then resisted all attempts to expose the payments. Thirdly, the Government, although it knew of the secret cover-up, never advised the Trial Court of that. Fourthly, it was obligated to do so and never at any time advised the

² Also see *United States v. Hernandez et. al*, No. 98-721-Cr-LENARD/DUBE, Filed Document 818 (So. Fl. 2000) (United States' Motion to Enforce Court's Directive Concerning Witness Comments to News Media) **Exhibit A**.

³ The publicity or propaganda prohibition is included in the yearly Congressional Consolidated Appropriations Act

Movants of the wrongful attempts to convict Movants. Fifthly, the prosecution does not deny that it did nothing, long after it knew the facts, and long after the story of the events surfaced six years ago and was widely reported throughout the United States. The Government withheld information for all these years because it knew its disclosure would require the convictions be set aside.

15. The proof we have at this point is that, according to Government records, certain sums were paid by governmental agencies to selected propagandists to carry out an illegal Government plan to convict. The Government, prohibited by law from domestic propagandizing, decided to use its international propaganda machine and undercover agents to get its prohibited “conviction” message to the Miami community. We do not know the totality of facts about these journalists. But because of the Government’s ongoing cover-up we do not know the total number of “journalists” and other people paid by the Government to secure a conviction. We do not know how much the journalists were paid in most instances and through which entities, what they did under cover, for what, and over what length of time.⁴ But what we now know is more than enough.

16. We believe that the Government, even as it argues that the “venue” issues have been definitively and forever decided, must now agree that this is the first time these propaganda issues have been raised in this criminal case. For the first time this Court has been offered proof as to the consistent, many times daily, brutal propaganda aimed at the jurors and the community in which they lived. These facts set in this affidavit were not raised at the trial, they were not raised before the Eleventh Circuit, and they were not raised in the United States Supreme Court.

⁴ This affidavit is far too long. It could be many times as long because the Government’s July 6, 2012 response, like their previous responses, claims we must prove detailed facts about events occurring over a six-year period that first began 16 years ago.

3. Characteristics and backgrounds of some of the Government secretly and covertly paid journalists, and some of the published propaganda writings, speeches, and radio and television broadcasts that violated the integrity of the trial and the Constitution of the United States

17. Propaganda is a form of communication aimed at influencing the attitude of a community toward a cause of action or position. Propaganda is often repeated and disbursed over a wide variety of media in order to create a specific identifiable result in audience attitudes. It uses a pre-determined narrative intended to mislead. Propaganda is a form of political warfare – it is the use of loaded messages to produce an emotional rather than rational response to the information presented. That is why our Government attempts to totally ban the use of Government funds for domestic propaganda.

18. The articles and words used to convict Movant were worse than disclosed propaganda – it was covert and secret propaganda hiding behind the names of known entities, like CBS and *The Miami Herald*, and journalists that the public thought were independent.

19. Thomas Fiedler, the Executive Editor and Vice President of *The Miami Herald*, when talking about the monies paid to his staff members and members of other media entities by the Government in the Oscar Corral story, said it was wrongful because it was “to carry out the mission of the US Government, a propaganda mission.” It was wrong even if it had not been secret. The integrity of the domestic American trial process cannot be destroyed by a propaganda machine built for national security. To allow the Government’s international propaganda machine to be turned on the environment of an American trial insults both the integrity of the trial itself and the integrity of the community for whom the jury speaks.

20. We will discuss specific journalists who are illustrative of the larger group of propagandists. We will provide names of journalists, their histories, the amount of Government monies they received, so far as we can tell at this time, and the names of the supposedly

independent news entities under which they published the secretive Government-scripted propaganda.

21. We have found, on our own, multiple but incomplete payment records from various governmental agencies overseen by the Broadcasting Board of Governors (BBG)⁵ and the United States Information Agency (USIA)⁶, including the Office of Cuba Broadcasting (OCB), Voice of America (VOA), Radio and TV Marti, and others. These payments have been documented in multiple FOIA suits and petitions, the Federal Procurement Database System, and investigative reports and articles, all of which are discussed in more detail later.

22. Paid Government propagandists were involved in all, or nearly all of the 1,932 days between the date of the shoot-down and the date of the conviction. It is impossible in this affidavit to fully detail the daily media events and specific acts of misconduct of a six-year period that began 16 years ago.⁷

23. Research conducted of only two press outlets in Miami during the period from November 27, 2000 until June 8, 2001 – from the beginning of the trial against the defendants, until they were convicted by the jury (a very small portion of the total coverage time) reveals the following about the frequency and ferocity of the Government-paid coverage: In 194 days El Nuevo Herald published 806 articles that would negatively influence the trial. In that same interval *The Miami Herald* published 305 articles.

⁵ “The Broadcasting Board of Governors (BBG) became the independent entity responsible for all U.S. Government and government-sponsored, non-military, international broadcasting on October 1, 1999. With enactment of the 1998 Foreign Affairs Reform and Restructuring Act (Public Law 105-277), the BBG assumed authority for the International Broadcasting Bureau (IBB) and its broadcasting services – the Voice of America (VOA) and the Office of Cuba Broadcasting (OCB). The Board also oversees three grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia (RFA), and the Middle East Broadcasting Networks (MBN).”

⁶ The USIA was the predecessor of the BBG. In 1999 when their offices closed, their oversight of Government-funded media projects was turned over to the BBG.

⁷ We believe that but for the Government’s misconduct, Hernandez would not have faced a conspiracy to commit murder charge.

24. In *The Miami Herald* and *El Nuevo Herald* alone⁸, 1,111 articles were published – an average of more than five per day – on themes related to the defendants and there were very few that were not arguably negative. In order to more fully comprehend what the jurors were exposed to, add to this the daily television and radio barrage of the Government’s still unknown other journalists’ false “facts” and news stories in other print outlets such as *Diario Las Americas*.

25. Of the 806 articles in *El Nuevo Herald*, 120 are attributed to the “staff” or “staff services” including numerous editorials. Of the 305 in *The Miami Herald*, 67 are attributed to “Herald Staff” or “Herald Wire Services”. Of the 686 other articles of *El Nuevo Herald*, 239 (35%) carry the byline of four journalists who we know received money from the Government: 123 by Wilfredo Cancio Isla, 96 by Pablo Alfonso, 11 by Carlos Alberto Montaner and 9 by Olga Connor. Some of the journalists in the remaining 65% also may have been on a Government payroll.

26. Each article is misrepresented. Thus, as a matter of law, each and every article is a violation irrespective of what the article actually says.⁹

27. The Government keeps repeating concepts like "fishing expedition," and "insufficiently specific," and "time barred,"¹⁰ as if those terms were a magic incantation. What they really are, are euphemisms for a cover-up.

⁸ *When the Story is Us: The Miami Herald, El Nuevo Herald, and Radio Marti*, Columbia University Case Study, CSJ-10-0026.0. **Exhibit C**. The Government violated ethical standards at *The Miami Herald* and at other independent media outlets.

⁹ Cancio Isla published 3 articles on the same day (January 19, 2001). Rui Ferreira (he is not on the list, but he may have received Government monies) wrote 105 articles. The *Associated Press* and news agencies that served the Miami area presented facts introduced by the Government journalists. We, of course, do not know how many other articles distributed within the United States to Cuban and non-Cubans, relied on Government propaganda.

28. Now the journalists. The first journalist, Alberto Muller was reportedly jailed in Cuba.¹¹ He received, as far as we have been told, a total of \$39,871.00.

29. We rely here, and in other instances, on government information and other previously published information. For example, page 152 of “Bandidismo: Derrota de la CIA en Cuba” (“Banditry: Defeat of the CIA in Cuba”) by: Pedro Etcheverry Vazquez and Santiago Gutierrez Ocegüera, states some of Alberto Muller’s history, why he was selected by the Government, and the alleged reasons for Muller’s Cuban imprisonment.

30. It is reported that before the Bay of Pigs invasion, the CIA conceived two plans for overthrowing the newly instated Communist government in Cuba. The first plan was the “Plan of Sabotage” and the second the “Plan of the Guerrillas”. Alberto Muller was given the task of leading the latter, and Muller supposedly became a CIA agent. Muller’s task, according to “Bandidisimo”, was to create a “guerrilla front” in Cuba by recruiting armed forces in various zones. He allegedly used his connections to create a network of 150 guerrillas with the intention of rising up against Fidel Castro. Muller and 135 of his 150 men in the force were arrested on April 20th, 1961. The Government knows the essential facts about the man they hired.

31. The Broadcasting Board of Governors’ contracts obtained by the second FOIA petition show Government payments to Muller from October 1st, 2004 to March 31st, 2010. Earlier, during the Movant’s trial, he wrote incendiary articles about the case and the BTTR plane shoot-down.¹² We do not know what funds Muller received during the period from the shoot-down to the Trial and we do not know all the sources of his funds. We do not know of his

¹¹ "Bandidismo: Derrota de la CIA en Cuba" (in English, "Banditry: Defeat of the CIA in Cuba") Published 2008 by Capitán San Luis Editorial, in Havana, Cuba. Authors: Pedro Etcheverry Vázquez and Santiago Gutiérrez Ocegüera.

¹² The GAO reports in Cuban Broadcasting from 1991-2011 repeatedly point out the lack of journalistic standards, partisanship, and incendiary language in the writings and broadcasts of Radio Marti, its associates, and its writers. Radio Marti used the same standards as criteria for hiring Albert Muller, as well as others.

alleged journalism background or training or what he wrote on his security clearance application. The Government has failed to release information relating to its employment of Miami reporters before November, 1999. We do not know if he received monies from several Government sources. We believe that they did through the “National Endowment for Democracy” and other Government agencies. These payments were all for propaganda pieces to help convict Movant.

32. On February 20th, 2001, in the midst of the trial, Muller wrote an article titled “Murderers”¹³ in *Diario Las Americas*, whose opinion editor, the daughter of the paper’s owner, also received Government funds:

“The last minutes in the life of four pilots downed in international waters by Castro's MiG planes were filmed and recorded for posterity. What we needed to hear ... live ... shamelessly uninhibited, accented with bloody premeditated calculation ... the subordinates asking the commander in chief for the go-ahead to pulverize the defenseless airplanes of Brothers to the Rescue with a Soviet missile ... Five years have passed since the horrendous crime committed over international waters. That's why the matter should be put to the legal and humanitarian powers of every organization of human justice, from the International Criminal Court at the Hague to the Human Rights Commission at the United Nations. The Criminal Confession ... in the very voice of the underling executioner ... we have finally heard it with absolute clarity ... during the trial of Castro's spies who infiltrated Miami. What more is needed now to make the decision to try Fidel Castro? What more is needed now to make the decision to seat Fidel Castro in the dock at an international legal trial? Well, nothing. All the elements of the inquiry are at hand. No crime should remain unpunished ... but one that is executed in the open skies ... against defenseless human beings who were flying over international waters in search of Cuban rafters on the high seas deserves the strictest and unmistakable repudiation by all of humanity ... due to its filthy genocidal character. The act is so despicable by its nature as a crime against humanity that it suggests the accused should be in the dock, whether they are subordinate executioners or executioners among the maximum leadership.”
(Emphasis added)

33. This is propaganda. Here, as with all the articles we have seen, the lines are starkly drawn. The same forces for good and evil, the same heroes and traitors, are described, juxtaposed, and repeated again and again in different media by different people paid by the

¹³ Alberto Muller, *Asesinos*, *DIARIO LAS AMERICAS*, February 20th, 2000. **Exhibit D**

government, in the nearly mythical battle between the forces of freedom and the forces of the worldwide, ever threatening dictatorship. The narratives of “facts” that give rise to the articles are placed in a consistent, unbending, unwavering repetitive theme.

34. Pablo Alfonso, the second journalist, was a longtime reporter for *El Nuevo Herald* and the author of at least 96 articles related to Movant’s trial. He was allegedly jailed in Cuba for eight years for publishing an underground newsletter.¹⁴ The contracts released by the FOIA suit show that Alfonso, one of the highest paid propagandists, received BBG payments of \$58,600 during the period between Nov. 1, 1999 and Dec. 31, 2001. His total payments were \$252,325 through Aug. 22, 2007.

35. The sums paid to the “journalists” vary widely. The Federal Procurement Data System, which allows users to search Government documents, has given us limited information regarding Government paid journalists. This system is not a viable alternative to Court-ordered discovery. We believe that the database is either programmed deliberately to withhold information, or that it is simply incomplete. The evidence of the database’s inaccuracy is easily proven. For example, the FOIA documents released by the Broadcasting Board of Governors in their March 11th 2009 response shows that Pablo Alfonso, who wrote extensively about the shoot-down and trial in Miami, received \$252,325 in Government monies, while the Federal Procurement Data System¹⁵ shows only \$71,200 in awards for the same span of time.¹⁶

¹⁴ *When the Story is Us: The Miami Herald, El Nuevo Herald, and Radio Marti*, Columbia University Case Study, CSJ-10-0026.0, p. 9 paragraph 2

¹⁵ The Federal Procurement Data System (FPDS) can be found at <http://www.fpds.gov>. This website allows searches for receipts of payments by government agencies, but can only be utilized with specific search inquiries, and each search nets thousands of results. Utilized in this affidavit are searches and results for Agency Codes: 6700, 9568 (The USIA and BBG). The searches we used returned over 800 pages of results.

¹⁶ It appears that *The New York Times*, *The Miami Herald* and other media investigations that reported on the Miami journalists in September 2006, and the other journalists, were frustrated in their attempt to get adequate information concerning fees received. The layers of secrecy we have uncovered only lead us to believe that there are more layers of secrecy that bury many more essential facts.

36. A third purported covert journalist was Humberto Cortina, a Bay of Pigs veteran who admits his involvement with paramilitary forces in Cuba that were trying to overthrow the Cuban government. He has been paid monies by the American Government. A TV commentator and elected official, Cortina has acknowledged in print and in videos his views about the American Government, Cuban-American relations and the necessity to kill people to achieve his democratic result.¹⁷ The only information we have about Cortina concerning monies is from the contracts that were obtained under FOIA. Cortina received \$2,700 from BBG/OCB from Jan. 16, 2001 to March 12, 2001 (and in our FOIA information, a total of \$4,450).¹⁸

37. A fourth purported Government-paid secret journalist, Julio Estorino's history and resume includes membership in Junta Patriótica Cubana, which was formed in the early 1980s. It advocates the violent overthrow of the Cuban government.¹⁹ Estorino's résumé — from Broadcasting Board of Governors documents obtained in the *Liberation* newspaper FOIA — shows his U.S. government employment by the Broadcasting Board of Governors goes back to at least March 1998, several months before the Movant's arrest.

38. Estorino's résumé annexed to Luis Medina's habeas petition states: "Employer: U.S. Government, Office of Cuba Broadcasting ... Miami Florida." The information released in the FOIA suit shows that Estorino was employed by the Government from March of 1998 to the

¹⁷ The interview with Humberto Cortina, in which he fills in his own background for us, can be found at: <http://vimeo.com/27855679>

¹⁸ *March 11th 2009 Freedom of Information Act Petition Response*, Office of the General Counsel FOIA and Privacy Act, Case #FOIA 09-007. **Exhibit D.** The Government would not release all of its information concerning the Broadcasting Board of Governors; it would only confirm or deny whether a name that was submitted was paid by the Board. 18 of the 33 names submitted were on the payroll of the BBG at some point, and their records were included in the March 11th Response.

¹⁹ *Hard-Line Organizations*, Cuban Information Archives Document 0005 p. 1, 15, Binder Section 15, 1998-2010, http://www.cuban-exile.com/doc_001-025/doc0005.html. **Exhibit F.**

present, and *El Nuevo Herald* from 1988-1996.²⁰

39. Our Estorino FOIA applications came up short. The Government had more information when we sought information about Estorino, but did not furnish it. Information made available by its Federal Procurement Data System website shows that Estorino was paid \$27,000 on November 15th, 1998 by the United States Information Agency (Award ID 00009199811BP9092015). This payment was awarded to Estorino two months after the arrest of the Movant. What did this “journalist” do for this money? What was he asked to do? Was he paid for past or future work? Was this money related to the conviction? It strains credibility to believe that it was not related to this Trial. The material obtained in the FOIA suit shows he was paid \$14,950 from Oct. 16, 2002 to Jan. 31, 2004. Estorino’s own resume, written by him, clearly states that his employment with Radio/TV Marti began in March 1998, yet we have little to no access to payment records from this crucial time.²¹ None of this information was available for the defense counsel at the initial trial because the Federal Procurement Data System website where it was found was not created until fiscal year 2004, according to a staff member at the website.

