LaRouche must be exonerated, says former Congressman Mann

The following speech by former Rep. James Mann (D-S.C.) was presented to a conference sponsored by the International Caucus of Labor Committees and the Schiller Institute in Eltville, Germany on Dec. 10, 1994.

Mann served on the House Judiciary Committee from 1969 to 1979. In May 1989, when the main appeal brief on behalf of American statesman Lyndon LaRouche was filed with the U.S. Court of Appeals for the Fourth Circuit, Mann signed an amicus curiae *(friend of the court) brief decrying the violation of fundamental standards of due process and fair trial in the LaRouche case. By the time oral arguments occurred in October 1989, close to 1,000 of America's most prominent attorneys joined as signers of that brief. Since then, Mann has actively lobbied his former colleagues in Congress to demand that they exercise their oversight powers to review the gross misuse of prosecutorial and investigative powers by agents and officials of the U.S. government that occurred in this case.*

I see by the program that my topic is "Why LaRouche Must Be Exonerated."

Injustice in any form will not be tolerated. And knowing Mr. LaRouche, you know very well that injustice in any form, whether it involves him, society, or the least of us, will not be tolerated by him. You know he has a mission; that, I know, we all appreciate. I particularly appreciated what he had to say in a document issued in July concerning his mission. He doesn't state it that way; I do. He discusses his record of achievement, which we know is substantial, and then he says: Given that record, if I were not running for President, the proper question of any informed journalist ought to be: "Why are you running away from your moral responsibility?"

Imprisoned for political beliefs

How could this man be sent to prison in America? How could it be that this man was sent to prison, basically, for his political beliefs?

As an American lawyer, and as a part of that system, I assure you that I am not here to defend it. One who loves his country ought to improve it. One who loves his country does not want to cover up its faults.

I always believed that the jury system was the best system in the world, and that the Anglo world was most fortunate to have their own peers to judge their guilt or innocence, a precious right that had its embryo among the peasants in 1100 A.D., and was etched out at the Magna Carta (when the barons got that concession out of King John), and that has remained the system since that time. The jury system, if it is to operate properly, must be uncontaminated; the jury in LaRouche's case was contaminated.

Where do I begin among the great number of sins and errors that were committed in the Judicial branch of our government in the LaRouche case?

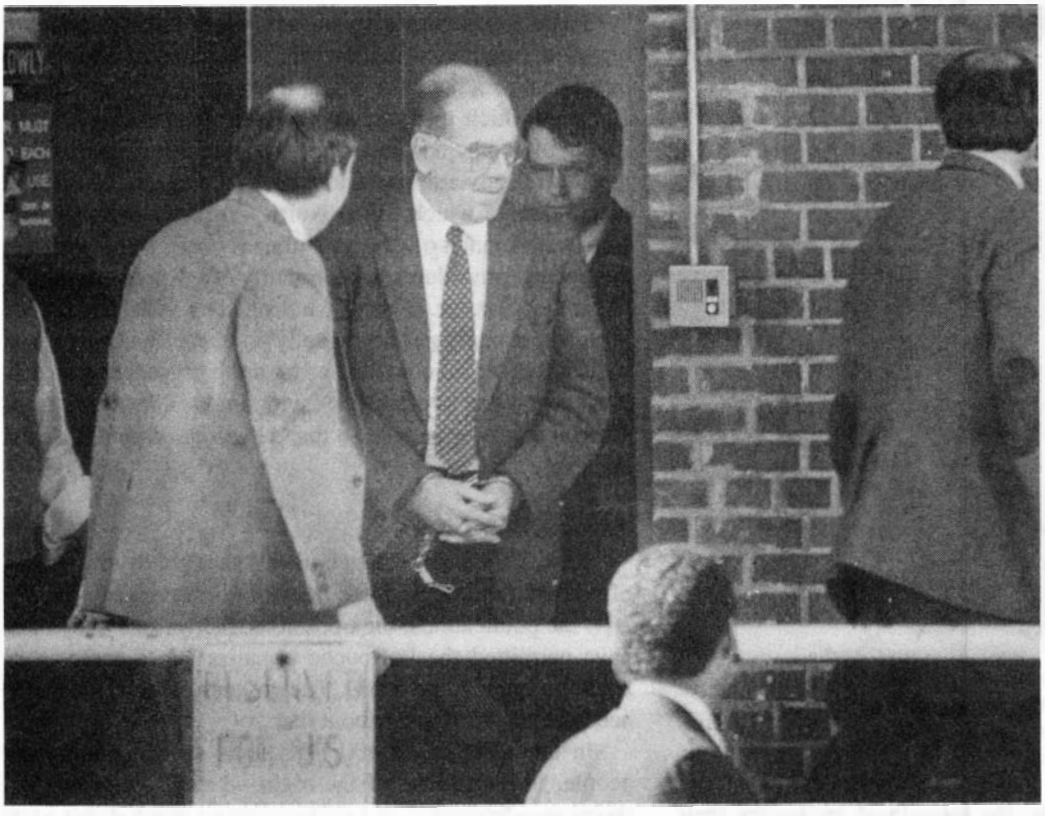
I think first that I must—having due consideration for those of you who have no experience with American law—tell you that the judiciary system of trials, our system of justice, is independent. It is not contaminated by the legislative body, by the Senate or the House of Representatives. There may be some illegal exceptions to that, but I tell you that, as a member of the elected body of the people in Congress, I dared not interfere with any judicial proceeding. I had no input into it, it would have risked my whole career and my life to attempt to influence a judicial body.

