Fact Sheet

Classified information was withheld in the Iran-Contra and LaRouche trials

The matter of classified government information has been at the heart of both the Iran-Contra cases and the LaRouche cases. In both instances, there existed massive amounts of classified documents and information that were relevant and material to the defense cases. Yet, the response of the Reagan and Bush administrations, as well as the courts, has been radically different in the two cases.

In both cases, the Reagan and Bush administrations have had reason to fear the political consequences of disclosure of classified documents into the public domain, and sought to prevent it. In the Iran-Contra cases, although the classified documents were disclosed to the defendants, the Bush administration refused to declassify certain critical material so it could be used in the public trials. This resulted in the dismissal of some counts (Lt. Col. Oliver North) and one entire indictment (Joseph Fernandez, the former CIA station chief in Costa Rica).

In the two LaRouche trials, in Boston, Massachusetts and Alexandria, Virginia, the government withheld almost all classified documents from the defense, never even allowing the defendants to see the information in the withheld documents. The government's stonewalling over classified documents was exemplified by the following:

- In LaRouche's first trial in Boston, prosecutors ridiculed defense assertions about covert operations and classified information, yet were forced to disclose the existence of hitherto-secret files throughout the course of the trial.
- At one point the Boston case against LaRouche was almost dismissed over the government's refusal to declassify secret information which had been found to be relevant.
- During that trial, the judge ordered a search of the White House files of then-Vice President George Bush.
- The judge and prosecutors read through thousands of pages of classified documents which the defendants were never allowed to see.
- The Justice Department later dropped the Boston LaRouche case and re-indicted LaRouche in Alexandria, counting on the fact that the judge there would suppress all classified exculpatory evidence.
- Only after LaRouche was convicted and jailed, did the FBI admit it had a super-secret "national security" file on him compiled under Executive Order 12333.

What is CIPA?

The Classified Information Procedures Act (CIPA) was passed in 1980 to allow the government to prosecute cases where "greymail" had been utilized, i.e., the threat by a defendant to expose classified government information. CIPA created a procedure wherein the judge reviews the specified information in advance. If he finds it not relevant, it cannot be used in the trial; if he finds it relevant, and the government refuses to declassify, the judge may allow substitute admissions. If the information is central to the defense, he may go so far as to dismiss an indictment if the government refuses to permit it to be used.

At issue is the right to a fair trial. A defendant in a criminal case is entitled to see and confront all the evidence and witnesses used against him. He is also entitled to see any evidence which is "exculpatory," i.e., which would tend to show he is innocent of the charges against him. In both the Iran-Contra cases and the LaRouche cases, it was exculpatory classified information which was wanted for use by the defense.

Iran-Contra cases

In the Iran-Contra cases, hundreds of thousands of pages of documents were disclosed to the defendants, including at least 40,000 pages of classified documents. The defendants (with the partial exception of Albert Hakim, who lacked security clearance) and their lawyers had full access to the classified documents. The issue in these cases was whether the defendants would be permitted to use certain classified information in their trials, which they had given notice of their intention to use under CIPA.

The North case:

After extensive CIPA hearings Judge Gerhard Gesell ruled that certain classified information which the government was refusing to declassify, was relevant to the defense and admissible at trial. Stipulations were agreed to with respect to some information, but the Justice Department refused to allow public disclosure of other information. As a

result, Counts 1 and 2 of North's indictment (conspiracy and theft) were voluntarily dismissed by Independent Counsel Lawrence Walsh.

The Fernandez case:

The defense identified 3,500 pages of classified documents it wished to use at trial. Judge Claude Hilton ruled that much of the information in those 3,500 pages was irrelevant and inadmissible; other information therein was replaced by a substitution of declassified information, less specific than the information in the original classified documents.

However, there were two categories of information (the existence of certain CIA stations and facilities in Latin America, and details of U.S. programs in Costa Rica) which the intelligence agencies refused to declassify. Thus, on Nov. 24, 1989, Judge Hilton dismissed the entire Fernandez indictment, on the grounds that Fernandez was entitled to use the information at issue and that he could not get a fair trial without it.

