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1
           UNITED STATES DISTRICT COURT
          SOUTHERN DISTRICT OF FLORIDA
2
              MIAMI DIVISION
3
                                ) Docket No.
  UNITED STATES OF AMERICA,
                     ) 98-721-CR-LENARD
          Plaintiff,
                      )
5
                     ) Miami, Florida
                     ) Friday
    v.
                     ) June 1, 2001
6
  GERARDO HERNANDEZ, ET AL.,
7
          Defendants.
8
9
                       VOLUME 102
10
11 TRANSCRIPT OF TRIAL
  BEFORE THE HONORABLE JOAN A. LENARD
12 and a jury
13
  APPEARANCES:
14
  For the Government: CAROLINE HECK MILLER, ESQ.
15
                   JOHN KASTRENAKES, ESQ.
                  DAVID M. BUCKNER, ESQ.
16
17 For the defendant Hernandez:
                            PAUL A. McKENNA, ESQ.
18 For the defendant Medina:
                           WILLIAM M. NORRIS, ESQ.
19 For the defendant Campa:
                           JOAQUIN MENDEZ, ESQ.
20 For the defendant Guerrero:
                           JACK BLUMENFELD, ESQ.
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21 For the defendant Gonzalez: PHILIP HOROWITZ, ESQ.

2223

24

Court Reporter: Richard A. Kaufman, C.M.R.R.

25

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1	(Open court. July not present.)
2	THE COURT: United States of America versus Gerardo
3	Hernandez, et al., Case Number 98-721.
4	Good morning. Counsel state their appearances for the
5	record.
6	(All parties present.)
7	THE COURT: The interpreters are also present, all the
8	jurors are now here.
9	Are we ready to proceed?
10	MR. McKENNA: Yes.
11	THE COURT: You may bring in the jury.
12	\ J 1 /
13	THE COURT: You may proceed, Mr. McKenna.
14	MR. McKENNA: Thank you, Your Honor.
15	Good morning, ladies and gentlemen. There is no more
16	serious accusation that you can level at a fellow human being
17	than first degree premeditated murder. When you do, you
18	better, like they say at the FAA, have all your ducks in a
19	row.
20	In this case, ladies and gentlemen, the ducks are not
21	in a row, and I think every person in this courtroom knows it.
22	That is why I will ask you to vote not guilty as to
23	Count 3, because I think that every one of you sitting here on
24	this jury wants to do the right thing, wants to do justice, and
25	to do justice, you will have to vote not guilty as to Count 3.

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1	It all starts with the indictment. This is the charge
2	against Gerardo Hernandez. The conspiracy that the government
3	alleged is that he knowingly, willfully, unlawfully, combined,
4	conspired, confederated and agreed with persons unknown to the
5	grand jury to perpetrate murder, that is, the unlawful killing
6	of human beings with malice aforethought, and the Judge will
7	also tell you in her instructions, it is with premeditation; in
8	the maritime and special jurisdiction of the United States in
9	violation of Title 18 United States Code Section 111.
10	In other words, they charged conspiracy. They didn't
11	charge murder. They charged conspiracy, conspiracy, the
12	essence of which is an agreement and the agreement in this case
13	was to kill people in the special maritime and territorial
14	jurisdiction of the United States.
15	Ladies and gentlemen, there never was such a
16	conspiracy. The Cuban Government's only concern ever, and all
17	the evidence has shown this, was not United States territory or
18	special maritime waters or international waters. Their concern
19	was their own territory. Their concern was their own country.
20	Think back to the opening statement by Mr. Buckner if
21	anybody can remember that far back. He stood right here, right
22	in front of you and he said ladies and gentlemen, this is a
23	story about three aircraft on a routine rafter rescue mission
24	searching for rafters in the straits of Florida. That wasn't
25	true, ladies and gentlemen. You know that now. There was

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1	absolutely	v nothing	routine	about	that	flight
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- 2 First of all, the Brothers to the Rescue published a
- 3 press release days before that flight, and they didn't call it
- 4 a rafter mission, they called it a memorial flight to honor a
- 5 battle in Cuba known as Grito de Baire, and they published that
- 6 to the whole world.
- 7 There was nothing routine about that flight, ladies
- 8 and gentlemen. Brothers to the Rescue hadn't made a routine
- 9 rafter flight in over a year. They hadn't even seen a rafter
- 10 in over a year.
- Everyone knew there were no more routine rafter
- 12 flights, ladies and gentlemen. That was a known fact. The
- 13 State Department knew it. Do you remember the testimony of
- 14 Richard Nuccio, he was desperately trying to get ahold of the
- 15 President's foreign policy adviser to tell him, I am concerned,
- 16 there might be a shootdown. Do you remember the FAA? Do you
- 17 remember this which was in evidence, one of the E mails. This
- 18 was the day before the shootdown, February 23. Brothers to the
- 19 Rescue and its leader Basulto. It is always Brothers to the
- 20 Rescue and Basulto. It is like bacon and eggs, they go
- 21 together. One doesn't exist without the other. Brothers to
- 22 the Rescue and its leader Basulto support Concilio Cubano. It
- 23 would not be unlikely that Brothers to the Rescue attempt an
- 24 unauthorized flight in Cuban air space in defines of the
- 25 government of Cuba and its policy against dissidents.

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1	Down at the bottom it says the Government of Cuba will
2	be less likely to show restraint in an unauthorized flight
3	scenario this time around.
4	Ladies and gentlemen, the whole world knew what was
5	going to happen. This wasn't some secret hatched plot. The
6	FAA knew it, the State Department knew it, the President's
7	adviser knew it and you know what, even Brothers to the Rescue
8	knew it.
9	Do you remember the testimony before they took that
10	flight that day they had a special meeting, they got together,
11	and they talked about the dangers of that kind of a flight at
12	that time. Every one of these people knew what they were doing
13	on February 24 flying right into the teeth of another
14	confrontation with the Government of Cuba.
15	For two years the Cuban Government had shown
16	restraint. They had tried diplomatic channels. They had tried
17	working with the FAA, they had tried warnings, they had tried
18	NOTAMS. They had tried everything they could to stop this, but
19	the United States was powerless to stop anything, and they
20	could have, ladies and gentlemen. They could have stopped this
21	at any time they wanted.
22	Do you remember the emergency revocation of
23	Mr. Basulto's license? That could have been done at any time.
24	The FAA knew what was going on.
25	What do they call it? They call it peaceful

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1	protesting. They call it exercise of their constitutional
2	rights.
3	Ladies and gentlemen, in this country, you could say
4	or do whatever you want. You could call Castro a murderer, an
5	assassin, you could call him a torturer; you could have
6	demonstrations, you can speak out, have protests, carry
7	placards, you could say anything you want in this country
8	because it is protected by our law; but that is not the way it
9	is in Cuba and in the same way if one of us were to go to Saudi
10	Arabia and say I demand a scotch and soda; you can't do that
11	there. You can't drink alcohol in that country. You can't

that you have to respect.
Ladies and gentlemen, the Brothers to the Rescue and

12 wear a bikini own the beach. They have certain rules and laws

- 14 Ladies and gentlemen, the Brothers to the laws in that manner.
- Do you remember Chuck Smith? Chuck Smith said that
- 17 Mr. Basulto was on a mission, and Basulto believed the rules
- 18 didn't apply to him.
- Ladies and gentlemen, the rules apply to everyone, and
- 20 when you don't play by the rules, specially with a paranoid
- 21 isolated country like Cuba, that is a recipe for disaster; and
- 22 in this case disaster struck.
- Now, five years later, they want to make Mr. Hernandez
- 24 responsible for this mess as if he knew that Mr. Basulto would
- 25 ignore these warnings; as if he knew that MIGs were going to be

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- 1 ordered to shoot down the planes. Ladies and gentlemen, he has
- 2 to be the biggest scapegoat ever in the history of this
- 3 courthouse, Gerardo Hernandez.
- 4 If you do the things that the Brothers to the Rescue
- 5 and Mr. Basulto did, he pushed the envelope like they did, all
- 6 these nice little rules that Chuck Leonard talked about, the
- 7 government's expert, about interception of civil aircraft; all
- 8 those rules go out the window. They are gone, because the
- 9 aircraft is no longer acting like a normal civil aircraft. It
- 10 is acting in a paramilitary fashion, and that is what was
- 11 happening in this case. That is what the Government of Cuba
- 12 was complaining about.
- 13 Specially when the country is dealing with someone
- 14 like Mr. Basulto, who in Cuba is a known terrorist and a wanted
- 15 person. He is wanted for a hotel bombing that he committed.
- 16 It might have been a long time ago, but if I shoot a cannon
- 17 into a hotel 16 times, that is a terrorist act. We wouldn't
- 18 forgive that in the United States and they don't forgive that
- 19 in Cuba. He is a wanted man in Cuba. That is who the Cubans are
- 20 dealing with.
- This is the same guy that the Cubans are getting
- 22 intelligence from the people here in Miami like my client
- 23 Mr. Hernandez and the others, they are getting intelligence
- 24 about Mr. Basulto like he is playing around with PVC pipes he
- 25 is going to load with ammunition, take them down to Cuba, use

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1	them in plots, use them in uprisings. What is the country
2	supposed to think about that?
3	You heard Mr. Basulto's lame explanation they were
4	going to shoot birds and eat fish.
5	You have to look at it from the Cuban's point of view
6	what they were dealing with, what kind of information they had,
7	who the person was they were dealing with.
8	The person they were dealing with was playing with
9	these PVC pipes, he was going to buy Czech jets to fly down to
10	Cuba. They were dealing with a very dangerous man. In their
11	eyes now, he came in here and said I have renounced
12	violence, there is no more violence. I am now a follower of
13	Martin Luther King and I am a follower of Ghandi.
14	Let me give you an analogy. Let's use Bin Laden. I
15	don't know how to pronounce his first name. He is an
16	international terrorist wanted in the United States just like
17	Basulto who is wanted in Cuba. Let's say that Bin Laden
18	announced, I have now renounced violence. I am no longer a
19	follower of violence or terrorism. I am now a follower of
20	Martin Luther King and I am a follower of Ghandi and what I
21	propose to do at this time is to get a squadron of planes who
22	are going to fly over Washington, D.C. and we are going to drop
23	leaflets, we are going to drop propaganda, hundreds of
24	thousands of pieces of propaganda condemning George Bush,

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25 calling him an assassin, a murderer, condemning the United

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1	States, condemning our form of government and asking the people
2	of the United States to rise up against George Bush and fight
3	against George Bush and fight against our country. He said
4	maybe while we are over here we will drop a few smoke bombs, we
5	will buzz a few buildings, we will buzz a few boats.
6	What if he did that and came over here and flew over
7	Washington, D.C. How many times do you think we would put up
8	with that? How many times do you think we would like Bin
9	Laden, this terrorist who blew up buildings just like Basulto
10	did, how many times would we let him come over and play around
11	over our capital? I submit to you we wouldn't let it happen
12	one time.
13	In this case the Cubans showed restraint. They showed
14	restraint for two years. They tried diplomacy, they tried the
15	FAA, but it was useless, it was futile and the Cubans knew it.
16	Do you remember that guy I called as a witness, Luis
17	Carmona. He was an FAA inspector that was a friend of
18	Basulto's. His son worked for the Brothers to the Rescue. He
19	was a pilot, and while Basulto had this investigation, which
20	was a lame investigation going on about what he had done, he is
21	getting help from this FAA inspector Luis Carmona. He helped

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him get a lawyer, he tried to smooth everything over. He was getting help from the very people that were investigating him and the Cubans knew it, because Gonzalez sent a message down there, you won't believe it, the people that are investigating

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1	Basulto are actually helping him.
2	What do you think the Cubans thought about that? They
3	knew that nobody was going to stop Basulto. They knew the U.S.
4	Government wasn't going to stop Basulto, they knew he wasn't
5	going to listen to any warnings. They finally realized it is
6	us that will have to do something about Basulto. No one else
7	will do anything.
8	In this country we all know that basically it is three
9	strikes and you are out. I would submit in a case of something
10	like this, it is not even one strike but let's go with the
11	adage three strikes you are out for old times sake.
12	Look at Mr. Basulto. Look at all the violations I
13	proved in this case to you. The government wanted to look at
14	this case in a vacuum. They wanted you just to take a look at
15	February 24, 1996 with these blinders on and say look, it was
16	just a little rafter mission and they were unimercifully blown
17	out of the sky. I didn't allow that to happen. I took the
18	blinders off so you could see the whole picture, so you could
19	put it all together to understand this thing and what you have
20	to do is, you have to look at what we showed.
21	I would submit, there were seven incidents that we
22	documented to you. There actually were more if you look at the
23	diplomatic notes but I didn't have witnesses, I didn't have

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24 cooperation, I couldn't prove every single one of these

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25 violations.

1	Let me go through them. I will say in advance I am
2	not going to play any more videos, I videoed you to death.
3	You have to forgive lawyers, we don't know when to
4	quit and I ask forgiveness; but when you are representing
5	somebody charged with premeditated first degree murder
6	MS. MILLER: Objection.
7	THE COURT: Sustained.
8	MR. McKENNA: When you represent somebody who is
9	charged with conspiracy to commit premeditated first degree
10	murder, you don't want to leave any stone unturned and I didn't
11	want to in this case.
12	Let's go quickly and I will ask Ms. McDermott to help
13	me by putting some things up on the Elmo.
14	Let's start with April 17. This is a still taken from
15	the April 17, 1994 video. This is when Mr. Basulto was up in
16	his Cessna 337 Sky Master with a reporter from Channel 23,
17	Bernadette Pardo, and she videotaped this little encounter.
18	What was happening on this day April 17, 1993?
19	Mr. Basulto was playing a little cat and mouse game with a MIG
20	aircraft in Cuban waters, and you could see that when you look
21	at the videotape. It is all in evidence if you want to play it
22	again for yourself.
23	Look at this kind of activity, what is going on.
24	Colonel Buchner testified, when I asked what category do you
25	put that in and he said, the insane category. That is really

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1	what it is. Think about what is going on. You are flying in
2	an aircraft and you are talking to a MIG pilot saying look, you
3	have to stop this Castro, join us, defect, become a member of
4	Brothers to the Rescue. Stop this insanity. It is basically
5	the plea he is giving to this anything pilot and this is
6	absolutely inconsistent with any type of known civil aviation.
7	Let's go on to the next one which was November 10,
8	1994. This incident involved a flyover of provinces of Cuba
9	from the Guantanamo Air Base. Think about what was going on.
10	Basulto went down, he wanted to see refugees, because
11	remember let me step back a little to set this up.
12	Brothers to the Rescue started off as this rafter
13	rescue mission. They never had any trouble with the Government
14	of Cuba, none, from 1991 to 1994. Everything was smooth.
15	There were no violent flyovers, there were no problems at all
16	with the Government of Cuba.
17	What happened is, they passed this migration law which
18	meant that all the rafters that were spotted in the straits of
19	Florida no longer would be brought to the United States, they
20	would be repatriated back to Cuba. That made the mission of
21	the Brothers to the Rescue obsolete.
22	The way you could determine that, look at his tax
23	returns that I moved into evidence that showed the corporate
24	records of Brothers to the Rescue. The donations plummeted.
25	They are not getting any more money after this migration accord

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l 1S	passed a	and Basulto	and Brothers	to the I	Rescue v	vanted t	he
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- 2 spotlight. They wanted to be on TV, they wanted the publicity
- 3 and to get back on stage, he started these missions, these
- 4 provocations, these nose tweaks, these buzzings of Havana, and
- 5 he did this to get back into the picture and he did this
- 6 because what he wanted to do ultimately was destabilize the
- 7 Government of Cuba. He wanted the population of the government
- 8 of Cuba to rise up against the government. He basically was
- 9 conducting foreign policy for you and me without a license,
- 10 without permission.
- Look at the dangers of that. He could have gotten us
- 12 involved in a war. He could have. Men could have been sent
- 13 over, killed, because of his insanity. He would love nothing
- 14 more, because that is what he lives for. He wants this
- 15 confrontation so he could go back, so people can go back to
- 16 Cuba.
- 17 Anyways, that sort of sets the stage a little bit for
- 18 November 10, 1994.
- He is down there visiting refugees. He tries to visit
- 20 refugees and they say no, you are not going to do it. It is a
- 21 military base, the military is running the show, I don't care
- 22 who you are, you are not going in and trying to stir up some
- 23 trouble with these refugees. They are our business, we will
- 24 handle them. You want to bring food and water, fine, get out.
- He got all ticked off and when he left, he buzzed the

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1	provinces of Havana.
2	Take a look at this little note, a diplomatic note.
3	The Ministry of Foreign Affairs has been notified by the
4	relevant Cuban authorities that on 10 November 1994 at 1:13
5	p.m. local time, two small Cessna 337 aircraft violated Cuban
6	air space by flying over the Punta Maisi Lighthouse after
7	having taken off at 12:40 from the U.S. naval base in
8	Guantanamo and flying South.
9	In what constitutes an intolerable provocation and
10	therefore a serious violation of Cuban sovereignty, the above
11	mentioned planes dropped on Cuban territory approximately 200
12	flyers containing enemy propaganda belonging to the self styled
13	counter revolutionary organization Brothers to the Rescue.
14	That is how the Cubans saw it. In the United States
15	you could do whatever you want. That is their country and they
16	have their own regulations. If you did that in Saudi Arabia,
17	they would lock you up too.
18	It goes to say, these small aircraft were two of the
19	three which arrived at the Naval Base in Guantanamo on 7
20	November 1994, and their U.S. license numbers are as follows, N
21	2506, we know who that is and what a slap in the Cubans' face.
22	He is flying around in their air space with the number of the
23	e
24	, 1
25	there for you to see, a Navy plane that flew down there and

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1	another one Bravo Bravo. Military planes flying over Cuba.
2	You have N 2506. The second one is N 5485S, one of
3	the planes that went down on February 24 and was shot down.
4	The Cubans were familiar with these aircraft. They knew these
5	aircraft. It wasn't the people inside the aircraft with the
6	exception of Basulto. It was Basulto and Brothers to the
7	Rescue and the aircraft.
8	That was the second one.
9	Then we go on to July 13, and I will not spend a lot
10	of time on this with you because I went over it in detail. If
11	we could put a couple of images up there. You have seen this a
12	hundred times. That is insane, you can't do that, you can't
13	fly over another country's capital where their president lives,
14	there parliament is, their population lives and do whatever you
15	want. You can't do that. We wouldn't allow it here; but he
16	got away with it because of politics. That is the only reason
17	he got away with it; politics.
18	The next image. Take a look at this one. This is
19	another video I moved in.
20	Basulto said that wasn't his plane but he said he did
21	the same thing, a little dive bomb on Cuban gun boats to drop
22	medallions. He said that is what he did. What kind of action
23	is that? It is like a provocation. You are messing with
24	military aircraft on April 17. You are messing with these gun
25	boats. That is crazy, it is insane. You can't do that and not

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1	expect the consequences that we saw in this case.
2	Let's go on to the next one. This is August 2, 1995.
3	This is a flotilla that didn't happen. These are
4	pictures of the planning of the flotilla; but what happened on
5	August 2 was, they were supposed to have another flotilla.
6	They were triumphant what happened on the 17th, they were all
7	over the news, right where Basulto wanted to be, back in the
8	spotlight. Forget about rafters, now we will take on the whole
9	country of Cuba right where he wanted to be, in the spotlight.
10	He went up to Washington, D.C., he met with top officials, he
11	was a big man. He met with that general who tried to say are
12	you people crazy, you are going to get some kids killed. Not
13	Basulto. The flotilla never actually took place because what
14	happened is, when they were leaving, one of the boats took on
15	water and sank and a poor man had a heart attack and died.
16	For what? What did this poor man die for.
17	This image right here is Ramon Saul Sanchez and his
18	group Democracia.
19	You were told the other day there was nothing
20	dangerous about democracy, it is nothing Cuba has to be
21	concerned about, it is a red herring the defense has raised.
22	It is a peaceful organization, they posed no threat to Cuba.
23	What are they doing in this picture? It looks like
24	they are having a landing exercise like a D Day invasion. As
25	ridiculous as you think, what are they supposed to think when

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1	you are down in Cuba and these groups, and Basulto would fly
2	support for these kinds of little missions and that is what he
3	said he was doing.
1	What the government said isn't true. The Cubans had

What the government said isn't true. The Cubans had 5 every reason to be concerned when they saw images like this.

Mr. Nuccio said he was aware of Sanchez' past and he 7 was associated with a terrorist group Omega 7.

You have to keep your eyes open. Don't get snowed by 9 little comments like Democracia. They are peaceful, they don't 10 do anything. Just look at the images.

11 Go on to the next one.

Here is Jose Basulto on January 9, 1996 getting ready 12 13 for an air drop over Cuba. It looks like he is going to bomb

14 Pearl Harbor.

6

What is going on here. What are these people doing. 15

16 He gets up in front of the camera with these other people and

17 says look, we are going on a mission, a secret mission, I can't

18 tell you what it is, but if I don't come back or if I am seen

19 on TV talking, you can assume I have been tortured by the

20 enemy.

21 These guys are operating little military missions.

22 Why else would you talk like that? If you were going to be

23 flying some normal international air space rafter mission, why

24 would you be going on the film saying if I get shot down -- the

25 Cubans don't care about international water. They are only

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- 1 concerned about their territory. They don't have any friends.
- 2 They are an isolated country stuck in a time warp. It is like
- 3 a cat in a corner. You don't play with it, you don't provoke
- 4 it, but that is what Basulto did. He wants this confrontation
- 5 so he could operate his way. That is not how we operate in
- 6 this country.
- 7 That was the 9th of January they dropped those
- 8 leaflets.
- 9 Then we go on to January 13. These are incidents I
- 10 thoroughly proved and established to you.
- January 13, I don't have any images of that but I have
- 12 some wonderful proof to support it which was a radio program
- 13 that Basulto went on. I will not go over the whole radio
- 14 program but I will go over a few clips because it gives an
- 15 incredible insight into what is going on.
- This guy, Pepe Vides asks Basulto, yes, I would like
- 17 to know how you did it. Basulto says, well, we conceal that
- 18 information for obvious reasons. We conceal that information
- 19 for obvious reasons. Does that sound like normal, civil,
- 20 aviation?
- Look at the next comment. Havana was the target.
- 22 Havana was the target. It is like military jargon. Havana was
- 23 the target and the surrounding points, I would say about three
- 24 miles from the center of the city was what was chosen as what
- 25 we would call the drop point.

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1	Is this normal civil aviation, folks?
2	Later on down, David says, apparently there was no
3	immediate reaction from a military standpoint. That is, there
4	wasn't, you were not attacked, the planes, nothing, right and
5	Basulto says that is right, we were not. We have not received
6	any type of attack from the Cuban Government up to now, it has
7	only been verbal. Slap. This is broadcast into Cuba and they
8	are listening to it and Basulto, slap, slapping their
9	faces, taunting them.
10	Do you recall Ms. Capestani, she worked with the FAA
11	and worked with the State Department. What did she say. This
12	is dated 1/22 right after these incidents.
13	She says we have received information from the State
14	Department another unauthorized flight occurred Saturday
15	January 20 in the morning. The plane according to State, did
16	not over fly Havana nor did it drop propaganda. That was
17	something on the 20th. Then she talks about these two
18	incidents, January 9 and 13. In light of last week's
19	intrusions, this latest over flight can be seen as further
20	taunting of the Cuban Government.
21	That is right, even their government, the United
22	States Government, our government said it is taunting. They
23	knew what it was, we all knew what it was.
24	Further on she says, State is increasingly concerned
25	about Cuban reactions to these flagrant violations.

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1	I didn't make up this stuff. That is what our
2	government called these, flagrant violations.
3	They are also asking for the FAA what is this agency
4	doing to prevent and deter these actions. What the agency was
5	doing, they were sending in Luis Carmona to help Basulto figure
6	out how to fight his way out of it, get a lawyer, beat the
7	rap.
8	Can you believe it? What are the Cubans supposed to
9	think.
10	Then it says, as a matter of fact, the Under Secretary
11	of State called Secretary Pena last week to check on our case
12	against Basulto. One of these days, the Cubans will shootdown
13	one of these planes and the FAA better have all its ducks in a
14	row, Cecelia.
15	Look at what is happening.
16	Then just to go back to this DO, David
17	O T O R D O N. Basulto, to what do you attribute the fact that
18	the Cuban Government did not have a military response against
19	you, lack of organization, surprise?
20	Another slap in the Cubans face, another taunt.
21	Basulto's response, that is the same question that our
22	compatriots on the Island should ask themselves when they go to
23	fear the government at a time they plan on doing something
24	against it. We have been willing to take personal risks for
25	this, they must be willing to do the same.

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1	Look at what he is broadcasting into Cuba. He is
2	telling the Cubans in Cuba, look at me. I can fly over Fidel's
3	house, I could drop leaflets, you could call for insurrection.
4	I could fly over gun boats, do whatever I want. Look at me.
5	They won't lift a finger against me, the military is afraid of
6	me. They can't even get a plane up there against me, look at
7	me, do like me.
8	You can't do that in another country. We wouldn't let
9	Bin Laden do it in this country, a terrorist, a guy who blew up
10	buildings like Basulto. We wouldn't allow it.
11	Then it goes on, this is great at the end. The guy
12	says, Basulto what has been the United States Government's
13	response with respect to this thing that you have done.
14	Basulto. Well, the other positive thing about this is that the
15	United States Government is on vacation until tomorrow. Then
16	he had a good laugh.
17	That is because Basulto thinks the United States is a
18	big joke. Their enforcement is a big joke, everything is a big
19	joke and he could do whatever he wants and that was broadcast
20	into Cuba on this day, I think it was January 15, 1996.
21	What are the Cubans supposed to think? Nothing will
22	be done by anybody in the United States. Basulto is openly
23	laughing and mocking his own government on air. He could do
24	what he wants with impunity. Nobody can stop him. That is
25	what the Cubans started to realize.

