

Oliver North goes to trial, to get LaRouche treatment?

by Herbert Quinde

Indicted Iringate scapegoat Oliver North finally seems to be going to trial, barring any further intervention by a Bush administration already apoplectic over revelations made by North's defense lawyers.

North's defense strategy has been a game of political brinkmanship with the Bush administration. The former White House aide is threatening to tell all he knows about the affair. The Justice Department, i. e., the Bush administration, is trying to "gut" his defense strategy by forcing the court to block the introduction of evidence deemed to compromise the national security.

But the pious invocations of concern for the national security by the Department of Justice have been exposed as a less than delicate cover-up for the disastrous foreign policy gambits of the Reagan/Bush administration.

Pulling out the stops in hopes of convincing the White House to end the prosecution, lawyers for North accused the Reagan-Bush administration of a high-level cover-up in the Iran-Contra affair. North's lawyer, Brendan Sullivan, said, "At the heart of this case are the *quid pro quo* and other third-country arrangements with which the Reagan administration obtained military support for the resistance [Contras]—when Congress banned it—and the policy that those third-country arrangements would not be disclosed outside a limited group of Executive branch officials."

Judge Gesell commented that part of North's defense "will be, to put it in the vernacular, that Colonel North was between a rock and a hard place. He is being told on the top side not to tell anybody and he's being asked a lot of questions about it on the bottom side. And some of those instructions came from people who have military authority over him as well as presidential authority over him, and I have ruled that he should be entitled to have the jury see the circumstances under which he acted."

North's lawyers, in court documents, named the names of his superiors who ran the operation. They were President Reagan, National Security Adviser Robert McFarlane, Defense Secretary Caspar Weinberger, Secretary of State George Shultz, Central Intelligence Agency director William Casey,

and Joint Chiefs of Staff chairman Gen. John W. Vessey.

Should the trial proceed, it is probable that former President Reagan will be forced to take the stand. Although the Department of Justice has tried to invoke executive privilege for Reagan, Judge Gesell has ruled that Reagan is on call for testimony if North's attorneys make the request.

Such a prospect could mean serious trouble for the squeaky-clean image of President Bush, whose quiet hands-on management of the Iran-Contra fiasco from the Office of the Vice President is no longer a well-kept secret.

For weeks, the trial had been delayed by a tug-of-war over the alleged need to protect national security secrets. Attorney General Richard Thornburgh, representing the interests of the Bush administration, intervened at the last minute, just as the jury was to be sworn in, claiming that North's lawyers, with the help of presiding Judge Gerhard Gesell, were going to violate the Classified Information Procedures Act (CIPA) by airing aspects of the dirty laundry accumulated during the Iran-Contra affair.

Independent Counsel Lawrence Walsh was caught in the crossfire, eventually losing credibility as an "independent" prosecutor. Initially, Walsh stated that all CIPA issues had been settled, agreeing with Judge Gesell that the Justice Department's concern for protecting national security secrets was "exaggerated." But later, under administration pressure, Walsh buckled under, agreeing to prosecute the case on a short leash held by Thornburgh.

CIPA was enacted nine years ago in an attempt to control the potential for blackmail which could be used by a defendant to force the prosecution to back off under threat of exposing secrets deemed of interest to U.S. national security.

Although North is certainly getting the "LaRouche treatment" and being hung out to dry, the procedural rulings by presiding Judge Gesell, when compared to those of the judges in the LaRouche case, demonstrate that even the political prosecution of a defendant could be handled fairly, if there is adherence to constitutional safeguards.

The Justice Department had been playing a dangerous public relations balancing act, not wanting to look like they

were part of a cover-up for Bush and company. After Thornburgh interrupted the trial by getting the Supreme Court to stay the proceedings until CIPA guarantees could be worked out to the administration's satisfaction, Judge Gesell said in open court that he doubted North could get a fair trial under the proposed Justice Department compromise on handling of national security secrets during the trial.

