LaRouche trial at impasse, as FBI refuses to declassify documents

by Our Special Correspondent

"You will recall, back in July of last year," said presidential candidate Lyndon H. LaRouche, Jr. during a press conference held in Boston March 31, "when the indictment of me was being celebrated here in Boston by the press and others, I said that you would find that this case was also the Oliver North case, and that before long his role in this case would become dominant. That, in effect, you can forget the credit card and conspiracy theories; those were just manufactured charges which are falling apart.

"The real case is the effort of a section, a faction of the U.S. government and forces associated with this faction . . . to deal with me and my associates because they wished to be rid of me politically," the candidate added to the unusually attentive press corps. "You've seen that my credibility on that point is extremely high. Mr. North is now in the center of the Boston case. I think the jury is probably by now—I'm just guessing, of course—forgetting about credit cards, and is interested in knowing what Oliver North is doing in the middle of their case."

As LaRouche spoke, federal Judge Robert Keeton was telling the defense lawyers and prosecution in the Boston courtroom that the jury trial of Lyndon LaRouche and associates, which had already been interrupted for hearings on government misconduct, would now be further interrupted for hearings on the FBI's refusal to declassify files which the judge has ruled should be given to the defense. Judge Keeton said that it was "almost inevitable" that he would have to hold lengthy hearings during the first week of April under the Classified Information Procedures Act (CIPA).

Thus, the major subject of the government's trial against LaRouche and his associates, has indeed become the intelligence community's political operations against the defendants, and the government's misconduct and malfeasance in refusing to disclose those operations to the defense. Even more intriguing is the fact that the court has already received numerous pieces of direct evidence that the political apparatus which ran Ollie North's operations, going all the way up to Vice President George Bush, was intimately involved in the intelligence community dirty tricks.

The potential penalty

Although the LaRouche trial has continually been interrupted by hearings on the government's withholding of relevant documents from the defense, on March 25 the issue finally came to a head. On that day, Assistant U.S. Attorney John Markham was forced to concede that he had violated both his agreement to provide pre-trial materials to the defense, and his legal obligation to provide exculpatory evidence to defense lawyers.

As a result of this admission, Judge Robert Keeton issued a finding that the government had violated its obligations, and set hearings to determine the scope of the violations, responsibility for them, and to determine what remedy he should order—which could range from dismissal of the indictment to allowing the defense to make new opening statements in the middle of the trial.

So far the hearing, which began March 28, has not gone smoothly for the government. Testimony by four government agents has been contradictory at many points. Additionally, it has pointed up other aspects of government operations against LaRouche and his friends. And in the course of exploring these government operations, new, potentially exculpatory, documents have turned up, which the FBI has claimed to be "classified."

For the first time in the course of the trial, upon reviewing these classified documents, Judge Keeton has ruled that they should be disclosed to the defendants, because of their relevance and exculpatory nature. In response to this ruling, made March 30, the FBI still refused to disclose the files.

Thus, the next step is likely to be a hearing on the invocation of the Classified Information Procedures Act (CIPA), which sets up procedures for dealing with a situation in which the government refuses to declassify information relevant to a trial. The defense had originally raised the possibility of the relevance of CIPA back during pre-trial motions in the fall of 1987, given the nature of contacts between the defendants and U.S. intelligence agencies. At that point the government insisted that CIPA was not appropriate.

But now that the judge has ruled that certain classified

materials are relevant to the defense, the government has to face the CIPA issue. CIPA was enacted in 1982 to avoid the problem of "graymail"—in which a defendant in a criminal case threatens to reveal classified information if the government continues to prosecute him. Its procedures range from ordering the trial to go ahead despite this, to precluding use of certain evidence by the prosecution, to a mistrial, or full dismissal of a case altogether.

With two legitimate reasons for dismissing the case accumulated, and potentially weeks of hearings on the subject of government misconduct and cover-up ahead, some observers are beginning to wonder if the trial will ever resume. Others have also noted that many other judges would already have dismissed the case against the defendants, given the extent of the irregularities.

