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Boston hearings set on Leesburg raid

by our Law Editor

Evidentiary hearings will begin on Aug. 31 in U.S. District Court in Boston to consider the government's conduct of the Oct. 6, 1986 search and seizure of offices in Leesburg, Va. linked to presidential candidate Lyndon H. LaRouche. At a preliminary hearing held on Aug. 6, the government's justification for the seizure began to dramatically unravel, resulting in the ordering of the Aug. 31 hearing by Judge Robert E. Keeton.

Electronic surveillance disclosed

Another potentially major blow to the government's case against Lyndon LaRouche and 15 other individuals and organizations was a new disclosure of electronic surveillance by the super-secret National Security Agency. Defense attorney Daniel Alcorn said that because the government was stalling on responding to discovery requests on electronic surveillance, some of the defendants had made requests under the Freedom of Information Act, which elicited positive responses from two agencies, the FBI and the National Security Agency.

Alcorn told the court that the defense would be entitled to any statements made by defendants recorded by electronic surveillance, as well as any exculpatory evidence derived from surveillance. The defense will also file a motion to suppress the fruits of any illegal electronic surveillance.

Federal Judge Robert Keeton ordered an evidentiary hearing commencing on Aug. 3 to determine, among other matters, whether FBI agent Richard Egan lied in procuring a second search warrant from a federal magistrate, which in the government's view, allowed the seizure of over 2,000,000 pages of documents from legal offices and First Amendment organizations.

Egan swore in affidavits to a Magistrate in Alexandria, Virginia, and in a subsequent court proceeding involving seizure of certain reporters' and legal notebooks, that agents entered the offices of Edward Spannaus and Robert Greenberg while seeking the notebooks of Paul Goldstein, Michele Steinberg, and Jeffrey Steinberg which were called for in the first search warrant. According to Egan's sworn testimony, the agents conducted a cursory examination of notebooks in the Spannaus and Greenberg locations, determined that they were not covered by the initial warrant, and sealed the offices of Spannaus and Greenberg while Egan went to Alexandria to procure a second warrant.

However, timed photographs provided by the government show agents reading the Spannaus and Greenberg notebooks while the offices were purportedly sealed. The photographs further show that Greenberg's notebooks already seized and boxed up hours before the warrant authorizing their seizure was obtained.

Not in 'plain view'

Prosecutor Markham had previously relied on a legal theory of "plain view" to justify these unlawful actions. Markham argued that if, while looking for the Goldstein and Steinberg notebooks, the government found evidence of crime in "plain view" they could seize the documents. He argued that the Spannaus and Greenberg notebooks were not clearly identifiable and government agents had to read entire notebooks in order to identify whether or not they belonged to individuals named in the warrant.

Much to Markham's surprise, Judge Keeton rejected that contention at the outset of the argument on Aug. 6—stating there was no authority to read entire notebooks under the "plain view" doctrine. Keeton forcefully rejected that argument, saying "It isn't in plain view if you have to open it up and look for it."

At this point the prosecutor tried to argue that the notebooks could be seized under a general clause in the first warrant, allowing for broad seizures of "any other evidence" pertaining to specified crimes. In the course of this argument, Markham admitted that he had told Egan in a telephone call he could seize the notebooks in question under this clause of the warrant.

As it developed, however, the clause which Markham talked about was in the second warrant, not the first search warrant governing the period in which Greenberg's notebooks were seized.

Fourth Amendment violated

Defense attorneys also argued that a much broader evidentiary hearing on the entire search is necessitated by the admissions made by Markham. Defense attorney Michael Reilly warned that "if the government takes that sort of broad general description and uses it an opportunity to read every piece of paper in an office on the argument that any piece of paper could be evidence of obstruction of justice. . .that's the classic general warrant." And, continued Reilly, "where you're dealing with legal and journalistic offices, it seems to me a particulary acute example of the general warrant." In writing the Constitution and the Bill of Rights, the hated "general warrant" was outlawed by the Fourth Amendment.

Judge Keeton has deferred ruling on this aspect of the evidentiary hearings requested by the defense until after the Aug. 31 hearing.

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