

On more than one occasion aside from the Emerson matter, agencies in possession of necessary files have been slow to provide them, and individual agents have demonstrated that their own view of disclosure obligations is narrower than the view of the prosecutors (and of the law as determined by the court).

Ultimately, of course, the responsibility for fulfilling the government's disclosure obligations rests with the prosecutors. Agents of the federal government outside the Department of Justice are not as fully and professionally trained in the complexities of *Brady* and *Jencks*. . . . In this case, the prosecutors were limited in their ability to fulfill this responsibility by lack of adequate support and assistance both within and beyond the United States Attorney's office.

The failure of the prosecutors consistently to guarantee the responsiveness of other federal agents was institutional negligence rather than deliberate misconduct. There was no cover-up of evidence extremely damaging to the government's case or delay for tactical advantage; rather, the delayed disclosures are chargeable to a "bureaucratic failure to properly support massive litigation." . . . It is apparent that two prosecutors cannot comprehensively develop trial strategy, prepare and examine witnesses, respond to substantive defense motions from ten (10) zealous defense attorneys, assemble *Jencks* material for more than 150 witnesses, and personally oversee all aspects of the *Brady* search.

The appropriate remedy for this transgression . . . is to pare the trial down to a scope that the government can reasonably support given the resources it sees fit to assign to the case. . . . This is a remedy "narrowly tailored" to deter the kind of institutional and systemic prosecutorial misconduct that occurred during the first trial. . . .

NDPC seeks to quash Writ of Execution

The National Democratic Policy Committee (NDPC) filed a motion on Aug. 16 before Judge A. David Mazzone in Boston, Massachusetts to quash or stay a Writ of Execution for a \$5.1 million fine, since the fine itself is now on appeal before the First Circuit Court of Appeals.

"The NDPC is the First Amendment-protected multi-candidate political action committee of the LaRouche wing of the Democratic Party which ignited an international explosion over the mental incapacity of Michael Dukakis to be nominated as President at the Atlanta Convention. In retaliation,

friends of Michael Dukakis and William Weld are trying to put it out of political business before the national elections," Warren J. Hamerman, the chairman of the NDPC, announced. He revealed that the NDPC challenge to the Writ includes the following points:

1) The Writ was illegally filed by the government *ex parte* as a trick to try and short-cut the NDPC's right to appeal;

2) The fact that the fine is set at an absurdly high amount of over \$5 million, unmasks the fact that the only intention of the Writ is to try and put the NDPC out of political business;

3) Since the NDPC is a political action committee, the government can not come in and "take over" the PAC as if it were a normal business with an income stream and assets to liquidate;

4) It would not only be absurd and impractical for the government to try and run NDPC and "solicit contributions," it would also be illegal and unconstitutional! The NDPC is a Federal Election Commission-regulated political action committee and spends its contributions on political enterprises such as publishing and political campaigning. It is inhibited by statute, regulation, and function from acquiring assets. The law does not allow contributions to be diverted from political activities into other expenditures. Furthermore, since each contributor can only give a fixed amount of money per year, if his or her money were siphoned off by the government, then the constitutional rights of that contributor to give money for political purposes would be destroyed.

5) The NDPC does not have income remotely capable of supporting a bond for a \$5 million judgment. It would take the NDPC, at its level of income generation, well over a decade to raise the money *just to post a bond*, while the appeal will probably be announced within a few months.

6) The government has nothing to lose in waiting for the appeal to be decided. The NDPC is no more able to pay \$5.1 million now than it will be then. The only thing the government would gain is cutting off the NDPC's right to appeal. Only the NDPC's rights to exist and appeal hang in the balance.

7) The Writ was issued illegally and is not valid. It was a maneuver by the government to get around an order by a Richmond, Virginia federal magistrate that the government had to return discovery documents to the NDPC from a previous matter. The government attempted an end-run around the Virginia court by going *ex parte* to a Massachusetts court and getting it to issue the Writ, without telling the Massachusetts court what the Virginia magistrate ruled.

8) Once before, the government tried to collect the \$5.1 million fine from the NDPC, and the First Circuit Court in Massachusetts ordered it to stop until the appeal is decided.

The NDPC is asking the court to stay the collection of the fine pending the outcome of the appeal, or, alternatively, to quash the Writ entirely.