

817 Henderson Street
Gambrell Hall, Suite 440
Columbia, SC 29208
July 13, 2015

Steven Eisenberg, Esq.
2 South Biscayne Blvd.
Penthouse 3800
Miami, FL 33131

Re: Reply to July 2, 2015 Letter Regarding Unauthorized use of Images in *José Martí: A Revolutionary Life* by Alfred J. López

Dear Mr. Eisenberg:

I am replying to your letter dated July 2, 2015 accusing me of defaming Dr. Alfred J. López.

The elements of a cause of action for defamation are: (i) a false and defamatory statement concerning another, (ii) unprivileged publication to a third party, and (iii) damage to the individual.

Truth is an absolute defense to a claim for defamation. Even if a statement reflects negatively on an individual, it does not constitute defamation if it is true. Dr. López appropriated the two images at issue, Manuel Mantilla's 1885 death certificate and Maria Mantilla's 1880 birth certificate, from my website without my permission and without giving me credit for the images in his book, *José Martí: A Revolutionary Life*. He purports that these are "public documents" and according to his letter to me of June 8, 2015, attributed them in his book "to their respective sources: the City of New York and the City of Brooklyn." However, those are phony citations taken from the 19th century titles on the documents. The correct academic citation for both is: "New York City Department of Records and Information Services, Municipal Archives."

<http://www.nyc.gov/html/records/html/home/home.shtml>

That is how they are cited on footnote 14 of my article "Fernandina Filibuster Fiasco: Birth of the 1895 Cuban War of Independence," *Florida Historical Quarterly*, 82:1 (Summer 2003): <http://www.latinamericanstudies.org/academic/fernandina.pdf>.

To acquire those images, I had to travel to New York City at my own expense, spend hours doing research at the municipal archives to find them, pay the fee for each image, for which I have receipts, and then spend time on Photoshop editing each image so that they could be readable before finally posting them on my website.

Dr. López admitted in his letter to Babalu Blog, dated June 6, 2015, that he took the two images from my website: "**I found these two documents at www.latinamericanstudies.org**, a website created in 1997 and still apparently operated by [Dr. de la Cova]" (emphasis added). In the letter that he sent to me, dated June 8, 2015, he also admitted to taking the two images: "**I acknowledge having found these two documents at www.latinamericanstudies.org**, a website you apparently created in 1997 and still operate" (emphasis added). Therefore, there is no dispute as to the truth

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of my statements that Dr. López purloined the two images from my website. Indeed, the images that appear in his book are identical to the ones from my website, right down to the pixel rates and Photoshop markings.

In my correspondence with the University of Texas Press, I asked them twice to inform me who Dr. López cited in their Illustration Permission Form as granting him permission and publication rights for the images. The press never responded to my inquiry, leading me to believe that either the forms do not exist or that Dr. López did not indicate that he took the images from my website without permission, which he now acknowledges.

While the University of Texas Press did include a standard legal boilerplate exculpatory clause in their email to me stating that “**We must state** that paying the image fees is in no way an acknowledgment that our author has violated any intellectual property rights. **We also feel strongly** that he has not violated the spirit of the AHA’s standards of professional conduct” (emphasis added). The press’s statement is a standard legal boilerplate exculpatory clause to shield themselves in case of any future legal actions against them. The language they used “we must state” and “we also feel strongly” is not an outright denial of Dr. López’s plagiarism. Moreover, their action of paying the image usage fees and an additional amercement is an acknowledgment of Dr. López’s wrongful conduct.

As I stated in my first letter to the University of Texas Press, on March 18, 2015, Dr. López’s actions constitute a violation of the American Historical Association’s (AHA) *Statement on Standards of Professional Conduct* which indicate that “[p]ractic[ing] history with integrity means acknowledging one’s debts to the work of other historians” and “document[ing] [one’s] sources.” Dr. López did not accurately acknowledge where he retrieved the two images and did not properly document his source for the images and instead used a phony citation. Thus, he violated the AHA *Standards of Professional Conduct*.

