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U.S. trampled on Sixth Amendment, tried to threaten LaRouche counsel

Justice Department intimidation tactics employed against attorneys representing Lyndon LaRouche and his associates were a central issue in a hearing on May 18 before U.S. District Judge Robert Keeton in Boston in the case, *United States of America* v. *The LaRouche Campaign, et al.* Attorney Odin Anderson, who represents Independent Democrats for LaRouche (IDL) and The LaRouche Campaign (TLC), demanded that Judge Keeton hold an immediate evidentiary hearing on a motion to dismiss the Boston indictment on grounds of prosecutorial misconduct.

The Boston criminal case is the most important in a chain of politically motivated actions against presidential candidate LaRouche and his associates, taken by forces determined to bring constitutional rule to an end in this Bicentennial year of the U.S. Constitution.

Judge Keeton is already considering motions to dismiss the Boston indictment on Fifth and Sixth Amendment grounds, motions occasioned by the Justice Department's extraordinary involuntary bankruptcy proceedings against two of the defendants in the Boston case—Caucus Distributors and Campaigner Publications (see *EIR,* May 15, 1987, p. 58).

"Everything I learned in law school has been turned upside down by the government's tactics in this case," Anderson said. "I learned that an attorney is only there to represent a client, that his client's interest comes first. When an attorney is put in the position, by deliberate government tactics, of worrying about his own interest first instead of his client's interests, his effectiveness as an advocate is lost."

Excerpts of the motion follow:

Statement of facts

On May 7, 1987, Special Agent Richard Egan, the FBI agent who has been in charge of the investigation of this case from the outset, contacted Michael Trainor, a private investigator retained by counsel for defendants, supposedly to discuss an allegation that Mr. Trainor told a Mr. Worthen (one of the alleged victims in this case whom Mr. Trainor had interviewed) that Mr. Trainor knew the whereabouts of Michael Gelber, an absent defendant in this case. . . . After Mr. Trainor advised Mr. Egan that he had never made any statements about Gelber's whereabouts nor knew where he might be, Egan made several statements to Trainor clearly intended to intimidate him and to warn him about associating with "those people" (i.e., the defendants). Egan advised Trainor that he was concerned that Trainor might be "harboring" a fugitive (Gelber), and stated that he wouldn't want to see Trainor jeopardize his license, end his career, "suffer", or "get hurt" because of his association with the defendants. Trainor took these statements to be threats, and was so upset by Egan's comments that his continued participation in this case is in jeopardy. . . .

During his conversation with Trainor, Egan also made allegations directed against Odin Anderson, attorney for TLC and IDL in this case, which clearly implied that Anderson was, in Egan's mind, engaged in criminal wrongdoing in connection with this case. Egan told Trainor that Anderson was "in a bad spot and it might get worse", and that Egan "knew" that Anderson was the last person to see "those people" (presumably the three absent defendants who are allegedly fugitives) in this country. This is not the first time that Egan has made statements to members of the defense team about Anderson's supposed knowledge of the whereabouts of these individuals and the facts surrounding their alleged disappearance. On a prior occasion, Egan questioned Anderson in a hostile manner about this subject. . . . It was also Richard Egan who, accompanied by AUSA John Markham, threatened and attempted to intimidate Attorney Joel Reinfeld (in the presence of Attorney Daniel Alcorn) by implying Reinfeld's involvement in instances of alleged unauthorized credit card charges. . . . These intimidation tactics contributed to the disengagement of Reinfeld from this case.

The above incidents represent only the most egregious, and not all, of the instances of veiled and not so veiled threats that have been directed against members of the defense team by agents of the government. Additional incidents are set forth in the attached affidavits: Daniel Small, the Assistant U.S. Attorney initially in charge of the investigation which resulted in this indictment, stated in a heated conversation with Matthew Feinberg (counsel for CDI) that he believed that some of the attorneys in this case might not be practicing law by the time the case is over. . .; Odin Anderson has been told by several persons that they heard that he was "being investigated" or was "in trouble" as a result of his involvement in this case . . .; recently, Daniel Alcorn, who repre-

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sents Campaigner, was the subject of intimidation tactics by the U.S. Attorney in Alexandria, Virginia, and several of his assistants, in connection with the involuntary bankruptcy proceedings against Campaigner. . . . These incidents are clearly part of a continuing pattern of intimidation by agents of the government directed at attorneys representing persons and entities associated with Lyndon H. LaRouche, Jr.

