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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA No. EP:07-CR-87-KC  
v. El Paso, Texas  
LUIS POSADA CARRILES March 31, 2011

BEFORE THE HONORABLE KATHLEEN CARDONE  
UNITED STATES DISTRICT JUDGE  
TESTIMONY OF RALPH FERNANDEZ

APPEARANCES:

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1 THE COURT: You may be seated, Ladies and Gentlemen.  
2 Are we ready to proceed? Yes? Everybody ready?

3 MR. REARDON: Good morning, Your Honor. On behalf of  
4 the United States Bridget Behling, Laura Galban, Jerry  
5 Teresinski and Tim Reardon, the Government's ready for trial.

6 MR. TERESINSKI: Good morning, Your Honor.

7 THE COURT: Morning.

8 MS. ANDERSON: Good morning, Your Honor. Rhonda  
9 Anderson on behalf of Arturo Hernandez, Felipe Millan, who are  
10 present, as well as Mr. Posada. And we are ready for trial.

11 THE COURT: All right.

12 MR. MILLAN: Good morning, Your Honor.

13 MR. HERNANDEZ: Good morning, Judge.

14 THE COURT: Good morning. Ready to bring in the Jury?

15 MS. ANDERSON: Yes.

16 MR. REARDON: Before that, Your Honor, we'd like to  
17 put something on the record.

18 THE COURT: Sure.

19 MR. REARDON: Your Honor, as I understand it,  
20 Mr. Ralph Fernandez is the next Defense witness. We believe  
21 that this is a prime example where the Court, in its wide  
22 discretion, ought to consider and -- consider not allowing this  
23 witness. As much as we can discern, he is a defense lawyer who  
24 tried a case in which he cross-examined Lieutenant Colonel  
25 Hernandez Caballero and thinks that he was not truthful.

1           On cross-examination in this trial, Counsel had an  
2 extraordinary opportunity to seek to impeach Caballero in  
3 specific areas in regard to his job, in regard to a -- what's  
4 referred to as the Tampa case, a kidnapping flight. And even a  
5 spy case in Miami. And developed a record and responses from  
6 the witness, which I think, if read, were explanatory and not  
7 contradictory. And now we have a lawyer who's going to come in  
8 here and give, purportedly, his opinion about the truthfulness  
9 of -- of Colonel Caballero.

10           We think this is the exact type of extrinsic evidence  
11 that should not be allowed. It's cumulative. It's  
12 prejudicial, unduly. And under 401 and 403 and 602, that it is  
13 not appropriate testimony.

14           THE COURT: The Court will overrule the request.

15           You may proceed. Go ahead and bring in the Jury.

16           (Witness takes stand.)

17           (Jury enters courtroom.)

18           THE COURT: Good morning, Ladies and Gentlemen. You  
19 may be seated.

20           You may call your next witness.

21           MS. ANDERSON: Ralph Fernandez, Your Honor.

22           (Witness sworn.)

23

24

25

1 RALPH FERNANDEZ, SWORN

2 DIRECT EXAMINATION

3 BY MS. ANDERSON:

4 Q. Good morning, Mr. Fernandez.

5 A. Good morning.

6 Q. And can you spell your name and state your name for the  
7 record?

8 A. Ralph Fernandez. R-A-L-P-H, F-E-R-N-A-N-D-E-Z.

9 Q. Okay. We need to give the Jury a little idea why you're  
10 here today. What do you do you for a living?

11 A. I'm an attorney. And I practice in Tampa, Florida.

12 Q. How long have you been an attorney?

13 A. Since 1977.

14 Q. And where were you born?

15 A. I was born in Cuba and came over when I was eight.

16 Q. Okay. And what year would that have been?

17 A. In 1952. I've been around sometime.

18 Q. So you were born in '52 and you came to the United  
19 States --

20 A. In 1961, in -- I believe in January.

21 Q. Okay. Well, you began to tell us a little about your  
22 background and history. You are an attorney.

23 A. Yes. I was an engineer before I was an attorney. And then  
24 I began at the State Attorney's Office as a prosecutor in  
25 Tampa. I did that for three years. I was in charge at the end

David A. Perez, RMR, RPR

1 of the narcotics prosecutions.

2 And then I began the private practice of law. And I  
3 have done that, specializing in litigation, in complex  
4 litigation, since that time. That would be in 1980. So it's  
5 been a while.

6 Q. And how many years have you been practicing?

7 A. Too many to count. I guess since '77, so it sounds like  
8 35. And been married almost 40, so I try to keep those  
9 together.

10 Q. Together. Okay. I'm going to show you what's been marked  
11 for identification as Defense Exhibit 147.

12 MS. ANDERSON: And Counsel, Mr. Reardon, I provided  
13 you a copy this morning.

14 MS. ANDERSON: May I approach, Your Honor?

15 THE COURT: You may.

16 A. I have seen this before.

17 Q. (By Ms. Anderson) And you recognize it?

18 A. Yes. It's my biographical profile. Um, some things are  
19 deleted, so that you know, from the standard one. But no point  
20 in talking more about myself.

21 Q. Okay. It's a two-page biographical profile. It's a fair  
22 an accurate copy of your biographical profile?

23 A. Yes. This is the one we disseminate at times.

24 MS. ANDERSON: And Your Honor, at this time the  
25 Defense would move Defense Exhibit 147 into evidence.

1 THE COURT: Any objections?

2 MR. REARDON: Absolutely not.

3 THE COURT: 147 will be admitted.

4 MS. ANDERSON: And may we publish, Your Honor?

5 THE COURT: You may.

6 Q. (By Ms. Anderson) We began talking a little bit about your  
7 background. And you spoke about the complex litigation that  
8 you're involved in. Do you have areas of specialty within the  
9 complex litigation?

10 A. We do. What happens is, we take cases that other attorneys  
11 refer at times and -- and we try the cases. Most of them,  
12 really, after referral, are not tried. We do complex personal  
13 injury work. We do criminal defense. And we have, you know,  
14 had the luck and the good fortune, I guess, over the years of  
15 handling, you know, a large number of high profile cases.

16 Q. Okay. Does that include criminal cases, high-profile  
17 cases?

18 A. Yes, yes. I've been, again, fortunate in that I've been  
19 asked to help a number of people out. And we've done so.

20 Q. I'd like to draw your attention to the time period between  
21 1997 and 1998. Did you have an occasion to handle a case in  
22 Tampa, Florida in which the Defendants were Adel Regalado  
23 Ulloa -- you're going to correct me on this pronunciation, I  
24 hope -- Leonardo Reyes Ramirez, Jose Roberto Bello Fuente,  
25 those three defendants?

1 A. Yes, I did. I -- I had that opportunity. It was kind of  
2 unusual how it came about, however, because a Jury had been  
3 selected --

4 MR. REARDON: Excuse me, sir.

5 I think the question was whether he had the case.  
6 It's a bit of a narrative now.

7 THE COURT: I'll sustain. Go ahead. You may proceed.

8 Q. And can you give the Jury a brief description about what  
9 the charges were in that case and the overall prosecution?

10 A. Sure. It was a case where three defendants, Mr. Regalado,  
11 Mr. Bello Puente and Mr. Reyes Ramirez were charged with air  
12 piracy formally by the United States. And that had to do with  
13 a skyjacking that took place on August 16 of -- of 1996.

14 Q. And where did the skyjacking come from, or originate?

15 A. Well, as ultimately it was established and proven at three  
16 levels, there was no skyjacking. But the charge came from the  
17 August 16th event.

18 MR. REARDON: I'm going to object at this point. This  
19 man is an advocate and was an advocate. And his personal  
20 opinion about this case is not something that's relevant to  
21 this case.

22 THE COURT: I'll overrule.

23 Q. Where did the plane come from?

24 A. The plane left a place called San Nicolás de Bari, a  
25 private -- small and private -- there's no such thing as

1 privacy in terms of private property. But it is a small  
2 airstrip.

3 MR. REARDON: I'm going to object. If this is going  
4 to be a thread throughout this conversation between Counsel and  
5 this witness, as an advocate, the United States is going to be  
6 obliged to object to those points in the narrative that are  
7 irrelevant and not responsive to the question.

8 THE COURT: All right. I'll overrule.

9 A. The airstrip is a small airstrip, a place called Itabo.  
10 And the three men and a fourth got on a small Wilga plane from  
11 a Cuban aerotaxi company. And they came to the United States.  
12 They were lost at sea. They did not have enough fuel, as no  
13 plane does, to make it all the way to land. They were lost at  
14 sea. And they decided to crash-land the plane in the Gulf when  
15 they saw a freighter that they believed was a Russian  
16 freighter.

17 And as a result of that event, there was a discussion  
18 aboard the plane between the occupants as to what would happen.  
19 And certain statements were made, which prompted the United  
20 States at that time, in good faith, to bring about a skyjacking  
21 prosecution.

22 Q. Okay. As a result of your involvement in that case, did  
23 you discover any fabrication, any evidence from the Government  
24 of Cuba?

25 A. Yes.



1 MR. REARDON: Objection. Talking about fabrication  
2 from the Government of Cuba, this is precisely a strain of  
3 objection as to the Government of Cuba not being on trial here.  
4 This has to be related -- if it's relevant to this case it has  
5 to be related to an individual, which I understood was the  
6 proffer in regard to this gentleman's testimony.

7 THE COURT: All right. And that is the Court's  
8 ruling, Ms. Anderson, so --

9 MS. ANDERSON: And that's exactly where we're going.

10 MR. REARDON: That's not where she just went, so I  
11 object.

12 THE COURT: I'll overrule.

13 MR. REARDON: Excuse me, I thought the Court was just  
14 saying that that was the Court's ruling, about not talking  
15 about Cuba.

16 THE COURT: Well, I understand that. But I am  
17 overruling your objection.

18 You may proceed.

19 MR. REARDON: All right. Thank you.

20 Q. (By Ms. Anderson) I'm going to show you what's been marked  
21 for -- well, actually in evidence as Defense Exhibit Number  
22 162.

23 MS. ANDERSON: And if it may be published to the Jury,  
24 Your Honor?

25 THE COURT: It may.

1 Q. And ask you if you recognize the individual depicted on  
2 Defense Exhibit Number 162.

3 A. The individual has changed significantly since I had  
4 face-to-face contact with him. He's older. I'm sure he'd say  
5 the same thing about me. But that's Roberto Hernandez  
6 Caballero from the Republic of Cuba.

7 Q. Did Lieutenant Colonel Caballero have any involvement in  
8 the Tampa case that we're speaking about?

9 A. Yes, he did. He was brought by the United States to  
10 testify in the case. And I ultimately called him as a witness  
11 as a result of the developments at trial.

12 Q. Okay. You were beginning to discuss the fabrication of  
13 evidence in the Tampa case. Can you explain to the Jury how  
14 you discovered the fabrication of evidence in the Tampa case?

15 MR. REARDON: I'm going to object. This is an opinion  
16 of a lawyer who tried a case and there was an acquittal, and  
17 now he's being asked as a fact witness about a fabrication that  
18 was -- incidentally, in a not guilty verdict, doesn't mean that  
19 the people, in fact, were guilty. So this is far away from  
20 relevance in this case.

21 THE COURT: I'll overrule. You have the right to  
22 cross-examine.

23 You may proceed.

24 Q. How do you discover the fabrication?

25 A. The fabrication discovery came about in a rather unusual

1 circumstances as a result of the fact that I had not had time  
2 to prepare for the case adequately. I became involved in the  
3 Federal proceedings at 9:00 the evening before, after the case  
4 had progressed for a year. The lawyers in the case came to  
5 visit with me the evening before and asked me to join in the  
6 defense and I acquiesced.

7 MR. REARDON: Excuse me, sir.

8 I object. This is a narrative. It's irrelevant. If  
9 we're going to talk about his opinion about -- the Court's  
10 going to allow his opinion about something, he can be asked  
11 directly that and not give a narrative of his examination and  
12 what he believed he found to be a fabrication.

13 THE COURT: I believe the question was in response to,  
14 How did you discover the fabrication? He was responding to  
15 that. I'll overrule the objection.

16 A. So I was handed several boxes at 9:00. I asked Counsel to  
17 leave. And I needed that opportunity during the night -- I  
18 worked all night with some people at my firm -- to digest the  
19 case so that I could appropriately be ready by 9:00 the  
20 following morning. That is not how I normally prepare a case  
21 of consequence like that. Or any case.

22 I became lead counsel at 9:00 the following morning,  
23 coincidentally, 12 hours later. And I had some idea of the  
24 documents that I had, then, in my possession. During the  
25 course of the trial when I was addressing Roberto Hernandez

1 Caballero related to Cuba documents, I became concerned because  
2 I did not -- or was unable to -- shall I say the documents did  
3 not coincide with what I was receiving from the witness stand.

4           And upon further inquiry I realized that the documents  
5 that were submitted in that trial had significant problems in  
6 terms of both their veracity and their reliability. So I  
7 formed an opinion, which, of course, then was ratified at two  
8 subsequent proceedings. In an immigration proceeding before an  
9 immigration judge that handled the subsequent event after the  
10 acquittal, and later before the Board of Immigration Appeals  
11 that likewise, on behalf of the Government of the United States  
12 reviewed the position. And at no time was my position that  
13 those documents were fraud ever rejected.

14 Q. Okay. I'm going to show you what's been marked for  
15 identification as Defense Exhibits 140A as in apple, 140B as in  
16 boy, 141, 144A, 144B, 145A, 145B, 145C and 146.

17           MS. ANDERSON: May I approach, Your Honor?

18           THE COURT: You may.

19 A. Yes.

20 Q. We will take them one at a time.

21 A. All right.

22 Q. 140A.

23 A. Yes.

24 Q. Is that a true and accurate copy of a document that you  
25 recognize?

1 A. Yes it is.

2 Q. 140B, is that a true and accurate copy of a document that  
3 you recognize?

4 A. Yes, that is a translation of the preceding document.

5 Q. 141, is that a true and accurate copy of a document that  
6 you recognize?

7 A. Yes, that's the diagram of the Wilga cabin.

8 Q. 144A, is that a true and accurate copy of a document that  
9 you recognize?

10 A. Yes, that is a translation of the Criminal History of  
11 Leonardo Reyes Ramirez.

12 Q. And Defense Exhibit 144B, is that a true and accurate copy  
13 of a document that you recognize?

14 A. Yes. That's the 302. I don't see the 302 marking on it --  
15 oh, yes, it is on top. FBI 302 is the FBI form.

16 Q. Form for what?

17 A. That is where the FBI agents generate police reports, in  
18 essence, or summaries, of their findings and conclusions in a  
19 case or what they personally observed. This is just,  
20 apparently, the statements of Mr. Caballero.

21 Q. 145A --

22 MR. REARDON: Objection. They're not statements  
23 unless a witness has been shown and has signed. 302, as the  
24 Counsel knows, is never a statement of the person interviewed  
25 unless adopted and signed.

1 THE COURT: Could you repeat your answer? Because I  
2 understood his answer differently, I guess, than the Government  
3 did. Go ahead and repeat your answer as to what a 302 is.

4 THE WITNESS: I'll try.

5 A. But it's an FBI -- this is a form, FBI 302. And it's  
6 essentially a police report format generated by the Bureau.  
7 And it includes the either observations or either statements  
8 that are taken by the FBI agent or a compilation of facts and  
9 data. And it takes various forms.

10 And in this case it begins with the -- with -- with,  
11 Hernandez is providing the following voluntary information. So  
12 I presume that that's accurate, meaning Roberto Hernandez  
13 Caballero provideing that information. So I presume that  
14 the -- that Agent Laflin wrote down what Hernandez was saying  
15 accurately.

16 THE COURT: Any objection?

17 MR. REARDON: Yes, I do have an objection. Number  
18 one, of course, it hasn't been moved yet, but it's hearsay. It  
19 shouldn't have come in.

20 THE COURT: Objection to his answer is my concern.  
21 You raised an objection.

22 MR. REARDON: No, I think that Counsel modified it to  
23 Government's satisfaction, thank you.

24 THE COURT: You're welcome.

25 You may proceed.

1 Q. (By Ms. Anderson) Defense Exhibit 145, is that a true and  
2 accurate copy?

3 A. Yes. This is, likewise, a translation. This is of -- the  
4 Criminal History of Adel Regalado Ulloa. He was also one of  
5 the --

6 Q. We will get into discussing the specifics in a moment.

7 A. All right.

8 Q. And 145B, is that a true and accurate copy?

9 A. Yes. This is, again, a translation of a Criminal History.

10 Q. 145C, is that a true and accurate copy?

11 A. Yes. This is a Spanish --

12 MR. REARDON: For the record -- pardon me, sir, again.  
13 A copy of what? Let's have it more precise for the record,  
14 please.

15 MS. ANDERSON: All right. Certainly.

16 MR. REARDON: I'll sustain.

17 MS. ANDERSON: Certainly.

18 Q. (By Ms. Anderson) More accurate copy of what? Where were  
19 you? 145B, or --

20 A. We were on 145C, but if you would like I can develop 145B.

21 Q. Absolutely.

22 A. 145B is an accurate copy of the translation of the Criminal  
23 History report from the Cuban Ministry of the Interior on Adel  
24 Regalado Ulloa.

25 Q. Okay. And looking at 145B, are there any notations on

1 there that you recognize?