Nonetheless, the University of Texas Press’s attempted denial of Dr. López’s conduct is futile as Dr. López already conceded that he did in fact take the two images from my website. Therefore, my statements of Dr. López do not constitute defamation because they are in fact true.

Dr. López, in his letter to me on June 8, 2015, is erroneous in assuming that I received a letter from the University of Texas Press accompanying the \$400 check that was sent to me in payment for the two images taken from my website without permission. The check came directly from their accounting office without any further communication. Dr. López is also mistaken when believing that his editor Casey Kittrell wrote to me. I have never received a letter or email from Mr. Kittrell nor communicated with him in any form.

I sent my exchange of letters with the University of Texas Press to Bob May, Professor Emeritus of History at Purdue University, who has been my academic mentor since 1990 and was a member of my dissertation committee. He vaguely recalled by phone being on a grant committee that financed Dr. López’s research and on June 7, 2015 emailed me this: “That correspondence is

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absolutely fascinating and I am saving it just in case any copyright issues arise ever in my own work. What wonderful references to appropriate copyright statute and so on. Good for you in protecting the hard work you exert in establishing and maintaining your wonderful web site!"

Regarding removing my comments from Babalu blog, I am not affiliated with that blog, like Jorge Ponce, Dr. López's cheerleader in that forum. I have no way of deleting those blog posts, the same way that I cannot remove my comments from the *New York Times* or other electronic publications. My statements were mostly in response to Dr. López's disparaging rant against Babalu blog and the historic Cuban exile community, patterned on Cuban Communist propaganda, in the Huffington Post blog on March 18, 2015: http://www.huffingtonpost.com/alfred-j-lapez/cuban-americans-behaving-badly-or-the-cayman-in-winter_b_6844576.html in which he stated in part:

"It was only my discovery of a **tiny, but very grumpy cyber-outpost of old-school Cubans [Babalu Blog]** (emphasis added) hating on a book that I have written but they have not read – that gave me my thesis." He concluded by emphasizing what his "former colleague – to the hardliners, 'accused Castro spy' – Lisandro Pérez would call their 'expiration date.'"

If Dr. López affirms that Babalu blog is "a tiny, but very grumpy cyber-outpost of old-school Cubans" I don't understand how that "tiny" blog can "maximize injury" to his reputation. In my criticism of his book in my Babalu response, on March 25, 2015 at 1:16 PM, I challenged those disagreeing with my conclusion of *José Martí: A Revolutionary Life* to respond and stressed: "I welcome their opinion to stimulate academic debate." Neither Dr. López nor his apologists responded to my challenge.

I have referred to Dr. López's work in my capacity as a scholar having critically reviewed thirteen books (1997-2007) for academic publications: <http://www.latinamericanstudies.org/articles.htm>. I consider Dr. López a "Fidel Castro apologist" for citing the dictator's *History Will Absolve Me* in Martí's biography, which I believe is irrelevant and politically motivated. Likewise, in my review of Anthony DePalma's book, *The Man Who Invented Fidel: Cuba, Castro, and Herbert L. Matthews of the New York Times*, I stated that "DePalma, like Matthews, is an apologist for the terrorist acts of Castro's 26th of July Movement" <http://www.latinamericanstudies.org/academic/cuban-affairs.pdf>. DePalma, however, did not complain about my constructive criticism, nor threaten the academic publication with a lawsuit.

I do not comprehend how stating that Dr. López "is not a trained historian" is defamatory. His title indicates that he is a "Professor of English and Comparative Literature," and he does not have a Ph.D. in History. In my review of Rodrigo Lazo's book, *Writing to Cuba: Filibustering and Cuban Exiles in the United States* <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=h-latam&month=0510&week=d&msg=JjgfW%2bWZUsmG6AKyhErbOw&user=&pw> I referred to similar problems that also appear in Dr. López's work. Since Lazo also has a degree in literature, I wrote that "A substantial problem with this work is its classification as a history book, which is not the author's main field of expertise . . . As a result of relying on weak sources, Lazo provides

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cursory biographical data on most of the leading exile literary figures.” Dr. López’s book likewise relies mostly on secondary sources, which is why, as a historian, I consider it a “mediocre work.”

