IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

MARIELLE ("MOLLY") KRONBERG,	)	
Plaintiff,	)	
-v-	)	Civil No. 1:09-cv-00947-AJT-TRJ
LYNDON LAROUCHE, BARBARA BOYD, EIR NEWS SERVICE, INC., and LYNDON LAROUCHE POLITICAL ACTION COMMITTEE,	)	
Defendants.	)	

PLAINTIFF MOLLY KRONBERG'S OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY ATTORNEY JOHN MARKHAM

TABLE OF CONTENTS

TABLE OF AUTHORITIES……………………………………………………………..iii

I. INTRODUCTION………………………………………………………………….1

A. THIS CASE…………………………………………………………………1

B. THIS MOTION……………………………………………………………...1

II. STATEMENT OF THE FACTS……………………………………………………3

A. The Current Litigation………………………………………………………3

B. The Testimony Given By Kronberg in 1988………………………………...4

C. Markham's Participation in the LaRouche Prosecutions…………………....5

Alexandria……………………………………………………………….5

Boston…………………………………………………………………...5

III. ARGUMENT……………………………………………………………………….6

A. The Standard of Review……………………………………………………..6

B. This Civil Case Is Not the Same Matter as The 1988 Prosecutions…………6

C. 18 U.S.C. §207(a) Is Not Offended By Markham's Involvement…………..7

D. Attorney Markham Did Not and Could Not Have Acquire Confidential Information Through his Role in the Unrelated Prior Litigation That Could Be Used to the Material Disadvantage of Defendants in the Present Litigation…………………………………………………...9

CONCLUSION……………………………………………………………………….16

TABLE OF AUTHORITIES

Cases

Commonwealth v. Miracle,
10 S.W.3d 117 (Ky. 2000)……………………………………………………11

Franklin v. Clark,
454 F.Supp.2d 356 (D.Md. 2006)………………………………………………10

In re Asbestos Cases,
514 F.Supp. 914 (E.D.Va. 1981)………………………………………………..10-11

Tessier v. Plastic Surgery Specialists, Inc.,
731 F.Supp. 724 (E.D.Va. 1990)………………………………………………..6, 7

United States. v. Clark,
333 F.Supp.2d 789 (E.D.Wis. 2004)……………………………………………8

United States v. Dorfman,
542 F.Supp. 402 (N.D.Ill.1982)…………………………………………………9

United States v. Evanson,
584 F.3d 904. (10th Cir. 2009)…………………………………………………12

United States v. Locascio,
6 F.3d 924 (2d Cir. 1993)………………………………………………………11-12

United States. v. Martin,
39 F.Supp.2d 1333 (D.Utah 1999)………………………………………………8-9

United States v. Philip Morris Inc.,
312 F.Supp.2d 27 (D.D.C.,2004)……………………………………………….12-13

United States v. Rasco,
2009 WL 1873804 (S.D.Ga. 2009)……………………………………………..10

United States v. Rosen,
599 F.Supp.2d 690 (E.D.Va. 2009)……………………………………………...8

Codes

18 U.S.C. s 207(a)……………………………………………………………………….7, 11

42 U.S.C. §1985……………………………………………………………………………1, 3

5 CFR §2637.201…………………………………………………………………………7, 9

5 C.F.R. §2641.201(a)……………………………………………………………………7

Office of Government Ethics' Final Rule, 73 FR 36168-01……………………………...8

Virginia Rules of Professional Conduct Rules
Rule 1.9……………………………………………………………………...7
Rule 1.11……………………………………………………………………6, 7, 9-10

I. INTRODUCTION

A. THIS CASE

Twenty-one years ago, attorney John Markham left the Department of Justice. Eighteen years later, the defendants in this civil case started harassing Molly Kronberg, a witness in a case in which Markham had participated substantially in 1988, by libeling her, writing, in articles published commencing in 2007 and continuing to 2009, that she had perjured herself in 1988 to "frame" Lyndon LaRouche, and that her perjury had finally caused her husband to kill himself in 2007.