40. Julio Estorino on May 14, 1999, immediately after Gerardo Hernandez was indicted for conspiracy to commit murder, exalts Jose Basulto and condemns Hernandez and his colleagues. He argues for the need for more cooperation between the Brothers to the Rescue, and our Government, so we can “properly address Castro’s long criminal arm here, on U.S. soil itself”, pointing out that the “mid-air” execution “was deliberately planned and executed by the

²⁰ Julio Estorino’s Resume, Found through FOIA Documents. **Exhibit G.** The File on Julio Estorino, found through the FOIA documents in his name, which includes his resume on page 81. It is not possible yet to know the total amount that Estorino received from the Government because the agency has not produced documents from before November 1999. This is because the BBG was created in 1999 to replace the USIA. The Government refuses to allow us full access to either the BBG or, especially, the USIA files related to Movant’s case.

²¹ The FOIA documents can be found at <http://www.pslweb.org/reporters-for-hire/documents-released/>

Cuban Movement Intelligence Directorate. The brutal attack was not a heated response to a provocation, but a coldly calculated aggression; a crime in every sense...”

41. The Estorino article ends with:

“The Cuban exiles have waited forty years for the beginning of recognition, even an implicit one, that their denunciations about the vile and wicked nature of Fidel Castro and the system of government he has imposed on our people have not been exaggerations, mistakes, or lies. The vileness and wickedness has already reached U.S. territory and its citizens and it’s time for the consequent actions to be taken: that it’s time for justice to be done”.

42. This is secret, paid-for, misrepresented Government propaganda. Voir dire, and jury directions during the Trial, the Government said, could deal with the writing of Muller, and the effect “speech” had on jurors as the trial progressed. But the Court did not know that each day, through magazines, newspapers, radio, and television, the Government was aggressively, behind false identities, propagandizing directly to jurors and their neighbors.

43. The propaganda was, for several reasons, far worse for the impartial twelve jurors than before they were selected. Once the trial began the entire community knew of the twelve who were to decide guilt or innocence. First of all, the propaganda intensified greatly once the trial began. It was a solid 194 days of media coverage. It was totally different in daily volume and specificity than before opening statements. The Government-paid media told the jury, potential trial witnesses, and their neighbors in a daily barrage of what was passed off as “news” stories (or even at times as opinion pieces) that, in reality were a combination of opinion, fiction, speculation, improper “sourcing”, and a biased view of history with false content, that there must be a conviction. More than guilt or innocence was at stake, the jurors were told. It was presented to the jurors as the frontline battle between the free world against the dictatorial world. Convicting Movant stood for being on the right side.

44. Secondly, neither Court nor Defense Counsel explored this issue at trial because neither the Court nor Counsel knew, prior to September 2006, the extent to which the Government spent secret monies and assets to interfere with the trial and influence the jury. And the Government, as it sought more and more money, reporting on its media success as the trial moved on, presumably told those who wrote the checks, or gave cash, that they were succeeding in their public and private secret campaign to persuade the jury to convict.

45. At page 27 of the Government's July 6th 2012 Response, the Government in a last attempt to keep secret what they must disclose about Muller, Alfonso, Cortina, and the others, states "There is a fair prospect that the Government would have to assert privileges or resort to the Classified Information Procedures Act as to certain materials and proposed inquiries Movant requests."²²

46. CIPA has a valid, important rule to play in Government. Hiding illegal secret Government conduct as the Government seeks to sustain an unconstitutional conviction is not one of them. Given the nature of Movant's 13 years and 11 months in jail and the violation of law by the Government, the CIPA argument is a striking statement, not a routine governmental assertion. But it is consistent with the Government's responses over the last years in the FOIA suits and to request from Congress, Government agencies, and scholars who try to find out about what the Government's Miami expenditures were for. This invocation of CIPA in the Response tells us what the Government's true concerns are on this motion. It is not about the mere words in the print media and on radio and television. It is the exposure of characteristics of the journalists, and the Government's involvement in this case with them, which jeopardizes more than Movant's convictions.

47. During the same period that Estorino was secretly paid by the Government he was

also: 1) Executive director of the morning news show of a right-wing Miami radio station WACC; 2) Host of that station's daily evening drive-time interview show, "El Portal," and 3) Co-host of "Al Día", a daily news and opinion show. He, like the other journalists, was at the center of spinning news stories. The Government's "facts" and speculations are repeated and exaggerated as they are passed from one show to another, from one form of media to another.

48. Since 1997, Estorino has been a regular columnist for the Miami newspaper *Diario las Américas*. In "Malice Aforethought,"²³ in *Diarios Las Americas* on May 14th, 1999, Estorino writes:

"It is clear from the prosecution's arguments that the brutal attack was not a heated response to a provocation, but a coldly calculated aggression; a crime in every sense, aggravated and perfidious. This ought to make us think a bit about our own conduct and the ease with which we often allow for the weeds to grow among us, all of us victims of the same victimizer. More than once I've heard an unfortunate insinuation about at least part of the responsibility for the tragic end of the mission on that February 24th resting with the president of Brothers to the Rescue. It's not hard for me to imagine how much this barb to Basulto's heart must have hurt, and yes, it is hard for me to understand how we can allow, often in such a self-destructive way, for trivial things to rob us of our greatness."

49. Estorino's resume shows us that he worked for Radio Paz in Miami from Nov. 1997 to at least August 2003. To the extent that anything in this case is typical, the work history and involvement of Muller, Alfonso, Cortina, and Estorino seems typical.

50. Other propagandists were often in management and secretly directed and drove the policies of their stations. Estorino was a significant part of the management team at WACC, a radio station that appealed both to Spanish-speaking and English-speaking listeners. It had a wide audience and is one of the most important stations in the Miami area. Estorino was involved in both news and opinion shows and had been the executive director of the Morning Show. "El Portal de Miami" is one of the most listened-to radio programs in Miami and focuses

²³ Julio Estorino, *Malice Aforethought*, *DIARIO LAS AMERICAS*, May 14th, 1999. At 4-A. **Exhibit H.**

on Cuba-related issues. He had a variety of “employers” at that radio station. They consisted, for example, of Pax Communications and Fenix Broadcasting Co.²⁴

51. The Government’s Response attempts to block our attempt to find out more information about Estorino. The Government does not deny that their FOIA responses concerning Estorino were filtered, redacted, and edited. We believe we have found, through other sources on the Internet²⁵, that he allegedly received an additional \$28,000 on February 15th, 2001 as well as \$34,000 on January 15th, 2000. We cannot tell whether or not this information was deliberately withheld.

52. The product of Radio/TV Marti was supposed to be for Cuban consumption. The Government ignored that limitation and created a covert structure to bypass it so that Miami became the targeted area. The Government asked the journalists employed to violate the law both in their coverage of this case and in their coverage of politics and in their coverage of Miami events. Without disclosing it in any governmental reports, the Government broke the law by creating a large secret media structure to convict Movant.

53. The Government chose wisely when they chose Estorino. According to Mr. Estorino’s resume, the shows he did for Radio/TV Marti, along with the shows he did with Radio WACC were among the most listened to in Cuba.

54. The information for both of Estornio’s programs was the same. Facts repeated again and again, set in a propaganda context on Government radio was decided by the government as perfectly appropriate for the Miami audience. The Government did its

²⁴ GAO reports and the reports of independent journalists on the Government’s propaganda program, point out corruption, the lack of any journalistic standards, partisanship, bitterness and lack of balance and objectivity. Criminal activity, improper business practices, and the like are noted. The GAO Reports show the previous refusal of Marti to comply with discovery requests based on the arguments of national security. Congressional Testimony shows the same thing.

²⁵ BBG Contract Numbers: #00009200102BP1091016 and #00009200001BP0098024. The first contract was found at <http://cubamoneyproject.org>. The second contract was obtained at <http://FPDS.gov>

propaganda through *The Miami Herald*, *El Nuevo Herald*, and other carefully-selected subterfuges. The journalists were paid to hide their identity. Not only did the Government fail to ever even try to punish the wrongdoers, they gave them more and more money over a six-year period to continue the movement to convict.

55. A fifth purported journalist, Carlos Alberto Montaner, who was first mentioned in *The Miami Herald* September 8, 2006 story, according to a published book titled “The Cuban Exile Movement” by Hernando Calvo Ospina and Katlijn Declercq, was found guilty in 1961 in Cuba of having participated in a CIA-sponsored terrorist organization that hid explosives in packages of cigarettes. He wrote at least 11 articles. He was jailed and then escaped, sought political asylum, left Cuba and in 1962 joined the Cuban Special Forces in the U.S. Army. He was later, according to Ospina and Declercq’s book, to have been recruited by the Central Intelligence Agency.²⁶

56. A contributing columnist for *The Miami Herald* and *El Nuevo Herald*, Montaner received \$41,150 from October 25th, 2000 to Aug. 26, 2006, according to the first FOIA response by the Broadcasting Board of Governors of March 11, 2009.² According to “The Cuban Exile Movement,” after Montaner came to the United States he continued his active political life as he wrote extensively about the need for reprisals against those in Cuba who have cooperated with the present Cuban government. He issued a statement from Madrid, quoted on page 17 of the Columbia Case Study, that material for his Radio Marti shows were taken from his columns.

57. A sixth purported journalist, Olance Noguerras, who received monies from the Government, wrote a Sept. 21, 1998 article in *El Nuevo Herald* shortly after the arrest of the defendants entitled, “Experts Believe that Cuba sold information of the spies.” In it he quotes, as

²⁶ Hernando Calvo Ospina and Katlijn Declercq, The Cuban Exile Movement: Dissidents or Mercenaries, Ocean Press, 2000. ISBN #1-876175-15-X.

an expert, another propagandist, Enrique Encinosa, who received from the Broadcasting Board of Governors \$5,200 during the time of the Five prosecution, and \$10,400 between Dec. 7, 2000 and Nov. 4, 2003. This creation of a closed ring of “experts” is shown throughout the print, radio, and television reports of the propagandists.

58. A seventh journalist, Enrique Encinosa, the author of “Cuba, The Unfinished Revolution”²⁷, who advocates the bombing of Cuban Hotels and glorifies Luis Posada Carrilas, was employed by the U.S. Government while he was working as an “independent” and principle commentator on the powerful right-wing Spanish-language station in Miami, WAQI. Encinosa boasted in an Internet radio interview: “I arrived in the United States in 1961. I became involved in the anti-Castro paramilitary organizations when I was 16. I participated in a number of military and covert operations into Cuba as a very young man. I worked cloak and dagger in covert operations ...” The interview was in 2010.²⁸

59. During the trial, Encinosa had a regular program on WQBA as well as WAQI “Radio Mambi”, Miami’s 50,000 watt station, and frequently commented on Movant’s arrest and prosecution. We are told that he received \$5,200 to host a weekly Government show from October 1st, 2000 to September 30th, 2001. We do not know how much else he received or whether WAQI, Radio Mambi also received Government funds.

60. In 2005, in an interview for the documentary titled “638 ways to kill Castro”, Encinosa supported the bombings that shook Havana hotels in 1997, one of which killed an Italian tourist, Fabio Di Celmo. In the film, Encinosa says:

“I personally think it’s an acceptable method. It’s a way of damaging the tourist economy. The message that you, one, tries to get across is that Cuba is not a healthy place for tourists. So, if Cuba is not a healthy place for tourists because

²⁷ Enrique Encinosa, *Cuba, The Unfinished Revolution*, Eakin Press, 1998. (CTUR)

²⁸ The interview can be found, in audio format, at:

<http://babalublog.com/2010/12/the-escambray-the-sierra-maestra-enrique-encinosa-humberto-fontova-and-more/>

there's a few windows being blown out of hotels, that's fine.”²⁹

61. Government-paid agents were involved in other clandestine, and at times covert and illegal, activities. For example, Encinosa co-hosted a clandestine shortwave radio station in Miami called “La Voz de la Resistencia.” It was broadcast into Cuba on a weekly basis, and Encinosa would call for listeners to wage violent attacks on economic targets, as well as advocating assassinations of Cuban individuals.³⁰ As significant as its clandestine nature is what it tells us about the motivations and intentions of the speaker and our Government and their view that the law should be broken to further their ends. It suggests that the propagandists also may have been violating laws prohibiting the Government agencies, like the CIA, from being involved in domestic intelligence.

62. In an interview several days after the Movant's arrest, published on September 21st, 1998 in *El Nuevo Herald*, Encinosa, now cited as an intelligence expert, stated that the arrests occurred because U.S. Intelligence “has detected or has indications that the information [supposedly gathered by the Movant and his co-defendants] is passing through terrorist organizations outside the United States.” Olance Noguera, the author of the article, “establishes” Encinosa as an intelligence expert; he also received payments from the Government.

63. Government monies were used not only to covertly publish misleading stories, but to deliberately violate the Court's orders, and to deliberately give the jurors information, some of which the Court said the jury should not hear. For example, after the Court sustained a defense objection and excluded evidence so that the jury would not hear it, the same information appeared publicly through, we believe, the use of Government funds.

²⁹ Interview by filmmaker Dollan Cannel for the film “638 Ways to Kill Castro”. The interview can be found at: <http://www.youtube.com/watch?v=-pJyHRQVZUY>

³⁰ Kathy Glasgow, *Overthrow on the Radio*, *MIAMI NEW TIMES*, February 13th, 1997. **Exhibit I.**

64. Ariel Remos, the ninth journalist, is a longtime reporter and commentator for *Diario Las Américas*. Remos received BBG payments of \$11,750 during the Movants’ trial from Nov. 1, 1999 to Dec. 12, 2001—roughly the same time span as Alfonso. His total pay was \$24,350 through Nov. 20, 2006.³¹ He wrote propaganda articles about Movants case. On November 28th, 1999 he wrote:

“[I]n the case of U.S. v. Gerardo Hernández, in which Caroline Heck-Miler has been serving as the prosecutor and where the chain of command and cause for the death of the four members of Brothers to the Rescue – three of them citizens of the US and one resident – supposedly begins with Fidel Castro. Castro, therefore, is in the referenced case accused of murder and under investigation for murder; and if he sets foot on United States territory he can be arrested and brought before the justice of this country. That is the opinion of attorney Fernández, and that is how he just told it to *DIARIO LAS AMERICAS*.”³²

65. The Government practiced deception at every level. A tenth covert paid Government journalist is Luis Aguilar Leon. In a February 27th, 1996 editorial three days after the shoot-down, published in *El Nuevo Herald*³³, Aguilar writes that Fidel Castro is “Hitlerian” and uses incendiary language and threats as a call-to-arms for Cuban exiles. Aguilar writes:

“One wishes for the power to send three well-armed fighter jets to the Cuban coastline to see if these henchmen of the air can prove themselves as courageous when the adversary above them is armed. Or to fly over Varadero [beach], shooting, to delight in the image of a stampeding bunch of lewd tourists, the kind who believe that in Cuba everything is for sale, jumping over fences and fleeing across the sand on which they trod.”

66. Aguilar co-hosted a twice-weekly radio program on Government radio, along with Omar Lopez Montenegro, who received Government funds. Despite his extensive employment with the Government, there is no evidence of Aguilar’s payments in any released

³¹ Liberation Newspaper’s FOIA Documents Analysis 1&2, *Government-Funded propaganda Operation in Miami Exposed*, Gloria La Riva & Ben Becker, ReportersForHire.org. **Exhibit J.**

³² See Antonio Guerrero’s Motion for Habeas Corpus Relief dated March 5, 2011 (hereafter cited as GM) at page 3 and 4 for additional articles by Remos.

³³ Luis Aguilar Leon, *Rage and its Limitations*, *EL NUEVO HERALD*, February 27th, 1996, at 6A. **Exhibit K.**

records (FPDS or FOIA), but his co-host Lopez Montenegro received a documented \$49,050 between October 1st, 2004 and June 29th, 2009. Aguilar's obituary claimed he worked for the Government since 1985.

67. Aguilar also participated as an independent journalist in a public panel that convened in order to examine issues of "political meddling and poor administration" of Radio and TV Marti.³⁴ It seems, from the written record, that the Government did not disclose his Government connection.