Special Prosecutor Walsh subsequently appealed—unsuccessfully—to President Bush, protesting the administration's "interference" with his efforts to prosecute Fernandez. Among the key issues raised by Walsh was the sacrifice of law enforcement objectives to maintain the "deniability" of certain activities by the intelligence community.

As Walsh pointed out, the intelligence agencies' ability to "censor," through the Attorney General, the Special Prosecutor's law enforcement activities involves the precise conflict of interest which the Special Prosecutor statute was designed to prevent.

The LaRouche cases

A similar conflict of interest involving the intelligence community arose in the LaRouche case; the rights of LaRouche and his co-defendants to a fair trial were also sacrificed in the interest of maintaining the "deniability" of covert government operations.

Boston:

Lyndon LaRouche was indicted on one count of conspiracy to obstruct justice by a federal grand jury in Boston in June 1987. Starting in October 1986, a number of other individuals and corporations had already been indicted on the same and related charges.

Aug. 21, 1987:

Attorneys for LaRouche and his co-defendants filed a formal notice and proffer of evidence under CIPA, giving notice of their intention to use certain information at trial that might be classified.

The CIPA proffer identified certain channels of communication and discussion between the defendants and the U.S. Central Intelligence Agency, and stated that LaRouche and associates had undertaken a number of activities at the request of the U.S. government. This included "back-channel" discussions with Soviet representatives in the early 1980s, which in particular focused on the development of what later became known as the U.S. Strategic Defense Initiative (SDI). Also included in the CIPA notice was information about anti-LaRouche operations being conducted by the FBI and other sections of the intelligence community, such as financial disruption and slanders of LaRouche as "KGB-controlled."

The defendants also made extensive discovery requests for exculpatory material in government files. The evidence sought concerned harassment of LaRouche and associates, infiltration, and interference in fundraising and financial operations of businesses run by associates of LaRouche. Specifically cited were activities carried out under Executive Order 12333 which authorizes covert intelligence operations, and which provided the "legal" underpinnings for the "secret government" whose existence was partially revealed in the Iran-Contra affair.

September 1987:

The administration's response to the LaRouche defendants' discovery requests and CIPA filing was twofold, aimed at maintaining the "deniability" of intelligence operations involving LaRouche or directed operations against LaRouche.

1) Prosecutors forwarded the defendants' CIPA proffer to the CIA for review. On the eve of trial, the CIA advised prosecutors that the proffer contained no classified information—with the exception of a "briefing book" submitted by the defendants, which the defendants said had been prepared by U.S. intelligence agencies and provided to LaRouche; the document concerned LaRouche's proposals on the SDI. At the last minute, a messenger burst into the courtroom to inform the judge that the CIA had just called to say that the briefing book was not classified. The prosecution team breathed a visible sigh of relief as the news was announced, since it meant the trial could proceed.

2) Prosecutors simultaneously ridiculed, as an "Orwellian fantasy," the defendants' assertions about their intelligence agency contacts, and about government harassment of the defendants and covert operations conducted under E.O. 12333. But despite the prosecutors' desperate denials, Judge Robert Keeton did order limited amounts of discovery of certain categories of exculpatory evidence. It was the government's failure to comply with their discovery obligations which eventually led to the prolonged interruption of the proceedings, ending in a mistrial.

The prosecutors agreed to conduct an "all-agency" search for documents pertaining to the defendants. Time and time again, as the trial proceeded, documents would surface from a government agency, which would then assert that no further documents existed—only to have additional documents appear a few weeks later. This was a particular pattern with the CIA.

It became a frequent occurrence for the FBI or CIA (and

once, the National Security Agency) to send a courier to the Boston courtroom with a locked briefcase full of classified documents pertaining to LaRouche and his associates. The documents would then be examined for "relevance" by Judge Keeton, who almost invariably would pronounce the documents "not relevant" to the defense. This procedure was repeatedly objected to and denounced by the defense attorneys, since neither they nor their clients were permitted to examine the documents. Thus, those who could best discern the possible relevance of the classified documents, couldn't see them! This is in marked contrast to the North-Fernandez cases, where the defendants were given access to classified documents so they could designate those they considered relevant.

