LaRouche's $150 million libel suit against NBC will now go to trial

by Edward Spannaus

The $150 million libel suit brought by Independent Democratic candidate Lyndon LaRouche against the National Broadcasting Company (NBC) and the Anti-Defamation League of B'nai B'rith (ADL) will go to trial by the end of this month as a result of a ruling issued on Oct. 11 in Alexandria, Virginia by Federal District Judge James C. Cacheris.

Judge Cacheris denied motions for summary judgment brought by both NBC and the ADL in which they sought to have the case dismissed before it could go to a jury trial. NBC and the ADL had unsuccessfully argued that plaintiff LaRouche could not possibly meet his burden of proof of showing that they acted with "actual malice" in two network broadcasts attacking LaRouche earlier this year. The two NBC broadcasts at issue are a 5-minute "Nightly News" segment run on January 30 and a 20-minute "First Camera" feature shown on March 4.

Specifically at issue in the lawsuit are statements broadcast by NBC such as that LaRouche had plotted to assassinate President Carter and other high government officials, that LaRouche and his associates are tax evaders, that LaRouche is a "cult leader" whose followers would commit violence at his command, that LaRouche is an anti-Semite who blames Jews for all the evils of the world, and that LaRouche is a "small-time Hitler" who draws support from the KKK and right-wing groups.

Commenting on today's victory, a spokesman for Mr. LaRouche expressed deep satisfaction that the lies about LaRouche which have been circulated for years by the dope lobby and circles around the ADL and NBC will finally become the subject of a full court trial.

Westmoreland parallel

Today's ruling in the LaRouche case parallels the recent denial of summary judgment to CBS in the General William Westmoreland libel case currently being tried in New York. In the Westmoreland case, the court found that there were triable issues of fact regarding what the court termed "constitutional malice," that is, whether CBS broadcast its accusations against Westmoreland either with knowing falsity or with "reckless disregard" of the truth.

And in a third case, another federal judge in New York today ordered that CBS stand trial on libel charges brought by Lt. Col. Anthony Herbert stemming from a 1973 CBS "60 Minutes" broadcast. In denying summary judgment to CBS, this court also held that there exist triable issues of fact which must go before a jury.

These three cases thus continue a recent trend reversing the reign of impunity with which the Eastern Establishment news media has been free to libel and defame public figures and public officials since 1964. In that year, in the famous *New York Times* vs. Sullivan case, the U.S. Supreme Court said that a public official could not recover for libel unless he could prove that the publisher acted with "knowing falsity or reckless disregard." In effect, this meant that the news media was free to lie about and defame prominent figures, and, unless the victim could bring into court proof that the publisher *knew* that his statements were false, the victim of the media could not recover for libel.

This was the first time in U.S. history that the Supreme Court had extended First Amendment protections to limit recovery for libel. Prior to 1964, libel was treated by the law as a form of personal injury equivalent to an assault, and the press was held to "strict liability" for statements made libelling any citizen—including public officials or other prominent persons.

The well-known circumstances of the case involved the publication of an ad in the *New York Times* by civil-rights leaders which purportedly libeled local officials in Montgomery, Alabama; the Alabama courts awarded a judgment against the sponsors of the ad and also the *Times*. It was in this case that the Supreme Court said that proof of mere negligence was not sufficient to justify an award for libel; the legal standard established was the necessity to prove "knowing falsity or reckless disregard of the truth."

The court's reasoning was that in the course of political debate and public controversy, some false statements and erroneous statements are inevitable, and "must be protected if the freedoms of expression are to have the breathing room

they need to survive." The opinion is replete with references from the *Federalist Papers* and elsewhere on the importance of the right to criticize the government and public officials.

Despite the obstensible and laudable intent of the decision—to prevent the use of state libel laws as a weapon against the civil rights movement—the flaws in the court's reasoning, already clear in the *New York Times* case, became even more obvious in subsequent rulings which extended the protections of the *New York Times* ruling to "public figures" and anyone involved in matters of public controversy. In 1967, in the Butts and (General) Walker cases, the notion of "public figure" was extended to non-public figures involved in matters of public concern.

