

INTERNATIONAL COMMISSION  
OF INQUIRY INTO THE CASE OF THE



**Statement of MARTIN GARBUS,**

**Member of the US legal team of the Cuban Five.**

**Given at the International Commission of Inquiry into the case of the Cuban Five on Friday the 7th of March and Saturday the 8th of March 2014.**

Thank you very much.

This is my opportunity, and obligation, on behalf of each member of the Cuban Five, to present to the Commission of Inquiry and the three eminent jurists a brief outline of the legal facts and the history of the case. I will, in my short talk, refer to a good deal of printed information, hundreds of pages of transcripts and evidence that I have prepared especially for them.

The Cuban Five trial was a 7 month trial. There is a 16 year history of litigation. We have tried to consolidate the facts and law and to answer all of their questions.

We will furnish the Commission of Inquiry and the eminent jurists together with the outline documents that are presently before the Florida court on the habeas corpus as well as a lengthy and a close examination of everything that happened at the trial, before the trials, and during the appeals. All those documents fill a room of this size.

I have asked two of my colleagues to join in this presentation. Philip Horowitz, who will be joining me, is a distinguished member of the criminal bar in Florida. He was involved with Rene at the very outset of the case. Many of the things that Rene was unable to answer yesterday, because he cannot be here, will be answered by Philip or me.

Peter Schey, a distinguished member of the California bar, will focus on the satellite issues – where was the plane when it was shot down, as well as the government's refusal to give the defendants documents essential for their defense.

Elizabeth Woodcraft and Sara Chandler, both of whom played a large role in the creation of this Commission for which we are grateful, asked us to advise the Commissioners of these specific acts that underlie our claim that the conviction and the arrest are unwarranted and unjustified. That we shall do.

We shall in the next four hours go through the facts prior to the shoot-down, after the shoot-down of February 1996, the period of time - two years - between the shoot-down and coming arrests (it was three and a half years before charges concerning any charges related to the shoot-down were filed), the pre-trial proceedings, the inability of the defense to examine material and the use by the Government of the Classified Information Procedures Act to stop the defendants from getting information.

Eminent jurists and members of the audience, the trial itself, the extraordinary events during the trial, the composition of the Jury, and the judges ruling will be also discussed orally and in the submitted papers too, as well as the appeals that went on for 8 years and the post-appeal period that went on for 2 years.

This case is unparalleled in American legal history, with respect to the violations of fair trial issues, the manner of arrest and the venue issues, most specifically the way that the Jury was affected by the payment by the American Government of millions of dollars to journalists who covered the case.

Facts laboriously developed after the Supreme Court declined review, thousands of hours of investigative time showed conclusively the United State government's spending money to get journalists to write stories to wrongly influence the jury and their success in achieving their goal of an unlawful conviction.

There were 1930 days from arrest to conviction of the Cuban Five, 1930 days of radio and television stories in the local newspapers. Over that period of time there was an average of 6 print stories a day paid for by the United States Government. They were in addition to these stories and articles on a daily, repetitive basis in newspapers, magazines, on radio and television, on NBC, CBS Radio, TV Marti and other outlets.

Potential and sitting juries were inundated with government paid-for propaganda.

Long after the end of the trial, in September 2006, we found out for the first time the extent of the wrongful payments. This issue now sits, for the first time, before a Florida court as we try and overturn the convictions.

We will also discuss with you the facts concerning each of the Cuban Five's innocence and particularly Gerardo's innocence. Gerardo has absolutely nothing to do with the shoot-down, nothing to do with any "conspiracy to murder". The facts in this case substantiate his total claim of innocence.

Gerardo submitted in court his affidavit that said: "Prior to the events of February 1996 and up to the present time I knew and know nothing about any of alleged plans of shooting down the aircraft of the Brothers to the Rescue. None of the actions that I did take in advance of February the 4th were intended to be any part of any such plan, nor was I aware that any of my actions contributed to any such plan, if it existed."

He said in his affidavit: "As I knew nothing of the alleged plan of the shoot-down of the aircraft, I could not contribute or have any knowledge of such a plan that would cause any aircraft to be shot down in international airspace or in territory of the

maritime jurisdiction of the United States.”

That affidavit, uncontradicted, has been given to the eminent jurists who are presiding over this Commission of Inquiry.

This case was tried in a perfect storm of politics. The Cold War was still being fought in the Florida straits in 1966, 1967, 1978, and still in 1998, 1999 and 2000 when this case was tried. Miami, at that time, had 700,000 Cuban Americans, who were living with the issues of “Cuba” and “terrorism”.

There are four different factors to consider when looking at the wrongful and prejudicial issues bombarding the jury.

First, the allegations of Cuban terrorism, and the allegations that America was performing terrorism with respect to the Cuban state was part of the daily story in newspapers, radio and television in Miami. Its impact on the jury is set forth in the papers I have submitted.

Secondly, there were the politics of the 2000 elections. Bush against Gore, the presidential election was decided for the country by the Miami Cubans. Both the Republicans and the Democrats very much wanted the Cuban vote. That is why Gerardo was charged, three and a half years after the event, with a conspiracy charge. The Government had all the facts on the date of the shoot-down and for three and a half years no one was charged. It was an attempt by the Democratic President and Attorney General to court the Cuban voters. The prosecution was finished by the Bush Administration. Payback for the vote.