March 7, 1988:

The first real break in the government's facade of "deniability" came on March 7, 1988, when one of the defendants obtained a declassified document found in Lt. Col. Oliver North's office. The telex, from Richard Secord to Ollie North, contained the critical passage: "Our man here says Lewis has collected info against LaRouche."

The North-Secord memo was not provided in discovery to the LaRouche defendants, but was obtained by them independently through a Freedom of Information Act request to the office of Irangate Special Prosecutor Lawrence Walsh.

March 8, 1988:

Spurred on by the North-Secord telex, prosecutors located a second document from the FBI containing background to the North-Secord telex message. The fight over declassification of this document almost led to the chief prosecutor's withdrawal from the case. When the FBI refused to declassify the document, prosecutor John Markham announced in court that he had a "conflict of interest" with his client— the U.S. government—and that he could not continue to represent the government until the conflict was resolved.

The conflict between Markham and the government was heightened when the FBI learned that before the FBI document was declassified, Markham had given it to a defense attorney. Markham said he thought it had already been declassified. At a later hearing, FBI agent Richard Egan testified that he had threatened Markham with prosecution for disclosing the classified FBI document.

The newly declassified FBI document was indeed explosive. It referred to FBI contacts with a trio of freelance spooks and soldiers-of-fortune (Fred Lewis, Gary Howard, and Ron Tucker), saying "they claimed that they had previously been requested by the FBI and CIA to penetrate the LaRouche organization." This revelation was particularly explosive because the LaRouche defendants' contention all along had been that the U.S. government intelligence agencies had been conducting infiltration and disruption operations in order to set them up for prosecution.

March 10, 1988:

At this point the trial proceedings were suspended, as Judge Keeton ordered the FBI and CIA to search for other exculpatory documents pertaining to Lewis, Howard, Tucker, and other specified individuals. Then on March 10, Judge Keeton further ordered a search of the files of Vice President George Bush and various government agencies. (Bush was named because of his direct supervisory role over the secret committees that oversaw the covert operations in which North and others were involved.) LaRouche and his co-defendants had asserted that indeed North's NSC covert operations were being used in an effort to silence them, due to their outspoken opposition to the Contra policy. The judge's order directing the search of Bush's files was headlined in the *Boston Globe,* the *Washington Post,* and other news media.

Not surprisingly, the prosecutors reported that the search did not turn up any additional "relevant" documents (the shredders were undoubtedly working overtime). The prosecutor succeeded in persuading Judge Keeton to narrow the scope of the search, and the government was able to prevent any further disclosures on the Lewis-Howard-Tucker matter.

March 1, 1988:

But meanwhile, another bombshell regarding the classified documents had exploded. After 55 days of trial, the prosecution disclosed documents revealing that one of its witnesses—who had attempted to "plant" evidence in a defendant's notebook—was a paid FBI informant!

The government's failure to disclose the information regarding the witness, Ryan Quade Emerson, was ruled to be a clear violation of the prosecution's obligation to provide exculpatory evidence to the defendants. Much of the information about Emerson which the government had been hiding was classified, and the dispute over these classified documents almost resulted in the dismissal of the Boston case.

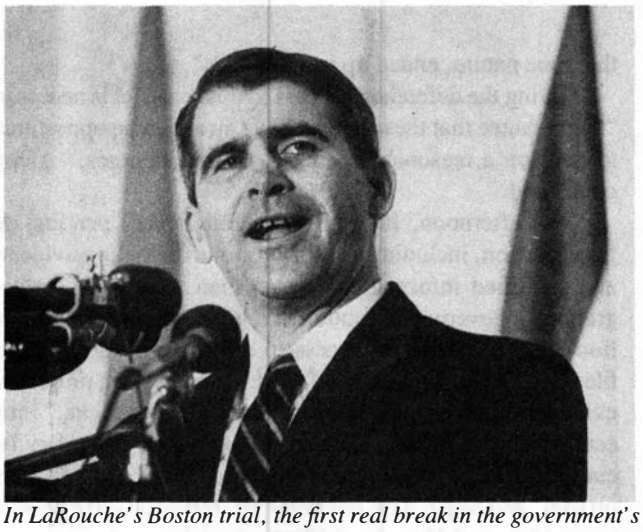
March 31, 1988:

By the end of March, the trial was in a state of constant disruption because of hearings on government misconduct and classified information. The FBI was ordered to produce a series of classified files on Emerson for *in camera* examination by Judge Keeton. On March 31, Judge Keeton ruled that various documents in these files were relevant and potentially exculpatory and should be disclosed to the defense. The FBI still refused to declassify.

