LaRouche lawyers seek to bar retrial

Although the Justice Department has vowed to put Lyndon LaRouche and six associates on trial for the second time, defense lawyers have just filed a battery of legal motions seeking to bar a retrial of the Boston case.

Government prosecutors ended up with "egg on their faces" when federal Judge Robert E. Keeton declared a mistrial on May 3, of the trial which had gone almost 100 court days. The mistrial was called after several jurors complained of severe personal hardships caused by the length of the trial. (Selection of the jury had begun in September 1987.) The length of the trial was caused, in turn, by time-consuming hearings on prosecutorial misconduct held outside of the jury's presence. Those hearings continued even after the jury itself was discharged.

After the mistrial was declared, the jurors took an informal poll among themselves, and voted 14-0 for acquittal of all defendants on all charges. And, as one juror commented, this was after hearing only the prosecution's case!

But the Justice Department hasn't learned its lesson. It has moved for a retrial, which Judge Keeton has scheduled for Oct. 3. If a retrial goes ahead, the case is likely to be broken up into smaller parts, with the first trial likely to be of the individual, not the organizational defendants, and only on the one count of "conspiracy to obstruct justice." The alleged credit card fraud counts would be tried later, if at all. During a hearing on July 7, Judge Keeton warned that he might split the case up into three simultaneous trials, in an effort to make it more manageable.

But the government has a number of hurdles to clear before any retrial can be held. The major ones are: 1) motions to prohibit a retrial on grounds of double jeopardy; 2) motions to dismiss the indictments altogether because of government misconduct; and 3) motions to throw out the evidence seized in the illegal October 1986 FBI raid in Leesburg, Virginia.

Double jeopardy

In a motion filed July 18, defense lawyers argue that a second trial is barred by the Fifth Amendment to the United States Constitution, which declares: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." There are conditions under which an accused can be tried twice—known as "manifest necessity"—for example in the situation of a hung jury. But in this case, the prosecution was wholly responsible for the long delay in the trial, argue defense counsel. Therefore there was no "manifest necessity," and a retrial should not be permitted. Prosecutor John Markham failed to disclose exculpatory evidence to the defense as he was required to do by law and under specific agreements with defense attorneys. The trial had been under way for 55 court days before a critical piece of exculpatory information was disclosed. Even after this, the defense brief argues, "the length of the delay, if any, would have been minimized had the prosecutor forthrightly admitted to the violations and made full disclosure. Instead, he stonewalled."

The prosecutor knew that hardship problems would arise for jurors as a result of these delays, the defense argument continues. "The trial was not going well for the government, and the prosecutor must have recognized this. . . . The overall weakness of the case being presented by the government was clearly demonstrated by the post-mistrial juror poll showing a unaminous vote for acquittal.

"Faced with a case that was going nowhere, Mr. Markham was looking for a way to have a mistrial declared, thus enabling him to start over and attempt to correct the deficiencies in the first trial. Indeed, since the mistrial, Markham has indicated on several occasions that his case will be far different should he have a second opportunity to prosecute."

The government should not have the opportunity to learn from its errors and gain an advantage by the mistrial and subsequent chance to correct its mistakes, contends the defense. "This is precisely the type of situation that the Double Jeopardy clause was intended to protect against."

Misconduct

The government's misconduct, which caused the mistrial, is the subject of a number of separate motions that seek dismissal of the indictment altogether simply on grounds of outrageous prosecutorial conduct. One of these motions asks dismissal on the grounds of the cumulative misconduct from the inception of the Boston grand jury in October 1984, up to the present time.

Finally, the Oct. 6-7, 1986 search and seizure of two "LaRouche" office buildings in Virginia is the subject of a number of motions. Evidence that has come out in both the Boston hearings and in hearings in state court in Virginia have shown a pattern of lies and misrepresentations in the sworn affidavits which were used to obtain the search warrants. The hearings have also elicited testimony that the search was in fact a "general search" which is prohibited by the Fourth Amendment's requirement that searches be specific with respect to places to be searched and objects to be seized. The defense in both the Boston federal and Virginia state cases are seeking suppression of evidence seized during the October raid, on grounds that it was illegally seized.