2 A. Yes. Adel -- conduct report. And, frankly, I don't know  
3 where that came from. And what I mean by that is, that was  
4 part of the file that was copied by the time I inherited the  
5 file in trial. So I don't know who wrote that.

6 Q. Okay?

7 A. That is not part, and neither is the underlining, of  
8 substance.

9 Q. 145C, is that a true and accurate copy of a document that  
10 you recognize?

11 A. Yes. That is the original Spanish. I speak Spanish as my  
12 first language, and read it and write it. This is the original  
13 Spanish report of conduct of -- of -- generated by the Ministry  
14 of the Interior of Adel Regalado Ulloa.

15 Q. Defense Exhibit 146 for identification. Is that a true and  
16 accurate copy of a document that you recognize?

17 A. Yes. That is the Criminal History translation, again.  
18 This one is the third fellow, Roberto -- Jose Roberto Bello  
19 Puente, characterized here as Roberto Bello Puente from the  
20 Ministry of the Interior. This is a translation of that  
21 conduct -- or Criminal History Report.

22 Q. Now, you just indicated each of the foregoing exhibits are  
23 true and accurate copies. How do you -- did you -- how did you  
24 acquire these documents?

25 A. These were provided by the Government in discovery. And



1 they came into my possession because Ted Wolfendale, the  
2 attorney who had been appointed to represent Mr. Regalado,  
3 provided me with the -- in essence, the two boxes the evening  
4 before the trial began, the testimony began. The Jury, again,  
5 had been selected. So that's how it came into my possession.  
6 And then I used them the best that I could.

7 Q. Okay. And they were part of your clients' file?

8 A. Yes, they were part of the clients' file, and subsequently  
9 they were used in a number of further proceedings.

10 Q. Okay. And that file that -- you maintain that as a regular  
11 course of your business?

12 A. Yes, I do.

13 Q. Is it your regular practice to maintain copies of the  
14 documents that we have just discussed, 145A, 140B, 141, 144A,  
15 144B, 145A, 145B, 145C and 146 as the regular course and  
16 practice of your business?

17 A. Yes. And beyond that, also, I have been requested by the  
18 Government to retain all my Cuba files.

19 Q. Okay.

20 MS. ANDERSON: At this time, Your Honor, we would move  
21 the Defense Exhibits, which I'll name off in a moment, into  
22 evidence; specifically, Defense Exhibits 140A, 140B, 141, 144A,  
23 144B, 145A, 145B, 145C and 146 into evidence.

24 THE COURT: Any objections?

25 MR. REARDON: Sure. Yes, Your Honor. Thank you.

1 It's all hearsay. This -- this -- this purportation of  
2 business records, it doesn't defeat the objection. These are  
3 foreign records. There's no certification. They're all  
4 hearsay. It's an FBI 302. This is not admissible. It's  
5 all -- it's all hearsay. Every one of these things without  
6 proper documentation under -- we could begin with the foreign  
7 public documents -- or foreign documents in 902. There's 901.  
8 Civil Rule 44. These are not admissible documents.

9 MS. ANDERSON: Under 803.6, Your Honor, these  
10 documents were maintained in the regular course of business and  
11 practice of Mr. Fernandez and had been so since receipt from  
12 the United States Government as part of the case file in the  
13 Tampa case that we've been referring to. On that basis we  
14 would move them into evidence.

15 MR. REARDON: There's hearsay in discovery all the  
16 time. It does not defeat the hearsay restrictions.

17 THE COURT: All right. The Court will overrule the  
18 objection.

19 Q. (By Ms. Anderson) Referring to the documents --

20 MS. ANDERSON: And Your Honor, I'd ask to publish as  
21 we discuss each one. I'll bring it up on the screen.

22 Q. Can you utilize those documents to explain to the Jury how  
23 you discovered the fabrication of evidence in the Tampa case?

24 A. Well, there were significant --

25 MR. REARDON: Excuse me. I'm going to object to the

1 form of the question. Once again, it asks for a conclusion on  
2 behalf of the witness if he's going to be qualified as an  
3 expert witness on whether something is a fabrication or not. I  
4 mean, Your Honor, where is the foundation in the rules of  
5 evidence for this sort of question and answer about finding --  
6 it's not even an alleged fabrication; the presumption is it's a  
7 fabrication. This is improper questioning. It's beyond the  
8 competence of this witness, as qualified at this point, and  
9 should not be before this Jury.

10 THE COURT: I'll overrule the objection.

11 MR. REARDON: Thank you, Your Honor.

12 Q. (By Ms. Anderson) Just give me the exhibit number and I  
13 can bring it up.

14 A. 140A. 140A is a four-page document. It's a declaration in  
15 the standard format prepared by the Ministry of the Interior  
16 and the DGI, and previous to that the DGCI, which is the  
17 acronym for the investigative agency in Cuba, *Dirección General*  
18 *de Investigaciones*, the DGI. Now, the person who prepared this  
19 document was Roberto Hernandez Caballero as he was taking a  
20 contemporaneous statement on August 24, 1996.

21 Mr. Caballero at the end signs off as an instructor of  
22 the DSC, that is, the Direction -- *La Dirección de Seguridad*  
23 *del Estado*, the Direction of State Security, which is a  
24 different animal within the Ministry of the Interior and the  
25 combination of the Cuban Directorate of Intelligence and the

1 Cuban Directorate of Counter-Intelligence.

2 MR. REARDON: I'm going to have an objection at this  
3 point. This is a -- first of all, there's no -- there's  
4 something that's printed with Caballero's name on it. There's  
5 no signature. And in terms of explaining to the Jury as a --  
6 purportedly as an expert on what things mean and their purport  
7 on behalf of the Government of Cuba, this witness has not been  
8 so qualified.

9 THE COURT: All right. Well, which objection --  
10 there's two objections.

11 MR. REARDON: All of them.

12 THE COURT: So the first objection is what?

13 MR. REARDON: There was no signature. The witness, I  
14 believe, represented it was signed. There's a print of  
15 Caballero's name. And then has gone on to explain in the  
16 narrative form distinctions in the Cuban Government and the  
17 functions of the Cuban Government. And that goes beyond the  
18 question that was asked. It is a narrative answer. It is  
19 unresponsive. It is beyond the competency of this witness as  
20 yet proven by a foundation that has been accepted by the Court.

21 THE COURT: I'll overrule the first objection. I'll  
22 sustain the second.

23 You may proceed.

24 Q. (By Ms. Anderson) Did there come a time you became  
25 involved in issues concerning Cuba's use of foreign

1 intelligence propaganda and fabrication of evidence?

2 A. Yes, in 1998. 1988, I began.

3 Q. Okay. And how did you begin?

4 A. A fellow by the name of Rolando Nieves was arrested and  
5 charged with firearms violations in a failed mission to Cuba.  
6 He had been a political prisoner for 17 years, arrived in the  
7 United States, and decided to quickly go back and engage in  
8 armed combat. He was arrested and I was asked to represent  
9 him pro bono, no charge. And I did.

10 During that process two intelligence officers from the  
11 United States visited my office. And we had a long and very  
12 difficult discussion. And they asked me to bring --

13 MR. REARDON: I'm going to object to the hearsay.

14 THE COURT: All right. I'll sustain.

15 A. During our meeting.

16 Q. It was sustained.

17 A. Right. I was not going to say what they were going to say.

18 Q. Okay. If you're not going to say what they're going to  
19 say, go right ahead.

20 A. After that meeting I decided to, again, cooperate with the  
21 United States intelligence. And I did so while representing my  
22 clients because I found there was a common interest in  
23 defending the country. The reason was that Cuban intelligence  
24 had penetrated all of these organizations for years, and they  
25 were engaged in bellicose, meaning in -- in -- in serious

1 activity against them. The FBI.

2 MR. REARDON: I'll object. I think this Jury probably  
3 knows what "bellicose" means. And I'll object also as a  
4 narrative that goes beyond the question -- if he's going to be  
5 established as an expert, it needs to be done so in a more  
6 disciplined fashion than allowing a free-streaming narrative to  
7 the Jury.

8 THE COURT: As to the first objection I'll overrule.  
9 As to the second, let's stick with question and answer.

10 MS. ANDERSON: No problem, Your Honor.

11 Q. (By Ms. Anderson) Did you become specialized in the --  
12 Cuba's use of foreign intelligence?

13 A. Yes, I did. And --

14 Q. In the course of becoming focused on the area of Cuba's use  
15 of foreign intelligence, did you interview individuals that had  
16 come from Cuba?

17 A. Yes.

18 Q. And what kind of individuals did you interview?

19 A. I have interviewed several hundred defectors, ex-military,  
20 Government officials, military personnel, Cuban agents of  
21 influence, Cuban agents, DGI officers, DI officers and a number  
22 of people who claimed to be any of those that I found out  
23 really were not, they just wanted to chat about things in  
24 general. And over the years you somewhat develop an ability to  
25 discern which is which. Sometimes it placed you in a very

1 embarrassing scenario. Most of the time it does not.

2 MR. REARDON: I'm going to object to that. Move that  
3 it be struck. This testimony thus far is filled with personal  
4 conclusions. The United States commends the gentleman for his  
5 service to his country, but in regard to a specific question  
6 and answer as regard to Cuba, once again, generically, as  
7 opposed to Colonel Hernandez Caballero, it falls astray from  
8 the Court's rulings that Cuba is not on trial.

9 THE COURT: Well, I believe this is qualifying him as  
10 an expert. I'll overrule.

11 You may proceed.

12 Q. In the course of your various interviews of dissidents,  
13 military officers, individuals from Cuba, civilians from Cuba,  
14 did you come to learn about Cuba's use of disinformation in  
15 its -- against the United States and others?

16 A. Yes.

17 MR. REARDON: I'm going to object on grounds of Cuba's  
18 use of disinformation. This -- this is -- the relevance of  
19 this inquiry and this witness has to do with the witness'  
20 supposed conclusions, which we may challenge, about the  
21 credibility of a particular witness, which brings it within the  
22 penumbra of this Court's prior rulings.

23 THE COURT: It's my understanding she's attempting to  
24 qualify him as an expert. And the Court will overrule.

25 A. Yes. And -- and generally as a result of the format of the

1 nature of the investigations that I've performed on behalf of  
2 the Government with Government agents at all levels on matters  
3 of national security, on matters of engaging a hostile  
4 intelligence service, and the provision of evidence and assets  
5 to bring about prosecution of people who had committed  
6 homicides in the United States, who had downed planes in  
7 international airspace, who had penetrated SOUTHCOM, who had  
8 penetrated intelligence circles and even penetrated the highest  
9 levels of the United States -- DIA in Washington, D.C.

10 Q. And for the benefit of the Jury, can you explain what the  
11 DIA is?

12 A. Our DIA and -- and we're fast-fowarding, is our  
13 intelligence agency. And they provide a branch of it. There  
14 are many intelligence agencies within Government. They provide  
15 a general, um, shall I say, forum, to disseminate information  
16 to the Pentagon to the White House at briefings and Department  
17 of the Defense and at briefings practically every morning. And  
18 they have some input into that. Restricted in some capacity,  
19 but they do have significant input.

20 Q. As a result of the background and experience that you have  
21 in this area that you have just described, did you learn the  
22 various ranks and roles between officers in the Government of  
23 Cuba?

24 A. I think I did. And, again, it's variable, because Cuba  
25 does have what's called a shifting practice. In other words --



1 for instance, like the FBI, it has been the FBI since its  
2 inception. Most intelligence services, whether it's CIA --  
3 which likewise has been the CIA since its inception. The  
4 Moussad has been, in Israel the same. The KGB --

5 MR. REARDON: Excuse me. Excuse me, Counsel. This  
6 is -- the gentleman now is testifying as an expert. He's not  
7 providing the answers as to why he should be considered an  
8 expert. And even if he is qualified as an expert, the  
9 Government will lodge the appropriate objections when those  
10 conclusions as an expert fall outside what we understand to be  
11 the rulings of the Court about Cuba on trial.

12 THE COURT: I'll sustain as to -- if we're qualifying  
13 him, still, as an expert.

14 You may proceed.

15 MS. ANDERSON: This is for the qualifications as an  
16 expert.

17 Q. (By Ms. Anderson) The type of information that you  
18 acquired from individuals had come from Cuba. Is that the type  
19 of information that's utilized by United States law enforcement  
20 agencies?

21 MR. REARDON: I'm going to object as leading.

22 THE COURT: All right. I'll overrule.

23 A. Yes, on a daily basis. As of, for instance, yesterday  
24 morning.

25 Q. And what agencies are you referring to?

1 A. My handlers are with the FBI. Um, I developed --

2 MR. REARDON: I'm sorry, did Counsel say that "my  
3 handlers are with the FBI"?

4 THE WITNESS: Yes, I said that.

5 THE COURT: All right. You may proceed.

6 Q. (By Ms. Anderson) Okay. Just to give the Jury a  
7 perspective, what period of time have you, yourself, been  
8 working with the FBI in the capacity of providing this type of  
9 information?

10 MR. REARDON: I'm going to ask to approach the  
11 sidebar, please this.

12 THE COURT: Come on up.

13 MR. REARDON: May I have a moment, please?

14 (Bench conference, out of hearing of Jury.)

15 MR. REARDON: Thank you, Your Honor. The United  
16 States' understanding is the testimony about "handlers" as a  
17 term of art, if, in fact, he has handlers, is something that is  
18 not to be disclosed publicly, ought not to be disclosed, so it  
19 should not be part of this testimony here. I think Counsel  
20 should -- knows or should know that.

21 THE COURT: All right. Well --

22 MR. REARDON: And we're also getting in -- I should --  
23 just to protect this record -- we want to make sure if we're  
24 getting into an area where there's something that the witness  
25 knows or suspects, or Counsel knows or suspects, gets into

1 classified information, however inadvertently, in terms of  
2 trying to qualify as an expert is something that needs to be  
3 heeded.

4 THE COURT: All right. The Defense Counsel needs to  
5 stay away from any classified information.

6 You may proceed.

7 MR. REARDON: Thank you.

8 (Back on the record in open Court.)

9 THE COURT: Whenever you're ready, Ms. Anderson.

10 Q. (By Ms. Anderson) You had used the word "handlers."

11 A. Yes.

12 Q. Could you explain to the Jury what a handler is?

13 A. A handler is a person who -- in essence, you exchange  
14 information with and monitor activities with who directs you.  
15 In some cases it's a daily event. In a different professional  
16 level, when it involves someone who is in a different position,  
17 then it's kind of like the person you keep in contact with and  
18 the person who knows about any free roaming that is done and  
19 the person who monitors whether or not you are being doubled.  
20 Doubled is when you are working a case and all of a sudden,  
21 somebody is working you and you have to be very cautious.

22 And, in essence, it's the person that you call and  
23 rely upon to memorialize in their mind whatever activities you  
24 engage in. Because when you're dealing with some of these  
25 matters involving national security, very few are written that

1 can be read for a vast number of years. So you encounter a  
2 situation where you need to talk about something, and you have  
3 to rely on your handler, who knows what and when you did and  
4 why you did it.

5 MR. REARDON: Now we will have to object again.  
6 Because, once again, now the -- now the advocate is speaking as  
7 an expert. He's not been qualified as an expert. He's not  
8 there yet.

9 THE COURT: I'll overrule.

10 Q. Is a handler an agent with a federal agency, such as the  
11 FBI, the DIA, the CIA?

12 A. Yes.

13 Q. Okay.

14 MS. ANDERSON: Your Honor, at this time, we would like  
15 to show the witness what's been marked as Defense Exhibit 147A  
16 and ask to approach the witness.

17 THE COURT: 147?

18 MS. ANDERSON: A. 147 is Biographical Profile. A is  
19 something else.

20 THE COURT: You may approach.

21 MR. REARDON: Your Honor, this is a --

22 THE COURT: Hold on.

23 MR. REARDON: Certainly. Thank you.

24 THE COURT: Go ahead.

25 MR. REARDON: This is a Dear Ralph letter from an FBI

1 agent. It's hearsay.

2 THE COURT: Well, it hasn't been moved yet for  
3 admission.

4 MR. REARDON: You're right. The Government just  
5 called what it is early.

6 THE COURT: And just so the record is clear, as --  
7 since you raised it, the Court had overruled Government's  
8 objections to 140A, 140B, 141, 144, 144B, 145A, 145B, 145C and  
9 146. And with that, they are admitted. I just wanted to make  
10 sure the record was clear.

11 You may proceed with your questioning.

12 Q. (By Ms. Anderson) Can you look at what's been marked as  
13 Defense Exhibit 147A as in apple?

14 A. Yes.

15 Q. And do you recognize it?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. I received this letter, and I was incidentally handed an  
19 additional copy at a meeting a couple of days after it was sent  
20 from the sender.

21 Q. Okay. And who was the sender?

22 A. The sender is Patrick Laflin, the FBI domain coordinator in  
23 the Tampa Division.

24 Q. Why did you receive this letter?

25 MR. REARDON: Objection. It's going to call for a

1 hearsay answer.

