International friend of the court briefs

On May 25, 1989 an unprecedented grouping of distinguished international jurists filed "friend of the court" or *amicus curiae* briefs in the LaRouche case before the Fourth Circuit Court of Appeals. The briefs of Bleckmann, Klecatsky, Hane, and Varaut were submitted to the American court by former U.S. Congressman Jim Mann of South Carolina, a former member of the Judiciary Committee in the House of Representatives. Below we select key excerpts, edited from these briefs.

Prof. Dr. Albert Bleckmann

Statement of interest of amicus curiae

The case *United States v. LaRouche et al.* raises a number of constitutional issues which I, in the capacity of *amicus curiae,* would like to address from the viewpoint of universally acknowledged international human rights, and in particular in light of the European Convention on Human Rights.

As director of the Institute for Public Law and Political Sciences of the University of Muenster, West Germany, I, Professor Dr. Albert Heinrich Bleckmann, have expertise in international law. Among various textbooks on international and European law, I published a study on the notion of and criteria for the domestic applicability of international treaties.

I submit this *amicus curiae* brief to the Court of Appeals which will deal with the following four issues:

1. In the jury process, lay jurors participated who are dependent on prosecuting agencies or who are by profession associated with notorious adversaries of the defendants. This raises the constitutional problem of the independence and neutrality of the court.

2. The rights of the defense were unduly limited especially by:

(a) insufficient time for the defense lawyers to prepare their case;

(b) limitation of the material, both documents and oral argument, allowed to be brought in during the trial and to be taken into account in the formulation of the court's decision.

3. Above all, the conviction of defendant LaRouche on tax charges raises constitutional issues since the tax authorities did not inquire of the defendant as to tax claims prior to the bringing of a criminal prosecution. In addition, a neutral expert's testimony was disregarded by the trial court.

4. The double prosecution ("double jeopardy") charging the defendants with nearly identical offenses both in Boston, Massachusetts and in Alexandria, Virginia raises the problem addressed by the principle *ne bis in idem*. . . .

Question presented

If constitutional rights guaranteeing a fair trial are violated—and if these violations also demonstrate utter disregard for important principles of international common law and the foundations of treaties between nations—does this militate for the reversal of judgments issued by lower courts?

Summary of the argument

The procedure in front of the District Court that led to the judgment now under appeal in the instant case is examined from the standpoint of the European Convention on Human Rights and international common law. The applicability of those codes to juridical procedures inside the United States is derived both from the United States Constitution and international agreements like the NATO treaty and the United Nations statutes.

This investigation suggests the conclusion that the independence of the court prescribed by law and the rights of defense—especially regarding sufficient preparation time and the possibility to present exculpatory evidence—were not respected. Particularly regarding the tax charge, the doctrine that there cannot be punishment unless guilt is proven was not upheld. Concerning the amount of punishment itself, the doctrine of proportionality was not applied in sentencing.

The most prominent violation of the principles of human rights though, lies in the double prosecution both in Boston and in Alexandria. In respect to the prohibition of "double jeopardy" by the United States Constitution, any meaningful interpretation of this rule must consider the notion of the "body of circumstances" as the framework of (alleged) criminal acts.

This significant number of severe human rights violations, as understood according to international standards as well as those proper to the United States, demands that the decision of the District Court be reversed and a new trial ordered.

Argument

The undersigned *amicus curiae* does not know U.S. constitutional law well enough to be able to present a binding opinion. It is, however, to be stressed that, as the Court of the European Community has established in numerous judgments, a common constitutional standard has developed in

Western democracies, which has also found expression in international, American, and European human rights agreements. Keeping this standard in mind might prove significant for the interpretation of the United States Constitution. For, the United States of America has always carefully nurtured an awareness of the fact that its Constitution is an essential component of those Western values which are to be defended, particularly by NATO. In fact, it is precisely the NATO treaty which for this reason stresses in its preamble that the member states are committed "to guarantee the freedom, the common heritage, and civilization of their peoples, which are founded on the principles of democracy, personal liberty, and the rule of law.". . .

