Federal court ignores Constitution

With the denial of all pretrial motions from the defense in the case of *U.S.A. v. Lyndon LaRouche et al.*, the Alexandria, Virginia federal court of Judge Albert V. Bryan, Jr. has determined to ride roughshod over the U.S. Constitution in order to force through the political trial against the prominent politician and his close associates.

The government is charging LaRouche and six associates with conspiracy to commit loan fraud, and LaRouche alone with a conspiracy to evade taxes. Charged are Michael Billington; Joyce Fredman; Paul Greenberg; Dennis Small; Edward Spannaus; and William Wertz.

Judge Bryan on Nov. 10 denied all the defense's pretrial motions, and upheld in substance the argument of the government that "matters concerning infiltration, harassment, and financial warfare are irrelevant" to the issues of the trial. On Nov. 17, the Fourth Circuit Court of Appeals denied a defense petition to order Judge Bryan to delay the trial.

Former presidential candidate LaRouche responded to the judge's denial of the pretrial motions, especially for discovery vis-à-vis financial warfare, by saying that the judge "has ordered a frameup in effect." LaRouche charged angrily, "I'm not being allowed a defense. The reason why this judge is going along with a politically motivated, Soviet-ordered frame-up must be determined."

Constitutional issues at stake

The cumulative effect of the judge's decision to rush through the trial, and deny the pretrial motions, is to violate the Sixth Amendment to the U.S. Constitution, the right to assistance of counsel for an accused. As a series of affidavits submitted by attorneys for the accused to the Court of Appeals showed, the rush has prevented the lawyers from having the time necessary to adequately prepare a defense.

The setting of the trial a mere 34 days after the arraignment in the case is particularly galling, since the government and judge denied motions by the defense that the Alexandria case is substantially the same as the mistried federal case in Boston, but now insist that familiarity with the Boston case by many of the lawyers makes it acceptable to rush to trial at breakneck speed.

Odin Anderson, counsel for LaRouche, noted that he couldn't be prepared for trial in such a short period of time. "In my 12 years of trial practice as a prosecutor and defense counsel. . . . I have never had so little time to prepare a case for trial, even a simple misdemeanor."

Anderson was echoed by counsel for defendant William Wertz, Brian P. Gettings, who was once the federal prosecutor in the district. Gettings' affidavit said that he was "stunned" by the rapid pace, and that, with such a rush, "Mr. Wertz will be deprived of an effective opening statement by his counsel and effective cross-examination of government witnesses."

The most dramatic statement, however, came from the attorney for Dennis Small, William P. Moffitt. Moffitt, speaking as a member of the Board of Directors of the National Association of Criminal Defense Lawyers and past president of the Virginia College of Criminal Defense Lawyers, attacked the general practice of the Alexandria federal district of treating all criminal cases alike with respect to the time needed to prepare, in effect equating common law robbery or larceny cases with complex fraud and conspiracy cases. In the specific *U.S.A. v. LaRouche* cases, however, Moffitt had the following to say:

"As an officer of the Court, there is no way that I can adequately be prepared for trial on November 21, 1988, and provide Dennis Small effective assistance of counsel in accordance with the Sixth Amendment to the United States Constitution. As a result of my limited ability to prepare this case and the need to retool Mr. Small's defense [in light of the denial of the pretrial motions—ed.], a conviction is inevitable if forced to trial on November 21, 1988. In my opinion, with respect to Mr. Small, such conviction would result from the inequalities in preparation time afforded the accused and the prosecution."

'Stop wailing and moaning'

In the final hearing before jury selection is scheduled to begin at 10 a.m. on Nov. 21, Judge Bryan refused to hear any further argument on the need for a postponement of the case. I don't want to hear your laments, Judge Bryan said. I've heard as much of your wailing as I'm going to hear. You're big men, and you surely have been through a trial under adversity before.

When asked by attorney Kenly Webster if his client Edward Spannaus could make a statement on the issue of the rush to trial, Judge Bryan refused.

Other pretrial preparations included the judge's insistence that the defense's exhibits for trial be submitted to the court by Nov. 22 at the latest.

Finally, Judge Bryan refused to grant a defense request that the government provide a full witness list, and the ordering of the witnesses, so that preparations could be made. He ruled that the government only has to provide the witness list 24 hours in advance of their being called to testify.

