
The 'LaRouche Case'

Seek dismissal for grand jury abuse

by Nancy Spannaus

Attorneys for the defendants in the *United States v. The LaRouche Campaign, et al.* case are not taking "no" for an answer on the issue of the government's abuse of the grand jury system. Judge Robert Keeton rejected their motion for dismissal on this ground in July. On Aug. 24, attorneys Lisa Kemler and William Moffitt filed a brief with the U.S. Court of Appeals for the First Circuit, urging dismissal of the indictment against the 13 individuals and 5 associations, who are charged with "credit card fraud" and "conspiracy to obstruct justice."

The question of grand jury abuse is one of the few issues which can be appealed to a higher court prior to the pending trial. Should the appeal, called an interlocutory appeal, be successful, the Sept. 21 trial will not occur.

The defense is also seeking to suppress evidence seized during the government's paramilitary raid on offices of LaRouche associates. Elimination of some of the seized items would likely result in the throwing out of some of the indictments.

The following excerpts from the brief summarize the issues involved in the appeal:

Statement of facts

In January-February 1987, the accused filed several motions seeking, *inter alia*, dismissal of the indictments, for abuse of the grand jury by the Government. These motions documented the pattern of abusive and improper behavior by the Government . . . including off-the-record colloquies between prosecutor and grand jurors, abusive conduct directed toward an immunized grand jury witness who is now a defendant, intentional disclosure of grand jury material to unauthorized persons, and selective dissemination of grand jury material to unauthorized persons, and selective dissemination of grand jury material to a successor grand jury . . . utilization of the grand jury which the government contends was the object of the conspiracy to obstruct justice to return an indictment for conspiracy to obstruct justice; use of the grand jury to further an investigation after the return of an

indictment for conspiracy to obstruct justice; . . . and government dissemination of grand jury material to the national news media and other unauthorized persons. . . .

Argument

The long history of the grand jury evidences a gradual emergence of its role as a vehicle to protect the rights of the citizenry from an overreaching prosecutor. Its companion function as an investigative body and the resulting role that the prosecutor plays in the conduct of its affairs cannot be permitted by this Court to overcome the grand jury's more compelling Constitutional function of protecting the rights of the innocent. It is indeed no historic accident that the first clause of the Fifth Amendment reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. . . ." This clause precedes all of the important protections provided to a criminal defendant including the right to due process, the privilege against self-incrimination, and the right to not be held twice in jeopardy. Just as the positioning of the First Amendment in the Bill of Rights has frequently been cited by commentators as an indication of its importance, a strong case can be made that the history of the grand jury and the value placed upon it by the colonial founders is consistent with its prominence in the Fifth Amendment. We call upon the Court here to guard the important rights at stake.

(In response to the government's argument that an interlocutory appeal should not be permitted, the motion continues:)

Moreover, the government misses the crux of the defendants' position. The defendants have not alleged mere technical violations of Rule 6 (e) [the rule protecting grand jury secrecy—ed.] . . . defendants claim that the substantial publicity polluted the grand jury to such an extent that it must have effected the charging decision, that the use of the grand jury victimized by the alleged obstruction of justice tainted the charging decision, and that the use of hearsay testimony, as well as the failure to present exculpatory evidence impinged on the grand jury's independence and impartiality in making its charging decision.

Issues raised by the accused motions

The issues raised by the appellants' motions include violations of Rule 6 of the Federal Rules of Criminal Procedure. The appellants alleged that the government, through its agents, used pre-indictment publicity to pollute the grand juries' charging decision. Simply stated, the government, through the intentional and skillful use of the press, was able to present its position regarding the conduct of the accused to the grand juries in a prohibited manner. Among the means that the government utilized to manipulate the press were public filings which included grand jury matters in contempt and appellate proceedings.