

Hispanic jurors called key to Castro foes' fate

The high-stakes weapons case against two anti-Castro activists will likely boil down to who sits on the federal jury in the Fort Lauderdale trial set for next week.

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When two anti-Castro activists were arrested on weapons charges in Miami, federal prosecutors filed the indictment in Fort Lauderdale -- seen as an "insult" by the pair's supporters.

The legal team for Santiago Alvarez and Osvaldo Mitat tried in vain to move the case back to Miami, arguing it was the only way the Cuban exiles could get a fair jury trial.

As the Sept. 12 trial approaches, their attorneys have come up with a new tactic: Allow Miami-Dade residents to sit alongside Broward residents in the jury pool so that some Cuban Americans might be selected.

It's legal, but it may be a long shot.

And it points to the sensitive issue of choosing jurors in the bordering counties for federal trials in which race or ethnicity can make the difference between a verdict of guilt or innocence.

A longtime jury consultant said the stakes over who sits on the 12-person jury couldn't be higher. Both Miami men, 64, face up to 20 years in prison if convicted -- though there's an outside chance they might cut plea deals at the last minute for far lesser sentences.

"The question is, are these guys terrorists or heroes? In Miami-Dade, they're going to be viewed as heroes," said Amy Singer, a South Florida psychologist who heads Trial Consultants, Inc.

DIFFERENT VIEWS

"In Miami-Dade, the defendants have a good chance of being found not guilty," she said. ``In Fort Lauderdale, the jury might actually listen to the facts of the

case. There are a lot of Hispanics in Fort Lauderdale, but it's still heavily Anglo. There's more of an anti-bilingual, anti-Hispanic flavor in Fort Lauderdale."

Prosecutors flatly oppose the defense proposal, saying it's an attempt to get around the judge's earlier decision to deny moving the case to Miami. Their plan "is not constitutionally sound, fundamentally fair, or consistent with the Southern District's random jury selection plan," prosecutors Jacqueline Arango and Randy Hummel wrote in court papers.

Now, the divisive issue must be answered by presiding U.S. District Judge James Cohn.

Normally, federal jurors are selected from the immediate area where a crime was charged, but a judge can make an exception in a large regional district such as South Florida to protect a defendant's right to a fair trial by a jury of his peers.

It's so rare, however, that lawyers for Alvarez and Mitat cited a case in Tennessee to make their point.

Their attorneys argue that the strikingly different demographics between Miami-Dade and Broward counties should compel Cohn to allow a two-county jury.

Citing 2004 Census Bureau numbers, about one out of three prospective jurors are likely to be Cuban American in Miami-Dade. The number rises to one out of 25 in Broward, according to an analysis by Florida International University professor Kevin Hill.

In court papers, the defendants' lawyers Kendall Coffey and Ben Kuehne wrote: "With Broward's noticeable absence of a sizable Cuban-American population, drawing from a jury [pool] that includes Miami-Dade jurors will promote a fair trial and ensure the jury is appropriately reflective of the community."

Last December, Alvarez and Mitat pleaded not guilty to weapons charges -- including illegal possession of machine guns, rifles and silencers with obliterated serial numbers -- in a Miami federal court.

Chanting "*¡Libertad!*" on the Miami courthouse steps, dozens of the men's supporters denounced their prosecution in Fort Lauderdale, where a grand jury indicted them on charges of storing illegal firearms in a Broward apartment complex that belonged to Alvarez, a wealthy developer.

U.S. government agents first learned about Alvarez in May 2005 when he helped Cuban exile militant Luis Posada Carriles emerge from hiding before his arrest for entering the country illegally. Posada is still in federal custody in Texas.

The charges filed against Alvarez and Mitat are unrelated to Posada's past anti-Castro activities, but prosecutors plan to introduce trial evidence showing Alvarez and Mitat ``have been involved in planning and staging insurgent paramilitary operations against Cuba."

Their supporters argue that the two men should be tried in Miami federal court. They say U.S. agents arrested the men in Miami and seized almost all of the nine firearms cited in the indictment in Miami-Dade. A government informant identified as Gilberto Abascal allegedly transported the weapons from the Broward apartment complex to Mitat in Miami. The supporters claim Abascal is a spy for the Castro government and the FBI.

`AN INSULT'

"The reason why they are taking this case outside Miami is because they don't want our community to be able to render justice," said Francisco "Pepe" Hernandez, president of the Cuban American National Foundation. ``To me and the rest of the community -- not just the Cuban community -- this is an insult."

Hernandez also said the U.S. attorney's office is trying to appear tough on Alvarez and Mitat because the Bush administration doesn't want the exile community to be involved in Cuba's internal affairs. He added that since President Bush and Gov. Jeb Bush are not up for reelection, the U.S. attorney's office is ignoring the Cuban exile community's stand on the weapons case because the Bush brothers don't need its political support this year.

During an interview last fall, U.S. Attorney R. Alexander Acosta said his office, as always, was taking an "apolitical" approach to the case, stressing that the seized weaponry was extremely dangerous and initially stashed in Broward.

On Friday, Acosta, of Cuban descent, declined to comment further.

The U.S. attorney's office has straddled this legal fault line before. In 2000, prosecutors blocked a bid by attorneys for five Cubans charged with spying for Castro's government to have their case moved outside of Miami-Dade. The

defense argued that the men could not receive a fair trial because of anti-Castro sentiment and pretrial publicity.

But last month, an appellate court in Atlanta ruled that these issues did not compromise their right to a fair jury trial in Miami.

"Miami-Dade County is a widely diverse, multiracial community of more than two million people," the 11th U.S. Circuit Court of Appeals said in a 10-2 decision. ``Nothing in the trial record suggests that 12 fair and impartial jurors could not be assembled by the trial judge to try the defendants impartially and fairly."

Acosta said his office was "gratified" with the ruling, citing U.S. District Judge Joan Lenard's impaneling of an unbiased jury. That jury did not include any Cuban Americans.

Yet in a separate civil case in 2002, prosecutors took the opposite approach. They sought to move the civil rights trial of a Hispanic immigration agent out of Miami-Dade because of antigovernment sentiment that was still spilling over from the U.S. seizure of Cuban boy Elián González from his Miami relatives in 2000.

The U.S. attorney's office asked a Miami federal judge to relocate the trial of agent Ricardo Ramirez, saying the government couldn't get a "fair trial" in Miami-Dade. Ramirez, who participated in the seizure, had claimed that the government discriminated against him after he publicly stated his concerns about anti-Cuban bias at the immigration agency.

U.S. District Judge Paul Huck granted the request to move the case outside South Florida, but it was settled before trial.