State securities laws used for political witchhunt

by Marianna Wertz

As the United States celebrates the bicentennial of the Constitution, one of the most open political witchhunts in the nation's history is under way against declared presidential candidate Lyndon H. LaRouche, Jr., and his associates. One aspect of the conspiracy against LaRouche is the attempt to apply state securities laws to political fundraising by LaRouche's associates, to bankrupt the publications which print LaRouche's writings, and to destroy his presidential campaign.

On March 3, a New York State grand jury, convened by Attorney General Robert Abrams, issued 15 indictments against supporters of LaRouche, charging illegal fundraising, including fraud in the sale of securities, conspiracy, scheming to defraud, acting as an unregistered securities broker, and grand larceny. The series of arrests which followed on March 17, was the third round of arrests for alleged violations of state securities regulations, launched in coordination with the office of Justice Department Criminal Division head William Weld, by state attorneys general antagonistic to LaRouche's policy-influence.

The New York indictments led to arrests of 12 individuals nationwide, all citizens who have never been convicted of any crime. They were incarcerated until bail—in most cases, in the range of $5,000 to $25,000—could be posted. Headlines in the press read "12 LaRouchies indicted" (*New York Daily News*), "12 Lyndon LaRouche Supporters are Arrested on Fraud Charges" (*New York Times*), "Crisis Time in LaRouche Land" (*Washington Post*), and the indicted individuals were paraded in jail clothing before the public eye.

One of those arrested on March 17, Mark Calney, a volunteer paralegal, remains to the date of this writing in Los Angeles County jail, *held on $500,000 bail!* The total of the loan transactions for with which he is charged amounts to $45,000, yet he was held on a bail about 20 times the standard for a murder suspect!

Municipal Court Judge Glennette Blackwell made a series of *sua sponte* remarks which reflected the intensity of behind-the-scenes, extra-judicial hysteria surrounding the indictments. Without any prompting from the prosecutor, Judge Blackwell said, "We all know in this courtroom that this man Calney is connected to that LaRouche." She added that the indictment results from a nationwide and international investigation, and that Calney is therefore "a danger to the community." Courtroom observers and legal experts were as shocked by the judge's admission of political motives as by the bail that resulted.

The New York indictments, and similar indictments handed down earlier in the State of Missouri and the Commonwealth of Virginia, stem from a conference held Feb. 12-14, 1986, for the purpose of national coordination of anti-LaRouche efforts. The conference was called, according to a document obtained through the Freedom of Information Act, by William Weld, then U.S. Attorney in Massachusetts, and Stephen Trott, deputy attorney general in the Department of Justice. A grand jury Weld convened in Boston in October 1984 to investigate LaRouche's "fundraising" had failed to indict LaRouche or his associates after 15 months of deliberation.

A memorandum, dated Jan. 17, 1986, was circulated to the FBI, U.S. Attorneys, and to directors of Financial Crimes Units, Criminal Investigative Divisions of the cities of Alexandria, Baltimore, Chicago, Cincinnati, Los Angeles, Newark, Philadelphia, and San Francisco—all cities where fundraising activities by associates of LaRouche were taking place. The aim of the conference is spelled out in the memorandum:

> For the information of the Bureau and all receiving offices, the Boston Division, in coordination with the U.S. Attorney's office, Boston, and the Secret Service has made plans for a conference in Boston from Feb. 12 through 14, 1986, to share information and coordinate efforts in the investigation of the widespread

fund raising fraud by the Lyndon LaRouche campaign organization and related entities.

Then, after a brief background description, the memo continues:

> The lack of a cooperating witness on the inside means that Boston as yet *lacks venue and evidence* to charge this as a national conspiracy. . . . It is obvious that the fund raising continues. . . . William F. Weld, U.S. Attorney for the District of Mass., is extremely interested in this case and has encouraged other U.S. attorneys across the country to develop their own cases were [sic]
> magnitude of the fraud. He believes that a conference of interested offices and U.. [sic] attorneys would be beneficial in this matter to coordinate a prosecutive and investigative effort. . . [emphasis added].

