

## January retrial set in LaRouche case

Federal Judge Robert Keeton set Jan. 3, 1989 as the date for jury selection to begin in a retrial of Lyndon LaRouche in U.S. District Court in Boston. LaRouche and several associates' first trial on charges of credit card fraud and conspiracy to obstruct justice ended in a mistrial on May 4, after 92 days, because of government misconduct. An informal poll of jurors afterward indicated that LaRouche and his associates would have been unanimously acquitted of all charges, even though the defense never formally presented its case. Nevertheless, the government has decided to retry the case.

Keeton had originally set a jury selection date for October, but defense attorneys are now scheduled to appear before the U.S. Court of Appeals in October to argue that the indictments should be dismissed on grounds of the Constitution's prohibition against double jeopardy. Should the defense win the appeal, the case will not be retried.

On Sept. 2, the Court of Appeals set an expedited schedule on the double jeopardy appeal, and denied the government's motion for "summary disposition," which would have meant a dismissal of the appeal. The defendants are asking the Appeals Court to bar a second trial of the case because government misconduct caused the mistrial. During the trial, FBI agent Richard Egan and the prosecutor, Assistant U.S. Attorney John Markham, were proven to have repeatedly lied to defense counsel.

While Judge Keeton has repeatedly insisted that the case against seven individuals and five organizations must be "pared down," and the Sept. 8 hearing had been set in order for decisions to be made on "severing" the defendants into separate trials, Keeton declined to make any rulings on those issues. The prosecution, still in the hands of Markham, has proposed that the case against the individuals—including the prime target, LaRouche—for "conspiracy to obstruct justice," be conducted first. But the judge has been exploring different options, including separate simultaneous trials, and putting the credit card case on first.

The judge was decisive on one issue, however. Saying that a new trial would take six months to a year, Keeton set a three-week vacation recess for August 1989!

Prosecutor Markham announced that, in order to expedite

matters, the government has decided to reduce the 123-count indictment on credit card fraud, dropping a majority of the counts. That will leave the defendants charged with 45 counts.

### Hostile judge

Judge Keeton is a long-time friend and mentor of Michael Dukakis, which has something about his own political motivations in the case. He has now disposed of all the major motions which have been brought since the May mistrial. He did so in such an arbitrary and one-sided manner, that defense lawyers recently filed a "Motion for Reconsideration." It accused Keeton of applying a "double standard" favoring the prosecution.

The defense used some plain language: "The court is apparently willing to disregard substantial constitutional claims under the Fourth Amendment so it can engineer a rapid new trial for these defendants. This court seems to be operating from presumption that the government can do no wrong and the defendants can do no right."

Attorney Michael Reilly, speaking for the defense, quoted back to the court its own finding that Markham's misconduct was responsible for the mistrial, but that this could be excused because of overwork and poor government staffing of the case. This was a remarkable finding, because Markham and his assistant, Mark Rasch, *specifically denied under oath* that overwork or the many defense motions had caused them not to make timely disclosures of exculpatory evidence, i.e., evidence favorable to the defendants.

How fast a new trial comes, if at all, may be further complicated by infighting in the Boston U.S. Attorney's office, which became plain in court Sept. 8. Prosecutor Markham, appointed by former U.S. Attorney William Weld to run the LaRouche case, is apparently at odds with the current U.S. Attorney in Boston, Frank McNamara. Last summer, McNamara was quoted in the press accusing Weld of smoking marijuana at a Virginia wedding party in June 1982. McNamara blamed Weld for holding up his appointment as U.S. Attorney by floating rumors that he had violated federal election laws.

In court on Sept. 8, Markham made numerous off-the-record comments attacking McNamara. McNamara had been angry about leaks in the media about a large seizure of heroin in Boston Sept. 7, saying that there was a "lapse of discipline," and that he didn't "wish to be anything other than a role model for prudence and silence."

Talking in the halls about the matter, Markham was heard to comment that McNamara was just angry that he had been "scooped" by the press, and therefore didn't get his picture in the paper. He then said, "'a role model for prudence and silence,' but 'Bill Weld smokes dope'"—referring to McNamara's earlier charges against Weld.

Even though Markham was making such disparaging remarks about a man who is his current boss, observers noted that the assistant prosecutor didn't seem to care who heard him.