EIR Feature

LaRouche demands freedom; calls judge 'intractably biased'

by Warren A.J. Hamerman

On Nov. 17, Ramsey Clark and other attorneys for political prisoner Lyndon LaRouche filed an appeal of Judge Albert V. Bryan, Jr.'s denial, earlier this year, of LaRouche's motion for freedom based on six volumes of new evidence. The new appeal to the Fourth Circuit Court of Appeals charges that Bryan was "intractably biased" and should have recused himself from hearing LaRouche's new-evidence motion. Bryan's "bias was manifested in his actions at trial and attendant proceedings, and rearticulated with shocking blindness and passion in his response to the recusal motion," the appeal argues.

The new 50-page legal document, backed by an appendix of new evidence, demands LaRouche's immediate freedom, that he and his co-defendants "are entitled to have their wrongful convictions set aside, be released from custody, and the charges dismissed."

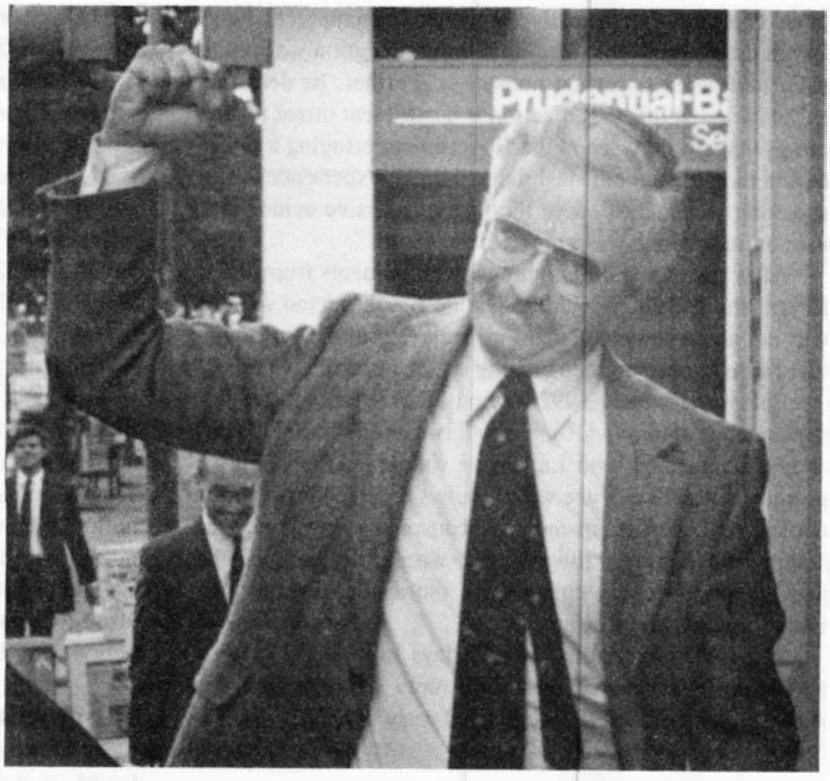
Due to Judge Bryan's prejudice, both in the original 1988 trial and in the appeal, LaRouche has now spent nearly four years in federal prison for crimes which he did not commit.

New evidence keeps coming in

Since LaRouche's sentencing in 1989, there has been a steady stream of new evidence. Therefore, in the January 1992 motion, LaRouche argued for discovery and hearings to get all of the facts (see *EIR Feature,* Jan. 31, 1992, "LaRouche Launches Major Legal Effort for Freedom").

All of this was ignored by the biased Bryan.

