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Juror: Disks made spy case easy

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Deliberating last week on the fates of five Cuban spies, juror David G. Buker glanced through thousands of pages of secret documents seized from the defendants' apartments on coded computer disks and wondered, "Why did they keep this stuff?"

"I don't know what they were thinking," Buker said Monday, "but I'm happy for the people of the United States that they did!"

In the first interview with a juror from the six-month spying trial, Buker, 45, said the secret documents were the prosecution's best evidence; that the lead defense lawyer "insulted our intelligence" with parts of his case; and that the government was "darn right" in prosecuting spymaster Gerardo Hernández for murder conspiracy in connection with the 1996 Brothers to the Rescue shoot-down that claimed four lives.

Buker is computer systems manager of the South Florida Natural Resources Center, the science wing of Everglades National Park. He and his 11 fellow jurors convicted the five men on all charges Friday. Three of the spies face a maximum of life in prison when they are sentenced in the fall. Two face 10-year maximum terms.

Deciding the case was made easier, Buker said, because of the secret documents. More than 2,000 pages of communications between Havana and Miami were on coded disks seized by the FBI.

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"It wasn't the complete case, but it was damaging," he said. "There wasn't much the defense could say about them. They were found in their apartments, and they said a lot of damaging things."

To make their deliberations easier, the jurors started last Monday with the 20 counts at the end of the indictment charging the spies with acting as unregistered foreign agents and possessing fraudulent documents. Then, they came back to the three conspiracy charges, Buker said.

"The fact that we'd already gone through and found them guilty of those individual [foreign agent] counts formed the basis of then looking at the conspiracy aspects," he said.

"We were very deliberate and methodical in going through each count" and reviewing the judge's instructions. The 20 individual counts took until Wednesday afternoon to resolve, with more agreement than not from the outset, Buker said.

The unregistered foreign agent charges "pretty much were very clear," he said. "They were hiding the fact that they were representatives of the Cuban government."

Defense arguments that the spies didn't have to register with the attorney general because they were sent to Miami for temporary assignments "didn't wash with anybody," Buker said.

As for the fraudulent documents, they were there for jurors to see.

Late Wednesday afternoon the jurors started deliberating on Count 1, conspiracy to act as unregistered foreign agents, and Count 2, conspiracy to commit espionage. They started on Count 3 -- the controversial murder conspiracy -- by about noon Thursday, reaching a final verdict late Friday afternoon.

The key to the espionage conviction was that the indictment charged a conspiracy, not actual espionage, Buker said. That meant it didn't matter whether the spies were successful in obtaining U.S. national defense secrets -- only that they had tried.

"Contrary to what the defense said, it was very clear in the documents that they were being urged to get as much as they could, secret information included, whatever way they could do it," Buker said.

Nor did jurors buy defense arguments that spying on U.S. military installations and exile groups was justified to protect Cuba from a possible invasion or terrorist bombings.

"We totally rejected that because what they were trying to do was damaging to the United States and helpful to Cuba. We also found that argument irrelevant because there's no exemption in the law" that allows spies to conspire to commit espionage "for a good cause."

Count 3, the murder conspiracy, nearly ended in a deadlock with one or two holdouts, according to an

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alternate juror who spoke to The Herald on Sunday.

Buker declined to comment in detail on the deliberations.

But he did say that the "primary issue" was whether prosecutors had proved that Hernández knew in advance that Cuba planned to shoot down the Brothers planes.

"There were various different pieces of evidence that different people found compelling and so it wasn't necessarily one thing that answered that question in everyone's mind," he said.

Most compelling for Buker were shortwave radio messages between Havana and Cuba warning that spies René González and Juan Pablo Roque should not fly with Brothers for several days in February 1996 -- including the day of the shoot-down.

"To me, those messages not to fly on those days only meant one thing: They were going to shoot down the planes," he said, adding that other evidence showed Hernández had passed along those warnings to the two men.

Buker said the jurors all agreed, despite defense lawyer Paul McKenna's arguments, that the air attack occurred in international airspace.

Much of McKenna's case "insulted our intelligence," Buker said, especially when McKenna argued that a blurry object seen from Brothers founder José Basulto's Cessna immediately before the shoot-down was a Cuban MiG flying a warning pass, and when McKenna used Cuban radar data to try to put the attack in Cuban airspace.

"I don't know whether Mr. McKenna totally misjudged this jury or what, but I would have to say this was not a jury that could be easily fooled," Buker said.

McKenna could not be reached for comment Monday.

To those who questioned whether the jury would convict because it had no Cuban Americans, Buker said: "We're humans, we care about our country. I'm absolutely convinced that good people of any race, ethnicity or nationality can evaluate information. I wouldn't have convicted anybody just because they were Cuban Communists, if that's the implication, and I have to hope Cuban Americans wouldn't have either."



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