1

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1	Finally we get to February 24 and this is a down load
2	from the video, I apologize for the quality of it. It is not
3	very good. It was shot out of Basulto's cockpit window showing
4	the coast of Cuba as he approached it and we all know about
5	that incident, I will come back and talk about it later, he is
6	up in the sky with MIGs all around his aircraft going hee, hee,
7	hee, while four men die. We will come back to that.
8	I want to go over a couple of concepts with you.
9	First is some law you will get from Judge Lenard if I could put
10	it up on this easel. I hope you can all see it. I will read
11	it.
12	This is not something I made up. This is the law as
13	you are going to get it from Judge Lenard that you have to
14	follow in this case. She will tell you in regard to Count 3 of
15	the second superseding indictment, you are instructed that
16	every nation has complete and exclusive sovereignty over the
17	air space above its territory.
18	That only makes sense.
19	The territory of every state consists of the land
20	areas and territorial waters adjacent thereto under the
21	sovereignty and protection of such state. Every nation, also,
22	has complete and exclusive sovereignty and control over its
23	territorial air space extending twelve nautical miles out to
24	sea.
25	International rules applicable to civil aircraft are

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1	not applicable to state aircraft. Aircraft used in military,
2	customs and police services shall be deemed to be state
3	aircraft. No state aircraft are permitted to fly over the
4	territory of another nation without authorization.
5	Then she will tell you, it is for you, the jury, to
6	determine whether or not an aircraft acted as a state aircraft
7	or a civil aircraft; because, ladies and gentlemen, if these
8	aircraft are not acting like civil aircraft, all those rules
9	and things that Chuck Leonard talked about are out the window.
10	We spent hours going over that, but they don't apply to this
11	case and the Cuban Government has a right like any government
12	to protect and defend its sovereign territory. Every country
13	in the world has that right, even this regime in Cuba.
14	How do you decide what is a state aircraft and what is
15	a civil aircraft? You have the rules which I introduced in
16	evidence. A study done by ICAO on state versus civil aircraft,
17	and let me take a quick sip of water before we go through
18	those.
19	I am sorry you have to be pounded by lawyer argument
20	for four days. It is probably worse than any kind of root
21	canal or any experience you could be exposed to. It is our
22	system, it is what has to be done and I ask you to bear with me
23	a little while longer.
24	Here is the instruction you will get and this material
25	in evidence from the ICAO report. The usage of the aircraft in

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1	question is the determining criterion and not, by themselves,
2	other factors such as aircraft registration and markings. That
3	is what the government wants to do. Look, these aircraft had N
4	written on the tail. That is a civil aircraft, Mr. McKenna, I
5	don't know what you are talking about, what is the silly stuff
6	you are talking about. Military aircraft; that is crazy.
7	That is what Chuck Leonard said but he didn't know
8	anything about this civil versus state stuff because he didn't
9	go to ICAO like Colonel Buchner did. Colonel Buchner went to
10	ICAO, talked to them, investigated this thing and the fact it
11	has an N doesn't mean anything. You have to look at how the
12	aircraft is used.
13	Then they go through these factors.
14	Number 1, the nature of the cargo carried.
15	The only cargo I could remember is 500,000 subversive
16	propaganda leaflets calling for the overthrow of the Castro
17	regime. That is what they called for, fight, stand up for your
18	rights, whatever. That is the only cargo we are talking about
19	and that cargo do you remember Mr. Buckner talked about the
20	02? I don't know if anybody remembers this, but he said in
21	Viet Nam, the 02 used to be used in military missions to drop
22	propaganda. It has this door you could open and you could
23	throw things out the door and these 02s had that door. The
24	fact they even put an 02 door on one of these 337 Sky Masters.
25	Dropping 500,000 propaganda leaflets, that is military

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1	like we did in Vietnam. Colonel Buchner even testified a U.S.
2	plane got shot down over China doing that, throwing propaganda
3	leaflets out.
4	Ownership of the aircraft. The aircraft is owned by a
5	corporation owned by Mr. Basulto. A terrorist. It would be
6	like Bin Laden owned the aircraft. The guy is a wanted man in
7	Cuba and a terrorist. That is the second factor.
8	Third. Operation, degree of control and supervision.
9	They are out of control. There is no degree of control over
10	Brothers to the Rescue. They are on a mission, the rules don't
11	apply to them. They will do as they please.
12	Passengers other personnel carried. They don't carry
13	passengers. They are not a passenger air business. They are a
14	provocation air business. It is provocation air, that is what
15	they should call themselves. They don't pick up rafters any
16	more, they pick fights. That is what they want to do. They
17	pick fights and they want somebody else to fight it for them.
18	Aircraft registration and nationality markings. That
19	is interesting. You have the photographs, I moved them into
20	evidence. One of them is a Navy marked 02. Marked, U.S. Navy
21	right on it. That is one of the aircraft complained about in
22	the diplomatic notes. You could go back and read it.
23	What is Cuba supposed to think when aircraft marked
24	U.S. Navy are flying around down there or when this other

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25 airplane Bravo Bravo when it is marked USAF and then they had

1	to take the F off because the FAA said you can't fly around
2	like that.

- 3 Secrecy of the flight. Will a usual civil flight plan
- 4 be submitted and the usual air traffic clearances obtained.
- Do you remember what I read to you a few minutes ago,
- 6 I would like to know how you did it and he said we conceal that
- 7 information. That is secretive. That is what was being
- 8 broadcast into Cuba. We concealed the flights. You are darn
- 9 right they concealed it. They also filed false flight plans,
- 10 all the time. They filed a false flight plan on the day of the
- 11 shootdown, February 24, 1996. That is the route they took,
- 12 look at that. They were on a bee line for Havana. They
- 13 weren't looking for any rafters that day. It was a bee line
- 14 for Havana so they could advertise. Do you remember that in
- 15 the tape, I want to advertise.
- What do you think advertise means? It means throw
- 17 leaflets out the windows.
- When I asked the witnesses on the stand what do you
- 19 think advertise means and they said I don't know. Is it a term
- 20 of art used by pilots? No. I don't know what was meant by
- 21 that.
- Come on, ladies and gentlemen, you are not stupid.
- 23 Don't allow witnesses to blow that kind of smoke on you, it is
- 24 ridiculous.
- This is what they did.

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I	An interesting thing, too. You will have the
2	transcripts, I moved them into evidence of the tower in Havana
3	talking to the aircraft, not just Mr. Basulto, to the other
4	aircraft as well and they asked Mr. Costa's aircraft what is
5	your flight plan where are you going to be flying today and
6	he said you, you it is in our flight plan. It wasn't in
7	their flight plan. This is in their flight plan, over here and
8	they were over there. He was lying.
9	That is what they are talking about when they talk
10	about secrecy of the flight. They were not being honest about
11	their route, because they wanted to go down to the shoreline of
12	Havana where there was a big festival that day, everybody was
13	outside celebrating, carnival, Grito de Baire. It doesn't
14	matter how important that battle is. That is not why I showed
15	you the evidence. It is showing you why Basulto went down
16	there that day, for another provocation.
17	You know the rest of these areas, nature of crew. The
18	nature of the crew and the operator go together like I said
19	before. It is like bacon and eggs. It is Basulto and Brothers
20	to the Rescue.
21	Documentation. That doesn't really apply.
22	Areas of operations. Will the aircraft fly to or
23	
24	conflict.
25	My God, ladies and gentlemen, they were warned don't

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	go into this area. The maps I moved into evidence says right
2	on it, if you don't follow the rules of aviation down in Cuba,
3	you will be shot down. There is no other country in the world
4	that publishes a notice like that except Cuba. You will be
5	shot down, it is on the map.
6	Customs clearances. They didn't get any kind of
7	clearances for what they did. I want to go on to a different
8	area, ladies and gentlemen.
9	Lost in all the hoopla of why the plane was shot down,
Λ	where the plane was shot down how the plane was shot down

- 10 where the plane was shot down, how the plane was shot down, is
- 11 exactly what did Gerardo Hernandez have to do with it.
- Would you please stand up, Mr. Hernandez. 12
- What did that man have to do with it. You could sit 13 14 down.
- Did he somehow trick Basulto into flying that day? 15
- 16 No. Did he send a message to Cuba? Yesterday the United
- 17 States Attorney stood up in front of you and said yes, he sent
- 18 a message to Cuba confirming that certain pilots were not going
- 19 to be on a flight and that allowed the Cuban Government to
- 20 shoot these aircraft down.
- Where is that message? What number is that message? 21
- 22 Would you please put that message up on the Elmo for the jury
- 23 to see in your rebuttal. Put it up there, put the message up
- 24 on the Elmo for the jury to see; because there is no message.
- 25 Just like she said the other day during this time period,

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- Hernandez was down at headquarters in Cuba cooking up this
 plot, hatching this plot of murder. That is what she told
 you.
- Gerardo Hernandez at that time was on vacation. He is here temporarily. He spends a year and he goes back for two
- 6 months. He was on his vacation. There was no evidence
- 7 whatsoever in this case that he was down at the headquarters
- 8 hatching some plot. It wouldn't even make sense if you think
- 9 about it. Why would they bother with all these goofy messages
- 10 on this high frequency, whatever it is. Why not have Hernandez
- 11 come back and say, I just got back from headquarters, we have a
- 12 plot, we are going to kill a bunch of people, here it is, we
- 13 will not goof around with these every other day, whatever,
- 14 morse code, goofy stuff.
- 15 It was made up. I objected to it and the Judge
- 16 sustained it. He never was at headquarters. There was no
- 17 evidence he was at headquarters and there was no evidence he
- 18 ever sent a message.
- 19 You cannot make it up as you go along in a conspiracy
- 20 to commit first degree premeditated murder, and she made things
- 21 up the other way when she stood up in front of you. She said
- 22 he sent a message. How do you know he sent a message? Was
- 23 there a witness that came in here and said he sent a message?
- 24 Was there a document showing he sent a message? No. She is
- 25 asking you to engage in some kind of wild speculation. Wild

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1	speculation that he was at headquarters.
2	Why should you assume that? Why, in a charge of
3	conspiracy to commit first degree premeditated murder, as if
4	she were the witness. That is crazy, you don't do that in this
5	country, it is not allowed.
6	There was no message that he sent down there, there is
7	no evidence of any message. It is absolute, made up
8	testimony.
9	Did he send a flight plan down there? No. The flight
10	plan was sent by the United States Government and it was
11	received by the Cuban military. He didn't have anything to do
12	with that.
13	Did he know or agree to a shootdown in international
14	waters? That is what they charged here, that is the
15	conspiracy? No, there is no evidence of that.
16	Let's be very clear exactly what the charge is. That
17	is the indictment, ladies and gentlemen. You have to go by
18	what is charged and what is charged is, is a conspiracy, an
19	agreement. They are saying he made an agreement to murder in
20	the special maritime and territorial jurisdiction of the United
21	States.
22	That is what they said he agreed to do.
23	First of all, there is no such evidence of that in
24	this case. The only concern Cuba had as I tried to explain to
25	you in the beginning of the case is their territory.

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1	Take a look at the jury instructions a little bit.			
2	Conspiracy to commit first degree premeditated murder in the			
3	U.S. maritime waters and territory.			
4	Could you put up on the Elmo first the conspiracy			
5	instruction.			
6	I have highlighted the relevant areas I am going to			
7	concentrate on. Of course you should consider all the			
8	instructions as I know you will when you do it.			
9	Title 18 United States Code Section 1117 makes it a			
10	separate federal crime or offense for anyone to conspire or			
11	agree with someone else to do something which, if actually			
12	carried out, would amount to a violation of Title 18, United			
13	States Code, Section 1111.			
14	All that means, what he is charged with is a			
15	conspiracy to commit the substantive offense of first degree			
16	murder.			
17	Then it goes on and says, the essence of the			
18	conspiracy offense is the making of the agreement. That is			
19	right. What did you agree to. That is the focus.			
20	Then it goes down and says, what the evidence in the			
21	case must show beyond a reasonable doubt is that two or more			
22	persons in some way or manner came to a mutual understanding to			
23	try to accomplish a common and unlawful plan as charged in the			
24	indictment.			
25	What is charged in the indictment? An agreement to			
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1	kill people in the special maritime and territorial
2	jurisdiction of the United States. Not in Cuba. It says the
3	defendant knowing the unlawful purpose of the plan, willfully
4	joined in it.
5	Let's go over to the substantive instruction and I
6	just want to concentrate on these highlighted areas for now and
7	I could come back and talk about other aspects of the
8	instruction later.
9	Title 18 United States Code Section 1111 makes it a
10	federal crime or offense for anyone to murder another human
11	being within the special maritime or territorial jurisdiction
12	of the United States. It lays out all the elements. One is
13	that it be done with premeditated intent and the fourth one
14	says, that the killing occurred within the special maritime or

You have to go back to the conspiracy charge and what this means is, for them to prove their case, he had to agree that is where the shootdown was going to take place. That is what they have to show.

15 territorial jurisdiction of the United States.

Ladies and gentlemen, let's take a look at the
evidence on this. Take a look at some of the evidence. Let's
start with this one. This is the only document that has his

name on it. This is DG 104. This is the only document with his actual name on it, and the HF messages, they didn't go to

25 him. He wasn't in the country and they went to somebody else

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- after he got back and I will show that to you. The only
 document with his name on it is this one. It is dated February
 13, 1996.
 This is what it says. Brother Iselin. That is a
- 5 letter to Rene Gonzalez sitting in the back over there.

 As we told you in the previous contact, we need
- As we told you in the previous contact, we need to
 pinpoint in more detail everything related to new incursions by
 Prothers to the Passage to be carried out in our country.
- 8 Brothers to the Rescue to be carried out in our country.
- 9 Ladies and gentlemen, that is the key. The agreement 10 that is charged in the indictment is the agreement to kill
- 11 people in the special maritime and territorial jurisdiction in
- 12 the United States.
- What does the evidence show? Not what Ms. Heck Miller
- 14 makes up. The evidence shows what they are talking about is
- 15 incursions by the Brothers to the Rescue to be carried out in
- 16 our country. That is not what the indictment charged. It is
- 17 not even a crime. There is no U.S. law that makes it a crime
- 18 to shoot somebody down in Cuba. That is not an offense. The
- 19 only crime they could charge was to shoot somebody down in
- 20 international waters and that was never what anybody agreed
- 21 to.
- It goes on, it says very clear and precise
- 23 specifications that will allow us to know without any doubt
- 24 whether Marisol is flying or not. Marisol is Basulto.
- 25 Remember what I said, like ham and eggs.

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1	Whether the activity is to drop leaflets or to violate
2	the air space.
3	They weren't concerned with rafter missions in
	1 1 1 1 7 7 0

4 international waters. They weren't concerned with U.S.

5 territory. They were concerned with their territory, people 6 dropping 500,000 subversive leaflets, people buzzing their

7 capital, people messing with them, terrorists like Basulto. He

8 didn't care about international waters.

9 If you go by the evidence, ladies and gentlemen, this 10 is a simple not guilty, simple.

is a simple not guilty, simple.
 Let me go on to some of the other HF messages and let
 me tell you, I don't like to go through these documents and put

13 these things up on the Elmo. I tried not to use any more

14 posters, we killed enough trees in this case. They went

15 through some and I have to go through some and it is

16 excruciating to put these things up there and to have to go

17 through them but I have to do it. Please bear with me a little

18 bit.

19 Let me address this issue of where the HF messages

20 were going. It is uncontroverted that Gerardo was not in the

21 country from October to late January, 1996. The man was on

22 vacation. He lives here and works without seeing his family,

23 without seeing his wife, without being around anybody for a

24 long stretch. When he goes back he doesn't go to headquarters,

25 he gets to see his family.

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1	Now, let's look at these HF messages. Put the first
2	one up there, 101.
3	101 says, you can now use M 2 to send A G U I L A S.
4	Received deciphered mail on the 28th.
5	I will not read the whole message. Look at the date,
6	it is November 29. He wasn't even back in the country. The
7	message is irrelevant but I am showing you this message so you
8	understand he is not in the country. Somebody else is getting
9	these HF messages and it is not him. The government came in
10	here and twisted it so bad, tried to make it look like he got
11	the messages because they recovered the disks from his
12	apartment. They recovered the disks from his apartment two
13	years later. They also recovered A 4 who is also Miguel do
14	you see A 4, he is right there, Albert Manuel Luis Miguel.
15	That is the guy that got the HF messages. He was running the
16	show while Mr. Hernandez was back on vacation in Cuba. Look at
17	the date. He couldn't have gotten it. Later when they
18	searched his apartment they found A 4's bag in there, A 4's
19	passport in there. He didn't get these messages but they would
20	lump it all on him and like spaghetti, throw it against the
21	wall and maybe it will stick.
22	You can't do that when you charge somebody with
23	conspiracy to commit first degree murder.
24	The next one is 29. This one is dated March 4.
25	Obviously Gerardo Hernandez is back at this time, and it says

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1	here in the middle of the passage, I will send your travel plan
2	with Manolo.
3	I will send your travel plan. Giro, Gerardo Hernandez
4	isn't going any place. A 4 is going somewhere. He will go
5	home. This is proof the HF messages are not going to Gerardo
6	Hernandez, they are going to somebody else.
7	Let's keep going. This is number 30. This one is
8	great. It says, the second sentence, because of operational
9	and documentation reasons, you should not sell your car to
10	Giro.
11	The government says no, Mr. McKenna, you are all
12	wrong, the messages are going to Giro. Why would they tell
13	Giro not to sell the car to yourself. Does that make any sense
14	whatsoever?
15	Let's try and do it the government's way. Do not sell
16	a car to yourself.
17	It doesn't work. The government makes stuff up, and
18	this is clearly not going to Giro.
19	Let's go on. This is message 31. You need to send
20	computel. Use Giro's program.
21	They are not talking to Giro. Why would they talk
22	like this if they were sending all these HF messages to Giro?
23	They are not.

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25 very carefully, number 34. It says, as of this message you can

Here is the grand daddy of them all please look at

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24

1	travel whenever you want. It can't be Gerardo Hernandez
2	because he just got back. He is not traveling anywhere. It
3	says in activity with Email that Manolo will pick up is
4	encrypted with your program. Give Giro a copy of the program
5	so he can decipher it.
6	Look at the date, March 14. The shootdown has already
7	passed, Giro doesn't even have the decryption to these HF
8	messages. He doesn't even have it. He is going to get it, but
9	he will get it after.
10	All these HF messages that the government has staked
11	their case on, there is no proof beyond a reasonable doubt that
12	Gerardo Hernandez even got these messages; there is no proof.
13	He didn't even have the program, they were going to give it to
14	him after the shootdown.
15	The only document that has any reference to Gerardo
16	Hernandez, Giro, is the one where they are talking about
17	incursions into our country which is not even a crime to agree
18	to conspiracy to that. It is not a crime and it is not what
19	they charged.
20	That is what establishes who got the HF messages.

That is what establishes who got the HF messages.

I could stop, but I will not. I will keep going 21

22 through the messages because you could untangle it. Even if I

23 am wrong, if you look at the messages, you will see there is

24 nothing in these messages that prove beyond a reasonable doubt

25 a conspiracy to commit premedicated first degree murder. The

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1 2	Judge will instruct you on that. She will tell you. Number 4, another message. This is sort of a
3	background to what was eventually called by the Cuban
4	Government, Operation Escorpion. It is dated January 12. If
5	you look up at the top, it says propaganda was dropped between
6	Matanzas and Varadero on the 9th. Equipment used, is not
7	known. Need to determine who it was and what type of plane was
8	used.
9	These people that have infiltrated Brothers to the
10	Rescue, they can't even get the information. How do you know
11	anybody ever sent any message to Cuba what was going to happen
12	on the 24th? How do you know? They weren't even getting
13	information about these flights. The Cubans wanted to know.
14	That is why they had these people in the United States. They
15	wanted to know what these people were doing, what they were
16	doing to our country.
17	They wanted information, they wanted to gather
18	information.
19	Go on to number 6. It is the same thing. Look at the
20	very bottom. It says necessary for German and Castor to find
21	information on equipment used, route and how they carried out
22	operation of Saturday the 13th.
23	That is one I went over with you where they dropped

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What is the Cuban Government interested in? Getting

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25

24 500,000 leaflets.

1	information. They wanted information what is going on.
2	Let's go on to what the government has staked its
3	entire case on, which is HF 12. It says okay 7 and 10.
4	Superior headquarters approved Operation Escorpion in order to
5	perfect the confrontation of counter revolutionary actions of
6	Brothers to the Rescue. Information from German and Castor
7	should come with clear and precise specifications that allow to
8	know without a doubt that Basulto is flying, he is the leader,
9	whether or not activity of dropping of leaflets or violation of
10	air space.
11	Whether activity of dropping of leaflets or violation
12	of air space.

- What are the Cuban Government people concerned about?
- 14 They are concerned about violation of their air space. That is
- 15 not what the government charged and that is not a crime; but
- 16 even if you look at this message in a sinister way that the
- 17 government wants you to look at the message for, Operation
- 18 Escorpion was to perfect the confrontation of counter-
- 19 revolutionary actions. In order to perfect the confrontation
- 20 of counter- revolutionary actions. Why is that supposed to
- 21 mean that someone who received it murdered. Could it mean
- 22 continue to gather information so we will decide how to perfect
- 23 the confrontation? What will the confrontation be? To force
- 24 the planes down? It is an option. Why must it mean murder?
- 25 Why must it mean premeditated first degree murder? That is

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1	what they must mean, so they could make everybody happy, so
2	there could be a scapegoat for these four men tragically killed
3	by Basulto's idiotic behavior.
4	If you go on and read it basically that is what
5	covers it.
6	Why did they call it Operation Escorpion, perhaps they
7	had been stung one too many times by Basulto. Who knows. The
8	government will say anything. They will make any argument.
9	The next thing they will be arguing, because it is Escorpion, a
10	scorpion kills, so that makes it murder.
11	They will say anything to try to get you to convict on
12	this count, because then they got a head for these killings,
13	look, we got the guy responsible.
14	As I told you before, he has to be the biggest
15	scapegoat ever in this courthouse.
16	Let's go on to the next message, number 16.
17	It says according to TV news on the 4th, two Brothers
18	to the Rescue planes went to the Bahamas.
19	They are getting their news about Brothers to the
20	Rescue from TV, not spies.
21	Then it says, today, according to information from our
22	ATC, air traffic control, they asked for permission to fly
23	between Varadero in Cuba and Sagua Grande for plane
24	registration 2506. Necessary for German and Castor to

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25 prioritize Operation Escorpion and report urgent information

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1	these are the types of flights we are requesting.
2	They have to prioritize Operation Escorpion and report
3	urgent information.
4	I submit that is what Operation Escorpion is. It is
5	to get as much information as they can what Brothers to the
6	Rescue are up to next; but the government twisted it all
7	around, they split it out the way they want it and they want it
8	to mean premedicated first degree murder.
9	Can you imagine, without a witness, without anything
10	more it is unprecedented. It is a prosecution based on a
11	word, confrontation. It is based on a word. It is
12	unprecedented in any courtroom in this country.
13	That is what Escorpion is about.
14	Let me talk briefly about Venecia.
15	The government says Venecia and Escorpion are the same
16	things. They are not. They are two completely different
17	things. Venecia was this little game that was being played
18	where they were going to get Roque, this double agent, out of
19	the country back to Cuba and he was going to denounce Brothers
20	to the Rescue, and he did go on TV and say look, I was one of
21	them, but I have left them, I have denounced them, they are
22	counter revolutionaries trying to destroy our country and
23	hooray, it lifted everybody's spirits.
24	Let me go through a few more messages.
25	The good news is when I get to the charge involving

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1	Southcom	and the	conspiracy to	pass defense	closely held

- 2 information, I wouldn't even be using the Elmo; so you know now
- 3 we are coming to the end of these little messages I put up on
- 4 the screen.
- 5 Let's go through some of these. It says, number 23,
- 6 okay your plan Vedette. Only worry is if it is justified to
- 7 leave car and take taxi at dawn, evaluate it and decide if he
- 8 turns over his beeper. Abandon it quickly since enemy special
- 9 services can locate it technically. Edgardo is already in
- 10 Alexis' land in order to support Venecia. ALexis land is a
- 11 code word for Mexico. They are getting ready to pick up Roque
- 12 as part of Operation Venecia. He is going back to Cuba. It
- 13 has nothing to do with Escorpion which is to get as much
- 14 information as they can about the flights of Brothers to the
- 15 Rescue.
- Let's keep going. Here is the next one. This message
- 17 is my favorite of all the HF messages. It must sound strange
- 18 to have a favorite but I will explain why. It is dated
- 19 February 23, 1996, the day before the four men tragically
- 20 died. This is what it says. Okay your 20. Necessary repeat
- 21 19. Since it came in garbled.
- Here it is. When Venecia's return is made public, and
- 23 they are talking about Roque getting back to Cuba; Castor's
- 24 first reaction, Rene Gonzalez, the guy back there with the
- 25 beard who infiltrated Brothers to the Rescue; Castor's first

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1	reaction should be incredulity, then condemnation. He should
2	call money to to, sitting in the front row right there who the
3	government said was going to be a witness in this case
4	MS. MILLER: Objection.
5	THE COURT: Sustained.
6	MR. McKENNA: The government stood in front of you and
7	said they would call Agent Montoto
8	MS. MILLER: Objection.
9	THE COURT: Overruled.
10	MR. McKENNA: They stood up in front of you and said
11	we will call Agent Montoto about these incidents. They never
12	called Agent Montoto. They stood up in front of you and said
13	we will prove this, we will prove this through Agent Montoto
14	and they didn't prove it.
15	You stand up in front of a jury and say we will prove
16	this on a first degree murder charge, you better stick to what
17	you said you would prove. They didn't. They didn't even have
18	the guts to put him up on the stand.