LaRouche's new-evidence motion was filed on Jan. 22, 1992, and presented a detailed picture of prosecutorial misconduct and concealment, including the knowing use of perjured testimony at trial; the exploitation of this perjury in making closing arguments to the jury; the bad-faith filing of bankruptcy proceedings against defendants' companies which had taken all the loans listed in the indictment, as a means of destroying the ability to repay loans; the recruitment of



Judge Albert V. Bryan, Jr. (left), who bragged, "I should get a cigar," after railroading through the jailing of Lyndon LaRouche. New evidence of the government's malfeasance is coming in, including the September 1992 arrest of former sheriff's deputy Don Moore, the chief "go-fer" of the "Get LaRouche" task force, who is now charged with a conspiracy to kidnap associates of LaRouche. Moore is shown here (right) at a more triumphant moment in his career, entering the Richmond Courthouse for hearings on LaRouche's appeal, which was denied.

prosecution witnesses through immunity agreements, rewards, threats of prosecution, and other inducements not disclosed to the defense; and the withholding of exculpatory and impeachment evidence specifically requested by the defense prior to trial.

The new appeal argues that the new evidence stream is overflowing with fresh new evidence each month:

> In August 1992, a former Stasi (East German spy service) official confessed that the Stasi mounted a massive disinformation campaign designed to blame the assassination of Olof Palme on persons associated with LaRouche. This demonstrates . . . that the LaRouche movement was significant enough to prompt this bizarre and elaborate contrivance, which was coordinated with Soviet attacks on LaRouche and their demand that action be taken against him in the U.S. This vicious falsehood was broadcast by NBC and became a critical aspect of attempts to destroy movement finances at the very time the loans in question were coming due. In September 1992, Don Moore, an integral part of the prosecution team, was arrested and charged with conspiracy to kidnap and deprogram LaRouche associates. The facts surrounding this criminal plot call into further question the misconduct of the prosecution team. In October 1992, an FOIA [Freedom of Information Act] release was received which indicates that Elizabeth Sexton, a critical Government witness, was acting as an agent of the Government during times relevant to this case, a fact she denied and the Government covered up at trial.

Ten major errors

The new appeal exhaustively documents 10 major errors which Bryan made in his denial of the new-evidence motion, each of which is grounds to free the former presidental candidate. The errors range from Bryan's failure to recuse himself, to his failure to either overturn LaRouche's conviction or, in the alternative, to grant him discovery and hearings, on nine substantive issues backed by new evidence.

The topics these nine issues cover range from the bad-faith bankruptcy action which shut down the companies which owed the loans; to the illegal government-private "concert of action" of the Anti-Defamation League (ADL), American-Israeli Public Affairs Committee (AIPAC), John Train, journalists, and others who plotted the prosecution; to the Oliver North-linked government "secret team" member who was foreman of LaRouche's jury; to covert operations against LaRouche during the Reagan-Bush administration under Executive Order 12333 and other "national security" pretexts.

Bryan's bias

The papers filed for LaRouche on Nov. 17 provide as evidence of Judge Bryan's bias, his own statements. For example, according to the brief, "defending the Government

from charges of politically motivated misconduct, Judge Bryan proclaimed 'this idea' that the prosecution was politically motivated as 'errant nonsense.' Further, he declared, '[t]he idea that this organization is a sufficient threat to anything, that would warrant the Government bringing a prosecution to silence them, just defies human experience.' This shocking statement flew in the face of massive evidence to the contrary which was known to the Court."

After reviewing other outrageous statements from Judge Bryan, the appeal concludes: "Judge Bryan's fixed opinion was not about some collateral or irrelevant matter; it constituted a preconceived idea bearing on the heart of the case."

LaRouche's early 1992 motion for freedom argued that the sentence against LaRouche and two of his co-defendants should be vacated, and LaRouche should be freed, on the grounds of new evidence which shows that "the prosecution conducted and participated in a conspiracy and concerted action with others to illegally and wrongfully convict him and his associates by engaging in outrageous misconduct, including financial warfare."

The U.S. government has 30 days to reply to the new appeal. LaRouche's response to its reply is due on Dec. 31. A decision on the appeal is expected early in 1993.

Documentation

From the appeal of LaRouche's 2255 motion

In the United States Court of Appeals for the Fourth Circuit On Appeal from the U.S. District Court for the Eastern District of Virginia Alexandria Division *United States v. Lyndon H. LaRouche, Jr., William Wertz, Jr., and Edward W. Spannaus.*

Brief of Appellants

This appeal arises from the refusal of an intractably biased trial judge to recuse himself from the review of the defendants' 28 U.S.C. 2255/Rule 33 motion, despite clear demonstration not only of the appearance of that bias, but its actuality. This bias was manifested in his actions at trial and attendant proceedings, and rearticulated with shocking boldness and passion in his response to the recusal motion and in the Memorandum Opinion herein. The egregious errors contained in that opinion resulted in whole or in part from that bias.