68. An eleventh covert journalist, also paid by the Government and mentioned in *The Miami Herald* story, is Wilfredo Cancio Isla.³⁵ Cancio was paid by the Government \$4,725 during the detention and trial of Movant, and \$21,800 from 2000 to 2006.³⁶ These are only the payments that we know of, found through the limited information received through the FOIA suit and the FPDS database. He wrote at least 123 articles. He wrote that Movant and "other" Cuban spies were given hallucinogens by Castro³⁷.

69. Cancio wrote an article on April 19th, 2001 titled "The Prosecution Fears Cuban Control in Spy Trial: Cuba is Preparing a Fabricated Version of the Facts."

70. A twelfth covert Government-paid journalist is Helen Ferre. She is an editor of *Diario Las Americas*, an important media source for Spanish speaking Miamians. She received, as far as we can tell, \$1,125 during the trial as part of a \$6,025 total. After she learned of the investigation into payments to her and other members of the media, she told *The Miami Herald*

³⁴ Christopher Marquis, *Journalists Will Analyze Integrity of Radio Marti Transmissions*, *EL NUEVO HERALD*, January 26th, 1996, at 11A. **Exhibit L.**

³⁵ Often members of journalist's families received money and perks as well. For example, Cancio's wife received Government monies. (See Footnote 55 on page 38 of this affidavit for more information)

³⁶ Liberation Newspaper's FOIA Documents Analysis 1&2, *Government-Funded propaganda Operation in Miami Exposed*, Gloria La Riva & Ben Becker, ReportersForHire.org. **Exhibit J.**

³⁷ Wilfredo Cancio Isla, *Cuba Used Hallucinogens to Train its Spies*, *EL NUEVO HERALD*, June 4th, 2001. **Exhibit M.**

she did not see any conflict of interest³⁸. She oversaw the publication of an editorial, during the trial period, titled “The Importance of the Arrest of 10 Castro Spies”. Working with another covert journalist, Ariel Remos, and editing Orlando Bosch, Ferre helped direct a paper that many believed to be independent. She, along with others, worked to influence the trial events while being paid by the Government. Horacio Aguirre, her father, the owner/director of *Diario Las Americas*, did the same.

71. A thirteenth Government-paid covert journalist who broadcasted numerous commentaries during the time in question and influenced Movant’s trial is Caridad Roque. Roque, a political prisoner in Cuba for sixteen years³⁹, received at least \$51,975⁴⁰ from the Government. It is not unreasonable to suspect that she was paid by the Government during the trial. An article in *El Nuevo Herald* on November 11th, 1998, says Roque helped lead a delegation which filed suit in Madrid, Spain to demand the arrest and trial of Fidel Castro. The article was written by Olance Noguera, a writer who received Government funds. Roque also had a regular program on WCMQ radio called “Hablando con Cuba”.

72. A fourteenth journalist, Enrique Patterson, received over \$100,000 from the Government while working with the Government since 1996. While we understand that Patterson has been working with the Government for over 17 years, we can find no records of payments before 2002. According to a book by Rosa Miriam Elizalde and Luis Baez titled “Dissidents”, Patterson recruited people for the CIA while in Cuba.

4. Government agencies deliberately hired and paid secret propagandists committed to influencing the jury to convict Movant.

73. We are focusing on only one government agency and its personnel hiring practice

³⁸ *When the Story is Us: Miami Herald, Nuevo Herald, and Radio Marti*, Columbia University Case Study, CSJ-10-0026.0. at p. 10 para. 3

³⁹ Carol Rosenberg, *Havel Salutes Ex-Prisoner of Castro*, *THE MIAMI HERALD*, September 23rd, 2002. **Exhibit N.**

⁴⁰ FPDS search documents. <http://www.fpds.org> (BBG and USIA searches)

and journalistic practices to show who the employers of the propagandists were. Nowhere in the GAO reports that we have seen, or in any Congressional testimony, is there any mention of the Government paying independent journalists in Miami during 1996 to 2001 to propagandize about the trial in domestic media. Movant cannot be kept in jail because he did not know anything at all about the facts of an artfully and totally concealed illegal practice that was concealed from Congress and the Department of Justice.

74. Radio Marti moved from Washington D.C. to Miami in early 1996. Although the Government's broadcasts were ostensibly aimed at Cuba, the primary area of concern was Miami. The entire network of clandestine journalists, those previously hired and those newly hired, were geared to break the law that stops the government from propagandizing its citizens in Miami. We believe Radio/TV Marti is the only government propaganda station not centered in D.C. Radio/TV Marti hired new personnel after the move; nearly all new hires were Cuban exiles committed to Movant's conviction, and then, over the next six years, spent vast sums in Miami as it became a center for actions against Movants and others. The paid journalists in this case were part of that action.

75. The move to Miami at the time of the shoot-down facilitated the creation of this secret network that could secretly break the law. As Alvin Snyder⁴¹ noted in *The Miami Herald* on April 29, 1996,⁴² the move to Miami was to remove or minimize Washington DC and the Voice of America's effective controls over Radio/TV Marti. The move multiplied the Cuban exile resources in Miami. What started in 1960, with the illegal use of government "journalists" and monies in Miami media came to a high point in early 1996. The effective management of

⁴¹ Formerly a Deputy Assistant to two Presidents of the United States, a employee of the USIA, a senior fellow at both the Annenberg Washington Program in Communications Policy Studies at Northwestern University and the University of Southern California, and an author of a leading book on propaganda

⁴² Alvin Snyder, *Privatize Radio and TV Marti*, THE MIAMI HERALD, April 29th, 1996, at http://alvinsnyder.com/privatize_radio_and_tv_marti_54918.htm . **Exhibit O.**

Radio/TV Marti changed hands in 1996, and as the GAO reports and Congressional testimony indicate, many in Washington DC were glad to be less involved with what was now becoming a rogue operation.

76. The Government knew of the relationship between the shoot-down, Brothers to the Rescue, the trial, Jose Basulto, and Radio/TV Marti. As Alvin Snyder says, the Government, through the board of Radio Marti, staff, freelancers, and contractors, was a “provocateur” in the shoot-down. Radio/TV Marti has been the voice of Brothers to the Rescue. It has been the voice of Jose Basulto, who was on the plane that came back from the shoot-down. Jose Basulto had a “personal” stake in the conviction of the Movant. Alvin Snyder writes in April 29th, 1996 of his investigation:

“Several weeks before Fidel Castro’s jet fighters shot down the planes of the Brothers to the Rescue, Radio/TV Marti was bragging that a small plane had buzzed Havana and dropped Anti-Castro leaflets. Castro was mocked for not retaliating, and a Cuban American was quoted that such flights to Havana would be made regularly.

“Castro’s downing of the two unarmed passenger planes in international waters was reprehensible. Yet it is difficult to fathom why an American government-financed radio station was permitted to carry the threats by Cuban-Americans exile leaders who were goading Castro, and why the Radio/TV Marti journalist doing the interview didn’t challenge the statements.

“Radio/TV Marti’s broadcast headquarters currently are located in Washington so that its programs can be screened by the U.S. Information Agency’s Voice of America. Congress’s mandated move of its broadcast headquarters to Miami will place Radio/TV Marti outside any effective VOA oversight.

• • •
“According to a spokesman for Sen. Phil Gramm, R-Texas, who sponsored the move, ‘putting the headquarters for Cuban broadcasting closer to the heart of the Cuban-American community just makes sense.’ That being the case, the time has come, too, for Miami’s Cuban-Americans formally to take over Radio Marti and run it as their own, without Washington attempting to look over their shoulders.

• • •
“As they assume total control, Miami’s Cuban Americans should also foot the bill for broadcasting to Cuba.” (Snyder p. 1)

77. The Government claims we have not met the minimal showing for relief or habeas corpus discovery because we are not precise in our requests. But, we can be precise about the discovery we seek concerning governmental agencies involved in Miami with the propagandists. We will show through discovery, that at the exact time that the events surrounding this trial took place, Radio/TV Marti redirected its focus and assets from Cuba to Miami, in order to satisfy the powerful domestic Cuban exile movement. The move to Miami cost nine million dollars. That sum, in 1996, was in addition to TV/Radio/TV Marti's annual budget of \$30 million, a large portion of which moved to Miami.⁴³ Alvin Snyder, gives the obvious reason Marti was moved to Miami:

“A State Department official recently provided, to a gathering of diplomats, an overview of U.S. foreign relations, without once mentioning Cuba. Asked why Cuba had been omitted, the official replied that ‘Cuba is no longer a foreign policy issue; it is a domestic political problem.’”⁴⁴(Snyder p. 1)

78. After the Miami move, the Government had an average yearly budget of well over \$30 Million from the time of the shoot-down to the conviction. They had over 100 employees. More than half of that budget, and the highest concentration of employees, may have been run through Miami. A substantial portion of those assets were directed at obtaining a conviction for the Movant.

79. Recent GAO reports put the figure spent for Radio/TV Marti in its lifetime at or in excess of \$600 million.⁴⁵ We can only understand the full force of the propaganda operations

⁴³ Because government budgets are reported agency by agency, it is difficult, if not impossible, to learn how such Government money went to Basulto, his colleagues, his nominees, and Radio/TV Marti and their nominees.

⁴⁴ “The VOA, which enunciates U.S. ideals and foreign policies around the world, has always been uncomfortable supervising the politically oriented Cuba broadcasts,” writes Alvin Snyder. Now, they no longer effectively were.

⁴⁵ United States Government Accountability Office, Opinion GAO-12-243R, *Broadcasting Board of Governors Should Provide Additional Information to Congress Regarding Broadcasting to Cuba*, December 13th, 2011
and

United States Government Accountability Office, Opinion GAO-08-764, *Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions*, July, 2008. **Exhibit P.**

when we add the monies spent on Movant by this Government agency to the amounts spent by other agencies.

80. After the Miami move, Radio/TV Marti, and the Cuban exile movement, now awash in government funds was free of any significant legal controls during the period of 1996 to 2001. Practices previously prohibited now flourished. That was the reason for the move. The Government radio and television station became what the Cuban exiles wanted it to be, a rogue outfit that was committed to a conviction of Movant.

81. The Government's Response misunderstands Movant's argument. The Government radio station has the right, within federal guidelines, to hire whom they choose. A Government station which is used for propaganda, however, can't use people hired for that purpose to go on domestic media and say or write material that would otherwise be perfectly appropriate if heard in Cuba. The paid journalists did not "split" themselves, saying one thing on Radio/TV Marti and another thing on Miami propaganda. On the contrary – they have described how they used the same words and images. The Radio/TV Marti board, composed in large part of partisan exiles and participants in the Brothers to the Rescue dispute with Cuba, can hire or pay as employees, and contactors whom it wishes. But it cannot then place secret propagandists in the mainstream Miami domestic media, and cannot have those employees, contractors, or freelancers use Government funds to secretly seek Movant's conviction.

82. Geoffrey Cowan, a Dean of Journalism at the University of Southern California, president of the Annenberg Foundation Trust at Sunnylands, and director of the Annenberg School's Center on Communication Leadership and Policy, was the Director of The Voice of America in 1994 until sometime in 1996 when he left to return to academia. He was intimately familiar with Radio/TV Marti. He appears to have been a colleague of Alvin Snyder and it may

be that his views and Alvin Snyder's are in agreement. He seems to have been at the Voice of America when the Radio/TV Marti move to Miami was discussed and seemed to be there at the time of the Radio/TV Marti move to Miami. I contacted Mr. Cowan. Mr. Cowan refused to answer questions unless subpoenaed.

83. The de facto leader of the Cuban exile movement, Jorge Mas Canosa, was the driving force behind Radio/TV Marti and the driving force to get it moved to Miami. Mas Canosa led the successful push to move Radio/TV Marti to Miami because he and his colleagues wanted it to be free of government restraints as it went after his enemies and because he wanted it to be a key independent in his domination of Miami politics. Another unofficial leader was Basulto, seen as a provocateur in the shoot-down incident. Jorge Mas Canosa was, along with Basulto, a Bay of Pigs' participant with CIA ties. Basulto, as Alvin Snyder learned, had a vital personal as well as political interest in securing the convictions – he was criticized for actions that directly led to the deaths of his four colleagues, and thus, Basulto with Government money helped the Government's assault on the Movant.⁴⁶

84. Alvin Snyder describes Mas Canosa's creation of specific plans for Radio Marti. Mas Canosa wanted it to be a dominant force in Miami politics. Mas Canosa wanted to use Radio/TV Marti money and personnel to influence Miamians. Mas Canosa created Radio Marti and used their funds for Miami propaganda. Mas Canosa and the staff hired journalists from every media in Miami to do illegally and covertly what it could not do legally⁴⁷. After his death the illegality continued. The Radio Marti-paid journalists mobilized around specific trial issues.

⁴⁶ Luis Posada Carriles, a Cuban exile paramilitary warrior who claimed responsibility for Havana killings and is widely suspected as orchestrating the 1976 bombing of Cubana Airlines flight 455, said he was directly supported by Mas Canosa. The CIA Cuban group included Mas Canosa, who government officials saw as the potential leader of Cuba after Castro. Mas Canosa was in the group leadership of the Cuban Delegation in Exile in 1964. Mas Canosa raised monies after the Bay of Pigs for further invasions of Cuba. This can be found in p. 177 of "The Cuban Exile Movement" by: Calvo and Declercq.

⁴⁷ Alvin Snyder, Warriors of Disinformation, Arcade, 2012, p221 et seq.

When the defense issued subpoenas for certain witnesses, the paid Government employees, upon information and belief, broadcast that these witnesses should either ignore their subpoenas or claim the Fifth Amendment on the stand so they could avoid questions or giving answers. Many of the witnesses did just that. In another instance, excluded evidence was broadcast by the media the very evening it was excluded from the trial. With the knowledge we have now of Miami during the time period in question, it would be typical for this entity to be paid by the government. The agents fueled and fomented public opinion so that defense lawyers (and even Oscar Corral, the author of the *Miami Herald* expose) were afraid to sleep at home. On at least one occasion a fearful Defense Attorney slept in a hotel. The defense lawyers' lives were threatened by paid agents.

85. The hiring, management, financial and journalistic practices encouraged and permitted at Radio/TV Marti seem not to be permitted at any other Voice of America entity. Many, if not all, of the articles and talks about Movants and other issues violated journalistic standards that only worsened after the Miami move. Radio Marti was the gift that kept giving to all those who agreed with it. It was the honey and money that drew the bees.

86. The connections between the investigations in 1996, and the investigations revealed ten years later in *The New York Times*, *The Miami Herald*, and *Associated Press* in 2006 are obvious. The 2006 articles show how the Government used the freedom it wanted when Radio/TV Marti moved in 1996.

87. Basulto, writing in *Diario las Americas* (the paper whose editor received Government monies) on May 24th, 2000, interweaves the Elian Gonzalez case, Movant's case, and Fidel Castro, with criticism of President William Clinton.⁴⁸

88. Basulto's drumbeat against the trial court was joined in by other Government-paid

employees. He, and other propagandists described Movant's actions as the first part of Castro's plan to invade the United States. According to him, Movant and the codefendants were an advance party, and this trial was the first of the battles against this foreign invader. Ernesto Betancourt, a colleague of Jose Basulto and former government employee and director of the Government's radio and television station who played the major role in the station's original hiring, also, along with Basulto, seemed to have personally received Government funds. On March 2, 2001, in an article in *El Nuevo Herald* entitled "Open Letter to John Ashcroft", he said:

"The trial of Castro's spies has turned into a real farce. For more than two years, since September 16, 1998, the FBI and the federal prosecution brought ten of Castro's agents to trial who were carrying out espionage against U.S. military bases in Florida and, to a lesser degree, infiltrating Cuban exile organizations. The first activity was the most dangerous for the United States, given that it was complementary to other preparations by Castro to attack the United States during the final stage of his government. One of the charges leading to the arrest, according to an affidavit presented at the time by FBI Agent Mark de Almeyda, was that the spies had received orders to 'sabotage planes and hangers somewhere in south Florida'."

"In regard to Brothers to the Rescue, Judge Lenard was overruled by the Court of Appeals in her attempt to censure Jose Basulto, when she prohibited him from participating in any commemorative action regarding the shoot-down of the aircraft on February 24, under the excuse that remembrance of the event might inflame a jury from which she accepted the exclusion of any Cuban American. These actions bring one to the sad conclusion that Judge Lenard is clearly biased against the Cuban American community. She should be recused."

