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## In Year of the Bicentennial

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# U.S. Constitution challenged in Justice Department's 'LaRouche case'

by Nancy Spannaus

From the history of U.S. government actions in 1987, there is no doubt but that the Justice Department was acting to finish off Democratic presidential candidate Lyndon LaRouche and all institutions associated with him during the Bicentennial year of the U.S. Constitution. It is a testament to the tenacity of the targets, the strength of their international support, and perhaps even the disarray of LaRouche's enemies that the government did not succeed.

The brutal government assault certainly did a considerable amount of damage to the physical resources of the LaRouche political movement. Most significant was the action by which the two most widely circulated publications put out by LaRouche associates, *New Solidarity* newspaper and *Fusion* magazine, were wiped off the map. The financial drain and terrorization of supporters also had tangible effects.

But the Justice Department networks who carried out these actions, in collaboration with the Soviet Union, have failed at their most important objective—shutting down the LaRouche presidential candidacy. They are now faced with attempting to carry out their judicial railroad while LaRouche is actively campaigning in the midst of the greatest crises the country has experienced in decades. Under such conditions, the danger is constantly increasing that the man whom they wish to condemn for his and his friends' efforts to "save Western civilization," may become the rallying point for millions of Americans disgusted with their government.

### 'Operation shut-down'

The first four months of 1987 were characterized by the most concerted series of police-state, "legal" actions that this country has known since the time of the Palmer Raids. In every month, the government carried out some new "surprise" arrest, series of arrests, or raid, against a number of LaRouche associates. The number of individuals arrested and/or indicted rose from 9 to a total of 40, including LaRouche himself. With each new arrest, of course, the financial burden of legal defense rose dramatically.

This of course followed the 400-person raid on the Leesburg, Virginia offices of LaRouche associates on Oct. 6-7, 1986, and the indictments of 10 individuals in October and

December. In late December, five individuals—all writers for this magazine—were being held in prison without bail by federal authorities; but they were all released by mid-January.

The first arrest of 1987 was on Jan. 16, when leading organizer Michael Billington—already indicted in the Boston federal case—was picked up at midnight, on a warrant stemming from an unpaid loan. Billington spent three weeks in jail, essentially in debtors' prison, until the government of Missouri dropped the charges on the condition that the loan be paid up to date.

Approximately one month later, Feb. 17, the state of Virginia swooped down, unannounced, to arrest 15 fundraisers working out of the offices of *Executive Intelligence Review* and Caucus Distributors, Inc. in Leesburg, Virginia, and Baltimore, Maryland. Announcing that she was going to "shut down" the LaRouche fundraising operations, Virginia Attorney General Mary Sue Terry, along with U.S. Attorney for Eastern District of Virginia Henry Hudson, made the unprecedented declaration that the political fundraising and loan-taking being done by the organizers, were part of a scheme for selling unregistered securities.

In fact, loans to political organizations have never been interpreted as "securities" before, and the charge was a transparent attempt to shut down political fundraising activities, by a member of the Democratic political machine committed to wiping out LaRouche.

Terry's blatant political efforts were followed exactly one month later, by arrests stemming from New York State charges that 15 fundraisers and corporate officers had "conspired to defraud" contributors. Once again, without any notice that charges were being brought against them, individuals were suddenly picked up and thrown in jail on "fugitive" warrants.

This shocking behavior was compounded in California, where defendant Mark Calney was arrested on a New York warrant. New York State demanded a \$500,000 bail for Calney, who had never been arrested before. Upon application that this was cruel and unusual punishment, the Los Angeles court only lowered the bail to \$150,000. Fortunately, the New York judge did not share the animus of the state offi-

cials, and commuted the bail down to the \$10,000-20,000 level, as with all the other defendants.