Prof. Dr. Hans Richard Klecatsky and Prof. Dr. Wolfgang Waldstein

Statement of interest of amici curiae

This case presents important issues concerning the rights of all American citizens to a fair trial and the right to be protected against being twice subject to criminal prosecution for the same offense.

The great achievements of the American and French Revolutions are viewed in Europe with great esteem. In teaching law at European universities, we emphasize the obligation of due process of law as a constitutional principle in the United States. The respective provisions of the American Constitution are in the center of the great catalogues of human rights in the world.

The undersigned desire to assist the Court in deciding this case by invoking especially those principles, since Europeans would view the affirmation of the decision by the District Court as a dangerous deviance from important constitutional principles the United States has in common with other Western nations.

Prof. Hans Richard Klecatsky, one of the undersigned of this brief of *amici curiae,* has been a lecturer on Constitutional Law and Politics at the University of Innsbruck, Austria, since 1964. He is a professor of Public Law, Faculty of Jurisprudence and Political Science. In 1965 he served as a deputy member of the Court of Constitutional Law, and from 1966 to 1970 as Minister of Justice of the Federal Republic of Austria. Klecatsky has published numerous books on state law, among others a commentary on Austrian constitutional law. He edits the reputed law magazine *Juristische Blätter,* which is in its 112th year of existence.

Professor Klecatsky founded the Austrian Commission of Jurists, which is part of the International Commission of Jurists (ICJ). The ICJ's work focuses on the legal promotion and protection of human rights and fundamental freedoms, seeing the rule of law as a dynamic concept to advance not only the classical civil and political rights of the individual, but also economic, social, and cultural rights. Other lawyers' organizations and human rights organizations are affiliated to the ICJ.

Prof. Wolfgang Waldstein, the second signer of this brief of *amici curiae,* lectures on law at the University of Salzburg, Austria, as a professor of Roman Law and History of Law. He has published historical law books and is co-editor of the oldest German-language historical law magazine, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung.* Professor Waldstein is a member of the Austrian Commission of Jurists.

Prof. William Nieboer, who co-signs this brief of *amici curiae,* lectures on penal law, criminal procedural law, and forensic psychiatry at the Catholic University in Tilburg, Netherlands. He also serves as a judge on a three-judge panel (Rechtsbank) for severe criminal cases at the Utrecht court.

Statement of issues

The legal principle *ne bis in idem* is a most important achievement in the history of law. Originating in Roman-canonical procedural law—after already Demosthenes in Greece had talked about the idea—this principle entered the *Corpus juris civilis* of Justinian and has been part of the rules of court in almost all countries of continental Western Europe for centuries. A violation of this provision regularly leads to a reversal of the earlier judgment regardless of whether or not the lower court is responsible for the violation.

The guarantee of a fair trial is one of the most important pillars of the constitutional state securing individual freedom and peace. Already in 450 B.C. the Roman "Twelve Tables" tried to protect the people against arbitrary and one-sided decisions by establishing the principle of due process of law. . . .

Question presented

Are generally acknowledged fair trial procedures in Occidental law tradition useful considerations, when confronted with violations of such procedures, in reversing decisions of United States courts?

Summary of the argument

The concept of a fair trial has been essential for constitutional law as far as our knowledge of the history of law reaches back. Only states that guarantee fair trials by impartial courts are considered "states under the rule of law." Provisions like *audiatur et altera pars* ("and the other part should be heard") and *ne bis in idem* ("not twice against the same") belong to the *sine qua non* conditions of any fair trial.

The guarantees by law for fair trial procedures have taken concrete shape in the legal codes and constitutions of all Western states; in various forms they have entered international conventions on human rights and the "law of nations."

In light of the community of principles in Occidental law tradition, international law and to some extent the juridical

principles of other Western nations bear authority upon domestic juridical processes in the United States.

If defendants tried in a United States court are denied important rights for a fair trial by an impartial jury, this in turn constitutes a setback for the evolution of human rights in the entire world.