The apparent outcome of the meeting was a coordinated, nationwide effort to shut down the fundraising activities of LaRouche's associates, through the instigation of harassing legal actions in several states, simultaneously and consecutively.

The *Washington Post* gave away Weld's and the FBI's strategy in its March 22, 1987 article, covering the New York State indictments. The article quotes "law enforcement officials . . . and others knowledgeable about the group" that "The boa is constricting. I know they're hurting bad. . . . The most fundamental threat to the organization is financial, government officials and specialists on the group say [citing legal fees, etc.]
ago when U.S. District Judge A. David Mazzone in Boston ruled that the federal government can collect more than $21 million in contempt of court judgments from four LaRouche-related entities for not providing documents sought by a federal grand jury." (This is under appeal.)

The reasons for the FBI and Department of Justice effort to bankrupt the business entities associated with LaRouche, have been well documented in previous columns. Both agencies have been heavily involved in the "secret government," now under investigation by Special Prosecutor Lawrence Walsh, and earlier exposed in detail in the publications associated with LaRouche.

The specific strategy of the DOJ and FBI is the novel application of state securities law, to the political fundraising efforts of LaRouche's associates. Civil or administrative investigations are currently under way in nearly 20 states; three states—Virginia, Missouri, and New York—have already instigated criminal proceedings.

The allegation, that the taking of loans by campaign organizations and publishing companies is the equivalent of selling securities, is a gross violation of the guarantees of free speech and thought in the Bill of Rights to the U.S. Constitution.

Reviving 'debtors prison'

Michael Billington is a political supporter of Lyndon LaRouche and an employee of Caucus Distributors, the company which distributes this magazine. He was indicted in both the Missouri and Virginia actions. His comment: "If loans contracted for political campaigns were construed as 'securities,' then nearly every politician in America . . . could be guilty of sales of 'unregistered securities,' since all have contracted political loans."

It should also be noted that the prosecution of individuals for alleged illegal action—i.e., taking of political loans which are alleged to be securities—before such action has been ruled to be illegal by any court of law or legislature, is the worst kind of *ex post facto* application of law. Indeed, in the only case where the taking of loans has been ruled to be the equivalent of the sales of securities, in the Commonwealth of Virginia, the organizations and individuals involved had actually requested direction from state authorities more than a year in advance of the indictments, though to no avail. They have fully cooperated with the state authorities involved, since the ruling was made, while appealing the terms of the decision.

The first such action was instigated by the State of Missouri, in October 1986, shortly after the "Great Leesburg Panty Raid," in which William Weld directed the storming of the offices of this magazine by close to 400 state and federal law enforcement officials. Michael Billington was arrested on a "fugitive warrant" from Missouri, charged with 15 felony counts of "offering to sell unregistered securities." After being released on $20,000 bail at that time, he was re-arrested three months later on an extradition warrant signed by Virginia Governor Baliles.

The alleged "victim," Wilma McCubbin, apparently under pressure from relatives and prosecutors, was induced to make perjured statements, alleging that Billington had come to Missouri to obtain loans from her for his employer, Caucus Distributors, Inc., which distributes books, newspapers, and other political literature. Billington has, in fact, never been in Missouri. The state claimed such loans were "securities"—although no such ruling had ever been made previously by state officials!

As was subsequently learned in this case, McCubbin did not bring the charges herself, but a nephew, who disagreed with her support for LaRouche's efforts, intervened, had her declared partially mentally incompetent, took over her finances, and contacted local and state officials. It was these local and state officials who then initiated legal proceedings.

Billington was arrested at midnight in his home. He was held three-and-a-half weeks in the Loudoun County, Virginia jail, without bail, despite the fact that the court had already ruled there was no risk he would flee. His appeal to challenge extradition to Missouri, resulted only in further delay. Only after appeals for justice, opposing this blatant violation of human rights, poured in from LaRouche's supporters around

the world, did the authorities in Missouri offer to drop all criminal charges, if the loan involved were immediately repaid—a loan that CDI had never contested.

Billington was held in jail, under agreement between the State of Missouri and Governor Baliles, until the full amount of the loan was repaid. He thus became the first American held officially in "debtor's prison" since the early 19th century.