She has sued defendants for libel and for conspiracy to injure her by reason of her having testified in a federal criminal case, in violation of 42 U.S.C. §1985. The issues in this case are (1) whether her testimony was true, and if so, (2) whether defendants' nasty allegations printed repeatedly against her were defamatory and part of a conspiracy to injure her because she testified.

B. THIS MOTION

This disqualification motion should fail. First, this civil case is not the same "matter" as were the criminal prosecutions two decades ago. The United States is not a party, it has no substantial interest, and there has been no switching sides. Second, the information Markham obtained 21 years ago is largely in the public record and, most important, given its scope and nature, it provides no advantage to Kronberg in this case, given the difference in issues presented by this case.

Defendants assert that Markham's distant past gives him an unfair advantage as to four distinct areas they assert to be at issue in this case. *See*, Defendants' Memorandum ("Def. Mem.") at p. 2. Each of the four is unavailing when deconstructed, which we do further below in

this Memorandum and in the accompanying declarations. Notably, there is not, in those four postulated areas, nor anywhere else in defendants' papers, one single mention of the actual substance of the testimony that Molly Kronberg gave in 1988 (the truth or falsity of which is the central matter in this case), nor any attempt to show how Markham's participation at the trial in which that testimony was given 21 years ago allows him any advantage on the issue of whether defendants' 2007–09 nasty writings about that testimony are libelous and part of a conspiracy to harass Kronberg. When her actual testimony is considered in light of the factual issues in this case, the long-ago involvement of Markham is shown to give no advantage.

Indeed, the defendants have much greater access to the past case information than do Kronberg and Markham. The shoe is really on the other foot. Throughout Molly Kronberg's legal representation years ago when she was a witness (twice) and a defendant herself in a state criminal proceeding, she was guided by lawyers and paralegals run by LaRouche and Odin Anderson, LaRouche's lawyer in the 1988 criminal case. In her preparation for the grand jury appearance in Alexandria in 1987-88, she was guided by lawyers sent by LaRouche. (Kronberg Dec. ¶ 6) Before she testified in the Alexandria trial in 1988, she was briefed on what she had told the federal grand jury by the same Barbara Boyd, who had Ms. Kronberg's grand jury testimony. (Kronberg Dec. ¶ 7) Ms. Boyd also took Ms. Kronberg to see LaRouche's lawyer, Odin Anderson, just before she testified and he discussed her upcoming testimony with her. (Kronberg Dec. ¶ 8) In 1989, when Ms. Kronberg herself was put on trial in a New York State prosecution, Barbara Boyd was again a paralegal for the joint defense and again reviewed Ms. Kronberg's Alexandria trial and grand jury testimony with her. (Kronberg Dec. ¶¶9 and 10) Finally, when she was subpoenaed by the IRS in 2000 to testify in a proceeding brought by LaRouche against the IRS, Ms. Kronberg was assigned by the LaRouche organization lawyers

the law firm of DiMuro Ginsburg, PC (Kronberg Dec. ¶ 11), the same lawyers now representing defendants in this case. Ms. Kronberg knows she sent them materials they requested so that they could represent her, but she does not have them. Presumably the defendants do. (*Id.*)

Defendants are hardly at an unfair disadvantage.

II. STATEMENT OF THE FACTS

A. The Current Litigation

Molly Kronberg has brought this action for libel and harassment of a federal witness (under 42 U.S.C. §1985), alleging that:

> Each of the defendants, and others, (i) conspired to injure Molly Kronberg in her person and property because she testified against Lyndon LaRouche in a federal criminal trial in this District at which he was convicted of defrauding elderly citizens of millions of dollars and of a conspiracy to defraud the government of the United States, and (ii) defamed and libeled Molly Kronberg. Defendants maliciously, and with conscious disregard of her rights, repeatedly published knowingly false statements that she had framed LaRouche and perjured herself at LaRouche's trial to falsely cause his conviction, perjury which, defendants also falsely stated, caused the death of her beloved husband, Kenneth Kronberg, to whom she had been married and devoted for 34 years, and who tragically committed suicide in 2007 after being viciously harassed by defendants.

