Bankruptcy judge: U.S. acted illegally against LaRouche

"It's springtime in November for the LaRouche political movement," announced Warren J. Hamerman, the chairman of the political action committee of the LaRouche wing of the Democratic Party, at the National Press Club in Washington, D.C. on Nov. 2. He was commenting on the ruling by a federal bankruptcy judge, exactly one week earlier, that threw out as illegal, the involuntary bankruptcies initiated by the U.S. government against three publishing and distribution companies associated with former presidential candidate Lyndon H. LaRouche, Jr. on April 21, 1987.

"The bankruptcy action taken against Campaigner Publications, Caucus Distributors, and the Fusion Energy Foundation two and a half years ago was the first junction on the LaRouche railroad," Hamerman stressed.

On Oct. 25, 1989, Judge Martin V.B. Bostetter dismissed the bankruptcies, finding that the government had committed fraud, and acted in "bad faith" in the action. The ruling came 15 months after a trial in Judge Bostetter's court in early May 1988.

Lyndon LaRouche was reported to have commented on the Bostetter decision, that although it comes two and a half years late, "it is important not only for us"—the LaRouche political movement—"but also for the country. It means that the principle of law can still be defended." Warren Hamerman told the press, that attorneys are now in non-stop planning "about how to take this victory and press forward to reverse all the unlawful atrocities that happened to LaRouche and his supporters."

Attorney David Kuney, who represented Campaigner, Caucus, and Fusion in the case, also addressed this Washington press conference. Speaking as a professor and as a bankruptcy practitioner, he said, "This is a great victory for the entities involved, and for the legal system and the bankruptcy system," and he hailed the 106-page decision by Judge Bostetter as both "judicious" and "courageous."

The "Get LaRouche" task force has received its first major defeat in the courts. Shown here are some leading operatives of the task force: (left to right) Boston FBI agent Richard Egan; U.S. Attorney Henry Hudson of Alexandria, Virginia; William Weld, who as U.S. Attorney in Boston started the federal prosecution of LaRouche, before being transferred to head the Criminal Division of the Justice Department; Chief Judge Albert V. Bryan, Jr., of Alexandria, who boasted that he "should have gotten a cigar" for railroading through the December 1988 criminal conviction of LaRouche and six associates.

"Were it not for the bankruptcies, not only would Lyndon LaRouche and six others, who have now served over 300 days in jail, never have been imprisoned, but they would never have been indicted in the first place," Hamerman, the chairman of the National Democratic Policy Committee, pointed out. As for the other LaRouche associates being tried for alleged fraud in New York and Virginia, and other trumped-up cases hinging on the failure of the LaRouche political movement to pay debts after the companies were bankrupted, Hamerman asserted, "they would never have gone to trial."

He pointed to a passage in the book *Railroad! U.S.A. vs. Lyndon LaRouche, et al.*, part of the preface written by LaRouche from prison in June 1989, which pinpoints the role of the bankruptcy in the frameup: "In April 1987, Alexandria U.S. Attorney Henry Hudson sent his minions to padlock the doors of the three firms, and to cut off all further repayment of these firms' creditors. This action by Henry Hudson's section of the 'Get LaRouche' strike-force, was carried out through Chief Judge Albert V. Bryan, Jr.'s Eastern District of Virginia Federal Court; Bryan, who personally supported that bankruptcy, knew that the prosecution's indictment was a big lie.

"On Oct. 14, 1988, Henry Hudson presented an indictment of LaRouche and six others in Judge Bryan's Eastern District of Virginia, accusing LaRouche and these six others of intending, during as early as 1983-84, to bring about that non-repayment of personal loans which Henry Hudson and Bryan's District Court caused to occur on April 21, 1987. When Hudson's office prosecuted the indictment, and when Bryan ordered that these facts of financial warfare and the bankruptcy not be revealed to the jury, both the prosecutors and that judge knew the indictment and prosecution were one giant lie. Judge Bryan knew it was all a big lie," LaRouche had written.

Hudson's bad faith

Judge Bostetter has determined that the forced bankruptcy was an *unlawful* act, in "bad faith," conducted by U.S. Attorney Hudson, who knowingly perpetrated a fraud on the court on April 20, 1987, Hamerman announced. Twice in the ruling, on page 14 and on page 42, Judge Bostetter wrote that he found Hudson's admission, as a U.S. Attorney, that he knew there were more than 12 creditors involved, to be a crucial fact. Technically, this would require that at least three of the creditors would have to bring the request for involuntary bankruptcy, but the U.S. government ignored this requirement and, with what Hamerman described as "unparalleled arrogance of power," moved *alone* to have the companies closed down, put under interim trustees, and all operations ceased for two and one-half years.

