

# Corrupt judge fixes acquittal of 'Kidnapers, Inc.' gang in Virginia

In a shocking and blatant act of political corruption, federal Judge Timothy Ellis intervened in the "Kidnapers, Inc." trial proceedings to fix the jury and cause the acquittal of former Loudoun County Sheriff's Deputy Don Moore and three others charged with conspiring to kidnap Lewis du Pont Smith, an associate of political leader Lyndon LaRouche and an heir to the du Pont fortune.

This travesty occurred in federal court in Alexandria, Virginia on Dec. 31, 1992.

In response to questions from the jury while they were deliberating, Judge Ellis created a novel and restrictive standard of conspiracy that made it impossible for them to render a guilty verdict. His rulings are in sharp contrast to the very broad instruction on conspiracy given to the jury by Judge Albert Bryan, Jr. in this same court in the LaRouche case in 1988.

This time Ellis's rulings effectively allowed the jury to ignore the contents of hours of surveillance tapes that featured the would-be kidnapers plotting the kidnaping and discussing contingencies, including the possible murder of Lewis should the plans go awry.

A short time after hearing the judge's ruling, the jury returned with a not guilty verdict for Moore, self-proclaimed deprogrammer Galen Kelly, lawyer Robert "Biker Bob" Point, and the conspiracy's alleged paymaster, millionaire E. Newbold Smith, Lewis's father. After the acquittals were announced, Judge Ellis compounded the outrage by announcing that it was his opinion that evidence on the tapes did not constitute a crime and scolded the prosecution for bringing the case to trial.

## Scope of the conspiracy

The trial, and especially the more than 60 hours of secretly recorded tapes, brought into the daylight the dirty side of the conspiracy arrayed against the LaRouche political movement. This conspiracy, which has perverted and corrupted the U.S. justice system to achieve its aims, would use any and all of the methods described on the tapes in the voices of the defendants against its political opponents, including kidnaping and murder.

This conspiracy, which includes the Anti-Defamation League of B'nai B'rith and its filthy little cult, the so-called Cult Awareness Network, and its violent and illegal methods,

was defended by a team of lawyers led by John Markham, the former federal prosecutor in the LaRouche case, who represented Newbold Smith. To defend this conspiracy, another LaRouche prosecutor, Virginia's Assistant Attorney General John Russell *lied*, as exposed by the prosecution, on the witness stand.

It were not surprising that federal Judge Ellis acted openly corruptly, even contradicting his own earlier rulings, at the last moment, to defend the conspiracy. Another judge in the Eastern District, Judge Albert Bryan, had behaved similarly in presiding over the 1988 railroading of Mr. LaRouche and his associates, and in subsequent appeals, as has been documented in motions filed by Mr. LaRouche's lawyers.

In response to the jury's request for clarification, Judge Ellis declared that for *anyone* to be guilty of the conspiracy to kidnap charge, two or more of the defendants had to agree on a specific common plan for a way to kidnap; general agreement on a kidnaping was, in the judge's unique determination, not sufficient reason to for a guilty verdict.

The hours of tapes played for the jury featured numerous discussions of plans for kidnaping and apparent general agreement that a kidnaping of Lewis should take place. This point was emphasized during his testimony by chief prosecution witness, former Loudoun Sheriff's Deputy Doug Poppa, who served as a government informant. Mr. Poppa unwaveringly maintained under cross-examination that a kidnaping of Lewis Smith was in place when the conspirators were arrested Sept. 30.

Judge Ellis also ruled that for anyone to be guilty of the soliciting to kidnap charge, there had to be specific soliciting of Poppa for a kidnaping. Surveillance, said Judge Ellis, even in support of a kidnap, was not a crime. Mr. Poppa, according to the taped conversations with Don Moore, was asked to become part of a team that was to kidnap Lewis Smith. This point was corroborated by testimony from Loudoun County Sheriff's Deputy Pete Bracera.

In his initial charge to the jury, Judge Ellis had made no such restrictive rulings, making it appear that a conviction were possible. With these restrictions, made in response to unusually sophisticated questions from the jury, a conviction was effectively made impossible. Jury foreman Mark Bush told the press after the trial that the jury had been split when the deliberations started. Judge Ellis's answers to their ques-

tions brought "the final doubters around" to a not guilty verdict.

### **Judge buys defense's view**

The judge's speech following the acquittals betrayed a prejudice and animus against the prosecution case that he had kept under wraps during most of the trial.