Documentation

Statement of Edward Spannaus

The following statement was not permitted to be given openly to the court. A slightly modified affidavit to the same effect, was submitted to Judge Bryan.

Your Honor, I am being forced into a trial that my lawyer is not ready for, which means that I cannot receive the effective assistance of counsel for my defense, which is my right under the Sixth Amendment to the United States Constitution—a document which I revere very much.

My lawyer is simply not prepared to try this case. He has already explained the reasons for that from his standpoint, but I think it is important that I explain them from my standpoint, since I am the one who goes to jail if I don't get an adequate and complete defense by my attorney.

It is not his fault that he is not ready. Kenly Webster is probably the hardest-working and best-organized lawyer I have ever dealt with. He is doing everything he can to get ready for trial.

But we are talking here about an alleged loan conspiracy which goes back to mid-1983, and a tax conspiracy which goes back to 1979. While he and I have to be primarily concerned about the counts I am charged with, that is Count 1 and Counts 3-11, we cannot completely ignore the tax count.

The amount of documents that pertain to the loan counts is simply staggering. My lawyer has only been able to look at a very small part of this. Furthermore, I have 17 notebooks that cover the time frame just of the loan conspiracy. The government has had 12 of these notebooks for over two years—as Your Honor is well aware, since I unsuccessfully sought the return of those notebooks in this courtroom two years ago. . . .

Should I have the chance to refresh my memory about these notebooks? And shouldn't my lawyer at least have a chance to look at them, and to know what relevant information is in them? . . .

On the day of the indictment in this case, Henry Hudson gave a press conference in which he stated that if convicted, I could be sentenced to 50 years in prison. When a prosecutor gets up and says that, I have to take that very seriously.

Yet, for 50 years of prison time, my lawyer has only been in this case for less than a month. And much of that time was spent preparing pre-trial motions. After the motions were filed and argued, there were only 10 days to devote to full-time trial preparation—in a case that the government has had a large team working on in this district for over two years. . . .

What reason is there to ride so roughshod over the rights of me and my fellow defendants?

There are only two apparent reasons: one is to protect the reputation of this court for speedy trials, and the second is to rush this case to trial before I and others are scheduled to go back on trial in Boston. However, yesterday the court in Boston continued the trial date there until Feb. 27, so that reason no longer holds.

Neither of those are valid reasons to throw our Constitutional rights out the window. These are rights that our forefathers fought for and died for—in the American Revolution and many bloody wars since then.

I tell this Court that I and my co-defendants cannot receive a fair trial under these circumstances.

Excerpts from Judge Bryan's denial

A. As to the motions filed jointly by all defendants, it is hereby ordered that:

1. The motion for disclosure of exculpatory information is denied. For the reasons set out in the decision on the government's motion *in limine,* the discovery matters concerning the infiltration, harassment, and financial warfare are irrelevant to the charges contained in the indictment, nor is the belief that the government was "out to get them." The discovery already provided the defendants by the government is more than adequate. . . .

4. The motion to dismiss on the grounds of selective prosecution is denied. . . .

8. The motion of the defendants for a bill of particulars is denied. . . .

9. The motions of the defendants for individual *voir dire* of the jurors and to submit a questionnaire to the jury panel are denied. . . .

ORDERED that the motion *in limine* of the United States is granted to the following extent only:

1. Reference to the bankruptcy proceedings as a reason for non-payment of the loans which are the subject of the indictment will be permitted; that the bankruptcy was an involuntary one, i.e., at the instance of other creditors [This is not true—ed.], will be admissable; that the government was the creditor which initiated the involuntary bankruptcy proceeding [true—ed.] will not be admitted. . . .

2. Evidence as to other FBI or law enforcement activities, use of informants (other than possible impeachment should the informant testify), FBI infiltration, intelligence or security activities directed at the finance and political activities of persons and organizations associated with LaRouche will not be admitted, except that the defendants may show that there were unexpected actions by some outside influence, including the government, which had the effect of frustrating their expectation that repayment would be made. Even then the court will not allow a delving into any details of alleged infiltration, financial warfare, etc., for the reason that under FR Evid. 403, this would divert the jury from the issues raised in the indictment.