"That all of this should come to pass during the Clinton-Reno administration was inevitable, given the low morals prevalent under that administration. That's why we voted against them. But, Mr. Ashcroft, the decisive contribution made by our community to President Bush's hard-fought election has to be worth something. The spy case should be reworked to include Castro and others in the trial. Whatever was behind the sting that set up Mariano Faget should be revealed. The FBI should be ordered to stop treating Cuban Americans like the enemy and Castro's intelligence

network as an ally. Or is our leg being pulled yet again? Your response is awaited.” (Emphasis added)

89. Voting to acquit Movants, the jury was repeatedly told, would directly lead to the destruction of America. Attempts to protect the jury were akin to keeping a finger in a small dike that had already been overwhelmed by an enormous flood that no one seemed to notice.⁴⁹

90. The best proof of this will be the Radio and TV Marti tapes that have so many of the paid journalist’s shows. The 1996 to 2001 tapes were not available until 12 years after they were made because the law is intended to keep out this propaganda from entering the United States. The legislators did not see how easy it was to get around this 12-year ban.

91. The Government disagrees with Alvin Snyder’s understanding of the media shoot-down and events in Miami. But Snyder is extraordinarily well qualified. A former executive at the United States Information Agency, now deceased, who formerly served not only two presidents and worked at CBS News and WCBS TV in New York, and worked extensively with Government agencies, including USIA, had his conclusions and analysis confirmed by other investigators in 1996 as well as by subsequent events.

92. On August 20, 1996, four months after the Alvin Snyder piece, *The Los Angeles Times* published a similar analysis of Radio/TV Marti, and the several pressures that led to its

⁴⁹ Since 1960, media entities and commentators with independent media in the Miami area received Government money from a variety of sources. For example, Channel 41 WJAN, America TeVe, was functioning in Miami at the time of the trial. America TeVe’s Network Director is Omar A. Saul Romay, the Chairman is Marcelo Soldano. We only know Sherjan Broadcasting Co. Inc. received \$111,600 from the Government from October 19th, 2004 to September 17th, 2005. We do not know how much, if any, that it received at any other time. The President and Chief Executive Officer of Sherjan is Omar A. Saul Romay and the CFO is Marcelo Soldano, according to Dunn & Bradstreet and the Florida Department of State. WJAN features, among other things, “A Mano Limpia”, a highly political show hosted by an alleged independent journalist who was not independent, Oscar Haza, who had previously received federal payments, is a very small example of the interrelationship between a small group of paid journalists, some of whom were previously imprisoned in Cuba, American agents, activists who go beyond journalism, and, who we believe are “dirty trick practitioners”.

relocation to the Cuban-American community.⁵⁰ The *Los Angeles Times* reporter, Mike Clary, focused on Mas Canosa's dominance at the station and the reasons for his successful drive to get it out of Washington. Mike Clary tells us that the staff of Radio/TV Marti was purportedly 146. TV Marti, with a budget of \$11.6 million and an additional staff of 85 has, according to the article "been seen by virtually no one inside Cuba since its launch..."⁵¹

93. Mike Clary's further interviews and investigations confirm each and every part of Alvin Snyder's analysis. The Government, Clary tells us, made it clear, through most of its history, that with its new staff in 1996 it wanted to get away from oversight and find new ways to propagandize in Miami. Rolando Bonachea, the then acting director of Radio and TV Marti, said now, in Miami in 1996, the Government's media employees work behind "a firewall of protection that ensures that our journalists can operate freely from outside influences or internal pressure."

5. To allow the Government's international propaganda machine to be turned on the environment of an American trial insults both the integrity of the trial itself and the integrity of the community for whom the jury speaks. Both the 2006 investigations that exposed the Government's secret operation and the Government Accountability Office opinions prove that the propaganda negated the concept of a fair trial as the Government created an intolerable influence on this trial; a structural error that violated statutory and constitutional law. The September 8, 2006 *Miami Herald* article and *The New York Times* September 9, 2006 article contradict the Government's argument that these facts were known prior to the trial or the Eleventh Circuit's En Banc August 9, 2006 opinion.

94. The *Miami Herald* article researched by the papers investigative team, placed all across the top of its first page with banner headline,⁵² the following statement:

⁵⁰ Mike Clary, *Radio Marti's Move to Miami Strains Credibility, Critics Say: Lawmakers, Others Warn Against Relocation to Heart of Cuban American Community*, THE LOS ANGELES TIMES, August 20th, 1996. **Exhibit Q.**

⁵¹ Mike Clary, *Radio Marti's Move to Miami Strains Credibility, Critics Say: Lawmakers, Others Warn Against Relocation to Heart of Cuban American Community*, THE LOS ANGELES TIMES, August 20th, 1996 at page 2

⁵² Oscar Corral, *10 Miami Journalists Take U.S. Pay*, THE MIAMI HERALD, September 8, 2006, at 1A. **Exhibit R.** The *Miami Herald* article referred to throughout this affidavit was a result of a team of investigative reporters. The author described the difficulties of his 2006 investigation and the resistance to his investigation – a resistance that continues today.

“Jesús Díaz Jr., president of the *Miami Herald* Media Co. and publisher of both newspapers, expressed disappointment, saying the payments violated a ‘sacred trust’ between journalists and the public.”

95. This motion deals with the “sacred trust” the government violated with the citizens of the United States and these defendants. But, it goes far beyond these defendants or this criminal case – or any case or any one set of defendants. One can argue that more has already been discovered about the widespread and varied use of the “paid journalists” and the violators of law in this case than on any previous instance in American domestic history – more than even before the Church Committee.⁵³

96. The Government Accountability Office (GAO)⁵⁴, Congress and the President, and the law, along with the *Miami Herald* and the journalistic community, recognize that “Independent journalists” and “Government journalists” are two very different jobs with very different job descriptions. They have different duties, and responsibilities. No one in the government who hired these journalists ever contemplated that they were anything but activists whose background was in politics not journalism; they had little or no concern for a free, balanced news report. That simply was not their function. Their use of pseudonyms and undisclosed sources, inventing of events and the reporting of past events that are passed as present factual reporting, are all practices condemned by journalists and the media in the United States. They were daily events in Miami for six years.

97. The *Miami Herald* article shows the Government’s confirmation of the Government’s hiring policies:

⁵³ The Church Committee is the common term referring to the United States Senate Select Committee to Study governmental Operations with Respect to Intelligence Activities, a U.S. Senate committee chaired by Senator Frank Church (D-ID) in 1975. A precursor to the U.S. Senate Select Committee on Intelligence, the committee investigated intelligence gathering for illegality by the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI) after certain activities had been revealed by the Watergate affair.

⁵⁴ The GAO is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. (From <http://gao.gov/about>)

“Pedro Roig, the director of the Office of Cuba Broadcasting since 2003, said he has sought to improve the quality of news by, among other things, hiring more Cuban exile journalists as contractors.”

98. In order to argue, as the Government does, that the wrongfully-paid media had no effect, you would have to believe that all media information is irrelevant and does not influence jurors or citizens. A remarkable argument by representatives of this Government, it contradicts every concept of democratic government, and the heart and soul of the First Amendment. If the prosecution in this case is correct, there is no need or function for open and robust debate, no need or function for the First Amendment of the United States Constitution, and no need for libel and slander laws, that are based on the idea that words and images do have meaning and can severely damage. One sentence, the Supreme Court tells us, can lead to the damaging of a man’s reputation. Ignore that concept, the Government now tells us. And the Government also says, ignore the reality that millions of dollars and assets paid for propaganda, relentlessly repeated in over a thousand articles, destroyed this “fair” trial.

99. The paid journalists were not a small part of the media. They had a substantial effect. The *Miami Herald* confirms what some of the paid journalists themselves said, they were among the most popular in South Florida, and many were reporting on issues involving the trial for their news organizations. Their reports were picked up, and relied upon, by innocent journalists who did not know they were using propaganda as part of their stories.

100. Oscar Corral’s investigation is consistent with Alvin Snyder and Mike Clary’s earlier 1996 investigations and interviews. The Government knew, after they hired Juan Manuel Cao, that he continued his activities as a covert, paid agent. The *Miami Herald* tells us:

“Channel 41 reporter Juan Manuel Cao, who received \$11,400 this year from TV Martí, made news in July when he confronted Castro during an appearance in Argentina by pressing the Cuban leader to explain why his government had not allowed a well-known doctor

and dissident, Hilda Molina, to leave the island to visit her son in Argentina. During the exchange, Castro openly questioned Cao if anyone was paying him to ask that question. The Cuban government has long contended that some South Florida Spanish-language journalists were on the federal payroll. "There is nothing suspect in this," Cao said. "I would do it for free. But the regulations don't allow it. I charge symbolically, below market prices."

101. Juan Manuel Cao, according to his employers, lied. He did so on behalf of the Government. Cao never told his employer that he received Government funds. Cao knew he had one commitment as a journalist, and as a paid agent, another. That did not stop Cao from doing his "job", a good part of which was not telling the truth.

102. Each story that the paid media published had many "lies" in it. The stories were a consistent drumbeat in Miami. Words in print, which we focus on here, and images and spoken words, have different effects. Print media reaches a different audience than the radio and television media. It was an audience the Government wanted. The Government could not have its own newspaper in Miami. So, it created a web of journalists in a web of independent-appearing newspapers and on independent-appearing radio shows. Each article lied in failing to disclose the source of the article, lied in failing to disclose that the author was not independent, lied in failing to disclose that the author was paid by the Government, and lied in their attempt to pass off blends of fact, fiction, opinion, and arguments as journalism. The propagandist's work lacked journalistic integrity. The propagandist's work destroyed public debate. The propagandist's work ate away at fair trial procedures guaranteed by our legal system.

103. The *Miami Herald* story tells us that in The *Miami Herald's* review of hundreds of articles by their journalists – that the *Miami Herald* found not one instance in which the reporters or columnists like Cao disclosed that they had received payment. This goes beyond

“coincidence” or Government acquiescence. That pattern of deceit would not have been possible without the Government’s active involvement and specific planning.

104. Contrary to what the Government’s Response says, very few of the paid propagandists or their stories surfaced in 2006. We believe very few have thus far surfaced. Very few were interviewed. The full story is not yet known.

105. The after effects of the September 8, 2006 story are significant. As a result of a coordinated Government attack, thousands of *Miami Herald* subscribers castigated the *Miami Herald*. Oscar Corral was vilified, attacked, and put in fear for his and his family’s safety by supporters of the paid journalists and Radio/TV Marti because he exposed the Government’s illegal payments. According to the Miami Sun Post of July 26th, 2007, one year after the *Miami Herald* story, Corral had been accused of being a Cuban agent and a communist. Corral described “an orchestrated campaign to intimidate, harass, and silence. It was a barrage. Some threats were very specific and mentioned my family. It got to a stage where I had to tell my editor that I was concerned. They were great about it. They moved me and my family to a secure location for about six weeks so that I could finish my reporting.” We can only imagine the subtle and not-so-subtle pressure the paid journalists and Government employees and contractors put on the jurors on a daily basis.

106. The internet report at the end of the *Miami Herald* story gives some of the paid journalists’ defenses to the Oscar Corral investigations:

Pablo Alfonso:

“I don’t have any comment. I believe that’s better for the newspaper and for me.”

Olga Connor:

Could not be reached.

Wilfredo Cancio Isla:

Declined to comment. Said his wife, Ivette Leyva: “This is [the rest is stricken]”⁵⁵

Juan Manuel Cao:

“I feel proud to help break the censorship in Cuba.”

Ariel Remos:

“I liked being on those panels because we could say what we wanted. For example, we didn’t have to call Fidel Castro the president of Cuba. I could call him what he is, a dictator.”

Omar Claro:

“I will not say whether I do or do not accept money. You publish whatever you want.”

Helen Aguirre Ferre:

“I don’t see a conflict of interest.”

107. The Government warns this Court (on page 27 of its Response) that the independent media and the media may object to discovery. There is no reason to believe there is any truth to this. Most of the journalists are today available to be deposed. Given the *Miami Herald’s* publication of the facts and their front-page banner headlines printing of the story, and the publication of the story by the media throughout the country, it is clear that the media believes the practice must be exposed.⁵⁶

⁵⁵ According to the FOIA petition information, Ivette Leyva, the wife of Wilfredo Cancio Isla, also received monies from the Broadcasting Board of Governors. According to the FPDS site, she received monies prior to 2005 and received \$45,550 from June 3rd, 2005 to September 29th, 2008. Leyva worked as an assignment editor and TV producer for WJAN Ch. 41, America TeVe, from May 2005 to September 2006. The total amount of this, and payments to the other families, is unknown.

⁵⁶ Abby Goodnough, U.S. *Paid 10 Journalists for Anti-Castro Reports*, *THE NEW YORK TIMES*, September 9, 2006. **Exhibit S.**

This is proven by the fact that much of the domestic press eagerly followed the *Miami Herald’s* lead and conducted their own interviews and investigations. *The New York Times*, in a September 9th, 2006 story,⁵⁶ written by Abby Goodnough, reports that the Office of Cuba Broadcasting, a Government entity, paid 10 journalists to “provide commentary on Radio and TV Marti, which translate to government broadcasts critical of Fidel Castro.” (p 1) Goodnough names Pablo Alfonso directly, citing his payment as the largest, “almost \$175,000 since 2001.”

Ms. Goodnough explains that the Castro regime had long claimed that some Cuban-American reporters in Miami were on the Government payroll, but that the *Miami Herald* article released days prior to her writing was the first evidence that proved Castro’s claim. The *New York Times* article also names specifically Wilfredo Cancio Isla, Olga Connor, and Juan Manuel Cao as some of the reporters who received thousands of dollars in Government monies. She recognized that the *Miami Herald* story just started to scratch the surface. The Government’s reasoning that it could and should pay monies to influence the Miami jury, and its refusal to acknowledge its wrongdoing, has been

108. The Government knew the backgrounds of the employees, freelancers, stringers, and “independent journalists” that they hired for the Office of Cuba Broadcasting, for Radio/TV Marti, for the *Miami Herald*. The Government cannot claim otherwise. Joe O’Connell, the spokesman for the Broadcasting Board of Governors, which oversees the Office of Cuba Broadcasting, admitted to the *New York Times* that background checks were done on the paid journalists referred to in the *Miami Herald* article, but they had “no ethics code for them.” (p. 3)⁵⁷

109. Media investigation and reporting on the payments by the Government in Miami referred to the Armstrong Williams GAO⁵⁸ opinion as analogous to the Government’s paying of Miami journalists. We now briefly look at the Williams case.

110. In the Williams case where the Government surreptitiously paid a newscaster to promote the Bush “No Child Left Behind” policy, the “[Government] violated the law by disseminating “covert propaganda.”” (p. 3) The Government makes various arguments about the burden of proof Movant bears to show his jury was influenced by the Government’s conduct. But the Government cannot corrupt Movant’s trial and then require Movant to show the jury was

criticized by journalism institutes throughout the United States.⁵⁶ The Poynter Institute⁵⁶ is the most prestigious and influential voice of journalism in the United States. What the Government did, hid, and now does, is not benign. It achieved its goals. The Government is putting its head in the sand, and hoping that the Courts will follow. Abby Goodnough, in her *New York Times* article, writes: “Al Tompkins, who teaches ethics at the Poynter Institute for Media Studies in St. Petersburg, called it a conflict of interest for journalists to accept payment from any government agency. ‘It’s all about credibility and independence,’ Mr. Tompkins said. ‘If you consider yourself a journalist, then it seems to me it’s an obvious conflict of interest to take government dollars.’” (p 2)

⁵⁷ Every factual assertion in the Government’s Response is contradicted by third parties and by un-contradicted, now discovered, facts. According to the investigations by the media, the direct words of the employers and many of the employees contradict the Government’s Response. Abby Goodnough describes, as did the *Miami Herald* and the *Associated Press*, the lack of knowledge that the media entities say they had of their employee’s conduct. Confirming the *Miami Herald* story, she explains that Robert Beatty, the Vice President of public affairs at the *Miami Herald*, said that *El Nuevo Herald* editor Humberto Castello learned only days before the paid journalists were revealed that anything was going on at all. (p 2) The management of the newspapers decided to immediately fire Mr. Alfonso, Mr. Cancio Isla and Ms. Connor after they heard of their Government payments.

⁵⁸ United States Government Accountability Office, Opinion B-305368, *Department of Education – Contract to Obtain Services of Armstrong Williams*, September 30th, 2005. **Exhibit T.**

influenced by the Government's corruption. Nor can the Government claim that the jury was not influenced by its corruption. The GAO opinions show the Government view of the law is wrong, even when only a civil violation is at issue.