He characterized the entire affair as a tragic rift between a father and son, and not a federal kidnaping. Judge Ellis stated that he hoped that the father now realized that he can't control his son's life and shouldn't have hired a gang who couldn't shoot straight. Ellis then made a gratuitous attack on Lewis Smith's association with the LaRouche movement by stating that he now hoped that Lewis realized that his relation to his father was more important than his political beliefs.

The judge said that he was glad that in the trial, the son and father didn't have to testify against each other. He didn't mention that Newbold Smith had spent much of his testimony attacking his son's political beliefs and slandering the LaRouche political movement. Judge Ellis decided on Dec. 28 not to allow either Lewis, or his wife Andrea, also a LaRouche associate and target of the would-be kidnapers, or her mother, to testify to rebut Newbold Smith's testimony that Lewis was "brainwashed."

Turning to the prosecutors, Judge Ellis said that when the government learned of the alleged kidnap, instead of getting wiretaps and surveillance, they should have gone to Newbold Smith and told him that kidnaping is a crime! One has to wonder whether Judge Ellis would offer the same advice for someone found planning a possible murder or to other criminals, or whether this is special treatment for Establishment figures like Newbold Smith.

During the trial, it was revealed in testimony, that Newbold Smith was fully aware that kidnaping was against the law, yet persisted in planning to kidnap his son.

In rebuking the other defendants, Judge Ellis ignored the evidence presented that these were dangerous men, capable of even murder—a fact that makes his stern words mild. To Galen Kelly, he said that one man's cult is another man's community. He told Don Moore that he had said outrageous things, that he came within a hair's breadth of conviction, and that he should grow up; this is all consistent with defense statements that Mr. Moore exaggerates and is a "legend in his own mind" and "the G. Gordon Liddy of Loudoun County." Finally, he told "Biker Bob" Point that as a member of the bar, he should have stood up and stopped this.

### **The prosecution's last words**

The prosecution in their summation and rebuttal to the defense summation Dec. 29 presented a sharply different view of the dangerous character of the would-be kidnapers and their plans.

Prosecutor Larry Leiser told the jury that the tapes and

their content were the core of the case, with the jury having heard, in the would-be kidnapers' own words, their plans and contingencies for kidnaping Lewis. Newbold Smith, said Mr. Leiser, went on the stand and claimed this was all hypothetical. Mr. Smith, said the federal prosecutor, tried to offer interpretations of his meanings of the words "lift," "wet-work" and "snatch." Which is more credible? Mr. Leiser asked: the tapes and transcripts of people who don't know when they are being recorded or the interpretations of people who testify after they have been charged?

In his rebuttal, Mr. Leiser argued that if there was no agreement, then why did these men go on talking month after month about all these details? He said that this was a hard case involving a family tragedy. But if Lewis found out his father was having an affair, he couldn't break the law and have his father kidnaped to have his brain rescrambled.

There is a tragedy here but there is also law, Mr. Leiser said. Edgar Newbold Smith was not man enough to say he crossed the line. Instead he got on the witness stand with all his hypotheticals. His testimony was incredible and is the best proof of the crime. The others played him like a guitar but a guitar who wanted to be played. Mr. Leiser said they wanted to have a kidnaping but debated how to do it and how to remain safe afterwards. This is not some crazy hypothetical or a fantasy but a group of men conspiring for a common goal to commit the violent crime of kidnaping, the prosecutor concluded.

### **Russell lied**

Along the way, the prosecution demolished the testimony of key defense witness and Virginia LaRouche prosecutor John Russell, who had testified on behalf of Don Moore. Aside from testifying that he knew Mr. Moore to exaggerate and stretch the truth, Mr. Russell, who is a close friend of Mr. Markham, claimed that Doug Poppa was not a reliable witness and would fabricate evidence. He claimed to have gotten that information from several sources, most of whom were involved with prosecution of William Douglas Carter. Poppa's testimony overturned a wrongfully-obtained conviction in the Carter case. Russell also mentioned that he had spoken to two state police officers who recently disparaged Poppa's credibility.

One of those officers, William Shand, is a state police officer since 1976 and director of the multi-jurisdictional anti-drug task force since 1985, testified for the prosecution in rebuttal that Doug Poppa never lied and was truthful and honest. He said that he had not spoken to Mr. Russell since 1986 or 1987 and if Mr. Russell had testified that such a conversation had taken place, "He would have been mistaken." The second officer was not called, but press reports indicate that federal prosecutors reportedly have begun an investigation into whether Mr. Russell's testimony conflicts with a tape recording that the officer is said to have made of the conversation.