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LaRouche lawyers slam government misconduct in Boston trial

The Department of Justice has vowed to put Lyndon LaRouche and six co-defendants on trial again this fall in federal court in Boston, Massachusetts. After the first LaRouche trial ended in a mistrial on May 3, the prosecution moved for a retrial, and Judge Robert E. Keeton set a new trial date for Oct. 3.

But before the government can take the case to trial again, it has to cross a number of major hurdles. These include:

1) a motion to bar a retrial on grounds of the U.S. Constitution's prohibition against double jeopardy;

2) motions to prevent the government from using evidence seized in the October 1986 raid in Leesburg, Virginia, based on new evidence discovered in hearings in both the Boston case and in the state court proceeding in Virginia; and

3) motions to dismiss the case on grounds of government misconduct.

All of these motions have now been filed with the court, and rulings are expected during August or early September. If the court denies the double jeopardy motion, defense attorneys are expected to pursue an appeal before any new trial occurs.

Following are excerpts from the final section of a recently filed defense motion seeking to dismiss the Boston case for "cumulative misconduct." The brief reviews the entire history of the Boston case, starting with the highly irregular and improper manner in which then U.S. Attorney William F. Weld opened the investigation in October 1984.

The brief details over 20 areas of major government misconduct, including the shutdown of the LaRouche presidential campaigns' bank accounts on the eve of the 1984 elections, the constant stream of leaks to the press about the grand jury's investigation, lies and misrepresentations in the affidavits used to obtain search warrants for the October 1986 raid, lies and misrepresentations in detention hearings which led to a number of defendants being jailed without bail for 100 days, the unprecedented use of involuntary bankruptcy proceedings against two of the corporate defendants, intimidation of attorneys, and withholding of exculpatory evidence from the defendants.

From the defense brief

This record of this case memorializes one of the most oppressive prosecutions in the history of this republic. There is not an aspect of the criminal justice process which was not tainted by Government misconduct. In the eyes of this prosecution team, the defendants possess no constitutional or other legal rights which the Government is bound to respect.

The protections afforded by Fifth Amendment right to a fair and impartial grand jury conducted in secret became a travesty as the Government initiated the investigation with a high profile announcement and immediately issued subpoenas which caused the closure of numerous bank accounts and forced the cancellation of an election eve broadcast by a presidential candidate. By the spring of 1986, grand jury leaks reached the flood levels as the national networks, wire services, and prominent metropolitan newspapers reported that the defendants had perpetrated multi-million dollar credit card fraud as well as disgorging portions of verbatim grand jury testimony. There is probably not a household in this country which was untouched by this Government-orchestrated media barrage.

After the media campaign had reached the saturation level, the Government finally went through the ritual of seeking formal indictments from a grand jury which heard nothing but self-serving hearsay testimony from Government agents in regard to the credit card allegations. The return of these indictments was timed to coincide with one of the largest searches to be conducted by law enforcement authorities in the United States. On October 6, 1986, an invasion force, comparable to the U.S. incursion into Grenada three years earlier, descended upon the hamlet of Leesburg, Va. and conducted a search and seizure of two office buildings in the town.

This "seize everything" invasion force was justified by false, deceitful, and misleading statements made in support of the search warrant and perpetuated during the limited suppression hearing held before this Court. The subsequent receipt of materials under the Jencks Act, the Brady Rule, and especially under the authority of a Virginia state court which held a two and one-half week suppression hearing in

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May, 1988 brought the truth to the surface. The Fourth Amendment rights of these defendants were violated with a (once again, well-publicized) vengeance.

On October 9, 1986, three days after the assault on Leesburg, the Government persuaded a Virginia magistrate to incarcerate Jeffrey and Michele Steinberg on the basis of the false testimony of Special Agent Richard Egan. The evidence suggests that this was not done because the Steinbergs were a danger to community, but because the Government desired to "break" them.

Despite full knowledge that Egan had given false testimony in Virginia, prosecutor Markham tried to deny defendants Spannaus, Greenberg, and Scialdone their Eighth Amendment right to bail by giving them the Steinberg treatment. This effort collapsed when Egan was forced to recant his previous testimony after being confronted with a grid of material which defendant and other organizations had produced to the grand jury. Prosecutor Markham conceded that the subpoenaed organizations had, in fact, produced a "wealth of material."

In April 1987, the Government performed a rerun of the Leesburg invasion by sealing up the offices of Campaigner, Caucus Distributors, and the Fusion Energy Foundation under the authority of an *ex parte* order issued by a bankruptcy judge. This act respresented not only an "unprecedented" use of the Chapter 7 Bankruptcy Code; it deprived the defendants of use of their legal office and materials. This seizure was merely the most dramatic example of a concerted attack upon the Sixth Amendment right to counsel of the defendants which was detailed to this Court in a contemporaneous motion. The Boston case agent, Richard Egan, subsequently admitted in the Brady hearing conducted one year later that he had pushed for the indictment of several attorneys involved in the case.

After the discharge of the grand jury, the Government initiated a star chamber proceeding in the Federal Republic of Germany to coerce testimony from U.S. citizens in express violation of their Fifth Amendment rights. This action also constituted an egregious violation of the rules of criminal discovery, since the obvious purpose of the German inquisition was to gather evidence for use in the Boston trial. This travesty was finally halted after applications were filed and heard by Judge Young and by this Court.

Finally, the trial itself was turned into a mockery by the Government's continual and repeated refusal to live up to its Brady obligations. The Government's efforts to locate Brady material were token, minimal, and undertaken with less than a professional atttiude. The record in this respect is replete with instances of knowing misbehavior by the Government. The trial eventually collapsed as a result of this misdconduct by the prosecution.

* * *

The foregoing represents several episodes in a continuum of prosecutorial oppression and abuse. The U.S. Constitution and other legal standards do more than censure misconduct, they mandate prosecutorial fairness and propriety. More than fifty years ago, the U.S. Supreme Court declared:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

The duty of the U.S. Attorney then is not just to bring cases, but to prosecute them fairly so that justice is done in the courtroom. . . . "The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of the people as expressed in the laws and give those accused of a crime a fair trial."

"The record of this case memorializes one of the most oppressive prosecutions in this history of this republic. There is not an aspect of the criminal justice process which was not tainted by government misconduct. In the eyes of this prosecution team, the defendants possess no constitutional or other legal rights which the government is bound to respect."

The open contempt which the prosecution has displayed for the obligations imposed by law as well as the rights of the defendants merit the severest sanction which this Court can deliver. The defendants believe that nothing short of dismissal of this case will teach the Government the appropriate lesson. . . .

* * *

If anything, the aggravated or egregious circumstances in the cited (and other) supervisory cases pale in significance when compared with this prosecution. Virtually all of these other cases concern a select instance of misbehavior, such as abuse of the grand jury, Brady Rule violations, and so forth. There is no case on record where the abuse has been as sweeping, protracted, and intense as the case at bar. The principles governing the supervisory power dismissal cases should apply *a fortiori* in this prosecution and the case should be dismissed with prejudice.