2 THE COURT: All right. I'll sustain.

3 Q. Is that a true and accurate copy of a letter that you  
4 received?

5 A. Yes, it is, indeed.

6 Q. What was the --

7 MR. REARDON: That's been asked and answered, and we  
8 object.

9 MS. ANDERSON: Okay. I forgot.

10 Q. And what was the purpose of the letter?

11 MR. REARDON: Objection. Calls for a hearsay answer.

12 THE COURT: I'll sustain.

13 Q. Without using any hearsay, could you describe what the  
14 purpose of the letter was?

15 MR. REARDON: I'm going to object because it's  
16 impossible to describe without hearsay, even for this fine  
17 advocate.

18 THE COURT: All right. I'll sustain. Why don't you  
19 just lay some foundation so we can understand?

20 Q. Prior to you receiving this letter, what events occurred?

21 A. I'm very concerned about this area, but this was a product  
22 of an active measure against me by a Cuban agent who filed a  
23 bar grievance because of my activities, to implicate my law  
24 license to practice in Florida with substantial support from a  
25 number of other people involved in the same activities.

1           We are soon going to be touching on a matter involving  
2 the security of the country. But this prompted this letter be  
3 used in official proceedings to defend me so that I would not  
4 have to talk about the case. So this was a really serious  
5 letter.

6 Q. Without getting into areas that are sensitive --

7           MR. REARDON: We've already teased the Jury on this.  
8 The fact of the matter is, Counsel is well aware if there's  
9 going to be any allusion or anticipation of information that is  
10 classified, there is a process in the law for that.

11          THE COURT: All right. Is that --

12          MR. REARDON: It's -- it's -- it's -- it is a  
13 cautionary note to an area that Counsel knows, or should know  
14 and be aware of without eliciting. We appreciate, actually,  
15 the witness' sensitivity.

16          THE COURT: All right. Then stay away from that area.

17          You may proceed.

18 Q. (By Ms. Anderson) Can you describe for the Jury what  
19 "active measures" are?

20 A. Yes. That's the most dangerous kind of event in terms of  
21 actual actions by an agent in place, or a penetration officer.  
22 And it involves different levels in the intelligence community  
23 because there are things that are done by, for instance, agents  
24 of influence that are just directing lesser events -- monetary  
25 investments, illegal activities at that level.

1           There are also, at the other extreme, active measures.  
2           And that is why somebody is executed or somebody is  
3           neutralized, which is really more vogue and fashionable in this  
4           business, in this late age. It's how to destroy an individual  
5           and keep them alive. And they're ever changing. And all  
6           intelligence services use them, not just Cuba. Cuba is a  
7           specialist.

8           Q. As a result of your involvement, interviewing individuals  
9           from -- that have arrived from Cuba, your involvement with the  
10          federal agencies and cooperating with them, provide -- with  
11          the -- with the provision of information from these  
12          individuals, have you acquired a knowledge basis regarding  
13          Cuba's use of foreign intelligence, propaganda and the  
14          fabrication of evidence?

15          A. Yes, I have.

16                 MS. ANDERSON: Your Honor, at this time we would move  
17          to qualify Mr. Fernandez as an expert in the area regarding  
18          Cuba's use of foreign intelligence, propaganda and fabrication  
19          of evidence.

20                 THE COURT: Any objections?

21                 MR. REARDON: No, not as a concept. But it depends on  
22          what the next area of the inquiry will be. So in terms of his  
23          observations and experience, the United States has no  
24          objection.

25                 THE COURT: All right. Then he will be qualified as



1 an expert.

2 You may proceed.

3 Q. (By Ms. Anderson) Going back to, essentially, the packet  
4 of exhibits that I handed up to you commencing with 140A -- and  
5 you were discussing 140A -- can you describe for the Jury, in  
6 particular regard to Lieutenant Colonel Roberto Hernandez  
7 Caballero, the fabrication of evidence that occurred in the  
8 Tampa case and how you discovered it?

9 A. Well...

10 MR. REARDON: Object to the form of the question.  
11 It's purported, or alleged. This is asking for a conclusion.  
12 This gentlemen was the lawyer in the case. Now he's coming  
13 here and saying, Hey, I thought he was lying then and I think  
14 he's lying now.

15 It's objectionable. It's -- it's -- it's -- it is --  
16 it calls -- actually -- it calls for a conclusion, a legal  
17 conclusion, that was not in this gentleman's wheelhouse as an  
18 expert. It -- it takes away from the trier of fact.

19 MS. ANDERSON: Your Honor, the question was focused on  
20 how he discovered it.

21 MR. REARDON: Excuse me. I think the objection was  
22 pending.

23 THE COURT: Um, hold on a second. The Court will  
24 overrule the objection. I heard no testimony regarding this  
25 case. The question had to do with tampering of evidence in

1 Tampa. I'll overrule the objection.

2 Q. (By Ms. Anderson) You may answer.

3 A. This statement of Mr. Pantoja had proven inconsistencies.

4 Q. So the Jury understands, who is Mr. Pantoja?

5 A. I'm sorry. Adolfo Perez Pantoja was one of the four  
6 individuals who stole the plane from Cuba. When they crashed  
7 at sea they came up with a plan because of the fear of  
8 repatriation, which was actual and real at the time. They all  
9 knew that there would be repatriation.

10 They had landed in the high seas and they had been  
11 taken in by a Russian vessel. Three decided to cast their lot  
12 to come to America under any circumstances. And because of the  
13 familial relationship, the fourth said, I want to go back  
14 because we're all going back and we're going to get killed.

15 At that point in time the three said, Listen, we'll  
16 claim that we skyjacked you, and you will be protected.

17 And that's how it unfolded. Pantoja was the pilot of  
18 the plane, who enjoyed a relationship with Mr. Regalado, who  
19 was the lead defendant in that prosecution.

20 MR. REARDON: I'm going to move to strike that answer  
21 as containing hearsay.

22 THE COURT: I'll overrule.

23 Q. At that point in time in history, why was repatriation an  
24 issue for an individual that landed in the high seas?

25 A. Because for two years the United States had been receiving

1 a massive exodus of Cuban rafters. And the policy changed.  
2 And they were being returned after given what's called a  
3 credible fear interview on the high seas aboard Coast Guard  
4 cutters and vessels. And only a small number then were allowed  
5 --

6 MR. REARDON: I'm going to object -- excuse me,  
7 Counsel. This is beyond the expertise for which this witness  
8 was qualified.

9 THE COURT: All right. I'll sustain.

10 Q. (By Ms. Anderson) As a lawyer in the case, the Tampa case,  
11 and in your experience -- background, experience and history,  
12 are you familiar with the Cuba Adjustment Act?

13 A. Yes, I am. Very well.

14 Q. And what is the basis of your knowledge?

15 MR. REARDON: Objection, relevance.

16 THE COURT: All right. Well, I believe it -- I'll  
17 overrule. He can answer the question.

18 A. In essence, it allowed Cubans an enviable position of being  
19 able to just land in this country and then come in and stay.  
20 It developed over the years. And it was as a result of a  
21 combination of factors. The Bay of Pigs Invasion, the Missile  
22 Crisis and other things that happened at the time. I think it  
23 was an implementation in the Kennedy times. And it continues  
24 to date. It's very well known universally as the Wet-Foot  
25 Dry-Foot policy, or part of it. And that's what most people

1 are familiar with nowadays, that, unlike anybody else, that --  
2 that Cubans who touch land are here to stay.

3 MR. REARDON: I'm going to object, Your Honor. Are we  
4 really talking about, in this case, the Cuban Missile Crisis as  
5 being anything relevant to the facts in this case?

6 THE COURT: Is that a relevance objection?

7 MR. REARDON: Yes, it is.

8 THE COURT: I need specific objections, not speaking  
9 objections.

10 MR. REARDON: Thank you, Your Honor.

11 THE COURT: And I'll overrule.

12 You may proceed.

13 Q. (By Ms. Anderson) In the context of the individuals that  
14 were in the plane in the Tampa case, how did the Wet-Foot  
15 Dry-Foot Policy play into what their actions were when the  
16 plane crash-landed?

17 A. Having crashed at sea, they would receive no benefit from  
18 the United States. In other words, they would be repatriated  
19 to Cuba. The only reason that they were allowed to come into  
20 the United States was because, indeed, it had been a  
21 skyjacking, and we have a jurisdiction over any skyjacking, in  
22 essence, in any part of the world, as tested in that case.

23 And there was no doubt that, had they -- had not an  
24 unusual event like that happened, all four would have been  
25 repatriated and not allowed to leave the Russian vessel and

1 returned to Cuba.

2 Q. As a result, these individuals were brought to dry land?

3 A. The three --

4 MR. REARDON: I'm going to object. He's plenty able  
5 to answer a question that's not leading.

6 THE COURT: Well, I believe he already said that, but  
7 I'll sustain.

8 Don't lead your witness.

9 MS. ANDERSON: Thank you, Your Honor.

10 Q. (By Ms. Anderson) Now, referring back to Defense Exhibit  
11 140A, you were beginning to explain Lieutenant Colonel  
12 Hernandez Caballero's role, vis-a-vis the pilot Adolfo Perez  
13 Pantoja. And can you explain with this exhibit and the  
14 remaining exhibits how you discovered the fabrication that  
15 occurred in that case?

16 MR. REARDON: I'm going to object as calling for a  
17 very long narrative. And the questions, I believe, should be  
18 more precisely drawn, especially given its relevance to this  
19 proceeding.

20 THE COURT: I'll overrule.

21 A. The -- the first problem with this that I saw, again, in  
22 the suddenness of the proceedings was that Mr. Caballero had  
23 testified that he had conducted these interviews and prepared  
24 all this in Villa Marista, which is the headquarters for Cuban  
25 intelligence. And I noticed that this document says that it

1 was prepared in the Vibora, which is a -- Vibora, V-I-B-O-R-A,  
2 which is a totally different unit. And so during the context  
3 of the exchange with Hernandez Caballero, I sensed that there  
4 was something that was not accurate even at the caption of the  
5 document. And it proceeded through to, then, his role.

6 But I then began to see that, when you compared this  
7 document to the Grand Jury transcript information of the  
8 testimony of Mr. Pantoja in the United States -- meaning the  
9 pilot when he was summoned in order to form the basis for the  
10 indictment before a Grand Jury -- and he testified that there  
11 appeared to be inconsistencies as to what was here.

12 I noticed from the date that this was after that  
13 appearance, when Mr. Pantoja had returned to Cuba. And that,  
14 as later came out during examination of agents in subsequent  
15 proceedings where we were more prepared, we were able to  
16 discern that this document had enhanced the activities of the  
17 alleged skyjackers, meaning that this document begins to tell a  
18 story of what happened on the plane with a gun and a knife and  
19 a wrench and the guy getting another instrument and so forth.  
20 And it embellished the story. Like --

21 Q. How did it embellish the story?

22 A. Well, the confession, shall I say, as characterized in Cuba  
23 of the witness, which is Mr. Pantoja, enhanced the criminal  
24 activity aboard the plane from what he had said to the  
25 investigators in the United States initially. It also enhanced

1 the Grand Jury testimony. And it differed in the placement of  
2 the occupants of the plane.

3 It then went on to suggest, as most Cuban documents  
4 do, that the individual also claimed that he wanted to be  
5 returned to Cuba and to voice his objections internationally.  
6 He wanted to show that he was no part of this. And that the  
7 United States had offered him, through its agents, political  
8 asylum to stay in the United States, but he refused that  
9 because I wanted go back to Cuba.

10 Q. And what was the significance of the offering of the  
11 political asylum?

12 A. Well, his rejection is significant in that he supposedly  
13 was offered to stay, and he declined because he obviously, in  
14 his presentation, was the victim of this --

15 MR. REARDON: I'm going to object as to the competence  
16 of the witness to testify what somebody else thought.

17 THE COURT: I'll sustain.

18 Q. And who allegedly offered him political asylum?

19 A. Nobody. No -- all the agents later testified nobody did.

20 Q. And I'm going to direct your attention to Defense Exhibit  
21 140B. Let me pull it up. In utilizing Defense 140B, can you  
22 explain to the Jury what that document is?

23 A. This is a translation of the previous document in Spanish.  
24 And this translation, it is to this day unclear exactly where  
25 it was prepared. But it appears to be an accurate rendition of

1 the previous document we referred. And it is a translation to  
2 English that was made part of the records produced in the  
3 discovery provided by the Government to Defense Counsel which I  
4 inherited that evening.

5 Q. Okay. I'm going to show you the next document, which would  
6 be 141. And we will fix the sizing on that.

7 THE COURT: Do you want the Jury to be seeing this?

8 MS. ANDERSON: Yes. Yes.

9 THE COURT: All right. And the witness?

10 Q. (By Ms. Anderson) In looking at Defense Exhibit 141, can  
11 you describe for the Jury what that document is and why it was  
12 significant in your discovery of the fabrication of evidence in  
13 the Tampa case?

14 A. The document is, as you can readily see, the inside, or  
15 purports to be the inside of the Wilga cabin. And it's a  
16 diagram. And it was prepared by Roberto Hernandez Caballero at  
17 his direction. He didn't draw it, but it was his direction in  
18 his presence according to his testimony in the Tampa trial.  
19 The placement of the plane and --

20 MR. REARDON: I'm going to object to that. I believe  
21 it's direction, but I don't believe that the testimony shows it  
22 was in his presence.

23 THE COURT: Well, you can cross-examine him. I'll  
24 overrule.

25 MR. REARDON: Yes. Thank you.



1 A. Um the -- the -- the *cola* at the bottom is the tail of the  
2 plane, and Adolfo Perez Pantoja is -- *piloto* is the pilot. And  
3 to his right is Adel Regalado. And to -- behind the pilot is  
4 Jose Roberto Bello Puente. And then Mr. Leonardo Reyes Ramirez  
5 is in the fourth position behind the passenger. And the  
6 placement is, indeed, very significant.

7 Q. (By Ms. Anderson) And why is the placement significant?

8 A. Because the pilot testified in -- I believe during the  
9 Grand Jury, and likewise --

10 MR. REARDON: I'm going to object as to hearsay as to  
11 what somebody said at that Grand Jury.

12 THE COURT: I'll overrule.

13 A. And in his statements and back and forth with some  
14 confusion, because one time he said one thing, another time he  
15 said another -- but the -- the guy behind him supposedly was  
16 the fellow who had a gun and was going to shoot him, a revolver  
17 in a Republic of Cuba by a private citizen. That was the claim  
18 that was made. And so that fellow was going to shoot him.

19 But -- but -- but Jose Roberto Bello Puente and his  
20 appearance and his demeanor, as opposed to Leonardo Reyes  
21 Ramirez, his appearance and his demeanor and his scars, are  
22 totally different for that purpose.

23 MR. REARDON: I'm going to object as to the Counsel's  
24 sense impressions he's relating to this Jury about witnesses in  
25 the case in which he was the defense attorney. It's improper.

1 It's beyond a personal -- it's beyond personal knowledge. It's  
2 hearsay. It's 401, 402, 403 in this case, Your Honor.

3 THE COURT: All right. Well, I'll overrule the  
4 objection.

5 You may proceed.

6 Q. Did you have the opportunity to observe the physical  
7 appearance of each one of the individuals that we're referring  
8 to here, Mr. Pantoja, Mr. Adel Regalado Ulloa, Leonardo Reyes  
9 Ramirez and Jose Roberto Bello Puente?

10 A. Yes, I did. And it was a tedious process because I really  
11 didn't --

12 MR. REARDON: I think the answers "yes" or "no" for  
13 that question is sufficient.

14 THE COURT: I'll sustain.

15 Q. And can you describe the physical appearance of Jose  
16 Roberto Bello Puente?

17 MR. REARDON: Objection. Objection. How far afield  
18 may we go, Your Honor? Relevance.

19 MS. ANDERSON: Your Honor, this is relevant in order  
20 for the Jury to be able to understand the testimony.

21 THE COURT: I am -- my understanding is it has to do  
22 with the placement of these people in the plane. Is that what  
23 I'm understanding?

24 MS. ANDERSON: And why they were moved.

25 THE COURT: All right. I'll --

1 MR. REARDON: Not their appearance, Your Honor.

2 THE COURT: I'll overrule. You may proceed.

3 A. Jose Roberto Bello Puente is lanky, perhaps. He's tall;  
4 he's five-eleven, maybe. Very soft spoken. Very thin. Very  
5 frail looking in appearance.

6 Leonardo Reyes-Ramirez is maybe five-tenish. He's  
7 built -- he's very strong he's built like a bulldog. He's  
8 gruff. He would knock this microphone down within the first 30  
9 seconds of his testimony. And he has a number of visible scars  
10 about his body.

11 Q. And --

12 MR. REARDON: Object as to relevance. Does that mean  
13 he's a bad guy? Where are we going next with this?

14 THE COURT: All right. I'll overrule.

15 Q. You were referring to prior testimony of Mr. Pantoja, the  
16 pilot. And utilizing what's been marked -- or is Defense  
17 Exhibit 141, can you describe for the Jury what the initial  
18 testimony was versus the subsequent testimony of Mr. Pantoja?

19 MR. REARDON: I'm going to object. We have a court  
20 file. The Court can take judicial notice of files. Rather  
21 than having a witness give his memory and hearsay, the proper  
22 course, the government would respectfully submit, would be to  
23 refer to those transcripts, not to get the witness'  
24 editorializing.