That separation of powers is pretty well observed. The judicial body, on the other hand, is the Judiciary of the United States, who are elected by Congress for life. They don't have to cease to perform, unless they reach senility or some other handicap that causes them to be unable to perform; they are independent. The Department of Justice has its political aspects: The Attorney General is appointed by the President. The Attorney General is instrumental in the appointment of the prosecuting attorneys in each of the federal districts of the United States. They hold office at the will of the Attorney General, or the President.

Therefore, when they get a message in the Justice Department, that the emphasis needs to be on this or that, they respond. They are political to that extent. One would hope that they maintain their objectivity when it comes to such things as trials and the rules of evidence, but, unfortunately, that branch of the government is a little bit more human than the Congress or even the judges.

The Kissinger letter

So when the message goes out from the President, the Attorney General, or anyone who has any input into that system—such as, for example, this letter, addressed to the director of the FBI, dated Aug. 19, 1982: "Dear Bill, I ap-



"So why should Lyndon LaRouche be exonerated? He is handicapped by the stigma of this conviction. . . . He has something to give to the world, and this outrageous conviction prevents that from happening." LaRouche is shown here being taken to prison on Jan. 27, 1989; he was not paroled until five years later. In the background on the right is LaRouche's colleague Michael Billington, who is still in prison in Virginia serving a 77-year sentence.

preciated your letter forwarding the flyer which has been circulated by Lyndon LaRouche, Jr. Because these people have been getting increasingly obnoxious, I have taken the liberty of asking my lawyer, Bill Rogers, to get in touch with you to ask your advice, especially with respect to security. It was good to see you at the Grove, and I look forward to the chance to visit again when I am next in Washington. Signed, Warm regards, Henry A. Kissinger."

Problem with "security"! A later complaint had to do with illegal money that the LaRouche organization was allegedly receiving from foreign governments, or some such wild suggestion.

In any event, given the climate of the Reagan-Bush years, and given the fact that this "obnoxious" person was coming up with too much good stuff, the word seemed to have gotten around, and a prosecution was commenced in Boston. They had a favorite prosecutor up there by the name of William Weld, a Republican, who undertook to prosecute LaRouche and some of his associates in Massachusetts, and after seven and a half months, he made such a botch of it, knew that he hadn't proved his case, that he contrived to cause the case to be a mistrial, meaning an abortion. Meaning, significantly, however, that it was not double jeopardy, it was not a final judgment, the case could be tried again. The judge, in granting that mistrial, recognized and stated that he had hardly ever seen more prosecutorial misconduct than he had in that case.