Especially in this light, any violation of these principles has to cause reversal of earlier judgments under appeal. . . .

Lennart Hane

Statement of interest of amicus curiae

1. My relevant background, for purposes of this *amicus curiae* brief is, not only as a practicing lawyer and member of the Swedish Bar Association since 1964, but also as a writer on matters of jurisprudence with special regard to changes in political philosophy, public administration, and administration of justice in the totalitarian states of the 20th century, mainly the Communist states and Nazi Germany. In a book titled, *Creeping Dictatorship,* I examined how the so-called "reforms" of the Swedish judicial system in the 1970s aimed to bring about an entirely different direction than the official propaganda supporting the reforms indicated. In my book, I documented how these reforms were, in reality, of a nature subversive to the traditions of established law and jurisprudence, and that leading elements of that reform process were surprisingly similar to Communist as well as earlier Nazi-era legal methodology.

Since that time, I have seen the traditional rule of law in Sweden drowned in a flood of so-called "general clause" legislation and other such "flexible" rules. In my practice as a lawyer, I have gained an in-depth knowledge of how this process has destroyed the human and civil rights which my country once offered its citizenry. On the latter point, I have, in several cases, successfully represented Swedish clients before the European Commission for Human Rights in Strasbourg, France, arguing cases involving violations of the "Convention for Human Rights and Fundamental Freedoms" (Rome, November 4, 1950). . . .

From the standpoint of questions of both legal and human rights principles, I became interested in the "LaRouche case" when informed of the circumstances of the police raid against the headquarters of companies associated with Mr. LaRouche and the political movement identified with him in Virginia in October 1986. The implications, during the ensuing legal process, for protection of the human rights of the individual, under the combined attack of the media and of a dramatic police intervention, were, from the standpoint of principles of law, something for which I felt a deep professional concern. Since that time, I have tried to follow the case, if from a distance, and in the capacity as a member of the "Fact-Finding Committee" of "The Commission to Investigate Human Rights Violations."

2. As an *amicus curiae,* I wish to stress, in relation to the case of *U.S. v. LaRouche et al.,* the importance of the two fundamental principles in Western law expressed in the long-standing principle of law, of *nullum crimen sine lege* ("no crime without law") and *difficilem oportet aurem habere* ("one must not descend to listen to slander").

The specific formulation in the Government's underlying indictment in the case before this Court, of "conspiracy" to commit economic crimes, creates a prejudice against LaRouche and any person associated with him by its incorporation of slanderous characterizations, which raises tremendous difficulties in upholding the principles required to ensure a fair judgment in court. I think it could be seriously argued that the indictment in itself, as formulated in Alexandria, Virginia, lacks the legitimacy to be brought up in a court of law, were such court to take full consideration of the two principles mentioned. The two principles must be given full attention, particularly when such an indictment is brought in court. I have seen no reference to consideration of the issues raised by these principles in the proceedings of the trial court and wish, therefore, to argue for such principles to be considered in this Court's review of this case. . . .

Maître Jacques Stul

Argument

Violation of the principle of freedom of association for political movements

To my mind, the procedures used against Mr. LaRouche show all the characteristic signs of an attempt to annihilate a political movement. Now, political movements and parties are protected by the constitution in every democracy, unless these parties or political movements commit acts clearly contrary to their country's constitution or laws. In that case only, is it incumbent on the government to dissolve these parties or movements, while stating publicly and without ambiguity what the reasons are which led to the decision to dissolve.

In the case of Mr. LaRouche and his friends, there is no doubt that they form an association which is political in nature; this transpires, not only from their intentions, which have been clearly and constantly declared, but even from the coverage in the American and world press, which has printed a great number of articles on the activities of this movement and on the individuals involved in it.

