Bush, Iran-Contra, and the LaRouche case: the striking parallels

"There are exact parallels between the unsuccessful efforts of Special Prosecutor Lawrence Walsh to obtain classified evidence needed for Iran-Contra criminal prosecutions from President George Bush and efforts to obtain also from the President classified exculpatory evidence needed for the defense in the case of Lyndon H. LaRouche, Jr.," charged Warren Hamerman in a Fact Sheet issued on Dec. 13.

Hamerman, the chairman of the National Democratic Policy Committee (NDPC), pointed out that:

1) The substance of the classified material in each case is intelligence community activities in the alleged interest of "national security" taking place under the authority of Executive Orders including E.O. 12333.

2) Some of the very same individuals, such as Lt. Col. Oliver North, Gen. Richard Secord, and others, were either engaged in or knew about the intelligence community activities in the two cases.

3) Each of the requests was based upon the President's executive authority to declassify national security information.

4) The requests and responses overlapped in time.

5) In each instance President Bush refused to exercise his constitutional authority and executive power, and instead deferred responsibility to the Department of Justice.

Excerpts from October 1989 correspondence between Iran-Contra Special Prosecutor Walsh and President Bush appeared in a story titled "Bush Rejected Plea on Iran-Contra Data, Walsh Says" printed in the *Washington Post* of Dec. 12, 1989. Below they are placed in chronological sequence against overlapping correspondence between Warren J. Hamerman and the President on requests that classifed documents be released, because they contain material exculpatory to Lyndon H. LaRouche, Jr.

Oct. 11: Hamerman writes letter to President Bush "that it is within your constitutional power, legal obligation and duty as President, to declassify and cause to be released to the general public now all documents, material and evidence exculpatory to Mr. LaRouche and his associated movement" which were denied in court proceedings. The documents requested tracked intelligence agency activity constituting what the letter called "a private effort and 'secret government' apparatus—like that which came to public light in the Iran-Contra affair." The letter stated that among those engaged in these activities were Oliver North, Oliver "Buck" Revell, James Nolan, Henry Kissinger et al. "Under the Reagan administration's Executive Orders 12333, 12334, and other specific related orders, agencies of the government launched counterintelligence investigations and repressive covert operations against LaRouche and his associates which were aimed at 'neutralizing' his political influence abroad and domestically."

Oct. 19: Lawrence E. Walsh writes to President Bush requesting that he intervene to prevent the creation of "an enclave of high public officers free from the rule of law." Only the President can force U.S. intelligence agencies to release classified information needed for Iran-Contra criminal prosecutions. "To leave these decisions solely to the unreviewed judgment of agencies concerned with intelligence issues runs a very real risk of emasculation of the rule of law which the Independent Counsel was appointed to further."

Oct. 20: In a second letter to Bush, Hamerman requests that he "invoke his powers under Executive Order 12356 to declassify and release all material on Lyndon LaRouche" in the possession of the White House, NSC, FBI, CIA, State Department, Department of Justice, the President's Foreign Intelligence Advisory Board and other government agencies or inter-agency government task forces. Appended to the letter is a list of 15 national security "topics" which were acknowledged by the government to exist but were not declassified.

Oct. 25: White House Counsel C. Boyden Gray writes to Walsh that Bush is "fully confident" that the administration's procedures for handling Iran-Contra cases are adequate. Gray writes that any concerns Walsh has should be directed to Attorney General Dick Thornburgh, who "continues to stand ready to meet with you."

Oct. 30: C. Boyden Gray's assistant, Brent O. Hatch, writes to Hamerman on the LaRouche documents request saying: "The Department of Justice has been handling this matter and is aware of the concerns you have raised. We are confident that this matter has been appropriately handled."

Oct. 31: On the Iran-Contra matter Walsh writes back

that "only the President," not Thornburgh, can "adjust the attitudes of the intelligence agencies."

Background on the LaRouche file

In the Boston trial of Lyndon LaRouche, the government had denied the existence of such "national security" documents. In the summer of 1987 the defense made a Motion to Dismiss based on "outrageous prosecutorial conduct." The motion argued that the government under the alleged authority of Executive Order 12333 had targeted LaRouche for intelligence community covert activities. LaRouche also made specific requests for exculpatory evidence concerning the documents which tracked the activities described in the Motion to Dismiss. Boston trial Judge Robert Keeton denied LaRouche's motions on the grounds that there was no evidence to support the claim. The government never responded to the LaRouche discovery requests, until after the case had ended in mistrial.

