

Panama Report by Carlos Wesley

Even fabrications admissible

The judge in Noriega's trial is allowing hearsay, irrelevant testimony, and even illegally seized "evidence."

Drug Enforcement Administration agent Henry Cuervo was on the stand in the Miami trial against Panamanian Gen. Manuel Noriega on Nov. 7. The American DEA agent was testifying about the circumstances under which the U.S. government claims to have obtained a letter reputedly sent to Noriega by admitted drug kingpin Stephen Kalish, a prosecution witness.

The DEA officer said he broke into Noriega's house while U.S. troops were invading Panama in December 1989. He ransacked a file drawer in Noriega's study, and there conveniently lay a Spanish translation of the Kalish letter.

"Did you have a search warrant?" asked defense attorney Frank Rubino. No, admitted Cuervo. Rubino then asked the U.S. law enforcement officer: "Tell us by what authority you entered a home in Panama?"

Presiding federal district Judge William Hoeveler interrupted. The DEA agent need not answer. No matter how the letter was obtained, it was admissible as evidence because Noriega, a foreigner, is not entitled to the protection of the Fourth Amendment of the U.S. Constitution against illegal search and seizures. The judge reminded the courtroom that he had earlier ruled in favor of the prosecution on a Sixth Amendment motion brought by the defense. "The U.S. Constitution does not protect non-citizens."

There was no evidence to show that the Kalish letter was not conveniently planted in Noriega's house for the DEA to find it. For months before the opening of the Noriega trial, cop-

ies of the 16-page letter were widely distributed to the world's media. This reporter was offered a copy by a journalist, who got it from a person who claimed it was "discovered in Kalish's secret safe-deposit box in a Switzerland bank." Earlier this year, an English version of the letter was supposedly found in a safe-deposit box allegedly owned by Noriega's wife in a Panamanian bank. There was no explanation as to how it got there.

Kalish wrote the letter, from behind bars in the United States, while facing drug charges that could have netted him sentences totaling life in prison without parole, plus 285 years in jail. Noriega's attorneys contend Kalish drafted the letter in hopes of improving his value to prosecutors as a witness against Noriega, and thus his plea-bargaining position. The facts support their charges: Because of his testimony against Noriega, Kalish will be out of jail in two years, and he gets to keep some of the \$20 million he made running drugs.

Even assuming that the Panamanian general—whom the U.S. government alleges was a mastermind of a years-long, multimillion-dollar conspiracy to smuggle drugs into the U.S.; who ran the Panamanian Defense Forces, indeed, the entire Panamanian government, and who for years was chief of Panama's intelligence services—was not smart enough to destroy an incriminating document such as the Kalish letter, but kept it around for his enemies to find it, there is no evidence that Noriega ever received the letter. In any case, it significantly contradicts the

testimony presented by other prosecution witnesses against Noriega. Kalish himself admitted on the stand that "not everything in this letter is accurate."

In any case, according to Hoeveler, Noriega is not entitled to the equal protection under the law established by the Constitution, although he was arrested in Panama during an invasion ordered by the President of the U.S., exercising the authority of commander-in-chief of the U.S. Armed Forces granted by the Constitution, and although he is being tried in a U.S. federal court established under the authority of the U.S. Constitution, for allegedly violating laws passed by Congress under the authority of that same U.S. Constitution. The Fourth Amendment states: "The right of the people to be secure in their persons, homes, papers and effects against unreasonable search and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Besides the letter, the judge allowed Kalish to testify about alleged offenses for which Noriega is not being tried in Miami. Such testimony is normally deemed "irrelevant" and is forbidden by law. However, the judge did rule "irrelevant," testimony by Kalish that former President Ronald Reagan had asked Noriega to help the U.S. Contra operations against Nicaragua's Sandinista government.

Hoeveler has also repeatedly allowed the prosecution witnesses to testify about things about which they have no direct knowledge. That is normally forbidden by laws against hearsay, but, claiming that hearsay testimony is allowed in conspiracy cases, the judge has ruled it admissible in Noriega's trial.