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Ex-Agent's Lawyer Calls Spy Charge Faulty

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LOS ANGELES, Oct. 16 — The defense for Richard W. Miller battled today to convince a jury that the former agent of the Federal Bureau of Investigation could not have been a spy because he had voluntarily disclosed his clandestine dealings with a Soviet émigré.

In the second day of his closing arguments in Federal District Court here, Joel Levine, a lawyer for Mr. Miller, insisted that there were too many holes in the Government's argument that Mr. Miller told the bureau about his contact last year only because he knew he was being investigated.

Mr. Miller is charged with conspiring with the Soviet émigré, Svetlana Ogorodnikov, who became his lover, to pass secret F.B.I. documents to the Soviet Union. The woman and her husband, Nikolay, pleaded guilty to espionage charges earlier and are serving prison terms.

The Government asserts that Mrs. Ogorodnikov was controlled by the K.G.B., the Soviet intelligence agency, and the defense contends that Mr. Miller was trying to infiltrate the agency.

Mr. Miller, 48 years old, a portly, bespectacled 20-year veteran of the bureau who was dismissed a few hours before his arrest last Oct. 2. He faces a possible life sentence if convicted.

Lawyer Assails Testimony

Mr. Levine sought to cast doubt on the assertion of an F.B.I. witness that Mr. Miller realized he was being observed one day in September 1984. The agent, Paul DeFlores, testified that Mr. Miller saw Mr. DeFlores watching him with Mrs. Ogorodnikov in a public park.

Mr. DeFlores, who said he was in the park by coincidence, testified that he and Mr. Miller looked at each other and that he saw Mr. Miller "raise his eyebrows" from 48 feet away.

"If Mr. Miller was wearing his

glasses, how could Mr. DeFlores see his eyebrows," Mr. Levine asked the jury. "If Mr. Miller wasn't wearing his glasses, how could he see Mr. DeFlores?"

A day later Mr. Miller went to a superior at the bureau, Bryce Christensen, and said he had been acting on a plan of his own to infiltrate the K.G.B. by using the Ogorodnikovs and that he now needed the bureau's help. Mr. Miller has contended that he was trying to become a hero.

The facts in the case could be interpreted to support either the Government's interpretation or Mr. Miller's, Mr. Levine told the jurors. But the lawyer said if they held a reasonable doubt about the Government's contention that the only reason Mr. Miller went to the bureau with his story was because he knew that he had been uncovered as a spy, then they could not convict him.

The defense lawyer described his client as an "average" man "with average weaknesses" who never belonged in the F.B.I. "He was a shoe that never fit," Mr. Levine said.

Despite Mr. Miller's failings, Mr. Levine said, he had the spirit to make an underdog's long-shot bid at glory, in the style of American movie heroes. Mr. Miller was "not as cute as Eddie Murphy" or "as macho as Clint Eastwood," but "he was trying to hit a home run and he did," Mr. Levine said.

Throughout his arguments, Mr. Levine sought to persuade the jury that Mr. Miller had virtually achieved his goal of ensnaring Soviet spies but was cheated of his achievement by a bureau hierarchy that disapproved of his methods and of him.

The Government charged that Mr. Miller turned over to the Soviet Union, through Mrs. Ogorodnikov, what the prosecutor, Russell Hayman, called "the playbook of American intelligence operations worldwide." Mr. Hayman described this as the most critical of several classified documents Mr. Miller gave Mrs. Ogorodnikov for "\$50,000 in gold."

Mr. Miller was questioned for five days by bureau investigators, in grueling sessions, Mr. Levine said, adding that before they ended Mr. Miller, in a confused state, confessed. But the lawyer said he also told his questioners, "I'll sign anything." The confession was false and wrongfully obtained, Mr. Levine said.

He told the jurors that the Government had provided no evidence that Mr. Miller had passed any classified documents to Mrs. Ogorodnikov.