- This is the kicker. His conduct with Brothers to the
- 22 Rescue and Basulto should be extremely caution. His conduct

To keep reading. It says, he should call Montoto to

- 23 with Basulto? I thought Basulto was going to be killed in this
- 24 murder plot they talked about. How could they be telling
- 25 Castor to be cautious with Basulto and Brothers to the Rescue?

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20 verify news.

19

1	what are they talking about. Be cautious with Basuito's
2	ghost? I know she said he is going to go to heaven.
3	If there is a real plot to murder Basulto, why in the
4	name of God would somebody from Cuba be telling them be
5	cautious with Basulto when it is February 23rd.
6	They are the ones that laid out the story. It is
7	crystal clear, Concilio Cubano was going to take place on
8	February 24, Basulto said he was going to go down there and
9	they got the wrong guys, but they shot down two planes.
10	That is proven untrue by this message, because if
11	there was a conspiracy to kill Basulto and that is the only
12	person they ever talked about. They talk over and over again,
13	make sure Basulto is flying, make sure Marisol is flying. Why
14	in the name of God will they say be nice to him when you see
15	him after Roque gets back? It doesn't make any sense. Their
16	case is crumbling, it is falling apart, because it was built on
17	an unsound foundation, a foundation of revenge and that never
18	works.
19	It goes on and it says, he should say it says,
20	express solidarity and without instigating actions, he should
21	say that they will return the blow at the opportune moment and
22	place.
23	The blow they are talking about returning is not any
24	murder. It is to return this stunt where they have Roque go
25	back and renounce Brothers to the Rescue. That is the blow

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1	they want to return.
2	Look at number 26. It is dated February 28. It says
3	operation Venecia has been a success. The commander in chief
4	met with all of us on two occasions in order to analyze steps
5	to be taken to continue the operation.
6	This isn't an operation to shoot down aircraft. This
7	has to do with their propaganda ploy to exploit all this stuff
8	that Roque brought back. He took films of himself going in and
9	out of the Cuban American National Foundation. He went on CNN
10	for interviews. They want to publicize how bad Brothers to the
11	Rescue is, how bad the Cuban American National Foundation is to
12	get back at them a little bit. It is this endless war. After
13	40 years these people who come from the same country, they
14	can't see eye to eye about anything, they hate each other.
15	It says increase in security measures and state of
16	alert of the units since February 24. Bases at Homestead and
17	McDill have been at maximum state of alert.
18	They want to know. They were worried that the United
19	States might attack or do something.
20	The final message in this series on Venecia is number
21	27, and it says on behalf of intelligence headquarters
22	receive it is obvious this is not being sent to Gerardo,
23	they are being sent to someone else because it says received
24	together with Giraldo, our profound recognition for Operation
25	German. German is Venecia. When he gets recognized, he

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1	doesn't get recognized for a shootdown, he gets recognized for
2	Venecia.
3	Read the document. That is what he gets recognized
4	for. They are trying once again to confuse and confound things
5	and because he got a promotion and congratulations for Venecia,
6	they are trying to say Venecia was the shootdown. Look, they
7	made him a Captain. He had to know something.
8	It doesn't work because when you read these messages,
9	Venecia is Operation German. German is Roque, the guy they got
10	back to Cuba for this stunt.
11	Then it says, the Commander-in-chief visited him twice
12	German being able to exchange the details of the operation. We
13	have dealt the Miami right a hard blow in which your role has
14	been decisive.
15	One message, A 4 is instructed to tell Giro to go and
16	film him going in and out of the Cuban American National
17	Foundation so they could show they had somebody inside.
18	Anyway, that is Venecia and it is distinct from
19	Escorpion, and if you look at these messages, I am telling you,
20	that doesn't amount to what is required in this country the
21	burden is to prove a case beyond all reasonable doubt. What

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that means is, the Judge will read you the instruction, but my spin on the instruction is this. You can have no hesitation in the most important of your own affairs. That means you have to know like right here in your gut and right here in your head

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1	that by God, bingo, that guy is guilty and I know it.
2	That is not the level of proof in this case at all.
3	It doesn't even come close to that. How could you not hesitate
4	in this kind of a case they have presented to you?
5	MR. McKENNA: Your Honor, I will move on to a
6	different area. I know in my next segment I will be able to
7	finish. Would you like to take a brief recess?
8	THE COURT: It sounds good.
9	We will take a break at this time. A short break. Do
10	not discuss this case amongst yourselves or anyone else. Have
11	no contact whatsoever with anyone associated with the trial.
12	Do not read, listen or see anything touching on this matter in
13	any way. If anyone should try to talk to you about this case,
14	you should immediately instruct them to stop and report it to
15	my staff.
16	Remember, until such time as you have heard all of the
17	closing arguments and I have instructed you on the law, you
18	simply are not to talk about this case.
19	Be back in the jury room in ten minutes. We will take
20	a ten minute recess and we will start promptly at 10:44.
21	(Jury leaves room.)
22	THE COURT: We will be in recess.
23	(Therefore a brief recess was taken, after which the
24	following proceedings were had.)
25	(Open court.

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1	(Jury not present.)
2	THE COURT: Good morning again. Counsel state their
3	appearances for the record.
4	(All parties present.)
5	THE COURT: Bring back the jury, please.
6	(Jury present.)
7	THE COURT: You may proceed, Mr. McKenna.
8	MR. McKENNA: One last thing to go over with you
	before I completely leave these messages. This is number 27.
10	
11	5 /
	German being able to exchange the details of the operation.
13	Roque wasn't involved in any way, shape or form in any
14	kind of Escorpion. He was Venecia. He couldn't be discussing
15	•
	said before.
17	We have gone through the HF messages and I have tried
	to show you how they have reverted to prosecution by word and
19	, 3
20	right now, you are the only ones that stand between
21	ı e
22	
23	
24	a family feel better or to make a community feel better. We
25	are above that, and we can never let our justice system be used

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1	in that fashion. It is just the beginning of the end for our
2	justice system if we let that happen.
3	Now, the other side of the coin with Brothers to the
4	Rescue is why it happened, where it happened and some of these
5	other issues. Why it happened, I think I really covered it. I
6	will not go back into it again. Essentially the Cuban
7	Government viewed Brothers to the Rescue as hostile, a threat
8	to their population, a threat to their air traffic control, a
9	threat to everything about the way their country operates, and
10	after they tried diplomacy and tried warnings and that failed,
11	finally, somebody in a command bunker was given authority to
12	exercise the final option and the final option was exercised.
13	Now as to how it happened, really the only competent
14	witness on that issue that was called was Colonel Buchner.
15	They did not call any expert of their own that was qualified to
16	talk about how MIGS operate, how combat operates, exactly how
17	it took place in terms of analyzing the MIG transcript. The
18	only witness that was called on that was Colonel Buchner and
19	let me talk a little bit about Colonel Buchner, they really
20	took some shots on Colonel Buchner. They said Colonel Buchner
21	was unsound and it was inappropriate of him not to investigate
22	the backgrounds of the four people that died.
23	I wanted to address that for a minute. The last thing
24	I ever would have told Colonel Buchner or any investigator
~ -	

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25 would be to dredge up the past of the four men that died. I

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1 never would have done that. I never would have sent Color

- 2 Buchner to the homes of the family members. I never would have
- 3 sent Colonel Buchner to dredge up any information on those
- 4 people. That is not my style to do that. I didn't tell
- 5 Colonel Buchner to do it and nobody here is dancing on
- 6 anybody's grave and I wouldn't be about to do that in this
- 7 case. My position about the other men that died, they were
- 8 followers and they followed Basulto who led them recklessly.
- 9 I don't have any reason to tell Colonel Buchner to
- 10 dredge up their past or muddy them up. They truly didn't
- 11 deserve to die and I believe that, but for the recklessness of
- 12 Mr. Basulto and what he led them into.
- Let's clear that up right now. That is a gigantic red
- 14 herring. They set Mr. Buchner up and slapped him down.
- 15 Mr. Kastrenakes, you are a Christmas tree farmer. Let's show
- 16 him respect. He flew 400 combat missions in Vietnam, putting
- 17 his life on the line for our country and you want to slap him
- 18 down like that? I don't think that is right, ladies and
- 19 gentlemen.
- This man has knowledge, he has specialized knowledge
- 21 and that is why you call an expert. These are complicated
- 22 complex issues. I am a lawyer and a layperson. I didn't know
- 23 anything about these complex issues before this trial and
- 24 lawyers need to have experts. The government needed to have an
- 25 expert, I needed to have one to understand these things and

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1	that is why I called Colonel Buchner.
2	In a nutshell, his version of what happened is that a
3	MIG did a warning pass on Mr. Basulto's aircraft. That is
4	uncontroverted, Basulto got a warning pass. That is
5	uncontroverted. After he got that warning pass and was going
6	hee hee ignoring that warning pass, these aircraft that fly
7	at 540 miles an hour, ten miles a minute was vectored around,
8	came on Costa's plane and shot that plane down, came back
9	around a few minutes later near the same area and I will
10	establish that in a little bit by going through the MIG
11	transcript and shot down the other aircraft, Mr. De La Pena's
12	aircraft.
13	One of the best pieces of evidence to understand what
14	happened up there in the sky on February 24, 1996 is this
15	transcript right here, which is the transcript of the cockpit
16	of Mr. Basulto's aircraft that I moved into evidence; and I
17	want to respond to one of the charges that the government made
18	against me the other day. They said I would blow right past
19	the evidence, that I blow past the evidence.
20	Well, I thought it was my case that introduced the
21	cockpit recording from inside the aircraft. I thought that was
22	a useful piece of evidence that they didn't use in their case.
23	I wouldn't call that blowing past the evidence.
24	It was also my case and my witnesses that brought in
25	the videotape of what took place up there on February 24,

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1	1996. I don't think I would call that blowing past the
2	evidence.
3	I also called Mr. Basulto, and I called him because
4	the government called Mr. Iglesias, who wasn't even the pilot.
5	He was the guy who came in and had written something on his
6	hand, the day of the shootdown, then he wrote something on his
7	hand here during his testimony. He kind of reminds me of that
8	phrase by Mark Twain, the thing about the truth is, you don't
9	have to remember it.
10	You don't have to remember the truth. The truth is
11	the truth. You don't have to write something down on your
12	hand. That is as phony as a \$2 bill.
13	This accusation that I blew past the evidence; watch
14	which way the wind blows, ladies and gentlemen, because I don't
15	think I blew by any evidence. I think I met the evidence in
16	this case and I think I went in search of the evidence in this
17	case.
18	My God, a video from the cockpit of one of the
19	aircraft showing the smoke of the other aircraft, why wouldn't
20	the government have something like that analyzed? Why wouldn't
21	they introduce the cockpit recording? Why wouldn't they call
22	Basulto? Why wouldn't they do all these things I did. I blew
23	past the evidence? Gee, I don't think that is a fair
24	accusation against me.

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I want to now go through some brief portions of this

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- 1 cockpit recording because it also shed a lot of light on what 2 happened up there.
- First, I want to start at page 3. This is the warning
- 4 from Havana Center to Mr. Basulto. It says okay, okay. This
- 5 is after he goes through this big long speech, which you are
- 6 not supposed to do. He is just playing around up there. They
- 7 say okay, okay, we copy you. We inform you that the area North
- 8 of Havana is activated. You are putting yourself in danger by
- 9 flying below 24 North.
- The government has insinuated Havana air traffic
- 11 control was in on this murder plot. Why would you warn
- 12 somebody you were waiting to ambush, why would you warn
- 13 somebody don't come down here, it is dangerous. If you wanted
- 14 to murder somebody, you would say Roger, come down. You
- 15 wouldn't warn them to stay out. It doesn't make sense.
- 16 If you go over to page 6, up at the mid part of the
- 17 page, De La Pena says, since you are going to be there a while,
- 18 I would like to advertise also.
- 19 Ladies and gentlemen, use your common sense when you
- 20 go back in the jury room, what is this advertising they are
- 21 talking about? Take a look at the last two missions that they
- 22 took, January 9 and January 13. They dropped 500,000 leaflets
- 23 and this talk about advertising, what do you think they are
- 24 talking about and do you believe Mr. Basulto when he gets up
- 25 there on the stand and say I don't know what advertise means.

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1	Do you believe that? He is hiding something. He is hiding
2	what he was really doing, because what he was really doing was
3	foolish, reckless, crazy and got four people killed.
4	Let's skip over to page 9. This is this whole Section
5	about Mr. Basulto seeing the MIG at page 9. I blew past the
6	evidence? They called Iglesias and said we didn't get any
7	warning pass, we didn't see any MIGs up there. Yet I blew past
8	the evidence with this transcript while he is up there, you
9	heard it yourselves on the tape and he is up there saying, MIGs
10	in sight and a little further down first he says MIGs in
11	sight go over to the first page, page 8. It starts over
12	here on page 8.
13	He says they launched the MIGs at us, give it to me.
14	That is when he asked for the camera.
15	Now over to page 9. On page 9 he says give it here,
16	you fly it Arnaldo. Maybe Basulto is going to sell the
17	photographs. Then he says, they are going to shoot. They are
18	going to shoot us. You will see, great.
19	To this guy it is a game. Great, ah.
20	Again he says MIGs in sight and there is a big time
21	lapse between all these statements.
22	If you go down to the bottom of page 9 it is very
23	important. It says that was, that was a flare.
24	Ladies and gentlemen, what Mr. Basulto saw when he
25	said that was, that was a flare; that wasn't a flare, that was

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1 Carlos Costa's plane being exploded by a missile from	1	Carlos Costa's	plane being	exploded by a	missile from	a MIG.
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- 2 There was nobody dropping flares out there. It looks like a
- 3 flare when you see an explosion many miles away up in an
- 4 aircraft. Maybe that is what he thought, but there were no
- 5 flares. Did you hear anything on the MIG transcript, drop a
- 6 flare? What Basulto saw was the first aircraft exploding in
- 7 the sky after it was hit by a missile.
- 8 Then we go over to page 10 and it is a very important
- 9 page. I want to go through it with you a little bit.
- Up at the top he says we have a MIG around. He
- 11 already saw the explosion. He is not going anywhere. He is
- 12 not warning anybody. We have a MIG around.
- 13 A little further down he says, we have a MIG around.
- 14 This is where he says hee hee hee. He is loving this part.
- Do you really think he was nervous? He wasn't
- 16 nervous, he was in his element.
- 17 A little further down it says Seagull Charlie, Seagull
- 18 one. Then it says, MP. That is De La Pena and De La Pena
- 19 says, Seagull One, there is a MIG in the air, bogey in the
- 20 air. Where are you.
- 21 That is very important. The government is trying to
- 22 say this speaker is Carlos Costa, not Mr. De La Pena and the
- 23 reason they are doing that is they don't want -- they don't
- 24 want you to believe that De La Pena knew there was an aircraft
- 25 up there and he wasn't retreating, because that is a sign he

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1	was up there messing around too. They don't want you to think
2	that, that he had the awareness to say there was a MIG in the
3	air, bogey in the air, where are you.
4	How do we know that was De La Pena? Look at
5	Mr. Basulto's testimony. Can we go to that for a minute?
6	Mr. Basulto when I asked him, this is at page 9117, I
7	asked him; I played it for him and I asked him this question at
8	9118.
9	Do you remember that voice, someone saying to you
10	Seagull one, there is a MIG in the air, bogey in the air?
11	"Answer: Yes.
12	"Question: Whose voice is that?
13	"Answer: I think it is Mario De La Pena."
14	That is what he said when I asked him. I didn't tell
15	him who it was, I asked him and he said De La Pena and it makes
16	perfect sense and it makes sense because the flare that he saw
17	was the first plane exploding and that was Costa's aircraft.
18	It wasn't De La Pena's aircraft.
19	That is the point I wanted to make about that.
20	I want to talk about radar now and I will not spend
21	forever on this subject. It reminds me of your faces right now
22	looks like my face when I was in the third grade and the none
23	said open up your math book. Radar is not a fun topic. I will
24	not spend a lot of time on it. I will not be putting things up

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25 on the screen.

1	Let me come back here for a minute and I will do this			
2	one myself.			
3	I put this into several categories, the first category			
4	was preservation of radar data, and over on the left-hand side			
5	I put the Cuban side of it and I put the U.S. side of it.			
6	With respect to the Cuban side of it, there was a			
7	realtime hand plot of the plane tracks by a plexiglass man			
8	verified by the battalion Commander Cecilio de La Cruz using			
9	the radar screen and clock.			
10	What about U.S. radar? Interestingly enough, they had			
11	the ability to do a radar screen dump back in 1996 to preserve			
12	exactly what was on the screen and they didn't do it. I asked			
13	this question of Mr. Clelland. Mr. McKenna: Did you print out			
14	the data on the screen from February 24, 1996 on RS 2 program?			
15	"Answer: We didn't do a screen dump, if you will, as			
16	a printout, no."			
17	The government made a big fuss about that with the			
18	Cuban air traffic control and they said gee, why didn't you do			
19	a screen dump. Guess what, they didn't do one, either. It			
20	happens to be the way it happened; but what is good for the			
21	goose is good for the gander. Don't be swayed by some of these			
22				
23	The next part of this is the immediate post event			
24				
25	Cruz. That is what he did immediately after the incident, he			
	RICHARD A. KAUFMAN, RMR, NP U.S. COURTHOUSE, MIAMI,			

1	preserved the data. He signed it. I introduced copies of it
2	for you in evidence. I introduced photocopies of that in
3	evidence. Let's look at what the U.S. did.
4	First the data went to Tyndall Air Force Base in
5	digital form and put on hard drive. The data was transferred
6	to a magnetic tape but Clelland doesn't know how. The data
7	stayed that way for three and a half years at Tyndall Base.
8	I asked him, how did the information on the magnetic
9	tape at Tyndall get to Hill. He answered, I don't remember.
10	He doesn't even know how the data got from one place to
11	another. He doesn't know who did it, in what form, whether
12	anything got altered in that transfer; whether the integrity of
13	the data changed. He doesn't know; yet here they are bashing
14	my Cuban radar. Is theirs so sound proof? They come in and
15	say because it is U.S. radar, that is it, folks. That Cuban
16	radar, let's laugh that out of court.
17	When we picked you as jurors, one of the things we
18	did, one of the questions and this is probably the most
19	important question we put to you when we were selecting you,
20	will you listen with an open mind to witnesses from Cuba, even
21	witnesses that might be connected to the government; and every
22	one of you said yes, you would.
23	Now the government at this stage of the case wants you
24	to forget about that promise. They want you to break that
25	promise and say hey, anybody from Cuba, you can't trust that.

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1	They are trash down there.
2	Don't break your promise to me ladies and gentlemen,
3	keep your promise. Just judge these witnesses as you would any
4	others. Don't throw them out and reject them just because they
5	are from Cuba.
6	The second part of this issue has to do with
7	accuracy. Let's talk about accuracy for a little bit.
8	Cuban radar, Matanzas radar is 381 feet above sea
9	level. It is not bouncing up in the atmosphere. The four
10	radars at Matanzas specialize in detecting small, slow flying
11	aircraft. It is considered the best radar battalion on the
12	North coast.
13	Look at U.S. radar, aerostat balloon that was floating
14	in the atmosphere at 10,000 feet. Only one radar reached that
15	far down.
16	Look at their data. Only one radar got that far
17	down. Not four like they had at Matanzas.
18	The aerostat balloon was not specifically targeting
19	these planes. The blimp was up there. The battalion Commander
20	at Matanzas had a specific job to track these planes.
21	Secondly, aerostat balloon is subject to wind gusts
22	and weather conditions that affect its accuracy and is less
23	reliable due to its distance from the Cuban coast and not fixed
24	to the earth.
25	Let's talk about alignment for a minute. Matanzas, it

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1	says the battalion commander testified he thoroughly checked
2	and aligned the radar hours before the shootdown, taking fixes
3	on known objects and verifying align meant.
4	Look at the U.S. side of it. McKenna. The alignment
5	of all three radar; do you remember that? Expert Clelland?
6	Yes. Did you personally conduct the alignment survey? Answer,
7	no. Who did it? Answer. Some of our people, RADES have done
8	that. Do you know who you assigned to that task? Answer.
9	They said they made sure it was in alignment but nobody
10	verified that. My witness said he did, he did it itself. It
11	also raises some questions about the RADES data.
12	Let's talk about inconsistency with other radars. It
13	is one of the biggest red herrings in the case.
14	When you start with the Cuban side of it, all four
15	radars were at the same location, they were all at Matanzas.
16	Each radar was consistent with each other per the battalion
17	commander.
18	Clelland said, on the other hand, obviously our radars
19	are in different locations and their replies are going to be
20	different, and they were.
21	Second, per ICAO, the radar coordinates ICAO had
22	differed from the Matanzas radar coordinates

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24 on this. These are the questions they asked of Mr. Buchner to

25 impeach, I guess, but the point is, they had their radar,

Mr. Kastrenakes questioned George Buchner extensively

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1 RADES, and we have ours, Matanzas. When they tried
--

- 2 issue of some other data ICAO had that was different from
- 3 Matanzas, look at the other side of this issue. Per ICAO, the
- 4 United States had five different radar processing agencies that
- 5 all showed differing radar data for positions and times. That
- 6 is what George Buchner testified to. He went to ICAO and
- 7 talked to these people at ICAO, and they told him that FAA had
- 8 radar data, customs had radar data, the U.S. Navy at Key West
- 9 had some data but erased it. That was at the Key West Naval
- 10 Air Station. They erased their data.
- 11 Then the government tried to make a big deal out of
- 12 the fact some of the data recorders on the MIGs, some of the
- 13 information was erased.
- Some things the United States had got erased.
- 15 These things are going to boomerang on you if you try
- 16 to find every little glitch. Things are not perfect. Radar is
- 17 not perfect.
- All of these radar data were so different that when
- 19 Buchner went to ICAO, what they told him was, the Americans
- 20 came to us with all this differing data and we said get out of
- 21 here, go come back with one set of coordinates and one radar
- 22 data. That is what they did; and this business about look at
- 23 what they gave to ICAO, the Cubans must be lying. Then the
- 24 Americans must be lying. There are just differences. The
- 25 Cuban radar always had these planes in the Cuban territory.

