

Mayor Barry associates acquitted; government prosecution stung

by Debra Hanania Freeman

As prosecutors wound up four weeks of testimony in the drug conspiracy and perjury trial of Washington, D.C. Mayor Marion Barry, related developments in the same federal courthouse four floors above threatened to blow apart the Department of Justice's massive legal persecution of anyone tied to the Barry political machine.

On July 16, a 16-week trial and 40 hours of jury deliberations ended with the acquittal of John B. Clyburn, a Washington, D.C. minority contractor and close associate of Barry. Clyburn's acquittal came four days after the same jury acquitted his co-defendant, David E. Rivers, another Barry associate and former head of the city's Department of Human Services. The acquittal of Rivers and Clyburn marked the finale of one of the government's broadest, most vicious, and most heralded, investigations of alleged District government corruption.

The persecution began in 1986 with a 17-month undercover FBI sting operation that DoJ officials described as a "mini-Abscam." The operation was revealed in a frenzy of subpoenas and front-page headlines in May 1987. The probe then widened, focusing on nearly every major city agency, top city officials, and numerous city contractors—all of them friends of associates of the mayor.

Although the Justice Department denied that Barry was a target of the probe, few doubted that federal investigators had viewed the probe as their best chance of linking the mayor to contract irregularities. Barry himself called the operation a thinly veiled attempt to gut his administration's successful partnership with the minority business community.

Clyburn and Rivers were ultimately charged with manipulating the contracting process over a four-year period to benefit themselves and their friends. The alleged scheme involved a pattern of stacking contract evaluation panels, leaking confidential bid information, and corrupting other D.C. officials.

Following the Clyburn acquittal, U.S. Attorney Jay B. Stephens, and his predecessor Joseph di Genova, defended the government's decision to prosecute, insisting that "the evidence in the case demanded it." Critics of the federal prosecutors were quick to point out, however, that the only "evidence" was that manufactured by the government sting.

Jury raps prosecution

Jurors interviewed since the acquittals described the undercover FBI investigators who posed as wealthy businessmen seeking D.C. contracts as "pushing too hard," "over-reaching," and "overzealous." Jury foreman Thomas McClean said several of the jurors were highly critical of the FBI's conduct and felt that the prosecution might have been motivated. "They [the FBI investigators] were wasting time and a lot of money," he said. "It took them too long to find nothing."

One juror commented, "The FBI offered more things than I can count on two hands to these men and they never accepted." She said she still wondered why the government had brought the case.

Sources close to the investigation were quoted in the *Washington Times* admitting that Barry was indeed the ultimate target of the probe from the beginning. A federal agent who has worked on a Barry-related public corruption case that is still pending said, "I'd be very surprised if the grand jury probe goes forward. Not after this." He admitted that prosecutors now plan to question the jury that acquitted Clyburn and Rivers before proceeding with a grand jury review of alleged contracting abuses aimed at Barry and high-ranking D.C. government officials.

Acquittals play into Barry defense

Observers close to the Barry trial expect many of the issues that led to the collapse of the government's case to reappear, as attorneys for the mayor unveil their defense strategy. For example, defense attorney R. Kenneth Mundy is expected to put FBI Special Agent Ronald Stern, who was in charge of the Barry sting, on the stand as a hostile defense witness.

Although the judge in the case, Thomas Penfield Jackson, has so far barred Mundy from bringing up the probe's cost and duration, Mundy is likely to ask Stern why the FBI's public corruption specialists have spent the past 18 months pursuing a drug investigation of Barry.

The clear implication for the jurors from such a line of questioning would be that the government had targeted Barry but, despite years of investigation, was unable to bring a case

Political solicitation is now a crime?

A five-count theft charge brought against Keith Levit in Upper Marlboro, Maryland, has carried the absurd logic of the "Get LaRouche" task force—that the mere fact of political sales and solicitation by those associated with Virginia congressional candidate Lyndon H. LaRouche, Jr. is a crime—to its most ridiculous extreme. With absolutely no allegations of force, intimidation, or fraud, i.e. without anything that would constitute a crime, a warrant for Levit's arrest was issued on the basis of information provided to a magistrate by a Greenbelt, Maryland Police Detective Carolyn McLean.