25 THE COURT: I'll overrule.

1 A. Being mindful of the spirit of the Government's concern,  
2 it's -- it's -- it's in a number of places within the document,  
3 what I previously stated to you. And some of the changes that  
4 appeared to be made such as in the placement. Here he's very  
5 firm. In this translation of the Cuba document, he is very  
6 firm as to the placement of Leonardo Reyes Ramirez behind him.  
7 He's likewise firm about the fact that a wrench appears in the  
8 cabin, when there's supposedly a gun, a knife and then  
9 different people holding it at different times in a plane that  
10 is about to crash at sea, making circles around a Russian  
11 freighter.

12 So those are the -- those are at different lines in  
13 there, and without going into more detail in a line-by-line  
14 basis.

15 Q. Was there a time when the position of the individual that  
16 you know as Leonardo Reyes Ramirez was different?

17 A. Yes.

18 Q. And when was that?

19 A. At the Grand Jury he initially stated by describing the  
20 fellow as a Colombian tourist and -- and -- and in the  
21 Colom- -- and the tourist guide, he -- he suggested that the  
22 fellow behind him was the tall, lanky fellow, which would be  
23 Jose Roberto Bello Puente. Later, then, that changed to --  
24 in -- in statements that he gave both before that and after  
25 that he indicated it was Leonardo Reyes Ramirez. So there

1 was -- there were different positionings there.

2           And then when he got to Cuba he indicated, and then at  
3 his trial he indicated that, indeed, was Leonardo Reyes  
4 Ramirez, the heavysset strong fellow that had been behind him.  
5 At trial he was adamant about that position, that, indeed, was  
6 Leonardo Reyes Ramirez who had held the gun and so forth and  
7 was seated behind him and reached over and put the gun -- the  
8 revolver in his head.

9 Q. Okay. Now, you mentioned the distance of the revolver.

10 And what was the significance, or the lack of significance, of  
11 the revolver with respect to the individuals that live in Cuba?

12 A. That would be a first. A revolver by a citizen of the  
13 Republic of Cuba, that would be headline news.

14 Q. Now utilizing the remaining exhibits -- and I'm going to  
15 ask you to choose which ones you want to use for comparative  
16 purposes -- um, how did you discover that there was additional  
17 fabrication in this case, the Tampa case?

18           MR. REARDON: I'm going to object to the form of the  
19 question. How did he believe that he thought that there was  
20 fabrication? This gentleman is not a trier of fact. He wasn't  
21 in that case. He represented his party well, but he's not a  
22 trial --

23           THE COURT: I'll overrule the objection.

24           You may proceed.

25 A. When the examination began, likewise, Judge Adams

1 restricted -- Henry Lee Adams, the District Judge, restricted  
2 the examination to the case at hand. And I was asking  
3 questions about -- from Mr. Caballero about his background.  
4 And the Government objected. And I was asking him about  
5 preparation of documents. And the Government objected. So the  
6 best that I could do was nibble. And I wanted to find out --

7 Q. Which document are you using?

8 A. I'm going to be referring to 144A.

9 Q. Let me bring it up for the Jury.

10 All right. We have it up.

11 A. 144A indicates in English, the translation of a document,  
12 an underlying document, this translation indicates that  
13 Leonardo Reyes Ramirez' criminal history is that he was  
14 sanctioned by the Tribunal of Palma Soriano for speculating and  
15 hoarding, which is a crime in Cuba, and was sanctioned because  
16 of it. And it was dated, apparently, there on September 10 of  
17 1996. Now, I have before me 144B.

18 Q. All right. Let me bring that one up for the Jury.

19 A. At the time -- which is Roberto Hernandez Caballero  
20 apprising the FBI agent, of all people Patrick Laflin, as noted  
21 at the bottom of the Criminal History. And Mr. Laflin, Agent  
22 Laflin, who is fluent in Spanish --

23 Q. I apologize; I brought up the wrong document. You're at  
24 144A.

25 A. I'm at 144A and 144B. I'm discussing, now, the FBI 302.

1 Q. Yeah, I know. I just got 145 up. It's been a long trial.  
2 We have 144B up now.

3 A. So the -- the FBI report, shall I say, indicates an  
4 extensive criminal history. And worthy of mention are crimes  
5 such as, in page 2, um, that crimes of significant violence,  
6 including a rape charge of Tanya Calero Rojas. And so what we  
7 have is a list of crimes. Battery against Mr. Acuna. A broken  
8 bottle, cutting somebody. Lesions and -- of Mr. Cabrera.  
9 The -- the problem with Mr. Telles. The attempted rape of --  
10 of Tanya Calero Rojas. And then it goes on to list that this  
11 latest criminal act, referring to the skyjacking, will result  
12 in yet a third trial pending against Reyes when he is deported  
13 or extradited to Cuba for criminal prosecution.

14 In terms of the contrast, if you see, the 144A seems  
15 to reflect not much of a criminal history. And it is a  
16 purported translation of a -- of an official Cuban document  
17 generated by Juan Carlos Anciano, a colleague of Roberto  
18 Hernandez, and likewise a DSC instructor. This is an  
19 official -- this purports to be the translation of an official  
20 document from the Ministry of the Interior. DSC, really DGI,  
21 in Cuba.

22 MR. REARDON: I'm going to object unless -- the  
23 witness may have a personal knowledge about the collegueship  
24 that he just described. If he doesn't, it's 602. If he does I  
25 want to make sure there's a proper foundation. I'm sure he

1 understands.

2 THE COURT: I'll overrule. You may cross-examine.

3 You may proceed.

4 Q. You were just explaining for a moment the DS -- what was  
5 it, DSI?

6 A. DCI.

7 Q. DCI.

8 A. DGI.

9 Q. And DGI. What are the differences between the two?

10 A. As I said earlier, they're variable. But there are  
11 differences in name, generally, and some in practice. DI is  
12 the recent Directorate of Intelligence. That is a division in  
13 Cuba which takes care of and engages in foreign espionage and  
14 proactive activity abroad. Generally. It does other things,  
15 too.

16 The DGI -- the DCI, now, is a division of  
17 counter-intelligence. In Cuba those are the agents that  
18 supposedly protect the island. They -- I think the policy  
19 and -- they profess to protect the island in terms of  
20 information that is being gained by foreign services or foreign  
21 individuals, but really they investigate offenses within the  
22 island largely as a result of counter-revolutionary activities  
23 or activities of foreigners on the island.

24 Previous to that, they had -- in the shifting name  
25 events, they had -- it was the DGCI and the DGI. And it was



1 just the general -- the DGI is the General Directorate of  
2 Intelligence, which is now just the Directorate of  
3 Intelligence. And previous to that the DGCI is the *Dirección*  
4 *General de Contrainteligencia*, of counter-intelligence. The  
5 names have changed over the years and continue to evolve. And  
6 there are a lot of branches within it. M-1. M-19. M-18. MC.  
7 Department of Americas. All part of MININT, the special  
8 troops, *tropas especiales*. And transitions that took place  
9 based on the events of 1989. And that's when Cuba started  
10 changing names, shall I say, of the same unit.

11 DSC is *Dirección de Seguridad del Estado*. That is --  
12 that is former G-2, which is internationally recognized as --  
13 as being, like, internal security. And that's what Juan Carlos  
14 Anciano purports to be. Likewise, the same title, same  
15 division as Roberto Hernandez Caballero signed that he was but  
16 testified differently in Tampa.

17 THE COURT: It's about 10:45. Is this a good time to  
18 take a break?

19 MS. ANDERSON: Can I just do one more question, Your  
20 Honor --

21 THE COURT: All right.

22 MS. ANDERSON: -- and then we'll do the break?

23 Q. (By Ms. Anderson) In your case, in the Tampa case, you  
24 indicated that Lieutenant Colonel Caballero had testified.

25 A. Yes, he did.

1 Q. And in what capacity did he state that he was with the  
2 Government of Cuba at that time?

3 A. He indicated that he worked counter-intelligence. And when  
4 I asked him, Counter-intelligence as to whom?, the Government  
5 objected and the Court, Judge Adams, upheld the objection.

6 Q. Okay. He didn't say he was just a cop, right?

7 A. Oh, no, he didn't --

8 MR. REARDON: Objection. That's leading.

9 THE COURT: I'll sustain.

10 Let's go ahead and take the break. It's 10:45.

11 Ladies and Gentlemen of the Jury, we're going to take  
12 a short break. Remember, you remain under all the instructions  
13 the Court has previously given you. And we'll see you in about  
14 15.

15 (Recess.)

16 COURTROOM DEPUTY: Court is back in session.

17 THE COURT: You may be seated. Ready for the Jury?

18 MS. ANDERSON: Yes, Your Honor.

19 (Jury enters courtroom.)

20 THE COURT: You may be seated, Ladies and Gentlemen.

21 Whenever you're ready.

22 MS. ANDERSON: Thank you, Your Honor.

23 Q. (By Ms. Anderson) Mr. Fernandez, we're going to move to --  
24 Defense Exhibits 145A as in apple, B as in boy, and C as in  
25 carrot. And utilizing those three exhibits -- I'll bring up

1 the first one, 145A --

2 MS. ANDERSON: Which, incidentally, does come up on  
3 your screen over there, just in case I bring up a wrong exhibit  
4 again.

5 Q. Explain to the Jury how these three exhibits assisted you  
6 in detecting the fabrication of evidence in the Tampa case.

7 A. 140- --

8 MR. REARDON: I'm going to object again for the record  
9 about Counsel's view of whether something was fabricated as  
10 opposed to an established fact that it was in litigation.

11 THE COURT: All right. . I'll overrule.

12 A. 145A is a translation of a document from the Ministry of  
13 Justice dated September 10, 1996, again related to a conduct,  
14 criminal history, of Adel Regalado Ulloa. And it has a  
15 conclusion which indicates until now there is no record of any  
16 sanction imposed by any judge or tribunal of the Republic of  
17 Cuba, and is dated September 10, 1996.

18 If you look at, then, 145B, there is a document from  
19 the Ministry of the Interior which indicates that Mr. Regalado  
20 Ulloa -- and again I apologize for the underlining, but that  
21 was how it was when I received it. But it indicates that --  
22 and this is -- at the bottom, you'll notice, is prepared by  
23 Hernandez Caballero. And it indicates that he, meaning  
24 Mr. Regalado, maintains arrogant and overbearing conduct. He's  
25 not very socialable and a womanizer. He does not have

1 prestige. He comes from a peasant family. And lists among his  
2 social relations Jose Roberto Bello Puente.

3 At his place of work he has been the target of  
4 criticism for his poor work as commercial representative. And  
5 he's a member of the Young Communist League.

6 So then you move on to Exhibit Number 34.

7 Q. You mean --

8 A. I'm sorry. To my 34, which is your 145C, which is the  
9 Spanish document. And that Spanish document tells a different  
10 story. In other words, that Spanish document just indicates  
11 where he lives, he comes from a peasant background and he knows  
12 Jose Roberto Bello Puente. And what it lacks is a translation,  
13 meaning that Exhibit 145C is Roberto Hernandez Caballero's  
14 preparation from the Ministry of the Interior about the conduct  
15 of Adel Regalado Ulloa.

16 Q. And how did you know it was from Lieutenant Colonel  
17 Caballero?

18 A. He signed it. It's the same signature. And it was part of  
19 the inquiry during the document exchange that took place in the  
20 Regalado trial in Tampa.

21 But this document has no translation, the Spanish one.  
22 And then there are two translations, which are 145A and B,  
23 without underlying documents. And those underlying documents,  
24 in other words, would say something different than the one that  
25 is before your consideration as 145C. Which means that Roberto

1 Hernandez Caballero or Juan Carlos Anciano, the DSC instructor,  
2 or whatever, generate a criminal history or a conduct report of  
3 anybody as they please, dependent upon on circumstances that  
4 are before them at the time.

5 And I had just, again, become involved in this case.  
6 So this was later developed in the immigration proceedings, to  
7 a great extent.

8 Q. And the last document, just explain for the Jury what  
9 Defense Exhibit 146 is, which is your 52.

10 MS. ANDERSON: And I'll bring it up.

11 A. This is a translation of an underlying document. This one  
12 is a conduct report on the lanky fellow that I described, Jose  
13 Roberto Bello Puente. And it indicates where he was born. And  
14 then it indicates that the Ministry of the Interior information  
15 is that he lives alone and is frequently visited by men and  
16 foreigners. He studied at the military technical institute.  
17 He has few relations on the block and he's viewed as an  
18 antisocial element. He's involved in various illicit economic  
19 activities, for which he has been punished. His links are all  
20 to antisocial elements. And he has no prestige in his area of  
21 residence. And again, the -- there is significant information  
22 in that paragraph of an adverse nature for Mr. Bello Puente  
23 under Cuban law.

24 Q. And what was the significance of that information?

25 A. The implication is that, because he's visited by men and

1 foreigners, that he -- that he is a homosexual and engages in  
2 that kind of illicit activity in Cuba.

3 Q. Okay. And what is the view in Cuba regarding that type of  
4 activity?

5 MR. REARDON: I'm going to object to that answer as  
6 being speculative, and a conclusion and 602.

7 THE COURT: I'll sustain.

8 MR. REARDON: May it be stricken?

9 THE COURT: He hasn't answered. I'll sustain.

10 Q. (By Ms. Anderson) Who prepared this document?

11 A. Roberto Hernandez Caballero is the DSC instructor who  
12 prepared the underlying document that prompted that  
13 translation. And that document -- again, there are many  
14 documents that I was -- I had to reconstruct while standing at  
15 a lectern, as you are, asking questions, because of the  
16 restricted nature of the inquiry. It was different back in  
17 1997, when this case was tried in July, as to the -- first my  
18 experience in the field, and then also as to my -- you know,  
19 the general knowledge by the community at large.

20 Q. You only had about ten years under your belt at that  
21 time --

22 A. That's it. That's it.

23 Q. -- with this issue --

24 MR. REARDON: I'll object. That was a statement, not  
25 a question.

1 THE COURT: All right. I'll sustain.

2 Q. Did there come a time that you learned that the Wilga plane  
3 and the -- some of the individuals that were involved in the  
4 Tampa case were involved in a previous action in which,  
5 ultimately, fabrication of evidence was involved?

6 MR. REARDON: Objection to the question, its breadth  
7 and on grounds of relevance absent a proffer.

8 THE COURT: I'll sustain.

9 Q. Did you become aware that the Wilga plane and the pilot,  
10 Pantoja, were involved in another activity which eventually  
11 arose into the fabrication of evidence?

12 MR. REARDON: Objection to the form of the question.  
13 It's a conclusion. It's leading.

14 MS. ANDERSON: Is he aware?

15 THE COURT: Could the attorneys approach a second?  
16 (Bench conference, out of hearing of Jury.)

17 THE COURT: Is this Hernandez Caballero again?

18 MS. ANDERSON: Yes. In that case is -- Hernandez  
19 Caballero, involves the same plane. Involves the same players.

20 THE COURT: But I'm saying, this -- the question was  
21 so -- the way it was worded, I don't know what you're referring  
22 to. So is this -- are you saying this is another incident  
23 where Hernandez Caballero was involved in tampering of the  
24 evidence? Is that what you're saying?

25 MS. ANDERSON: Hernandez Caballero was involved in the

1 case, and in that case there was tampering of evidence.

2 MR. REARDON: That wasn't the Court --

3 THE COURT: But was he involved in the tampering?

4 MS. ANDERSON: I believe he was. He will testify that  
5 he was. If you like, I'll rephrase the question.

6 THE COURT: Again, unless he has, you know, something  
7 that -- that, after he analyzed it, you know, resulted in  
8 tampering, that's one thing. But I don't want just -- I mean,  
9 every case that was ever tampered with. Unless Hernandez  
10 Caballero had a direct hand in it, I don't want to hear about  
11 it.

12 MS. ANDERSON: Okay. I'll rephrase the question.

13 MR. REARDON: Let's get the record clear here.  
14 Counsel just said there was a case in which he was involved  
15 with the tampering. She made a clear distinction. Now, the  
16 United States would like a proffer -- would like to have more  
17 precision in terms of the date, what case, its title, so this  
18 record is rather clear. And then a representation now that the  
19 fact that he was directly involved with the tampering, as  
20 alleged, not -- in that case where there was tampering, which  
21 is what she said.

22 THE COURT: That's the Court's ruling. Unless he was  
23 directly involved, I don't want to hear it.

24 MS. ANDERSON: Thank you, Your Honor.

25 (Back on the record in open Court.)



1 THE COURT: Whenever you're ready.

2 Q. (By Ms. Anderson) Did there come a time in which you  
3 became aware of another case in which Lieutenant Hernandez  
4 Caballero was involved with the fabrication of evidence?

5 A. Yes.

6 Q. And what case was that?

7 A. In the United States of America versus Gerardo Hernandez,  
8 also known as Gero, and multiple other defendants. There were  
9 really 19, and it was the Wasp Network prosecution.

10 Q. And in what capacity was Lieutenant Colonel Caballero  
11 involved?

12 A. He represented the Government of Cuba. He testified  
13 against the Cubans of the United States as I --

14 MR. REARDON: I'm going to object. Was Counsel part  
15 of this case? If he was, let's get the record clear. If he  
16 wasn't, it's going to be a lot of hearsay.