A judge cannot order declassification of government documents. That is an Executive branch function; ultimately the responsibility for classifying and declassifying documents rests with the President. A judge can only order that information be disclosed and made available for use by a defendant; if the government refuses to declassify, the judge can impose various sanctions against the government.

April 6, 1988:

As the FBI continued to stonewall, Judge Keeton ruled on April 6 that five more files contained exculpatory evidence and should be disclosed. Prosecutor Markham was directed by the FBI to submit a set of sanitized "admissions" in lieu of disclosing the classified files. In certain instances, just as



Stuart Lewis

In LaRouche's Boston trial, the first real break in the government's denial that classified documents were relevant for the defense, came when one of the defendants obtained a declassified telex from Richard Secord (right) to Oliver North, revealing operations against LaRouche by the Iran-Contra "Enterprise."

in the Fernandez case, the government refused to declassify information which was already public.

The defense vigorously protested that they were not allowed to examine the documents on which the "admissions" were allegedly based—thus making it impossible for them to judge the validity of the government's stipulations. Markham told the court that the U.S. government would never give even limited security clearances to LaRouche and the other defendants so they could examine the classified documents. "I know the thinking" on that issue, Markham said in court. "It's not going to happen."

April 11-15, 1988:

On April 11, Judge Keeton rejected the prosecution's second attempt at fashioning proposed admissions to substitute for the seven FBI files which remained classified. After a fierce behind-the-scenes battle within the FBI and Justice Department, a third set of proposed substitute admissions was filed by the government. Judge Keeton had warned the prosecution that this would be their last chance to fashion substitute admissions. However, on April 15, Keeton accepted the government's final proposal, saying that the admissions gave the defendants sufficient information without declassifying the documents.

Prosecutor Markham later told defense attorneys that, had Keeton not accepted the government's final proposal, the government would have allowed the case to be dismissed rather than release any more classified information to the defendants.

The "admissions" stipulated that:

1) Emerson had been an FBI informant for many years, on both criminal and national security matters;

2) He had been paid and subsidized by the FBI in his journalistic endeavors; and

3) He was regarded as an "opportunist" by some of his FBI control agents.

The government and Emerson both denied that he had any other connections to the intelligence community—although he had represented himself to the defendants as an emissary from various officials in the intelligence community, including, most notably, National Security Adviser John Poindexter.

Issues of classified information continued to pop up as hearings on government misconduct continued in Keeton's courtroom. Ultimately, Keeton did rule that there had been "serious" misconduct by the government, which he termed "institutional and systemic prosecutorial misconduct," in violating their obligations to provide exculpatory evidence to the defendants. But in holding that the misconduct was "institutional," Keeton let the individual prosecutors off the hook, by excusing their conduct as not intentional. Keeton therefore denied a defense motion to dismiss the indictment on those grounds.*

Even though most of the disputes over classified documents and government misconduct took place outside the presence of the Boston jury, the jurors had gotten enough of a whiff of government harassment and dirty tricks that, after the mistrial was declared, they said they would have acquitted LaRouche and all defendants on all counts. The reason given by one of the jurors, "There was too much question of government misconduct. . . ."

The Alexandria railroad

It was clear that LaRouche and his co-defendants were likely to win in any retrial. To prevent any recurrence of

* See *U.S. v. The LaRouche Campaign, et al.*, 695 F.Supp. 1290, 1314 (D.Mass.1988). For other rulings pertaining to discovery violations, the North-Secord telex, and CIPA matters, see 695 F.Supp. 1265 and 1283 telex, and the defendants' discovery requests for "national security" documents as containing classified information believed to be relevant to the defense.

the Boston events, the "Get LaRouche" task force conspired to transfer the LaRouche case to the Eastern District of Virginia federal court in Alexandria. The task force knew that Chief Judge Albert V. Bryan, Jr., could be counted on to suppress any issues of classified information and government misconduct. Bryan's "rocket docket" court is known for routinely denying virtually all pre-trial motions submitted by defendants, especially all discovery motions. Plus, having sat on the super-secret special court created by the Foreign Intelligence Surveillance Act (the "FISA court"), Bryan could be presumed to be intimately familiar with covert intelligence operations, including those directed against LaRouche.