Prior to the LaRouche motions, in February 1987 one of the defense attorneys had submitted Motions to Dismiss for Vindictive Prosecution and for Destruction of Documents. The government's response to the earlier motion stated:

"The defendants now assert, without the slightest factual support, that this prosecution resulted from a covert program targeting political rivals of the government for infiltration and political destabilization. However gratifying this Orwellian fantasy may be, it is a bald assertion. . . ."

On Aug. 10, 1988, in a Memorandum and Order, Judge Keeton found that, around the questions of production of evidence involving intelligence agency areas, the government had engaged in "institutional and systemic prosecutorial misconduct." Keeton's order concerned an evidentiary hearing concerning intelligence community operative Ryan Quade Emerson, which in fact had led the case to mistrial.

In LaRouche's Alexandria trial the government, backed by trial Judge Albert Bryan, blocked all defense requests for "national security" exculpatory evidence under Executive Order 12333 and other related intelligence agency activation.

In July 1989, after LaRouche was imprisoned in Rochester, Minnesota, FBI agent David Lieberman submitted an affidavit admitting the existence of a "file" on LaRouche, under Executive Order 12333, in a lawsuit by an associate of LaRouche under the Freedom of Information Act (FOIA).

After Hamerman had sent his two letters to President Bush, on Nov. 7, Vernon Thornton, the acting section chief for Records Section at FBI Headquarters in Washington, submitted an affidavit in the same FOIA case saying that he had reviewed the documents in the file acknowledged by Lieberman and determined that they could not be released because the file was a "national security repository." Thornton had previously been the supervisor of the domestic security-terrorism section of the Criminal Investigation Division at FBI Headquarters.

Warren Hamerman charged that "George Bush's failure to respond to either the Walsh or Hamerman requests is particularly troubling because of his longstanding deep personal ties to the intelligence community and the widespread allegations of his direct involvement in both the Iran-Contra and LaRouche-railroad affairs. The President's failure to use his authority to declassify exculpatory evidence in the LaRouche case, makes him personally responsible for the fact that the political leader sits in prison serving what amounts to a 'death sentence.' As President, he is today still constitutionally and legally empowered to declassify the material in these two files, and must be made to do so by all legal means available in the interest of justice and our national interest."

Documentation

From Walsh's report to the U.S. Congress

On Dec. 11, Iran-Contra Independent Counsel Lawrence E. Walsh issued a 61-page "Second Interim Report to Congress" which takes on President George Bush, Attorney General Richard Thornburgh, and the heads of the intelligence agencies for sabotaging justice in the Iran-Contra trials, and running a coverup of violations of the law and the Constitution. Attached as an appendix to Walsh's report are copies of his entire correspondence with President Bush and Department of Justice officials.

In his report, Walsh states that he would have preferred to take his concerns up directly with President Bush. However, says Walsh, given the President's refusal to meet with him or give him a direct channel of communication, and given Attorney General Thornburgh's flouting of "the rule of law," he has no choice but to "report to Congress and invite its consideration."

Walsh's report contains a full review of the Bush administration's conduct on national security information disclosure in three Iran-Contra cases—the North trial, the Secord case, and the Fernandez case. Walsh's report focuses on the specifics of Bush administration misconduct under CIPA, the Classified Information Procedures Act. In both of LaRouche's trials in Boston and Alexandria, the defense filed major CIPA motions to try and mount a defense on the areas of governmental financial and intelligence agency warfare against LaRouche carried out under the pretext of "national security cover." Many of the material and technical details of the LaRouche CIPA motions parallel the direct issues in the Iran-Contra trials.

Below are excerpts from Walsh's document to Congress.