17 THE COURT: All right. You may proceed. I don't know  
18 at this point, so you may proceed.

19 MR. REARDON: Your Honor, the objection is, what's the  
20 source of his knowledge? 602.

21 THE COURT: All right. Lay foundation.

22 Q. (By Ms. Anderson) What's the source of your knowledge?

23 A. The information first began during the Regalado trial in  
24 Tampa when Adel Regalado, whom I had barely recognized as my  
25 own client --

1           MR. REARDON: I'm going to object. This is a very  
2 simple question. If Counsel has personal knowledge or was  
3 involved he can say so. If he's about to give a narrative  
4 that's how he learned it by hearsay, it would be inappropriate  
5 to have that narration before this Jury.

6           THE COURT: All right. Please answer the question.

7           A. I represent Brothers to the Rescue. I represented Jose  
8 Basulto, who was a surviving one of four victims of the downing  
9 and the killing in international airspace in the case of --  
10 Roberto Hernandez Caballero came to testify against the United  
11 States and for the Wasp Network in Operation Scorpion.

12          Q. Okay. And specifically with regard to the fabrication of  
13 evidence in that case, can you explain to the Jury how  
14 Mr. Caballero, Lieutenant Colonel Caballero was involved with  
15 the fabrication of evidence?

16          A. The Cuban presentation, for instance, was characterized by  
17 Jeffrey Richardson.

18          MR. REARDON: Forgive me, Counsel.

19                As I understand it, the record is that the -- this  
20 advocate testifying here represented Basulto, who was a witness  
21 in the case. Did not represent any of the parties in the case.  
22 Unless I'm -- I stand corrected if Counsel will correct me.

23          THE WITNESS: Well, as a matter of fact, I provided  
24 assets that led to that prosecution.

25          MR. REARDON: That's not the question.

1 THE COURT: All right.

2 MR. REARDON: Did he represent a witness or did he --  
3 I'm talking through Your Honor. Or did he represent a witness  
4 in this case?

5 THE COURT: Please clarify for the record his  
6 representation.

7 Q. (By Ms. Anderson) Who did you represent?

8 A. Mr. Regalado, among others, met with your agents  
9 extensively to --

10 MR. REARDON: That's not responsive. He was asked who  
11 he represented.

12 THE COURT: Please listen to the question and answer  
13 the question.

14 A. I represented Adel Regalado, who provided information in  
15 that case. I represented Jose Basulto, who was a victim in the  
16 case. And I represented Brothers to the Rescue.

17 MR. REARDON: I take it he represented none of the  
18 parties.

19 THE COURT: Well, you can --

20 THE WITNESS: No, I --

21 THE COURT: That's not what I take. And you can  
22 cross-examine him. You may proceed.

23 Q. (By Ms. Anderson) Okay. You indicated that certain  
24 individuals were provided as assets to the United States  
25 Government. Which individuals were you referring to?

1 A. Adel Regalado was a principal asset in that case. That has  
2 never been disclosed previously because of some of the matters  
3 that he touched upon. I've provided about 250 assets to the  
4 United States.

5 MR. REARDON: Objection. It's not responsive as to  
6 what the Counsel did.

7 Q. In that case, what was the fabrication?

8 THE COURT: I haven't ruled on the objection.

9 MS. ANDERSON: I'm sorry, Your Honor.

10 THE COURT: I'll overrule the objection.

11 Go ahead.

12 Q. (By Ms. Anderson) What was the fabrication of evidence, as  
13 you learned from your representation of these individuals?

14 MR. REARDON: Once again we're going to object for the  
15 record. It's what he believed is the fabrication, not what is  
16 a fabrication.

17 THE COURT: All right. I'll overrule.

18 A. The United States believes that Jeffrey Richardson, who was  
19 in charge of the 84th Radar Squadron stationed out of Tampa --

20 MR. REARDON: Objection to the answer, The United  
21 States' believes. It's not responsive. He's being an advocate  
22 up there, not a witness.

23 THE COURT: Please listen to the question and answer  
24 the question.

25 Q. You may proceed.

1 A. The United States presented Jeffrey Richardson to a jury in  
2 Miami in the Hernandez prosecution. Jeffrey Richardson  
3 testified in Miami on behalf of the United States. He's a  
4 radar operator and the person knowledgeable about the downing  
5 of the Brothers to the Rescue event that day. He analyzed the  
6 Cuban charts and characterized the submission by the Republic  
7 of Cuba as clearly a fraud -- clearly a fraud. A fraudulent  
8 representation in an American courtroom.

9 He had the information from the United States  
10 available to him. Jeffrey Houlihan from Daico March Air Force  
11 Base in California, former NORAD -- and these are acronyms,  
12 these are North American Defense Zone protection systems. Care  
13 Brock, Cheyenne Mountain were all involved. As he also noticed  
14 what was about to take place in the downing of the Brothers to  
15 the Rescue planes and the information that came from Cuba  
16 later, which was totally inconsistent with the tracking, with  
17 the monitoring and with the placement. Because Cuba presented  
18 evidence to an American jury that the downing of the Brothers  
19 to the Rescue plane was in Cuban airspace and it took place 22  
20 and 20 miles away from Cuba, 10 miles and 12 miles, or 8 miles  
21 and 10 miles outside of the territorial waters of Cuba. That  
22 is the position of the United States ten years ago yesterday.

23 MR. REARDON: The objection, Your Honor, is to the --  
24 to the representation in this testimony Cuba presented  
25 evidence. This is once again Cuba. And this witness knows --

1 this witness knows Mr. Caballero testified that he did not know  
2 about the details of the shutdown --

3 THE COURT: What's your objection? I don't know what  
4 the objection is. Based on what?

5 MR. REARDON: Personal knowledge, 602.

6 THE COURT: I'll overrule.

7 Q. (By Ms. Anderson) Just -- just to give the Jury a little  
8 context, what is the Brothers to the Rescue and their function?

9 A. Brothers to the --

10 MR. REARDON: I'm going to object. It's irrelevant.

11 THE COURT: I'll overrule.

12 A. Brothers to the Rescue is an organization formed by an  
13 ex-U.S. military officer by the name of Jose Basulto, who was  
14 likewise involved in the Bay of Pigs invasion. Um, Mr. Basulto  
15 felt a need in the early or mid-'90s to -- to form an outfit of  
16 volunteers that flew the Straits of Florida because there were  
17 so many people that needed to be rescued at sea.

18 The U.S. military and Coast Guard did not have the  
19 capabilities, as can be imagined, of people getting in rafts,  
20 inner tubes, and swimming across from Cuba to be able to save  
21 those people. So he formed this group that would fly over the  
22 Florida Straits. They would leave Homestead Air -- area, not  
23 the Air Force base, and they would chart their course and do  
24 what was called comb searches off of Cuba. North of the Cuban  
25 Territory, south of the 24th Parallel.

1 Cuba has designed what's called a danger zone,  
2 something -- it's only Cuban -- that anyone who flies south of  
3 the 24th Parallel, which perhaps is as far distance as 40, 50  
4 miles is in danger of a retaliation by the Republic of Cuba.  
5 The United States has responded to that over the years by  
6 placing fighters, on battle stations at Tyndall Air Force base  
7 in Homestead.

8 MR. REARDON: Your Honor, is there a point of  
9 departure in the terms of relevance that Your Honor --

10 THE COURT: Is this a relevance objection?

11 MR. REARDON: Yes.

12 THE COURT: I'll sustain.

13 Q. (By Ms. Anderson) Turning back to the Wilga plane, the  
14 same plane utilized in the Tampa case itself, did you learn  
15 that Wilga plane was also involved in the preparation by the  
16 Government of Cuba for the shootdown of the Brothers to the  
17 Rescue?

18 Q. The Wilga plane was the practice plane that flew  
19 approximately a week before, after Castro gave the orders on  
20 February 14. And --

21 MR. REARDON: I'm going to object. I'm sure he knows  
22 a lot, but that's hearsay, even if it's about Castro.

23 THE COURT: So your objection is hearsay?

24 MR. REARDON: Both relevance and hearsay --

25 THE COURT: I'll sustain.

1 Q. (By Ms. Anderson) How did you learn about the Wilga plane  
2 being involved in the preparation for the Brothers to the  
3 Rescue shutdown?

4 A. Because Regalado recounted his participation in the events  
5 surrounding the practice run, including the meeting, the  
6 takeoff, the pilot involved and his knowledge of the event.  
7 And that was provided to the Government in four separate and  
8 distinct debriefings by Caroline Heck, the Assistant United  
9 States Attorney from Miami who then ultimately prosecuted the  
10 spy case; Allen Sullivan, another Assistant United States  
11 Attorney, was present; Frank Oliva from the FBI working  
12 intelligence was present; um, there were Mr. Harris from  
13 Immigration, Bob Harris, a criminal investigator.

14 MR. REARDON: I'm going to object. It's beyond --  
15 it's a narrative. He's an advocate up there. He's not a  
16 witness.

17 THE COURT: All right. Well, again, you need to stick  
18 to -- the objection, the Court will sustain as to relevance.

19 Let's stick to the issue at hand Ms. Anderson.

20 MS. ANDERSON: Yes, Your Honor.

21 THE COURT: All right.

22 Q. (By Ms. Anderson) Did Lieutenant Colonel Caballero  
23 Hernandez testify in what you're referring to as the Cuban spy  
24 case, the Hernandez case, the one tried in Miami?

25 A. Yes, he did.



1 Q. Okay. In what capacity did he identify himself in that  
2 case, if you are aware?

3 A. I believe he indicated he was an investigator. He -- I  
4 don't recall, specifically, the ranges that he used. He did  
5 make reference to his superiors within the DGI. And at the  
6 time he indicated that he worked for Adalberto Gravedo --

7 Q. Okay.

8 A. -- who was, supposedly, his -- one of his two superiors,  
9 which may well be inaccurate.

10 Q. You spoke a little bit about disinformation, but I'm not  
11 quite sure the Jury -- I asked you to explain to the Jury  
12 exactly what is disinformation, vis a vis the Government of  
13 Cuba, and how it utilizes it.

14 MR. REARDON: I'm going to object. This has been  
15 answered and explained.

16 THE COURT: I'll sustain.

17 Q. Okay. Based upon your background and experience and  
18 extensive involvement with issues concerning Cuba, did there  
19 come a time that you became aware of the type of briefings that  
20 are received by individuals traveling to Cuba, especially those  
21 that are within the Government of the United States?

22 MR. REARDON: Objection.

23 A. Yes.

24 MR. REARDON: Relevance.

25 THE COURT: I'll sustain.

1 MR. REARDON: Perhaps the witness could be instructed  
2 not to answer when there's an objection.

3 THE COURT: When you see the attorney rise for an  
4 objection, please do not respond until the Court's had an  
5 opportunity to rule.

6 THE WITNESS: I apologize.

7 Q. (By Ms. Anderson) Did there come a time you became  
8 familiar with the videotaping practices of the Government of  
9 Cuba within Cuba hotels and within Cuba airports?

10 MR. REARDON: Objection.

11 A. Yes.

12 MR. REARDON: Relevance. Again, Counsel --  
13 Pardon me, Your Honor.

14 THE COURT: Go ahead, Mr. Reardon. What's your  
15 objection?

16 MR. REARDON: Relevance, Your Honor.

17 THE COURT: I'll sustain.

18 MS. ANDERSON: May I have a sidebar, Your Honor?

19 THE COURT: Sure.

20 (Bench conference, out of hearing of Jury.)

21 THE COURT: Yes, sir -- ma'am.

22 MS. ANDERSON: Not a problem. I'm used to it.

23 THE COURT: So am I. Go ahead.

24 MS. ANDERSON: Videotaping within Cuba is centrally  
25 relevant here because videotaping has and does occur within

1 hotels, within airports. And, certainly, the existence of  
2 videotapes, just like the existence of the autopsy videotape,  
3 is relevant for this Jury to understand what evidence has not  
4 been preserved or presented by the Government of Cuba in this  
5 case, which would have been available in the Cuban hotels of  
6 the actual bombings as they occurred.

7 THE COURT: Okay. Here's my concern: Does he have  
8 any information there actually was video going on in any of  
9 these hotels at that time?

10 MS. ANDERSON: Yes. I'll pin it down to the period of  
11 time of when he's aware that videotaping was a routine  
12 practice, the wiring of the hotels, how he's obtained that  
13 information over the years, and in particular in the years of  
14 1997 and 1998.

15 MR. REARDON: It's hearsay. It's not what he's been  
16 qualified to testify about. He's -- 602. It's relevance.

17 THE COURT: I'll overrule, but based on -- I'm not  
18 overruling the --

19 MR. REARDON: Individual objection.

20 THE COURT: -- individual question, because I don't  
21 know where it's going.

22 MR. REARDON: Sure.

23 THE COURT: All right.

24 MS. ANDERSON: Absolutely.

25 (Back on the record in open Court.)

1 THE COURT: You may proceed, Ms. Anderson.

2 Q. (By Ms. Anderson) In the hundreds or thousands -- I've  
3 lost track of how many people you've interviewed during your --  
4 your, I guess, 20-some-odd years of -- of contact with  
5 individuals from Cuba, dissidents and defectors and  
6 individuals, did you learn, in particular between the years of  
7 1997 and 1998, whether videotaping was a practice in the  
8 Government of Cuba?

9 MR. REARDON: Objection, relevance.

10 THE COURT: All right. I'll overrule.

11 A. Yes, I did.

12 Q. In what areas does the Government of Cuba videotape?

13 MR. REARDON: Objection, lack of foundation.

14 THE COURT: I'll overrule.

15 A. The Government of Cuba videotapes and monitors the  
16 activities of every foreigner that comes into Cuba from the  
17 time they get off a plane at Jose Martí Airport until the time  
18 they're back aboard, including their most private moments in  
19 bathrooms, in hotel rooms, everywhere they go. In tourist  
20 hotels, in restaurants. You name it, they have them.

21 Q. How were you aware of that information?

22 A. As recently as a debriefing of the person who implemented  
23 the programs in the early '90s. And supplemented it -- I think  
24 it's called the 32 TV Samsung Provision of one of the war rooms  
25 that controls it at one of the former *Tropas Especiales*, who

1 then transitioned over to security and served abroad.

2 But long before that the United States was fully  
3 cognizant of that, and we've taken active measures --

4 MR. REARDON: Objection. It's a narrative. It's  
5 beyond responsive to the question.

6 THE COURT: I'll sustain.

7 Q. As a result of the existence of the videotaping in the  
8 Government of Cuba, have you become aware of the warnings that  
9 are provided to travelers to the Government of Cuba by the  
10 United States?

11 A. Yes.

12 MR. REARDON: Objection, relevance.

13 THE WITNESS: I'm sorry.

14 THE COURT: Overruled.

15 MR. REARDON: I'm sorry. You're the victim of your  
16 own quick wit, sir.

17 THE WITNESS: Thank you.

18 THE COURT: No commentary, Mr. Reardon. No sidebar.

19 You may proceed. The Court overruled the objection.

20 A. Yes.

21 Q. (By Ms. Anderson) How?

22 A. Well, I've participated in briefings and I've had to  
23 advise, for instance, the United States Congressmen about the  
24 trap in front of the intelligence officer who handled that for  
25 the United States.

1 MR. REARDON: I'm sorry, sorry to interrupt you.

2 THE WITNESS: Be my guest.

3 Q. And what do those --

4 MR. REARDON: Excuse me. Now I have an objection.

5 The response to that was clearly irrelevant. The  
6 question may have -- been -- my objection overruled, but that  
7 answer is totally irrelevant to the inquiry of this Court.

8 THE COURT: All right. I'll overrule.

9 Q. (By Ms. Anderson) And what do those warnings include? Can  
10 you explain that to the Jury?

11 MR. REARDON: Objection, relevance.

12 THE COURT: All right. I'll overrule.

13 MS. ANDERSON: Your Honor, if you'd like a standing  
14 objection to relevance, I would not object.

15 THE COURT: All right.

16 MR. REARDON: I actually prefer to stand when I  
17 object. Thank you.

18 THE COURT: That's fine.

19 A. The travelers, particularly people in Government, and  
20 Congressman Jim Davis is an example, had a problem getting  
21 briefed prior to going to Cuba about eight years ago. And so  
22 he asked me if I could connect him up with somebody really in  
23 the know of --

24 MR. REARDON: I'm going to object. That's hearsay and  
25 how far relevance -- relevance -- .

1 THE COURT: Please listen to the question and answer  
2 the question.

3 A. I was present.

4 Q. Are you familiar with the warnings?

5 A. Yes.

6 Q. What are they?

7 A. They are that everything that you are doing in Cuba is  
8 being videotapes so you must avoid any embarrassing scenario as  
9 a result of the fact that that's what prompts Cuba, then, to  
10 use you later.

11 Q. What do you mean by "use you later"?

12 A. That means that there's a longstanding practice of catching  
13 people in very compromising positions in Cuba and then  
14 approaching the individuals with that evidence and asking them  
15 to perform different functions at different levels. Some are  
16 fairly innocent at first, and some develop into far more  
17 serious and egregious situations.

18 Q. Does that include areas that impact national security?

19 MR. REARDON: Objection. It's leading. And -- and if  
20 it does, we need to be at sidebar, not in open Court.

21 THE COURT: All right. Well, I'm not sure the  
22 relevance of this, so let's move on.

23 MS. ANDERSON: Okay.

24 Q. (By Ms. Anderson) Do you have an opinion and based on --  
25 or specific knowledge of whether the lobbies of the hotels,

1 such as the tourist hotels in Havana, would be videotaped?