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1	That was consistent; but it is a red herring. They want to say
2	the Cuban radar is inconsistent; so is U.S. radar times five.
3	Defense radar witnesses. On the government side of
4	the issue, they didn't call one realtime live witness that saw
5	these things and there were people that could have been called,
6	but you didn't hear from one live witness. You did hear from a
7	live witness on my side, the radar battalion Commander, Cecelio
8	de La Cruz.
9	The government argued to you the other day you should
10	reject him because he wouldn't reveal some military secrets in
11	Cuba about another radar station.
12	Ladies and gentlemen, here they go again. They used
13	evidence in this case, do you remember the MIG transcript?
14	That comes from a Department of Defense secret listening post
15	that they wouldn't reveal, they wouldn't tell us about
16	MS. MILLER: Objection.
17	THE COURT: Overruled.
18	MR. McKENNA: What is good for the goose is good for
19	the gander. Cuba has some military secrets they want to
20	preserve and so do we. Don't go for these red herrings because
21	they do the exact same thing in the United States that is done
22	in Cuba.
23	It goes back to this situation where they don't want
24	you to believe Cubans because they are Cubans and you are not

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25 going to do that because you told us you would be open enough

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1	to listen to witnesses, judge their credibility based on what
2	you heard like any other witnesses. They don't want that,
3	because if you do that, their case gets in big, big trouble.
4	That is the radar data.
5	Now I want to talk about Capt. Johansen, the
6	unshakeable witness.
7	When you put a witness up on a pedestal like that, you
8	know he is going to be knocked down, and I think they know it
9	and you will see right now.
10	George Buchner testified at length about Capt.
11	Johansen and he told you that he found Capt. Johansen's
12	testimony to be unreliable, and he also said he found Johansen
13	to be hiding something, and I want to explore that with you
14	right now because he was. This is something new you don't know
15	about yet in this case and I will show it to you for the first
16	time. Nobody has ever discussed this before and I will show
17	you that he lied about something very, very important.
18	Buchner went through a number of factors why he was
19	hiding something and why he was not reliable. The first of the
20	factors was that this witness who is on the bridge and
21	witnessed not one, but two aircraft shot out of the sky didn't
22	even call the coast guard. Take a look at the photograph of

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the bridge of the Majesty of the Seas, there is a phone right
there. They never called the coast guard. Why? How bizarre.
You witness two aircraft shot out of the sky and you don't call

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1	the coast guard, you don't call anybody? Wait, it gets
2	better.
3	Not only do they not call anybody, but they don't even
4	slow down, they don't change their course, they don't even stop
5	to look for survivors, to look for debris, to look for
6	anything. My God, how callous. Why in the name of God would
7	they do something leak that, and I will answer it in a minute.
8	Can you imagine a passenger ship witnessing this and
9	not calling the coast guard, not stopping?
10	Another factor that Buchner considered was that
11	according to the ICAO report, the Triliner fishing vessel was
12	18 miles away from the Majesty of the Seas. Their coast guard
13	pilot who went out the next day around the same time, similar
14	weather conditions, said from his plane you could only see 15
15	miles. That is a lot higher than the bridge of the Majesty of
16	the Seas. How was it if the Triliner was 18 miles away
17	Johansen could see it? It doesn't make sense. It is another
18	factor that Buchner relied upon.
19	Another thing, what about the fact that in the video
20	of Gerardo Hernandez 10B, the video shot from the cockpit of
21	Basulto's plane? Johansen said the planes fell right on top of
22	the Triliner. Where is the Triliner? Why is it not in the
23	video? If you look at the video, there is a column of smoke
24	that comes from the ocean floor up and it is heavy and thick

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25 and burning at the bottom. There are two distinct columns of

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- smoke, you will see it when you see the video and guess what,
 no Triliner on the ocean floor. Why don't you give that to
 your expert and have that examined? They didn't do that at
 all.
- Another factor, the day following the incident was another factor, according to the ICAO report, the FBI went to
- 7 the Majesty of the Seas in Miami and interviewed every one of
- 8 the deck officers that was on board and saw the shootdown and
- 9 in the interview the masters of the vessel were present, the
- 10 Captain. The Captain of the vessel was present, along with the
- 11 owners and the Captain and the masters, according to the report
- 12 in ICAO, would not vouch for anything that their first officer
- 13 reported, nor would they guarantee the position of the vessel.
- 14 Why? That is bizarre, another factor Buchner relied upon.
- 15 Also, Buchner relied upon the fact that Johansen said
- 16 he was never interviewed by the coast guard or the FBI. Why
- 17 wouldn't you interview him, he was the one that witnessed it?
- 18 Why would they deny that.
- This log, why would you have two test runs before you
- 20 fill out the log? Why would you have to do that? It is like
- 21 Mark Twain says, when it is the truth, you don't have to
- 22 remember. When he went up on the witness stand he had this
- 23 pile of documents and before I got up to cross examine him,
- 24 Agent Alonso went over and took them all away and I asked him
- 25 that. If it is the truth, you should remember that.

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1	The most bizarre thing about Johansen is that out of
2	3,500 people aboard the Majesty of the Seas, he is the only
3	witness that you heard from. It was 3 o'clock in the
4	afternoon, a beautiful day, there were probably thousands of
5	people outside by the pool. It was after lunch. Out of 3,500
6	witnesses, he is the only witness you heard from.
7	They didn't call a living soul to corroborate, to
8	confirm what Johansen said. They didn't call the Captain, they
9	didn't call the deck officers, they didn't call any of the
10	passengers; they didn't call anybody. Instead, in their
11	rebuttal case, they sent a copy of my video to Washington, D.C.
12	First the guy came down here and testified about Chevies or
13	something and left. Another guy came down and first of all
14	they didn't even tell him there were MIGs up there that day.
15	They didn't tell him the person that had flown was in the other
16	seat and they didn't look at the whole video. They spent their
17	time trying to prove it was a mirror and not a MIG.
18	Yet on something that was as important as an eye
19	witness to a premeditated first degree murder, they didn't call
20	one witness to corroborate Johansen? Why? Because there is
21	nobody to corroborate Johansen and I will explain to you why in
22	just a minute.
23	It all comes back to this. What is he hiding? What
24	is Johansen hiding? This is what he is hiding. When he
25	testified, Mr. Kastrenakes put him up on the stand. He said we

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1	always drive the ship in the axis of the Gulf Stream. We
2	always keep 25 miles away from the coast of Cuba, and that is
3	because we like to have a twelve mile cushion because our
4	vessel and the territorial waters of Cuba, and we do that
5	because we don't want to get close at all to their territorial
6	waters and we always go with the axis of the Gulf Stream.
7	You know what, that was a lie. How do we know it is a
8	lie? Look at the log book of the Majesty of the Seas, which I
9	subpoenaed, but I didn't get it until after George Buchner had
10	testified and it answers the rid he will and this is how it
11	answers it.
12	If you go to the week before on February 17, 1996, the
13	Saturday, every Saturday the ship goes from Cozumel to Miami
14	and they go by the North coast of Cuba.
15	Guess who was on the bridge at 1500, 3 o'clock on that
16	day? Johansen.
17	Look at the log, ladies and gentlemen.
18	Do you see at the top where it says Cozumel to Miami
19	and it says February 17, 1996? That is the week before.
20	Now go down to the to the section that says 1500; do
21	you see it?
22	If you look at that, the handwriting on the side of
23	that box where it says 1500 is Capt Johansen's

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Look at the coordinates for 1500. 2319 North at

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25 1500.

1	Let's look at what they were on the day of the
2	incident which is right here, February 24. On the day of the
3	incident it was 23, not 29 North. He was ten miles closer the
4	Saturday before, ladies and gentlemen. Every degree is a
5	nautical mile. He was ten miles closer the week before, and I
6	put it on the map. Take a look at this, ladies and gentlemen.
7	This is a very important point, because the reason there is
8	nobody to support him and the reason he lied is, he was a lot
9	closer to Cuba than he let on, and this is very important about
10	Johansen. Everything is handwritten. They didn't give you any
11	computer generated GPS positions for Johansen. They exist. He
12	talked about it. They had a computer but you didn't get it.
13	You got nothing except his handwritten observations.
14	Take a look at this map right here.
15	If you look right here, this X right here, this is
16	23.19. This is the axis of the Gulf Stream, this line that
17	goes across here. It is ten miles further South the Saturday
18	before and look this would have been 1500, the same time as
19	the shootdown, this would have been 1530 and this would have
20	been 1600.
21	Now, this X up here is where he said he was on
22	February 24 at 1500. If you move him down ten miles from that
23	X on that date, look at where he is? He is right above the
24	shootdown. Why would he come in here and tell you I never go
25	close to the coast of Cuba. Why didn't he come in here and say

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1	we are always traveling along the axis of the Gulf Stream? Why
2	did he do that? He lied. He wanted you to think they never
3	get close to Cuba, but they do. That is a thrill for the
4	passengers to see a forbidden city, the forbidden coast.
5	The last thing that Johansen and the Majesty of the
6	Seas wants to be in a place they are not supposed to be at the
7	time of some kind of international incident.
8	If you look at everything about Johansen, the fact
9	they don't call the coast guard, why wouldn't you call the
10	coast guard unless you were at a place you weren't supposed to
11	be. Why didn't you call to get help, unless you were in a
12	place you weren't supposed to be. He said they are never in
13	that place you weren't supposed to be but look at the log. The
14	week before, boom, ten miles further South.
15	I suggest to you, he wasn't truthful, and it is too
16	suspicious that there is nobody to back him up. Where is the
17	Captain of that ship? Where is he? Where are the other
18	officers, where are the passengers?
19	I submit the problem is, the people could see the
20	coast of Cuba and that was the death knell why they couldn't
21	call one witness in support.
22	e e ;
23	
24	•
25	the witness testified falsely concerning some important fact.

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- 1 This is an important fact, ladies and gentlemen. When somebody 2 comes in here and looks me square in the eye and says we are
- 3 never that far South.
- 4 One other thing about his testimony that is
- 5 important. He said about the oil slick -- do you remember he
- 6 said he saw an oil slick. I asked him why didn't you stop and
- 7 photograph that oil slick and he said we don't do that. I
- 8 don't have the equipment to do that. It is just not something
- 9 we would do, stop and take a photograph of the oil slick.
- Guess what, ladies and gentlemen, this is from the log 11 too. Take a look.
- 12 Can you point to the part about the oil slick.
- 13 Earlier in the log. They stopped on another trip to take a
- 14 photograph of an oil slick. They did do that. There was no
- 15 shootdown on that day. They saw an oil slick and they stopped
- 16 and photographed it.
- 17 If they stopped and photographed an oil slick for a
- 18 non-event, why wouldn't they stop and photograph the oil slick
- 19 of a shootdown of two aircraft?
- They will be damned if they were going to stay in
- 21 Cuban territory after a shootdown. They will not go into Cuban
- 22 territory to look for survivors, they will get the heck out of
- 23 town because they were too close. That is what happened. That
- 24 is the only way you could explain a professional ship
- 25 navigation crew not rendering any aid, not going to the scene,

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1	not calling the coast guard, not taking a photograph.	That is
2	the only explanation.	
		_

What do they offer you as any kind of support for any of the things Johansen testified to? They called this coast guard officer, the pilot in rebuttal. He testified and you saw in the video that saw an oil slick up near the axis of the Gulf Stream. He admitted he had seen hundreds of other oil slicks and that is a shipping lane and it wouldn't be unusual for this to be an oil slick in the shipping lane.

They are claiming that oil slick came from a little Cessna with a little engine.

You have seen pictures of that plane enough times, you have seen it in videos and photographs; how many quarts of oil

14 do you think fit into that plane, enough to poor over a

15 football field; because that is what that witness said. Do you

16 really think there is a football field quantity of oil in a

17 little Cessna that is about as big as a car? It is ridiculous,

18 ladies and gentlemen. He doesn't know what oil slick that was

19 and this guy, when he first goes out five years ago, he writes

20 a report, unable to identify debris, unable to positively

21 identify debris, he doesn't know positively what he saw.

He comes in here, I think it may have been

23 mechanical.

Come on, ladies and gentlemen. This is the same guy

25 whose eyes play tricks on him. Right in front of you he is

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1	watching the video and goes there is the Kemoch, the vessel he
2	used to search the vessel. I asked them about that, they
3	didn't see anything. They searched with another bunch of coast
4	guard boats and didn't find anything. They didn't see a
5	thing.
6	The point about an oil slick up in the Gulf Stream
7	with the axis of the Gulf Stream that the guy cannot link to
8	anything, doesn't support a thing. There are all kinds of oil
9	slicks up there. It is the axis of the Gulf Stream. It is
10	like a highway for vessels.
11	What is more reliable, that observation or this? Do
12	you remember this debris? What is more reliable.
13	This was found by a Cuban border patrol officer,
14	Mr. Herrera. He was out looking for wreckage or debris,
15	survivors the day after the incident and nine miles off Moro
16	Castle where he found this. He was a simple man, a border
17	patrolman, not a politician, not connected to the government.
18	Just a simple border patrol officer and this is what he found.
19	Do you remember what is interesting about this
20	exhibit, GH 81; that after I introduced it and the government
21	had a chance to look at it down in Cuba, inspect it, photograph
22	it; did you hear any rebuttal about that bag? Did you hear
23	anybody come in here and say they didn't ask us about a bag

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24 like that, Carlos Costa didn't have a bag like that. You don't
25 think Agent Alonso took the photographs to the Brothers to the

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1	Rescue to Jose Basulto, to the Costas, to everybody that might
2	have some knowledge about this so they could bring in a witness
3	and say they didn't have a bag like that?
4	Take a look at the budget on tax returns. These
5	people spent up to \$14,000 a year on video equipment. Ladies
6	and gentlemen, this came from Mr. Costa's aircraft. They
7	didn't cook this up five years later. They found this at the
8	time, they reported it to ICAO and it makes sense. There are
9	two aeronautical maps inside of it that show Miami and the
10	approaches to Cuba. My God, what is more reliable, some oil
11	slick that could be from any vessel up in the Gulf Stream or
12	this which was found nine miles off the coast of Cuba? What is
13	more reliable.
14	The government, it is a Cuban witness, it cancels out,
15	you don't consider it.
16	You are not the government. You made the promise to
17	listen to each witness and it is not just that it was found
18	nine miles off the coast of Cuba. Don't forget there are two
19	other witnesses I called on this issue. The first witness was
20	Herrera who found it. He said it was submerged in the Gulf
21	Stream not the Gulf Stream, in the waters.
22	The second witness I called was the oceanographer who
23	testified based on the current in this area, 18 and a half
24	hours earlier it would have started out at this position. Then

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25 I called the radar technician from the battalion, the place

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1	where Costa's plane went down and it all matches up.
2	In the beginning of this case, they talked about a
3	triple play. We didn't have any triple play for you in this
4	case. This is a triple play. The man who found that debris,
5	the man who knows the marine current that can show where it
6	came from and the man that showed you on the radar where
7	Costa's plane went down that shows that this bag started out
8	over here.
9	You could even look at the U.S. map. I used a U.S.
10	NOAA oceanographic map to show the current on it. Clearly the
11	currents are moving away from Cuba and moving in this
12	direction.
13	You have to look at all the evidence, you have to
14	consider all the evidence, you have to consider what all the
15	witnesses have said about this.
16	Mr. Kastrenakes went after the oceanographer and over
17	the littlest details, for example, his affidavit which was
18	translated and created down in Cuba, not exactly sure from the
19	evidence what the circumstances were, but he goes after him
20	because there is a little section of the affidavit that says
21	something about the shootdown and he says so you knew about the
22	shootdown and you plotted the shootdown and you this the
23	shootdown, you that the shootdown.
24	That is crazy. The guy is an oceanographer. It is a
25	complete red herring that Mr. Kastrenakes was after. Back in

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1	England they used to lay it in front of the hounds to get them
2	off the scent. That is what Mr. Kastrenakes wants to do to
3	you, to get you off the scent, of this triple play. It creates
4	doubts, it creates problems, they don't like it.
5	Don't go for those red herrings.
6	One red herring was, when that witness was testifying,
7	they said, well, what about the current three miles off of
8	Cuba? If the current were three miles off it would go towards
9	the shore. They we didn't contend it was shot down three miles
10	off but five or six miles off; so it is another red herring.
11	In the end, in the final analysis, even though we
12	spent three quarters of the trial on where the shootdown took
13	place, it seems crazy to say this at this point, but it is
14	largely irrelevant because the crime the government charged was
15	a conspiracy, which is an agreement to shoot four people down,
16	to murder four people in the special maritime and territory of
17	the United States. It is not where the planes went down. It
18	is what the agreement was, and when you go back to all those
19	records and all that evidence, the only concern, the only
20	concern with Cuba was its country, its territory, nothing to do
21	with U.S. territory. That is where their case fails. If you
22	realize that when you start out in your deliberations, you
23	don't have to get to all this stuff or reach this stuff. It is
24	the government having us chase our tails, but the issue is,

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25 what was the agreement; because that is what a conspiracy is.

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1	We are in the home stretch. I will be done by noon.
2	Then Mr. Kastrenakes will get up.
3	At this time I want to pull back and say thank you,
4	you have been unbelievable. You have come, you have listened,
5	you have listened to four days of lawyers, you have been great
6	and I thank you and I thank the Court and the Court's staff and
7	defense counsel and the defendants and I even thank the
8	government, because even though we fight and we struggle, I
9	respect every lawyer at that table and I respect every agent
10	that works for the government. Our system is built on a search
11	for the truth, a truth that allows for vigorous advocacy and
12	
13	You will go on with your lives when this case is over
14	and I want to thank you for all the time you have spent. I
15	have light bulbs in my house I haven't changed since November
16	I will try to get Mr. Horowitz over to help me when this case
17	is over; but we all need to move on and well, and soon one of
18	the greatest parts of the trial is when the lawyers stop
19	
20	thrilling part of any case and the most important part of any
21	case.
22	A few final words I want to talk about. The first is
23	Count 2.
24	I am not going to stand up here and go through all the
25	arguments made by the other lawyers, because they did a

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1 thorough job, a good job and those same arguments apply to 2 Mr. Hernandez. The fact I will not go into a detailed argument 3 about Count 2 with you doesn't mean it is not important to me, 4 it is very more to me but I will not cover ground already 5 covered. I just want to make a couple of points. If you want to understand Count 2, I think the best 7 way to understand it from my client's perspective is this 8 question that I asked Joseph Santos, this is the question I 9 asked Joseph Santos when he was being cross examined by me. "Question: You never had any discussion about 10 11 getting secret information or anything like that with Giro; did 12 you? 13 "Answer: No. "Question: He never told you to get national 14 15 security defense information; did he? 16 "Answer: No." Ladies and gentlemen, you could call 17 a million experts, you could play with documents all day long, 18 but the bottom line is, this guy, Joseph Santos, was on the 19 inside. Nobody else was on the inside. Ms. Heck Miller, 20 Mr. Kastrenakes, Mr. Buchner, Mr. Alonso, their documents, 21 their witnesses, their agents, their experts; this guy Santos 22 was on the inside. He was a professor from the University. He 23 was working with my client Mr. Hernandez. If there had been a 24 conspiracy to go over closely held national defense secrets, 25 wouldn't they have talked about it?

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1	Remember, their theory about Count 2 is, some day, way
2	in the future in a far away land, Mario and Lorient would
3	magically decide some day to go after closely held national
4	security information with the intent to hurt the United States
5	and to put Cuba back on top. That is their fantasy; ladies and
6	gentlemen, but the reality is, there was a witness on the
7	inside that if he was some day in the future going to do this;
8	he would have told you. This guy was a professor. He was with
9	my client. If there was a conspiracy they were going to do
10	this some time in the future, that guy would have discussed it
11	with my client and he never did. Look at the record. It never
12	happened.
13	You will go based on experts? That is the could have,
14	would have, should have form of prosecution. Maybe he could
15	have done this or that; he didn't use the word "secret," maybe
16	in the future they would do something secret.
17	The law of conspiracy doesn't have to show you
18	succeeded. It doesn't also give prosecutors a license to come
19	in and argue anything is possible. That is clearly not what
20	the law says. They have to prove fundamentally deep down in
21	this conspiracy there was an agreement, these people got
22	together and said we are going to get closely held national
23	security type information and we are going to use that
24	information to injure the United States or to put Cuba back on
25	top. They didn't prove that in this case and that is the

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1	bottom line.
2	Because it sounds secret in these papers or because it
3	says penetrate, it is back to the same thing. It is the same
4	concept as Count 3, it is prosecution by a word.
5	For Count 2, the word is "penetrate." For Count 3,
6	the word is "confront." And they would have you convict
7	people of these serious felonies based on a word.
8	They called this witness Santos. He originally had
9	been charged with the conspiracy to injure the United States by
10	getting closely held information. He pled guilty and averted
11	that charge but he testified to you my client who faces that
12	charge faces a possible life sentence. That is what he saved
13	himself from.
14	I will not beat that horse because it is over. There
15	was no conspiracy to do these things because they based their
16	case on an a fallacy and the fallacy was the misunderstanding
17	of what Cuba is, a nothing country that poses no threat to us,
18	but they would invent threats. They would invest in the
19	Chinese, the Russians; but don't go for the made up stuff, the
20	inventions, the would have, could have, should have. Go for
21	what the evidence shows and when you go to somebody on the
22	inside who says he never had any discussions ever at any time
23	about getting closely held national security information, it is

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25 down unless you want to follow what they do which is the never

24 the end of it. That is the end of it. Stop. Put your pencils

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- 1 never land stuff. A conspiracy doesn't give them the right to 2 do that.
- A couple of other -- I will sit down at noon. I know you don't believe that, but I will do it is. My watch says I
- 5 have ten minutes.
- About some of the other counts. The Judge is going to
- 7 instruct you on the false passport count. The Judge is going
- 8 to tell you for you to believe able to convict my client of
- 9 possession of a false passport, he had to have intended to use
- 10 it for entry into the United States. That is the law. You
- 11 have to intend to use it for entry into the United States.
- 12 Guess what, folks, the government in their own case introduced
- 13 evidence that that was his escape passport --
- MS. MILLER: Objection, misstates the instruction.
- MR. McKENNA: Let's read it.
- 16 THE COURT: Sustained.
- MR. McKENNA: I will put the instruction up. . Title
- 18 United States Section 1546 makes it a federal crime or
- 19 offense for anyone to knowingly possess, accept, obtain or
- 20 receive a false counterfeit at the time or fraudulently
- 21 obtained document prescribed by statute or regulation for entry
- 22 into the United States: The very first element says that the
- 23 defendant knowingly possessed, accepted, obtained or received a
- 24 document prescribed by statute or regulation for entry into the
- 25 United States.

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1	I don't make it up. I am telling you what the law is
2	that the Judge will read to you, and they in their case
3	MS. MILLER: Objection, Your Honor. Misstates the
4	law.
5	MR. McKENNA: I read the law from the instruction.
6	MS. MILLER: I would ask the jury simply be told
7	MR. McKENNA: I read from the instruction verbatim.
8	THE COURT: Give me a moment to rule, please.
9	Overruled.
10	MR. McKENNA: The law is the law. It will be in the
11	instruction. They have to prove that he was going to use it
12	for entry and in their own theory of the case, it was an escape
13	document. It wasn't even signed. It was to get out of the
14	country, not to get into the country; so that one is easy.
15	Read the law and it is an acquittal.
16	The other thing they charged him with was a false
17	passport. That was locked up in some books and boxes. There
18	is no evidence he knowingly possessed that. You couldn't find
19	him guilty of a false passport. There is no evidence he
20	possessed it; so that Count is not guilty too.
21	He got charged like the other defendants with being an
22	unregistered foreign agent in the United States. He has the
23	same defense as the other defendants. If you are there
24	temporarily and you are doing the work of a foreign government,
25	and you read the instruction. I am paraphrasing it. Read that

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- 1 instruction. My client, Mr. Hernandez was here temporarily.
- 2 He was here and he would go back for two months, he would be
- 3 here and go back. He didn't have any roots, he didn't own
- 4 anything here. He was a ghost.
- 5 What are some of the other counts? Count 1. It is
- 6 sort of an either or. You have the unregistered foreign agent
- 7 conspiracy and you have the defraud the United States
- 8 conspiracy.
- 9 What does it take from the United States? What did he
- 10 take from us? He is charged with conspiracy to defraud the
- 11 United States. What did he take from our government? Did he
- 12 take money, did he take goods, property? It is such a red
- 13 herring. They are trying to say he defrauded the United States
- 14 by possessing some documents. He was not charged with those
- 15 documents. He is not guilty of the passport. He got charged
- 16 with possessing five or more documents and take a careful look
- 17 at that instruction because it says for him to be guilty of
- 18 possession of five or more identity documents that are false
- 19 and I fully admit they were false, I never contested the issue
- 20 of his identity, he is Gerardo Hernandez, not these other
- 21 people; but the charge he possessed these documents in or
- 22 affecting interstate commerce. There is no proof in the
- 23 records those documents traveled anywhere except one document
- 24 which was his driver's license which he wrote about in the
- 25 reports; that was it.

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He also got charged with aiding and abetting a whole

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2	bunch of other people to be foreign agents. Aiding and
3	abetting the Alonsos to be foreign agents, Mario and Julia,
4	Guerrero to be a foreign agent, Gonzalez to be a foreign
5	agent go back and look at the evidence. Every one of those
6	people was in the United States before he ever got here. He
7	didn't help anybody get installed here as an unregistered
8	foreign agent. He did nothing to aid and abet them. Read the
9	law on aiding and abetting. They were here, they were agents,
10	they were here before he was.
11	You have a lot of work to do and I wish you good luck
12	in doing it. I am going to sit down. I just have a couple of
13	more things to say.
14	I want you to be careful of red herrings. Red
15	herrings are a killer because they could turn the jury around.
16	When I sit down, I guarantee you they will play the tape of the
17	MIG pilot screaming in delight after he shoots down the plane.
18	That tape makes me sick to my stomach, sick to my stomach, it
19	is disgusting. They will try to disgust you. They will try
20	and turn you into disgusted people that will no longer look
21	objectively at anything and say those Cubans, now let's
22	convict.
23	That is such a transparent thing to do, but they will
24	do it, they will play it to get you all emotional.
25	It is like another part of this case, there was this

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I thing about a taxi driver he met when he was in Cuba. He w
--

- 2 in the car and the taxi driver was speaking poorly about Cuba
- 3 and Castro and he said he was going to report him. Well, what
- 4 does that have to do with this trial, what he did in Cuba?
- 5 They didn't introduce that for any of the charges, they
- 6 introduced that so you will hate him, so you will hate his
- 7 guts. They will play that tape not because he was up in the
- 8 anything and he did that or knew it was going to happen or
- 9 anything; but so you will hate him and you will lose all
- 10 perspective and say God, I hate those Cubans, I hate what they
- 11 said about the taxi driver, I hate what they said on that
- 12 tape.
- Don't do that. The Judge will tell you as one of her
- 14 instructions, you can't go by sympathy or emotion. You have to
- 15 go by the evidence and you have to go by the law.
- The other red herring they threw at you is this
- 17 alleged book bomb. There was no bomb. This was something they
- 18 were talking about, but the big red herring about that is, it
- 19 came out of this other guy's apartment, Horacio, and it came
- 20 out of his apartment before my client ever even arrived here.
- 21 That was something that was discussed before he ever even got
- 22 to the United States. It has nothing to do with the charges
- 23 per se. It is another one of those things so you will hate
- 24 him, convict him not based on the evidence but because you
- 25 think he is a communist creep.