I. Statement of subject matter and appellate jurisdiction

On December 16, 1988, the defendants were convicted by a federal jury in the Eastern District of Virginia, the Hon. Albert V. Bryan, Jr. presiding, of conspiracy to commit mail fraud, mail fraud, and one count of conspiracy to defraud the Government (the latter conviction only involved defendant LaRouche). These convictions were finalized on appeal. . . . On January 22, 1992, defendants filed a motion, pursuant to 28 U.S.C. 2255 and Rule 33 of the Federal Rules of Criminal Procedure (F.R.Cr.P.), seeking to vacate their convictions, as well as for other relief, and filed a related application for Section 2255 discovery. On the same date defendants also filed a motion to disqualify the presiding judge, which was denied on January 28, 1992. On May 14, 1992, the District Court issued a final Order and a Memorandum Opinion (hereinafter "Memo. Op.") denying the defendants' 2255/Rule 33 motion and disposing of all claims thereto.

The defendants filed a timely notice of appeal with the District Court on May 26, 1992. This Court maintains jurisdiction over this appeal pursuant to 28 U.S.C. 1291.

II. Statement of issues presented for review

1. Whether the Court [Judge Bryan] below abused its discretion in denying the defendants' motion to disqualify.

2. Whether the Court below erred in denying defendants' bankruptcy claims.

3. Whether the Court below erred in denying defendants' conspiracy of prosecution claims.

4. Whether the Court below erred in denying defendants' suppression of evidence claims.

5. Whether the Court below erred in denying defendants' claim regarding the motion *in limine*.

6. Whether the Court below erred in denying defendants' exculpatory evidence claims.

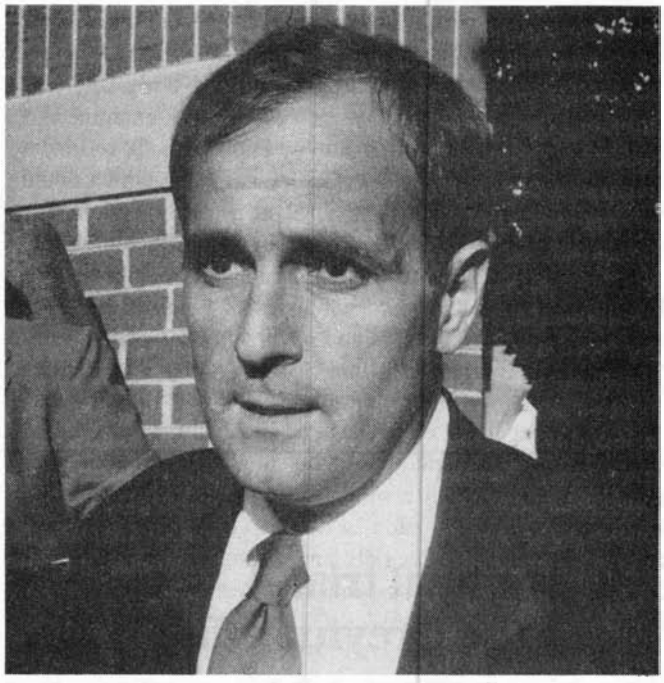
7. Whether the Court below erred in denying defendants' claims regarding [witnesses] Hintz, Curtis, and Yepez. Whether the Court below erred in denying defendants' claims regarding witness immunity for Curtis and Hintz.