In the lengthy footnote 25, on page 42, Judge Bostetter supplied the court record of a number of such admissions by Hudson and his office, and concluded: "On the basis of the above, the government's actions could be liken[ed] to a constructive fraud on the court, wherein the court may infer the fraudulent nature of the government's conduct." (See p. 28 below for text.)

Hamerman said that another individual whose miscon-

duct stands exposed by the decision is U.S. District Judge Albert V. Bryan. Bryan was told by the companies targeted for the forced bankruptcy, that he was the more appropriate judge to hear the constitutional issues involved, including the potential violation of the Fifth Amendment protection against self incrimination, the companies were targets of a federal criminal investigation *before* the bankruptcy occurred. But Bryan said that the bankruptcy proceeding should stay in bankruptcy court, and that it was in good faith.

Then, in the criminal case, the same Judge Bryan granted a pre-trial *in limine* motion presented by the government, which excluded from the trial all mention of the U.S.-instigated forced bankruptcy. Thanks to this motion, "the defendants were forced to *lie* in court about the bankruptcy, by not being allowed to say the government bankrupted them," Hamerman pointed out. "Hudson cleverly shaped the indictment to end on April 19, 1987"—two days before the bankruptcy—he went on, but "there is no way that LaRouche and his friends would have been indicted if the bankruptcy had not occurred."

He promised, "This decision will have a tremendous effect on the appeals for the defendants" in the Alexandria case, which is currently before the Fourth Circuit Court of Appeals.

Vindication

"Lyndon LaRouche and his political movement have constantly said, especially over the past half-decade, that the federal government of the United States has engaged in an unlawful series of actions to put a political movement out of business," Hamerman noted. "I am overjoyed that this press conference is taking place in the First Amendment room of the National Press Club, because Judge Bostetter's decision defends, by implication, a basic constitutional principle. A scientific association and a national newspaper were put out of existence simply because of their political agreement with Lyndon LaRouche's ideas."

Although the First Amendment issue was not explicitly

1987 bankruptcy: first stop on the railroad

The following is adapted from the opening section of Chapter 2 of the book, Railroad! U.S.A. vs. Lyndon LaRouche et al. *(Washington, D.C., 1989), pp. 219-251.*

To understand the Alexandria case, it is first necessary to understand the government's unprecedented use of an involuntary bankruptcy against the LaRouche political movement.

This was the opening shot of the Alexandria trial. First, the Alexandria U.S. Attorney shut down three publishing companies, operated by associates of LaRouche, throwing over a hundred employees out of work and freezing the business's debts. This action was upheld by Judge Albert V. Bryan. Then, the very same U.S. Attorney indicted LaRouche and six associates for not repaying the companies' debts—the same debts which the companies were legally prohibited from paying! And then Judge Bryan ordered the defendants to lie about what had happened in the bankruptcy.

Three court documents summarize the facts of the bankruptcy. One is Judge Bryan's July 15, 1987 order on the bankruptcy. The second is the opening section of the pre-trial brief filed by attorneys for the three victimized companies. This memorandum was filed just prior to the trial of the bankruptcy case, which ran from May 4-9, 1988. The other is the "Proposed Findings of Fact" filed after the trial by attorneys for the three companies. These provided a documented, detailed, step-by-step description of how the U.S. Department of Justice planned and carried out the involuntary bankruptcy, in which every proposed finding is documented by reference to testimony or other evidence adduced at trial.

The central argument presented is that the bankruptcy—a civil proceeding—was actually conducted as part of the government's criminal prosecution against the LaRouche movement. The involvement of the Alexandria prosecution team—U.S. Attorney Henry Hudson, Assistants Kent Robinson and John Markham, and FBI agent Tim Klund—in the planning and execution of the bankruptcy, is documented from the evidence presented at the bankruptcy trial.