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1	In this country it doesn't make a difference whether
2	you are a communist or anybody else, you get the same rights,
3	and that is that a jury fairly and impartially looks at the
4	evidence.
5	The final thing I wanted to say to you before I sit
6	down and pick up my mess.
7	Ms. Miller stood up here the other day and said she
8	wanted the propaganda to stop. Well, I don't know exactly what
9	she meant by that but I did want to say this. Nothing that I
10	have done in this case was propaganda. I will go anywhere to
11	find the evidence. I will go to the moon and I am not ashamed
12	I went to Cuba. I am glad I went there and I would go there
13	again and I would go to the ends of the earth if I had to to
14	find the evidence and find the truth and I am not a stooge of
15	Castro and I am not some dupe. I don't like communism. I had
16	two grand fathers that fought in the First World War. One got
17	a purple heart. My dad fought in the South Pacific and I am no
18	communist and I didn't like being called one in this trial and
19	I don't like it being insinuated I am a propagandist for Cuba.
20	I am not. I went there and asked for the evidence. They
21	didn't tell me what to put on. I put the evidence on that I
22	thought showed my client innocent of these charges; so forget
23	about propaganda. There is none.
24	The issue right here now is what you are going to do,

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25 what is your verdict going to be, do you have the courage to

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1	vote not guilty; do you have the courage to be fair and know
2	when they play that tape with cajones, that it is not evidence
3	against my client. To put aside the taxi driver stuff; do you
4	have the nerve to do all those things? I know what the answer
5	is, you do. I know it right now and I know what your verdicts
6	are going to be.
7	Thank you.
8	MR. KASTRENAKES: Could we take a stretch or three
9	minutes.
10	THE COURT: We could all take a stretch. It is a good
11	idea.
12	(Interruption.)
13	THE COURT: You may proceed.
14	MR. KASTRENAKES: Good afternoon, ladies and gentlemen
15	of the jury. Counsel, counsel, may it please the Court.
16	I want to join Mr. McKenna in thanking you for your
17	attention for the past several months. There is one thing I
18	can definitely say and we can all say about what you have done
19	as jurors in this case. You have absolutely discharged your
20	duty. You have paid close attention to every witness. You
21	have taken extensive notes. You are well armed to make the
22	right and legal decision in this case.
23	Whatever your verdict, I can't ask for anything more.

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You have paid attention, you have studied the witnesses, not only what they said but their demeanor. You have made

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1	judgments about them as is your job to do, whether to believe
2	or disbelieve, and now you are ready in a short while on Monday
3	to start talking amongst yourselves what the right decision in
4	this case is.
5	This is an extremely important case. Your decision is
6	extremely important.
7	As I hear and heard over the past several days the
8	defense attorneys speak to you, I heard several themes. One
9	resounding theme is, that we in the United States Attorney's
10	Office in bringing this case have wasted our time and wasted
11	your time. That it is the fault of everybody else in the world
12	that the things that have brought these defendants before you
13	and this bar of justice, but them, it is not their fault. It
14	is the fault of the Cuban exile community. They are here
15	illegally working for the Cuban intelligence community but it
16	is because of the Miami Cuban exile community.
17	Focus your attorney on the Cuban exile community, not
18	us. Judge them, not me. Judge the Cuban American National
19	Foundation, Judge Alpha 66, PUND, Rodolfo Frometa. Don't Judge
20	us. Look there. Don't look at me.
21	I wonder why they say those sorts of things to you.
22	The FBI is to blame. The FBI doesn't pursue cases involving
23	violent Cuban exile groups. Judge the FBI, judge law

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Every case that Mr. Mendez brought before you resulted

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24 enforcement.

25

1	in somebody	getting arrested	and prosecuted.	It sounds like
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- 2 the FBI does do their job.
- 3 MR. MENDEZ: Objection, misstates the evidence.
- 4 THE COURT: Sustained.
- 5 MR. KASTRENAKES: It sounds like the FBI does do their
- 6 job, doesn't it? I join with Mr. Blumenfeld in his eloquent
- 7 closing to you in commending the Federal Bureau of
- 8 Investigation's performance in this case. They did a fabulous
- 9 job. They are the best of the best and they have set quite a
- 10 high mark for future performances in other cases. The
- 11 surveillances, the searches that were involved all with the
- 12 approval of United States District Judges; the decrypted disks,
- 13 the preservation of all the available evidence, an
- 14 extraordinary job, worthy of the highest praise.
- 15 It has been a pleasure and an honor to work with them
- 16 in this case.
- But of course in the world of criminal defense
- 18 attorneys, law enforcement never does exactly the right thing.
- 19 They either return to judgment and arrest people too soon or as
- 20 they have argued to you in this case, you guys waited too long,
- 21 you gathered too much evidence. You wanted to make sure you
- 22 proved everything and you let my guy stay at Boca Chica Naval
- 23 Air Station. They can't get it right. They either moved too
- 24 quickly or worked too hard to establish beyond a reasonable
- 25 doubt the intent of everybody involved here, because this case

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1	is about intent. The intent of the Cuban intelligence bureau
2	and the intent of these defendants.

- 3 Mr. McKenna tells you four innocent people are dead
- 4 and that is not because of his client's complicity with his
- 5 partners in Cuba, but because of Jose Basulto. Maybe because
- 6 of the FAA. Judge them. Judge Jose Basulto, not me. Don't
- 7 look at the evidence that links me to this agreement to kill
- 8 those four innocent people, those four innocent husband's,
- 9 sons, brothers, fathers. Let's talk about Jose Basulto.
- Sure, he called Jose Basulto as a witness and cross
- 11 examined him as his witness for three days, aggressively.
- 12 Why? Put him on trial, divert your attention from who died
- 13 here. Maybe if we talk about Jose Basulto long enough we will
- 14 forget what happened, but you will not.
- 15 Who is indicted in this case? As we sat through this
- 16 trial it was seven months long, it was a long time. There were
- 17 many times during this trial I pulled the indictment out to
- 18 make sure I was in the United States of America versus Gerardo
- 19 Hernandez. I was in the United States of America versus John
- 20 Doe Number 2, John Doe Number 3 and Antonio Guerrero and Rene
- 21 Gonzalez; because the defense attorneys were trying the case of
- 22 United States of America versus Jose Basulto, United States of
- 23 America versus Rodolfo Frometa, versus the Cuban exile
- 24 community.
- Well, Carlos Costa was no exile. He was born in this

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1	country and this was his home. Mario De La Pena, a 24 year old
2	kid was no exile, he was born here, raised here, his future and
3	his life was in this country.
4	George Buchner feels that investigating their
5	background was unimportant. That all he needed to know is that
6	they were with Brothers to the Rescue and had flown that day.
7	Armando Alejandre was on his second flight with Brothers to the
8	Rescue, the first one a couple of weeks before to take goods to
9	the exiles that were located in the Bahamas; do you remember
10	that flight he took? That was the only other flight he ever
11	took.
12	Pablo Morales was a kid who had been rescued by these
13	people.
14	It doesn't matter in the world of George Buchner who
15	they are. All that matters to George Buchner and Mr. McKenna
16	is Jose Basulto. What kind of justification is that to shoot
17	people out, or in Mr. McKenna"s word, the final solution. I
18	heard that word before in the history of mankind.
19	This case really boils down to a couple of basic
20	themes. I want you to remember these things when you go back
21	and discuss them amongst yourself in the jury rooms. These are
22	themes that you have known since childhood, that your parents

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taught you, that you taught your kids, instilled in your
brothers and sisters and these are themes when you make a

25 decision and you take actions in furtherance of those

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1	decisions, there are	consequences	and with conseque	ences come
_				

- 2 responsibilities. This case is about consequences and
- 3 responsibilities.
- 4 They took the action and decision to join a hostile
- 5 intelligence bureau. Nobody forced them to do that. They did
- 6 that on their own. A bureau that sees the United States of
- 7 America as its prime and main enemy. This was their decision.
- 8 These are not the rules of Cuba. This is the United
- 9 States District Court in the Southern District of Florida.
- 10 This is an Honorable United States Federal District Judge and
- 11 you will receive the law of this great country. We are not
- 12 operating under the rules of Cuba, thank God.
- 13 Their loyalty to their country has not been disputed
- 14 by them in this trial. That loyalty is something that has
- 15 driven their very action in this case and they chose to
- 16 dedicate themselves to that. They took those actions and there
- 17 are now consequences.
- 18 Whether you disagree or agree with Jose Basulto -- he
- 19 said one thing I remember when I was asking him questions that
- 20 kind of rings true and it is in the documents; do you remember
- 21 when he went back to Cuba in 1961 with the false identities.
- 22 Yes, he was bent on the overthrow of the communist country of
- 23 Cuba as he is today, he wants to see Democracy restored and he
- 24 had those false documents and he told you he knew he was taking
- 25 a risk, that he knew if he infiltrated that country, at left he

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risked prosecution and going to jail.
In the documents presented to you, I emphasize this
over and over again. Read the documents. The whole case is in
the documents. Everything is there about their intent, what
they did, what they hoped for; everything is in the documents.

- What did the defendants know? We are taking a risk.
- 7 They knew the risks. They knew what they were up against.
- 8 They knew if they got caught they would be prosecuted and that
- 9 they were guilty; but in the immortal words of Robert Burns,
- 10 getting caught is the mother of invention. In this trial you
- 11 have heard invented the Disney World defense that have been put
- 12 before you. Don't look at me, look at these other people,
- 13 forget I am a spy infiltrating the FBI, the United States
- 14 Congress.
- 15 I want you to think about the politics vis-a-vis Cuba;
- 16 isn't the embargo a bad idea? Who cares? Mr. Mendez. Aren't
- 17 we better off with these guys in our country? What? Yes, this
- 18 is great, we want these guys sending threatening phone calls
- 19 the way they did. David Lawrence, sending threatening letters
- 20 to Allan Simpson of Wyoming? Book bombs, sabotage of airplane
- 21 hangars. Maybe Rene Gonzalez can break into the Brothers to
- 22 the Rescue hangar and do something that will cause the
- 23 planes -- Operation Picada, nose-dive. We are better off with
- 24 you guys.
- Well, that is not what those cases are about. Whether

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1	we are better off with them or not, I submit to you it is
2	impossible to believe we would be better off with spies in our
3	community in Tampa, in Fayetteville, North Carolina, in
4	Norfolk, Virginia, on our military bases, and in Miami Florida
5	too, and in Key West; we are better off. They are everywhere,
6	come on.
7	What defense have you heard about the document count?
8	I hadn't heard anything until Mr. McKenna got up here and told
9	you in fact the passport count was not effectively proved
10	because he did not mean to enter into the United States with
11	it. In Mr. McKenna's word that is a red herring. But if you
12	look at that Count there a lot of things Mr. McKenna can
13	you all see Title 18 United States Code 1546 makes it a federal
14	crime or offense for anyone to knowingly possess, accept,
15	obtain or receive a false or counterfeit
16	THE COURT: Mr. Kastrenakes, we are not picking you up
17	on the microphone.
18	MR. KASTRENAKES: United States Code 1546, for
19	entry into the United States. It is defining what the object
20	is, not what it is intended to be used for
21	MR. McKENNA: Objection, it is a misstatement
22	THE COURT: Overruled.

MR. McKENNA: Objection. That has to do with another

MR. KASTRENAKES: On the next page Mr. McKenna doesn't

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24 show you this --

23

25

I	defendant.	It is not a	Count dea	ding with	ı my dete	ndant.
2	THE	COURT: 0	Overruled			

- 3 MR. KASTRENAKES: This is exactly what he was reading
- 4 from.
- 5 MR. McKENNA: My client is not charged with Count 11.
- 6 MR. KASTRENAKES: He was reading the definition.
- 7 THE COURT: Overruled.
- 8 MR. KASTRENAKES: A passport is a document prescribed
- 9 by statute and regulation for entry into the United States. It
- 10 is a definitional term.
- MR. McKENNA: Objection. It is an element of the
- 12 offense. He said it is only a definitional term.
- 13 THE COURT: Sustained.
- MR. KASTRENAKES: Here is what a document prescribed
- 15 by statute -- it is a passport. Every passport is a document
- 16 prescribed by statute and regulation. It is not how it is
- 17 used.
- MR. McKENNA: Objection. It is an element of the
- 19 offense.
- 20 MR. KASTRENAKES: It is not.
- THE COURT: Sustained.
- Rephrase your statement, Mr. Kastrenakes.
- MR. KASTRENAKES: The defendant knowingly -- first,
- 24 that the defendant knowingly possessed, accepted, obtained or
- 25 received a document prescribed by statute or regulation for

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1	entry	into	the	United	States.

- 2 The next page. A passport is a document prescribed by
- 3 statute and regulation for entry into the United States. No
- 4 red herring, it is right here, a passport.
- 5 What did the experts at the Naturalization and
- 6 Immigration Service told you. Mr. Laptosh told you, these were
- 7 the best frauds he had ever seen.
- 8 Mr. Norris on behalf of John Doe Number 2 and he is
- 9 indicted as John Doe Number 2, because even before the United
- 10 States Magistrate Judge when he got arrested, under oath swore
- 11 to tell the whole truth and he said my name is Luis Medina
- 12 III. Ramon Labanino, that was something presented to you for
- 13 the first time.
- What does he say? My client had no intent to deceive
- 15 the United States. What? Government Exhibit Number 10. In
- 16 Tampa he swears under oath I am Luis Medina III and obtains a
- 17 passport. Lock at Government's Exhibits 10 and 11. Look at
- 18 every driver's license he got. Of course he is deceiving.
- 19 What is the number one thing you deceive people about, the
- 20 name, who you are.
- 21 Many of the defense attorneys got up here and said we
- 22 don't dispute the false identities. Folks, you will get an
- 23 instruction the defendants are presumed innocent until proven
- 24 guilty, that is because we are in the United States of America
- 25 and that is the rules and has always been the rules. I respect

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1	that rule, I am ready to meet that burden of proof in this
2	trial or any other trial; but that is because they are presumed
3	innocent. Their attorneys entered a plea of not guilty on
4	their behalf. Of course we have to prove it. It is lawyer
5	talk getting up here and saying we don't dispute it. Sure they
6	dispute it; they plead not guilty.
7	They have argued to you they don't dispute it; why?
8	Common sense. The evidence is overwhelming of their guilt.
9	Ruben Campa, John Doe Number 3, when he is arrested
10	what does he tell Agent Berligeri. He is not Fernando
11	Gonzalez. I am Fernando Gonzalez, I have been secretly working
12	with you for years to stop exiles. He doesn't do that. He
13	lies to them and says I am Ruben Campa and gives him his entire
14	legend, under oath to a United States federal Judge, Magistrate
15	Judge, I am in the sanctuary of the courtroom now, all is
16	safe. I can now reveal my true persona and I have been really
17	working with you guys for a long time. What does he say? My
18	name is Ruben Campa. Fernando Gonzalez cooked up for you
19	guvs.

- What does the government do with these false
- 21 identification? I should say the Directorate of Intelligence
- 22 because that is who the defendants worked with. Do they really
- 23 care? They sponsor book bombs, they sponsor threats, telephone
- 24 threats of car bombs, they sponsor sabotage. They killed four
- 25 innocent people and they use in these identities dead babies,

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who they claimed

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1	dead children to establish who they are.
2	We had to prove that they weren't

- 3 they were. They plead not guilty, but there is more than just
- 4 that. You talk about stealing the memories of families.
- 5 Reverend Medina lost a child 30 years ago. Luis Medina III who
- 6 died in infancy, and died in a different state than he was
- 7 born, but that is enough for them, that is what they need. You
- 8 die in a different state than what you were born in and it is
- 9 about 30 years ago, well, that is who they become. That is
- 10 what these guys are about. They don't care.
- 11 Ruben Campa was the beloved brother of a homicide
- 12 detective from Texas. Does that matter to anybody? He died in
- 13 infancy.
- 14 When they see Detective Campa on the streets out in
- 15 Texas, I think it was in Houston, you probably know because you
- 16 have the notes; but Ruben Campa, wasn't that a Cuban spy
- 17 prosecuted in Miami Florida? No. That was my brother. That
- 18 was not a Cuban spy sent to the United States to destroy the
- 19 United States. He was born in the United States and if he had
- 20 been allowed to live, he would love this country.
- 21 The hollow words of Mr. Norris he is sorry that his
- 22 client stole the identity of some child isn't enough. His
- 23 client wasn't sorry one month before he was arrested when he is
- 24 out in California hatching another 30, 40 names to be used for
- 25 the next waive of spies.

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1	Mr. Norris' words ring very hollow. How sorry is John
2	Doe Number 2.
3	It is not just the dead kids. How about the live
4	people they have assumed identity of to escape from this
5	country. Osvaldo Reina, a truck driver from Florida. Edwin
6	Martinez, a Fire Rescue guy from New York. Daniel Cabrera.
7	Look, they are Cuban spies.
8	I join Mr. Blumenfeld again in telling you that it is
9	a test of the greatness of this country that they got the
10	fairest trial that they could have gotten. They were presumed
11	innocent. They forced us to prove their guilt beyond a
12	reasonable doubt. They received the able left of counsel who
13	
14	our witnesses.
15	These are for people bent on destroying the United
16	States, paid for by the American taxpayer
17	MR. McKENNA: Objection.
18	MR. MENDEZ: I have a motion.
19	THE COURT: Sustained.
20	MR. KASTRENAKES: Mr. Blumenfeld made that statement
21	to the jury.
22	THE COURT: Sustained.
23	MR. KASTRENAKES: It is a test of our greatness as a
24	•
25	you have sat here and deliberated fairly and dispassionately

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RICHARD A. KAUFMAN, RMR, NP U.S. COURTHOUSE, MIAMI,

1	about this case and thought about it and I know you will when
•	1 1 1 4 41 1

- 2 you go back into the jury room.
- The defense regarding the foreign agent count is that
- 4 they were here for a good reason that is a fallacy. The reason
- 5 we need to be here is to keep an eye on the Cuban exile
- 6 groups.
- 7 Let's ask, why are you on military bases? Why are you
- 8 in Key West Florida at Boca Chica Naval Air Station? Why are
- 9 you in Fayetteville North Carolina --
- MR. MENDEZ: I have an objection and a motion.
- 11 THE COURT: Sustained.
- MR. KASTRENAKES: Angel Berlingeri testified in this
- 13 case the defendant told him when he went to San Francisco in
- 14 1988 for two years, San Francisco is in California. He went
- 15 back to Mexico for two years, then went to North Carolina in
- 16 Wrightsville Beach in 1994. We have proven to you in this case
- 17 with the driver's license application, that defendant John Doe
- 18 Number 3 got his driver's license in November of 1993. Where?
- 19 Fayetteville, North Carolina, and he renewed it in 1994, when
- 20 he moved to Dalton Road. Where? Fayetteville, North
- 21 Carolina.
- What else did he tell Agent Berlingeri, that he stayed
- 23 in North Carolina until he moved to Miami in 1998 when he met
- 24 the shoe salesman from Mason Shoes Luis Medina at a night
- 25 club. That is what he tells Agent Berlingeri.

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We proved part of what he told the agent was the truth. He wasn't there in 1993. We called Mr. Bagget. He rented him a house.

Let's count the exiles that are in Fayetteville North Carolina -- stop counting. Why is he going to Norfolk Virginia

6 in 1998? It is in the documents to meet Roberto and gather

7 materials from Roberto. I will show you the document in a 8 second.

9 What about John Doe Number 2. Why are you in Tampa 10 spying on McDill Air Force Base if you are here to fight

11 exiles? This is a defense that insults each and every one of

12 your intelligence. It is patently ridiculous. John Doe Number

13 2 is so temporarily in the United States he has a fiance here,

14 gets a driver's license in Tampa, we know he is there in 1992.

15 We know he is there in 1993. We have the driver's license to

16 prove it. They make bald statements he is here to fight

17 exiles. Where is the proof, where is the pudding? We have

18 it. He is in Tampa, Florida spying on McDill Air Force Base.

19 You not only know he was living across from that base,

20 but he was on that base. Government Exhibit 611EE when we

21 searched his place here in Miami and remember one thing in this

22 case and I will show it to you in a second, there were no

23 searches in Fayetteville or in Tampa, Florida. What is going

24 on during that period of time is not before you as a matter of

25 proof; but there are some things that were kept by John Doe

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- 1 Number 2 that tell you, kind of what was going on up in Tampa.
- 2 We know he was spying on the air force base because he kept a
- 3 record which we introduced four years later. He also had a
- 4 bank record. March 27, 1996. Still in Tampa, folks, not down
- 5 here in Miami looking for exiles. Still in Tampa. Where is
- 6 he? He uses a debit card purchase at McDill Air Force Base, at
- 7 the ACES, that is the base exchange.
- 8 What did Wendy Santiago tell you you needed to buy at
- 9 a base exchange or Stu Hoyt tell you that you need to buy with
- 10 at the base exchange? You need a military ID. Think about it,
- 11 folks.
- He is up there from 1992 to 1996, he is not in Miami,
- 13 he is up in Tampa. He is also getting engaged to a
- 14 Ms. Quinones and driving up with her to a friend to Eglin Air
- 15 Force Base. Isn't that in the panhandle? He wanted to get a
- 16 job at Eglin Air Force Base. What exiles are on the air force
- 17 base at Eglin.
- There is one other document. Ms. Miller showed it to
- 19 you in her closing.
- What did Mr. Campa, John Doe Number 3, excuse me;
- 21 under the name of Ruben Campa tell the United States on July 4,
- 22 1998 where his permanent address was? Still North Carolina,
- 23 5929 Dalton Road, Fayetteville. The Judge will instruct you on
- 24 intent and motive. Let's look at this, a very important
- 25 instruction.

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1 You will get these so you will have plenty of time to 2 study the instructions and I urge you to study the instructions 3 carefully.

4 Intent and motive should not be confused. Motive is 5 what prompts a person to act while intent refers to the state 6 of mind with which the act is done. So if you find beyond a

- 7 reasonable doubt that the acts constituting the crime charged
- 8 were committed by the defendant voluntarily as an intentional
- 9 violation of known illegal duties, that is, with specific
- 10 intent to do something the law forbids, then the element of
- 11 willfulness as defined in these instructions has been satisfied
- 12 even though the defendant may have believed that the conduct
- 13 was politically or morally required.
- What is morally right or wrong is not what the intent
- 15 is. There is no moral righteousness to being spies in the
- 16 United States. Even if you attach some good movetive to
- 17 looking out for exile groups, that is not a defense to the
- 18 crime.
- 19 People have reasons for committing crimes every day in
- 20 every courtroom throughout this great land. A robber may
- 21 commit a bank robbery because he is greedy, maybe because he
- 22 has political motives he has to get the money to support a
- 23 political party that he believes must be elected and make a
- 24 donation. What about he robs a bank because an idea relative
- 25 of his is about to pass away and needs an operation and there

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1	is no other	source for the	money, a very	v altruistic	motive.
	is no ounci	boared for the	1110110 , 4 , 01	, and and the	mouti v C.

- 2 Bank robbery, nevertheless, -- let's talk about
- 3 motives. Rodolfo Frometa. He was guilty. He was prosecuted.
- 4 He had a motive. He told you that from the stand. Fidel
- 5 Castro wiped out his entire family. It didn't make him any
- 6 less guilty. Motives should not ever be confused with intent.
- 7 It reminds me of the distinction between are job and Judge
- 8 Lenard's job and she has a very important job and you have a
- 9 very important job. She tells you what the law is, you tell
- 10 her what the facts are by your verdict; but she does one very
- 11 important thing and that is, when you find someone guilty, she
- 12 takes into account all other factors that may be relevant for
- 13 what would be the appropriate sentence.
- 14 MR. MENDEZ: Objection.
- 15 THE COURT: Sustained.
- MR. KASTRENAKES: The Judge has a different function
- 17 than the jury and that has been something that has been
- 18 respected and held close to our system of justice for 200
- 19 years. Do not nullify a guilty verdict because you don't trust
- 20 Judge Lenard to do her job. She will do her job if you do your
- 21 job.
- Mr. McKenna made reference on several occasions to the
- 23 Cuban Government's point of view. The Cuban Government's point
- 24 of view with respect to why they do this and send spies into
- 25 our country is something that is not proper for your decision

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1	making.	Sure.	part of the	work here	involved	infiltrating

- 2 exile groups. That was alleged in the indictment. That has
- 3 been known to the public in that public document since it was
- 4 filed, almost two and a half years ago now. It has always been
- 5 alleged. Nobody ever hid from that. They did that. Did that
- 6 make them any less spies? Absolutely not. It is only part of
- 7 the job they do. What also did they have to do? They
- 8 infiltrated the FBI. They infiltrated Congress, they sow
- 9 dischord, they send threatening letters.
- Mr. Del Toro who testified in this case, do you
- 11 remember him, a nice gentleman who had the unfortunate
- 12 circumstance of employing Ramon Saul Sanchez. That is all he
- 13 did wrong, he employs a guy. In Rene Gonzalez' word, that
- 14 means you get a letter that threatens your life and your
- 15 business. That is the world of the Cuban Intelligence Service,
- 16 because defendant Hernandez and defendant Gonzalez decided
- 17 look, Del Toro, he employs this guy Saul Sanchez and now he has
- 18 to get a letter.
- Let's take a look at it. This was shown to you by
- 20 Ms. Miller. I will show it to you again. Threatening phone
- 21 call to Ricardo. Anonymous letter to Ricardo. Ramon Saul's
- 22 uncle by marriage. We the patriots of the exile communities
- 23 will settle accounts with all who help Ramon Saul and democracy
- 24 for being accomplices to the deception of our long suffering
- 25 people. Settle account. What was the question asked by one of

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1	the defense counsel? You didn't consider that a threat? Of
2	course I did. Settle accounts?
3	Now, Mr. Horowitz gets up before you and tells you
4	that the dot matrix printer that was seized at his client's
5	house was inconsistent with that letter.
6	Well, Mr. Horowitz, I am sorry, you did not read the
7	stipulation, but it is not only not inconsistent, but it is
8	wholly consistent, RG 17, folks, right here. Not lawyer talk,
9	evidence.
10	There is an introductory paragraph. I will put it on
11	the overhead.
12	Mr. Hammer would further testify that after performing
13	an analysis that Government's Exhibits 701 composite and 702
14	composite, the letter and the envelope, were prepared by a dot
15	matrix printer. All the searches who had a dot matrix
16	printer, one guy, Rene Gonzalez.
17	Mr. Hernandez didn't have a dot matrix printer, one
18	
19	Let's go to the next part of the analysis.
20	Mr. Hammer would testify during the analysis, no
21	<u>.</u>
22	
23	
24	
25	701 composite and 702 composite were prepared.

