

Fact sheet: actions against Lyndon LaRouche and associates

On April 28, attorneys for two companies operated by associates of Lyndon H. LaRouche, Jr., and for numerous individuals, filed two motions in Boston Federal District Court, one "To Stay Bankruptcy Proceedings or, in the Alternative, to Dismiss the Instant Case," the other "To Dismiss for Violation of the Sixth Amendment."

The "instant case" in question involves indictments of the companies and various officers on charges like "obstruction of justice," charges leveled when a Boston grand jury convened by William Weld, current Justice Department Criminal Division head, was unable to come up with any evidence of "credit card fraud" and other wild allegations concocted as part of a general witchhunt against LaRouche and organizations with which he is associated. A trial in that case is scheduled for June 1.

Before the officers in question could come to trial, however, federal marshals on April 21 raided the premises of the companies, plus the unindicted Fusion Energy Foundation, and forced them into Chapter 7 involuntary bankruptcy on the basis of a "contempt of court" fine totaling over \$16 million leveled by the judge in the case—a fine then and currently under appeal! Thus, the prosecutor of the criminal case, the government, made itself a creditor of the defendants, obtained a bankruptcy order, and by that means, appointed trustees under bankruptcy law, who now have total control of the companies and power to demand information relative to the criminal case from the defendants, in violation of at least four Constitutional rights and all statutory precedents. The motions filed, calling attention to this "whipsaw" feature of the government's action, demand that either the criminal case be thrown out or the bankruptcy proceeding stayed; and that the criminal case be stayed because of clear violation of the defendants' right to due process.

Additionally, attorneys for these organizations have filed a notice of appeal in U.S. bankruptcy court, charging violations of the First and Fifth Amendments.

The following are the basic facts and their significance.

April 20, 1987. An Order Directing Appointment of Interim Trustees is secretly signed by United States Bankruptcy Judge Martin V.B. Bostetter, in the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division. The Order, sought by Unnited States Attorney Henry E. Hudson, is based upon Chapter 7 of the federal bankruptcy code. It places into involuntary bankruptcy Campaigner Publica-

tions, Inc. (CPI), Caucus Distributors, Inc. (CDI), and Fusion Energy Foundation, Inc. (FEFI), all organizations involved in publishing, and identified with declared presidential candidate Lyndon H. LaRouche, Jr.

The order is issued in an unprecedented *ex parte* civil proceeding, despite the fact that the organizations are involved in ongoing criminal proceedings in other jurisdictions, in relation to the same charges. The action is justified by alleging "a danger that the property sought to be attached would be concealed, substantially impaired in value and otherwise made unavailable to levy . . . if issuance of the order were delayed until the matter could be heard on notice."

The stated basis for the order is the corporations' alleged "debt" to the United States, in the total amount of \$16,635,000. This debt is the fine imposed in February 1987, by Judge David Mazzone, for "contempt" of the U.S. District Court for the District of Massachusetts in alleged obstruction of grand jury proceedings, and is currently under appeal by the corporations in the First Circuit Appellate Court, in Boston, Massachusetts.

The United States Attorney in Alexandria, Virginia, Henry E. Hudson, tells the *New York Times* that this is the first time in history that the government has used this type of "collection" technique.

The order directs the interim trustees as follows:

- 1) "obtain custody and control of the business and assets" of the three corporations;
- 2) "operate the debtors' business as practicable but to terminate those activities of the debtors' employees which the interim trustee believes either violate federal or state law, or are likely to unreasonably increase the liabilities of their respective debtors, or are unnecessary to the business operations";
- 3) "take all necessary and prudent steps to preserve the assets of their respective debtors, preservation of assets having a higher priority than continued operation of the business";
- 4) "stop the payment of all pre-petition debt except upon application to the Court."

April 21, 1987. Beginning at dawn, the offices of CPI, CDI, and FEF in Leesburg, Virginia are seized, inventories made, and all personnel expelled by federal marshals, despite protests from attorneys representing the companies. Offices of CDI in Palisades Park, N.J., Boston, Chicago, Houston, Los Angeles, and Seattle are also seized by federal marshals.

The marshals did not allow observers to remain in the offices when they conducted their inventory.

Also seized is the office of Eastern States Distributors in Philadelphia, despite the fact that ESD was not named on the order and is an entirely separate corporation from CDI.

Bank accounts owned by the corporations are frozen by order of the interim trustees.

All publishing and distribution of printed materials by the corporations is effectively stopped.

Daniel Alcorn, attorney for the three organizations whose assets were seized, states that, since all three were involved in publishing, the government seizures represent a violation of the First Amendment: "This is a highly irregular, one-of-a-kind procedure with frightening implications for the press." He also notes that "the government's failure to provide notice or a hearing also infringed his clients' rights to due process."