The standard was also broadened by the early 1970s so that not only did a plaintiff have to prove "knowing falsity or reckless disregard" but he had to prove it by "clear and convincing proof"—a standard far more stringent than the usual civil rule of "51% of the admissable evidence." This made it virtually impossible for a public figure to win a libel case, and in fact *no* public figure made any substantial recovery in a libel case from 1964 until the early 1980s.

The Supreme Court's reasoning was straight British liberalism, dusted off for the convenience of the Eastern Establishment media. "Under First Amendment there is no such thing as a false idea," wrote Justice Powell in the Gertz opinion. "However pernicious an idea may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." "But," Powell conceded, "there is no constitutional value in false statements of fact." The erroneous statement of fact is inevitable in free debate, and to impose a rule of strict liability compelling the publisher or broadcaster to guarantee the accuracy of his factual assertions "may lead to intolerable self-censorship." To say that the media can only avoid liability by proving the truth of its statements doesn't provide sufficient First Amendment protection. "The First Amendment requires that we protect some falsehood in order to protect speech that matters." To provide the freedom of the press and speech with necessary breathing space, "this Court has extended a measure of strategic protection to defamatory falsehood."

> . . . Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures . . . may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth. This standard administers an extremely powerful antidote to the inducement for media self-censorship of the common-law rule of strict liability. And it exacts a corresponding high price from the victims of defamatory falsehood. Plainly many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the *New York Times* test. . . .

The paradox of the *New York Times* ruling was that the truth or falsity of a libel was no longer a triable issue when the victim of the libel is a public official or "public figure." There was a major battle in the early years of this country to establish truth as a defense against a libel charge; that is to say, that a publisher charged with libel could assert the truth of his statements as a defense. Under English law in the colonial period, this was not the case: A truthful statement which defamed a public official gave rise to a cause of action for libel. This notion of "lèse majesté" still is found in the laws of many European nations, where truth is not a defense to a publisher charged with libelling a state official.

The *New York Times* ruling turns this on its head. Not only does the media defendant not have to prove that the statement is true to prevail in a libel action, but the plaintiff/victim of the media cannot win his case simply by proving that the statement at issue was false. As the Supreme Court said, it has created a zone of "strategic protection for the defamatory falsehood."

Under this standard, the media in the United States possessed a virtually unrestricted license to lie and defame. From 1964 until the early 1980s, there were virtually no public figure recoveries in libel suits. Almost all cases were decided by summary judgment, since it was held (as NBC just argued last week) that no plaintiff could meet the almost-impossible burden of affirmatively proving that the publisher *knew* that the defamatory statements were false.

Following a cryptic footnote in a 1979 Supreme Court opinion which questioned the propriety of automatically granting summary judgment to media defendants, this situation began to change.

LaRouche trial counsel Michael F. Dennis, reached for comment after today's ruling, stated: "It's time that the First Amendment cease to be a private monopoly of the media. Instead of using the First Amendment as a shield, the media has wielded it as a sword against new ideas and decent and respectable people."

Mr. Dennis further expressed his pleasure at today's ruling by remarking that "NBC's contention that LaRouche's claims are frivolous and without merit were certainly not concurred in by the court."

In the LaRouche ruling, the court denied summary judgment motions brought on behalf of defendants National Broadcasting Company, NBC reporters Brian Ross and Mark Nykanen, NBC "First Camera" producer Pat Lynch, the Anti-Defamation League, and ADL fact-finding director Irwin Suall. The court granted summary judgment in favor of only one defendant, ADL Chicago director Abbot Rosen.

The case will now proceed to a jury trial scheduled to commence by the end of this month or soon thereafter. The trial is expected to last at least three or four weeks, with over 50 witnesses scheduled to testify.