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1	Is it they were consistent or can't be identified as
2	coming from that particular dot matrix printer? I submit to
3	you the latter is the truth and in this case, who gets the
4	request to do it? Ding, ding, Rene Gonzalez. Who is the only
5	one with the dot matrix printer in this group? The same guy.
6	Who do you think wrote the letter? It doesn't take rocket
7	science, folks. Mr. Horowitz did not tell you the correct
8	version of the evidence in this case.
9	Mr. Horowitz also discussed with you his client
10	vis-a-vis the FBI, and that was brought out to you through an
11	individual by the name of Angel Berlingeri. When did Angel
12	Berlingeri get involved with Rene Gonzalez? January 1996, the
13	end of January. What was happening at that time? The guy that
14	was into the FBI, the double agent, was getting ready to be
15	taken out of the country.
16	In a track race you pass the baton every day. The
17	baton was passed from Juan Pablo Roque to Rene Gonzalez. He
18	was going to be the guy on the inside of the FBI to do what?
19	To find out what they know and how they know it.
20	You know what, I will say something that maybe the FBI
21	won't be happy with, but when you are at a place and you are
22	trusted, you let your guard down. You say things sometimes
23	that you shouldn't say. It happens every day in every day
24	life. It happened at Boca Chica Naval Air Station and I will
25	show you something about that in a few minutes. It happens

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	1	within the four	corners of the FBI.	If you trust a p	oerson
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- 2 because he is giving you right information -- nobody ever said
- 3 Hector Viamonte wasn't a drug dealer. He came up with that
- 4 valuable information. Alex Barbeito was a narcotics
- 5 investigator and wanted to pursue that. No thanks to him he
- 6 was prosecuted over a year and a half later. Remember that, no
- 7 thanks to him, but that is his opening door, he has
- 8 credibility.
- 9 Every liar tells the truth. The part about a lie that
- 10 is so believable is that a person tells the truth about things
- 11 that are helpful to you. Hector Viamonte is a narcotics
- 12 dealer, true. Okay, I will trust you. Then he is in the FBI
- 13 and trying to gather -- he talks, he listens. People
- 14 accidentally say small things that people put together and
- 15 report back. What was his job in the FBI? When Roque got out
- 16 and publicized back in Cuba, he wanted to know what the FBI
- 17 knew and he wanted to make sure he distanced himself from that
- 18 guy, to make sure that the FBI would continue to credit him as
- 19 a source.
- 20 Rene Gonzalez was brought back to the FBI late in
- 21 1996, August of 1996. Absolutely true. The FBI approached him
- 22 and brought him back. Why? They knew he was a spy at the
- 23 time. He had started to start their investigation in the fall
- 24 of 1996 and they knew that Rene Gonzalez was working with the
- 25 Cuban Intelligence Service, so they brought him back in to see

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- 1 what he was doing. Of course at that time he says I thwarted
- 2 them diplomatically with my "sincerity."
- 3 Of course he is trying to mislead the FBI.
- 4 Mr. Horowitz' argument is, it is ridiculous. You can deceive
- 5 somebody who already knows you are a spy. The focus is on his
- 6 intent, not the FBI's.
- Remember what I said in the beginning, the case is
- 8 about intent. He didn't know the FBI was onto him, so he is
- 9 trying his best to mislead the FBI.
- Folks, two wrongs do not make a right. We have
- 11 learned that since we were kids. The appeal to you to acquit
- 12 these guys is based on that premise, that we should be approved
- 13 here as spies, but that is wrong because other wrongs are going
- 14 on. Bombs in Havana. Absolutely wrong. If there is evidence,
- 15 credible evidence that was prosecutable in this district or I
- 16 hope any other district where there is a capable prosecutor and
- 17 capable investigators, they should bring those charges against
- 18 people if they are responsible from this community or any other
- 19 community in the United States. I will find out and prosecute
- 20 the case.
- 21 Proof beyond a reasonable doubt with credible
- 22 evidence. What did the FBI want to do? They wanted to go back
- 23 to Cuba, interview witnesses, gather physical evidence. In
- 24 June of 1998 they go there for the first time. They want to go
- 25 back after March of 1999. One problem, these guys are on

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1	trial. They have been arrested. They are not being invited
2	back. The FBI isn't invited back to pursue that stuff
3	MR. MENDEZ: There is no evidence of that.
4	THE COURT: Sustained.
5	MR. KASTRENAKES: Caballero told you he was willing to
6	work with the FBI and still waits. We are waiting still here
7	too; but he is not in control. S not calling the shots. He
8	told you that himself on cross examination. Why did you go to
9	Washington? My boss told me to go.
10	When the bosses in Havana decide that they want to
11	share evidence with the United States of America
12	MR. MENDEZ: Objection.
13	THE COURT: Sustained.
14	MR. KASTRENAKES: And they want to allow witnesses to
15	be interviewed in Cuba, then that process will take place
16	MR. MENDEZ: Objection, there is no evidence of that.
17	THE COURT: Sustained.
18	MR. KASTRENAKES: The defense attorneys have discussed
19	another instruction there is an exception to the foreign
20	agent notification requirement set out by statute and the Court
21	will instruct you on that. I agree with Mr. Mendez, it is a no
22	brainer. An agent of a foreign government, however, does not
23	include any officially and publicly acknowledged and sponsored

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official or representative of a foreign government. The meaning of any officially and publicly sponsored official or

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1	representive of a foreign government includes any official of a
2	foreign government on a temporary visit to the United States
3	for the purpose of conducting official business internal to the
4	affairs of that foreign government.
5	You are instructed at the bottom, this is the
6	paragraph they didn't read to you and I want you to study this
7	paragraph. You are instructed that you must return a verdict
8	of not guilty as to any Count charging the defendants with
9	acting as a foreign agent unless the government proves beyond a
10	reasonable doubt that the defendant was not an officially and
11	publicly acknowledged and sponsored official or representative
12	of a foreign government.
13	Folks, that is not meant for spies. That is meant for
14	people who are here on a temporary visit to the United States
15	to sign some papers in an embassy from their country on
16	official business internal to that country. Officially they
17	get visas, they come into the country and then they leave.
18	MR. NORRIS: He is misstating the law. This is your
19	province. I object.
20	THE COURT: Overruled.
21	MR. KASTRENAKES: It is not meant for clandestine
22	spies who come here under the name of Luis Medina III, Manuel
23	Viramontez, Ruben Campa. It is not meant for Antonio Guerrero
24	or Rene Gonzalez. It is common sense. If our great nation

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25 would allow as an exception to this statute spies who came in

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temporarily, there would be no purpose for the statute. We
should close down the FBI foreign counter intelligence squad.
It is ridiculous. Each of these defendants were here over four
years. Hernandez was here in 1994, Medina in 1992, Gonzalez
and Guerrero, 1992 and 1993. John Doe Number 3 is here since
1993 up in Fayetteville or 1988 in San Francisco.
We do not allow spies in our country for one hour, one
minute, one day, one month or one year. There would be no
purpose for that statute. Use your common sense.
Mr. McKenna at the end of his discussion with you
discussed some of the things that tell you a lot about his
client and wants to avoid those things, but they are in the
records. What is Hernandez all about? He never loses an
opportunity to spy or report on people. The guy is a cabbie.
A cabbie in his own country, a Cuban working in Havana who
drives him unfortunately drives him to the airport and makes
some statement about the economic problems in Cuba and
attributes to them, my God, to the leader of Cuba, Fidel
Castro.
Does he say let's send the goon squad and give this
guy a tune up?
What did he say in the document? You need to send out

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some people from the department and talk to this guy. What doyou think go see this guy means in Cuba, somebody who talks

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25 about Fidel Castro?

1	It is not just exiles. Military bases, his own
2	people.
3	I submit to you the evidence has been overwhelming as
4	to the defendant's guilt as to all the identity counts, all the
5	foreign agent counts.
6	I equally submit to you when you look at the documents
7	carefully, you will see that the evidence is overwhelming as to
8	their guilt, as to the conspiracy to commit espionage count
9	lodged in Count 2.
10	Remember, the defendants who are charged with that
11	crime, which is defendant Hernandez, John Doe Number 2 and
12	defendant Guerrero, are not charged with committing espionage.
13	They are charged with agreeing with each other and with others
14	to obtain closely held information related to the national
15	defense of the United States.
16	You have heard from a lot of talking heads and
17	Mr. McKenna, I agree with you about that. Throw them all out
18	and use your common sense. What can't they change? They can't
19	change what the crime is. They can't change what the crime is
20	charged as, conspiracy to commit espionage.
21	Folks, you will get a conspiracy instruction.
22	This is the same one that Ms. Miller put up.
23	What is not in this instruction. If you find that it
24	is impossible for them to commit the crime, you have to
25	acquit. It is not there because that is not the law. We

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1	couldn't prosecute cocaine cases any federal court in this
2	country if that was the case how many deals are done with drug
3	officers every day where they don't allow real drugs to come
4	in. The crime is complete upon the agreement. You don't have
5	to have the crime completed. It could be impossible to commit
6	and it still would not prevent you from finding him quilty

6 and it still would not prevent you from finding him guilty.
7 So, it depends -- does it depend on whether it is
8 impossible, absolutely not? How about really hard? No. Was
9 it a little hard to get national security clearances at General
10 Wilhelm's facility? Yes. They hadn't even gotten a job yet.
11 Santos had not even gotten employment to begin to do that.
12 Does that make them not guilty? Absolutely not. That is what
13 the agreement was. They agreed to try to do it.

Does it have to be an express agreement? Do you have to say I want you to go get classified information. Absolutely not. No requirement. Look at it here.

No formal agreement required. It doesn't have to be expressed.

Look, folks, you read the instruction about Joseph Santos but both of the defendants' attorneys used it to their advantage. I submit to you, he told the truth about

22 everything. He told you that he was trained by this network to

gather secret information and that was the most valuableinformation. Go back to your notes. Look at your notes

25 regarding his training and his instructions in Cuba on behalf

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1	of this network.
2	This is a conspiracy. It involves a lot of people.
3	The agreement and the training was to gather whatever
4	you could get, wherever you are. It is common sense.
5	The defense would have you believe that the Cuban
6	Government took the risk and took the time to infiltrate
7	somebody into Boca Chica Naval Air Station to watch CNN and to
8	get public information.
9	Folks, that is so opposed to just regular old common
10	sense it is ridiculous. You could stay in Havana and watch
11	CNN. He could read the newspaper from his house in Key West.
12	Why would you go on a base? Why do you try to get higher
13	levels of penetration at a base if all you want is
14	information? It is clear, it is as clear as the nose on your
15	face, it is as clear as the fact the sun is coming up in the
16	morning. The 13th juror that will go back in there with you is
17	your God given common sense. You don't go through the risk,
18	you don't go through the expense, the exposure of your
19	organization to put a person on a military base to gather
20	public information.
21	What did the talking heads called by the defense say?
22	Mr. Norris told you they had an eight star defense and
23	I say to you, what information did the generals and the
24	, , , , , , , , , , , , , , , , , , , ,
25	all witnesses must do, tell you that was relevant? That Cuba

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1	would never win a war with the United States. How is that
2	relevant to this charge? How is that relevant to the fact of
3	what their agreement is. That it would have been hard if not
4	impossible to gain information at Southcom. That is not a
5	defense.
6	We don't need the information or can't use it. That
7	is their opinion. If they didn't need it or couldn't use it,
8	why are they there.
9	What can't those witnesses change, either? They can't
10	change the documents.
11	Most crimes involving intent or agreement that are
12	committed are proven without letters between co-conspirators or
13	the cooperation of a co-conspirator. Think about it. We judge
14	people's intentions by their actions in every day life. I
15	submit to you if somebody was charged with bank robbery and
16	they walked into a bank with a gun in their hand, you would
17	have no difficulty determining what their intent was.
18	I submit to you, the fact that the Cuban Intelligence
19	Service put Antonio Guerrero on a military base in Key West
20	Florida because a man who is loyal to the country of Cuba and
21	signs an oath saying he is loyal to the United States which is
22	completely false; I submit to you that alone shows you what his
23	intent is, it is to gather military secrets, closely held

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But you have so much more than that in this case. In

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24 military information.

1	the bank robbery scenario I was discussing, you call the
2	getaway driver as a witness. He says that guy who is my
3	partner who had the gun in his hand, he didn't really need to
4	rob that bank. Now you understand what the plan was and he
5	will take the money
6	THE COURT: You need to point the microphone at you.
7	MR. KASTRENAKES: We called Mr. Santos and he tells
8	you, look, I was trained to gather secret information. I was
9	taught that the most secret and the most closely held is the
10	most valuable and that is what I was supposed to do at Southcom
11	if I got a job there.
12	Well, who is his handlers? My gosh, the same two
13	people. Hernandez and John Doe Number 2, that are handling
14	Guerrero.

- You have the get away driver. In this bank robbery
- 16 scenario, do you need the letters between the bank robbers and
- 17 his co-conspirators and the people that have bought the getaway
- 18 car or the stash car or the drop car? No. But if you had
- 19 that, that would be incredible evidence of intent, incredible.
- 20 I intended to rob the bank and here is what I was going to do
- 21 with the money. That is what you have with this case. It is
- 22 an incredible amount of evidence. You not only have his
- 23 placement at Boca Chica. You not only have the testimony of a
- 24 co-conspirator, but you also have the letters, the secret
- 25 encoded communications between and amongst the co-conspirators

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1	what they were planning to do.
2	When you are a defense attorney, you have to dance
3	around plain English, so when the command to Tony Guerrero is
4	to find out what is in that top secret installation, that
5	doesn't mean what it says, folks, that is Mr. Blumenfeld's
6	argument to you; they want you to ignore your common sense.
7	I will do the same thing the defense attorneys did. I
8	will use their own witnesses against them.
9	What did General Atkeson say?
10	"Question: With regard to the public information we
11	discussed before things out of like the Jane's publication,
12	that is information available to anybody who wants to buy the
13	8 ,
14	
15	" Question: If Cuba wanted those, they wouldn't need
16	to send spies here?
17	"Answer: Correct. If Cuba wanted those, they could
18	just go by them? Correct.
19	"Question: As you have already noted, those kinds of
20	activities placing agents inside facilities can take extremely
21	large amounts of time and resources to eventually lead to
22	fruition; is that correct, the access to information?
23	"Answer: Yes."
24	"Question: But they are going there to find out what
25	they might find out?

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1	"Answer: Correct.
2	"Question: And they are going there hoping for
3	opportunities to access that information?
4	"Answer: Correct."
5	How much more plainer is that. That is their
6	witness. That is one of their stars.
7	Just to show you an example how things began and
8	steamroll into something that begins actually as not an issue
9	at all, the gardener issue. Do you remember all of that the
10	gardener matter, where did that start from? Not from Santos.
11	He was supposed to get a job as a computer person there. That
12	was Paul McKenna. He asked Mr. Santos that question out of the
13	blue, made up out of whole cloth, by Mr. McKenna.
14	"Question: You talked about penetration of the
15	Southern Command. You proposed at one time to penetrate by
16	being a gardener; didn't you?
17	"Answer: These are ideas that you throw around."
18	Santos eventually agreed he tried to get any job he
19	could at Southern Command. What was his direction at Southern
20	Command, to get a job in the computer field. Why? Because
21	that is where he had been trained. That is in the documents
22	and I will show you that document.
23	I would like to discuss some documents regarding this
24	particular issue that have not yet been discussed with you.
25	DG 141 has been shown to you and I will start with

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1	that briefly.
2	This is DG 141 folks. Lorient and Antonio Guerrero.
3	I do have information the structure will be used for some top
4	secret activity. The military intelligence chief in Havana
5	sends a message to defendant Hernandez about the remodeling of
6	the hot pad. You say you have information they will use it for
7	top secret activities. If possible expand on why they say
8	that. It is for top secret and anything else you can get
9	related to the use of that building. Anything else you can
10	get.
11	What is not here? Tell Lorient not to get public
12	information.
13	Do they expect us to believe that when the guy was
14	able to get secret information that it is something they would
15	have rejected in Havana, that they wouldn't have wanted? Come
16	on? They don't put this guy there to watch CNN and get the
17	Miami Herald or the Southernmost Flyer. Yes, he does do that.
18	Yes, he gets everything. Stu Hoyt please, I will ask you to
19	go back and review your notes on stew Hoyt. It has been a long
20	time. I submit to you he was a superb witness with impeccable
21	credentials. He also told you there are some things you don't
22	need impeccable credentials to decide, common sense.
23	At the bottom here, did Mr. Blumenfeld discuss this
24	with you? No. Allan. John Doe number 26789 exhorting
25	Lorient. He should try to determine its future use,

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1	discussing, of course, the hot pad.
2	Let's go to some other documents.
3	Every expert called, military expert called said the
4	United States closely guards information about its future
5	movement and immediate future movement of its assets, of its
6	forces.
7	What is Lorient looking out for? He is getting
8	advanced information on the movement of military intelligence
9	battalions, the 224th. Look at DL 123 pages 5 and 6 and DG 123
10	page 17, DL 103, pages 5 and 6. This is to Lorient from
11	Allan. From Guerrero to one of his handlers.
12	In the mail you tell me that you found out that the
13	estimate of the arrivals of those aircraft from 1/9 to 24. It
14	is necessary that when you obtain the plan even if you do not
15	have the data verified by visual observation they are
16	talking about him getting information before the planes
17	arrive. It will be sent via radio to alert the exploration
18	aircraft from the FAR, the Cuban military Air Force and prevent
19	the enemy from picking up our communications and easily
20	detecting the air force's radio location system.
21	What is that message. Guerrero is not there to sit on
22	the runway and watch, but to find out before the planes land so
23	they could alert their people down in Cuba.
24	Let's go to DG 123. This is a later communication to

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25 Edgardo, one of the bosses from defendant Hernandez, regarding

1	his contact with Guerrero. Page 17.
2	As we have explained I join Ms. Miller in that
3	pagination. I printed these things out and I am not sure of
4	the exact page. It will be close. This is the quote. As we
5	have explained in this report by chance, not officially, even
6	though we believe the information true and important, on the
7	7th of January we learned that the deployment we learned
8	that the deployment of the 224th Army military intelligence
9	battalion had been planned for here from the 9th through the
10	24th of January. It was possible to impart this information
11	that day even though it was stated that it would be confirmed
12	by visual observation that could be carried out regarding the
13	arrival of the soldiers and resources as well as the air
14	resources.
15	This is the confirmation again of his observations
1/	C

- 16 confirming what he had heard before.
 17 Mr. Blumenfeld discusses the floor plan of the hot pad
- being something that was disclosed to you as a public record.
- 19 What is not on the floor plan? The security arrangements
- 20 within the hot pad. Is that closely held? Captain Hutton told
- 21 you it was. Let's go through it.
- He describes on DG 123 the inside of the hot pad.
- 23 Some of the sections were protected with the installation of
- 24 wire mesh above the false ceilings to prevent the passage of an
- 25 intruder by way of the false ceiling. It is not on the

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1	sketch. Closely held information.
2	The description, this office has a window with a
3	double metallic protection from which the platform, the area
4	through which the personnel enters, is visible.
5	Again, this is not on the diagram.
6	If all they want is public information, why would they
7	exhort Guerrero to get higher and higher access? Common
8	sense. DL 102 pages 4 and 5.
9	If you are getting public information where you are
10	and you are doing good, as Mr. Blumenfeld says, they were happy
11	with him. That is not true. Look at the documents. They were
12	happy with his efforts but they wanted him to step it up.
13	To Lorient from Allan, February, 1998. A very
14	important document. I ask you to read it. I will read it to
15	you. With respect to what we have talked about on more than
16	one occasion, the need to maintain and elevate Lorient's
17	possibilities of intelligence, independent of the fact that we
18	are proud of the work that he has done and is doing, we are not
19	happy with what has been accomplished. Not happy? And we have
20	to progress further on this path of course in an appropriate
21	way taking the characteristics of the agent into account. It
22	is because of this that we should work in the following
23	directions. Study and analyze with Lorient the current sources
24	that he possesses or the ones that he thinks he could have in

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25 the near future within the objective. Have him make you a list

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1	of 1	possibilities	that	these	sources	have	for	access	tc
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- 2 information that is of interest to us or that permits them to
- 3 access certain areas of the base or as a last resort, that
- 4 permit him to get closer through this friend's relation to
- 5 other sources that could be of interest to us. We should find
- 6 out from that analysis, who or whom would be able to help us in
- 7 the first phase to access certain information and how we should
- 8 work it. We should also find out who or whom would serve as a
- 9 springboard to access other more valuable sources. In this
- 10 sense, he should view the work as a ladder where each rung
- 11 helps reach a higher one.
- Does this sound like an exhortation to stay within the
- 13 realm of public information? Use your common sense. You don't
- 14 try to go up another rung in the ladder if you are happy with
- 15 the public information from CNN, from Miami Herald or sitting
- 16 on a runway.
- 17 Mr. Blumenfeld talked about Tim Carey and Ed Donohue
- 18 and I would like to talk about them for a moment.
- Tim Carey and Ed Donohue took the same oath of loyalty
- 20 to this country that Antonio Guerrero did. One difference.
- 21 They took it seriously. They weren't working for Cuba. Just
- 22 because Antonio Guerrero has the same access to information by
- 23 virtue of his employment with the government, because he is
- 24 trusted, he took an oath, doesn't mean that it is all public
- 25 information. The general public doesn't have access to all

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1	areas of Boca Chica.	It doesn't have to be	classified to be

- 2 closely held. Who told you that? Their talking head, their
- 3 biggest star, a four star general, General Wilhelm. Do you
- 4 remember his quote about that? There are a lot of things that
- 5 aren't necessarily classified that are closely held. For
- 6 example, when I fly though Colombia and have discussions with
- 7 leaders of that country regarding narcotics interdiction and
- 8 fly back to the United States and have discussions with people
- 9 concerning my impressions and feelings; those are not
- 10 classified, but that information if it got out would severely
- 11 damage the security and national defense of the United States.
- 12 General Wilhelm said that.
- So it doesn't have to be classified to be closely
- 14 held.
- 15 There are many things you saw in these documents that
- 16 are not necessarily classified but closely held. The mesh
- 17 inside the room, the layout of inside the hot pad. Yes, Tim
- 18 Carey saw those same things. Big difference, Mr. Blumenfeld.
- 19 Tim Carey doesn't work for Cuba, your client does.
- 20 Mr. Blumenfeld made a big point that his client got
- 21 the job there because of the interdiction of Dalila Borrego, a
- 22 young lady who testified here -- she testified -- she testified
- 23 it was my idea. Mr. Blumenfeld said my client didn't want to
- 24 get a Boca Chica job, it was her idea and he got the job
- 25 there. DAV 122 page 8 this is the document discussing the

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1	background	l of Antonio	Guerrero.	In 1993 a	work plan	was

- 2 organized that would begin implementation on January 25, 1993,
- 3 which was the day he would settle in Key West. The plan
- 4 already accounted for, search for rental of housing, search for
- 5 a job, visual intelligence against Naval Air Station, study of
- 6 and job search at the Key West Naval Air Station obtaining
- 7 military information from different sources. He started
- 8 working at the Naval Air Station in Boca Chica in March of 1993
- 9 through the good relationship established from the time of his
- 10 arriving with Dalila Borrego an employee of the Department of
- 11 Labor and employment.
- Doesn't this tell it all how these guys work? He is a
- 13 master manipulator. The plan was already in place when he got
- 14 to Key West to get a job at the Naval Air Station and spy on
- 15 the military. He was able to convince Dalila Borrego it was
- 16 really her idea and she came in and as honest as she could be,
- 17 totally honest, sincere believes it was her idea. She was
- 18 totally manipulated by defendant Guerrero and it is right here,
- 19 the proof is in the pudding. What Mr. Blumenfeld told is not
- 20 the evidence, it is lawyer talk. He was commandeered when he
- 21 went to Key West to penetrate that Naval Air Station.
- Mr. Blumenfeld told you Antonio Guerrero would be a
- 23 tremendous employee and you would want him as an employee of
- 24 yours. Two comments. Number one, it was his job to be a
- 25 tremendous employee, how else do you get trusted and promoted.

