

Drug Case Against Noriega Stalled by Web of

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MIAMI—Far from the “will-we-or-won’t-we” tension over the Persian Gulf and the disintegration of the Soviet Union, the focus of 1990’s first U.S. foreign policy crisis, sits pedaling his exercise bicycle and telephoning his mistress from a Miami jail cell.

Since Panamanian dictator Manuel Antonio Noriega surrendered to U.S. forces in Panama last January,

he and a slew of lawyers have made regular court appearances. Yet the drug case against him—the alleged activities for which he was deposed and flown to this country under cloak of night—today seems further than ever from judgment.

Presiding U.S. District Judge William M. Hoeveler has said he wants Noriega to have “a completely fair trial.” But, he conceded during a recent hearing, “it is becoming more and more difficult in this case to do that.”

Among the issues that Hoeveler has to dispose of before Noriega can be tried:

■ Who will pay Noriega’s lawyers, and where will the money come from? Chief defense counsel Frank A. Rubino says that Noriega has \$20 million, all of it frozen in foreign bank accounts. An informed U.S. official puts the figure closer to \$50 million, and the Panamanian government claims there must be at least \$300 million.

The Justice Department, which

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once asked foreign governments to freeze all of Noriega’s money, more recently sent a delegation to Switzerland to beg for millions to be unfrozen, rather than respond to ju-

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dicial queries about whether Noriega may have gotten some of his money from the U.S. government itself.

■ Has the case been tainted, as the defense charges, by the broadcast of tapes of Noriega’s attorney-client telephone calls and possible additional prosecution access to the substance of those and other conversations? “I suspect they’ll be charged with contempt,” Hoeveler said in a recent interview, referring to Cable News Network’s alleged violation of his order not to air the tapes.

■ Will the FBI seek prosecution of the man it believes to have been the source of the leaked tapes—who also happens to be one of the government’s chief witnesses against Noriega? Federal investigators, responding to Hoeveler’s order to pursue the leak “as vigorously as possible,” have already searched the home of the witness, Jose Blandon.

Blandon, who has denied leaking anything, maintained the government already has all the information on the tapes that was available to him, since it was the government that asked him to listen to the tapes in the first place.

Even Hoeveler, 67, a tall, silver-

haired ex-Marine with a Harvard law degree and a courtly manner, sometimes finds his patience with the endless pretrial wrangling wearing thin. “I feel a little like we’re in ‘Alice in Wonderland’ at this point,” he told a circumlocutory CNN attorney last month.

But judicial colleagues and other courtroom observers here believe that if anyone can untangle the complications of the Noriega case and ensure that Panama’s former “Maximum Leader” is treated fairly, it is Hoeveler.

“He is an experienced, brilliant, compassionate human being that is the quintessence of a federal judge,” said James King, the chief judge of the South District of Florida, who, like others in Miami, views Hoeveler as deeply solicitous of defendants’ rights. “He leans over backwards to do that, which I say in a complimentary sense,” King said.

Coupled with this solicitude, however, is a persistence in obtaining complete answers to questions he deems important that borders on legendary here. One U. S. official likened Hoeveler to Judge John J. Sirica of Watergate fame. “I’ve never seen Hoeveler not hold anybody’s feet to the fire,” said the official.

Hoeveler went out of his way to spend time in jail, visiting inmates and sharing meals, so that he could better understand the issues before him in a case involving prison overcrowding. As much as anything else, the recent controversies over Noriega’s assets and the CNN broadcast have been driven by Hoeveler’s concern about the rights of his most famous defendant. “That is my function,” he said, during the interview.

Under the glare of what he described as the “enormous attendant publicity” surrounding the case, in-

cluding news coverage that has sometimes portrayed Noriega in a starkly unfavorable light, Hoeveler said he is especially sensitive to the appearance of judicial fairness toward the former dictator.

The publicity, he said, “has both good and bad aspects to it—the bad being the amount of administration and time that is sometimes needed. But the good is it certainly makes us all focus on the importance of showing the system in its best light.”

Thus, when Noriega wanted to make a speech in court about his grievances, Hoeveler let him proceed. “Why not?” Hoeveler said. “He has a right to say what he would like to say. He is not before a jury. If he has some complaints, he ought to have the right to say them.”

Wearing his Panamanian general’s uniform, Noriega stood before Hoeveler and recited a list of complaints about what he called a “totally unfair and unjust system.” Yet even Noriega conceded in his speech, “The one shining light through this

legal nightmare has been your honor."

With the trial, which has been rescheduled several times, now not due at least until spring, the most intrusive of the outstanding controversies is the fate of millions of dollars being held in foreign bank accounts once controlled by Noriega.

The money was originally frozen at the request of the Justice Department, which claimed it was drug-related.

Noriega asserts that without those funds he cannot pay normal attorneys' fees. His present lawyers have so far not agreed to accept the lesser fees normally paid lawyers by the government for representing indigent clients. Hoeveler has the option of appointing other attorneys who will accept the lower fees, but has so far declined.

In an order last June, Hoeveler said the government had frozen the money "without any showing that the assets are tainted by illegal activity," and he asked it to identify all money that was drug-related. "Elementary concepts of fairness," he ruled, "suggest that no one, government or otherwise, should take and hold another's property which it has no legal right to hold."