2 A. Yes.

3 Q. Do you have knowledge about whether the lounges, the bars  
4 and the waiting areas would be videotaped?

5 A. Not as different from everywhere, meaning everywhere. When  
6 I came in I had a comment about the camera. Those are not the  
7 cameras in Cuba; you can't see them. In other words,  
8 everything is videotaped.

9 Q. Is there any exception of an area that's not videotaped?

10 A. I have to rely on -- you know, on U.S. intelligence for  
11 that. I don't think so.

12 Q. Are rest rooms videotaped?

13 MR. REARDON: I'll object. We appreciate your  
14 reliance, but it's hearsay.

15 THE COURT: All right. Well, I'll sustain. I don't  
16 want anything that you don't know by your direct knowledge.

17 I'll sustain. You may move on.

18 Q. Based upon the interviews you have done of hundreds of  
19 individuals from the -- have come from Cuba, have you learned  
20 about the wiring of the hotels in the areas that are wired in  
21 the hotels?

22 A. Yes.

23 Q. That includes the videotaping --

24 A. Yes.

25 Q. -- of specific areas?



1 A. Yes.

2 Q. And What specific areas are videotaped in these hotels?

3 MR. REARDON: Your Honor, excuse me. Excuse me,  
4 Counsel. I'm constrained to object unless there's a different  
5 source than -- the witness very candidly acknowledged a moment  
6 ago about the United States intelligence as being the source.  
7 Because, if it is, it's hearsay.

8 THE COURT: I'll overrule.

9 Q. You may answer.

10 A. Yes. And there are more sources. It's just that I heavily  
11 rely upon --

12 THE COURT: You need to listen to the question and  
13 answer the question.

14 THE WITNESS: Yes, Your Honor.

15 Q. Do your sources include sources other than the United  
16 States intelligence?

17 A. Yes.

18 Q. Okay. What are those sources?

19 A. People who have been there. People who have been  
20 compromised in the sense that, Oh, my God. You know what  
21 happened to such-and-such?

22 So I have never been there. But this is tradespeak.  
23 This is like I know that there's another courtroom in this  
24 building, and I haven't visited yet.

25 Q. Okay. And based upon your background and experience and

1 interviews with these individuals, do you have an opinion as to  
2 what areas of the hotels are videotaped?

3 A. Everything. From bathrooms to kitchens to exits to  
4 entries. If you can videotape a bathroom and you have to tell  
5 a Congressman to be careful of how he does something in the  
6 bathroom if he doesn't want to see himself later, you know that  
7 everything is in a position of grave concern.

8 MR. REARDON: I don't know where to begin with this  
9 objection, about Congressmen in bathrooms, but, other than the  
10 anecdote, it's a narrative. Relevance.

11 THE COURT: I don't need a speaking objection.  
12 Relevance, fine. I'll overrule.

13 Q. Do you have an opinion with regard to Lieutenant Colonel  
14 Caballero as to whether he is a threat to our national  
15 security?

16 MR. REARDON: Objection.

17 THE COURT: I'll sustain.

18 Q. Do you have an opinion as to whether he's a fabricator of  
19 evidence?

20 A. He claimed in Miami that his country does not sponsor  
21 terror.

22 MR. REARDON: I believe -- well, actually, I may  
23 listen to your answer. I'll take it back.

24 THE COURT: Again, Mr. Reardon, I'm very close to  
25 sanctioning. No more commentary.

1 MR. REARDON: All right. I apologize.

2 THE COURT: You may proceed.

3 A. In Miami, testifying for the Defense in the Scorpion  
4 Operation and the Wasp Network, he indicated that his country  
5 had never been a state sponsor of terror. And this Government  
6 knows that is an absolute bald-faced lie. And if it's -- a  
7 defense lawyer ever put a guy like that on he would lose his  
8 license.

9 MR. REARDON: Objection to this -- clearly -- object  
10 to relevance, Your Honor.

11 THE COURT: All right. I'll sustain.

12 Q. Mr. Fernandez --

13 MR. REARDON: The answer be struck. It's not before  
14 this Jury.

15 THE COURT: All right. I'll sustain and I'll strike  
16 it from the Jury.

17 Ladies and Gentlemen of the Jury, you are to disregard  
18 the last answer.

19 You may proceed.

20 Q. Other than your last answer, do you have an opinion as to  
21 whether Lieutenant Colonel Caballero fabricates evidence?

22 MR. REARDON: Objection. Relevance.

23 THE COURT: I'll overrule.

24 A. He does anything that serves the interest of the Republic  
25 of Cuba.

1 Q. Mr. Fernandez, why are you here?

2 A. You subpoenaed me to be here and I -- and this is one of  
3 the most difficult days of my life because it flies into some  
4 of the most sensitive work I've done. I've never charged a  
5 dime. I've never been reimbursed by the United States.

6 MR. REARDON: Objection. Narrative answer.

7 THE COURT: I'll sustain.

8 Q. Have you received any compensation?

9 A. Never.

10 MR. REARDON: Objection.

11 THE COURT: He can answer whether he's received  
12 compensation.

13 A. Never from any source. The United States has never even  
14 attempted to pay me my expenses.

15 Q. In this case?

16 MR. REARDON: Object. Objection.

17 THE COURT: What's your objection?

18 MR. REARDON: I think I'm the United States in this  
19 case. We never offered to pay him.

20 THE COURT: That's what he just said. I don't know  
21 what that objection means.

22 MR. REARDON: Objection, relevance, Your Honor.

23 THE COURT: He can answer whether or not he's been  
24 paid.

25 You may proceed.

1 Q. (By Ms. Anderson) In this case, have you received any  
2 compensation, any reimbursement, anything whatsoever?

3 A. None at all, except that yesterday somebody went over my  
4 head and bought my wife and I lunch. That's the first thing  
5 I've ever gotten since 1988 from anybody in any Cuba case.  
6 It's all out of pocket. And it's out of a sense of duty.

7 MS. ANDERSON: One moment, Your Honor.

8 THE COURT: All right.

9 Q. Thank you, Mr. Fernandez.

10 MS. ANDERSON: And I'll pass the witness.

11 THE COURT: Mr. Reardon?

12 MR. REARDON: Your Honor, it will take me a while to  
13 set up here. Thank you.

14 THE COURT: Welcome.

15 If you want to move around, stretch, you're welcome to  
16 do that.

17 CROSS-EXAMINATION

18 BY MR. REARDON:

19 Q. Good morning, sir.

20 A. Good morning, sir.

21 MR. REARDON: Good morning, Ladies and Gentlemen.

22 Q. Now, sir, have you read the transcripts of -- the  
23 transcript in this particular case, the Posada case?

24 A. No.

25 Q. Do you know all who have testified here in the --

1 A. Well --

2 Q. Let me finish, please. All that that testified here in the  
3 Posada case?

4 A. Not all.

5 Q. I take it one of those persons whom you know or have been  
6 told that testified was Colonel Hernandez Caballero, correct?

7 A. Yes.

8 Q. Anybody else?

9 A. I had one of the young lawyers at my firm every morning  
10 give me a copy of the *El Paso Times*, I believe, and *Granma* in  
11 Cuba. And for a couple of days I followed it, and then I  
12 sporadically did. I have additional knowledge of the case from  
13 an outsider's perspective.

14 Q. You were born in Cuba. It's very clear that you have a  
15 great distaste and disrespect for the current regime in Cuba;  
16 is that fair to say?

17 A. That's an understatement.

18 Q. That's pretty unusual for a trial lawyer, isn't it,  
19 understatement?

20 A. I've only had to testify twice, and they're both unpleasant  
21 events. This is the most unpleasant, as I told you, because I  
22 see this side as my friends, and I'm perplexed by my presence.

23 Q. And you have a great compassion for those who have fled  
24 Cuba, as well as for those who remain; is that fair to say?

25 A. Yes, I do.

1 Q. You've dedicated a great deal of your professional work to  
2 the interests of those whom you perceive needing your work, and  
3 you have done so without -- as you've already testified,  
4 without profit; is that correct?

5 A. Very true, yes, sir.

6 Q. And you take a great many cases of people that are from  
7 Cuba who are now in the United States; is that correct?

8 A. Yes, I have.

9 Q. And you're located in Miami; is that right?

10 A. About 289 miles north of Miami.

11 Q. Ah. And are you aware of the Cuba exile community in  
12 Miami?

13 A. Yes.

14 Q. And are you familiar with both wings of that community?

15 A. I think if you have 20 Cubans together you have 19 wings.

16 Q. Uh-huh. How about the political and the militant? Let's  
17 just take two of them. Does that sound familiar to you?

18 A. Very familiar. You know, I've represented many of those  
19 groups.

20 Q. And do you support the political Cuban exile anti-Castro  
21 community vociferously and consistently over the years?

22 A. Yes, I have.

23 Q. How about the militant part?

24 A. If anybody is charged in just about anything against the  
25 Republic of Cuba by the United States and they come to me, I

1 volunteer my services. As I have on behalf of the country,  
2 too, here.

3 Q. As you would had Mr. Posada come to you, right?

4 A. If he had come to me, I probably would have.

5 Q. You know who Mr. Posada is, don't you?

6 A. Yes.

7 Q. He's an icon, isn't he?

8 A. To some. I think Fidel Castro speaks of him a bit  
9 differently. And everyone in Cuba uses his name, better not  
10 say it loudly, outside the most private of enclosures.

11 Q. It's hard for you to repress your partisanship, isn't it?

12 A. No. No, because, you see, we have a commonality in  
13 interest defending this country and promoting democracy in  
14 Cuba. And that's something that has been recognized by many,  
15 many prosecutors long before you and I met this morning and you  
16 had a nice quote for me.

17 Q. And so in terms of the militant wing, do you support the  
18 violent overthrow of the Government of Cuba?

19 A. I do my job.

20 Q. The answer is -- do you support the violent overthrow of  
21 the Government of Cuba?

22 A. I would.

23 Q. How far would you go, sir?

24 A. Not to kill anybody by modes of assassination, but I would  
25 support it as we support it. For instance, yesterday I think I



1 was watching in the news what we're doing in Libya --

2 Q. Sir, excuse me for cutting you off, but this is not  
3 responsive to the question, as I --

4 MR. REARDON: Through the Court. I don't wish to  
5 address Counsel --

6 THE COURT: Please listen to the question and answer  
7 the question.

8 MS. ANDERSON: Your Honor, if I may respond, that was  
9 his answer, and he was interrupted.

10 THE COURT: Well, the Court has ruled. Please listen  
11 to the question and answer the question.

12 THE WITNESS: Certainly.

13 Q. (By Mr. Reardon) So you wouldn't support killing, you  
14 said. But would you support assassination of -- let's say of  
15 Castro?

16 A. Our Government declined --

17 Q. I'm not asking about our Government. I'm asking about --  
18 I'm asking you, sir.

19 A. I follow -- sir, I'm answering your question. I follow --

20 Q. Answer it, please.

21 THE COURT: Okay. I don't need a conversation. You  
22 can answer his question.

23 A. You would be surprised how much I follow our line.

24 MR. REARDON: Your Honor, it is not responsive when he  
25 says, You would be surprised, to me, when I've asked him a

1 question.

2 THE COURT: Listen to the question and answer the  
3 question.

4 Q. Do you support the assassination of Fidel Castro?

5 A. Absolutely not. I don't want to make a martyr out of a man  
6 that I want to be remembered in his latest hour very  
7 disappointed about world order. I want him to live another 20  
8 years, frankly, so I can see him debilitate to the point beyond  
9 recognition for all he has done to this country.

10 Q. Do you mean Cuba?

11 A. Yes. Yes.

12 Q. You said "this country." Do you mean --

13 A. No, no, no. I'm an American. And your own notes would  
14 show that I said that if there was every a conflict in one of  
15 my cases I would stand by the side of the United States,  
16 because that's where my children were born.

17 MR. REARDON: Excuse me, Your Honor, once again he's  
18 talking about my own notes? That's not responsive.

19 THE COURT: Mr. Fernandez, you're an attorney. Listen  
20 to the question and answer the question. Again, you may feel  
21 passionately about this, but you need to listen to the question  
22 and answer the question.

23 You may proceed.

24 Q. Well, let's talk about things a little short of  
25 assassination and killing. How about just a series of

1 bombings? Would they be okay?

2 A. No.

3 Q. How about just to scare off tourism for a little while with  
4 little, small explosives? Would that be okay?

5 A. No.

6 Q. And if you knew somebody did that, would you, because of  
7 your passions and your beliefs and your intellectual basis and  
8 your own experiences, you'd still offer to represent them,  
9 wouldn't you?

10 A. Counsel, at that time -- it's come up a couple of times, in  
11 which I've approached the Government with it.

12 MR. REARDON: Your Honor --

13 THE COURT: This is not a yes-or-no answer. You're an  
14 attorney. You know if somebody asks you why you represented  
15 somebody, you wouldn't be able to say "yes" or "no." I'll  
16 overrule.

17 MR. REARDON: I said, Would you? I didn't say, Why?

18 THE COURT: Go ahead. You may answer the question.

19 A. Many times I have been approached about matters or found  
20 out where I have contacted FBI authorities and I have gotten to  
21 the bottom of the thing to resolve or avoid a tragic event. It  
22 is all dovetailing, one into the other. When a Cuban  
23 penetrates -- a Cuban from the Republic of Cuba penetrates --

24 THE COURT: All right. And now I'm going to instruct  
25 you, nobody asked about penetration. The question was whether

1 or not -- well, I don't even remember the question now. Listen  
2 to the question and answer the question.

3 You may ask the question.

4 MR. REARDON: Thank you, Your Honor. I'll proceed.

5 Q. Sir, you haven't read transcripts of -- of this trial; is  
6 that correct?

7 A. The only thing I think I read was about 20 lines of a --  
8 supposedly of a motion that you filed in another matter in this  
9 case. Frankly, that -- but I don't even know if that was from  
10 this case or not.

11 Q. Okay. But a motion isn't a transcript, correct?

12 A. Right. And I don't know if it was part of a motion. The  
13 only thing I've read that comes from the case was -- was  
14 something that I think was a two-pager about an issue, another  
15 issue that's not before the Court.

16 Q. Okay, sir. So I'm clear to you and fair to you, my  
17 question was, you haven't read the transcript -- a transcript  
18 of the trial in this case?

19 A. If you are referring to transcripts of anything related to  
20 these proceedings reduced to writing formally, no.

21 Q. Thank you.

22 A. I wish I had, but no, I don't.

23 Q. Okay. Well, you're going to get to, okay, sir?

24 A. Thank you.

25 Q. All right.

1 THE COURT: Is that a comment or a question?

2 MR. REARDON: Yes. It was -- it ended because I knew  
3 I was getting close to a comment. Thank you.

4 Q. Now let's see what cases, sir, you actually participated in  
5 as an advocate. And let's take the Tampa case first. What was  
6 the year of that?

7 A. It was 1997.

8 THE COURT: The arrest was in 1996.

9 Q. Okay. Thank you.

10 A. It was tried in July, I think 14, 15 and 16 of 1997.

11 Q. Okay, sir. And on direct examination you were asked a  
12 great many questions about that case. And whom did you  
13 represent in that case, sir?

14 A. Adel Regalado Ulloa.

15 Q. And that's the case where most extraordinarily and to your  
16 great credit you stayed up all night and came in on the next  
17 day and tried the case as lead counsel; is that correct?

18 A. That's what the transcripts reflect, yes.

19 Q. Well, is that correct?

20 A. Yes.

21 Q. And you asked Mr. -- or Colonel -- he wasn't a colonel  
22 then, I guess. But you asked who is now Colonel Hernandez  
23 Caballero during that case. When he testified you questioned  
24 him; is that correct?

25 A. Yes, I did.

1 Q. And you asked him whether, You work for the Ministry of the  
2 Interior as you've stated.

3 Do you recall asking him that?

4 A. Yes.

5 Q. And he said yes, didn't he?

6 A. Yes. At page 54 he went into the inquiry. He was my  
7 witness, so I was on --

8 Q. Do you have eidetic imagery, sir?

9 A. Excuse me?

10 A. Do you have eidetic imagery? Do you have a photographic  
11 memory?

12 A. I wish I did, but I don't. Otherwise, I'd have stayed in  
13 engineering.

14 Q. You're extraordinarily talented, aren't you, sir?

15 And also on page 54 you asked, And the branch that you  
16 work for is the DGIC -- or the DGCI.

17 And he asked you if you'd repeat, please.

18 And then you asked the question, DGCI, and then  
19 *dirección* and the answer. Was, I work for the director of  
20 counter-intelligence.

21 Do you recall asking that and getting that answer?

22 A. Yes.

23 Q. And so he says there -- you follow-up with, So your  
24 expertise is -- or what you do is in counter-intelligence  
25 operations?

1           And the answer is, Yes.

2           Is that -- is that -- refresh -- pardon me. is that  
3 your recollection?

4 A. Vividly, yes.

5 Q. Okay. And you don't recall because you didn't have the  
6 opportunity, but when Colonel Hernandez Caballero was  
7 cross-examined here in Court, he was referred to page 54 of the  
8 Tampa trial in which you were examining Colonel Caballero, I'm  
9 going to call him. And what we just went over was repeated to  
10 Colonel Caballero.