I am informed that Mr. LaRouche himself has several times campaigned for the United States presidency, and indeed to [have] receive[d] matching funds from the Federal Election Commission; this made it possible for him to appear on American national television about 20 times. For 15 years or so, I have kept up with Mr. LaRouche's activities, the political nature of which is perfectly obvious to me, and

Ramsey Clark leads main LaRouche appeal

Former U.S. Attorney General Ramsey Clark is the lead attorney for the main appeal in the case of *U.S. v. LaRouche, et al.* The appeal asks that the conviction of Lyndon LaRouche and his six associates last Dec. 16 be overturned, stressing three issues:

1) "Whether the District Court violated appellants' fundamental constitutional rights to a fair trial and to the effective representation of counsel by forcing them to trial within 38 days of indictment in an exceedingly complex case involving millions of documents, many witnesses, and a myriad of complex and novel issues."

2) "Whether the District Court violated appellants' fundamental constitutional right to present their defense to a jury by prohibiting the appellants from introducing admittedly relevant evidence concerning the role of the government and others in waging financial warfare against appellants and their political organizations."

3) "Whether the District Court violated appellants' right to a jury trial by denying them the ability to conduct a meaningfully probing *voir dire,* when, as here, the appellants and their political organizations had been portrayed historically by the media in pejorative terms and when prospective jurors could very well have had personal encounters with appellants or their political associates which the Court's limited questioning would not have uncovered."

which have been always represented as such by the activists of his movement.

I myself have been the lawyer for political movements which have been dissolved; on every one of these occasions the French government respected the juridical guidelines which cover the case of an organization it has decided to dissolve.

In the present case, it appears that, for political reasons, given the growing influence of Mr. LaRouche's ideas and the electoral success his friends have begun to enjoy, the U.S. government does not dare to take the decision to openly dissolve Mr. LaRouche's movement, and has rather preferred to rely on so-called juridical pretexts, attacking the activists and leaders of this movement one by one. . . .

Maître Jean-Marc Varaut, et al.

Statement of interest of amici curiae

It is as a French specialist in human rights and lawyer before the Appeals Court of Paris that I desire to participate in the appeal of Mr. Lyndon LaRouche and his co-appellants, in conformity with the procedure of *amici curiae*. I am convinced that the issues of law raised by this case, *U.S. v. LaRouche, et al.*, are of a nature and sufficient gravity to justify a new judgment.

I am moved to join the appeal in this case all the more as it has been one of my longstanding preoccupations to ensure the minimum procedural rights of defendants of all countries. I am the author of a treatise, "The Right to Law," which reflects my views. I am a professor of criminology and Director of Studies of the Institute of Penal Law of the Paris Bar, and Commission Reporter of the Universal Declaration of the Rights of Defense adopted in 1987 by the bar associations of the countries of the Free World.

Judge Jacques Boilevin, a co-signer of this *amici curiae* brief, is Vice President of the High Court of Bordeaux, France.

Maître Biaggi, also a co-signer of this *amici curiae,* is a lawyer at the Paris Bar, prize-winner of the Paris Law University and of the Concours Général, a former Deputy to the National Assembly of France, an officer of the Legion of Honor, and a decorated veteran of the French Resistance.

Statement of issues

From the standpoint of several universal principles of good penal justice, I would bring to the attention of the Appellate Court a number of points concerning the verdict sustained against Mr. LaRouche by Judge Albert V. Bryan, Jr. in Alexandria. Universal principles of the rights to a fair trial appear to have been grossly violated by the evolution of the trial as a whole.

1. The jurisprudence of free countries concerning "white collar crimes" would have to deem the 15-year prison sentence against Mr. LaRouche as disproportionate.

2. The standard in criminal proceedings of proof beyond a reasonable doubt must seriously be examined, since presumption and circumstantial evidence was so pervasive in these proceedings, especially as to the presumption of an intent to defraud.

3. The Alexandria trial was hastily opened and proceeded to conviction with a speed contrary to both the rights and requirements of an in-depth defense, and to the exigencies of examination of a particularly complicated case.

4. The criminality of the imputed act. A civil misdeed or a breach of an administrative law does not constitute per se a violation of the common values considered everywhere as a crime. . . .