I also commented on Babalu blog: “Alfred López is grateful in the acknowledgments to accused Castro spy Lisandro Pérez; Adriana Méndez Rodenas, an activist with the pro-Castro *Areito* magazine and Antonio Maceo Brigade and participant in the 1978 ‘dialogue’ with the dictatorship; and Emilio Bejel Aguilera, another *Areito* collaborator.”

Regarding *Areito* and the Antonio Maceo Brigade, on March 4, 1982, Florida Department of Law Enforcement (FDLE) officers Sergio Piñón and Daniel Benítez testified about it before a U.S. Senate subcommittee on security and terrorism investigating “The Role of Cuba in International Terrorism and Subversion” (<http://www.latinamericanstudies.org/terrorism.htm>). Piñón and Benitez declared under oath that the Committee of 75, *Areito* magazine, and the Antonio Maceo Brigade were “sponsored and headed by the Cuban DGI” intelligence agency: <http://www.latinamericanstudies.org/dialogue/Dialogo-DGI.pdf> .

For the record, Dr. López’s friend and mentor Professor Lisandro Pérez for years has been publicly accused of being a Castro agent by retired U.S. Defense Intelligence Lt. Col. Chris Simmons on Miami Spanish-language radio and television programs. Simmons described Pérez in his “Cuba Confidential” blog on June 12, 2012, under the post “‘Burned’ Cuban Agent Moves From Miami to the Big Apple,” <https://cubaconfidential.wordpress.com/2012/06/26/burned-cuban-agent-moves-from-miami-to-the-big-apple/>, as “Identified as a Cuban Intelligence agent by no less than three separate sources.” Pérez has never taken legal action for libel or defamation against Simmons for his statements. Furthermore, two Florida International University (FIU) associates of Dr. Pérez, active in the Cuban Research Institute that he directed, were convicted Castro spies: Prof. Carlos Alvarez and his wife Elsa Pérez, <http://www.latinamericanstudies.org/alvarez-espionage.htm>.

In 1993, Professor Lisandro Pérez also tried to intimidate me after I published the academic paper “Academic Espionage: U.S. Taxpayer Funding of a Pro-Castro Funding.” His threatening letter appears at the end of the document: <http://www.latinamericanstudies.org/espionage/FIU-espionage-1993.pdf>. In spite of his bravado of referring the matter to the university attorney “for legal action given the slanderous content of the document,” Professor Pérez never carried out his threat. He likewise threatened the *Diario las Americas* newspaper with a lawsuit after they published my essay in Spanish but Pérez also failed to act.

Another Fidel Castro admirer mentioned in the essay, Prof. Carmelo Mesa Lago, likewise threatened to sue me for slander but never did. In 1978, Dr. Mesa Lago had the audacity to declare to the *New York Times* that Castro “is a political genius, perhaps the only true genius among the world’s leaders today.” <http://www.latinamericanstudies.org/dialogue/nytimes-12-31-1978.pdf>

In regard to my statement that Dr. López plagiarized from my “José Martí y la paternidad de María Mantilla” article which appeared on a blog post on May 21, 2010 at <http://eichikawa.com/2010/05/jose-marti-y-la-paternidad-de-maria-mantilla.html>, which is also

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posted on my web site at http://www.latinamericanstudies.org/maria_mantilla.htm, five years before *José Martí: A Revolutionary Life* was published, the following are my historical theories and propositions that I believe he plagiarized from that piece.