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1	It would be bad for him to be a screw off. It would not be
2	good for the ultimate goal. The long term goal, the
3	penetration of the Naval Air Station.
4	Second, if you run a corporation and have trade
5	secrets, you want Antonio Guerrero who works for a competing
6	firm working for you? Come on, of course not. He is a spy.
7	My God, these guys are spies. What do you think they are doing
8	here in this country.
9	I would like to spend the last half hour and sit down
10	and you will go home for the weekend and on Monday the Judge
11	will give you the instructions but I would like to spend the
12	last half hour on Count 3 which Mr. McKenna spent, I dare say,
13	the three and a half hours discussing with you. I can't say
14	everything in a half hour. You have the evidence, you have all
15	the evidence. Read the documents, the high frequency messages,
16	use your common sense. If I don't think of an argument because
17	I don't have enough time and I am not as smart as you guys,
18	please, if you have an argument in your head that blows his
19	arguments away, don't be afraid to use it, use your common
20	sense.
21	There is one truth, just one truth, there is not
22	multiple theories, not multiple choice tests. Truth comes in
23	one package and this is a quest for the truth.

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25 justified. The shoot downs of those planes were justified. He

Mr. McKenna told you in his opening the shooting was

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l argues to you now his client didn't know anyth
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- 2 is not a multiple choice test. Somebody dies and it is
- 3 justified, you are involved in it. If you don't know anything
- 4 about it, tell us from the beginning, Mr. McKenna. Why do we
- 5 spend months determining where the location of the shootdown
- 6 was? If your guy doesn't know anything about it, let's go
- 7 home. That is because he changes horses in the middle of the
- 8 stream. He throws up what might be good day one and then uses
- 9 what may be good day two.
- How about Mr. McKenna's view, this being a MIG that
- 11 goes by captured on the videotape. True or false, not a
- 12 critical issue, but tells you about the quest for the truth.
- 13 It is false. It was proven to you to be false by a scientist
- 14 who knows what he is doing, not a guy who makes comparisons in
- 15 his head. You saw the pictures.
- I am not saying this because I am a Greek American,
- 17 but Sophocles made the best statement about the truth and the
- 18 truth is always the strongest argument. It is. You don't
- 19 dance around it, you don't throw up ideas that are false and
- 20 come up with some other ideas. You tell the jury the truth and
- 21 you go and that is what they make their decision on. You make
- 22 a decision based on truth.
- Even Mr. Norris in his argument to you regarding the
- 24 shootdown said they were unarmed civilian aircraft. Was George
- 25 Buchner a believable witness? He is their expert. That is the

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1	wave they are riding.	That is the man	that they base	ed their
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- 2 defense on. Think about it.
- 3 He served his country and I do not take that away from
- 4 him. He served two tours of duty in Vietnam, I respect him for
- 5 that, but he had no business coming in here and making it up as
- 6 he goes along to try to justify an unjustifiable murder of four
- 7 people.
- 8 He comes up and describes they are state aircraft.
- 9 Diametrically opposed from Chuck Leonard. When you go back I
- 10 want you to look at your notes on Chuck Leonard and I hope you
- 11 wrote things down. Compare them with what you wrote down about
- 12 George Buchner whether or not they were state or civilian
- 13 aircraft.
- 14 Come on, this is common sense.
- 15 I read to George Buchner in my cross examination of
- 16 him a passage out of the working paper that Mr. McKenna is
- 17 relying on. It is in evidence, the working paper. The
- 18 government of Libya -- Cuba is not alone by the way. Cuba has
- 19 been proven in this case to have friends such as the Chinese
- 20 and the Russians. They have radar interception. They are
- 21 cooperating with the Chinese. They are not alone. They are
- 22 friends with our enemies.
- A Libyan airliner in February of 1986 left Tripoli.
- 24 Over international waters Israel intercepted it and forced it
- 25 to land. Read page 7 of that exhibit introduced by the

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- 1 defense. The government of Libya defended the fact it was
- 2 civil aircraft and it was found dispositive and Israel was
- 3 condemned by the International Civil Aviation Association. The
- 4 fact they had an N number, they had papers showing that they
- 5 were civilian. State aircraft means state aircraft. Customs,
- 6 military or police. I asked George Buchner, what state does
- 7 Brothers to the Rescue belong to. He couldn't come up with an
- 8 answer. They don't. They are civilian aircraft.
- 9 Do you shoot down planes because you have a beef with
- 10 Jose Basulto on planes he is not even on board? Well, another
- 11 example in the ICAO working papers. I asked George Buchner
- 12 about this on cross examination. Do you remember the Achilles
- 13 Lauro a cruise ship in the Mediterranean. The ship was
- 14 hijacked and a passenger was murdered. The United States
- 15 determined the subject of that murder was on this plane. Did
- 16 they shoot the plane down and kill innocent people? No. They
- 17 forced Egypt Air flight to land in Sicily and took off the
- 18 hijacker and murderer. What does that tell you about reason
- 19 and common sense should be in a case like this? If Mr. Basulto
- 20 is you and is affronting the government of Cuba, you force him
- 21 to land. You identify these other planes. Mario De La Pena,
- 22 who is that, he is not the guy we are looking for. Let's not
- 23 shoot him down. They don't care. Carlos Costa. Did they
- 24 care? George Buchner didn't care, the Government of Cuba
- 25 didn't care.

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1	To him, one of the most important and chilling
2	statements was, it didn't matter to him about their
3	backgrounds, the planes they were flying.
4	He says that and the defense seems to harken to this
5	view and I ask you to think about it, think clearly through
6	this argument. We warned you, we told you not to fly into our
7	air space, we told you not to come close to us and see, we
8	warned you, so when you kill them, we warned everybody.
9	What is that? You have a neighbor who parks, drives
10	down the street too fast. I am telling you, quit driving down
11	the street too fast. He throws beer cans into your yard.
12	Irritating? Absolutely. Should the police be called?
13	Absolutely for throwing the beer cans. I will kill you the
14	next time you park on my swale. Is that what we are reduced
15	to, what is that, the law of the jungle, what Paul McKenna's
16	law is and George Buchner's law is in this United States
17	District Court in the United States of America? No you don't
18	get away with murder because you tell them you are going to
19	kill them. That doesn't make it right. There is no death
20	penalty for littering. Sovereignty means to George Buchner
21	whatever you could getaway with. It is in the books. Read it,
22	read your notes. That is what he said. Whatever you could
23	getaway with.
24	The United States must prove there was a conspiracy to
25	kill and have we proven the conspiracy to kill

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1	MR. McKENNA: Objection, they have to prove more than
2	that.
3	THE COURT: Sustained.
4	MR. KASTRENAKES: You will get two instructions. One
5	is a conspiracy instruction and you will get the murder
6	instruction. I will discuss the conspiracy instruction with
7	you for a moment.
8	How do we know there was a conspiracy here? Well,
9	Admiral Carroll. The defense thinks this is good for them.
10	That he goes to Cuba and they say to him, we are having
11	problems with planes, you know we could shoot them out of the
12	sky. How is that good for the defense? You are advertising
13	the fact that you are premeditating a shootdown. Think about
14	it. If they come close to land to do this again, we will shoot
15	them down.
16	That doesn't make it right. It shows their
17	premeditation and the fact people are talking about doing it.
18	How does that legitimize the warning? It does not.
19	How else do you know that there was a conspiracy to
20	kill here
21	MR. McKENNA: Objection.
22	THE COURT: Sustained.
23	MR. KASTRENAKES: There was an agreement based on the
24	MIG transcript, pages 8 through 10. I will talk about
25	Mr. Costa's shootdown.

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1	From the time they saw that plane and they are asked
2	to identify it, what is the only identification that is done?
3	It is small. Ten seconds later. What is the color and
4	registration? They asked for an identification of it.
5	What is the response? It is an expletive.
6	There is already an agreement. You don't say that to
7	everybody if there is not an understanding that is supposed to
8	go on here. They will shoot those guys down.
9	Then in case there is any doubt, less than a minute
10	away before the sighting of the plane, authorize, give me
11	instructions, authorize me.
12	If there is no agreement, the question comes back,
13	authorize you to do what. To do what? That is understood,
14	folks. There is no question what we should be authorized to
15	do, because there is an authorization before they left the
16	ground. Use your common sense.
17	Look at this. Less than a minute and a half after
18	they first see this plane. That is the one, that is the one,
19	authorize us, damn it. We have it. Authorize to destroy.
20	Great.
21	This is a smoking gun and excuse the parable phrase,
22	
23	
24	absolutely. That is where they were, that is where they were
25	

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1	We have jurisdiction in this Court, in this United
2	States District Court because it occurred in international air
3	space
4	MR. McKENNA: Objection.
5	THE COURT: Sustained.
6	MR. McKENNA: I ask the jury to be instructed to
7	disregard that mistake of the law.
8	MR. KASTRENAKES: The Judge will instruct you we must
9	prove it occurred in international air space
10	MR. McKENNA: Objection.
11	MR. KASTRENAKES: It is in the instruction.
12	THE COURT: There is a motion to strike.
13	The statement regarding jurisdiction is not at issue
14	for the jury to determine. It is for the Court to determine.
15	The motion to strike is granted. You are instructed to
16	disregard it.
17	MR. KASTRENAKES: There is an element that requires
18	the proof of the crime occurring in international air space.
19	MR. McKENNA: Objection, it is a misstatement. It is
20	S .
21	
22	
	instructions
24	MR. McKENNA: He is now arguing with the Court what
25	the instruction says.

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1	THE COURT: Sustained.
2	MR. KASTRENAKES: You will be given a copy of the
3	instructions. I ask you to go back and read them closely
4	concerning the crime and the elements that are charged. The
5	United States of America has proven that the shootdown occurred
6	in international air space
7	MR. McKENNA: I object to this argument by counsel and
8	I ask it be stricken. That is not what must be proven.
9	THE COURT: Sustained.
10	MR. KASTRENAKES: I am merely telling the jury
11	MR. McKENNA: I object to him arguing with you about
12	the law.
13	THE COURT: Sustained.
14	Move on.
15	MR. KASTRENAKES: Mr. McKenna in his opening discussed
16	the fact that the United States versus Cuba was like David
17	, , , , , , , , , , , , , , , , , , ,
18	Goliath when it comes to a confrontation between a 337 Cessna
19	6 /
20	interception. Operation Escorpion was enacted when? After
21	· · · · · · · · · · · · · · · · · · ·
22	· · · · · · · · · · · · · · · · · · ·
23	all comes down to the end as to why this happened, you will
24	
25	is in the leaflets, and the truth is not because Jose Basulto

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1	flew over Cuba in July of 1995, or to Guantanamo and flew over
2	in 1994, it is because in January of 1996 he did something that
3	the Cubans couldn't stop, and that was drop leaflets from
4	international air space that would float over Havana.
5	February 25, do you remember the first anniversary,
6	Castor, Rene Gonzalez targeted to monitor the celebration
7	commemoration of the shootdown of the plane
8	THE COURT: Use the microphone, Mr. Kastrenakes.
9	MR. KASTRENAKES: What he did say? In the end, they
10	know that. If they had concentrated on looking for rafters and
11	not distributing leaflets, they would have arrived at 70,000
12	missions without any problems.
13	You see, the problem was the leaflets to the Cuban
14	Government. The leaflets represented something that they
15	couldn't deal with. The leaflets told people in Cuba that they
16	had rights and you may not have liked the messenger, Basulto,
17	but the message is something that everybody can identify with;
18	Mr. Morejon standing in Havana in 1996 saw those leaflets come
19	and what did that mean to the country of Cuba, that repressive
20	regime who doesn't believe in any of those rights, that meant
21	trouble and they had to stop that, they had to stop that at all
22	costs, because if you can drop leaflets from international air
23	space and get away with it and not fly over Havana; that was a
24	problem and Rene Gonzalez knew it, Hernandez knew it, it is a
25	message.

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1	What happens, the Cuban Government enacts Operation
2	Escorpion after the leafleting and what is his role in
3	Operation Escorpion? His role in Operation Escorpion is to
4	make sure that Rene Gonzalez and Juan Pablo Roque do not fly
5	during the weekend of February 24 and February 27.
6	Why shoot people down for leaflets? To make a point,
7	a propaganda point and you can ask yourselves, that is a
8	ridiculous point to the rest of the world. You heard the
9	testimony
10	MR. McKENNA: Objection.
11	THE COURT: Sustained.
12	MR. KASTRENAKES: It is not a point to make with the
13	rest of the world, it is a point to make with their own
14	people.
15	If their own people see that planes dropping
16	leaflets people inside those planes are going to be murdered
17	brutally, mercilessly and nothing happens, what people in Cuba
18	are going to stand up for their rights? Zero.
19	This was a message to their own people and he told
20	you, McKenna told you that himself through opening, they were
21	slapped, they were humiliated; absolutely. They were
22	humiliated that this guy can drop leaflets from international
23	air space and bring them into our country and nothing is going
24	to happen.
25	Everything changed after the leaflets. Was the
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I	defendant a partner in the conspiracy to shoot those planes
2	down in international air space? Absolutely. In for a penny,
3	in for a pound. Everybody has a role in a conspiracy,

4 everybody. The defendant had an important role, a role for

5 which he was recognized by his own intelligence service.

Read the documents, is Operation Escorpion -- in the

7 package Mr. McKenna showed you regarding his commemoration for

8 Operation Venicia, they asked him to check for heightened

9 security at Boca Chica Naval Air Station in that message. Why

10 would you check for heightened security at Boca Chica if

11 Venecia only involved getting Juan Pablo Roque out of the

12 country? You don't need security. Operation Venicia, just

13 like this guy is known as known as Allan, Oso, Johnny, and they

14 used names interchangeably, they changed operation names and

15 they mean the exact same thing. It is in the documents.

16 Operation Venicia is Operation Escorpion. It is the same

17 plan. Take the planes out.

He was their Man Friday. Is he capable of conspiring

19 to kill people? Absolutely. He is the guy who proposes Rene

20 Gonzalez to break into the hangar and sabotage the planes.

21 This organization is capable of murder. Operation Picada.

The link to the crime is so plain and so readily

23 apparent and. A Roman philosopher said he who profits by crime

24 commits it. Did the defendant profit by the murder of those

25 four people? Absolutely. He was promoted. He is recognized.

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1	MR. KASTRENAKES: Do I have an extra 15 minutes?
2	MR. McKENNA: Judge.
3	THE COURT: Go ahead.
4	MR. KASTRENAKES: Operation Venecia has been a
5	success. The Commander-in-chief Fidel Castro they instruct
6	people all the time. People coming in and out of Cuba all the
7	time. Fidel Castro, he is meeting with them on this
8	operation. This is a big operation. Analyze steps to be taken
9	to continue operation. He was very pleased with the job done.
10	Lorient should urgently inform of any changes at the base
11	specially reinforcements, increase in security measures and
12	state of alert. Four days after the shootdown.
13	Venecia and security go hand in hand. Why? Unless
14	they relate to the same subject matter, Operation Escorpion,
15	the shootdown of the plane.
16	Juan Pablo Roque was known as both, German, Venecia.
17	I would like to talk to you about the Cuban
18	Government's view of what happened on February 24, right here,
19	this message. You will recognize by the head of the DI for

- 20 Operation Venecia, the shoot down. It says the following.
- 21 April 1. Order. Grant recognition for the outstanding result
- 22 achieved on the job during the provocations carried out by the
- 23 government of the United States this past 24th of February,
- 24 1996.
- Venecia, 24th of February, 1996. What day was that?

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1	That was the shootdown.
2	Was this the provocations of a terrorist counter
3	revolutionary group? No. The Cuban Government doesn't say
4	that. That is lawyer talk in a courtroom five years later.
5	The Cuban Government viewed what happened on the 24th of
6	February, 1996 as a provocation by the United States of
7	America. To the comrade, Giraldo. That is defendant
8	Hernandez. To the esteemed comrade and the chiefs and officers
9	who participated in its fulfillment.
10	He who profits by crime commits it. He who performs a
11	role in a conspiracy is a co-conspirator.
12	Let's look at the evidence regarding the shootdown.
13	Capt. Johansen. This is his testimony. I submit to you he was
14	an extremely credible witness.
15	Mr. McKenna in his surprise argument and I don't fault
16	you for this but you don't read log books very well.
17	Look at the log book, folks. He pointed to a date of
18	February 17 which revealed information that in fact Capt.
19	Johansen was lying because they had been ten miles further
20	South the week before. Mr. McKenna, what you forgot to tell
21	the jury, what the longitude was because if you look at it,
22	•
23	MR. McKENNA: Objection, it is a misstatement. He

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24 plotted both the longitude and the latitude on the map.

THE COURT: Sustained.

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25

1	MR. KASTRENAKES: On February 17, at 3 o'clock, 23
2	degrees 19 minutes North, 83 degrees 12 minutes West. 3
3	o'clock.
4	Let's go to the 24th. Look at 1 o'clock on the 24th.
5	23 degrees 20 minutes North, 83 degrees 10 minutes West.
6	What is the truth? Look at the truth. Look at every
7	week. What is the truth? Johansen is two hours off schedule.
8	He is traveling on the same track. Look at the positions.
9	They all match up every week like clock work. Sure, you are
10	ten miles further South when you are 30 miles further West
11	because he is taking this track. When he is at 83 degrees off
12	this map over here, he is going to be ten miles further South.
13	If you look at the log books, folks, you will see that
14	argument for what it is, a total falsehood, a total unmitigated
15	falsehood, nothing to do except to mislead you. The only
16	difference in every week in those positions is the time,
17	whether he is two hours behind schedule or ahead of schedule.
18	That is it.
19	You will see as I have just showed you on the 24th of
20	February, he was at 23 degrees 19 minutes around 83 degrees
21	West longitude; but that was at 1 o'clock. He is making better
22	time on the 24th of February than he was on the 17th of
23	February and it is true for every Saturday. It is in the
24	
25	and February 24. Look at them, look at those times, at those

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1	positions. He takes the same track like clock work.
2	He tells you that he has these positions for the
3	shootdown. This is an estimate which is Mr. Costa's shootdown
4	location. He tells you this is the position for the second
5	shootdown which he witnessed. Was he just a witness to the
6	locations? Absolutely not. He was a witness to murder. He
7	was a compelling eye witness to murder.
8	The defense talks about other people that could have
9	been called, Oscar Montoto, other people in the Majesty of the
10	Seas.
11	As Mr. McKenna has amply demonstrated to you they have
12	no burden of proof but he absolutely has subpoena power. He
13	called a number of witnesses.
14	MR. McKENNA: Object to the shifting of the burden.
15	THE COURT: Sustained.
16	MR. KASTRENAKES: The defense has the same subpoena
17	power
18	MR. McKENNA: Objection. It is shifting
19	THE COURT: Sustained.
20	MR. KASTRENAKES: It is not
21	THE COURT: Sustained.
22	Move on Mr. Kastrenakes.
2	MR KASTRENAKES: I ook at these two locations. One of

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24 the locations is accurate another one is an estimate based on 25 the radar. He said he had a fix on the radar and he was

1	estimating the distance of the shoot done from that boat. He
2	estimated in his notes and on the stand as one to two nautical
3	miles away. It looked like it was on top. These are the
4	positions he gave for his ship and these are the extrapolations
5	he drew.
6	Now, the United States radar which was kept and
7	preserved has the positions again for the same two shoot downs
8	as noted by the experts. All within the margin of error.
9	Look how close? It looks a little further away and
10	don't forget what we learned in this trial, to measure
11	distances in nautical miles, all you need to do is take a ruler
12	and go to the positions and line them up on the sides. A
13	minute is a mile. One slash mark is one mile. One minute is
14	one mile. Look how close.
15	In rebuttal the United States says the oil slick, it
16	is right on top.
17	MR. McKENNA: I would ask the jury be instructed it is
18	a demonstrative exhibit, it is not in evidence.
19	THE COURT: It is a demonstrative exhibit.
20	Go ahead.
21	MR. KASTRENAKES: These positions are all in
22	evidence. You have written them down. They are in documents
23	that you have. Folks, you could go something commander Garcia
24	couldn't do, you could accurately plot a position. All you do
25	is take the longitude and latitude and plot the position.

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1	Look at these positions all within the margin of							
2	error.							
3	Let's talk about the Cuban positions that were							
4	submitted to you.							
5	In 1996 and George Buchner was asked this question							
6	let me talk about the Triliner, I am sorry I missed that.							
7	Mr. McKenna tells you the Triliner was so far away it							
8	couldn't be seen. We know that is not true. The MIG tape							
9	shows the Triliner was there. There is nothing to dispute that							
10	on the radar except the Triliner reported to ICAO they were 18							
11	miles away. What was the question that was asked and answered							
12	•							
13	* **							
14	when either of the events occurred. The master later estimated							
15	position for the first shootdown and the second shootdown. The							
16	positions estimated by the master would place his boat							
17	approximately 17 nautical miles East of the cruise ship. It							
18	was determined by the ICAO team while the visual							
19	observations							
20	MR. McKENNA: Objection I am sorry.							
21	MR. KASTRENAKES: The positions provided by the master							
22	of the fishing boat were not accurate.							
23	What is the simple truth here? The Triliner didn't							
24	have the GPS working. It was an estimated position.							
25	MR. McKENNA: Objection, there is no evidence of							
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1	that. No witness was called.
2	THE COURT: Sustained.
3	MR. KASTRENAKES: That is the testimony that was read
4	in this trial
5	MR. McKENNA: Objection.
6	THE COURT: Sustained.
7	MR. McKENNA: I move to strike.
8	MR. KASTRENAKES: That was the question that was
9	read.
10	THE COURT: Sustained.
11	MR. KASTRENAKES: The Cuban Government submitted
12	positions in 1996 that George Buchner testified to in his cross
13	examination again, Mr. De La Pena at this position and the
14	red for Mr. Costa.
15	You can take the measurement of these positions and
16	see that is a few miles off the Cuban coast, both of them right
17	there. What happens in 2000 is when the radar is submitted,
18	the Cuban radar? It is like night and day. There you go. Now
19	this is the new position of the De La Pena shootdown and this
20	is the new position of the Costa shootdown. I don't have a
21	ruler here but I will make a conservative guesstimate for you,
22	15 nautical miles apart for that shootdown. Totally different
23	materials.

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25 radar maps he was given. If he had four radar maps, why did he

What did George Buchner tell you, there were four

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- 1 only show us one? Does the other radar map have these other
- 2 positions? Or are they going to be saved for another rainy day
- 3 when the Cuban Government needs to have another location for
- 4 this shootdown.
- 5 Four radar maps, you see one. Hand plotted. Look at
- 6 it. Hand plotted?
- What happens? The Cuban Government -- Mr. Herrera is
- 8 not a lonely coast guard guy. He is a commander of a border
- 9 patrol ship and works for the Directorate of Intelligence as
- 10 testified to. That is what he does. He says he found this
- 11 bag --
- MR. McKENNA: Objection, I move to strike that. It is
- 13 not in the evidence.
- MR. KASTRENAKES: You are right. The Ministry of the
- 15 Interior. He worked for the Ministry of the Interior which is
- 16 over the Directorate of Intelligence.
- 23 degrees 18 minutes North, 18 degrees 22 minutes
- 18 West. The guy in 2001 does a drawing and what don't we have
- 19 here? We don't have his practice drawings outside of the
- 20 deposition where he practiced the locations of the shootdown.
- 21 It is in his affidavit. It is in evidence. He practiced the
- 22 positions of the shootdown. Isn't that amazing. Practice
- 23 makes perfect. How do we know that? Major Garcia looking at
- 24 the same radar map that George Buchner said puts this shootdown
- 25 right here and I will submit to you George Buchner can plot,

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1	that is an accurate plot. Garbage in, garbage out but that is
2	the Cuban radar they decided to put that shows this position
3	here. Commander Garcia walks in and please look at the Cuban
4	radar data, look at it closely. It is not 23 degrees 11
5	minutes North, he moves it up. It is clear as day if you look
6	at that chart of that position, it is down here, not up here.
7	Why does he back into a deposition saying I have memorized the
8	position, that is what it is.
9	Practice makes perfect. Isn't it a coincidence he
10	moves that position so the whole thing fits? Johansen was out
11	of site of the coast of Cuba. In this position here he would
12	be running aground in Havana. That is ridiculous. It is
13	absolutely ridiculous.
14	If you don't believe Captain Johansen and you don't
15	believe the U.S. radar and you don't believe the oil slick it
16	Buchner, acquit. If you believe this malarky if you believe
17	this evidence, acquit.
18	I am telling you, go back there and vote not guilty.
19	This information isn't worth the paper it was written
20	on. It is bogus. It is a lie. Adlai Stevenson said it best
21	about lies. He said lies are an abomination on to the Lord but
22	a very pleasant help in a time of trouble. Aren't they?