April 22, 1987. A motion by defendant organizations, to halt the seizures, is denied in the Alexandria, Virginia Bankruptcy Court. Defendants announce plans to file an appeal to the U.S. District Court.

April 24, 1987. The Washington offices of *Executive Intelligence Review (EIR)* are seized and shut by U.S. marshals. These offices are also shared with the Fusion Energy Foundation and the Schiller Institute, Inc. (SII), a philosophical association. The entire *EIR* office is sealed, and entry is prevented by federal marshals—despite the fact that *EIR* is not subject to the bankruptcy order.

The effects of these actions

According to legal specialists, the action of the United States Department of Justice, in throwing three LaRouche-identified organizations into "involuntary bankruptcy" on April 20, was completely unprecedented, and represents such a fundamental invasion of constitutional rights that it is potentially fatal to constitutional rule in the U.S.

It is not just that the use of involuntary bankruptcy is unprecedented as an effort to collect a government fine, but that the procedure is being used against defendants who have been indicted and are awaiting trial in a *criminal* case. As such, the procedure constitutes "execution before trial," in that the defendant corporations will be liquidated before they ever have an opportunity to go to trial and prove their innocence.

The government actions shut down the following publications:

- *New Solidarity*, a national newspaper published twice per week, with a circulation of 150,000 copies for each issue, and having 125,000 subscribers, published by Campaigner Publications, Inc.

- Four local newspapers, all inserts in *New Solidarity*:
—*Loudoun County News* (Virginia);
—*Illinois Tribunal*
—*New Jersey Prosecutor*
—*New England Spy*

- *Fusion* magazine, a national monthly science and technology journal, with 70,000 subscribers, published by Fusion Energy Foundation, Inc.

- *International Journal of Fusion Energy*, a quarterly science publication.

- The publishing and distribution of dozens of books, political pamphlets and fliers, devoted to the preservation of the American System and the U.S. Constitution.

- The government actions have made it very difficult for *Executive Intelligence Review*, a national weekly news journal, with over 10,000 subscribers, to continue to publish.

The government actions violate the First, Fourth, Fifth and Sixth Amendments to the U.S. Constitution:

First Amendment

By shutting down two publications—*New Solidarity* newspaper and *Fusion* magazine—and severely hampering a third—*Executive Intelligence Review* magazine—the United States government has silenced voices which have been in the center of major policy controversies over the past decade and more. The seizure of their editorial offices, throwing writers and editors out onto the street, and the impending liquidation of the companies, constitutes the grossest type of "prior restraint" of publications—impermissible under a long line of Supreme Court rulings over the past 50 years.

Fourth Amendment

The Fourth Amendment prohibits "unreasonable searches and seizures" and says that search and seizure, when permitted, must be particular and exacting; in this case the government has illegally seized offices and property not only of the three organizations named—Campaigner Publications, Caucus Distributors, and the Fusion Energy Foundation—but also offices and property of legally distinct corporations such as that which publishes *Executive Intelligence Review* magazine.

Fifth Amendment

(a) The Fifth Amendment declares that no person shall be compelled to be a witness against himself. Yet the nature of a bankruptcy proceeding is such that officers and principals of a "debtor" company must disclose information to the trustees and the bankruptcy court. In this situation, when the companies and many of their officers and employees are under criminal indictments, most criminal attorneys will not permit individuals to make any statements to government authorities. Such "failure to cooperate" ensures immediate liquidation of the companies.

(b) The Fifth Amendment also provides that no person (which includes a corporation) shall be deprived of life, liberty, or property without due process of law. The involuntary bankruptcy petition was filed, and seizures ordered, in a secret, *ex parte* (only one side present) proceeding, in blatant violation of even the statutory requirement of notice and

hearing. Offices were seized, employees thrown out, and corporations shut down, without any hearing or due process whatsoever. The first that any of the companies or their lawyers knew of the proceedings was when federal marshals appeared at 7:00 a.m. to seize and seal off their offices.

Sixth Amendment

The Sixth Amendment, governing criminal prosecutions, provides the following:

(a) The right to trial, and to trial by jury: Here, corporations which were indicted and awaiting trial, are now being "executed" before trial. The involuntary bankruptcy petition relies heavily upon the "criminal" nature of these companies, yet by the time they would have a chance to go to trial, defend themselves and prove their innocence, they will have been liquidated in the bankruptcy proceeding.