9. Whether the Court below erred in denying defendants' claims regarding the knowing use of false testimony.

10. Whether the Court below erred in denying defendants' claims regarding jury impartiality. . . .

IV. Statement of the case

On January 22, 1992, defendant Lyndon LaRouche, an internationally known political figure and candidate for President of the United States, plus two co-defendants, William Wertz and Edward Spannaus, filed a motion under 28 U.S.C. 2255 and Rule 33 of the Federal Rules of Criminal Procedure to vacate their convictions and also sought discovery and hearings in conjunction therewith. This motion, supported by 85 pieces of new evidence, presented . . . a detailed picture of prosecutorial misconduct and concealment, includ-

Two top members of the "Get LaRouche" task force: prosecutor John Markham and Mira Lansky Boland of the Anti-Defamation League. In Judge Bryan's "rocket docket," the evidence connecting the prosecutors in the case to longstanding enemies of LaRouche, notably the ADL, was suppressed. Here, Markham and Boland are shown at a hearing on Oct. 6, 1992 in the case of the attempted kidnaping of LaRouche associate Lewis du Pont Smith. Markham is the attorney for Smith's father, who is charged, along with several other defendants, with conspiracy to kidnap his son.

ing: the knowing use of perjured testimony at trial; the exploitation of this perjury in making closing arguments to the jury; the bad faith filing of bankruptcy proceedings against defendants' companies which had taken all the loans in the indictment as a means of destroying the ability to repay loans; the recruitment of prosecution witnesses through immunity agreements, rewards, threats of prosecution, and other inducements not disclosed to the defense; and the withholding of exculpatory and impeachment evidence specifically requested . . . by the defense prior to trial. New evidence also demonstrated that the foreman of the defendants' petit jury and three other venirepersons gave false answers during *voir dire*. Concealment of the true nature of his employment by the jury foreman enabled a person who was in direct contact with investigative agencies of witnesses at the trial to be at the jury's helm.

Simultaneous with the filing of the 2255/Rule 33 motion, the defendants filed a motion to disqualify the trial judge, Albert V. Bryan, Jr., for bias or because his impartiality might reasonably be questioned. The trial judge, after denying the recusal motion on January 28, 1992, gave another vivid demonstration of his bias in a Memorandum Opinion and Order signed on May 14, 1992, denying the motion without hearing.

The government's case at trial against these defendants relied on proof of nonpayment of certain loans solicited by persons associated with the defendants and an entirely circumstantial case of fraudulent intent. The defendants made numerous pretrial discovery requests for evidence related to the government's willful interference with the financial ability to repay, and also for evidence needed to cross-examine and otherwise present evidence regarding the former members and the lenders who testified for the prosecution. The Government denied the existence of such evidence, later found to exist, successfully concealing it throughout the trial, thereby depriving defendants and the Court and jury of evidence which would have demonstrated the innocence of these defendants.

Reduced to its bare bones, the Government determined to bring a fraudulent bankruptcy petition designed to eliminate business entities associated with the defendants, at least for the short term, prohibit any ability to continue to pay or otherwise satisfy their loan obligations, and thereby create a pool of victims for the criminal prosecution. Simultaneously, they determined to bring a fraudulent criminal indictment based on these victims and the artificial construction that a conspiracy existed which conveniently ended on the very date the bankruptcy was filed. This obvious sham was artfully constructed to eliminate the bankruptcy and its consequences as evidence at trial. They successfully completed the circle by the filing and allowance of a motion *in limine* which prohibited any evidence of these frauds by the Government.

The defendants' motion presented new evidence that key government witnesses, Christian Curtis and Wayne Hintz,

were afforded immunity and/or other rewards or inducements for their cooperation which were never disclosed to the defense. Mr. Curtis perjured himself on this issue, and Mr. Hintz, due to the nondisclosure, was not cross-examined on this point. With respect to Wayne Hintz, the Government also failed to turn over exculpatory evidence which could have been used to impeach Hintz at trial. Several former members of defendants' political movement, including Mr. Curtis and Mr. Hintz, testified at trial and material evidence connecting these "insider" witnesses to longstanding enemies of the defendants, such as Mira Boland of the Anti-Defamation League of B'nai B'rith (ADL) and Patricia Lynch of NBC News, was suppressed by the Government. Evidence connecting the prosecutors and investigators in this case to these longstanding enemies was denied and suppressed. The prosecution also used perjured testimony from lender witnesses and failed to disclose evidence which could have been used to impeach or otherwise undermine the testimony of all lender witnesses at trial. This exculpatory and impeachment evidence was specifically requested by the defendants.