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24 asking you to disbelieve their stuff. I am asking you to disbelieve it because it is incredible. It is not credible

It is not because of the Cuban Government that I am

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1 evidence. It is no different than anybody else who gets caught 2 in a crime, as it does in every courtroom in this great country 3 of ours --4 MR. McKENNA: I object to that. 5 THE COURT: Sustained. MR. KASTRENAKES: When you are caught, you destroy 6 7 evidence --8 MR. McKENNA: Objection. It is so far outside of our 9 case --10 THE COURT: Sustained. 11 MR. KASTRENAKES: What did the Cuban Government do in 12 our case? That radar at Jose Marti Airport was not working? 13 The radar on the MIG 29, not working? Where did the guy find 14 the bag? Don't have it. Hand plotted positions. This 15 evidence is not worthy of belief and it is really told in the 16 end by commander Garcia when you look at the Cuban radar and 17 how he moved in obvious position from here just to here. Not a 18 mistake. To match it up with the drift that this guy did based 19 on this bogus bag recovery. Folks, the Cuban Government would like you to believe 20 21 that this pristine battery charger stayed gently inside of its 22 velcro straps as a plane was exploded. Capt. Johansen said the 23 plane was consumed in a ball of fire and this thing gently fell 24 to the water a thousand feet below and remained snugly packed

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25 in here with these maps and this velcro battery. Try it

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1	yourself. You can't even turn this bag without the battery
2	falling out. It is ridiculous. They put this kind of bogus
3	evidence here before you guys to have you guys believe this?
4	This never happened. A bag search mission. Think
5	about it. Commander Herrera, when you found the bag what did
6	you do? I went home. We are looking for survivors. You find
7	a bag and believe it is evidence from a shootdown, maybe you
8	should intensify your search, but no, this is not what this is
9	about. This is about finding a bag. It is submerged. For the
10	drift analysis it is submerged but for Herrera it is floating
11	on top.
12	MR. McKENNA: Objection, that wasn't the evidence it
13	was floating up on top.
14	THE COURT: Overruled.
15	In order to disbelieve Capt. Johansen, you have to
16	believe that at 4 o'clock when he got off his shift, he got
17	together with the RADES people, the Cudjoe Key radar, Key West,
18	everybody involved and they agreed on a location because he
19	wrote it out at 4 o'clock. You have his handwritten notes
20	preserved. Not destroyed, not brought to court, preserved.
21	Wrote it at 4 o'clock. Not the next morning. He put it into
22	the log the next morning after the Captain approved it and the
23	Captain approved that.

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He has no stake in this case. Does the Cuban

25 Government have a stake in this case? A huge one.

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1	I tell you that George Buchner was unworthy of
2	belief. He had a total lack of preparation, best exemplified
3	by the fact on direct examination, do you remember his going
4	through the MIG tape on direct examination saying when the
5	second wave of MIGs went up, read the MIG transcript. He
6	testified confirmed by Cuban radar, Basulto was still flying
7	ten miles North of Cuba at 3:40
8	MR. McKENNA: Objection. It is beyond rebuttal. I
9	didn't even go into the MIG transcript during my argument.
10	THE COURT: Overruled.
11	You are wrapping up, it has been over 20 minutes.
12	MR. KASTRENAKES: On direct examination he says in
13	his testimony and his expert opinion those planes Basulto's
14	plane after the shootdown was still there, proven by the Cuban
15	radar. Completely false. On cross examination he admitted he
16	was wrong. The oath doesn't apply to cross examination only,
17	it applies to direct. He makes it up as he goes along.
18	He had 75,000 reasons to make that stuff up, folks.
19	75,000 reasons
20	MR. McKENNA: Objection. There is no evidence he got
21	\$75,000.
22	THE COURT: Sustained.
23	MR. KASTRENAKES: You decide the motives he had to
24	come up with the incredible testimony that he did.
25	We talked about in for a penny, in for a pound and the

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1	concept that anybody who joins into a conspiracy is liable for
2	the results of that conspiracy and two defense attorneys in
3	this case referred to Pearl Harbor. I would like to discuss
4	that for a moment with you. They discussed a movie that had
5	come out and it really drives home the point.
6	In that movie and it is Hollywood, but in that movie a
7	person posing as a tourist took pictures of the battle ships in
8	battleship row. That paragraph was used by the Japanese high
9	command to give the go signal to shoot and destroy American
10	naval war ships in Pearl Harbor. Without those photographs
11	showing that those battleships were there, those planes
12	wouldn't have flown. Gerardo Hernandez played the same role.
13	He confirmed with his partners in this crime that Roque
14	MR. McKENNA: Objection. There is no evidence he
15	confirmed anything.
16	THE COURT: Overruled.
17	MR. KASTRENAKES: He was told to make sure that they
18	didn't fly on those days and it is in the evidence and
19	Ms. Miller showed it to you, the report of his expenses, the
20	meeting with both those guys that day and the day before this
21	murder occurred. He carried out their instructions
22	MR. McKENNA: Objection, no evidence of that.
23	MR. KASTRENAKES: There is a document in evidence that
24	shows he met with those people when he was able to pass that
25	message to them

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1	MR. McKENNA: Objection, there is no evidence he
2	passed anything along.
3	THE COURT: Rephrase your argument.
4	MR. KASTRENAKES: Without Gerardo Hernandez, those
5	MIGs don't go up in the air and Pearl Harbor is also a good
6	analogy because this was a sneak attack on two defenseless
7	planes who had no idea they were going to get shot down on
8	February 24, 1996.
9	THE COURT: We need to take a break.
10	MR. KASTRENAKES: I only have a minute.
11	THE COURT: Okay.
12	MR. KASTRENAKES: February 24, 1996 like December 7,
13	1941 is a day that will live in the hearts and minds of these
14	families, these four families forever destroyed. I want you to
15	remember that when you think about how long this trial has
16	lasted, from Thanksgiving to Memorial Day, a day we commemorate
17	people who have fought for our country and Thanksgiving, a day
18	we cherish to be with our families and this will never happen
19	again for these families because he with his blood promotion to
20	Captain, Captain Hernandez, according to the Cuban Government,

- 21 has earned recognition for his actions in destroying these
- 22 lives. He has earned his conviction for that recognition.
- 23 When all is said and done and when the smoke clears, you can
- 24 look at all of these defendants for what they truly are, they
- 25 are spies, bent on the destruction of the United States of

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1	America. They are conspirators, three of them in espionage and
2	Gerardo Hernandez has the blood of four people on his hands.
3	Thank you for so much of your time. I know you will
4	do the right thing.
5	THE COURT: Ladies and gentlemen, this now concludes
6	the closing arguments in this case. When you come back on
7	Monday morning, I will instruct you on the law and then you
8	will retire to the jury room, actually to a courtroom. I will
9	have a courtroom set up for you to begin your deliberations.
10	Until such time as I have instructed you on the law, you are
11	not to talk about this case. Do not discuss this matter either
12	amongst yourselves or with anyone else. Have no contact
13	whatsoever with anyone associated with the trial. Do not read,
14	listen or see anything touching on this matter in any way. If
15	anyone should try to talk to you about this case, you should
16	immediately instruct them to stop and report it to my staff.
17	Report back on Monday morning at 8:45. It will take
18	several hours to instruct you on the law and I want to make
19	sure that you have time to begin your deliberations so you need
20	to make arrangements to be here for a good part of the day on
21	Monday.
22	I know one of your members has a conflict on
23	Wednesday, a child who is graduating some kindergarten and you

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will be able to set your time after Monday what hours you want to deliberate. If you tell me you want to deliberate from 8:45

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1 to 1:45 like the trial schedule, I will respect that decision 2 by the jury. If you want to deliberate all morning and 3 afternoon, it will be up to you, but I know one of your members 4 has a conflict Wednesday morning and I am sure you will work 5 out an accommodation as we have worked out commissions for 6 members of the jury on so many days during this lengthy trial. Have a nice weekend and I will see you Monday morning 7 8 at 8:45. 9 (Jury leaves room.) THE COURT: We have to take a break for a few minutes 10 11 while Richard gets another diskette. Is there anything further? 12 13 MR. MENDEZ: Yes, I have a motion. 14 THE COURT: We will be in recess until 3 o'clock. 15 (Therefore a brief recess was taken, after which the 16 following proceedings were had.) 17 18 (Open court. Jury not present.) THE COURT: We are back on United States of America 19 20 versus Gerardo Hernandez, et al., Case Number 98-721. Counsel state their appearances. 21 (All parties present.) 22 THE COURT: All the defendants are present as are the 23 24 interpreters. 25 Now that we have finished all the closing arguments,

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1	Mr. Mendez?
2	MR. MENDEZ: Your Honor, I am of course extremely
3	reluctant to make this motion after six or seven months of
4	trial but I don't think I have a choice.
5	During the course of this trial and we have had time
6	to cool off but I am still a little upset. During the course
7	of this trial we have had a number of instances the government
8	has disregarded and I would say disrespected the Court's rules
9	and in no area has this been more pronounced than in the
10	persistent attempt by the government to suggest, indeed to
11	quite transparently state, my client was doing something
12	improper, illegal, in connection with some of the military
13	installations in the Fayetteville, North Carolina area.
14	We have had a number of instances during the course of
15	trial in which such accusations were made. Finally, on
16	February 16 when Mr. Kastrenakes attempted to introduce a map
17	of Fayetteville which quite prominently displayed the military
18	bases in the area, Your Honor granted my objection, reminded
19	the government of my motion in limine not to include any
20	improper references to any connection between Mr. Campa's stay
21	in that area and the military installations. At the conclusion
22	of that day, Your Honor told us that there was no evidence to
23	support any connection between Mr. Gonzalez' stay at North
24	Carolina and those bases and "I will order the government not

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25 to bring up in closing arguments in connection, and I don't

1	believe Mr. Kastrenakes or anybody else would do so."
2	Your Honor also said, "I will order the government not
3	to present any further evidence concerning a connection between
4	Mr. Gonzalez' stay in Fayetteville and the military bases in
5	the area unless you have and can proffer concrete evidence that
6	there is a connection between his presence in Fayetteville and
7	the military bases that were there and it is not to be brought
8	up in closing argument as I have ordered before."
9	There was a certain amount of wishful thinking and
10	believing given all those warnings and orders it would not be
11	brought up in closing argument, but that proved to be just
12	that, wishful thinking.
13	A few weeks later, Mr. Buckner in his cross
14	examination of a defense witness again alluded to that
15	connection and the Court will recall that Your Honor gave the
16	jury an instruction that told them that, "contrary to the
17	Court's rules, the government has suggested Mr. Campa's
18	presence in North Carolina was related a military
19	installation. This was improper. I therefore instruct you to
20	completely disregard the government's suggestion." That is at
21	page 8373 on March 7, 2001.
22	I don't know what else the Court can possibly do to
23	insure the government's compliance with this Court's
24	directives. Motions in limine have been granted, objections
25	have been sustained, admonitions not to bring it up in closing

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1	have b	een	given;	an	instruction	to	the	jury	ad	moı	nis	hing	,
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- 2 condemning the government for its improper suggestions and
- 3 innuendo my client is somehow involved in espionage in
- 4 Fayetteville.

5

- I don't know what is left. I have to move for a
- 6 mistrial and I am extremely reluctant to do that because we
- 7 have been in trial so long and nobody wants to start over and I
- 8 might say, there is an alternative request and the mistrial I
- 9 am asking for is with prejudice, because I think we have seen,
- 10 for example in the government's petition to the Court of
- 11 Appeals where they quite candidly state given the Court's rules
- 12 or at least preliminary rules on the jury instructions, they
- 13 did not believe they could convict my client of lawfully being
- 14 a foreign agent in the United States; so I have to argue that
- 15 this deliberate, willful, flagrant, repeated violation of the
- 16 Court's instructions that they desist from suggesting that my
- 17 client was conducting espionage at military bases in
- 18 Fayetteville, warrants a dismissal with prejudice.
- I am sure the Court anticipated this argument and
- 20 maybe had an opportunity to review the argument. Of course I
- 21 don't have the argument that Mr. Kastrenakes made, but as I
- 22 recall, it wasn't just a vague reference to where Mr. Campa
- 23 lived. I let that go because arguably he was an agent during
- 24 that period of time and he lived in Fayetteville during that
- 25 period of time, but they went much further than that.

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	1	Mr.	Kastrenakes	as I recall	said sometl	hing like	this to the	he
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- 2 jury. The defendants argue that they were only here to keep an
- 3 eye on Cuban exile groups. Well the truth is they were here
- 4 looking at military installations and then he turned to
- 5 Mr. Guerrero, isn't that true, what were you doing in Boca
- 6 Chica, in Key West and he turned to Mr. Gonzalez and what were
- 7 you doing in Fayetteville.
- 8 That is the context in which the suggestion was made
- 9 which I think is more than a suggestion, it is a transparent
- 10 allegation that my client like Mr. Guerrero who is charged with
- 11 conspiracy to commit espionage was connected with penetrating
- 12 military installations in Fayetteville.
- 13 It wasn't brought up in the government's initial
- 14 closing or in my response and it was only brought up in
- 15 rebuttal when I didn't have a chance to say anything about it.
- 16 It is in violation of the Court's order. The most severe
- 17 sanction the Court can impose is warranted and I do believe a
- 18 mistrial with prejudice is required, or in the alternative, if
- 19 the Court is unwilling to do that because it is a drastic step,
- 20 that we need some instruction that even further drives the
- 21 point home that it is absolutely improper you cannot attempt to
- 22 convict my client by smearing him with innuendo and improper
- 23 suggestions ruled upon by the Court time and time again.
- MR. KASTRENAKES: I guess that is directed at me.
- 25 My comments concerning Mr. John Doe Number 3's

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- 1 presence in Fayetteville were based on the admitted evidence
- 2 and Agent Berlingeri and the driver's licenses that were
- 3 introduced and they were offered to refute his claim, which is
- 4 what they were admitted for, which you recall which Agent
- 5 Berlingeri testified to in 1993 -- through Agent Giannotti, in
- 6 1993 when the messages are coming through concerning DG 108
- 7 concerning the actions of the exile groups, that the defendant
- 8 was in Fayetteville, North Carolina and the argument posited by
- 9 counsel to the jury was, he was brought to South Florida to
- 10 fight exile groups. That is fair rebuttal to that argument.
- 11 He was not brought to Florida to fight exile groups. He was in
- 12 San Francisco in 1988 and in 1993 he went to Fayetteville,
- 13 North Carolina where we know from the evidence in the record he
- 14 was there for two straight years and stayed there until 1998
- 15 which completely refutes the argument he is here in South
- 16 Florida fighting exile groups and that he is temporary.
- 17 Those two bases, Your Honor -- it was never brought up
- 18 in the context of espionage at all. I was careful concerning
- 19 espionage with regard to the defendants charged with that count
- 20 and discussing their presence on certain military bases which
- 21 is in the record. I avoided Fort Bragg. That is the issue
- 22 that got the Court concerned and it was only brought up in the
- 23 context of the admitted evidence with respect to the arguments
- 24 posted by counsel that he is here temporarily and he is here in
- 25 South Florida for exile groups.

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	THE COURT OF THE STATE OF THE S				
1	THE COURT: The statements made by Mr. Kastrenakes,				
2	reading from the realtime, the defendants regarding the foreign				
3	agents count, they were here for a good reason. That is a				
4	fallacy. The reason we need to be here is to keep an eye on				
5	the Cuban exile groups. Let's ask, why are you on military				
6	bases? Why are you in Key West Florida at Boca Chica Naval Air				
7	Station? Why are you in North Carolina? At which point				
8	Mr. Mendez stated he had an objection and a motion and I				
9	sustained the objection.				
10	MR. KASTRENAKES: With respect to military bases, I				
11	was not pointing at John Doe Number 3.				
12	MR. MENDEZ: Yes, he did.				
13	MR. KASTRENAKES: That is completely false. The Court				
14	knows that.				
15	THE COURT: I think what he did was turn towards the				
16	defendants, generally.				
17	I am going to deny the motion for a mistrial. I have				
18	already instructed the jury as to any improper suggestion				
19	regarding Fort Bragg and Fayetteville, North Carolina. These				
20	were three separate questions, why are you on military bases,				
21	why are you on Key West, why are you in North Carolina, in				
22	answer to the defense as alleged by the government in their				
23					
24	While I think it is a close question, I do not find				
25	the statement, why are you in Fayetteville North Carolina				

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1	directly	relates	to the	the qu	estion	why are	you in

- 2 Fayetteville, North Carolina, does not relate directly, why are
- 3 you on military bases. They were three separate questions and
- 4 while I understand your concern, Mr. Mendez, based upon the
- 5 past conduct of the government, I do not find that those
- 6 statements in a closing argument context were improper or
- 7 reference an improper inference. They were questions in
- 8 response to they were here to keep an eye on Cuban exile
- 9 groups. The inference being here, Miami is where the Cuban
- 10 exile groups are, and they were also in other places; so the
- 11 defense fails. That is the inference.
- MR. MENDEZ: It is just the reference to military
- 13 bases in the plural, Your Honor. If he had said why are you on
- 14 a military base, Mr. Guerrero in Boca Chica and Key West but
- 15 why are you on military bases in general and beginning with
- 16 Mr. Guerrero and in rapid succession turn to my client, you
- 17 Mr. Campa in North Carolina. That is why it is transparently a
- 18 reference to a connection.
- 19 THE COURT: I think it is close. I don't disagree
- 20 with your concern. I think it is close as far as the inference
- 21 and one of the reasons it is close is because it is on military
- 22 bases, but there are other military bases that were presented
- 23 in the government's evidence, Southcom, although that is not
- 24 directly referenced, but in a closing argument context and
- 25 given the instruction that the Court has already given to the

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1	jury regarding Fayetteville and any military bases there, I do
2	not find it warrants the granting of a mistrial with or without
3	prejudice; so I will deny the motion for a mistrial.
4	MR. KASTRENAKES: What time do we come back for
5	instructions on Monday?
6	THE COURT: 8:45 on Monday.
7	Everybody has gotten their copy of the instructions?
8	Each juror will be given a copy of the instructions and you
9	have also seen the verdict forms.
10	MR. McKENNA: I didn't get a copy but I can get it on
11	Monday.
12	THE COURT: It may have been handed out while you were
13	arguing.
14	Richard is giving you his.
15	There were some additional typos that came in
16	yesterday afternoon in which Mr. McKenna was covering for you.
17	If you want to see exactly what the typos are, I have them
18	flagged. They were singular rather than plural and a comma,
19	the striking of let me go through it with you so you will
20	know.
21	Page 18, there is a comma in the second paragraph, the
22	third line up from the bottom after, that is, communicating,
23	comma. That should be in the convinow received today.

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Page 19, the first paragraph as charged in the

25 indictment, semicolon and in the second element, the "and" was

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1	taken out since there are more than three elements.
2	Page 23 relates to the Title 18 1111 charge. The
3	first element that the victims named in the indictment are
4	dead. The second element, victims again is made plural and as
5	charged is stricken.
6	There was one more page 28. This is the instruction
7	on Counts 5, 8 and 12, violation of Title 181028. On page 28.
8	The term "is" was stricken, so it is the term "in or affecting
9	interstate or foreign commerce," and in such a minimal is
10	stricken and the second line from the bottom of that paragraph,
11	the defendant rather than the defendants.
12	There was some other argument regarding the Count 3
13	instruction that was denied by the Court, but it only relates
14	to defendant Hernandez so I need not review that with you.
15	You now have a copy of the instructions?
16	MR. McKENNA: Yes.
17	THE COURT: The jury will be getting a copy of the
18	instructions.
19	After we broke at 2:35, one of the jurors mentioned to
20	Larry they have a doctor's appointment at 3:15, but I said he
21	could be accommodated, on Monday. I expect they will probably
22	begin deliberating by about 11, maybe a little bit before. I
23	don't know how long it will take me to read them, but I think
24	it will take an hour and a half to two hours. I wanted them to

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25 get started and I have made arrangements for a courtroom on

1	another floor so they can have the evidence with them in a
2	courtroom which we will make sure does not have any
3	dictionaries or books in it and they could utilize the
4	courtroom.
5	MR. BLUMENFELD: You are going to charge here?
6	THE COURT: Yes. Then they will go to the floor and
7	no one will be allowed on the floor.
8	MR. BLUMENFELD: You are going to ask them at some
9	point what hours they want to deliberately?
10	THE COURT: On Monday they will probably deliberate to
11	somewhere around 2:30 because of the conflict one of the jurors
12	has and I will order lunch in for them. When we break on
13	Monday I will bring them in, give them their instruction. I do
14	not normally see jurors before they start deliberating in the
15	morning. I give them a very strong instruction when they leave
16	in the evening they can't start until all their members are
17	present and there signal when they can begin is when Lisa and
18	Larry bring to them the instruction pack and the evidence and
19	next week they will be led into the courtroom. It is more than
20	likely they will go to the floor they are deliberating on and
21	when they are brought into the courtroom that is when they
22	begin deliberating and I see them whenever they recess and I do
23	allow juries to make their own schedule

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25 announce we wants to deliberate until 1:45 or whatever?

MR. BLUMENFELD: They will come back on Monday and

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1	THE COURT: Yes. I have had a number of juries that
2	tell me they would like that schedule. That is the schedule
3	they are used TO and I will allow them to deliberate during
4	those hours.
5	As you heard me tell them in my closing instructions
6	to them, one of the jurors' child is graduating from
7	kindergarten. She wrote a letter to me requesting an
8	accommodation not to start until noon and at that point it is
9	in their hands and I am sure they will make that accommodation
10	to her.
11	MR. BLUMENFELD: How long a leash will we have?
12	THE COURT: Ten minutes, 10 to 15 minutes. Not too
13	long a leash.
14	MR. KASTRENAKES: I have actually two requests. One
15	is a personal one if I could take it up at side bar. The one
16	relating to the case, given the length of the trial and the
17	
18	suggest to the Court instead of discharging the alternates I
19	• 1
20	, 1
21	alternates. I tell them they can't discuss the case with
22	anyone else or amongst themselves just in case they are called
23	•
24	They need to leave all their numbers with Lisa. I don't
25	totally release them until deliberations are concluded.

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1	MR. KASTRENAKES: You give them basically the same
2	charge that you give to every juror when they go home?
3	THE COURT: Correct.
4	MR. KASTRENAKES: I wanted to make sure God forbid
5	something happens to one of them
6	THE COURT: Right. I conditionally release them.
7	Actually I did call back an alternate once. A woman
8	walked into the jury room. She immediately walked in and said
9	I am not deliberating. Before deliberations even began, she
10	said I am not deliberating. We had a hearing and at the time
11	the hearing started, I think it was Larry who ran downstairs
12	and got the first alternate. I brought them back in and
13	reinstructed them just in case. That is the only time. That
14	is normally what I do is conditionally release them.
15	MR. KASTRENAKES: The other matter?
16	THE COURT: Come up, please.
17	(Side bar.)
18	MR. KASTRENAKES: There is a possibility I won't be
19	able to be here. I have a prepaid vacation to Greece and I am
20	leaving a week from Monday, but if things happen after the end
21	of next week, I won't be here. I wanted permission from the
22	Court to be excused.
23	THE COURT: I am a little liberal with the ten minutes
24	as long as it doesn't get out of hand. If it is 15 minutes
25	okay, but your office can't be in Dadeland and it will take you

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1 25 minutes to get here. 2 I also had the experience sometimes with a question, 3 if you don't get to it right away they resolve it; so it is 4 about 10 or 15 minutes. MR. BLUMENFELD: I have a couple of medical things. I 5 6 will play it by ear. On the 18th I have been called for jury 7 duty. 8 THE COURT: We have some time. They have been here 9 for almost seven months. MR. McKENNA: I have my cruise coming up on the 10 11 Majesty of the Seas the 15th. MR. HOROWITZ: My son is graduating from kindergarten 12 13 also on Wednesday, Wednesday night. THE COURT: I don't think they will want to be here. 14 15 I really expect them to deliberate the same hours. 16 MR. HOROWITZ: I also have this problem across the 17 street. I had a 2:30 with them. It is only to pick a jury. 18 THE COURT: It is within ten minutes. MS. MILLER: The exhibits will go back immediately 19 20 when they start deliberations? I don't know if counsel want some time to look at the exhibits as they are organized. 21 THE COURT: You may want to do that now.

MR. McKENNA: We could do it on Monday. Let's get all

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THE COURT: That is fine.

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24 our evidence together.

22

23

1	I didn't want to announce it in open court, but I
2	believe I think it is Judge Nesbitt's courtroom, the third
3	floor, I believe. I am drawing a blank. It may be the fourth
4	floor and nobody will be allowed on the floor and they will
5	have the courtroom and the jury room there. The problem with
6	that, I have the best equipped jury room in the building so the
7	jurors get very unhappy not having all the amenities that I
8	have, but I try and accommodate them with that, we will pop the
9	popcorn for them, the refrigerator, but I have had
10	complaints maybe they start to appreciate me, I don't know.
11	MR. KASTRENAKES: Were you still thinking about an
12	exhibit list?
13	MS. MILLER: On Monday we will have our exhibit list.
14	I have asked Ms. Salomon to go ahead and make copies for
15	counsel.
16	THE COURT: Great. You could all look at it and go
17	through it as you organize the the evidence. It will take them
18	some time. They will have a big adjustment. I have been
19	watching them in the last couple of days as they have been
20	sobering as to their responsibility and it will take them a
21	little bit of time to switch gears which is good, because
22	Monday will be jury instruction as opposed to argument and they
23	will the weekend to think about the shift in their
24	responsibilities, but they will need some time to pick a
25	foreperson and determine how they want to proceed. During that

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1	time period y	ou could go through the exhibits.		
2	Have a nice weekend.			
3				
4		000		
5				
6	I certify	that the foregoing is a correct		
7	•	from the record of proceedings in the		
8	-	tled matter.		
9				
10				
11				
12	Date	Official Court Reporter		
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