111. First, the Government's violation of Civil law does not require direct proof that anyone was directly influenced by it. The legislators who passed the anti propaganda laws did not place the burden of proof on Movant to show, by quantifiable evidence, the effect of the influence. The "influence" flows from the fact that the words were said. It is conclusive.

112. Secondly, the secretive nature of the wrongdoing is by itself, a violation. The September 30th, 2005 GAO opinion states "A critical element of this violation is the concealment of, or failure to disclose, the agency role in sponsoring this material." The Government did act secretly in Miami. Thirdly, after acting secretly, they concealed. Concealment is being continued now by the United States attorney's response to our motion.

113. The GAO, after determining the violations for distributing covert propaganda through Armstrong Williams, stated that it was required to refer the Williams violation to the President and the Congress, and it did.

114. The Williams opinion refers to and reaffirms a 1987 GAO decision⁵⁹ involving the State Department use of propaganda in Central American policy. The Williams opinion said of its previous 1987 opinion:

"That newspaper articles and editorials (supporting the Government's Central American Policy) that were prepared by paid consultants at Government request and published as the work of non-governmental parties violated the publicity or propaganda prohibition. Again it was the covertness of the Government's actions that led to the violation. In that case the Government was attempting to convey a message to the public advocating the Government's position while misleading the public as to the origins of the message. Id at 709."

⁵⁹ United States Government Accountability Office, Opinion B-229069, *66 Comp. Gen 707*, September 30th, 1987. **Exhibit U.**

115. The Williams opinion was based on the work of only one journalist, the Central American opinion only a very few articles. The Miami payments involved a great number of journalist and at least a thousand “publications”.

116. The GAO’s opinion of September 2005 went through in great detail, step by step, what Williams and the Government did. If discovery is necessary, then we want produced in discovery exactly what the GAO compelled the government to produce in discovery in the Williams case. Because the amount of monies, publications, paid journalists, and seriousness here far exceeds those in the Williams case, as well as in the 1987 Central American case, the Government in Movant’s case is required to further respond, and to submit to full discovery.

117. In the Williams case domestic monies were misused for domestic propaganda. In the Central America case, monies were misused for foreign propaganda. Here, monies allocated for a foreign propaganda machine were used to destroy any possibility of fairness in an American criminal trial.

6. The use and actions of secret propagandists, as set forth in the Church Committee investigations, and the actions of the secret propagandists in Miami from 1996 to 2001, are all forbidden by the Constitution.

118. We use the term “journalists” in the same way that Government documents referred to other paid journalists who have covertly worked for the Government. It is an inadequate description. “Paid secret agents” is a more accurate description. It may be that the agents in Miami also functioned as tipsters, community organizers, intentionally interfered with the jury, covertly planted distorted articles, were involved in domestic intelligence, may even have given information to the prosecution investigative team, and done a host of other

unconstitutional activity. This is what other “journalist” agents have done both in the past and since then.

119. In investigating what happened in Miami from 1996 to 2001, as well as in the Williams case and the Central American case of 1987, as Alvin Snyder, the Church Committee, and the GAO opinions reflect, we are looking at many of the most secretive areas of Government activity.

120. The 1976 investigation by the Senate Intelligence Committee exposed the Government’s secretive involvement with the press. Those “facts”, and their cover-up and concealment, were a prototype for what was to later occur in Miami.

121. Professor Stephen Kimber, a respected scholar at the University of Kings College in Halifax has written a book, to be published next year, primarily about what was happening in Miami and Havana before, during, and after the shoot-down. Entitled “What Lies Across the Water: The Real Story of the Cuban Five”, the book explains why secret paid Government journalists/agents were so easily able to create the climate of fear, intimidation, and hostility for witnesses and jurors that made a fair trial impossible. He shows the relationship between the past and present in the Miami payments. Professor Kimber shows the motivations of both the payer and payee of the funds.

122. An excerpt from Professor Kimber’s book reads:

“The day after the initial charges were announced, *El Nuevo Herald* reporter Pablo Alfonso insinuated—without offering any concrete evidence—that the FBI arrests ‘*may* be an action aimed at preventing a possible collaboration between the Cuban government and countries involved in terrorist actions against the United States.’ ... later, he resurrected Cold War rhetoric to suggest ‘the idea to send Cuban spies en masse to Miami was developed more than three decades ago in the Georgian city of Pitsunda in the old Soviet Union’ during a post-Cuban missile crisis tête-à-tête between Soviet leader Nikita Khrushchev and Fidel Castro.” (p.346)

123. Now that we, scholars, and Courts, are first becoming aware of what happened, the defense lawyers in this case will be able to, upon listening to government secret tapes and the use of “second hand information,” learn of other events surrounding the prosecution, which interfered with the defense and influenced the jury. Information confirms, in detail, what Professor Kimber, Alvin Snyder, Oscar Corral, Abby Goodnough, Mike Clary, and the GAO in its previous and subsequent reports, and others, were investigating and concluding. We believe enough is now known to set aside the convictions. If the Court disagrees, we believe, once we are shown some of the withheld documents, we can pinpoint with greater specificity the attempts to interfere with the trial itself. In order for that to be done we must have discovery, especially of previously withheld Radio/TV Marti files and tapes.

124. Professor Kimber, writing about the paid agents’ use of each other as experts, and showing how information is passed from one journalist to another until it becomes irrefutable fact, tells us:

“Writing in *Diario Las Americas* on September 20, 1998, Ariel Remos parroted and amplified Alfonso’s claims the arrests ‘*could be*’ connected to Cuba’s terrorist plans, then upped the ante yet again, tying together ‘the issue of spies and drug traffickers,’ and claiming—again without offering evidence—that it was ‘obvious’ Castro ‘has been significantly involved in drug trafficking.’

“Two-and-a-half years later, on the day the un-sequestered jury was set to begin considering its verdict, *El Nuevo Herald* trumpeted the headline: ‘Cuba Used Hallucinogens to Train its Spies.’ In the article, Wilfredo Cancio quoted yet more anonymous sources, these ones suggesting Cuba fed its spies LSD and other hallucinogens to train them for their missions

“At one level, the incendiary anti-Cuban rhetoric in South Florida’s Hispanic press was par for the Miami exile course but, as would later be discovered, it was also being surreptitiously, simultaneously funded by the same American government that was prosecuting the Five. At least 10 well-known South Florida journalists, including Alfonso, Remos and Cancio, all supplemented their salaries with tens of thousands of undisclosed dollars from the U.S. government-funded Board of Broadcast Governors and the Office of Cuba Broadcasting.

“After the secret payments to the journalists were finally exposed in 2006, the *Herald* fired [Alfonso and Cancio] for violating the ‘sacred trust’ between journalists and the public.

“But, by then, the damage had been done.” (p.346-347)

125. As Professor Kimber points out, again taking a position that contradicts the Government; it is not the journalist’s historical views of Khrushchev, Elian Gonzalez, The Bay of Pigs, The Cuban Missile Crisis, or Fidel Castro, that is the issue. It is the way that the Government secretly paid sophisticated propagandists in Miami to weave together all of the disparate strands of the Cold War, its historic parameters, and political devils, adding those “murdered and destroyed” by America’s enemies, and “to be murdered in the future”, as a context for their stories so they could arrive at the conclusion the Government wanted. There is a religiously followed, strident, and inflammatory format for all the articles. They all come out of the same bad cookie cutter.

126. Remos, mentioned both in *The Miami Herald* in September 2006, and the Kimber book, a member of the right-wing Cuban exile movement, wrote articles about Gerardo Hernandez and of Cuban-American relationships. They were neither news stories nor opinion pieces. They are all skillful propaganda pieces aimed at the jurors, their neighbors, and a wider American audience.

127. An article written by Remos on October 13, 1998, one month after the arrests, is an example.⁶⁰ This is a genre of article that the Government claims ought not to be subject of inquiry. We have selected it because it appears, as the Government argues, innocuous and thus irrelevant. It does not focus on the shoot-down or the trial. It is, we believe, the “best” article for the Government’s case.

⁶⁰ Ariel Remos, *Close to 100,000 Cuban Exiles Made Their Rejection of Castro Clear*, *DIARIO LAS AMERICAS*, October 13, 1998, page 1A. **Exhibit V**.

128. Remos, paid by the United States, glorifies individuals imprisoned by the United States, for committing murder and violence. Remos denigrates any opposing voices, no matter how mild they are. Remos claims, and quoted, these American-prosecuted and imprisoned exiles as “experts” on democracy, on what happened and what is happening in Cuba, and on each and every aspect of the Cuban-American controversy. There is a predetermined narrative and structure for his article – his same story is repeated and repeated and repeated – and other propagandists repeat it again and again in as many different venues the Government can find.

129. The Remos article is passed off as a news story on a specific event. Because of the Government’s continued insistence that we are not sufficiently specific, we set forth the entire October 13th, 1998 Remos article so the Court can clearly see the anatomy of the article. When the Court looks at the construct of hundreds of the other propaganda articles and radio shows, it will see that they are similar.

“Responding to a call by the principal militant anti-Castro organizations, almost 100,000 people (according to calculations of EFE international Spanish news agency) took part in the March of the Patriotic Intransigence on Saturday, to make clear on Saturday their repudiation of the tyranny of Fidel Castro, and their firm stance of “no agreement of any kind,” with it.

“Shortly after noon on Saturday, individuals and organizations began to gather from 8th Street to 17th Avenue towards the east, and one could start to see the Cuban flags and placards with slogans related to the act and others like those of the Junta Patriótica Cubana, “Tony Varona, Alma Mater del Exilio,” “We want the 1940 Constitution,” “Mas Canosa Lives,” “Forward, Forward, Forward,” and “Freedom for Eduardo Arocena” and others imprisoned in the United States for fighting against communism, and hundreds more.

“Early on, together with the people were the mayors of Dade County, Alex Penelas and of Miami, Joe Carollo. Penelas declared to the press that the exile community is not inactive, as some assume. Carollo told *DIARIO LAS AMERICAS*: “The exile

community is showing the true feelings of the intransigency, to not make deals with crime, nor injustice, and that the evil ones like the Castro tyranny have to be rooted out.

“One could see among others, the state representative Carlos Valdés, the city commissioner Tomás Regalado, the School Board member Demetrio Pérez, and Joe Bush, gubernatorial candidate of Florida. ‘I am here with the exile friends who want freedom and justice for Cuba,’ he said.

“The presence of journalist and diplomat Rafael Bonilla Aybar was one of the highlights of the March, for his connection to the cause of the exiles and for the fact that he had been physically assaulted by Castroite elements in his own Dominican homeland. He received countless well wishes and solidarity of his friends and exiled admirers.

“A large Cuban flag several meters wide and long — which has accompanied the last patriotic demonstration of exiles — was displayed in all its symbolism, and was carried aloft principally by the ex-political prisoners of the tyranny. In the same way, a replica of the image of Our Lady of Fatima — carried on the shoulders of members of the TFP, with a group of 25 youths who came directly from Pennsylvania, who sang the Cuban National Anthem to close the event — was another emotional note in the parade.

“The March, called by the Coordination of the 9, and backed by an infinite number of organizations, extended from 17th Avenue to 13th Avenue, the intersection of the Monument to the Martyrs of Girón (Bay of Pigs—editor), where the organizers and personalities gathered. At almost 2:30, the parade began, going down 8th Street towards the east until 4th Avenue, to the platform where the speakers spoke.

“The speeches were brief and gave the justified and doctrinal content of the March, based on the points of the document, “Cuba at the Crossroads,” to which tens of thousands of persons have subscribed. One of the points is the rejection of international elements that promote a negotiated formula which would perpetrate the regime or continue it by means of a variant. ‘We are here because our nation is going through the most critical moment of its history,’ said Armando Pérez Roura, at which point a provocateur took out a placard that said, ‘Peace, not war.’ He was removed immediately by the March security and police. ‘These are the Castro infiltrators who are exposed here. These are the Cubans who have sold themselves to the tyranny for a few coins. These are

the Judases who betray the sacrificed homeland...’, said Pérez Roura, who then referred to ‘a series of international elements that move like scabby aura over carrion, to impose on our beloved Cuba a negotiated formula that is totally alien to the interests of our suffering people.’ ‘We are alone and abandoned, but this march demonstrates that we are firm and with honor ... We do not accept any type of mediated intervention by international elements, be they governments or super-national organizations in a process that leads to a solution of the Cuban crisis,’ said Dr. Enrique Huertas, president of the Free Cuba Medical College, who made an eloquent recognition from the podium, of the presence at the event of Dr. Horacio Aguirre, director of *DIARIO LAS AMERICAS*, and of the journalist Rafael Bonilla Aybar, who was also mentioned by doctors Antonio Jorge, de la Concertación Cívica Cubana y Luis Gómez Domínguez, of the World Federation of Cuban Ex-Political Prisoners.”⁶¹ Emphasis added.

130. This is domestic propaganda, but of a very unusual sort. The Remos article shows that Government funds, millions of dollars, were being used to attack the Government for punishing individuals who perpetrated violent attacks upon citizens. This Remos article shows that the Government was paying Remos to 1) defend those prosecuted in the United States and imprisoned by the United States in the United States and other countries, for murder and other claims 2) to glorify those convicted defendants, some of who were still in jail, 3) to criticize the United States for prosecuting and jailing them and 4) criticize the American Government for not toppling Castro. Only “rogue” writers, and “rogue” agencies have the freedom to use United States agents to attack the United States with money from the United States. And it went on, day after day, for years.

131. Orlando Bosch, in the May 15th, 2001 edition of *Diario Las Americas*, started off his article on the trial by saying⁶²:

⁶² Orlando Bosch, *Lightning*, *DIARIO LAS AMERICAS*, May 15th, 2001. **Exhibit W.**

“Now we go to the crux, in reference to the trial of the traitors and miserable spies and the historical reasons that challenge us and motivate Castro’s tyranny and his hit men.

“In 1961 when I arrived to this country, escaping my first death sentence by Castro’s regime, with credentials notarized by the heroic Escambray Front in search of assistance for that patriotic, colossal, and daring effort, I was scorned, deceived and avoided by some of the Cuban leaders of the time, the CIA and FBI.

“Then, on the 17th of April 1961 the government of President Kennedy betrayed the heroic and valiant 2506 Brigade. Later (1962 missile crisis) the same President Kennedy, without right nor authority over the destiny of another people and country named Cuba, marketed and sold the destiny of the Cuban people to the perfidious and perverse Russian tyrant N. Khrushchev.

“With these two betrayals the United States Government shrank its commitment, moral, and historical debt with Cuba and the Cuban combatants who love liberty within and beyond Cuba, including in the US territory. That is why many Cubans made use of these rights and faced for many years all its consequences despite persecution, prosecution, prison, etc, of which we were unjust victims of on many occasions.

“...notorious trial of the spies that intends to engage various exiles while at the same time trying to justify Cuba’s illegal and dangerous interference of informing the tyranny of the alleged activities of the exiled enemy aggressors.”

Emphasis added.

132. Bosch, mentioned and quoted as an expert in Remos’ October 13, 1998 article as well as in many other propagandist articles, has a sordid history. A former CIA operative, he was designated by former Attorney General Dick Thornburgh as an “unrepentant terrorist” who had been sentenced to ten years in an American prison.

133. The entire Remos article is a propaganda piece for a particular group of people, all of whom have a particular interest and a particular agenda that is being pushed by Government monies. The article performs a valuable function for this motion because it helps show other members of the cohesive group. It helps make transparent what is otherwise opaque. Beside Orlando Bosch, Eduardo Arocena, who was put in prison by the United States,⁶³ Juan Perez Franco, who fought at the Bay of Pigs, Andres Nazario Sargen, member of Alpha 66, and

⁶³ Remos describes the Junta Patriótica Cubana’s placards and slogans, including one calling for Eduardo Arocena’s freedom. Remos is a member of that group. Eduardo Arocena is founder and leader of the paramilitary organization Omega 7. (Jim McGee and Bob Lowe, “FBI Agents Arrest Omega 7 ‘Mastermind’”, *THE MIAMI HERALD*, July 23, 1983.)

others identified with Mas Canosa's Cuban-American National Foundation are identified in the article and accompanying images. Helen Ferre Aguirre, previously discussed, the opinion editor of *Diario Las Americas*, and who received government funds, edited the Orlando Bosch piece. The amount of money that flowed to the people named in this one article is substantial.