Argument

The Sixth Amendment to the United States Constitution provides that a criminal defendant shall have the right "to have the Assistance of Counsel for his defense." The right to due process, as guaranteed by the Fifth Amendment, also includes the right to have the effective and substantial aid of counsel. *Coplon* v. *United States,* 191 F.2d 749, 757 (D.C. Cir. 1951). As the Supreme Court has stated:

> The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled. . . . An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.

. . . In connection with the right to counsel, courts have stressed "the importance of protecting a criminal defendant's attorney-client relationship from a deliberate attempt to destroy it and to subvert the defendant's right to effective assistance of counsel and a fair trial", and have noted "[t]he concern with which the courts view government intrusion into the attorney-client relationship. . . ." *United States* v. *Costanzo,* 625 F.2d 465, 469 (3d Cir. 1980).

. . . Furthermore, as the court stated in *Keeker* v. *Procunier*, 398 F.Supp. 756, 765 (E.D. Cal. 1975):

> The mirror-image of the client's Sixth Amendment right to effective counsel is the attorney's right to practice his profession without undue governmental interference. The vindication of one is consequently dependent upon the vindication of the other.

The outrageous actions of the government directed at specified and unspecified defense attorneys and other members of the defense team is set forth in great detail in the attached affidavits and in the above statement of facts, and need not be repeated here. It is sufficient to state that the government's attempts at intimidation appear to have reached a peak (for now, at least) with Special Agent Egan's telephone conversation with defendants' investigator, Michael Trainor, in which Mr. Egan blatantly threatened Mr. Trainor and made statements indicating that defense counsel Odin Anderson was in danger of being prosecuted. Clearly, Egan's statements must be looked at as an attempt to drive a wedge between members of the defense team, to intimidate Mr. Trainor and drive him out of the case, and to intimidate defense counsel (particularly Mr. Anderson) and divert them from devoting their maximum attention to this case. These types of actions constitute a violation of defendants' right to effective assistance of counsel. . . .

These most recent statements by Special Agent Egan are merely a continuation of a pattern of similar governmental actions directed at the defense team in this case . . . which actions have already contributed to the disengagement of one attorney from this case (Mr. Reinfeld). The actions of the government clearly constitute "a deliberate attempt to destroy [defendant's attorney-client relationship] and to subvert the defendant's right to effective assistance of counsel and a fair trial." *United States* v. *Costanzo, supra* at 469.

Numerous cases have considered allegations of governmental interference with a criminal defendant's attorney-client relationship. *See, e.g., United States* v. *Morrison,* 449 U.S. 361 (1981); *United States* v. *King,* 724 F.2d 253 (1st Cir. 1984). In many of these cases, no Sixth Amendment violations were found because the courts found no prejudice to the defendants. In the present case, such prejudice clearly exists. As the court stated in *United States* v. *Irwin, supra* at 1187, prejudice can result "from government influence which destroys the defendant's confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial." In a case as complex and involved as the present one, it is important that defendants not lose confidence in their chosen counsel who are familiar with the facts and history of the case, and that such counsel or their agents not be forced out of the case by deliberate governmental actions.

This case does not involve a single, isolated instance of governmental conduct which impacts on a defendant's right to counsel. Rather, it involves a persistent, deliberate pattern of governmental misconduct directed at impairing the attorney-client relationship and disrupting the defense of this case. In *United States* v. *Morrison, supra,* while the Supreme Court found no prejudice and hence no violation of the right to counsel, it noted that "the record before us does not reveal *a pattern of recurring violations by investigative officers* that might warrant the imposition of a more extreme remedy in order to deter further lawlessness." 449 U.S. at 365 n.2 (emphasis supplied). This is in accord with the well-established rule that "[u]nder its inherent supervisory powers, a federal court is empowered to dismiss an indictment on the basis of governmental misconduct. . . ."

The allegation of serious acts of governmental misconduct set forth in the attached affidavit clearly requires an evidentiary hearing before this Court. *United States* v. *King, supra* at 258. Those acts of misconduct are sufficient, under the authority cited above, to justify dismissal of the action based on intentional governmental misconduct whose purpose and effect is to impair the attorney-client relationship and the defense of this case.