Thirdly, the Elian Gonzalez case, returning the young boy to his father in Cuba, caused fury in much of the Cuban-American population of Miami. That case became the daily focus of the media resulting in an increase in the impact of prejudicial material for potential jurors against Cuba and anyone associated with Cuba.

Fourthly, the Brothers to the Rescue attempted to interfere on a daily basis with the jury trial and succeeded. What you will see, and what the Commissioners will read about, in the very lengthy documents that we have provided them, is that all of these things were the daily focus of the press; at the extraordinary rate of 6 columns a day for 1932 days. Radio, TV and newspaper columns written by people who often had long histories of anti-Cuban activities, who were paid by the American government.

The American law prohibits the paying of journalists to influence a jury. And in this specific case you had specific findings by the Judge about the difficulties in finding an impartial jury, the failure to get an impartial jury and even these judges did not know of the millions of dollars paid to the journalists or the many millions of dollars paid each year to Radio and Television Marti to help them influence juries.

Following the traditional concept of the American law, the Judge said that the government could not make statements outside of court, as the defendants could not make statements outside of court.

Nonetheless, we have learned, since 2006, that this has been done on a regular basis by the Government for 1930 days.

Many of the articles are exactly like the other articles. They repeated, repeated and repeated the same false factors and accusations. Also in addition to the written articles, three or four times a night there were newscasts done by the very same people paid by the United States, who were reporting the events.

To say that this is one of the worst trials in American history is not an exaggeration!

The documents I have given to the Commission are in part prepared by the National Committee to Free the Cuban Five, in part prepared by Peter Schey and in part by Gerardo's defense. They go through every very specific detail of each one of the allegations against these defendants.

You must read the words of the Circuit Court in this case. The Circuit Court said the motion for the change of venue should have been granted, because it was impossible to get a fair trial in Miami at that time. Since then - that decision was in 2005 - we have learned all these additional allegations of government misconduct which is directly tied to that.

This is what the Circuit Court said in 2005, having only a fraction of the information we now have concerning the influence on the jury.

The Court said: "Despite the District Court's numerous efforts to ensure a partial jury in this case, we find that an impartial jury in this community was an unreasonable probability because of a prejudicial community ... The entire community is sensitive to the concerns of the Cuban exile population in Miami. Waves of public passion, evidenced by the public opinion polls and newspaper articles regard a change of venue."

The documents that we have submitted to the Commission show the power and influence of the Brothers to the Rescue and how they were able to violate orders of the Clinton Administration and the Judge to help get a fair trial.

For example, the Brothers to the Rescue were not permitted to make any public statements about the trial as the trial was going on. But they did. Ignoring the Judge, they circulated petitions throughout Miami. These petitions were asking for the indictment of Fidel Castro and others in the Cuban government. These petitions were re-fighting the Cold War and making reference to Hitler, Lenin, etc., making claims that the defendants in this case, the Cuban Five, were trying to get intelligence to soften Southern Florida so that it would be invaded by the Cuban Government.

Such claims, which the Judge ordered not to be repeated outside of court, were, we now know, constantly repeated outside of court, not only in papers and petitions in supermarkets, but also on radio and television. We have only learned this since the conviction. We have only learned this since the Supreme Court denied a review on this case.

Leonard Weinglass and I have litigated many motions for change of venue and it is rare that motions like that are granted. It's a very difficult motion to win, but it was granted in our case.

But then the government appealed and asked the decision to be reversed. A motion to change the venue that is reversed is extremely rare. It was in this case.

The Court in granting the motion for change of venue said that: "Moreover, the Elian Gonzalez matter, which was ongoing during the time of the change of venue motions, concerned the relationships between the United States and Cuba and raised the community's awareness of the concerns of the Cuban exile community. It is uncontested that the publicity about Elian Gonzalez during the trial aroused passion within the Miami community. Despite the District Court aim to protect the jury, the community's awareness of this case and the one of Elian Gonzalez made the trial of the case impossible. In this instance there were no reasonable means of ensuring a fair trial."

One of the things that the judges tried to do was to keep secret the names of the jurors so that they would not be intimidated, prejudiced, wrongfully influenced. Those attempts failed. One of the reasons it failed is because the journalists paid by the government, who were working on the television networks, followed the jurors outside to their cars, they had their licences plates shown on television and followed them to their work. So within a relatively short period of time, the public knew who the jurors were and these jurors knew that their lives, their jobs, their futures, their children's lives, were at stake. They believed they had no alternative other than to convict these defendants in trial.

In another case that the government was involved in at the same time, they sought to move a case outside of Miami, because they believed they could be prejudicial of the persuasive influence with respect to the Cuban community. In that case the government argued: we had to move the trial outside of Miami because there were such deep feelings on issues Cuban. The case was moved outside Miami.

The government in the case of the Cuban Five made a contradictory decision that the Cuban Five case in fact should stay in Miami.

The sentencing in this case was outrageous. I have submitted documents to the Commission concerning the sentencing.

The injustice of the sentencing is a very important issue. If you would compare this case to any other case in the United States with respect to the sentences that were given than you would realize soon that these were exaggerated. These sentences were only partially and insignificantly reduced. At the present time Gerardo is serving two life sentences. His co-defendants are serving 30 years and 22 years.

In any other situation – even if there were a conviction – you are talking about two to five years at the most.

The sentencing, the composition of the Jury, the delayed charging and arresting of these people, are all unparalleled and unique, and given the politics of the time, not surprising.

This case was a travesty of justice.