134. Armando Perez Roura, referred to in the Remos article, was a director of WAQI, Radio Mambi, which tried to transmit programs to Cuba and rebroadcast Radio/TV Marti programs in the United States. Radio/TV Marti rebroadcasted Roura's daily Radio Mambi segment in "Tome Nota". Other journalists on Radio Mambi, we believe, illegally received funds from the United States Government. Roura, Radio Mambi, and Radio/TV Marti were constant commentators on the trial.

135. Daniel Morcate also received Government monies. In *The Miami Herald* of May 13, 1999, he followed Basulto, Estorino, and Ariel Remos' themes. Morcate claimed that "U.S. Government officials could be directly or indirectly involved in the crime." He writes "These prosecutions, however, should just be the beginning of a deeper inquiry. That the prosecution has excluded Fidel Castro suggests that the jury failed to fully liberate itself, if not from political pressure, then at least of the concerns of possible repercussions of going to the core of the problem."⁶⁴

136. We can subject each and every article written or spoken radio or television show to the same analysis as the Remos, Muller, and Cancio articles. The articles could all have been written by one person. They are monolithic. That is what propaganda is. We believe it's not

⁶⁴ Daniel Morcate, *Imperfect Crime*, THE MIAMI HERALD, May 13th, 1999. **Exhibit X**. The trial Judge noted outside articles & events that may have influenced the jury. The Court only knew of very few of those events and articles, and did not know that in all likelihood they were Government-driven and Government-created. (*Medina v USA*, 2255 Motion, transcript 1817-1826, 2266-2279, 2637-2641, 6730-6762, 7130-7136)

necessary at this point to take each article apart. If the Court feels it is necessary we will immediately supply that information.

137. As Professor Kimber and others make clear, the issue here is not the truth or falsity of all those heavily charged articles – we are only showing the Courts how the Government deliberately, in an attempt to influence this jury, used “history” in the campaign against Movant. The paid journalists, many of whom were sophisticated propagandists, knew what they were doing when they wrote about elements unrelated to the trial – it gave their stories the punch and context that this Government, to assure a conviction, wanted. That’s why they were paid for it, and that is why they did it. That is why they succeeded.

138. Professor Kimber’s book says:

“While the Elian affair played out in the streets of Little Havana and on the TV screens around the world, reporters in South Florida’s Spanish-language press were busily whipping their readers – including, of course, potential jurors – into a frenzy of hostility and hysteria against the accused Cuban spies.” (p.346)

139. Critical domestic and international interests were at stake in Movant’s case. Carl Bernstein, a Pulitzer Prize winner, one of the authors of *All the President’s Men*, a former outstanding reporter for the Washington Post, and one of the leading investigative reporters in the country, wrote extensively on the Government’s use of the media and journalists in similar situations long prior to the Movant’s case, foreshadowing what would be done in this case.⁶⁵

140. As the Carl Bernstein article indicates, and contrary to the Government’s argument, this is not a case where we start an argument without a base - from nothing. We are not looking for a “smoking gun.” Events occurred. We have the “smoking gun”; agents were secretly paid substantial sums by our government to convict Movant.

⁶⁵ Carl Bernstein, *The CIA and the Media*, Rolling Stone, October 20th, 1977. **Exhibit Y.** The Government’s Response asks this Court to follow its lead and make believe that none of what happened in Miami happened.

141. Official Government documents show the Government's recognition of the value of secretly using media in the struggle started years before the shoot-down occurred. In 1960 the Government owned parts of Miami media stations, and using covert journalists in Miami as partisans in the Cuban-American conflict⁶⁶ Monies throughout the ensuing years were wrongfully paid into "independent" media outlets in media to propagandize in the United States. Journalists in the 1960s, and thereafter, who were employed by the Government were individuals who had shown a history and willingness to do and say anything to defeat the Cuban Government. Government documents show an agency suggestion that the United States should blow up an American boat in Guantanamo and blame it on the Cuban government and Cuba, and that the United States should shoot and kill people fleeing from Cuba to the United States and blame it on the Cuban government and Cuba.⁶⁷

⁶⁶ Government records, below, from March 16th 1960 indicate the beginning of a long history of the use of journalism and the Government's methods in Miami in 1996:

"A PROGRAM OF COVERT ACTION AGAINST THE CASTRO REGIME

Objective: The purpose of the program outlined herein is to bring about the replacement of the Castro regime with one more devoted to the true interests of the Cuban people and more acceptable to the U.S. in such a manner as to avoid any appearance of U.S. intervention. Essentially the method of accomplishing this end will be to induce, support, and so far as possible direct action, both inside and outside of Cuba, by selected groups of Cubans of a sort that they might be expected to and could undertake on their own initiative. Since a crisis inevitably entailing drastic action in or toward Cuba could be provoked by circumstances beyond the control of the U.S. before the covert action program has accomplished its objective, every effort will be made to carry it out in such a way as progressively to improve the capability of the U.S. to act in a crisis.

PROPAGANDA

"Articulation and transmission of opposition views has already begun. Private opposition broadcasts (i.e. purchase of commercial time by private individuals) have occurred in Miami (medium wave) and arrangements have been made with station WRUL for additional broadcasts from Massachusetts (short wave) and Florida (broadcast band). [redacted] and [redacted] have also agreed to the use of commercial stations for short wave broadcasts from [redacted] and [redacted]. CIA has furnished support to these efforts through encouragement, negotiating help and providing some broadcast material.

Newspapers are also being supported and further support is planned for the future. Avance, a leading Cuban daily (Zayas' paper), has been confiscated as has El Mundo, another Cuban daily. Diario de la Marina, one of the hemisphere's outstanding conservative dailies published in Havana, is having difficulty and may have to close soon. Arrangements have already been made to print Avance weekly in the U.S. for introduction to into Cuba clandestinely and mailing throughout the hemisphere on a regular basis. As other leading newspapers are expropriated, publication of "exile" editions will be considered.

Inside Cuba, a CIA-controlled action group is producing and distributing anti-Castro and anti-Communist publications regularly. CIA is in contact with groups outside Cuba who will be assisted in producing similar materials for clandestine introduction into Cuba."

⁶⁷ See Weiner, *Legacy of Ashes*, Doubleday 2009, Part Three, *Psy War on Cuba*, by: John Elliston, P. 92-96

142. The multiple reasons why the Government has used, paid, and infiltrated journalists in the past in Miami all existed in Miami from 1996 to 2001. The Bernstein article and the Church Committee investigation also show why further discovery is required and necessary. This discovery motion is brought now because of the Government's previous disingenuous response to the §2255 application and because there is no alternative. We cannot, on our own, go any further in seeking to get information from the Government. Nor can we get the non-government witnesses we want to speak with to talk to us, even if we locate these witnesses decades after the fact. I tried. For example, Thomas Fiedler, the Editor at the *Miami Herald*, at the time of the events, now the Dean at the College of Communications at Boston University, who could be the a critical witness, said he would speak about the facts but only under subpoena. Fiedler knows what happened at the *Miami Herald*. He was directly involved. He previously said it was propaganda. He and I spoke. He does not want to be seen as favoring either party by speaking to one party alone. He, like other potential witnesses, fears allegations of collusion.

143. We also want to obtain discovery from former Government officials.⁶⁸ I have tried; I have located some but not others. I asked questions of an individual who was involved with the Government at the time in question. At the top level of management in the Voice of America, and familiar with Radio/TV Marti, he broke off our conversation as I pressed for answers. He could have answered nearly all of the questions we raise in this motion. He will respond to a subpoena.

144. Of course the Government, being the Government, has greater access not only to its own past and present employees but also to non-governmental witnesses as well as to funds and to people. Representing five convicted defendants, in a Miami case with four killings, where

⁶⁸ Because of the passage of time, some of the more important witnesses are dead.

Movant's interests are allegedly so "deeply intertwined" with Fidel Castro, and whatever remains of the "Red Menace" and Cuba, I have had doors shut in my face.

145. The context for the Church Committee is significant. The Government should appoint a similar investigative inquiry concerning the events in Miami. It is important to note as we look at Miami, in 1996 to 2001, how and why the Church Committee⁶⁹ arose and why a fuller investigation is needed in this case. The Church investigation arose out of a history of transgression. Many of those same transgressions are evident here. In the beginning of the 1970's, due to the combination of the Vietnam War and the developments in the Watergate scandal, the United States Congress decided to rein in the Nixon administration and attempt to discover the extent of the questionable, if not illegal, activities of several of the nation's intelligence agencies, including the CIA. The result of this Congressional inquiry was the Church Committee. Some of those agencies were, we believe, involved in Miami before and after 1996. Bay of Pigs veterans, including Basulto and many of the journalists we named, were involved in the Nicaragua events with some of the same personnel and same agencies that had been involved in the Bay of Pigs and Nicaragua.

146. Following a trend of publicity surrounding the questionable actions of the Government, the final straw that began the Church Committee study was the publication of Seymour M. Hersh's *New York Times* article on December 22nd, 1974. In that article Hersh described the actions of U.S. Government agencies, including "a massive, illegal domestic

⁶⁹The Church Committee was the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, a U.S. Senate committee chaired by Senator Frank Church. The Committee's duty was to investigate Government agencies in response to the Watergate scandal.

intelligence operation during the Nixon Administration against the anti-war movement and other dissident groups in the United States.”⁷⁰

147. According to Carl Bernstein in his 1977 article, the organizations which have been implicated in the past Government cooperation for monetary gain include NBC, ABC, the *Associated Press*, United Press International, Reuters, Hearst Newspapers, *Newsweek* magazine, the Mutual Broadcasting System, Scripps-Howard, the *Miami Herald*, the old *Saturday Evening Post* and *New York Herald-Tribune*. Also, major media executives have been linked to this kind of behavior, including William Paley of the Columbia Broadcasting System, Henry Luce of Time Inc., Arthur Hays Sulzberger of the *New York Times*, Barry Bingham Sr. of the *Louisville Courier-Journal*, and James Copley of the Copley News Service.⁷¹ Most valuable to the Government by far, according to Government officials, have been associations with local media.

148. The Government’s relationship with the news media “majors” allowed them to post valuable journalistic assets domestically without exposure for over two decades. Government files show that in most cases, officials with the highest ranking would deal with a single designated individual in the top management of the news agency with whom it was cooperating. This included basically partnerships between high-ranking Government officials and some of the best known correspondents in the media business. (Bernstein p.2)

149. The line in the sand, in this case as well as in so many others, separating the American press corps and the Government, is often indistinguishable.⁷² A news agency has

⁷⁰ Seymour M. Hersh, *HUGE CIA OPERATION REPORTED IN U.S. AGAINST ANTIWAR FORCES, OTHER DISSIDENTS IN NIXON YEARS.*, *The New York Times*, December 22, 1974, at 1. **Exhibit Z.**

⁷¹ Much of this argument and the arguments in paragraphs numbered 141 et seq. draw heavily from Carl Bernstein’s article titled “The CIA and the Media”, published on October 20, 1977 in *Rolling Stone Magazine*, and can be found at Exhibit Y.

⁷² Getting detailed responsible information about the Government’s use of radio Marti funds for illegal purposes has always been difficult. As late as 2011, Radio Marti was failing to give information to the Government as to exactly what it was doing. See GAO reports on Cuba (Exhibit P).

rarely provided cover for or written stories for the Government, or the exchange of information, between the media and the Government without the explicit knowledge of the upper management. We do not know about the other media involved. The media and the Government are both often served by “undercover” reporters or agents, who can help put together a news story and include Government “facts” it trusts. The idea that the Government recruited individual reporters alone in the past was a false one. There is ample evidence that America’s leading publishers and news executives, in the past, have allowed themselves and their organizations to cooperate with the Government. “Let’s not pick on some poor reporters, for God’s sake,” William Colby exclaimed at one point to the Church Committee’s investigators. “Let’s go to the managements. They were willing.”⁷³ Overall, said Carl Bernstein in 1977, about twenty-five news organizations have previously provided cover for the Government. Here, of course, we believe those numbers in this case, to be enormous.

150. Government monies seem never to have gone to anyone not determined to influence a conviction. The recruitment of journalists in the past, as here, has been generally handled through Washington D.C. Here, it was Miami. After the Miami journalist had gone through a background check, and often signed a pledge of secrecy and a contract, the actual approach and discussion was most often handled by a high ranking Government official or operative. “The secrecy agreement was the sort of ritual that got you into the tabernacle,” said a former assistant to the director of a Government organization. “After that you had to play by the rules.”⁷³

151. David Attlee Phillips, a Central Intelligence officer for 25 years, formerly involved with Alpha 66, an organization of anti-Castro Cuban fighters and its founder Antonio

⁷³ Drawn from: Carl Bernstein, “The CIA and the Media”, *Rolling Stone*, See Exhibit Y

Veciana, estimated in an interview that at least 200 journalists signed secrecy agreements or employment contracts with the Government from 1952 to 1977.

152. We believe the number of those agreements, signed in Miami during the period in question, exceed that number. Another official described a typical example of the way that journalists on the Government payroll might be used: “In return for our giving them information, we’d ask them to do things that fit their roles as journalists but that they wouldn’t have thought of unless we put it in their minds.”⁷³ That of course is what some employees do for money and what some employers will insist on.

153. There was in Miami, prior, during, and after the trial, cooperation, accommodation, and overlap, among Government employees, management, and the paid journalists, the Cuban exile movement subverted the independent press as it strove for a dominant role in Miami politics. The Church Committee investigation, in the areas of its concern, showed that the media shared information and staff with the Government, and the Government told the media exactly what it wanted the headlines to be. The Government, in Miami, did the same – it created the headlines. All of this in exchange for financial compensation by the Government. In this case, pseudonyms used in political articles and “sources” were all in complete violation of journalist standards. The journalists documented by the Church Committee to have participated range from Pulitzer Prize winners to freelancers trying to make an extra dollar. In most of these instances, the journalists were participating in this activity with the full knowledge and consent of America’s leading news organizations. Joseph Alsop, one of America’s leading syndicated columnists in the 1950s was quoted saying that “I’m proud they asked me and proud to have done it. The notion that a newspaperman doesn’t have a duty to his country is perfect balls.” (Bernstein p. 2) There is no reason to believe that any of the paid

Government agents in this case had less testicular strength. Their motivation may have been higher than solely money. They saw this as their fight – their country – their families – their lives. But money also played a part.

154. The past helps tell us what we must look for. Government sources have admitted in the past that a particular journalist was at one point trafficking for the Government. The journalist often denies these claims, stating that they were simply having lunch with a high ranking Government official. Government sources say that a well-known ABC correspondent worked for the Government through 1973; they refuse to identify him. A high-level official said that even the august *New York Times* provided cover for about ten operatives between 1950 and 1966. He did not know who they were, or who in the newspaper's management made the arrangements, and that was not in a situation even remotely representing the tinder box that was Miami at the turn of the century.

155. The actions of these reporters and propagandists in Miami go far beyond propaganda by stripping men of their rights. In some instances in past history, the reporters' assignments were more complex than printing propaganda, as Carl Bernstein notes. These assignments included planting subtly concocted pieces of misinformation; hosting parties or receptions designed to bring journalists together with other people; serving up "black" propaganda to leading journalists at lunch or dinner; providing their hotel rooms or bureau offices as "drops" for highly sensitive information moving to and from agents. What service did the journalist knowingly provide to the prosecution when he wrote the hallucinogen story as the jury was getting the case? Where did he get the story from? Was there ever a "Cuban Official"? Why was it published on that date? Was it written at this critical time, or was it kept in a drawer

until the perfect moment? ⁷⁴ Where was the story repeated? “One of the things we always had going for us in terms of enticing reporters,” observed a Government official who coordinated some of the arrangements with journalists “was that we could make them look better with their home offices. A correspondent with ties to the [Government] stood a much better chance than his competitors of getting the good stories.” Success comes with Government access. Success is getting the hallucinogen story printed at exactly the right time and in exactly the right fashion. Here the paid journalists seem to have had access that gave them information that showed other journalists how to be rewarded – it showed journalists who are not on the payroll what they had to say and do, by shaping stories and writing false facts, to get money. The more extreme the facts and stories, the more money received.

156. There was no reason for the Court to anticipate that the day the jury was to receive the case, the story in the press would be that Castro had been giving hallucinogens to his agents. There was no reason then to believe, at the time that this Government story was deliberately and timely placed to have the jury return a guilty verdict. But it was.