One example of the screeds the defendants have combined to write and publish about Ms. Kronberg reads as follows (Amended Complaint, ¶ 14(v)):

> The organization broke down morally for a period of time, over a suicide, which Molly [Kronberg] had driven her husband to! . . . Molly gave the false testimony without which the trial could not have occurred in Alexandria…. She lied! It was only her lies that got us imprisoned. If she hadn't had that lie, nobody would have gone to prison in that trial.
>
> Now, you've got a situation, where he kills himself, because he was living with that witch: Who's been evil all along! Her behavior had never been good. She's never been honest. And then, he commits suicide, and these bums try to blame me for it! He was driven – there was no reason for the suicide, there was no excuse for it. But there's an understanding of the oppression that he felt by being married to that bitch.

Plaintiff Kronberg expects to prove that the defendants' repeated writings (such as the one just quoted) were defamatory because her testimony was true. She also expects to show that the defendants combined to write these nasty articles to injure her because she testified in 1988, and that she has in fact been injured substantially.

B. The Testimony Given by Kronberg in 1988

In 1988, the Alexandria grand jury indicted Lyndon LaRouche and six of his followers for fraud, and LaRouche for tax fraud. Molly Kronberg, then a devoted follower of LaRouche, testified under a compulsion order about certain limited subjects. The 30 pages of transcript of her testimony are annexed in full to her declaration submitted with this motion. Summarizing, (i) she testified about her employment position and duties in 1979 and 1980 as Secretary Treasurer of a publishing company that published books at that time for Lyndon LaRouche. *See*, Kronberg transcript pp. 64–67; (ii) she next testified about various exhibits, including a check register, check stubs, and several checks written in 1979–1980 by her on a LaRouche-affiliated publishing company's checkbook, and what those checks were written to pay for; (iii) she then testified about several conversations she had with a colleague about whether to write certain checks payable to the order of Lyndon LaRouche (transcript pp. 68–80); (iv) finally, she testified about various books LaRouche had written, commissioned, and published (transcript pp. 83-90).[1]

The gravamen of Ms. Kronberg's complaint is that defendants libeled her and harassed her by writing that this testimony falsely put Mr. LaRouche in prison and caused her husband to take his life. Significantly, while attributing these ills to Ms. Kronberg, the articles written by defendants never refer to the substance of her testimony, which any objective observer would label fairly benign.

---

[1] Notably: Defendants nowhere address the specifics of Kronberg's trial testimony or how anything learned by Markham relating to that testimony could advantage him and disadvantage them. In contrast, we explain how no such advantage is possible. *See* Markham Dec. ¶ 3.

C. Markham's Participation in the LaRouche Prosecutions

Alexandria

Between October and December 1988, Boston AUSA Markham was assigned to the Alexandria U.S. Attorney's office to help at the trial of Lyndon LaRouche and some of his followers who had been indicted for loan fraud and, in LaRouche's case, also for tax fraud. (Markham Dec, ¶10) Mr. Markham's participation in the trial was personal and substantial. He did not participate at all in the grand jury proceeding leading up to the Alexandria Indictment, and never received any of the grand jury materials, even those given the defendants as *Jencks* material. (Markham Dec. ¶11) He never spoke to Molly Kronberg or her husband. (Markham Dec, ¶12). He never saw any documents of EIR News Service, other than publications well known to EIR itself. LaRouche PAC was not in existence and he never saw any testimony of Barbara Boyd. (*Id.* at 13–15)