The defense maintained in an affidavit that "at least \$17 million" of

the frozen assets "was derived from legitimate sources," and defense attorneys have claimed that at least \$11 million of this money was paid to Noriega by U.S. government agencies, for which he worked as an intelligence asset.

Rather than contesting the matter and allowing it to be taken up at an evidentiary hearing that would have permitted defense counsel Rubino to subpoena U.S. intelligence officials, the government has decided to try to unfreeze at least \$6 million of the frozen foreign accounts in Switzerland and elsewhere. The task has been complicated by the resistance of the governments involved, which want the money forfeited as ill-gotten drug gains.

The process of trying to free up the money, one U.S. official acknowledged to Hoeveler, is "rather like trying to un-ring a bell."

"We'd be on course if it weren't for the attorneys' fee problem," Hoeveler said in the interview. "Really. That's the thing that is holding us up. If we could get the lawyers paid . . . we'd be moving right along."

"I have not wanted to replace the lawyers because they have been in it so long and they have done a good job up to this point," he said. "But there will come a point where we're

going to have to make a very firm decision on it."

"It's questions like this that make this case interesting," Hoeveler said at a hearing Nov. 8, the same morning CNN broadcast a report that showed Rubino identifying a barely audible tape recording of a conversation between Noriega and his defense staff about two potential witnesses.

Rubino immediately sought a temporary restraining order prohibiting CNN from broadcasting any recordings of attorney-client conversations it may have obtained involving Noriega's telephone calls at Miami's Metropolitan Correctional Center.

After lengthy go-arounds with CNN attorneys, Hoeveler ordered that "any tapes that disclose the attorney-client information" not be broadcast until he could review them to determine whether the conversation was legally privileged.

In the interview, Hoeveler said he had been pained by the choice between Noriega's due process rights and the First Amendment rights of a network. "I think if anyone takes the trouble to check my record, you'll probably find that up to this point I have never had a case in which I have not sided with the First Amendment."

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NORIEGA, From A20

"I think we lose sight sometimes of the importance, really the history, of the Constitution," he said. "The reason for the amendments of the Bill of Rights was to protect the individual . . . and, more importantly, those among us who are most in need of protection."

The day after the Nov. 8 hearing, CNN broadcast the attorney-client conversation on the tapes in its possession despite Hoeveler's order. Its appeal of his order failed at an appeals court, and the Supreme Court subsequently refused to intervene.

Hoeveler has asked the Miami U.S. Attorney's Office to prepare a criminal complaint against CNN for

violating his order. CNN has asserted throughout that it violated no order, since the broadcast conversation, in its opinion, was not privileged.

But behind the question of whether CNN should have broadcast the tapes was the critical legal issue of who else had access Noriega's phone calls and whether prosecutors had received information gleaned from any of his conversations with his attorneys.

Hoeveler, who ordered the FBI to investigate the leak, later described himself as shocked when he first heard about the CNN tapes. "I was just not familiar with the procedures down there" at the Miami jail, he said. "I have since become more familiar. It didn't bother me so much

that their calls were recorded; what bothered me was the attorney-client calls were recorded."

Assistant U. S. Attorney Myles Malman told Hoeveler that prosecutors had not listened to, or even seen the tapes. "We don't know what they contain," he said. "The trial team has not listened to, heard or been privy to any of these tapes that involve conversations between attorney and client."

Yet prosecutors subsequently filed a motion acknowledging that the Drug Enforcement Administration had listened to the tapes and that strict procedures set up to prevent the prosecution from hearing information gleaned from attorney-client conversations were not always followed.

One outsider who said he had listened to the tapes—at government request—and had briefed a prosecutor as to their contents was Blandon, an early government witness against Noriega. The prosecutor, while acknowledging that DEA had been assisted by an unidentified “person,” declined to discuss Blandon’s assertions.

The FBI investigation requested by Hoeveler quickly focused on Blandon as the source of the leak, and on Dec. 6 five FBI agents searched his home.

But sources familiar with the investigation say there is disagreement among U.S. officials over how to proceed. “Different entities look at things from different points of view,” said one.

Rubino has claimed publicly that officials in Panama—which wants Noriega eventually returned there to stand trial on various charges—must have leaked the tapes for unknown reasons. There have been published reports that senior Panamanian officials heard the tapes, but no official confirmation.

Whether Blandon’s version of events turns out to be true or he becomes seriously discredited, his story now poses further problems for the case. According to some legal experts, the government could be faulted for allowing one of its witnesses against Noriega to listen to conversations that might taint his own testimony.

If Blandon is called as a government witness, defense attorneys

could question him as to his claims that he briefed a prosecutor on the contents of attorney-client calls. If the government drops him from its case, the defense could call Blandon itself.

Whatever happens in the seemingly unending Noriega saga over the next several months, Hoeveler said his own purpose is clear. The state has the right to charge someone with a crime and to gather and present evidence. The defendant, however, also has rights. “I propose to protect them any way I can do so properly under the law,” Hoeveler said at a hearing. “And that’s what we’re here about.”

Staff news aide Benjamin Abramson contributed to this report.