(b) The right to confront witnesses: The *ex parte*, Star Chamber nature of the seizure of the companies denied this fundamental right. Further, the justification for this *ex parte* proceeding was other *ex parte* proceedings such as the issuance of "Cease and Desist" orders by various state Securities Commissions and the *ex parte* attachment of the "PANIC" (anti-AIDS Initiative) bank account in California last summer. Each Star Chamber proceeding justifies the next one.

(c) The right to the assistance of counsel: In a bankruptcy proceeding, the lawyer for the debtor is obligated to provide information to the court, and can be ordered to waive the attorney-client privilege. When the debtor is simultaneously a defendant in a criminal proceeding, this creates an insurmountable constitutional conflict.

The background

The April 20 actions follow a series of coordinated government actions, illegal jailings, and unconstitutional treatment of individuals and organizations associated with Lyndon LaRouche nationwide, beginning with the October 6, 1986 action in Leesburg, Virginia. The following outline describes this series of events.

October 6, 1986. 400 federal and state law enforcement agents invade the small town of Leesburg, Virginia and conduct searches of two buildings housing the editorial and distribution offices for *Executive Intelligence Review* magazine and *New Solidarity* newspaper, publications associated with Lyndon LaRouche. Helicopters and armored personnel carriers are employed in the search. Law enforcement authorities subsequently justify the force deployed on the raid with the theory that "armed resistance" might be encountered, despite the fact that individuals associated with the publications have no history of violence. On the afternoon of October 6, a federal criminal indictment is issued by a grand jury in Boston, Massachusetts, charging 11 individuals, two corporations, two campaign committees and a philosophical association with credit card fraud and conspiracy to obstruct justice. The indictments stem from a politically motivated

grand jury investigation instigated by U.S. Attorney William Weld, now head of the Criminal Division of the U.S. Department of Justice. While the indictment charges individuals and corporations with \$68,000 in credit card "fraud," the indictment asserts that the charges are part of a "\$1,000,000 nationwide fraud scheme," otherwise not elaborated.

October 9, 1986. The United States argues that Jeffrey Steinberg, Michele Steinberg and Michael Billington, arrested in Virginia pursuant to the Boston indictment, should be detained without bail for trial. No defendant has a previous criminal record. While bond is ultimately set for Billington, Magistrate Harrison Grimsley finds that the Steinbergs should be detained until further findings by the U.S. District Court in Massachusetts. Grimsley's finding is based upon alleged obstruction of the Boston grand jury investigation—namely, non-production of records to that grand jury. FBI Agent Richard Egan falsely testifies before Grimsley that no records of the corporate defendants in Boston were produced to the grand jury.

October 20, 1986. Boston Magistrate Robert Collings finds that he cannot disturb the previous finding of Magistrate Grimsley regarding the Steinberg detention. FBI agent Richard Egan retracts his previous testimony regarding non-production of records, stating that he inadvertently "misspoke." The Steinbergs are detained in Massachusetts while appeal proceedings are undertaken before Judge Keeton. The Steinbergs are ultimately incarcerated for 40 days before the government accepts an arrangement allowing them to work as journalists in Leesburg during the day while staying in the Loudoun County jail at night. A similar procedure is effected at this time for defendant Paul Goldstein, who was in France at the time of his indictment. Goldstein surrendered himself to Boston authorities following the completion of his assignment in France.

October 21, 1986. The United States gives notice of its intention to pursue civil contempt proceedings for non-production of documents to the Boston grand jury before Judge David Mazzone in Boston. The United States asks that two corporate criminal defendants in the Boston indictment, Campaigner Publications and Caucus Distributors, be fined \$5,000,000 apiece, and that two non-defendants, the National Democratic Policy Committee and the Fusion Energy Foundation, also be fined \$5,000,000 apiece. The issue of alleged non-production centers completely on index cards of their political supporters, maintained by fundraisers for CDI—a legal issue which was appealed, on First Amendment grounds, to the U.S. Supreme Court. The Supreme Court denied the petition for *certiorari* on January 27, 1987. The corporate defendants seek a stay, citing the impossibility of defending themselves against the civil proceeding when the criminal indictment charges them with conspiracy to obstruct justice, based, in part, on alleged non-production of documents to the grand jury. The NDFC, Campaigner and FEF demonstrate their complete compliance with the grand jury

subpoenas.

October 27, 1986. Boston defendant Michael Billington arrested in Leesburg, Virginia for selling unregistered securities in Lawrence County, Missouri. Bail is set at \$20,000 and extradition is opposed on the grounds that Billington has never been to the State of Missouri.