Boston

From 1986 to 1988 Markham participated personally and substantially as a Boston AUSA in the Boston grand jury investigation and prosecution of credit card fraud, loan fraud, and obstruction of justice allegedly perpetrated by LaRouche and his followers. (Markham Dec, ¶¶ 17-18) Before and during the trial of that case, he turned over as *Jencks* material to the defendants, including Lyndon LaRouche and his lawyer, Odin Anderson, who has been admitted *pro hac* in this case, the grand jury testimony of all those who had testified to the Boston grand jury (and the FBI 302s) of the trial witnesses and certain others. (Markham Dec, ¶19; 21) He has none of those transcripts now. While Markham does not recall much of the testimony now, he recalls no testimony about Molly Kronberg, Ken Kronberg, or anything relating to her testimony more than one year later in Alexandria. (*Id.*, at 20) She was neither the subject nor a target in

Boston. She was not a witness. She did not appear in the grand jury. There was no testimony about her at the public trial that he can recall. (Markham Dec ¶ 20) Neither Molly Kronberg, nor any of the matters on which she testified in Alexandria, was relevant to the charges of credit card and loan fraud or obstruction of justice being investigated and prosecuted in Boston. Neither were the taxes of Ken Kronberg. They were not mentioned. (*Id.* at ¶4, 20)

III. ARGUMENT

A. Standard of Review

On a motion to disqualify an attorney,

> …the moving party bears a "high standard of proof" to show that disqualification is warranted. *** The high standard of proof is fitting in light of the party's right to freely choose counsel, *** and the consequent loss of time and money incurred in being compelled to retain new counsel.*** However, this Court has held that the right of one to retain counsel of his choosing is "secondary in importance to the Court's duty to maintain the highest ethical standards of professional conduct to insure and preserve trust in the integrity of the bar." *** There must be a balance between the client's free choice of counsel and the maintenance of the highest ethical and professional standards in the legal community. *** [citations omitted]

Tessier v. Plastic Surgery Specialists, Inc., 731 F.Supp. 724, 729 (E.D.Va. 1990). In *Tessier*, District Judge Clarke also observed that "The Court is not unmindful of the recent practice indulged in by some to use disqualification motions for purely strategic purposes … and that courts should not be oblivious to this fact. Appropriately, the Fourth Circuit has cautioned against a mechanical application of the Virginia Code of Professional Responsibility to all situations." *Id.* at 729

B. This Civil Case Is Not the Same Matter as the 1988 Prosecutions

Virginia Rules of Professional Conduct Rule 1.11(b) provide in relevant part:

> (b) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in *connection with a matter* in which the lawyer participated personally and substantially as a public officer or employee,

unless the private client and the appropriate government agency consent after consultation.

Rule 1.11 further provides:

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

This civil case brought by Kronberg in 2009 is simply not the same matter as the 1988 Alexandria prosecution or the Boston prosecution of the preceding year.[2]

C. 18 U.S.C. §207(a) Is Not Offended By Markham's Involvement

5 C.F.R. §2641.201(a) provides guidance on the application of 18 U.S.C. §207(a) as applied to former officers and employees of the government. Government employees who terminated government service prior to January 1, 1991, as Markham did, follow the guidance of 5 CFR §2637.201,[3] which provides:

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

---

[2] "Matter" as used in the post-government representation rule (Rule 1.11) does not mean or include "substantially the same matter," the more expansive language found in the District of Columbia ethics provision. This difference is noted by the defendants at Def Mem p. 26, fn. 43. Significantly, the "substantially related" phrase missing from the rule invoked by defendants in this case is also found in Rule 1.9, the successive representation rule, which states that in the absence of consent, "[a] lawyer who has represented a client in a matter shall not thereafter represent another person in the same or *substantially related matter* if the interest of that person is adverse in any material respect to the interest of the former client ...." (emphasis added).