Levit, an associate of Mr. LaRouche already indicted in Virginia for so-called securities fraud, surrendered on July 13 on the charges and was released on a \$15,000 bond. The charges brought in December of last year, allege five counts of theft, involving contributions made by a political supporter of LaRouche. The warrant has all the pawprints of the work of the multijurisdictional, multi-agency "Get LaRouche" task force. The warrant was sworn out in December of 1989, yet until July 12 there had been no attempt to serve it, or to notify Mr. Levit of its existence. Only then, when Officer McLean, along with three other Maryland police officers, Loudoun Coun-

ty, Virginia Sheriff's Deputy Donald Moore, and a film crew from the syndicated television "news" program, Inside Edition, stormed into the Baltimore offices of Levit's employer, did the existence of the charges come to light.

The charges against Levit, judging from what was in the affidavit of probable cause sworn by McLean, appear to be even more ridiculous than those brought against three associates of LaRouche in Ogle County, Illinois, which resulted in a dismissal in June. LaRouche, Patricia Noble-Schenk, and Ron Fredman just a week before Levit's arrest had filed a suit for \$30 million in damages for violations of their civil rights by an Illinois prosecutor, a supporter's hostile daughter, and Patricia Lynch, a longtime anti-LaRouche operative with NBC. That action arises from a strikingly similar case of attempts to concoct criminal charges, deny First Amendment rights, and extort the return of funds willingly contributed by an elderly supporter, Harriet Driver.

In a *Washington Post* article that appeared on July 14, Mira Boland of the tax-exempt Anti-Defamation League was quoted, along with sources close to the investigation, and appeared to have more information about the charges than Levit's attorneys had been given thus far. Levit's attorneys noted that, besides the fact that the warrant was issued in the unusual fashion that it was, over six months ago, the alleged "crimes" date from 1988. Other observers noted that the arrest had the character of a "canned" event designed to bolster the flagging efforts to silence LaRouche and his associates after recent setbacks in Roanoke, Virginia, and Ogle County, Illinois.

against him based on government fraud, deciding instead to mount a drug investigation that only culminated in an indictment when the government created a "crime" in FBI informer Rasheeda Moore's government-financed hotel room.

Government strongarmed witnesses

Mundy has also not hesitated to point out that, of the 25 witnesses the prosecution produced, all of them, with the exception of the federal officials who set up and orchestrated the sting, testified under grants of immunity or promises of leniency in their own cases. One such witness, former restaurateur Hassan H. Mohammadi, had been threatened with deportation to his native Iran where his opposition to the Khomeini revolution would have meant his death.

One instance in which the prosecution's heavy-handed tactics may have backfired came with testimony from Barry's friend Bettye L. Smith, a former employee of the city's financial adviser, W.R. Lazard and Co. Smith did not testify voluntarily. She was escorted by U.S. Marshals under a war-

rant issued by Judge Jackson from a hospital bed in Chattanooga, Tennessee where she was being treated for stress related to this case. On July 16, her lawyers pleaded with Jackson to delay her appearance since her medical condition had deteriorated; her psychiatrist submitted written testimony describing Smith as suicidal. Jackson responded by ordering her arrest.

Prosecutors needed Smith's testimony to bolster the drug possession charges against the mayor alleging that he possessed cocaine between New Year's Day, Jan. 1, 1990, and Jan. 18, the day he was arrested in the government sting. But Smith said she was unsure of the exact date on which she gave Barry a small amount of cocaine at her house. She said it might have been in 1989.

Smith said that on that occasion, the mayor took the cocaine with him to the bathroom. When he returned, he gave the cocaine back to her, she said. She also testified that in the nine years since she first met Marion Barry, he has never used drugs in her presence, and has frequently reprimanded her for her own drug use.