November 19, 1986. California police raid and search offices associated with the anti-AIDS ballot initiative Proposition 64 in California, in Livermore and Los Angeles. The investigation, by California Attorney General Van De Kamp, who had previously tried to deny the initiative ballot status, centers on an alleged criminal "conspiracy" to bring out-of-state residents to California to circulate petitions for the ballot initiative. The ballot initiative is publicly associated with Lyndon LaRouche.

November 24, 1986. The *Washington Post* and the *Loudoun Times-Mirror* of Leesburg, Virginia report that a federal grand jury in Alexandria, Virginia has commenced an investigation into the taxes of Lyndon H. LaRouche, Jr. and companies publicly associated with him.

December 16, 1986. Superseding indictment returned by federal grand jury in Boston naming three additional defendants: Edward Spannaus, the Treasurer of LaRouche's 1984 presidential campaign committee, Robert Greenberg and John Scialdone. The government moves for detention of all three individuals, although none has a previous criminal history. FBI agents Richard Egan and U.S. Attorney John Markham stipulate that there had been massive production of documents, contrary to their previous testimony. Following a two-day detention hearing in Boston, Magistrate Robert Collings finds against the government detention request. Spannaus and Greenberg are released from jail on December 31 after posting bond. Collings also finally modifies detention conditions for Jeff and Michele Steinberg and Paul Goldstein, allowing them to post bond.

January 16, 1986. Michael Billington is arrested again in Leesburg, Virginia following the signing of an extradition warrant to Missouri by Governor Baliles of Virginia. No bail conditions are available pursuant to an extradition warrant. The Loudoun County courts set an extradition hearing for late February. Billington spends 25 days in jail and is finally released in early February when Missouri charges are dropped, following a monetary settlement with the complainant.

February 17, 1987. Indictments are returned by a Loudoun County, Virginia grand jury against 16 individuals and 5 corporations publicly associated with Lyndon LaRouche, for alleged securities fraud. The sole issue in the indictment is whether promissory notes, evidencing loans to political committees and political publishers, are securities in the Commonwealth of Virginia and whether, therefore, the individuals and corporations have unlawfully engaged in the sale of securities. Among those indicted is Michael Billington. The Attorney General of the Commonwealth of Virginia, Mary Sue Terry, moves for an injunction to shut down the

indicted corporations in Virginia, before the State Corporation Commission, and vows that all "LaRouche activities" will terminate immediately in the state. According to Terry, the alleged monetary frauds now involve a "30 million dollar nationwide scheme," which is otherwise not elaborated. While Terry fails in her initial request for a TRO, the State Corporation Commission does finally issue a temporary cease and desist order in early March, covering the taking of loans by the corporations. However, the Corporation Commission notes that this is an "issue of first impression" and is extremely unclear and ambiguous in both state and federal law.

February 24, 1987. Judge David Mazzone issues partial summary judgment contempt fines on behalf of the United States for \$20,000,000 against NDPC, Caucus Distributors, Campaigner Publications and the Fusion Energy Foundation. Judge Mazzone's decision occurs while an appeal is pending before the U.S. Court of Appeals for the First Circuit of his denial of a stay of the civil proceeding. Judge Mazzone was not informed by the government that his contempt findings cover a period in which no grand jury was sitting on this matter in Boston, a fact which was disclosed to the defense during pre-trial proceedings on the criminal indictment. Mazzone's findings of contempt for failure to produce documents to the grand jury extend to three organizations—the NDPC, the Fusion Energy Foundation and Campaigner Publications—which the government concedes produced "truckloads" of documents before the grand jury.

Production of documents by these corporations was never even an issue before Judge Mazzone. The defendants have moved for reconsideration before Mazzone and for an enlargement of their appeal and stay application to the First Circuit.

March 17, 1987. Fifteen individuals publicly associated with Lyndon LaRouche, indicted on March 3 by a New York County grand jury, are arrested pursuant to an investigation by New York Attorney General Robert Abrams. Abrams cites the same "\$30,000,000 national scheme" unsubstantiated figure, otherwise quoted by Virginia Attorney General Mary Sue Terry. New York originally requests \$100,000 in bail per individual, pursuant to fugitive warrants—a request which is rejected by judges in Virginia and New Jersey on March 17. However, in California, Mark Calney, a New York defendant, is detained on \$500,000 bail. In a bail hearing on March 18, Los Angeles Municipal Court Judge Glennette Blackwell imposes the \$500,000 bail. Calney has no previous criminal record and voluntarily surrendered to California authorities. Judge Blackwell sustains the outrageous bail with the statement, "Counsel, in all candor, and let the chips fall where they may, you know and I think the world knows, apparently this is part of that Lyndon LaRouche national and international investigation." She alleges that the bail was requested by New York State Attorney General's office, an allegation subsequently denied by the New York State attorney.