Oct. 17-Nov. 7, 1988:

LaRouche and his six co-defendants had only three weeks after their indictment and arraignment to prepare and file all their pre-trial motions. Despite this oppressive schedule, they were still able to file 28 pre-trial motions, including a detailed, 62-page Motion for Disclosure of Exculpatory Evidence, containing 181 specific requests. The requests sought information on all aspects of the government's "Get LaRouche" efforts, such as attempts within the intelligence community to isolate and discredit LaRouche, financial warfare, and "national security" investigations as well as covert operations conducted under the authority of E.O. 12333.

Defense attorneys for the LaRouche defendants also filed a separate notice under CIPA, giving formal notice that the defendants "reasonably expect to cause the disclosure of classified information in connection with this case." The CIPA notice cited 4,700 pages of FBI documents, the North-Secord memo, and other items.

Nov. 10, 1988:

At a Nov. 10 hearing, defense attorney Daniel Alcorn told the court that this case "is different than any other CIPA case," because "the defendants are not former government agents or current government agents who were given access to classified information while in the employ of the government," but rather, "they have been investigated by classified means."

Alcorn contrasted this case with that of Oliver North. "He [North] was a government agent who was very much in the middle of the mix of classified information. [But] we have admissions by the government that there are large volumes of documents that they have in the classified areas of the government relating not just to the defendants but to investigations of the defendants. . . ."

Alcorn then recounted the history of the Boston case, telling Bryan: "We filed a CIPA notice in Boston. We filed extensive exculpatory evidence requests in Boston. They were met with the response that we were engaging in an Orwellian fantasy . . . and when that was disproved, and when the government became concerned and started having to give us access to classified information, it caused a disruption of the trial schedule, which along with other things of the same nature, ended up in a mistrial."

Giving the defendants access to this material is necessary "to guarantee that these people have an adequate opportunity to develop a reasonable defense to these charges," Alcorn concluded.

That afternoon, Judge Bryan denied every pending defense motion, including all motions for exculpatory evidence and classified information. Bryan then went even further, granting a government motion *in limine*, which, in combination with his denial of access to all government classified files on LaRouche, prevented the defendants from presenting evidence of government harassment and "dirty tricks." Prosecutors argued that the motion *in limine* was necessary because the defendants otherwise would "put the government on trial" and begin their defense—as in Boston—by presenting evidence of 20 years of FBI harassment.

Nov. 21-Dec. 15, 1988:

During the trial, the issue of classified information could not even arise; the closest it came was during the testimony of defense witness Richard Morris, the executive assistant to former National Security Adviser William P. Clark. Morris testified that he had discussed several subject areas regarding issue of "national security" with LaRouche at the NSC in 1982-83.

Dec. 16, 1988:

With such suppression of evidence, plus a rigged jury to boot, it was no surprise that LaRouche and his six co-defendants were convicted after a trial lasting less than four weeks.

Jan. 31-July 6, 1989:

After the defendants were jailed on Jan. 27, 1989, the FBI released a small portion of the 4,700 pages of mostly classified documents they were withholding. Those documents that were declassified and released showed extensive efforts by the FBI and other agencies to discredit LaRouche, and indicated attempts to frame up him and associates on spurious charges. Most significant was the July 1989 disclosure of the existence of a secret file on LaRouche which "was compiled . . . pursuant to Executive Order 12333"—something prosecutor Markham always ridiculed as an "Orwellian fantasy."

Conclusion

There cannot be the slightest doubt that the government's files contain massive amounts of classified information that would show that LaRouche and his friends were the victims of a massive government frameup. These suppressed documents would prove that LaRouche and his associates are innocent of all charges against them. When even small bits of such secret information came out in Boston, it ultimately resulted in the government dropping that indictment. In Alexandria, the complete and total suppression of all such evidence is what made the convictions of LaRouche and associates possible.