

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

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.

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