Despite this precedent, the Commonwealth of Virginia proceeded with a similar, expanded action against 16 individuals and 5 corporations identified with LaRouche, all indicted on Feb. 17, 1987, and charged with "sales of unregistered securities, by unregistered agents." The individuals were arrested on the evening of Feb. 17. The news media had been notified in advance. They were then released on personal recognizance bonds the following day. Hearing of the case has been scheduled for April 16.

At the same time, Virginia Commonwealth Attorney General Mary Sue Terry, a collaborator of Weld and of the anti-LaRouche Nunn-Johnson wing of the Democratic Party in the Commonwealth, launched an effort to "shut down" the five indicted businesses, demanding a temporary restraining order from the State Corporation Commission. After a hearing, the Commission took two weeks to issue its "Opinion and Order," noting as follows:

> Critical to the disposition of this case is a determination of whether the instruments in question, notes, are securities for purposes of the Virginia Securities Act, Va. Code ## 13.1-500, *et seq*. Section 13.1-501(j) of the Code of Virginia defines security to mean in relevant part "any note . . . [or] evidence of indebtedness. . . ." It is undisputed that the instruments in issue are notes. Defendants maintain that an economic reality test must be applied and under such analysis the notes do not come within the purview of the Virginia Securities Act.
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> This is a case of first impression in Virginia. . . . A review of federal court decision reveals an admitted lack of clarity about the proper analysis to be used in determining whether a given instrument comes within the definition of "security" for purposes of the federal Acts. The initial question is whether a court may merely look to the form of the instrument and its characteristics or must also examine the economic substance of the transaction in each instance to determine whether the instrument utilized is a "security."

The decision cites numerous Supreme Court decisions, and then concludes,

> [B]ased on the record before us for a temporary injunction, sufficient evidence exists to find that the notes in question possess all the usual characteristics of interest-bearing notes, and therefore bear out their labels. Additionally, using an analysis of the substance of the transactions, sufficient evidence was presented to indicate that the pattern of solicitation and response by those solicited can be characterized as an agreement to invest in defendant companies through the mechanism of a promissory note.

The Corporation Commission is very careful in its decision, to protect the defendants' rights to continue to raise funds through the vehicle of promissory notes, noting that it "merely seeks to have defendants register those securities and restrict the offer and sale of such securities to activities by registered agents." It orders the temporary enjoining from such activities by said companies to remain in full force and effect until June 5, 1987.

The reasoned argument of the Commission, albeit flawed from a constitutional standpoint, contrasts starkly to the flight-forward fury of Attorney General Terry, whose widely reported press conference vowed the "shut down" of LaRouche and associates in the Commonwealth of Virginia. Were it not for the clear intent to do political harm to LaRouche by Terry and her backers, the matter could clearly have been clarified and court action prevented, through open discussion among the parties. Indeed, as noted above, the LaRouche-associated companies had applied to the Commonwealth Corporation Commission more than a year before the indictments were handed down, for clarification on the issue, so as to abide by the law. As attorney Patrick Moran, representing the indicted corporations, pointed out to the Commission in hearings following the indictments, the Commission had failed to respond in writing, orally, or otherwise, for more than a year.

Abrams's homosexuals

The New York indictments, most recently in the national news, have equally obvious political motives. Officials in the office of State Attorney General Robert Abrams are on record testifying to their animus against LaRouche, because of his alleged "anti-gay" stance, and announcing their determination to "indict LaRouche." Abrams's office is a hotbead of radical "gay" ferment and organized opposition to the anti-AIDS initiative, Proposition 64, which was launched by LaRouche's co-thinkers in California's November 1986 election.

Investigations are known to be pending in other states, and could result in further indictments, arrests, and nationwide adverse publicity at any time. Their purpose is clear: to crush the political movement which could put LaRouche in the White House.

Whether such wildly illegal use of the powers of the government is tolerated by the people of this nation, will be the clearest test of what LaRouche has called the population's "moral fitness to survive." In this bicentennial year of the U.S. Constitution, the onus is on those who consider themselves patriots and upholders of constitutional law, to prove the continued efficacy of that document.