157. The prosecutor, defense, and the Trial Court were all concerned about the amount of information that the unsequestered jury would get. The Government, when faced with what it believed to be a defense impropriety, filed, on December 26th, 2000, an application to “Enforce the Court’s Directive to the Media.” The Government claimed the influential effect of comments by Robert Nuccio and said “no parties should have to endure such hardship”. The Government’s

⁷⁴We understand that “Cuba used hallucinogens to train its spies” by: Wilfredo Cancio Isla (Exhibit M) was picked up by other media outlets. Originally appearing in the *El Nuevo Herald* on June 4, 2001, this article is a specific example of a article deliberately intended to, influence the jury written by a journalist paid by the U.S. Government for his reporting. The sole purpose of the article was to talk directly to jurors.

concerns were appropriate. Movant endured hardships far worse than set forth in the Governments 2000 application.⁷⁵

158. We do not know the extent to which government monies went further into the Miami independent media. The Broadcasting Board of Governors, the Church Committee, the Voice of America, and Radio/TV Marti management all know the world of propaganda and the different world of journalism. The Government agencies know the value of dealing with propagandists with previous CIA, Nicaragua, and Bay of Pigs backgrounds. They knew the propagandists to call in, knew how to focus them and knew what they did not need to tell them. Whether it is in Chile, Cuba, or Miami, the same principles apply. Journalists compete, and giving one set of journalist's access and money gave them a distinct advantage. There were two classes of journalists in Miami, those with and those without security clearances. You were either part of the Government team or you were not. The more you did what the Government wanted you to do the more you got. The writing path was lined with Government favors and money. Bribery is not an inappropriate term. Of course many of these journalists were anxious to be bribed, and as one noted, would do what he wanted to in the media, even without money.

159. Carl Bernstein tells us that the Government's past relationship with journalists, as described in Government files, include:

- a) The use of legitimate, accredited staff members of news and media organizations, usually reporters. Many were paid. The files show that the salaries paid to reporters by newspaper and broadcast networks were sometimes supplemented by nominal payments from the Government, either in the form of retainers, travel expenses or outlays for specific services

performed. Almost all the payments were made in cash.⁷³ We do not know the extent of that in the present case.

- b) Freelancers/Stringers, mostly pay rolled by the Government under standard contractual terms. In many cases, the news organizations for which these writers were publishing stories had no idea of their involvement with the Government.
- c) Columnists and commentators. There were dozens of well known columnists and broadcast commentators whose relationships with the Government went far beyond those normally maintained between reporters and their sources. They were referred to by the Government as “known assets” and can be counted on to perform a variety of undercover tasks; they are considered receptive to the Government’s point of view on various subjects. Three of the previously most widely read columnists who maintained such ties with the Government are C.L. Sulzberger of the *New York Times*, Joseph Alsop, and the late Stewart Alsop, whose column appeared in the *New York Herald-Tribune*, the *Saturday Evening Post* and *Newsweek*.

160. The Government Response claims so many of the Miami journalists received very little money. What may seem like a small amount of money to the Government often seems larger to the person receiving it. For example, in 1965-66, an accredited *Newsweek* stringer in the Far East was in fact a government contract employee earning an annual salary of \$10,000 from the Government, according to Robert T. Wood, then a government official. Some *Newsweek* correspondents and stringers continued to maintain covert ties with the government into the 1970s.⁷³ It is not just the sum that is the inducement.

161. The undercover government operative Robert H. Campbell, from 1964-65, was employed by the *Courier-Journal*. “We paid the *Courier-Journal* so they could pay his salary,” said a Government official who was involved in the transaction. Responding by letter to these assertions, Norman E. Isaacs, then editor of *Courier*, said: “All I can do is repeat the simple truth—that never, under any circumstances, or at any time, have I ever knowingly hired a government agent. I’ve also tried to dredge my memory, but Campbell’s hiring meant so little to me that nothing emerges....”

162. Mr. Bernstein writes that: “There is quite an incredible spread of relationships,” William B. Bader, a former government official, reported to the senators. “You don’t need to manipulate *Time* magazine, for example, because there are Government people at the management level.” We do not yet know the hierarchy of the Miami print, TV, and radio media during the period of 1996 to 2001.

163. In 1975 and 1976, the Church Committee published fourteen reports on various governmental intelligence agencies and their alleged misconduct. The original reports were classified, but since 1992 and the President John F. Kennedy Assassination Records Collection Act over 50,000 pages have been made public. This makes the Church Committee papers among the most complete review of Government misconduct and domestic infringement of rights in history. Their findings inform our view of what happened in the case in Miami today by showing how the Government has overstepped its boundaries in the past with the same agencies and in the same period. Many of the same agencies and even some of the same people were in Miami in 1996.⁷⁶

⁷⁶ Select findings which are informative of the situation in Miami include:

164. The Government responds by claiming we are dealing in this motion with political disputes, rather than constitutional issues and that our Government and all governments lie. Any Government with a foreign propaganda machine has the right to lie. They do not have the right to lie in the United States when it affects the integrity of our legal system behind a mask. What is permissible in foreign policy is not permissible in Court. Especially when defendant's liberty and lives are at stake. The commitment to truth and justice is paramount in court. The paid journalists deliberately intertwined foreign propaganda and supposed factual courtroom reporting to obtain a conviction.⁷⁷ Justice was drowned.

165. The Government responded by blaming Movant for commenting on the Government's "outside" references to Khrushchev, the Cold War, and the like, but Movant did

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- a) In Book Two of the Church Committee's final report, Section B, titled "The Overbreadth of Domestic Intelligence"¹⁴, included the major finding that "domestic intelligence activity has been overbroad in that (1) many Americans and domestic groups have been subjected to investigation who were not suspected of criminal activity and (2) the intelligence agencies have regularly collected information about personal and political activities irrelevant to any legitimate governmental interest." (Senate Subcommittee, Book 2, Section B, p. 1)
 - b) In Book Three of the Committee's findings, the Church Committee describes a government policy called COINTELPRO, in which governmental agencies investigate what they deem domestic threats. The committee writes: "COINTELPRO is the FBI acronym for a series of covert action programs directed against domestic groups. In these programs, the Bureau went beyond the collection of intelligence to secret action defined to "disrupt" and "neutralize" target groups and individuals. The techniques were adopted wholesale from wartime counterintelligence, and ranged from the trivial (mailing reprints of Reader's Digest articles to college administrators) to the degrading (sending anonymous poison-pen letters intended to break up marriages) and the dangerous (encouraging gang warfare and falsely labeling members of a violent group as police informers)." (Senate Subcommittee, Book 3, Final Report, p.1)

⁷⁷ Professor William LeoGrande, Dean of American University and one of America's leading Cuban experts, writes, at page 42 of his classic 1987 study regarding Cuba and the American press about the juxtaposition of the Constitutional commitment to a fair and free press that the American people are entitled to, and foreign policy: "After the crisis had passed, a major controversy erupted over the administration's handling of the press. In part, this was a product of the accumulated frustrations of the previous week, but it was triggered by several public statements by Arthur Sylvester. In an October 29 interview, Sylvester called news a "weapon" in the crisis, and defended the administration's press policy by claiming that the ends justified the means. A few days later, speaking in Syracuse, New York, he argued that the government has an "inherent right" to lie to save itself in a crisis threatening national survival. Both statements brought forth a firestorm of criticism from the press, but Sylvester backed down only slightly. Testifying before the House of Representatives Subcommittee on Freedom of Information, he tried to clarify his position: 'The government does not have the right to lie to the people, but it does have the right in facing an enemy, if information is not accurate and in intended to mislead the enemy, I think that any people will support their government in not putting out information that is going to help the enemy. And, if necessary, mislead them.'"

not write the articles. A Government journalist, paid by the Government, has every obligation to do what his employer pays him to do. If he's asked to, or even without being asked, if he can serve his employers interest, he will. As the Columbia study, the Kimber book, the Alvin Snyder study, the Clary article, the Church Committee, the *New York Times*, and the *Miami Herald* articles have all pointed out, truth goes by the wayside when the foreign propaganda machine comes into the courtroom.

166. The Government responds that we are discrediting honest men. Again the Government sidesteps the issue and sidesteps the case. The Cuban exiled journalists, "brothers" with those killed in the shoot-down were, as they saw it, fighting for the life of their families, friends, ideology, and Cuba itself. They wanted, as they saw it, to kill Movant, a man who was charged with killing close friends and colleagues they believed in. They had a blank check to distort and lie, and the more they did so, the more they received. This was their bonanza and they "milked" it. This was payback time.

167. From 2001 to the present, there are more recent examples of the Government overstepping its boundaries ethically and legally, where far less was at stake. At least in terms of American interest. What is relevant to Movant's case of these other instances, for example in the Balkans, is the method of the Government's action. In a February 4th, 2005 *Associated Press* article, an investigation brought to light the actions of the military paying reporters in the Balkans. The Inspector General at the time, Joseph Schmitz, was called on to review the Government's "inappropriate" payments to American journalists in exchange for favorable stories on two news websites influencing readers in North Africa.

168. The Government's considered Radio/TV Marti Miami decisions were not unlike its considered decision to use wrongly appropriated Government funds for illegal activity in the Williams, Central America and the Balkans case.

169. As the Balkan payments were going on, so were the payments to Armstrong Williams. The Armstrong Williams incident is particularly informative to see how paid journalists and, unknowing or knowing, third parties can be, and are, used.⁷⁸ The GAO opinion shows the many different places money can come from. It is admitted now that Armstrong Williams was secretly paid \$240,000 by the Education Department of the Government to press forward to support the Bush administration's education position. Originally, the Government tried to keep it secret by funneling it through third parties⁷⁹. We at this point have not had enough discovery to see if in addition to direct government payments there were extensive private third party conduits.

170. The Williams case shows how hard the government tries to cover their secret acts and how difficult it is to detect them. The *USA Today* article on the Williams case said:

"The contract, detailed in documents obtained by USA TODAY through a Freedom of Information Act request, also shows that the Education Department, through the Ketchum public relations firm, arranged with Williams to use contacts with America's Black Forum, a group of black broadcast journalists, 'to encourage producers to periodically address' NCLB. He persuaded radio and TV personality Steve Harvey to invite Paige onto his show twice. Harvey's manager, Rushion McDonald, confirmed the appearances."⁸⁰

171. The passion, and the number of people involved, in Movants case is far greater than the passion in the Williams Case. Lying, driven by a passion to convict Movants, is the heart of the Miami violation. Both Williams and the government originally lied, and when

⁷⁹ Howard Kurtz, *Administration Paid Commentator*, Politics, January 8, 2005 at AO1. **Exhibit AA.**

⁸⁰ Greg Toppo, *Education Department paid commentator to promote law*, USA Today. January 7th, 2005. **Exhibit BB.**

discovered, they kept lying. Williams, like the Miami paid covert journalists, had a great deal to gain by speaking to other journalists and third parties working for the Government. In addition to the monies Williams received, he had access to people and facts that other journalists did not have. It advanced his career. Other journalists, who may have known about it, like other Miami journalists on the Government payroll, saw the advantages of being a paid agent of the Government. The use of special information given to Williams also raised his visibility, and presumably his stature, to the public. Williams now had information and access few others had.

172. Williams, like some of the Miami journalists, said he did not remember if he disclosed the Government contract to audiences on the air but he said he told colleagues about the Government's payments when urging them to promote NCLB. He misremembered. He did not disclose it on air, as his taped show indicates. Not one colleague remembered him saying anything. He acted exactly like the Miami journalists.⁸¹

173. The Williams contract may be illegal "because Congress has prohibited propaganda," or any sort of secret lobbying for programs funded by the government, said Melanie Sloan of Citizens for Responsibility and Ethics in Washington. "And it's propaganda."

174. After a thorough investigation, the GAO released its opinion regarding the Armstrong Williams case.⁸² The opinion refers to the same genre of extensive third party manipulation that existed in Miami. The GAO's objective in the investigation was to decide whether the Department of Education violated the government-wide publicity or propaganda

⁸¹ The *USA Today* article says:

"I respect Mr. Williams' statement that this is something he believes in," said Bob Steele, a media ethics expert at The Poynter Institute for Media Studies. "But I would suggest that his commitment to that belief is best exercised through his excellent professional work rather than through contractual obligations with outsiders who are, quite clearly, trying to influence content."

⁸² United States Government Accountability Office, Opinion B-305368, *Department of Education – Contract to Obtain Services of Armstrong Williams*, September 30th, 2005.

prohibition.⁸³ According to the Consolidated Appropriations Act, the prohibition states “[n]o part of any appropriation... shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.”⁸⁴ The GAO goes on to explain that this act “bars agencies from using appropriations (a) to produce or distribute ‘covert’ propaganda.” The GAO concluded that the Government violated the publicity - propaganda prohibition.

175. The Miami payments were not a governmental aberration. As we see in the Church Committee investigation and the Williams case, it is often a standard way of doing business.

176. Very little has changed since the Church Committee report. As the *New York Times*, *CNN*, and the other American news media tell us, opinions to be told to the media supportive of government policy by generals and officers were recently “exchanged” for monies and defense contracts. Defense contractors were awarded contracts because of the news appearances by generals associated with these contracts.⁸⁵

177. We believe the amount of money being taken out of Government budgets by Government employees to get Movants convictions was substantial. The *New York Times* article of April 20, 2008 “Behind TV Analysis, Pentagon’s Hidden Hand”⁸⁶ by David Barstow refers to William Cowan on page 8. Cowan’s company was seeking tens of millions in contracts from the government. The “covert” speakers and their colleagues were paid either directly or indirectly in money or other benefits. The speaker can receive lavish expense accounts or parts of contracts to

⁸³ The publicity or propaganda prohibition is included in the yearly Congressional Consolidated Appropriations Act

⁸⁴ Pub. L. No. 108-199, div. F, title VI, sect. 624, 118 Stat. at 356

⁸⁵ CNN and NYTIMES

⁸⁶ David Barstow, *Behind TV Analysts, Pentagon’s Hidden Hand*, the *New York Times*, April 20, 2008 at 1. **Exhibit CC.**

the companies he represents. It is nearly impossible to conceive of all the different covert ways this was done.

178. The Miami situation involves a multiplicity of government agencies and government cover-ups. The *New York Times*, as it intertwines the Government's misuse of press funds with the *Miami Herald* story, tells us that the generals' false and misleading campaign used "special access as marketing and a networking opportunity, or as a window into future possibilities." That defines the Miami operation. Media companies as well as individual journalists benefitted by access to the "best news".

179. Inside the Pentagon, in the "General" story, the *New York Times* tells us, was a "masterpiece in the management of perceptions."⁸⁷ That secret governmental work in Miami at the time of the trial was the government's attempt to create Miami "masterpiece". The Government succeeded. They got the verdict they wanted and they kept their operation secret. Their plan escaped detection for years and the Government is still trying to hide it.⁸⁸

⁸⁷ The Government's Response continually wants to get into pro Castro and anti Castro arguments, paint the Government critics and defense lawyers as agents or partisan, and use that as a justification for the invocation of CIPA. This is neither the time nor the place to recount the view of many individuals, corporations, government elected officials and government agencies with their particular view of Cuba, Fidel Castro and Fidel Castro supporter's. The question is larger and more important for this country's constitutional principle. How did the Government and Radio/TV Marti, so sophisticated in managing perceptions "manage perceptions" in the Miami jury? Before the revolution, before the Bay of Pigs and thereafter, the multiple stories of assassination attempts at Cuban officials show, it is safe to say, there has been a substantial hostility in Miami directed at Cuba, Castro and Castro supporters. The Government, here as in the instances considered by the Church Committee, knew the exact buttons to push. It is hard to think of a more reviled figure by exiles in the Miami than Fidel Castro and his supporters. These were "models" in the Government, and at Radio/TV Marti, to show how the media was to be used against these defendants. The Government followed their models. Basulto and Brothers to the Rescue, through Radio/TV Marti and this government, waged through the secret propagandists an unprecedented media campaign that we have never seen in the other case in the United States. The management of perceptions in Miami between 1996 and 2001 was very, very easy, thorough, and successful.