[3] The Office of Government Ethics' Final Rule, 73 FR 36168-01, provides that as part of the recent amendment of 2641, "part 2637 is being removed in its entirety, with the proviso that the last published edition of the 5 CFR in which part 2637 was published (the one revised as of January 1, 2008) will be retained by OGE, and should be retained by agency ethics officials, to provide interpretive guidance to employees who terminated service before January 1, 1991."

18 U.S.C. 207(a)(1) "… is designed to prevent former government officials from using the specific knowledge—rather than any general expertise obtained during their employment for the benefit of parties whose interests conflict with those of the United States." *United States v. Rosen,* 599 F.Supp.2d 690, 699 (E.D.Va. 2009).

> In enacting § 207(a), Congress's purpose was to protect the public from an individual attempting to use *not* the expertise, but the specific knowledge obtained while serving as a public servant. Among other things, the statute seeks to prevent such knowledge from being used against the government itself. . . . Section 207(a) accomplishes this purpose by prohibiting an official from changing sides on the same "particular matter." *Id.* at 843. According to the House committee which considered the proposal that became § 207(a), " 'an official should be prohibited ... from "switching sides" in a matter which was before him in his official capacity.' " *Id.* (quoting House Report at 4.)

United States. v. Clark, 333 F.Supp.2d 789, 793 (E.D.Wis. 2004).

Markham's involvement in this case is not "switching sides" in the same or substantially equivalent, pending litigation. *See e.g., United States v. Clark* 333 F.Supp.2d 789, 795 -796 (E.D.Wis. 2004) (Former U.S. Attorney disqualified as defense counsel for client facing drug charges where attorney was the supervisor of the initial drug trafficking investigation that ultimately led to defendant's indictment years after attorney had left U.S Attorney's Office); *United States. v. Martin*, 39 F.Supp.2d 1333, 1335 -1336 (D.Utah 1999) (Conflict of interest prohibited former AUSA from representing defendant where attorney had personally and substantially participated in investigation of defendant while an AUSA). The main purpose behind these rules is "to eliminate the perception that a 'revolving door' exists between the private bar and government service," to prohibit conduct which could "interfere with the prosecutorial discretion and prosecutive decisions necessary to the effective operation of the United States Department of Justice," and to protect the "government's interest in preservation of

the integrity of its system." *See*, *Martin*, *supra*, 39 F.Supp.2d at 1335-1336 *citing United States v. Dorfman,* 542 F.Supp. 402, 407 (N.D.Ill.1982).

Thus, the same matter this case plainly is not. Regarding the other prong, a matter in which the government has an interest in the "particular matter," 5 CFR §2637.201(c)(5) provides:

> (5) *United States must be a party or have an interest.* The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

This case does not present such an interest. The defendants, indeed, make no claim that it does. When Kronberg went to the FBI for assistance she was told, correctly, to get a private attorney. (Kronberg Dec, ¶ 18-19) She tried fours sets of attorneys, all refusing her, before engaging Markham. (*Id.*)

D. Attorney Markham Did Not and Could Not Have Acquired Confidential Information Through his Role in the Unrelated Prior Litigation That Could Be Used to the Material Disadvantage of Defendants in the Present Litigation

Under Rule 1.11(c).

> …a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person.

Rule 1.11(f) Provides:

> As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which*, at the time this Rule is applied*, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

Comment 8 to Rule 1.11 clarifies the restriction:

> [8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

By the language of the Rule, quoted above, the confidential information proffered by the moving party must be information that remains confidential at the time the motion to disqualify is filed. *See also*, *United States v. Rasco*, 2009 WL 1873804, 4 (S.D.Ga. 2009) (Chief Judge Moore denied motion to disqualify where former prosecutor became private defense attorney for a client whose case was pending in the US Attorney's Office before her termination, because motion was based on information allegedly known by former prosecutor that was now part of the public record and no longer confidential); *Franklin v. Clark*, 454 F.Supp.2d 356, 367 (D.Md. 2006)