Contradictions and recriminations

From its inception March 28, the evidentiary hearing on government misconduct in the *U.S.A. v. The LaRouche Campaign* trial was rife with contradictions. The contradictions ranged from conflicting evaluations of FBI informant Ryan Quade Emerson, to hostile arguments over how the case should have been conducted.

The propriety of the government's use of informant Emerson was the initial subject of the hearing. It was not until the 55th day of trial that AUSA Markham gave some of the defendants the written FBI reports which showed that Emerson was working for the government when he visited the defendants' offices shortly before the Oct. 6 raid. In addition, AUSA Markham referred, in his opening statement to the jury, to notebook entries reporting what Emerson told some of the defendants, as evidence of the defendants' conspiracy to obstruct justice. In effect, the government was "planting" information which would later be used to convict the defendants, while hiding the fact that the "planter" was their own agent.

Markham's official position has been that Emerson was not acting as an informant except for one visit to the defendants' offices in Loudoun County, Va. Government witnesses put on the stand couldn't keep their stories straight.

For example, both FBI agent Richard Egan and Loudoun County Deputy Sheriff Donald Moore testified that Emerson was "unreliable, and "not credible." Yet FBI Special Agent Angus Llewellyn, from the International Terrorism section of the Alexandria, Virginia FBI office, provided information to the court which read: "From information gained through case file, source has continually provided reliable, useful information."

Equally explosive was testimony given by Egan, who, after admitting to having arranged for the non-consensual tape-recording of an investigator for defense attorneys by Emerson and that he knew Emerson was an FBI informant, then launched into a fervid attack on AUSA Markham, for having released classified information to the defense which led to the current hearing.

Egan said that he had warned Markham not to turn over the North/Secord memo, or documents revealing the operations of private intelligence community operatives Gary Howard and Fred Lewis, to the defense. He said that he vehemently disagreed with Markham that the FBI records were exculpatory, even though they revealed an ongoing infiltration effort by the FBI and CIA! In effect, Egan was saying that the constitutional rights of the defendants to information about government operations against them should be withheld because it caused "a crisis of credibility, regarding whether what we did was improper."

Even wilder was Egan's charge that Markham had "arguably violated the law" in mistakenly releasing the Howard-Lewis document, and could be "subject to prosecution" for same. Egan then followed up by threatening a number of the defense attorneys with indictment, by charging that they had "counseled the defendants" to commit crimes.

The role of Emerson

After Egan's outbursts, however, the subject returned to the role and credibility of FBI informant Emerson. During cross-examination of Llewellyn, it was revealed that Emerson was involved in investigating an individual named Reg Slocum, who was involved with the networks of convicted arms dealer Edwin Wilson in Loudoun County, Virginia. On this subject, Llewellyn testified, Emerson was credible, since he was depending on a reliable source.

Defense attorney Daniel Alcorn followed up by asking if the source was an individual named Don Lowers, who is part-owner of a security company located in the same building as *EIR* in Leesburg, Virginia. Met with objections by Judge Keeton that the hearing couldn't be used to delve into issues of national security, Alcorn called for the invocation of CIPA, and gave a strong proffer of relevance.

Alcorn reminded the judge that Deputy Moore had already testified that Lowers and his company had been used as informants in obtaining a search warrant for the Oct. 6, 1986 raid. He then said that he had information that Lowers is in a partnership with Glenn Robinette, who had been hired by Secord and North as a counterintelligence and security expert for North and his "Enterprise."

In a stirring argument, Alcorn told the judge that the counter-terrorism section of the FBI was a "secret political police" that used the likes of Emerson and Lowers to run operations against political opponents of the Reagan administration. Alcorn said, "I am directly familiar with at least four instances where groups opposed to administration policies" were targeted by "provocations thought up by North, Secord, or their employers."

"I feel that we are dealing with a network which understands the rules of evidence," challenged Alcorn, and that this network uses its knowledge to elude evidentiary procedures. Mentioning the North, et al. record of hiding docu-

ments, Alcorn made a direct appeal to Keeton's respect for the Constitution: "You are the only one we have to whom we can appeal" to stop the coverup that the government was trying to run under the rubric of 'classification.' "

Following Alcorn's argument, Judge Keeton himself reviewed the file on Emerson which Llewellyn had with him. At that point he decided that certain elements of the file, pertaining to an "international terrorism" investigation in Loudoun County, should be released to the defense.