Prosecutor John Markham confirmed the truth of this argument when he subsequently declared that the bankruptcy had helped to accomplish the prosecutorial objectives of the government. Shortly after the Alexandria convictions the Boston U.S. Attorney submitted a motion to Judge Keeton in Boston seeking to dismiss the Boston indictment. In addition to the Alexandria convictions of LaRouche, Spannaus and Billington, and over 20 other indictments, he cited the shutdown of Campaigner Publications, Caucus Distributors, and the Fusion Energy Foundation as evidence of "the interests of the United States in effective law enforcement having thus been served from the point of view of both deterrence and punishment." Later in the same memorandum, under the section captioned "Deterrence Has Been Achieved," the argument says: "Three . . . of those entities have been placed in bankruptcy and their assets have been seized." Campaigner and Caucus had been indicted in Boston. All three were targets of the Alexandria grand jury investigation at the time of the bankruptcy.

raised in the bankruptcy trial, the illegal federal action shut down *New Solidarity* newspaper and *Fusion* magazine, each of which served over 100,000 subscribers. Judge Bostetter did rule that the Fusion Energy Foundation and Caucus Distributors, Inc. cannot be the subject of an involuntary bankruptcy proceeding. As "eleemosynary" institutions, whose primary purpose was the dissemination of educational ideas and political views, they are not "truly commercial in nature," the judge wrote.

It could be called poetic justice, Hamerman remarked, that Judge Bostetter cited precisely the same paragraph from an internal memorandum that had been repeatedly used in the trials against LaRouche and his associates to charge fraud, as evidence that "the debtors strived more to expose the world to its political viewpoint than attain private monetary gain. While the government has alleged that their methods of fund raising were reprehensible, that alone does not change the debtors' status and provide the appropriate basis for the invocation of *this* Court's jurisdiction."

'Courageous, scholarly decision'

"Judge Bostetter has made a courageous and scholarly decision," attorney David Kuney said. "He had to resist tremendous pressure by the government, which was asserting that because the cited companies were linked to someone they considered a 'political extremist,' they are therefore not entitled to the protections of the Bankruptcy Code.

"The government will probably defend itself by saying they lost on a mere technicality," Kuney went on. In fact, in his public statements after the decision, U.S. Attorney Hudson has tried to present it in that light. "But the three creditor requirement is not a technicality; it is what prevents the oppressive use of the Code."

Moreover, Kuney pointed out, Judge Bostetter also found that the government failed to fulfill another requirement of the Bankruptcy Code, as it failed to prove its contention that the three companies were not paying their debts.

Also, although Judge Bostetter made an "almost academic" distinction between the "objective" and "subjective" bad

Involuntary bankruptcy

A word of explanation, as to how an involuntary bankruptcy proceeding works, is in order. It is normally initiated by a petition of three or more creditors, and is opposed by the "alleged debtor"—called "alleged" because the allegations of the petitioning creditors that the debtor is insolvent must be proven in court. It is an adversary proceeding, operating like a civil case, with pre-trial discovery and a trial. Normally, only after the debtor is proved insolvent (either through summary judgment, or at trial) is the debtor company liquidated.

Here, in a highly unusual procedure, the three alleged debtor companies were seized and shut down before any trial; Bankruptcy Judge Martin V.B. Bostetter ordered the companies padlocked in a secret, *ex parte* proceeding, of which the companies had no notice.

At the May 1988 trial, the chief arguments made in opposition to the government's petitions were:

1) that the procedure was illegal because there was only one petitioning creditor (the United States government), not three as required by law;

2) that the petition was brought in bad faith, and for an improper purpose;

3) that two of the three debtor companies were nonprofit organizations, therefore not subject to an involuntary bankruptcy.

A critical aspect of the bankruptcy proceeding was the government's efforts to use it to extract and compel testimony from the officers of these companies. Many of the officers were already under indictment, and all were under investigation by Hudson's office. Because of the pending criminal proceedings their lawyers all advised them not to testify when the government tried to take their depositions. But if they exercised their Fifth Amendment right not to testify, their silence could be used against them—and the companies—in the civil (bankruptcy) proceeding. This issue, among others, came before Judge Bryan.

Bryan was an active participant in the bankruptcy proceeding, fully aware of what the government was doing, and indeed, approving it. The Bankruptcy Court in which the case was brought is part of the Eastern District of Virginia federal court, where Bryan is the Chief Judge. He personally made two rulings in the bankruptcy case. (Decisions of a Bankruptcy Judge, like decisions of a U.S. Magistrate, are first appealed to the U.S. District Court before going to the Court of Appeals.)

The first motion before Bryan was to appeal the April 20-21 *ex parte* order and seizure. The grounds for appealing Judge Bostetter's order included the secret *ex parte* nature of the proceeding, and the fact that the U.S. government was exercising prior restraint against these companies' First Amendment rights to publish. The hearing was so secret that it was not even stenographically recorded as is standard operating procedure. Judge Bryan denied the motion.