Less than happy with the Bush administration's unprincipled attempts to cover its backside, Gesell said, "The court . . . is committed to the traditional values established under the Constitution for the protections of a defendant in a criminal case. . . . These protections have nothing to do with whether a defendant is guilty or innocent. It is the right of every citizen to have a fair trial, to present their defense fairly and fully. This is not a country like some other country where the entire script of the trial is worked out in advance and the judge plays a role to some pre-determined conclusion."

Gesell reserved his harshest criticism for Attorney General Thornburgh, effectively calling him a worm. "If the attorney general wants to protect national security secrets . . . he should exercise his power under the law now and file an affidavit. . . . The attorney general is unprepared to or unwilling to exercise his authority now. . . . What he wants to do is see if he can wriggle through it with the court's rulings." Under CIPA, the attorney general can *stop* a criminal prosecution by filing an affidavit preventing a defendant from revealing state secrets.

Throughout the LaRouche cases, classified material was central to the defense. Both in Boston and in the Alexandria, Virginia prosecutions, the government denied defense lawyers hundreds of exculpatory documents which both the CIA and FBI admitted were in their possession, while hiding behind the CIPA law. LaRouche was denied a political defense, much in the same way that North's defense options have been whittled away.

At one point during the wrestling match over national security secrets, Judge Gesell threatened to declare CIPA unconstitutional. One legal observer noted that almost every defendant that has been forced to bite the CIPA bullet has been convicted.

A fair jury

Judge Gesell's attempt at a fair trial could also be seen in his handling of the jury selection process. Although there has been much ridicule of the jurors for their lack of exposure to and interest in current affairs, a central premise for a fair jury is that each juror be free of bias toward the defendant. Thousands of media commentaries have commented that the jurors "must either have been understudies for Rip Van Winkle during the past two years or congenitally somnolent in the world of government affairs," as lawyer Bruce Fein wrote in the *Washington Times*, for not recognizing North's face or knowing anything surrounding the most widely reported event of the Reagan years.

Judge Gesell struck for cause any potential juror from the jury pool who had heard any of North's immunized testimony before Congress which was broadcast live on television.

A Washington, D.C. Finance Department control clerk was excused by Judge Gesell after saying she didn't pay much attention to the Iran-Contra case, even though she read the daily newspapers and recalled seeing North testify at televised congressional hearing back in 1987. "I was wondering, why did he take up [all the channels on] the television. . . . I wanted to watch the soap operas. I heard him say something, but like I say, it didn't interest me."

An employee of Sears Roebuck was let go because she worked in proximity to the television display area. The woman at first could not remember anything about Colonel North, but after repeated questioning, recalled that she might have overheard some of the testimony on the TV sets next to where she worked. "They were talking about him shredding the paper documents when he was in the service," said the store clerk.

The jury selection process was difficult enough without the news media making it worse. As the selection process started, an ABC news correspondent ran clips of North's congressional testimony on the evening news, closing with the message: "If you paid close attention to this report, you too are now ineligible to be a juror." Judge Gesell almost cited the reporter with a contempt citation for obstructing the process.

In the LaRouche case before Judge Albert V. Bryan, Jr. in Alexandria, Va., the jury selection process took less than two hours, compared to almost two weeks in the North case. The majority of jurors in the LaRouche case never answered a single question. The jury foreman, Buster Horton, an Agriculture Department official whose job in emergency preparedness requires him to deal with the intelligence and defense community, never had to answer a question about bias, even though Horton's prior assignment in the USDA Office of Governmental and Public Affairs meant it was part of his job to keep up with current affairs. That means reading at least the *Washington Post*, which regularly libeled LaRouche as a "political extremist."

In a LaRouche-connected case, *Commonwealth of Virginia v. Rochelle Ascher*, the jury selection process documented that it is impossible for any LaRouche-affiliated person to get a fair and unbiased jury in Loudoun County, where the trial is taking place, or anywhere in the Washington Metropolitan area. During the *voir dire* of individuals from the jury pool, person after person said they had not only read and seen unfavorable TV coverage of LaRouche and associates, but had formed strong opinions that anyone linked to LaRouche must be guilty. Yet, Judge Carleton Penn accepted as potential jurors those who admitted to holding a bias against LaRouche, if they said they could put the bias aside in this particular case—something that Judge Gesell never bought in the North case.