The defendants' moving papers informed the Court that they continued to acquire new evidence of government misconduct and suppression of evidence. Since the sentencing

'A political trial, like the Dreyfus affair'

Friedrich-August von der Heydte, a German professor of constitutional and international law, analyzed the remarkable parallels between the infamous "Dreyfus Affair" in the 1890s in France, and the political persecution of Lyndon H. LaRouche in the United States. On Feb. 18, 1989, he issued the following evaluation of the show-trial against LaRouche. The statement was published as an advertisement in newspapers around the world, by the Commission to Investigate Human Rights Violations.

Everything we have been able to find out about the trial against Lyndon H. LaRouche, has been yet another painful reminder that the exploitation of the judicial system for the achievement of political ends, is unfortunately a method used repeatedly today in the West as well as in the East. The "LaRouche case" is a glaring example of how, in the United States also, the judiciary is abused for the dispensing of "political justice."

On closer examination of the behavior of the U.S. authorities toward LaRouche, there emerge strong parallels to the infamous Dreyfus Affair in France, which has gone down in history as a classical example of a political trial.

Just as LaRouche was, the French Capt. Alfred Dreyfus was deprived by the structure of the trial procedures, of any opportunity to prove his innocence, and facts critical for his defense were excluded from the trial. In both cases, the harshness of the punishment betrayed the authorities' actual intent, namely, for political reasons, to hold the condemned in prison for such an extended period that alone for simple biological reasons, he would no longer be able to influence the political process.

In both political trials, the prosecution consistently denied the political background of the accusations. LaRouche's actual "crime" seems to consist in the fact that he has created a financially and otherwise politically independent force which stands outside of the Eastern Establishment's strictly controlled political framework. Since that is hardly a punishable offense in a democratic state, an indictment had to be concocted which would make it possible to convict him under criminal law. After the first trial before a federal court in Boston collapsed, because even the court was unable to deny its political dimensions, a new trial, with a virtually identical indictment, was set up in Alexandria, Virginia, thereby taking advantage of the American federal system.

Some further parallels should be pointed out between the Dreyfus Affair and the LaRouche case:

In both cases, despite massive efforts, the initial criminal investigations led nowhere. Then the media were "drawn in," and, playing on the growing wave of anti-Semitism and anti-German revanchism in France at the end of the 19th century, managed to stir up a witchhunt campaign and create a "pre-judgment," such that additional pressure by the General Staff and the government finally led to an indictment against Dreyfus. Similarly today, in the United States there is scarcely any political figure more hated by the media than LaRouche.

Up to the trial's conclusion, Dreyfus was almost certain that he would not be convicted, since despite falsified documents, the evidence against him was quite scanty. A handwriting expert had even confirmed that the famous "Bordereau" document could not have been written by Dreyfus. Nevertheless, the crushing verdict was delivered after only one hour's deliberation. It was similar with the trial in Alexandria: On the basis of the judge's instructions to the jury, the defendant could expect at least partial acquittal; and yet the jury unanimously found him and his six associates guilty on all 48 counts—which would work

in 1989, there has been a steady stream of new evidence discovered which had been suppressed by the prosecution that shows the innocence of the defendants. Defendants argued that for this reason, discovery and hearings were required in order to get all of the facts before the Court. The flow continues! Each month that passes brings fresh new probative material to the fore. In August 1992, a former Stasi (East German spy service) official confessed that the Stasi mounted a massive disinformation campaign designed to blame the assassination of Olof Palme on persons associated with LaRouche. This demonstrates . . . that the LaRouche movement was significant enough to prompt this bizarre and elaborate contrivance, which was coordinated with Soviet attacks on LaRouche and their demand that action be taken against him in the U.S. This vicious falsehood was broadcast by NBC and became a critical aspect of attempts to destroy movement finances at the very time the loans in question were coming due. In September 1992, Don Moore, an integral part of the prosecution team, was arrested and charged with conspiracy to kidnap and deprogram LaRouche associates. The facts surrounding this criminal plot call into further question the misconduct of the prosecution team. In October 1992, an FOIA [Freedom of Information Act—ed.] release was received which indicates that Elizabeth Sexton, a critical government witness, was acting as an agent of the Government during times relevant to this case, a fact she denied and the Government covered up at trial. . . .