Later, attorneys for the debtor companies sought to utilize a provision which allows the entire case to be "removed" to federal court, when important legal or constitutional issues are involved. This motion was also heard by Judge Bryan. The major argument for removal was the constitutional conflict created by the efforts of the U.S. Attorney to compel testimony of company officers in the bankruptcy proceeding, at the same time the U.S. Attorney was conducting an active grand jury investigation of those same companies and individuals. Judge Bryan denied the motion for removal on July 10, 1987, saying he would consider the matter anew if it later became a problem.

faith of the government, ruling that he did not have the evidence to impugn the U.S. Attorney's *intentions*, the entities' contention that the government did act in bad faith was vindicated.

Mr. Kuney said that he was evaluating the decision also from the standpoint of a professor of bankruptcy law (he is Adjunct Professor of Law at American University in Washington). He answered affirmatively when asked whether he thinks this ruling may become a "classroom text." It "will become a leading, seminal decision."

"They shut down three companies for two and a half years, and put them under interim trustees. Can the government now just walk away and say, 'We're sorry?' "

Attorney Kuney was asked whether he believed the government will appeal the Bostetter ruling. He replied that Hudson has said that they will, "but I do not think they will."

Hudson should be investigated

One reporter at the press conference asserted, "I happen to know of well-substantiated allegations about a major Vietnamese mafia operating in the northern Virginia area, which Henry Hudson refused to allocate the manpower to investigate. Do you have any idea of the amount of investigative manpower Hudson applied to this case, that was taken away from such serious cases?" Hamerman replied that he thought the Government Accounting Office ought to be called upon to do an audit of U.S. Attorney Hudson's misuse of manpower and funds for the fraudulent bankruptcy action, as well as other "Metro-Goldwyn-Mayer-style actions by Hudson, such as the June 1988 Pentagon raid conducted under Operation Ill Wind."

Documentation

From Judge Bostetter's decision of Oct. 25

Below are excerpts from the 106-page ruling in the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, In re: Caucus Distributors, Inc., *debtor,* Campaigner Publications, Inc., *debtor, and* Fusion Energy Foundation, Inc., debtor. *Footnote numbers have been omitted, except for the instance where we are reprinting the relevant footnote.*

Memorandum opinion

This matter is before the Court upon the involuntary petitions in bankruptcy filed by the United States against Caucus Distributors, Inc. ("Caucus"), Campaigner Publications, Inc. ("Campaigner"), and Fusion Energy Foundation, Inc. ("Fusion"). The involuntary petitions, which request relief under Chapter 7 of the United States Bankruptcy Code ("the Code"), were filed on April 20, 1987. . . . The United States based the petitions upon claims outstanding against the debtors totaling approximately 16-million dollars. The claims consisted of contempt fines imposed upon the debtors for their failure to comply with grand jury subpoenas. The United States filed the petitions as a sole petitioning creditor and did not make reference to the total number of creditors of each debtor.

Upon the denial of two motions for dismissal, answers to the petitions were filed on June 25, 1987. The government then filed a motion for summary judgment in each case. After the filing of the debtors' answers but before the Courts' disposition of the motions for summary judgment, creditors intervened in each of the petitions, bringing the number of petitioning creditors to a minimum of three in each case.

On March 8, 1988, this Court issued a memorandum opinion, which clarified that the United States was the holder of a claim, which was not contingent as to liability, nor subject to a bona fide dispute. . . . This Court denied the government's motion for summary judgment, however, on the basis that a genuine issue remained as to whether Caucus and Fusion were debtors against whom the United States may proceed, and whether the debtors were generally not paying their debts. . . . Accordingly, the Court declined to rule on the issue of whether the government filed the involuntary petitions against the debtors in bad faith. . . .

A trial on the issues remaining for adjudication was held and at the close of the government's case, counsel for the debtors moved again to dismiss the involuntary petitions. . . .

The first basis asserted by the debtors in support of the instant motion to dismiss is that the government should not be allowed to proceed as a matter of law in an involuntary bankruptcy proceeding against parties whom the government also is prosecuting for criminal violations in another forum. Secondly, the debtors assert that an involuntary petition filed by a sole petitioning creditor *with* the knowledge that a debtor has in excess of twelve creditors warrants dismissal as a matter of law. We consider these grounds in the order proposed.

Parallel criminal proceedings

At the time the involuntary petitions were filed, the alleged debtors had been the subject of criminal investigations for approximately two and one-half years. . . .

With respect to the alleged debtors' contention that they were unable to defend themselves adequately in the instant proceedings, we note that such an argument only has merit, if any at all, if the outcome of these cases is unfavorable to the debtors. We, therefore, decline to consider this argument as a proper element of the debtors' motion to dismiss.

Accordingly, we find no improprieties in the prosecution