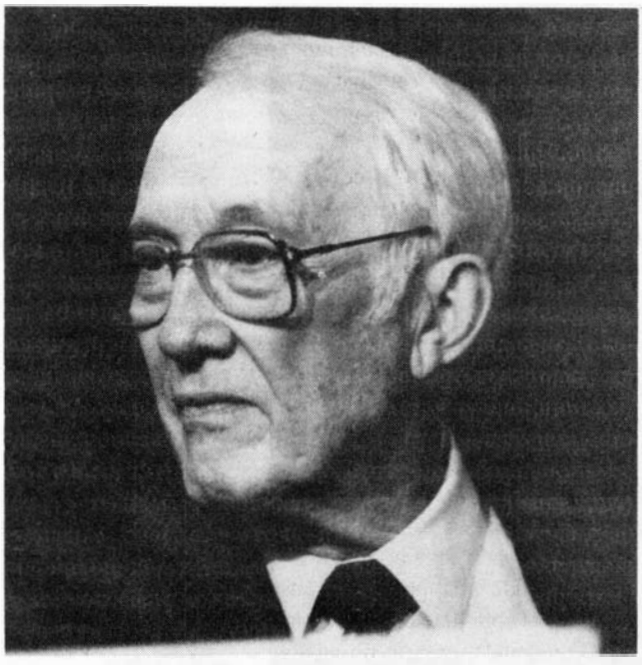
The Attorney General, and I give him the credit, had the case transferred to Alexandria, Virginia, near Washington, D.C. And he put it on what they call the "rocket docket," which means you get about 30 days to get ready to go to trial.

(Interestingly enough, the courts in my state of South Carolina just this year enacted a rule that nobody could be forced to trial in less than a year—of course, you can volunteer to go to trial in less than a year—in order that the appropriate discovery procedures could be conducted.)

For some of you who don't understand American courts, each of the 50 states has its own court system, its own method of selecting judges, its own method concerning judicial tenure, its own court rules. There are great variances in the states. For example, the northern states are primarily of English origin, and we have what we call the "common law." States such as Florida, Louisiana, and those which were settled largely by France and Spain, are called "civil law" states, and their procedures are different. But there is only one federal court system. And under the rocket docket rules, a judge, who in this case happened to be Judge Albert Bryan, could almost set the schedule.

Discovery yields no results

And so he ordered the case for early trial. I think the defense had somewhere around 28 days to prepare after getting notice of the trial date. The defense, of course, started making motions for discovery of material, i.e., what's the



Former congressman James Mann (D-S.C.) speaking about the violation of fundamental standards of justice in the LaRouche case, in Eltville, Germany on Dec. 10, 1994.

government got? They did the same thing in Boston; they didn't get good results in either case. The U.S. Attorney was not forthcoming, and that is a legal responsibility.

So LaRouche and his associates went to trial without the kind of information that a defendant is entitled to, i.e., just what am I being charged with, and just what evidence do you have? That's what the word "discovery" means—you tell us what you have. And most jurisdictions, particularly in the United States, now require the prosecutor to cough up and let the defendant know what he has. Not only that, but on a timely basis, so that the defense will have an opportunity to at least prepare.

The U.S. Attorney in the federal district where this case was tried, was not forthcoming. He did not furnish the evidence to the defense; the defendants had no opportunity to prepare. The case was called for trial, the jury was drawn.

Jury was not impartial

I started talking about the jury system. An impartial jury is what we imply by those words, and you arrive at that impartiality by a system that we call *voir dire,* it's French—to see you speak, to see you hear. Ordinarily, the judge asks the jurors general questions to determine whether or not they have formed or expressed any opinion in the case, and then the defense, and the state, too, the government, has the right to ask any questions that they want to, to determine whether or not a specific juror has any bias, prejudice, experience, litigation record, or anything of that sort that might help them determine whether this juror is impartial.