Despite the flimsy nature of the charges, and the blatant political motivation, especially in the Virginia case, neither of these state cases has been thrown out. On the other hand, neither has yet come to trial, and New York has added at least one new defendant to the case, since the original arrest. Furthermore, in early December, state and local officials in California were also threatening mass indictments growing out of the AIDS initiative which associates of LaRouche put on the ballot in that state in 1986. The revived interest in indictments was an immediate reaction to the successful petition drive to place a similar initiative on the 1988 California ballot.

### **Execution before trial**

There is no question but that the mass arrests of 1987 were orchestrated between the state governments involved and the Justice Department, as part of a nationally coordinated shut-down operation. But, the Justice Department was disappointed with the results. They had thought that such new assaults, which limited fundraising capabilities by such actions as eliminating loans, put fundraisers under tremendous stress, and cost hundreds of thousands of dollars in legal defense, would combine with the pressures of preparing the defense in the Boston federal trial, to shut off the political momentum of the LaRouche movement. But it didn't work.

So, on April 21, 1987, the federal government carried out a new and completely unprecedented exercise of police-state power. After having gotten permission in a secret proceeding with a federal bankruptcy judge, federal authorities marched into Leesburg, Virginia, and padlocked the offices of three corporations: the Fusion Energy Foundation, Inc.; Campaigner Publications, Inc.; and Caucus Distributors, Inc. All three businesses were declared to be under the control of government-appointed trustees, pending adjudication of the charge that they were involuntarily bankrupt. Offices of Caucus Distributors in other parts of the country were also seized by federal marshals.

Judicially, defense lawyers characterized the move as "execution before trial." Two of the corporations summarily shut down were already under criminal indictment in the Boston federal court, and preparing to defend themselves. The bankruptcy action abruptly cut off their funds, and threatened to subject their officers to interrogation by the same government which was prosecuting them.

The assault on the Constitution which this action represented was unprecedented, and mind-boggling. First, the action violated the First Amendment, freedom of the press and political expression, by halting the publication of two longstanding publications by LaRouche associates. *New Solidarity*, which had been published for 14 years, and *Fusion* magazine, in existence for 10 years, just simply ceased to exist.

Second, the action attempted to force the LaRouche associates involved in these corporations to choose between the exercise of their Fifth and Sixth Amendment rights. Although their Fifth Amendment right should have allowed them not to testify to the bankruptcy officials who were seeking information on the corporations, the government tried to interpret that action as evidence of guilt. However, if they collaborated with the bankruptcy officials, they would be handing over information to the government which it intended to use against them in the Boston federal trial.

Indeed, the action itself represented a *prima facie* invasion of the Sixth amendment rights of the defendants in the Boston criminal case, since the government seized the legal defense files and the legal office of the defendants in their bankruptcy shut-down. While the bankruptcy judge finally ordered return of these materials, this only occurred after the government had had the defense material in its possession for several weeks.

Also unprecedented was the fact that the bankruptcy shut-down was taken at the behest of only one "creditor"—the federal government itself. This is the first time in U.S. history that the government has been the petitioning creditor in an involuntary bankruptcy case. The Justice Department claimed that the three corporations owed it \$16 million in contempt fines, between them, although the levying of these fines was on appeal. Legally, an involuntary petition must be brought by three creditors. To this day the government has not remedied the second criterion.

This was not only the first time that the Justice Department brought an involuntary bankruptcy action; it is also the first time that the government has used bankruptcy as an adjunct of a criminal prosecution.

### **Political vendetta**

During the course of all these political assaults, the federal government continued the drive on its main legal front against LaRouche and his associates, in the federal conspiracy trial of *U.S.A. v. The LaRouche Campaign, et al.* Faced with demands for discovery and confronted with evidence of blatant violations of due process, of illegal search and seizure, and of selective and vindictive prosecution, the Department of Justice both stalled and parried.

Then, in mid-June, as LaRouche began to gear up his election campaign, the corrupt William Weld and Stephen Trott made the decision to indict the candidate himself. First, he was invited to give testimony before the grand jury in Boston, which he did on June 29. The situation had been well prepared by the prosecution, however, for less than 24 hours after LaRouche's voluntary testimony, a sealed indictment for one count of "conspiracy to obstruct justice" was issued.