Confrontation

On the next day, March 31, prosecutor Markham told Judge Keeton that he had talked to the FBI, and stated the following: "Although I consider declassification urgent, they do not wish to declassify everything that Your Honor wishes to declassify." Markham told Judge Keeton that he expected that this would trigger a CIPA proceeding, and commented regarding the FBI, "Their interests are different than mine, and they're bigger than me."

On March 8, Markham had threatened to withdraw from the case over a "conflict of interest" with the FBI, which was only resolved when the FBI agreed to declassify another secret document.

Earlier on March 31, Judge Keeton reviewed still another classified file, which concerned Ryan Quade Emerson as an "asset" of the FBI's Houston office during December 1984 and January 1985. Keeton ruled that there were portions of that file which also should be released to the defendants, and ordered the government to proceed with a declassification review.

After that ruling, prosecutor Markham told Judge Keeton that, based upon the court's ruling on the Houston file, there were probably other files that the Judge would want released also. Markham said that this would be a very time-consuming process, and suggested that perhaps the government could simply stipulate that certain of the government witnesses, such as Emerson, had been government informants, or had some previous relationship to government agencies.

However, Judge Keeton responded that there was an additional problem that might be involved in the classified files. The issue of government witnesses is only one of the issues, he said. There is also the issue of legal defenses that might be used by the defendants—such as the lack of corrupt intent if they thought they were carrying out instructions from the CIA. "What if I see something in the files that supports the defendants' belief that the messages from Roy Frankhauser were actually coming from the CIA?" Keeton asked.

Where's the jury?

The end of March developments mean that there will be even further delays before the jury trial could resume in this case. In fact, during the past five weeks, the jury has heard only eight days of testimony, with the trial being interrupted repeatedly for hearings on document searches and government misconduct.

The last evidence heard by the jury was on March 24; the testimony of government witness Charles Tate was halted at that point to allow hearings on government withholding of information which is required by law to be given to the defense. Then on March 29, the testimony of FBI agent Richard Egan was interrupted to allow for the taking of testimony from FBI agent Angus Llewellyn, but when defense attorneys demanded disclosure of an FBI teletype written by Llewellyn, his testimony was then interrupted to allow for Judge Keeton to examine the documents. FBI informant and "free-lance" intelligence agent Ryan Quade Emerson then took the stand, but his examination was also interrupted as defense attorneys refused to conduct cross-examination pending further proceedings regarding declassification of FBI files.

In fact, the only one of five witnesses in the evidentiary hearing on government misconduct, who completed testimony during the first week of the hearing was Deputy Donald Moore. Moore's testimony provided an interesting glimpse as to how he applied his history as a Marine Corps "community action" specialist in Vietnam, "winning the hearts and minds of the people," to his later role as a "community relations" officer for the Sheriff's Department of Loudoun County, Virginia—home of Lyndon LaRouche and headquarters for numerous LaRouche-linked publications.

Still scheduled to go on the stand—if and when the evidentiary hearing resumes—is FBI agent Tim Klund of Alexandria. The defense has also requested testimony from AUSA John Markham and his assistant Mark Rasch. The judge has not yet decided upon this issue.

The Bush angle

As LaRouche has frequently pointed out, if the trial continues, it is likely to reach directly into the office of Vice President George Bush. Bush heads the unit which oversaw the activities of Ollie North and his crew, and, as LaRouche said, "People who are accountable to him are running the operations against me."

Defense attorneys have already announced that they wish to follow up the documents by subpoenaing North and Secord. In addition, Judge Keeton has ordered a search of the indices of the Vice President's files for material relevant to operations against LaRouche.

LaRouche concluded his press conference with the following promise: "This thing is going to blow. Exactly how, when, I don't know. But as I told you last summer, North would surface big in this case . . . so I tell you now, that if this case is not promptly dismissed, thus cutting off that line of activity, it will come out through this case or things related to it, that George Bush could not possibly be elected President of the United States. Because who wants to elect a man who's going to be sitting, trying to run the country, from inside a federal prison?"