11           But here with these Ladies and Gentlemen of the Jury  
12 and under oath, as Mr. Hernandez asked him, he answered yes.  
13 And he gave an explanation that you haven't had an opportunity  
14 to -- to read; is that correct?

15 A. Please enlighten me.

16 Q. He said, Well, I would have to see what the translation  
17 was. What I said was that I worked for the Directorate of  
18 Counter-Intelligence until 2005, but I'm not a  
19 counter-intelligence. My specialty is investigating crimes  
20 against national security, which is something different. I  
21 investigate places and events. I investigate facts after a  
22 crime has been committed. But I'm not an expert in  
23 counter-intelligence work, although I do have some knowledge of  
24 it.

25           That's what he answered here, sir.

1 THE COURT: Is that a question?

2 A. Is that a question?

3 THE COURT: Hold on.

4 THE WITNESS: I'm sorry.

5 THE COURT: Is that a question?

6 MR. REARDON: Yes.

7 THE COURT: What's your question?

8 MR. REARDON: Well, actually, I would like to have  
9 marked now as a Government exhibit -- and I'd ask to take --  
10 Court take judicial note of its own transcript, the transcript  
11 of 2-22-11.

12 THE COURT: Okay. Could the attorneys approach?

13 (Bench conference, out of hearing of Jury.)

14 THE COURT: I just want to be careful about starting  
15 to introduce transcripts of our own trial into the trial.

16 MR. REARDON: I've been there.

17 THE COURT: Okay.

18 MR. REARDON: I understand what the Court's saying.

19 THE COURT: Okay. So I don't have any problems with  
20 questioning him.

21 MR. REARDON: Sure.

22 THE COURT: And I assume there's a question coming.

23 MR. REARDON: Yes.

24 THE COURT: But I do not want to admit transcripts of  
25 this trial into this trial.



1 MR. REARDON: Maybe, Your Honor -- consistent with --  
2 thank you for the -- this sidebar. In terms of how -- this  
3 process, different courts have different ways of doing things.  
4 I'm privileged to be a visitor in your Court.

5 If there is something that is a particular page and --  
6 I want to be able to show so the -- the witness can see what  
7 was done in response to in terms of direct during -- during the  
8 cross-examination what his answer was here, I want him to see  
9 that, and be able to talk to him about that.

10 THE COURT: You can question about what you just read  
11 if that's what you want to do.

12 MR. REARDON: Yes. But I wanted to show --

13 THE COURT: But not mark a prior inconsistent  
14 statement.

15 MR. REARDON: Not at all. Not at all. And we can  
16 handle it, I take it, consistent with the way Your Honor runs  
17 this Court, is to be able to just have it marked, as I tend to  
18 do things even in refreshing -- I know you don't have to. But  
19 this isn't refreshing, of course. To have it marked as an  
20 exhibit but not -- not -- not admitted, but be able to show it  
21 so it's marked for our record.

22 MS. ANDERSON: I wouldn't object to him providing the  
23 witness a copy of the particular pages he's referring to,  
24 because at this point we're dealing with a long series of  
25 questions and answers. To require this witness to retain in

1 his memory exactly what the question was asked in this case,  
2 which, he hasn't read the transcripts, and to whatever question  
3 it is that Counsel intends to ask him about it. But the  
4 witness should be able to have a copy in front of him. I don't  
5 think it's necessary to mark it. It's just for the purposes of  
6 assisting the examination.

7 THE COURT: Well, I don't have any problems with  
8 marking it as long as it's not admitted.

9 MR. REARDON: Sure.

10 THE COURT: But my bigger concern is that if you have  
11 a question about whether he disagrees with Mr. Caballero's  
12 characterization of who he is, that's fine.

13 MR. REARDON: Yes.

14 THE COURT: But I just want to avoid getting into a  
15 whole transcript, because we are --

16 MR. REARDON: I've been there. Yes, I understand.

17 MS. ANDERSON: And while we're here, if you're  
18 going -- to mark it, I'd appreciate a copy of the page that  
19 you're referring to.

20 MR. REARDON: Of course. Of course. Of course.

21 MS. ANDERSON: Because I don't necessarily have the  
22 trial transcript here with me.

23 THE COURT: All right.

24 MR. REARDON: Just to make sure, so I'm courteous and  
25 proper, I take it that Counsel, as we have, has a copy of

1 Caballero's testimony.

2 MS. ANDERSON: I don't have it necessarily with me. I  
3 have the entire Tampa case here with me.

4 MR. REARDON: Well, I don't know how to address that.  
5 If this cross-examination was going to be on Caballero, I think  
6 a reasonable expectation we'd have that you'd have that  
7 transcript here. I don't know -- I'm going to be asking a  
8 number of questions involving transcript pages, and I would  
9 assume, apparently incorrectly, that Counsel would have Colonel  
10 Caballero's transcript here since that was the focus -- the  
11 entire focus on this witness.

12 MS. ANDERSON: Well, I didn't design your cross, so,  
13 no, I don't know what pages you're going to refer to. And I --  
14 you know, just like I gave you my exhibits for identification  
15 purposes or otherwise, I would have thought you'd have done the  
16 same here. And that's my request.

17 MR. REARDON: Well, I, of course, have to craft my  
18 cross on your direct, which I've done.

19 So, Your Honor, whatever you want -- I can go any  
20 number of ways with this. We're happy if we're -- it's 12:15.

21 THE COURT: I can go ahead and break for lunch if you  
22 want to get your copy.

23 MR. REARDON: I think that would resolve things  
24 administratively, if it's fine with the Court.

25 THE COURT: That's fine.

1 MR. REARDON: Okay.

2 (Back on the record in open Court.)

3 THE COURT: Ladies and Gentlemen of the Jury, it's  
4 about 12:15. We're going to go ahead and take a break for  
5 lunch. Remember, you remain under all the instructions the  
6 Court has previously given you. And we stand in recess for  
7 lunch.

8 (Jury leaves courtroom.)

9 THE COURT: We stand in recess. We'll see everybody  
10 at about 1:45.

11 (Lunch recess.)

12 THE COURT: Bring in the Jury.

13 (Jury enters courtroom.)

14 THE COURT: You may be seated, Ladies and Gentlemen.  
15 You may proceed.

16 MR. REARDON: Thank you, Your Honor. Good afternoon.  
17 May it please the Court, Counsel.

18 Good afternoon, Ladies and Gentlemen of the Jury.

19 Q. (By Mr. Reardon) Good afternoon, sir.

20 A. Good afternoon, Counsel.

21 Q. Counsel for Mr. Posada in their direct examination of you,  
22 sir, showed you a number of exhibits and marked them from 140A,  
23 140B, 141, 144A, 144B, 145A, 145B, 146, 147 and 147A. And  
24 they're now in evidence.

25 MR. REARDON: May I approach?

1 THE COURT: You may.

2 Q. Sir, just a bit of housekeeping here. Those are  
3 exhibits -- are they your exhibits in another case other than  
4 this case?

5 A. "This case" meaning the Regalado case?

6 Q. Posada, yes. Are they exhibits in -- in this case?

7 A. In the Posada case?

8 Q. Yes. Before they were marked. When you brought them when  
9 you were -- before they were put into evidence in this case,  
10 were they your exhibits in another case?

11 A. Yes.

12 Q. And what case was that?

13 A. Regalado in Tampa, 1997.

14 Q. Thank you. And were those exhibits, all of them, admitted  
15 into evidence?

16 A. Where?

17 Q. In Tampa.

18 A. No.

19 Q. Well, which of them were? Certainly, some of them were.

20 A. Um, I would say that I remember 141 was in. And I don't  
21 recall any other exhibit being admitted.

22 Q. Thank you.

23 MR. REARDON: May I approach?

24 THE COURT: You may.

25 MR. REARDON: Thank you.

1 Q. (By Mr. Reardon) Thank you, sir. 141, Defense Exhibit now  
2 in evidence, is a diagram of a cockpit that you testified about  
3 on direct exam; is that correct, sir?

4 A. Yes.

5 Q. The rest of these were not admitted into evidence; is that  
6 correct, sir?

7 A. Yes, after the Government's objections.

8 Q. And they were sustained, weren't they? I can show you the  
9 transcript.

10 A. No, I know the transcript well. Plus, I was there and I  
11 recall the commentary of the Court and the choices that I was  
12 given to elect --

13 Q. Well, the point was, was it sustained, yes or no?

14 A. Yes. Yes.

15 Q. Thank you.

16 A. I didn't know who he was. And you know they were admitted  
17 later.

18 Q. Excuse me. I don't think there is a question pending, sir.

19 THE COURT: I'll sustain. Listen to the question and  
20 answer the question.

21 Q. (By Mr. Reardon) And in regard to that drawing of the  
22 plane cockpit in the Tampa case -- if I may refer to it, sir?

23 A. Yes.

24 Q. In 1997, Regalado, you testified about Colonel Caballero's  
25 testimony in that case as you examined him; is that correct?

1 A. Yes.

2 Q. And you also, of course, were generous with your opinion  
3 about his testimony; is that correct?

4 A. As you say, you have the transcript. I think I wasn't  
5 being just generous; I was being honest.

6 Q. Oh, I didn't mean to suggest, sir, that they were mutually  
7 exclusive.

8 THE COURT: Is that a question?

9 Q. Was I?

10 A. I don't know what you mean, sir.

11 Q. All right. Okay. Now, let me rephrase that.

12 THE COURT: All right.

13 Q. When you asked the questions about -- to Colonel Caballero  
14 about this cockpit drawing, prepared, as I believe, not by him  
15 but at his direction, you offered your opinion about the  
16 truthfulness of his testimony, didn't you?

17 A. Did the Court sustain it or object, or -- I mean, did  
18 Counsel? I don't know. I'm sure I did. I try to opine a  
19 great deal. But there was a judge there and there was a  
20 prosecutor there, so I'm...

21 Q. Yes, sir. At that Tampa trial, sir, when you questioned  
22 Colonel Caballero and -- you asked him, Was the diagram  
23 prepared at your direction?

24 And he said, Yes, a diagram was prepared.

25 Do you recall that question and answer?

1 A. Sure.

2 Q. And you asked, also, That was based on the information that  
3 you gathered from the witnesses?

4 And he answered, Yes.

5 Do you recall that?

6 A. Yes.

7 MS. ANDERSON: Counsel, if you could note the page  
8 that you're referring to.

9 MR. REARDON: Oh, I'm sorry. Please forgive me. It's  
10 page 57 -- pardon me. 58, 59 and -- 59. Thank you.

11 Q. And on page 59, after you had asked him at the bottom of  
12 page 58, The particular witness being the pilot?

13 The colonel said, Yes, I would like to clarify.

14 And you said, Go ahead.

15 Do you recall that? I'm happy to refresh you.

16 A. Oh, no. I don't need it; I remember vividly.

17 Q. Thank you.

18 A. Plus, I've reviewed it.

19 Q. All right. Thank you. And his answer was that, There's a  
20 mistake on this plan of the one who drew it. Placement of the  
21 highjackers in the airplane is not exact with respect to  
22 Leonardo Reyes Ramirez, who is located in the seat behind the  
23 pilot and in the documents that we gave to the State  
24 Department.

25 Do you recall that answer?



1 A. Yes.

2 Q. And the answer continued, There are other documents such as  
3 photographs and statements where they give the correct -- where  
4 they give the correct order in which each person inside the  
5 aircraft -- the space they occupied. We could see the  
6 pictures, if you would reach for me some of the documents that  
7 I presented.

8 And the question at that point was, Certainly.

9 THE COURT: Is that a question?

10 Q. Do you recall that question and that answer?

11 A. I never got those documents that he referred to. They  
12 didn't exist.

13 Q. You know, I'm sorry, sir, but --

14 MR. REARDON: I'm sorry, Your Honor. That was not  
15 responsive. The question is, Do you recall that question and  
16 answer?

17 THE COURT: And I believe he answered. He said,  
18 Yes --

19 THE WITNESS: Yes.

20 THE COURT: -- I do. I never got those documents.  
21 You may proceed.

22 Q. (By Mr. Reardon) And that you also ask the colonel, Now  
23 you have in the last day met with the prosecutor?

24 He said, Yes.

25 And you discussed the mistake in the drawing.

1           And he answered, No. And then he said, Yes, yes.

2           Do you recall that?

3     A. Yes.

4     Q. Later on, sir, in that same examination on page 121, you  
5     asked, Mr. Fernandez, When you provided your investigative file  
6     to the Government, you provided a schematic or drawing of the  
7     seating arrangements?

8           And he said, Yes.

9           Do you recall that?

10    A. I recall at page 120 he accused the FBI of making the  
11    mistakes or fabricating the evidence.

12           MR. REARDON: Your Honor, excuse me. That was not  
13    responsive.

14           THE COURT: Mr. Fernandez, listen to the question.

15           THE WITNESS: Okay.

16    A. Page 121?

17    Q. Yes, that's what I said, sir. Let me ask it again,  
18    Mr. Hernandez -- this is you -- When you provided your  
19    investigative file for the Government you provided a schematic  
20    or drawing of the seatings arrangements?

21           And his answer was, Yes.

22           Now, my question is, do you recall that question and  
23    answer?

24    A. Yes, yes.

25    Q. Thank you. On page 122 you ask him, And you have already

1 admitted that, supposedly, this diagram that was prepared and  
2 was turned over to the Government is supposedly wrong or  
3 incorrect.

4 And he answered, I explained before that there was a  
5 mistake, but --

6 And then you interjected, So was that a --

7 And he continues his answer, A mistake by the person  
8 who drew this plan, yes.

9 It continues that, You never provided the Government a  
10 different diagram on this type of special paper with the  
11 corrected version, did you?

12 And he said, No.

13 Do you recall that, sir?

14 A. Yes, I recall what he said.

15 Q. And when you -- on page 123 you questioned. You said,  
16 There was no contradiction, then, with respect to this diagram  
17 and the picture that was numbered --

18 THE COURT REPORTER: Can you start over?

19 MR. REARDON: Oh, I'm sorry, sir; I'd be happy to.

20 Q. Page 123, top, Mr. Fernandez, you ask, There is no  
21 contradiction, then, with respect to this diagram and a picture  
22 that was numbered and also turned over to the Government.

23 And the answer was, What exists is there is a mistake  
24 in this drawing which --

25 At this point there was an objection by you. And then

1 you asked the question, I show you Government's Exhibit 1B.  
2 Sir, will you now admit, after reviewing Government's Exhibit  
3 1B and referring to Exhibit 3, Defendant's Exhibit 3, that  
4 there exists a contradiction in the seating arrangement and who  
5 was seated there?

6 And he answered, It's logical there is a  
7 contradiction.

8 And you said, No further questions.

9 Do you recall that?

10 A. I recall the exchange, but there was -- Miguel Fernandez  
11 was another attorney involved in the case who was co-counsel,  
12 and he was representing Leonardo Reyes. I believe that's  
13 Miguel, but it doesn't matter. I was there and I recall that  
14 response.

15 Q. That's kind of you. Thank you. And I do see the M, if you  
16 forgive me.

17 The answer was interrupted. And then the Court told  
18 the witness, Colonel Caballero, to continue, Go ahead with your  
19 answer.

20 And he said, Departing from the fact that there was a  
21 mistake from the person who drew it, in my previous statement I  
22 expressed that. There were other documents that corrected.

23 And then your colleague objected as being  
24 unresponsive. And then your colleague said, No further  
25 questions.

1 Do you recall that?

2 A. I recall that. By the way, he was a major at that trial.  
3 He's progressed up the food chain.

4 Q. Yes. That was in 1997, right?

5 A. Yes.

6 Q. Now it's 2011, right?

7 A. Yes.

8 Q. Was that -- did you mean to add that for the Jury's  
9 consideration, or did you think it was responsive to my  
10 question?

11 A. Which part?

12 Q. The part where you added gratuitously that he had gone up  
13 in the food chain.

14 A. I was just --

15 MS. ANDERSON: Objection, Your Honor. Argumentive.

16 MR. REARDON: This is cross-examination.

17 THE COURT: You know what? This is cross-examination,  
18 but you understand the rules of the Court, Mr. Reardon. Let's  
19 proceed.

20 MR. REARDON: Thank you.

21 Q. (By Mr. Reardon) Sir, in your fine career, as you've  
22 already testified to on direct the work you've done on behalf  
23 of the Cuban American community, you have been, also, an active  
24 part of that community; is that correct?

25 A. Yes, sir. Yes.

1 Q. And proudly and over many years?

2 A. As a matter of fact, since 1980.

3 Q. And before our break we were discussing your commitment,  
4 and, indeed, your passion to their cause, the cause being a  
5 free Cuba; is that -- is that fair to say?

6 A. It's secondary to the security of this country. I've said  
7 it many times. It's --

8 Q. The security -- if you were an American, the security of  
9 the United States?

10 A. That's right. If there's ever a divergence, this  
11 allegiance controls. I've always said that if you can't be a  
12 good Cuban you can't be a good American. So I try to do the  
13 best that I can. If there's ever a conflict between the two  
14 positions, then I remain an American.

15 Q. Yes, sir. And you do have very strong opinions in regard  
16 to certain matters in the relationship because, of course,  
17 there is one between Cuba and the United States; is that fair  
18 to say?