The cases defendants rely on to support their motion to disqualify are "side-switching" cases, particularly where the former prosecutor leaves government employment and retains a client in a matter against the government, often in the same ongoing case pending while the attorney had been a prosecutor. Defendants repeatedly cite (at Def. Memo, pp. 18, 21, 24-25) *In re Asbestos Cases*, 514 F.Supp. 914 (E.D.Va. 1981), in which a government attorney defended the United States against multiple asbestos claims cases and then joined a private law firm who represented hundreds of plaintiffs in asbestos claims directly against the United States or as a third-party defendant, particularly a group of cases referred to as the "Norfolk litigation," which had been pending while the attorney was still working on behalf of the government. The attorney was clearly barred from participating in the litigation and the motion to disqualify considered whether the law firm was thereby barred or whether proper screening methods had been followed to prevent disqualification. Applying 18 U.S.C.A. s 207(a), Canons 4 and 9, the Court found that the law firm's participation in the Norfolk asbestos litigation where the

Government was a party constituted a threat to the integrity of the trial and created the appearance of impropriety. *Id.* at 922-924. One of the concerns of the government, stated by the Department of Health and Human Services (cited at Def. Memo., p. 21) was that the attorney had had "immediate and constant" contact with the scientific experts of the Department (who may be a defendant in the asbestos cases) and thus had assessed the strengths and weaknesses of the government's position and how the government would factually and scientifically present that position in the asbestos litigation. *Id.* at 918. Markham certainly was not interviewing LaRouche members to assess the strengths and weaknesses of LaRouche's position on harassment and defamation claims that did not come to fruition until 18 years later, nor was Markham able to gather any other such information at that time regarding actions the Defendants had not yet perpetrated.

In *Commonwealth v. Miracle*, 10 S.W.3d 117, 118 (Ky. 2000), cited at Def. Memo., p. 24, the former prosecutor had been the lead on the criminal case against the defendant for a string of charges including murder; then the prosecutor left the government to work for the private law firm representing the defendant—again, switching sides during a pending criminal case, one month before the trial date, and compromising confidential discussions of trial strategy and witness interviews and leading to the appearance of impropriety.

In *United States v. Locascio*, 6 F.3d 924 (2d Cir. 1993), cited at Def. Memo., p. 25, defense counsel was disqualified because he had been present for various conversations with his client and others that were taped by the government, he was entangled in the affairs of the known crime family he represented, and this relationship presented the unsworn witness problem, as well as a conflict of interest regarding the

potential of the attorney's interactions being part of the government's proof of criminal conduct against the defendant. In *United States v. Evanson*, 584 F.3d 904. (10th Cir. 2009), at Def. Memo., p. 25, defense counsel was also disqualified based on the unsworn witness problem because the attorney had been involved with and drafted documentation relevant to the scheme to enable participants to cheat the government out of income-tax revenue for which the defendant was on trial. These fact patterns are not analogous to the present case.

United States v. Philip Morris Inc., 312 F.Supp.2d 27, 33 (D.D.C.,2004), cited at Def. Memo., p. 26, is another side-switching case where an attorney who formerly represented the United States on tobacco matters, later entered a tobacco company lawsuit on behalf of an intervenor against the United States. The attorney, Koslowe, worked for the government by assisting the Food and Drug Administration ("FDA") and the Department of Health and Human Services with the Youth Tobacco Rulemaking, in which FDA proposed to assert its jurisdiction over the tobacco industry. It was undisputed that Koslowe worked extremely closely with the then-FDA Commissioner and that his assignment was "to help protect the administrative record from subsequent challenge in court," where he advised the FDA on legal issues relating to the compilation of the administrative record, helped draft portions of the FDA's basis-and-purpose statement, and helped respond to public comments. He also reviewed notes of interviews with confidential informants to the FDA, as well as other privileged and confidential documents that were used and/or relied upon during the rulemaking. *Id*., 312 F.Supp.2d at 33. The Court found that disqualification was the only remedy because:

> …Mr. Koslowe, on the basis of his own time records, worked a total of 382 hours on the FDA Litigation. In the course of that representation, upon which he worked

> personally and substantially, he had extensive access to confidential information that could be of use to him in representing BATAS in its efforts to insulate certain documents from discovery by the Government. Work performed on the FDA Litigation constitutes a "matter" within the meaning of D.C. Rule 1.11. Thus, it is reasonable to infer that knowledge he gained during the course of that work could be useful to him in his representation of BATAS, in clear violation of the disciplinary rules of this jurisdiction.

Id., 312 F.Supp.2d at 44.

The present case is clearly distinguishable from each of these cases. Markham has not switched sides and entered into litigation against the United States in which he could (as in those cases cited by defendants) use what he has learned from the United States specifically against the United States in discernable ways.

Nor can it be shown that his now-two-decade-old involvement in the Boston and Alexandria cases gives him any unfair advantage over the defendants in this case. To begin with, and not that any of it is relevant to this case, the defendants have access to substantial amounts of the once-confidential information to which Markham had access, including witness statements and agent reports of interviews. Indeed, they have access to documents and information that neither Markham nor Kronberg has, including Kronberg's grand jury testimony, the materials Kronberg gave to DiMuro Ginsberg when it acted as her counsel, the benefit of her discussions when she was debriefed and prepared to testify by LaRouche paralegals before Kronberg's grand jury appearances in Alexandria, before her trial testimony in the Alexandria trial (by defendant Boyd and attorney Odin Anderson, then LaRouche's attorney and now having appeared in this case), and during her own trial in New York.

The defendants' attempt to show unfair advantage fails. They cite four areas where that advantage supposedly exists. Markham's response to each of the four postulated areas where he

supposedly has some advantage (Markham Dec ¶¶ 3-6) is worth quoting here in some detail, starting with the supposed area of advantage, stated in italics, followed by our refutation):

> *The Veracity of Molly Kronberg's 1988 Testimony (Def. Mem p. 2)*
>
> I learned nothing about the veracity of Molly Kronberg during my involvement as a prosecutor. I saw no document relating to that, saw no "evaluation" (Defense Memo, p. 2) and learned nothing from any other source refuting or corroborating her testimony. I am aware of none. I only learned what I heard in open court when I listened to her testify as she was being questioned by other lawyers. I did not question her so did not prepare any questioning nor review any materials concerning her, then or ever. She testified concerning four subjects at the trial as is shown by the 30 pages comprising the transcript of her testimony which is annexed to her declaration submitted with this opposition:
>
> (i) she testified about her employment position and duties in 1979 and 1980 as Secretary Treasurer of a publishing company that published books at that time for Lyndon LaRouche. *See*, Kronberg transcript pp. 64–67. I learned nothing about that from any source. Yet since she was at the time working with defendants Boyd and LaRouche, they know well whether there is evidence to contradict her on this or any other point on which she testified.
>
> (ii) she next testified about various exhibits, including a check register, check stubs, and several checks written in 1979–1980 by her on a LaRouche-affiliated publishing company's checkbook, and what those checks were written to pay for. I never even saw these exhibits since she was not my witness, and learned of no facts relating to that testimony, other than hearing the testimony when she gave it in open court. Since the checks, her trial testimony showed, were written on bank accounts of the LaRouche organization, they should know about them, and the accuracy of her testimony relating to them. I do not have and saw nothing relating to them while a prosecutor;
>
> (iii) she then testified about several conversations she had with a colleague about whether to write certain checks payable to the order of Lyndon LaRouche (transcript pp. 68–80). I have never spoken to that colleague, Ms. Felice Gelman, saw any reports mentioning her, any grand jury testimony relating to her, nor did I otherwise learn anything about those conversations from any source apart from Kronberg's public, trial testimony when she gave it; and
>
> (iv) she also testified about various books LaRouche had written, commissioned, and published (transcript pp. 80–94). Certainly, LaRouche would know all about the accuracy of this subject matter. I came across various of LaRouche's writings during my involvement, but only those he had published and not as a result of any confidential source.