The new evidence further reveals the voluminous nature of the government-suppressed material which included 85 discrete items discovered and presented to the trial court, which alone warranted reversal and required an evidentiary hearing and discovery as provided in 28 U.S.C. 2255. This would have occurred if the Motion had been considered by an impartial and fair-minded jurist. The record comments of the trial court make it very clear that the defendants did not receive either full or fair consideration below. This case should be reversed and judgment rendered for defendants, or remanded for a full evidentiary hearing and discovery. Judge Bryan should be disqualified, and another judge should be appointed to preside.

V. Argument

A. The court abused its discretion in denying defendants' motion to disqualify

Concomitant with the submissions of the 2255/Rule 33 motion, the defendants also filed a motion, supported by an affidavit from counsel, to disqualify the presiding judge, Hon. Albert V. Bryan, Jr. . . . By Order dated January 28, 1992, the Court denied the disqualification motion stating, in essence, that neither the affidavit nor the cited comments by the Court "indicate a personal, as opposed to judicial, bias.". . . [T]he disqualification of the judge is mandatory if there is a reasonable factual basis to question his or her impartiality. . . . The test for recusal turns upon whether a reasonable lay person would question the judge's impartiality, not whether the judge is or is not actually impartial. . . .

Following the allocutions of Lyndon LaRouche and another defendant, the trial judge revealed the depths of his prejudice and that his view of the case may be influenced by extra-judicial considerations. Defending the Government from charges of politically-motivated misconduct, Judge Bryan proclaimed "this idea" that the prosecution was politically motivated as "errant nonsense.". . . Further, he declared "[t]he idea that this organization is a sufficient threat to anything, that would warrant the Government bringing a

out to a total of approximately 10 minutes of "deliberation" on each count.

Rush to judgment

Both proceedings were rushed to their conclusion, as is typical for political trials. The period between the issuance of the indictment and the final conviction in both cases, was only a few weeks. LaRouche was indicted on Oct. 14, 1988 and was pronounced guilty on Dec. 16, 1988; Dreyfus only learned that he was indicted for treason when he was arrested on Oct. 15, 1894, and was convicted on Dec. 22, 1894.

In the court-martial trial against Dreyfus, exculpatory material was suppressed, and as proof of guilt, documents were produced which had been manipulated by intelligence services, and whose source was concealed citing regulations on classified materials. The defense did not have complete access to the documents upon which the indictment was based. Only years afterward, was Dreyfus able to prove that the essential documents which led to his conviction had been forged, and that the prosecution's star witness had committed perjury. Judging from the currently available published information, one is hard put to fend off the impression that here, too, there are parallels to the trial against LaRouche.

In both cases, the courts rushed to carry out the sentence, in order to deprive the accused of the ability to influence events. Even after the convictions, the press campaigns—now snide and triumphantly gloating—did not subside, but rather the contrary.

In order to disprove the accusations which to him were beyond belief, Dreyfus presented himself before the trial fully conscious of the fact that he had done nothing wrong. The fact alone that Lyndon LaRouche, although he was well aware of the political character of the trial against him, did not become a fugitive from justice—though he could have easily done so—is a convincing demonstration that LaRouche has a clear conscience.

prosecution to silence them, just defies human experience." This shocking statement flew in the face of massive evidence to the contrary which was known to the Court. Not only was the Court apprised of the relevant facts through the pretrial filings of defendants; the barrage of pretrial media attacks, including negative coverage on the eve of trial, together with the violent political and media reaction to the LaRouche movement's electoral successes in March of 1986 served clear notice of political motivation and concert of action between the Government and others opposed to LaRouche.