I am the first historian to ever indicate where José Martí is enumerated in the 1880 federal census, which I posted on my website here: <http://www.latinamericanstudies.org/marti/marti-census-1880.pdf>. No other scholarly publication has ever previously cited that page. A segment of that document, identical in PhotoShop markings to the one on my website, appears in Dr. López's book on page 202. The partial image caption states that Martí lived in "a boarding house owned by Henry C. Beers, June 8, 1880, entry from the 1880 U.S. Census." The name of Beers and the date do not appear on the image or anywhere else in his book. The correct academic citation should be: 1880 Federal Census, New York City, New York, page 20D, Records of the Bureau of the Census, Record Group 29, National Archives, Washington, D.C. Since Dr. López does not have the appropriate citation for the census page and does not indicate where he obtained it, it is obvious that he got the name of Beers and the date from my article "José Martí y la paternidad de María Mantilla" and from the document on my website without giving me proper credit.

Likewise, data about the Manuel Mantilla family in the 1880 federal census, which I mention in my article and appears on my web site <http://www.latinamericanstudies.org/marti/mantilla-census-1880.pdf> has never been published before, especially because the census misspelled the last name as "Mandilla." In consequence, Manuel Mantilla and his family do not appear on the census index and it would have been nearly impossible for Dr. López to find this data. I am the first scholar to publish this census data showing that Mantilla did not suffer ill health in 1880, when Martí boarded in his house, as other writers have erroneously repeated. This historical hypothesis, which I formulated in 2010, appears in Dr. López's book on page 198 but he omits citing this document in his endnotes. The correct academic citation is: 1880 Federal Census, New York City, New York, page 24D, Records of the Bureau of the Census, Record Group 29, National Archives, Washington, D.C. I believe that Dr. López plagiarized this thesis from my article as well as Martí's citation in the 1880 federal census. His failure to locate the archival source of these census records or to not properly cite them was another reason why I referred to his book as a "mediocre work."

It is also evident that Dr. López plagiarized citations from my article "Fernandina Filibuster Fiasco" which he cites on note 117 of page 375 in his book. For example, the *Florida Times-Union* articles for 1895 that he cites on notes 125, 126, 129, and 130, are referenced in my article and are also posted on my web site at: <http://www.latinamericanstudies.org/1895/Fernandina-articles.pdf>. I seriously doubt that he knows where this original material came from, as it is located in only one repository that he did not visit, and instead took it from my website. Dr. López likewise cited the *New York World* for 1895 on notes 122 and 125 and the *Savannah Morning News* for 1895 on notes 122 and 125. Nowhere else in his book does he cite those publications whose articles appear on my website. The citations of those newspapers on his notes 125 and 126 on page 375 of his book were directly lifted from footnote 17 of my article "Fernandina Filibuster Fiasco." On his following endnote, 127, Dr. López cites my article. His sequence of note citations appears to be more than just mere coincidence and I regard it as plagiarism of my article and my website.

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I have the constitutional right to freely express myself and will not be intimidated by Dr. López's accusations that I have defamed him. A statement of opinion does not constitute defamation. I will not be silenced and I will be heard. My comments regarding Dr. López are my opinion of his character based on his appropriation of my two images and his borrowing from my writings without due credit. I have the right to say and express my opinion regarding Dr. López's actions. Therefore, my statements are constitutionally protected.

Dr. López should have asked for permission, or properly cited my intellectual property and research, before purloining the two images from my website. If he would have asked for permission, or at least given me credit for the images, this entire matter could have been avoided.

Dr. López's hatred and public denunciations of the historic Cuban exile community, of which I am a public figure, prevented him from reaching out to me as a scholar, in spite of his citing in his book my academic article,

<http://www.latinamericanstudies.org/academic/fernandina.pdf>

a Mantilla-Romero family letter from 1935,

<http://www.latinamericanstudies.org/marti/maria-mantilla-1935.pdf>

and transcribed U.S. National Archives documents;

<http://latinamericanstudies.org/1895/RG-36.pdf>

all of which are posted on my website. Dr. López's enmity toward me is evident when copying his June 8th letter to my university department chair and dean by hardcopy and email. If he believed that would create a problem for me, he was wrong. Neither of these scholars have addressed this issue with me as they are strong proponents of academic freedom. This was the same failed tactic used against me by accused Castro agents Bernardo Benes and Professor María Cristina Herrera in 2005 and 2007, respectively, when they likewise threatened to sue me for defamation and notified my academic superiors.

