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LaRouche scores a victory in mistrial in Boston

by Jeffrey Steinberg

The headlines said it all. From the *Boston Herald,* "LaRouche Jury Would Have Voted 'Not Guilty' "; from the *Washington Post*: "Mistrial Seen as Triumph for LaRouche"; and from the *Boston Globe*'s editorial column: "Biting Off Too Big a Trial."

After 92 days of the prosecution's case, and with no end in sight until well into the autumn, Federal District Judge Robert E. Keeton sent five jurors home and declared a mistrial in the federal government's obstruction of justice and credit card fraud prosecution of Democratic presidential candidate Lyndon H. LaRouche, Jr., six associates, and five organizations. Keeton's May 4 action came after five jurors told him that the unanticipated length of the trial, caused in part by a seven-week delay for an evidentiary hearing into government misconduct, was creating severe personal hardships.

Even as the mistrial order itself was sending shockwaves through the American legal community, government prosecutors were treated to a second blow. Just hours after the Keeton order, Boston's local ABC television affiliate carried a lead news item reporting that an informal poll taken by the just-dismissed jurors themselves revealed a 14-0 vote for acquittal on all 124 counts of the indictment.

The Justice Department and FBI's three and a half year blood vendetta against LaRouche, which had included a full-scale armed assault by 400 government agents against the offices of *EIR* in October 1986, had suffered its first major setback. And while the prosecutor, John Markham, was putting up a good facade by vowing that he would seek a speedy retrial, the editorial board of the prestigious *Boston Globe* was advising in no uncertain terms that such a move would be a grave error.

In an editorial published on May 6, the *Globe* commented, "Although Keeton placed some blame on both prosecution and defense lawyers, the major responsibility lies with the U.S. Attorney's office. Prosecutors went to trial without being fully prepared. Worse, they violated disclosure rules by withholding evidence. Obviously, the government could not have had much of a case if it had to resort to disreputable tactics. The government wants a retrial. We hope the prosecutors learned a lesson. The only certainty at this point is that justice was not done for the people, the accused, or the taxpayers who paid more than $1 million for the trial."

Nor was the political impact of the mistrial order missed. The *Washington Post,* covering a May 5 press conference by candidate LaRouche at the National Press Club, attended by over 30 reporters, proclaimed, "Although lawyers for . . . Lyndon H. LaRouche, Jr. say that nothing short of acquittal is a victory for the defense, it is clear that the mistrial declared in Boston Wednesday by U.S. District Judge Robert E. Keeton was a flat-out triumph for LaRouche."

Jury found government misconduct

From the very outset of the trial, LaRouche defense attorneys had emphasized to the jury that the prosecution was simply a political vendetta by elements of the Reagan administration and the FBI, and that there was no evidence warranting the criminal case. In opening statements, defense counsel had provided the jury with evidence of a 20-year FBI harassment campaign against LaRouche and his political associates, involving illegal infiltrations of scores of agents provocateur into the U.S. Labor Party, the National Caucus of Labor Committees, and other LaRouche-tied groups, illegal break-ins, and financial warfare. In short, the key to the LaRouche defense was to show the jury that it was the government, and not LaRouche, that was really on trial.

That message clearly remained with the jury throughout the 92 days of trial. In an interview with the *Boston Herald*'s Shelley Murphy immediately after the case was halted, juror Roman Dashawetz, expressing the sentiments of all 14 jurors, stated, "We would have acquitted everybody at this point, and that's based on prosecution evidence. There was too much question of misconduct in what was happening in the LaRouche campaign. . . . It seemed some of the government's people caused the problem [for LaRouche]."

Dashawetz added that the government's own evidence showed people working on behalf of the government "may have been involved in some of this fraud to discredit the campaign. It certainly throws a lot of doubt into the government's evidence. . . . There was a question as to how many of the actual alleged wrongdoers were government people and how many were overzealous LaRouche people."

Anatomy of a mistrial

As Dashawetz's remarks would indicate, the LaRouche trial, which began after over 14 months of pretrial hearings and motions last December, was well on the road to an acquittal of all the defendants when evidence of the govern-

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ment's misconduct began literally spilling out of the file cabinets of the National Security Council and the FBI.

