

## Appeals court: U.S. bankruptcy action was in 'bad faith'

Federal Judge Claude Hilton on July 19 upheld Chief Bankruptcy Judge Martin V.B. Bostetter's finding that the Justice Department acted in "bad faith" when it brought an involuntary bankruptcy action against three companies associated with Lyndon H. LaRouche.

In throwing out the government's appeal, Hilton wrote, "The bankruptcy court evaluated the government's action under both an objective and a subjective standard, holding that on an objective level, the government filed the petition in bad faith." The government's action, brought on April 20, 1987, shut down the companies overnight, and appointed federal trustees "to run the businesses." However, the trustees didn't do so, causing, for the first time in U.S. history, the silencing of a national newspaper and a scientific journal. The government's illegal bankruptcy action also paved the way for the judicial frameup of LaRouche and six co-defendants, jailing them for the last year and a half.

The involuntary bankruptcy petitions were brought against Caucus Distributors, Inc., Campaigner Publications, and the Fusion Energy Foundation (FEF). Campaigner was the publisher of the newspaper *New Solidarity*, which had been in existence for 17 years and, at the time of the government's forced shutdown, had over 100,000 subscribers nationwide. FEF published the popular scientific magazine *Fusion*, which had over 120,000 subscribers at the time its doors were closed by the government's actions.

The proceedings in the case lasted over one year, and Judge Bostetter's ruling was not issued until one and a half years after the May 1988 trial of the case. Between the trial and Bostetter's October 1989 findings, the very same U.S. Attorney's office which brought the bankruptcy action proceeded to indict LaRouche and six of his associates for failure to repay loans made to these three companies. It was the government's bankrupting of these companies—an action now ruled to have been illegal—that prevented the repayment of the loans.

### The government's 'constructive fraud'

Hilton's six-page memorandum and opinion, in addition to affirming the finding of "bad faith," supported Bostetter's earlier findings that the government had committed a "constructive fraud" upon the court. Hilton wrote: "The government had actual knowledge that each of the debtors had in excess of twelve creditors . . . which constituted an improper use of the involuntary bankruptcy statute and an improper invocation of the court's jurisdiction." Likewise, Hilton up-

held Bostetter's finding that bringing such an involuntary bankruptcy action against non-profit entities, such as Caucus and FEF, was in violation of the law. The "court also held that the government could not proceed against [these companies] in an involuntary proceeding, because those entities are not moneyed, business, or commercial corporations. . . . [T]here was sufficient evidence to support the court's ruling."

### Cross-appeal also denied

After the government had filed its appeal, the companies filed a cross-appeal, challenging Bostetter's finding that there was not "subjective bad faith" on the part of the government, but only "objective bad faith." His ruling seemed to foreclose the companies from seeking compensatory and punitive damages from the government for its wrongful action. The cross-appeal detailed why a finding of objective bad faith was insufficient to award such damages. But the companies also argued that due to the extensive collusion between the criminal prosecution team and the civil bankruptcy team to bring about this bankruptcy for ulterior purposes, they had met the subjective standard. Hilton, however, did not agree and also dismissed the cross-appeal.

It is unknown at this time whether the government will appeal this decision. Attorneys for Caucus, Campaigner, and FEF are reviewing the judge's opinion to determine if they will appeal the denial of their cross-appeal.

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