

Panama Report by Carlos Wesley

Prosecution has its cake and eats it too

The government does not expect the truth to derail Noriega's railroad to conviction.

Prosecutors in the federal drug trial in Miami against Gen. Manuel Antonio Noriega asked U.S. District Judge William Hoeverler to delete parts of the indictment against the Panamanian leader before turning it over to the jury. The highly unusual move came on March 10, as the government began the rebuttal phase of the trial.

The government either made no attempt to present evidence to back up those charges—having to do with alleged racketeering—or the evidence it presented, directly contradicted the accusations. More than a question of prosecutorial incompetence, it was a case of having your cake and eating it, too.

By having some of the charges deleted, the prosecution avoided the risk of having Noriega acquitted on at least some of the counts against him.

As the London *Financial Times* noted on March 6, “a rejection by the jurors in the Miami trial of all or most of the charges against General Noriega” could affect George Bush’s reelection efforts.

But, by accusing Noriega of racketeering, the government was allowed to have its witnesses testify to things about which they had no direct knowledge, under the rules of the Racketeering Influenced and Corrupt Organizations Act, (RICO). Hearsay testimony is usually forbidden by law, but is permitted in cases where racketeering is charged. Virtually every one of the bought-and-paid-for prosecution witnesses gave hearsay testimony. Most of them did not even know Noriega before the trial.

Max Mermelstein, the confessed murderer, never met Noriega. Neither did drug kingpin Carlos Lehder. U.S. Attorney Michael Sullivan, the lead prosecutor, conceded in his opening statement last Sept. 16 that “Lehder never met or spoke to Noriega.” Nonetheless, their testimony stands.

At the same time, Judge Hoeverler squelched any reference by the defense to George Bush or to the illegal U.S. drugs-for-arms Nicaraguan Contra resupply operations that Ollie North ran out of the White House. Noriega opposed those operations, and defense lawyers contend that that was one of the reasons the Panamanian leader was gone after.

On March 10, during a hearing in the judge’s chambers, Noriega said that he was claiming his rights as a prisoner of war under the Geneva Convention, and would not testify because of the muzzle imposed by Hoeverler. Dressed in his full military uniform, Noriega addressed the court in Spanish. “I am mentally and physically prepared to testify,” he said. “I have sufficient documents and sufficient mental recollection to answer any of the questions that have been raised during the months that I have been sitting here.”

But, added the Panamanian leader: “My testimony would have to be limited to not include political matters, issues of the war, of the invasion” of Panama. Thus, “I invoke my right not to testify.”

Defense attorney Frank Rubino told reporters afterward that the court imposed further restrictions through

“certain secret decisions I cannot discuss with you.”

Several of the prosecution’s key charges were proven to be lies. Claims that Noriega received a bribe from the Medellín Cartel to protect a drug lab in Panama’s jungle province of Darién, were disproven by a Central Intelligence Agency document introduced at trial and by testimony from a former officer of the Panamanian Defense Forces (PDF).

According to the testimony, Noriega ordered the lab destroyed. The bribe was paid to Maj. Julián Melo, an aide to Gen. Rubén Darío Paredes, Panama’s true drug general and a protégé of former U.S. Secretary of State Henry Kissinger.

U.S. government officials also disproved another key prosecution contention: that Noriega traveled to Cuba in 1984 to ask Fidel Castro to mediate a dispute between himself and the drug cartels. CIA official Donald Winters testified that Noriega actually undertook the trip as a favor to the United States. “We viewed this as an opportunity to bring certain things to [Castro’s] attention,” he said.

And even the heart of the government case, that Noriega was a partner of the Medellín Cartel up to 1984, was ripped apart by none other than the U.S. chief drug enforcement officer during the period in question. Francis Mullen, Drug Enforcement Agency administrator from 1981 to 1985, said there was no evidence that Noriega was ever involved in drug trafficking.

But prosecutors are not concerned that the truth has undermined their case. Though the “case against Noriega is buffeted by inconsistency,” explained the *Washington Post* last Oct. 6, “Miami juries are accustomed to convicting drug defendants and rarely worry about squaring the statements of their confederates.”