The first big development came when Irangate Special Prosecutor Lawrence Walsh, in response to a Freedom of Information Act request filed by defense attorney Daniel Alcorn, representing Paul Goldstein, discovered a document that his office had seized from the safe of Lt. Col. Oliver North. That May 5, 1986 document, sent to the Marine by Air Force General Richard Secord, referenced efforts to gather information "against LaRouche" by an individual later identified as Sgt. Major Frederick Lewis, a retired Green Beret who was involved with two Midland, Texas-based government agents provocateur in a two-year effort to infiltrate LaRouche-tied groups for both the FBI and the CIA. When prosecutor Markham released the Secord-to-North cable and then turned over a redacted version of a May 1, 1986 FBI memorandum on Lewis and his two cohorts, Gary Howard and Ron Tucker, and admitted to defense counsel that FBI Deputy Director Oliver Revell was involved with the trio, the FBI threatened to indict Markham for espionage for passing classified government documents.

On the 55th day of the trial, Markham suddenly turned over to defense attorneys a series of FBI files on yet another agent provocateur who had been asked by the FBI to infiltrate the staff of this magazine. That man, Ryan Quade Emerson, turned out to be a career paid FBI informant since the mid-1960s. He had also been investigated by the FBI for a string of suspected crimes over an equally long period of time.

When defense attorney William Moffitt demonstrated to the court that Emerson had been used by the government to plant evidence that was subsequently used by Markham in his opening statement to the jury, Judge Keeton felt obliged to send the jury home in order to convene an evidentiary hearing to determine the extent of prejudice caused by the government's conduct in the Emerson affair, in the Howard-Lewis-Tucker business, and in other actions that amounted to withholding of crucial evidence damaging to the government's already dubious case.

Seven weeks into that hearing, Keeton determined that it was essential to bring the jury back to poll them on the impact of the trial delay upon their personal lives. It was at that point, on May 2, that Keeton was initially confronted with the five jurors' hardship dilemmas.

Secret government on trial

Even as *EIR* goes to press, Judge Keeton continues to preside over the evidentiary hearing, which could last for weeks. Before dismissing the jury, he had told counsel that he would conclude the hearing in order to make a full determination of the level of government misconduct. If Keeton finds that that misconduct warrants a dismissal of all charges, he could still change the mistrial into an acquittal.

It is no coincidence that at the very moment that the jury was being dismissed, the three immediate trial issues before Judge Keeton were: motions to quash defense trial subpoenas for Oliver North, Adm. John Poindexter, and Oliver Revell; defense motions to have all the defense attorneys and defendants granted security clearance to enable them to access classified government documents that Keeton had found to be relevant under guidelines of the Classified Information Procedures Act (CIPA); and defense motions to extend the evidentiary hearing to incorporate the Howard-Lewis-Tucker infiltration effort.

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The latter motion would have opened the entire Irangate "secret parallel government" to scrutiny and would have likely turned up new and startling evidence of the Revell-North-Secord "Enterprise" having run an illegal domestic espionage and active measures campaign against American citizens—simply because they politically opposed the Reagan administration's Central America "Contra" program.

Reflecting on the 19-month case, defense attorney William Moffitt pondered the implications of the LaRouche mistrial. "Sometimes the system works. The government was caught manufacturing evidence through an elaborate ruse implicating prosecutors, FBI informants, etc. It is not very often that a defense can muster enough resources in a courtroom to catch the government cheating. The scary thing is that the government was attempting to win a conviction by a fraud. How many times don't people have the resources to catch them. It is always a fight to equalize the situation in the courtroom and that is the most insidious feature of these kinds of cases. I am very pleased with the results, but the government frightens me with its capacity for evil. My biggest fear is that out of this case, they will only learn to cover up their fraud more efficiently so they don't get caught next time."

Odin Anderson, LaRouche's attorney, added, "What goes around comes around. My client has spent the last 20 years of his life inside an environment shaped by FBI harassment and other forms of government abuse. Ultimately, the jury, on its own, came to share in that sense and began to see the heavy hand of the government all over the alleged crimes. It was the most astonishing thing in the entire case. It was inevitable that the truth finally won out. This is the biggest story, really the only story to come out of the entire trial."