Judge Bryan did not permit free *voir dire*. He asked a few questions, permitted the lawyers to ask maybe one or two questions, as a result of which the foreman of jury, Buster Horton—which there was no way of determining without asking in-depth questions—turned out to be an employee of the federal government who was on a special, 100-person committee, of which Oliver North was also a member, two from each branch of the government, basically, to plan for emergency procedures for continuity of government in case of a major disaster. Horton, who ended up as foreman of the jury, was strongly governmentally oriented. The government basically could do no wrong as far as he was concerned. Or, if the jury were to come back with a not-guilty verdict, his status might be affected. So that's the type of jury that tried this case.

The bankruptcies

Now, let's flash back to how this case got that far. Many of you are familiar with the operation in Leesburg [Virginia]—the publications, the bookstore, the various things that have permitted the LaRouche organization to make itself heard throughout the world. The government decided that it needed to do something about that.

In late 1986, over 400 FBI, local sheriffs, and other people, in the middle of the night—1 or 2 o'clock in the morning—descended on Leesburg, broke down doors, conducted searches, confiscated documents, in effect, emasculated the operation of its ability to continue to function. Its ability to continue was based on publication, subscription fees, the sale of books, the sale of *EIR,* and all of those things—emasculated.

Worse, because certain confidential records were not being immediately coughed up, the federal judge held that Mr. LaRouche and his organizations, particularly three of the publications, were in contempt of court for their delay in furnishing their records. As a result, they were fined by the judge somewhere between $2 and $6 million—I hear both figures [court records refer to it both ways]—for contempt of court, for not jumping when the judge hollered.

What did that do? That made it impossible for the LaRouche organizations to continue to manage their debt-service. They had loans from many faithful people; many of the loans of course were, basically, political contributions, but the lenders had the right to call them if they wanted to. Many loans of that nature could no longer be serviced.

So, the LaRouche organizations could not pay their bills. What, then, did the government do? The government put the LaRouche organizations—or three of them, in any event—into bankruptcy, froze their assets, made it impossible for them to operate. And then, FBI agents spread out all over the country, saying:

"Hey, you loaned money to the LaRouche organization?" (There is sinisterness even in that question.)

"Well, yes."

"And you know that you are not going to get paid? You know, they don't intend to pay."

"No, I don't know that."

"Well, you need to know that they are bankrupt."

After canvassing thousands of people in the United States, they scared about seven or eight or nine people into saying, "Well, maybe I guess I was defrauded." And those were the witnesses that they used in the trial of the case. That was the evidence. They included something about not complying with IRS rules, something of that sort. That was the case. A manufactured case.

Well, the jury system didn't work. Lyndon LaRouche and several associates were found guilty, and LaRouche was given 15 years, and his friends were given lesser sentences.

They filed an appeal with the Fourth Circuit Court of Appeals. (The United States is divided into nine circuits, and the circuit in which Virginia exists also includes South Carolina. It is the Fourth Circuit.) The Fourth Circuit has about seven or eight judges, but they sit three to a panel—three judges hear an appeal. Some of you may not be familiar with the appeals process in the United States.

An appeals court, these three judges, receive the written record from the circuit court that tried the case. They review the written record. The attorneys have the opportunity to argue before that court on the record—no new evidence, but on the record. Unless the court finds that the circuit judge erred in the inclusion or exclusion of vital evidence, unless the jury had no evidence—and that really means no evidence, we sometimes call it a scintilla or an inference—on which to base the verdict of guilt, meaning that if there is some evidence to support the verdict of the jury, and the jurors did not err substantially (and the circuit judges used to be district judges and they don't like to be found wrong), unless there is no evidence, or unless the judge made a grievous error in the law, the case is affirmed.