(4) *Ken Kronberg's Supposed Fears (Def. Mem p. 2)*

I never met Ken Kronberg. I never saw any grand jury testimony he may have given, if he gave any. Nor was I ever told of its content. I have no knowledge about any of his sentiments on any subject save for those I have learned from his wife, Molly Kronberg as conveyed to me since we met, fully 20 years after I left the government. I never saw any document involving any tax obligation or violation of Ken or Molly Kronberg, or anything relating to any tax violations of any companies he worked for. Moreover, the late Mr. Kronberg's fears about taxes, real or not, have nothing to do with the issues in this case. Whatever the reason for his suicide, it is the fact that *after* he took his life, LaRouche wrote that he had done so because Molly Kronberg had testified against LaRouche. I have no knowledge remotely based on what I learned in my time in government 20 years ago that sheds light on why a man I never met took his life in 2007. Persons having knowledge of his state of mind in 2007 simply do not include me.

(5) *My "Knowledge" About Gus and Other Witnesses (Def. Mem p. 2)*

I never met any "Gus." I see no way that this "Gus" relates to whether the defendants defamed Ms. Kronberg when they wrote that she perjured herself when she testified about five specific subject matters that did not mention him, and particularly since I never met him. As to "other witnesses" that I met during my involvement 20 years ago, this is not specific enough to address. Nor is it possible to address the assertion that I learned something that may affect the substance of the testimony of unnamed persons.

(6) *Unique Personal Relationships (Def. Mem p. 2)*

Apart from the mention of Criton Zoakos, no names are mentioned by the defendants in this the last issue on which they claim I have some special advantage gained from confidential knowledge. As to Mr. Zoakos, I met him once, in 1987, in a brief meeting at his house. I asked him if he had any information concerning the allegation that LaRouche had obstructed justice by sending suspected credit card cheats to Europe in 1985 and Mr. Zoakos told me that he had no such information.[4] This gives me no informational advantage given the issues in this case.

CONCLUSION

The motion to disqualify attorney Markham should be denied.

Respectfully submitted,

Marielle Kronberg

[4] *See also*, the declaration of Criton Zoakos to the same effect.

By Counsel

LAW OFFICE OF JOHN BOND, PLLC
/s/ John Bond _
John Bond, Esq., VSB#39457
10617 Jones Street, Suite 101
Fairfax, Virginia 22030
Attorney for Plaintiff Marielle Kronberg
Tel: (703) 359-7116
Fax: (703) 359-7120
jbond@jbondlaw.com

John J.E. Markham, II
Pro Hac Vice
Markham & Read
One Commercial Wharf West
Boston, Massachusetts 02110
Tel: (617) 523-6329
Fax:(617)742-8604
jmarkham@markhamread.com

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

Edward B. MacMahon, Jr. (VSB # 25432)
Law Office of Edward B. MacMahon, Jr.
107 East Washington Street
P. O. Box 25
Middleburg, Virginia 20118
(540) 687-3902
(540) 687-6366 (facsimile)
ebmjr@verizon.net
Counsel for Lyndon LaRouche and
EIR News Services, Inc.

Bernard J. DiMuro, Esq. (VSB # 18784)
Hillary J. Collyer, Esq. (VSB #50952)
DIMUROGINSBERG, P.C.
908 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 684-4333
Fax: (703) 548-3181
Email: bdimuro@dimuro.com;
hcollyer@dimuro.com

Counsel for Defendants Barbara Boyd and Lyndon
LaRouche Political Action Committee, Inc.

/s/ John Bond
John Bond