1. On the Bush administration's accountability to law.

This second interim report of the Independent Counsel for the Iran/Contra matter addresses the problems of prosecuting public officials involved in national security activities. It is prompted by the Nov. 24, 1989, dismissal of all charges against Joseph Fernandez, the former CIA chief of station in Costa Rica, which resulted from the Attorney General's refusal to allow the disclosure of certain classified information. It is our concern that the Attorney General, in causing the dismissal of a significant Iran/Contra prosecution, undervalued the principle that all persons are accountable to the law. (p. 1)

In his affidavit, the Director of Central Intelligence undertakes to explain why public disclosure of this classified information *could* cause serious damage to this country's national security. He makes clear that his views are those of the Bush administration reached at meetings of agencies on July 21, 1989, and November 9, 1989. . . . (p. 43)

These officials do not address the principle that intelligence activities be conducted within the law or, at least, that important CIA officers not obstruct lawful investigations when their conduct is called into question. (p. 47)

2. On presidential impeachment or treason trial to protect the rule of law.

Independent Counsel would not request relief from Congress simply to gain an advantage in a single case or even all of the cases remaining for his prosecution. The concern which prompts this report is that the generalized views and policies by the intelligence community and the Attorney General could jeopardize any prosecution of other government officers heavily involved with classified information. The agencies' actions have created an unacceptable enclave that is free from the rule of law. Even during the violence of feudal times, the scholars and jurists of English law refined the concept that no person was above the law or beyond its reach. In the thirteenth century, Bracton, a Justice of the King's Bench and one of the first great commentators on English law, said, "The King is beneath no man, but beneath God and the law, because the law maketh the king." The Lord Chief Justice of England defied King James I by reminding him of this principle. King Charles I was beheaded for ignoring it. The Declaration of Independence recites as a grievance against King George III that he withdrew from the colonists their rights to English law. John Adams, one of the drafters of the Declaration of Independence, incorporated in the Constitution of the Commonwealth of Massachusetts the concluding objective "to the end that it may be a government of laws instead of men." Since then, two Presidents have been subject to impeachment proceedings and one vice-president has been tried for treason. Somehow, it mocks this history to suggest that the CIA former chief of station for Costa Rica may not be tried for giving false statements and obstructing justice. (pp. 53-54)

3. Institutional deniability is not absolute.

[T]he *Fernandez* prosecution is the clearest example of what can occur when this cooperative process is impaired by institutional self-interest. Disregarding a possible conflict of interest, the Attorney General relied exclusively upon the views of the intelligence community to end a prosecution within the legitimate authority of an independent counsel, which threatened to expose others engaged in CIA activities. The affidavit of the Attorney General and the supporting affidavits from the intelligence agencies attempt to ritualize a one-sided view of a profound conflict between national security and law enforcement. They are no more than a rationalization for the abstract concept of deniability, without any recognition that the concept cannot be absolute—that at some point, for some desirable objective, it could be sacrificed. (pp. 37-38)

The affidavit filed by the Attorney General in *Fernandez* states that he accepts Independent Counsel's judgment as to the importance of the prosecution. Yet, neither the Attorney General's affidavit nor those of the intelligence agencies take account of the predicted exposure of defendant's superiors in the CIA. This report questions the balance struck by the Attorney General in the *Fernandez* case. It is our belief that the so-called secrets involved in *Fernandez* would have been sacrificed for some other administration objective—military, diplomatic or political. . . . (pp. 2-3)

4. Only the truth can restore credibility.

The Attorney General also concludes that acknowledgment of these known facts would "undermine this nation's credibility throughout the world." From this possible loss of credibility the Attorney General then predicts other dire consequences, including an adverse impact upon the Central American regional peace initiative. Notwithstanding Iran/Contra, can this credibility be restored by the non-acknowledgment of publicly known information? We suggest that any injury to this country's credibility flows from support of illegal activities by former CIA officials, and not from their investigation and prosecution. (p. 42)

5. Implications beyond the Iran/Contra cases.

The concerns raised by the affidavits of the Attorney General and the intelligence agency heads go far beyond the *Fernandez* case. These assessments of risk to national security are so generalized that they may be applied to the trials of other intelligence officers. So profound an exception to the rule of law deserves more thoughtful consideration than any of the affidavits disclose. Anglo-American law places its faith in proof of facts, and not in speculation. For centuries it has perfected the adversary process in which conclusions are measured against their supporting facts, and in which those expressing conclusions are subject to challenge and are expected to support them with something other than speculation. (p. 48)