The defendants' 2255/Rule 33 motion offered 85 separate items of new evidence, many of which further demonstrated the government targeting and political motivation charged by the defense. Despite this additional evidence, on the very first page of his Memorandum Opinion, Judge Bryan reaffirmed and accelerated his biased comments that defendants' political movement was too insignificant to prompt retaliation. In a sarcastic footnote, the Court comments: "The notion that the movements' significance would prompt such retaliation was characterized by the Court at sentencing as 'arrant nonsense.' The term when transcribed appeared as 'errant nonsense.' Either word will do." Predictably, the Memorandum Opinion simply ignored or distorted most of the evidence adduced.

The Memorandum Opinion makes it clear beyond a reasonable doubt that the presiding judge did not—and because of his bias could not—give impartial consideration to the matters presented. . . .

Judge Bryan's fixed opinion was not about some collateral or irrelevant matter; it constituted a preconceived idea bearing on the heart of the case. No honest person evaluating the above facts could doubt that Judge Bryan's impartiality might reasonably be questioned. The Court below abused its discretion in denying the motion to disqualify and, upon remand of this case, a different judge should be assigned. . . .

Loudoun County Sheriff's Office

As the defendants articulated in their response pleadings below, media reports in the spring of 1992 confirm that the Loudoun County Sheriff's Office is now under investigation by the FBI for, among other things, "handling of criminal investigations and evidence," "alleged civil rights violations," and "abuse of power.". . . This investigation was precipitated by a deputy who charged that the Sheriff's Office and Commonwealth Attorney suppressed exculpatory evidence in a high-profile case. This same individual served as the cooperating witness in the case of *U.S. v. Moore et al.* One of the principal foci of the federal probe appears to be whether the Loudoun Sheriff's Department withholds exculpatory evidence as a matter of practice and policy.

The Government participated in concealing this evidence prior to trial, and defendants did not have the admissions of the role of ADL Fact-Finding Director Mira Boland and the officials in the Loudoun Sheriff's Office (Sheriff Isom and Deputies Moore and McCracken) in interfering in business relationships in Loudoun County. . . . This information was only developed in the *Commonwealth v. Welsh* proceedings during the spring of 1990. Additional evidence regarding the political motivations of Virginia Attorney General Mary Sue Terry and Loudoun Sheriff John Isom were obtained through the Freedom of Information Act in late 1991. . . . The latest evidence which suggests the Department may have a policy of suppressing exculpatory evidence as a matter of practice, has surfaced in the press in the past several weeks and is now under federal investigation.

The suppressed evidence demonstrates that the Loudoun Sheriff's Office and the ADL were involved in coordinated activity designed to disrupt the financial activities of defendants' movement. Loudoun Deputy Sheriff Moore was also a Special U.S. Deputy Marshal appointed to assist the federal prosecutions in Boston and Alexandria. Sheriff Isom and Deputy McCracken worked closely with the federal prosecution team. The knowledge and actions of these individuals is attributable to the prosecution in this case. . . . The nondisclosure of this evidence impeded defendants' ability to present a defense and constituted a violation of their due process rights. . . . The Court addresses none of this new evidence, beyond saying it is "irrelevant."

VI. Conclusion

The defendants have shown that their imprisonment resulted from violation of the Constitution or laws of the United States, including outrageous governmental misconduct, which has resulted in a complete miscarriage of justice. The defendants were targeted for prosecution, harried by economic warfare, subjected to a crusade of numerous media attacks, and wrongfully convicted as a result of a conspiracy and concerted action by public and private forces dedicated to their elimination. Relevant and exculpatory materials were intentionally and routinely withheld by the Government in an effort to preclude defenses, prevent discovery of the truth, and cover up the conspiracy and concerted action in which the Government was engaged. The actions taken by the Government and its co-conspirators were designed and intended to force massive investigations under any pretext, including national security, to destroy the financial and political base of the movement and prevent the servicing of loans, so as to allow those loans to become the basis of the indictments.

The government's failure to meaningfully respond is further evidence of the merits of defendants' Motion.

Based on the facts and arguments presented, the defendants are entitled to have their wrongful convictions set aside, be released from custody, and have the charges dismissed.

Respectfully submitted,
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