Likewise, in 2007 another one of Dr. López's FIU bevy of pro-Castro scholars, Professor Marifeli Pérez-Stable, had ACLU attorney John de Leon threaten to sue me, Babalu blog and Henry Gómez for slander after I put on my academic website a copy of an FBI debriefing of Cuban intelligence DGI defector Jesús Pérez Méndez in which she and others are denounced as controlled by Cuban intelligence. <http://www.latinamericanstudies.org/espionage/Perez-Mendez-debriefing.pdf>

Gómez's response appears here: <http://heraldwatch.blogspot.com/2007/03/herald-contributor-attempts-to-silence.html> This was just another failed attempt at intimidation, as no legal action was ever taken.

I was completely vindicated two years later when former Cuban political prisoner and U.S. Ambassador to the United Nations Armando Valladares published the article "Their men in higher ed" in the *Washington Times* on June 18, 2009.

<http://www.washingtontimes.com/news/2009/jun/18/their-men-in-higher-ed/>

Valladares quoted the defector's report saying that "Marifeli Pérez-Stable assumed the spy duties of DGI agent Lourdes Casal, a Rutgers University psychology professor, who died in Havana in

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1980. So extensive were Ms. Pérez-Stable's intelligence responsibilities that the DGI prepared annual plans for her." In spite of this exposé in a leading national newspaper, Dr. Pérez-Stable never denied the accusations nor took legal action for defamation.

In addition to truth and statements of opinion constituting a defense to a defamation action, consent is also an absolute defense to a claim of defamation. Dr. López's June 8th letter to me stated "[y]ou **have my permission** to publish this letter on your website if you so desire, but only in its entirety" (emphasis added). Dr. López also gave Babalu Blog permission to publish his letter. He also pinned his letter in the blog of his friend Manuel Tellechea:

<http://josemartiblog.blogspot.com/2015/06/professor-alfred-lopez-responds-to.html>. Therefore, Dr. López himself has made this matter available to the public by granting permission to publish online the correspondence concerning this matter. In consequence, my correspondence with the University of Texas Press as well as my email exchanges with Dr. López, this letter, and any further communication regarding this case will remain on my academic website. My website also contains all the documentation of a previous lawsuit for libel against me by accused Castro agents when I was a journalist in Puerto Rico in 1984. The case was eventually decided in my favor by the Puerto Rico Supreme Court: <http://www.latinamericanstudies.org/demanda.htm>

Following Dr. López's example of posting his letter to me in Tellechea's blog, I will likewise circulate all the correspondence related to this case to my blogger friends. We do not live in Dr. López's beloved Castro's Cuba, where there is no freedom or the right to freely express ourselves.

Lastly, please make your client aware that an unsubstantiated and frivolous legal action could result in his paying for my court costs and attorney fees. A party that brings forth a malicious prosecution that is not well grounded in fact, unwarranted by existing law, or filed for an improper purpose, can be sanctioned by the court. Moreover, a plaintiff in a malicious prosecution case may recover actual and compensatory damages as well as punitive damages, which I intend to do if it reaches that point. There are no reasonable grounds for Dr. López to initiate a defamation action against me because my statements regarding Dr. López are true. Therefore, his attempt at intimidating me via a threat of legal action is fruitless. I have no ill will or malice towards Dr. López, I simply wanted the University of Texas Press to be aware that Dr. López purloined the images from my website and that I should receive proper compensation and recognition, which they have already done. As I indicated to the press in my letter of March 18, 2015, Pearson Education, Inc. requested and purchased an image from my website last year, as have done other enterprises since 1997. Dr. López could have and should have asked for my permission to use the images or at least given me proper credit. He failed to do so and has already acknowledged his wrongful conduct.

Sincerely,

Antonio Rafael de la Cova, Ph.D.