19 A. It's probably an understatement, and I reaspect the way you  
20 phrased it, yes, Counsel.

21 Q. Thank you. And how about -- what would you say to a --  
22 a -- a more open -- more engagement with Cuba, unrestricted  
23 travel, tourism and those things that would ordinarily be part  
24 of a communication, a mutual existence, a symbiosis, if you  
25 will, benefiting both countries, between the United States and

1 Cuba right now?

2 MS. ANDERSON: Objection, irrelevant, Your Honor.

3 THE COURT: I'll sustain.

4 Q. You testified on direct examination much about your  
5 position in regard to Cuba, and I began some in our  
6 cross-examination before our brief hiatus, about the degree to  
7 which that commitment, that passion, commits you. You were  
8 very clear you are against -- you're against killing of -- of  
9 Fidel Castro; is that correct?

10 A. Yes.

11 Q. And your reasons were you want him to live a long time --  
12 what were your reasons for that?

13 A. As I said before, I want the world to see him in his waning  
14 years. He's the most brilliant political mind, I think, in  
15 modern-day history. He's been able to manipulate the world.  
16 And I don't want a Ché Guevara position. I don't want some kid  
17 wearing his shirt that doesn't know that he is the founding  
18 father of terror.

19 Q. And the founding father -- and incidentally, would you  
20 consider the bombing of -- of hotels of a sovereign country,  
21 any -- Cuba, Spain, anything, would you consider that an act of  
22 terror?

23 MS. ANDERSON: Objection, Your Honor. Beyond the  
24 scope, asked and answered, and an opinion.

25 THE COURT: All right. It is asked and answered.

1 I'll sustain. Move on.

2 Q. How about in 1997? Did you have personal knowledge of the  
3 bombings that went off in Havana?

4 A. Honestly, no. But again, I keep abreast of a lot of things  
5 through casual chat and everyday exchanges with people that I  
6 trust.

7 Q. Do you understand that a bombing campaign did, in fact,  
8 exist?

9 A. We were troubled by the Eduardo Diaz Betancourt matter of  
10 1992, which I characterize and term as the Aldana Project. And  
11 it's widespread, again, in tradespeak, that Cuba stages its own  
12 events.

13 Q. And -- oh. And so I think my question was, were you aware  
14 of the particular bombing campaign in 1997, of the tourist  
15 hotels along the ocean?

16 A. Generally speaking, I was aware at the time. It was a very  
17 busy year for everybody, from 1994 to 1999.

18 Q. You recall, sir -- there was no question pending about  
19 whose responsibility you accused of that bombing campaign.  
20 There was no such question as that, was there?

21 A. Your questions, Counsel, sometimes call for "yes," "no," "I  
22 don't know," then you can explain answers. We're both seasoned  
23 litigators; probably tried a couple hundred cases each. And I  
24 know that you would like to restrict me to "yes" and "no," as I  
25 do many times to people, but these call for that additional



1 explanation.

2 THE COURT: All right. I will tell everybody it's my  
3 purview to instruct the witness. Ask your question. Let's  
4 move on.

5 Q. You told these Ladies and Gentlemen of the Jury about your  
6 view, which was a rather absolute view I think, sir, about the  
7 presence of cameras everywhere in Cuba. Do you recall giving  
8 that testimony on direct?

9 A. Yes.

10 Q. It was an extraordinarily broad statement of -- of -- of  
11 allegation, was it not?

12 A. I'll concede the point.

13 Q. When's the last time you were there?

14 A. I don't want to be executed. I can't travel to Cuba, and  
15 everybody on the planet knows that. I am --

16 Q. Pardon me, sir. No offense. I didn't know it, and I'm  
17 asking you, when's the last time you were in Cuba?

18 A. The day that, as a child, I left. My parents, you know,  
19 holding my hand. My mom was taking me, put me on a plane, and  
20 we never looked back. In 1961, I believe, in January.

21 Q. So your information about these cameras came from other  
22 sources whom you trust, yes or no?

23 A. Yes. No, I can't. I wasn't at the hotels, either.

24 Q. But you clearly believe this and you believe that there  
25 were cameras everyplace. That's what you said on direct.

1 A. Yeah, based on fact. I don't believe most -- like I don't  
2 believe Roberto Hernandez Caballero at all, and he tells me a  
3 story. But I believe investigators from this country that  
4 have --

5 Q. You're not a trier of fact in this case, are you, sir?  
6 You're an advocate.

7 A. No, I'm a witness. I wish I was an advocate at times, but  
8 I'm a witness.

9 Q. Sometimes it's very hard for you to be both on that stand;  
10 is that correct?

11 A. I told you --

12 MS. ANDERSON: Objection, argumentive.

13 THE COURT: I'll sustain.

14 MR. REARDON: May I approach?

15 THE COURT: You may.

16 MR. REARDON: Ms. Galban, please bring up 115Y  
17 Government Exhibit -- United States Exhibit now in evidence.

18 May it be published to the Jury, Your Honor?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 MR. REARDON: Thank you.

22 Q. (By Mr. Reardon) Sir, can you identify what's been marked  
23 as Government's Exhibit 115Y now in evidence?

24 A. It's a photograph of a building that I have never seen  
25 before. It appears to say Copacabana on the top right, and

1 it's marked as 115Y.

2 Q. Do you have any knowledge of whether there were cameras  
3 there on September 4 of 1997 inside the lobby of that, what  
4 you've identified tentatively as the Copacabana?

5 A. Not beyond what I have already said, that everywhere -- if  
6 a tourist goes, there's a camera.

7 Q. So then if -- if -- if you'll accept my representation  
8 that's a tourist hotel on the ocean, then you would say that  
9 there was definitely cameras there; is that correct?

10 A. Yes. Multiple, if --

11 Q. And -- and do you have personal knowledge of that?

12 A. Counsel, I told you I didn't travel. Sometimes we accept  
13 facts based on the foundation of the evidence. Sometimes we  
14 reject it. When multiple people at multiple times get in  
15 compromising positions and are rolled, and then in debriefings  
16 they identify the fact that it happened as a result of that  
17 having taken place, including political figures, members of  
18 Congress and otherwise, then, if my colleagues in -- you know,  
19 my friends that I work with tell me that that's an ongoing  
20 thing, then we kind of come up with a decision that that  
21 probably has happened. And that's all I'm saying.

22 So, no, I wasn't there that day. But I do know a lot  
23 about cameras because, supposedly, the installer of most of the  
24 security systems is somebody who's frequented my office.

25 Q. You'll forgive me if I try to encapsulate your answer

1 briefly. Your answer is no, you don't know from your personal  
2 knowledge?

3 A. No, no, of course not. I would have to see it. Like that  
4 camera there. I don't know if there's a camera. It looks like  
5 there's one behind it, but I don't know. I just heard earlier  
6 that it may not be as functional as we would like. It's true.

7 Q. I hope that's not a cause for concern for you, sir.

8 A. By no means, Counsel. But, you see, that's a perfect  
9 example. You would think there's a camera there. But I was  
10 told it only works some portions of the room. And I have  
11 reason to believe the person who said it was not telling me a  
12 story.

13 Q. And sir, then, you've testified -- it's very clear --  
14 number one, you know little other than what you've read in  
15 newspapers about this particular case; is that correct?

16 A. No.

17 Q. Okay. What is incorrect about it?

18 A. About the Posada Carriles case?

19 Q. Yes. Yes.

20 A. Counsel, do you really want me to answer that?

21 THE COURT: Could the attorneys approach?

22 Q. Well, if you've got personal knowledge and it's not  
23 classified information. You have personal knowledge of who's  
24 responsible for the bombings in Havana in 1997, in the summer?  
25 Do you know? Do you know who did it?

1 THE COURT: Could the attorneys approach.

2 MR. REARDON: Oh, yes, Your Honor.

3 (Bench conference, out of hearing of Jury.)

4 THE COURT: I understood you to be asking him a  
5 question about what he had read in the newspapers, and so --

6 MR. REARDON: Oh, sure, sure. No, I appreciate your  
7 caution. And your admonition. Yes.

8 THE COURT: Let's just be careful.

9 MR. REARDON: Yes, yes, thank you.

10 MS. ANDERSON: Could you rephrase the answer so the  
11 witness is not confused about newspapers or --

12 MR. REARDON: Sure. No. And I thank each of you.

13 THE COURT: All right.

14 MR. REARDON: Thank you.

15 MS. ANDERSON: Okay. Thank you.

16 (Back on the record in open Court.)

17 THE COURT: You may proceed, Mr. Reardon.

18 MR. REARDON: Thank you.

19 Q. (By Mr. Reardon) Let me rephrase that, sir.

20 Not that you've read in the newspapers, but of your  
21 personal knowledge, you know little or nothing about the facts  
22 of this case and the testimony in this case; is that correct?

23 A. Yes.

24 Q. You weren't here when Colonel Caballero testified, were  
25 you?

1 A. No. I was in Tampa, probably.

2 Q. Do you need to explain that, sir?

3 A. I was in Tampa --

4 Q. Okay.

5 A. -- most likely. I think I was in DC, because my first  
6 grandson was born, and so I had to -- I had to be up there.

7 Q. Congratulations to you.

8 A. Thank you.

9 Q. Does the name Fabio Di Celmo mean anything to you?

10 A. The names rings a bell, but I really don't recognize it  
11 enough to testify about it. I think he, in some capacity, has  
12 been mentioned in this courthouse. I believe he's the  
13 decedent.

14 Q. All right. So you knew somebody died in these bombings?

15 A. Using the same standard, yes, because of discussions. Was  
16 that my primary emphasis in those discussions? No. I know a  
17 lot about what happens in Cuba. Just about everything.

18 Q. That exhibits an extraordinary amount of knowledge and, I  
19 must say, self-confidence, sir, doesn't it?

20 A. It's been a long time.

21 MR. REARDON: If it would please the Court, I'd like a  
22 moment.

23 THE COURT: Sure.

24 MR. REARDON: Thank you.

25 Q. (By Mr. Reardon) You've won many awards for your community

1 service sir; isn't that correct?

2 A. Yes.

3 Q. Your oath, of course, compels you to -- to dispense with  
4 the trial lawyer's usual modesty, doesn't it?

5 A. It's hard to be modest, you know? All of us that have been  
6 in this field know that. But, you know, I'm under the watchful  
7 eye of my wife, who's in the courtroom. And I want her to  
8 continue to think I'm all right.

9 Q. I'm sure we're all graced by that, sir.

10 Now, let me ask you that, among your awards for  
11 community service was an award from CANF, the -- what does that  
12 acronym stand for?

13 A. From whom?

14 Q. C-A-N-F.

15 A. The Cuban American National Foundation. And I -- I have --  
16 I've never belonged to CANF, although I was asked many times to  
17 join. I received an award, and I received it from political  
18 prison groups. And I've received it from a number of groups,  
19 that I have represented people within those. The Brigade 2506,  
20 also. A number of them.

21 Q. And, sir, in 1997, just -- let me just give you -- just the  
22 following very short list here. April 12, the explosion at the  
23 Aché disco at the Melia Cohiba Hotel. July 12, the explosion  
24 at the Capri Hotel. July 12, the explosion at the National  
25 Hotel. August 22nd, explosion at the Sol Palmeras Hotel.

1 September 4. 11:10 a.m., explosion at the Copacabana.

2 September 4, 11:20, explosion at the Chateau Miramar.

3 September 4, 3:00 p.m., explosion at the Triton Hotel.

4 Incidentally, there's a mistake there; the explosion at the  
5 Copacabana was 12:10. September 4, 11:40 p.m., explosion at  
6 the Bodeguita del Medio restaurant.

7 Sir, do you recall -- yes or no, do you have personal  
8 knowledge of any of these attacks?

9 A. No.

10 Q. And these were attacks against Cuban tourism; do you  
11 understand that?

12 MS. ANDERSON: Objection, Your Honor.

13 THE COURT: Go ahead. What's your objection?

14 MS. ANDERSON: It would be improper for this witness  
15 to comment upon the evidence in this case. That would invade  
16 the province of the Jury.

17 THE COURT: I'll sustain.

18 MR. REARDON: Thank you, Your Honor.

19 Q. (By Mr. Reardon) You weren't -- you don't have personal  
20 knowledge of any of those explosions that I just spoke about,  
21 do you?

22 A. As you characterize it, no. I told you that I know about a  
23 lot of things, or most things that happen that affect the  
24 security of both sides of the stretch there. What happens is  
25 that while I may have heard and discussed portions of these



1 events, they were in the context of something completely  
2 different that came to light in 1992 and again in 1998 which  
3 dealt directly with information that I was the developing by  
4 the self-staging events.

5 Q. Okay, sir. Ah, you hit a provocative note. Self-staging  
6 events. Then you have personal knowledge that these were  
7 self-staged, yes or no?

8 A. Absolutely not. I told you.

9 Q. And do you know anything about them in regard to which  
10 hotel the Italian national, Mr. Di Celmo died? Do you know  
11 which hotel that was?

12 A. No, I don't. I believe it was the Copacabana, wasn't it?

13 Q. Yeah. Do you know how he died?

14 A. From what I've read in the -- as a result of the  
15 transcripts of this trial that -- not the transcripts that you  
16 made mention of earlier, the news --

17 Q. Well, let's not talk about newspapers, please. Thank you.

18 A. Well, is that a question?

19 Q. I think we ought not to talk about newspapers. From --

20 THE COURT: If you have a question, that's fine. Ask  
21 your next question.

22 Wait and listen. You can answer.

23 Q. All right. From your personal knowledge, do you know how  
24 he died?

25 A. No. I wasn't there.

1 Q. All right. And in regard to CANF, that's an  
2 extraordinarily powerful group in Miami, is it not?

3 A. Yes. They have influenced the outcome of the presidential  
4 election on two occasions.

5 Q. And -- and you're aware of the -- at least two -- I've  
6 heard your prior answers --

7 A. Well, I'm a Democrat, so I wasn't very pleased.

8 Q. I wasn't going to ask you that, sir, but it's now on the  
9 record.

10           Could you tell us your awareness, personally, from  
11 your great expertise that you -- here you've displayed that  
12 there are, even in CANF, not just in the Cuban anti-Castro  
13 movement generically, but in Miami and CANF, a political side  
14 and a militant side even in CANF?

15           MS. ANDERSON: Objection, Your Honor. This is  
16 argumentative. It's beyond his scope and irrelevant.

17           THE COURT: I'll overrule. If he knows, he can  
18 answer.

19 A. There have been significant positions exposed over the  
20 years as to the dual nature of most Cuban-American  
21 organizations. CANF, what happens is -- well funded. And it  
22 was a project of Mas Canosa. That which you say applies to  
23 even the political prisoner organizations, which are  
24 underfunded. And those are the people who served the longest  
25 sentences under Castro's regime.

1 Q. Once again, sir, we're talking about CANF. The question  
2 was about CANF.

3 A. Okay.

4 Q. And the gentleman who you just mentioned, who was the giant  
5 of CANF that you just mentioned by name?

6 A. Jorge Mas Canosa.

7 Q. Was he associated with the political side or the militant  
8 side?

9 A. Jorge Mas Canosa and I -- had one conversation. When I  
10 declined to be the attorney for the foundation we kind of  
11 ceased contact.

12 Q. And Mr. Posada is -- expert that you are in things Cuban  
13 over many years, do you understand what, if any, part of CANF  
14 he belonged to?

15 A. I know a lot about Mr. Posada's background, but I don't  
16 know -- I have no idea of his involvement with CANF. I know  
17 about Mr. Posada's background.

18 Q. Do you know that CANF financed Mr. Posada?

19 A. Do I know if they financed Mr. Posada?

20 Q. Do you know that CANF financed Mr. Posada?

21 A. No, I don't know that. I don't think that -- you know, I  
22 know about Cuba, Cuba matters, and I've heard a lot about  
23 everything. I -- in other words, I have read articles in which  
24 you and others have suggested that.

25 Q. Me?

1 A. Well, I'm saying the trial.

2 THE COURT: Ladies and -- I mean, gentlemen, let's  
3 stick with the question and answer so that we are on what's  
4 relevant to this case.

5 Your next question.

6 A. Not you, sir. Meaning the Government.

7 MR. REARDON: You'll forgive my response, Your Honor.

8 THE COURT: All right.

9 MR. REARDON: All right.

10 Q. (By Mr. Reardon) The United States has no further  
11 questions of you at this time, sir. Thank you.

12 THE COURT: Thank you, sir.

13 Defense, Ms. Anderson, anything further?

14 MS. ANDERSON: No further questions, Your Honor.

15 THE COURT: All right. Is he free to go?

16 MS. ANDERSON: Yes.

17 THE COURT: Thank you, sir. You're free to go.

18 Call your next witness.

19 (Requested proceedings concluded.)

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## I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Further Redirect</u>	<u>Voir Dire</u>
WITNESS FOR THE DEFENSE:						
RALPH FERNANDEZ	4	29				
EXHIBITS FOR THE DEFENSE:						<u>Admitted</u>
147			Biographical Profile			4
140A			Declaration			29
140B			Declaration			29
141			Diagram			29
144			Criminal History Report			29
144B			FBI Report			29
145A			Criminal History Report			29
145B			Criminal History Report			29
145C			Criminal History Report			29
146			Criminal History Report			29
* * * * *						
I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.						
Signature: <u>/s/ David A. Perez, RMR, RPR</u> Date: May 25, 2011						

David A. Perez, RMR, RPR