The move was obviously political, but, by this point, the government didn't care. Not a shred of new "evidence" had been gathered against LaRouche since the first indictments had been handed down on Oct. 6, 1986, and the first

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superseding indictment issued on Dec. 16, 1986. The "evidence" amounted primarily to reports that LaRouche had received documents from intelligence community cut-out Roy Frankhauser, which included recommendations that certain actions be taken that could be interpreted as obstruction of the Boston grand jury; and entries in notebooks of other defendants which indicated that they were taken in reference to discussions with LaRouche. At most, a lot of hearsay.

But, by this time, the government had determined to go for broke. LaRouche's enemies in the Justice Department and intelligence community had come to the conclusion that they didn't have a chance of breaking LaRouche's movement, unless they broke him personally, and that there was no use just going after his associates. It was now out in the open: the U.S. government versus LaRouche.

### **Coming to a conclusion**

It is in 1988 that the judicial war between the enemies of the U.S. Constitution and the LaRouche movement will come to its fateful end. Most emphatically, the result will depend upon the outcome of the U.S. presidential primary process, not the other way around.

However, certain critical legal decisions have been made, or will be made, that will signal the relative strength of the protagonists at present.

Exemplary of such a decision was the Boston prosecution's move to join with the longstanding defense demand to sever the trial of CIA cut-out Roy Frankhauser from the larger "LaRouche" trial, and then to try Frankhauser first. This decision virtually assured that the prosecution would get a conviction to take into the main trial, since Frankhauser's

court-appointed lawyer had made it clear that he would only "defend" his client by attacking LaRouche.

The Justice Department got its conviction of Frankhauser—but it paid a significant price for this victory. Throughout the two-week trial, witness after witness undercut the prosecution's (and defense's) argument that Frankhauser was not connected to the intelligence community. Additionally, there was considerable evidence put before the court about LaRouche's connections with the intelligence community. Prosecuting attorney John Markham's attempt to claim that this is a "simple fraud case" has probably been fatally undercut.

Added to this is the prosecution's continuing problem of finding any direct evidence at all to support its claims of the existence of a conspiracy to obstruct justice. Every shred of "evidence" available to the government on these points comes either from a known liar, such as Forrest Lee Fick, or from notebook entries of the defendants which have no provable causal connection to what happened.

At the opening of the main trial on Dec. 17, Assistant U.S. Attorney John Markham attempted to circumvent this problem by concentrating on presenting a picture of organizational dynamics among LaRouche's associates, that would create the plausible impression that LaRouche was responsible for anything which his associates did, or appeared to do. But Markham had to lie relentlessly to create his impression. The facts will not sustain his picture during the course of his 140 witnesses, and the projected six-to-nine months of trial.

It is to be expected that the establishment powers who want LaRouche out of the way will do everything in their power to try to rig the trial, of course. Once again, as in the NBC trial of 1984, media can be expected to play a major role in slanting perceptions. But in the current volatile political period, it is by no means likely that the establishment will be able to maintain its controlled environment.

The outcome of other legal battles could also have a significant impact on the ongoing Boston trial. A decision is due at any moment on the Justice Department's attempt to win a declaration of "summary judgment" in the bankruptcy case, for example. Pre-trial rulings in the New York and Virginia cases could also affect the momentum.

Also on the back burner, although with a potential backfire effect, is the Justice Department's attempt to concoct a racketeering and tax fraud case out of an ongoing federal grand jury in Alexandria, Virginia, run by the same U.S. Attorney's office which initiated the April bankruptcy seizures.

Observers believe that the Justice Department has lost a lot of momentum, as the weaknesses of its case have become apparent in Boston and elsewhere. Their ultimate objective has always been to eliminate LaRouche, and to silence the political movement and publications he has inspired. Nineteen hundred eighty-eight could be the year they fail.