I don't want to overstate it when I say that that appeals court is not interested in the justice of the cause, they are interested in whether or not the person apparently had a fair trial. The outcome is of no interest to them; only, is there enough evidence to support what the jury did, and did the judge do anything bad? That, of course, is a very tough test. And so the court said, well there is enough evidence, if you believe everybody—which the court did for purposes of the appeal, to support this verdict.

No action by the U.S. Supreme Court

So, then we appeal to the United States Supreme Court. The Supreme Court hears about one case out of every 5,000 that is appealed to it. It considers cases of first impression, when the law needs to be decided, where it is not statutorially determined, or to interpret the statutes, or some major social issue, such as race relations and abortion, and things of that sort. They formulate the law, virtually, because in the United States and under the common law system, the decisions of courts establish the majority of the law. The statutory law passed by legislatures is a minority of the laws that prevail in the United States. And that's strange if they can go somewhere and file the law on whether or not someone really was driving in the wrong direction on a certain day. You won't find it, it comes from precedent. That's why lawyers have a library full of books, dating from the English Common Law up until last week—you subscribe to CD-ROM or something so that you can get the decision of an appeals court last week, so that you know what the law is on a case you will be trying next week.

It's almost that complex, and it is court-written law that governs a great portion of American justice. And it is fairly stable, but different circumstances come up. I used to have a law professor, who said, "The law must be stable, but it must not stand still." Unless you find something in the book, for example, in an old case that was tried in 1722, where it says this is the law, then you make new law.

That didn't happen in this case. The court was following traditional appellate court practices, of finding that there was evidence, and there was no substantial error of law. The U.S. Supreme Court had no interest in considering this ordinary case, it only involves guilt or innocence. They would only do that—this is almost a dogmatic statement—in a death-sentence case, because our death penalty laws have been somewhat in a state of flux over these past 25 years. So, there was no appeal to the U.S. Supreme Court.

A few months had expired, and along about this time, the attorneys for the defendants were able to determine that much had been excluded from discovery. Much had been withheld by government agencies, vital information had been withheld. Evidence about the jury, like Buster Horton, had not been revealed. And so they filed a 2255 motion. Unfortunately, that motion goes back to the same judge who tried the case, and you try to convince him, based on these after-discovered prosecutorial errors, prosecutorial abuse, failure to deliver documents, failure to identify witnesses, failure to advise the defendant, in effect, of what the case was really about. And in this case, they attempted to conceal what this case was really about.

Exculpatory evidence not revealed

Now, LaRouche's organizations had been put into bankruptcy by a bankruptcy court, which is a different court under the federal system. Only federal courts have bankruptcy courts, so this was a federal bankruptcy court, based on a petition of the government, which is almost unprecedented. Bankruptcy usually doesn't exist unless two or three creditors who have not been paid, apply, alleging that the defendant is insolvent and therefore must be liquidated and the debts paid.

In this case, the federal government brought the bankruptcy proceedings by itself, primarily based on the allegation that the organizations could not pay the fine that the judge had put on them for contempt. That happened on, let's

say, a Tuesday. In the meantime, the government crafted its indictment so as to allege that the crimes committed, these financial crimes of not paying people or not intending to pay people and that sort of thing, that that conspiracy existed up until Monday. So the indictment was based on a period that ended on Monday; the bankruptcy was filed on Tuesday.

So the judge ruled by motion which we call *in limine,* in which the government moved that no evidence developed after that Monday, such as the fact that the LaRouche organization was put into bankruptcy, was admissible; it was ruled irrelevant—had nothing to do with the case that they were put into bankruptcy. The period of Monday and prior thereto was the period in which these alleged offenses were committed.

In the meantime, I have already told you about how the operations of the LaRouche organizations were paralyzed. That's the kind of lack of honest prosecutorial activity and lack of the appropriate application of judicial discretion which could have been prevented, but it wasn't. So that was the atmosphere, hands tight.