⁸⁸ It is too late to say that our Government never uses its agents to manipulate the public (in nearly any way it can), or that the lessons of the Church Committee have been learned. In 2005, thirty years after the Church Committee, in Iraq, a manipulation of the press was again coordinated by the United States government. A *Los Angeles Times* article by Mark Mazzetti and Borzou Daragahi titled "U.S. Military Covertly Pays to Run Stories in Iraqi Press" (**Exhibit DD**) explains how the U.S. government had been paying local Iraqi newspapers to allow the Army's "information operations" troops to write bias stories and pass them off as free speech on the part of the local paper. The articles, written by American soldiers in English, were translated to Arabic and published unbeknownst to the population of Baghdad. A senior Pentagon official was quoted saying: "Here we are trying to create the principles of

180. The facts offered on this motion totally change the dynamic and the applicable law concerning every aspect of this case, including the change of venue issue. Our argument of course does not limit the Government's First Amendment right to speak either about foreign or domestic affairs. The Government can, within limits, say what it wants. To go outside those limits, deliberately, in a case where the speech is directed at an ongoing trial to get a conviction of defendants, violates the Constitutional rights of these defendants.

181. This case goes beyond the anti-propaganda statutes. The Government's obligation to identify itself is never more important than when the Government is talking to jurors during an ongoing domestic trial about that very trial. The obligation is greater here than in Williams, greater here than in the Central American case. What the Federal Government cannot do, covert Government employees or agencies cannot do. It is of course far worse when it

democracy in Iraq. Every speech we give in that country is about democracy. And we're breaking all the first principles of democracy when we're doing it." This applies directly to Miami in the period of 1996 to 2001.

Jeff Gerth and Scott Shane of the *New York Times* on December 1, 2005 wrote "U.S. Is Said to Pay to Plant Articles in Iraqi Papers". (Jeff Gerth and Scott Shane, *U.S. Is Said to Pay to Plant Articles in Iraqi Papers*, the *New York Times*, December 1, 2005. **Exhibit EE.**) The *New York Times* refers to an article published in the Iraqi press, they wrote: "But far from being the heartfelt opinion of an Iraqi writer, as its language implied, the article was prepared by the United States military as part of a multimillion-dollar covert campaign to plant paid propaganda in the Iraqi news media and pay friendly Iraqi journalists monthly stipends, military contractors and officials." It is as if the Church Committee never existed.

A reading of the *New York Times* article by Abby Goodnough on Miami and the Gerth and Shane Iraqi articles, and the Armstrong Articles on September 9th, 2006 shows how the Iraqi and Williams situations were similar to the Miami situation. Gerth and Shane write how the U.S. government paid Iraqi newspapers directly to print propaganda, and how they recruited Iraqi journalists and paid them monthly salaries to write stories viewed as favorable towards America. The Government's view that Miami, Iraq, and Williams are proper, appropriate, and benign has been firmly rejected. We know of no one in Government other than this prosecutor, who any longer defends it.

Another blatant example of Government manipulation of the press in Iraq in 2005 can be seen in an article about Iraq's oil industry. The story opened in Al Hayat, an Arabic newspaper in London, with three paragraphs "taken verbatim" from an oil ministry spokesman. But the Government version of the story took out one quotation from the ministry spokesman which was critical of American reconstruction efforts. The government not only omitted the quote, but changed it to a more U.S.-friendly message.

The obvious connections between those events are not seen by us alone. It has been recognized by the media, investigative reporters, and newspapers. The Pentagon in 2005, 29 years after the Church Committee, paid the public relations firm "The Lincoln Group" "about \$5 million with the stated purpose of accurately informing the Iraqi people of American goals and gaining their support. But while meant to provide reliable information, the effort was also intended to use deceptive techniques," according to the *Times* article. (Gerth, Shane p. 4) Other sources have also connected the dots with respect to Miami before 2000, the Church Committee, and the trial events.

is done secretly, for the juror, who expects to hear an independent voice, is having his or her views shaped and influenced by a party to the trial whom he is conditioned to rely on.

182. Simply put, as the GAO said, the Government cannot pretend to a citizen or juror to be what it is not. That is lying. And certainly not when lives are at stake and the issues are so important. It cannot continue to deceptively and covertly bombard both a community and a sitting, unsuspecting jury as it did.

183. We are not setting forth Due Process arguments because of the Government's failure to identify itself at a protest rally, or in a political debate, or even in the Williams case or even the 1987 case involving Nicaragua. We are talking of a time and place, in a high profile criminal case involving international and domestic politics, with four deaths and long sentences that is unlike any other in American history. Alvin Snyder's chapter on Miami and on Mas Canosa refers to the caudillo of Miami in the "Cauldron of Miami." This case implicated, amongst other things, national security, the vestiges of a past, the then present Cold War, killings in Miami and Havana as well as in the rest of the world, the murder of four Americans, and the trial, conviction, and jailing of five Cubans. The Government cannot go out of its way to secretly interweave extraneous facts to defeat justice.

184. Consistent with the Government's obligation to identify itself, is the separate constitutional right, of the listener to know where the information he is hearing is coming from. The American people, as jurors and the public, have the right to know the sponsor of the speech. Again, this right goes beyond the anti-propaganda statute. It is a constitutional right of its own. That separate right that each juror and each member of the juror's community had was violated.⁸⁹

⁸⁹ The Government says we must prove a more specific intentionality. We disagree. The Government knew exactly what it was doing. These funds were for something. These "journalists" knew what they were supposed to do. They were paid for a purpose. Reading their backgrounds and some of their responses, leads one to believe there is very little the propagandists would not do to ensure a conviction. Intentionality can truly be "proven" by their

7. The Government resisted exposure for many years. It is now constitutionally required to submit to Court-ordered discovery of federal and state agencies.

185. The shoot-down, arrests, and convictions were international matters. The Government saw vital international interests at stake in this case. The Government's interests were also seen from a domestic view. The government, realizing it had two separate issues that were in one ball of tar, wrongfully used all the resources it had at its disposal to oppose foreign and domestic enemies. State and local agencies were involved. Every appropriate Federal and State resource was used. In so doing, the Constitutional rights of these defendants were disregarded and violated.

186. We believe no further discovery is needed because of the Government's present and required future admissions. Because the Court may feel otherwise, we discuss the discovery issues. The Government's discovery obligation on this motion has been recently clarified in the three Department of Justice Memoranda Addressing Discovery Obligations of the Prosecution in Criminal Cases.⁹⁰ The memoranda were issued after the Government, in a number of highly publicized cases, was found to have wrongfully withheld information from the defendant. Those memoranda, as we can see from the opinion of District Judge Wolf in USA v Jones, 686

responses. Nor is it necessary to prove a particular agency, entity, government, person, address, nor activity, nor particular part of the government, as acting wrongfully. The Government resists, it claims otherwise. For example, a CIA employee, perhaps at the State Department or another department may be there as a secured employee. The Government had long begun its practice of "covert operations in the United States – giving funds to conduits and friends. Through entities affiliated with democracy promotion campaigns the Government channels funds. The giving of the funds may have been "open" but the giver was not, nor was the purpose. The Government wanted to be deceptive. Many "democracy promotion" entities flourished in Miami – it's hard to think of any metropolitan area in the United States where they were more active. We are entitled to discover who did what in Miami that is relevant to this case.

⁹⁰ Memorandum from David Ogden, Deputy Attorney General, to Department Prosecutors, January 4, 2010. **Exhibit FF.**

F.Supp.2d 147 (2010) where the District Court describes the history and intent of the new guidelines, seems to have been promulgated with Movant's case in mind.⁹¹

187. The Government's July 6th, 2012 Response contradicts and ignores the purpose and spirit of new Holder directive.⁹²

188. These directives inform this motion. On January 4, 2010, the Department of Justice issued the memoranda that "address discovery practices in criminal cases and outline specific steps intended to help ensure that federal prosecutors comply with their discovery obligations."⁹³

189. After the 2009 dismissal of former Senator Ted Stevens' conviction, Attorney General Eric Holder instituted additional training for prosecutors regarding discovery obligations, and also created a working group of senior prosecutors and attorneys from the Department of Justice and the United States Attorney's office, representatives from law enforcement, and IT professionals. This United States Attorney's office may have been involved and may have promulgated further guidelines for this district. The purpose of this group was to explore the department's training and practices related to discovery in criminal cases. The result of this group's work was the issuing of the three memoranda by Deputy Attorney General David Ogden.

⁹¹ From 686 F.Supp.2d 147: "The United States Attorney's office has made intensive efforts to better prepare its prosecutors to perform their duties to provide discovery. While the Court remains skeptical that training involving prosecutors alone will suffice, representatives of the United States Attorney participated in planning the educational programs prompted by this case, which was organized by the court and involved prosecutors, defense lawyers, judges, and a law professor. That program was voluntarily attended by the vast majority of Assistant United States Attorneys in this district and by an official of the Department of Justice responsible for the training of Federal Prosecutors. The new United States Attorney, Cameron Ortiz, participated in the program, welcomed the "unique opportunity" that the program offered, judged it to have "considerable" value and pledged her best efforts to assure that her prosecutors always "do the right thing. In addition, in January 2010, Attorney general Holder instituted a series of initiatives to assure that prosecutors understand their duties concerning discovery and discharge them in a way that is faithful to the Department of Justice's highest aspirations and finest traditions." Judge Wolf found the United States attorney's conduct was unintentional in her failure to comply with this directive.

⁹² This Court should note that Government resists nearly all discovery aimed at finding out what Radio Marti does.

⁹³ Department of Justice Memoranda Summation from Morrison and Foerster: <http://www.mofo.com/department-of-justice-issues-memoranda-addressing-discovery-obligations-of-prosecutors-in-criminal-cases-01-05-2010/>

190. The first memorandum to all Department of Justice prosecutors urged prosecutors to realize that their duty is to “seek justice”. In this section, Ogden explains that even a minor lapse in discovery procedure can have disastrous effects. He tells prosecutors that providing all discovery in a speedy and efficient manner, even discovery which could disclose “exculpatory and impeaching evidence,” is in the best interest of the state in order to avoid a widespread lack of faith in the criminal justice system. The prosecutor has done exactly the opposite in this case.

191. The second memorandum, sent to United States Attorneys and the heads of the Department of Justice directing them to develop a policy for each office regarding discovery in criminal cases. The policy was instructed to include the timing of discovery and the assurance that all prosecutors in criminal cases will turn over any interviews with any witness, testifying or not. The policy that each office was to implement was to be based off of district and circuit court precedents and be completed by March 31, 2010.

192. The third memorandum issued by the Justice Department titled “Guidance for Prosecutors Regarding Criminal Discovery”, referred to as “Guidance”, specifically outlines a prosecutor’s responsibility when it comes to discovery in a criminal case, including step by step instructions and factors to consider. These recent guidelines seemed to anticipate this case.

193. “As a first step, the Guidance directs prosecutors... ‘to err on the side of inconclusiveness when identifying members of the prosecution team for discovery purposes.’”

194. The guidelines tell us the Government must look for discovery information in all agencies, whether it is to look at the Federal Bureau of Investigation, or the Broadcasting Board of Governors, or the Office of Cuba Broadcasting. Prosecutors are told they must consider eight factors:

- a) Whether the prosecutor and the agency conducted a joint investigation or shared resources related to investigating the case
- b) Whether the agency, for example (OCB and BBG), played an active role in the prosecution, including conducting arrests or searches, interviewing witnesses, developing prosecutorial strategy, participating in targeting discussions, or otherwise acting as part of the prosecution team
- c) Whether the prosecutor knows of and has access to discoverable information held by the agency
- d) Whether the prosecutor has obtained other information and/or evidence from the agency
- e) The degree to which information gathered by the prosecutor has been shared with the agency
- f) Whether a member of an agency has been made a Special Assistant United States Attorney
- g) The degree to which decisions have been made jointly regarding civil, criminal, or administrative charges
- h) The degree to which the interests of the parties in parallel proceedings diverge such that information gathered by one party is not relevant to the other party.

210. What were the September 2006 events surrounding the *Miami Herald's* investigation and the follow up investigations, such as the Columbia University investigation

where participants in the *Miami Herald* story were interviewed at length?⁹⁴ What did the Government do and say when it learned of the *Miami Herald*'s investigation? What did they do to try to stop the story and to continue and expand the concealment? What did the Government say when it put so many journalists on so many payrolls? How did they decide their success in influencing the community in order to get millions and millions of dollars in funding? What else did Radio/TV Marti justify for its Miami operation? Why was one journalist or one Media Company chosen over all others?

211. The Government, in FOIA applications, and in response to Congress and scholars, resists discovery.⁹⁵ It is inconceivable that the Movant has no discovery right in a case where he faces life imprisonment, when the GAO, where there was a "smaller" similar violation of federal law had total unhampered discovery.

212. The competition among the FBI with other Government agencies, as well as between state and local law enforcement and federal agencies, and their separate involvement with both the paid journalists and those paid journalist's goals, is of great significance. What is the illegal "masterpiece" created in this case? Did any State or local law enforcement official knowing of federal violations try to cover up? The close ties between state and local law

⁹⁴ I contacted Columbia University to get copies of the interviews of Fiedler, Corral, the paid journalists, and others to see, amongst other things, what other information Corral had obtained about other journalists and the Government. Corral told Columbia University his original article was cut (*When the Story is us: Miami Herald, Nuevo Herald, and Radio Marti*, Columbia University Case Study, CSJ-10-0026.0, p14). Columbia University refused to make those interviews available, claiming they were confidential. The University said they would honor a subpoena.

⁹⁵ For example, Professor John S. Nichols, a Professor of Communications and International Affairs at Pennsylvania State University gave his testimony before Congress on Radio and TV Marti on June 17th, 2009. He said: "Furthermore, it is at least ironic that, while TV Marti is supposedly about freedom of information for the Cuban people, the U.S. government has not been forthcoming in releasing information to the U.S. public about its operation of the station. I have filed numerous Freedom of Information Act requests for relevant unclassified documents, but almost all of those requests have been ignored or inappropriately denied. It is equally ironic that most of the three-way correspondence among the United States, Cuba and the International Telecommunication Union was supplied to me by Cuban officials." (John S. Nichols, *TV Marti has Virtually No Audience, Violates International Law, and Should be Closed*, Before the Subcommittee on International Organizations, Human Rights and Oversight, Committee on Foreign Affairs, U.S. House of Representatives, June 17th, 2009.)

enforcement agencies and anti-Castro forces in Miami have previously been extensively documented in many books and articles. The spirit of the new memoranda should be followed to see what those agents did in this case with relation to the paid journalists. When prosecutors are to determine when to look for discoverable information from state and city law enforcement agencies (like Florida and Miami), they are, the guidelines tell us, directed to consider three factors:

- a) Whether state or local agents are working on behalf of the prosecutor or are under the prosecutor's control
- b) The extent to which the state and federal government are part of a team, participating in a joint investigation, or sharing resources
- c) Whether the prosecutor has ready access to the evidence.

8. Conclusion

215. The Government attacks me. I was not involved in this case at any time prior to this year. I had heard of it but had not seen one single document and had read only one single opinion, the Eleventh Circuit Court of Appeals' En Banc venue ruling. I had not seen or read the trial record. When I did learn, this year, of the Government's interference with the trial and its subterfuge, I read more of the documents and did my own investigation. Some of that is set forth in this affidavit. I came up with very little, but more than enough.

216. Because the facts and circumstances in this case show what I believe to be a serious abuse of constitutional rights, I was appalled and agreed to represent the Movant.

217. This motion was brought on too hurriedly and with too little resources. The longer I delayed to get more facts, the longer the men wrongfully spent time in jail. When faced with

men spending years in jail, I made the decision to file. With a snap of the finger, the Government could produce all the documents and all the testimony this Court needs to render a decision that will vacate the conviction.

218. The question for the Court is clear and simple. Was American justice done in this case?

219. Every dollar for every article, image, radio or television show that was spent on this secret program violated the integrity of the trial. That is why the prosecutor resists discovery.

220. Every person who decided to pay, paid, took funds, or covered up those payments in this secret program, violated the integrity of the trial. That is why the prosecutor resists discovery.

221. It is surprising to see this prosecutor so minimize the effect of the printed and spoken word. It is as if the founders of this government, American history, the Constitution, and the First Amendment, never existed.

222. The fundamental concept of a fair trial was negated as the Government created a consistently intolerable influence that is structural error.

223. Attorney General Eric Holder Jr. was not responsible for this prosecution when it began. He is now. Movant's conviction should be vacated. The Department of Justice should forward the facts of these events to the President and Congress so that we may hope that this will never happen again in the United States.

Date: *August 17th, 2012*

MARTIN GARBUS

Sworn to before me this
day of , 2012.

Notary Public