A significant part of the pre-trial activity comes under what we call the Brady motion. A motion that requires the government to reveal to the defendant anything good you may have to say about this defendant, any exculpatory evidence—any evidence that you paid all your bills for the last 100 years, and just because you missed paying last week. . . . One of the FBI men who had roamed out across the country pursuant to the witchhunt to find a witness, reported back to the FBI in Washington—his name was Tim Klund, and he was a middle-grade FBI official—by an air telegram: "I have interviewed many people, and none of them think they have been defrauded. Most of them feel that they are supporting a political movement and are satisfied with what they know about the whole situation."

That was not revealed. That was found through the Freedom of Information Act many months later. As a matter of fact, more than 10,000 pages, about six big volumes that take up shelf-space that long, of after-discovered evidence was accumulated and was made available to the court—not on Judge Bryan's refusal to grant the 2255, but in an appeal filed on Judge Bryan's ruling.

Two years have passed and the Fourth Circuit Court of Appeals has not considered that appeal; it does not have to consider that appeal. It's discretionary whether it considers that appeal or not, because it was a discretionary decision based on the right of the circuit judge who tried the case, to deny that appeal.

The independent commission

But all of that evidence was examined by me and some other so-called intelligent people in September. We met in Tysons Corner, Virginia, and I will not tell you we read the whole 10,000 pages, but we took a good sample, plus the record evidence that was available to us from the trial.

The persons on that group are: Curtis Clark, a criminal trial attorney from San Luis Obispo, California; Hon. James Mann, former member, U.S. House of Representatives, South Carolina; Hon. Theo W. Mitchell, state senator, South Carolina; J.L. Chestnut, Selma, Alabama, author, *Black in Selma;* James Wilson, vice president, Alabama New South Coalition; Hon. Rufino Saucedo, member, Congress of Mexico and, member, Human Rights Committee of the Mexican Congress; Patricio Ricketts Rey de Castro, former minister of education, Peru, and journalist; Chor-Bishop Elias El-Hayek, collegial judge, Montreal Regional Tribunal, former professor of Philosophy of Law, Notre Dame School of Law; Prof. Kurt Ebert, member, Center of European Law, University of Innsbruck, director, Institute of Austrian and German Legal History, Austria; Viktor Kuzin, chairman, Bureau for Human Rights Defense Without Borders, Moscow, former member of the Moscow City Council; Godfrey Lukongwa Binaisa, former President, Republic of Uganda, former Attorney General, Republic of Uganda.

Gross abuse of power

That committee issued a report; I will read part of it: "We, the undersigned, assembled in Vienna, Virginia on Sept. 1 and 2, 1994, having studied numerous documents concerning the case of *United States v. Lyndon LaRouche, Jr. et al.,* have come to the conclusion that there has been a gross, even conspiratorial, misuse of prosecutorial and investigative powers by officials and agents of the U.S. government. The common purpose and concerted action of the conspirators was to secure criminal convictions of Lyndon LaRouche and his associates to destroy their political movement." That was just another voice raised seeking justice.

So why should Lyndon LaRouche be exonerated? After all, he is right most of the time, and there are people throughout this world who need the benefit of his rightness. He has been more right than any leader that you and I can name. He is handicapped; he is handicapped by the stigma of this conviction and, incidentally, even a presidential pardon would not remove the fact that he was convicted.

Only one of these judicial procedures, or some extraordinary procedure by the Department of Justice, or some legislation by the Congress, which is unlikely, but possible; only something that would erase this crime, erase the verdict of guilty, or would remove the stigma to his satisfaction, and to my satisfaction, would be acceptable.

He needs to be free to travel. He has limitations, he has a parole officer looking down his throat and setting his schedule. He has something to give to the world, and this outrageous conviction prevents that from happening.

Those of you who are here are, I know, already soldiers in that effort. It is a tough route to go, the consequences of the actions of the Reagan-Bush era are not likely to be reversed by the Gingrich cabal. So we have a tough job. The Dreyfus case took many years; it will take as long as it takes.