

Ascher freed on bond, in blow to 'get LaRouche' judicial vendetta

Judge Carleton Penn of the Circuit Court of Loudoun County defended the lynch mob verdict against fundraiser Rochelle Ascher, a political associate of Lyndon LaRouche, during a hearing on her sentencing in Leesburg, Virginia on June 5. Mrs. Ascher was convicted on April 5 on charges brought by the state of conspiracy, loan fraud, and securities violations; under Virginia's system of jury sentencing, she was given an unprecedented 86-year prison term, subject to final review by the judge. Penn declared that he sympathized with those who consider the 86-year jury verdict "sacred."

However, since Mrs. Ascher's crime was not "violent" in the sense of rape or murder, the judge said he was modifying the sentence to 10 years in prison, and 10 years on probation, with multiple conditions, including "restitution" to lenders and the cost of the court case.

Given that Judge Penn himself had made the rulings which "fixed" the jury with individuals inflamed against LaRouche, his attempts at showing consideration for the defendant rang hollow, indeed. In reality, Penn was upholding the tradition of Nazi Judge Roland Freisler, noted for being the political hatchet man against opponents of the Hitler regime.

Penn proceeded to deny bond on appeal to Ascher, because she was "willful" and "lacked remorse," and because he said he found the evidence of her crime "overwhelming." She was jailed immediately after the hearing.

But in an abrupt reversal, the Virginia Appeal Court overturned Judge Penn's ruling two days later, and ordered that Ascher be freed forthwith on \$50,000 bond. The order stated, "We hold that the trial judge abused his discretion in denying bail," because his reasons did not support the conclusion, under law, that Ascher would not appear when directed or that she was a danger to herself or the public.

The first part of the hearing on sentencing was taken up with post-trial motions by the defense. These centered on the question of jury bias, and the unconstitutionality of jury sentencing. Ascher's attorney, John Flannery, described the jury as massively prejudiced by the behavior of the government, and argued that the unprecedented verdict bore out this judgment. The verdict reflected a "burst of passion," Flannery said.

He then noted that the state's own guidelines for sentencing a crime like that of Ascher's—if she were guilty—would give her a sentence of six months!

Flannery also revealed that the Commonwealth of Virginia had offered one of Ascher's alleged co-conspirators, Michael Billington, a sentence of only *three years* if he would



Rochelle Ascher walks from jail to freedom with (from left) attorney John Flannery, husband John Ascher, and friend Warren Hamerman, after Appeal Court reverses the judge's ruling denying her bail pending appeal.

just plead guilty. The Commonwealth argued that this was irrelevant, and urged “substantial” jail time.

The final word on the jury was said by Judge Penn, who claimed that whatever passion they showed, might have been created by the situation of the lenders who testified at trial. He then commended the jurors, as he had at trial, for their conduct—including those six who showed such ghoulish interest in the outcome that they took time off work to attend the sentencing.

During his closing statement, Flannery powerfully argued one of the major issues in the loan fraud trial—the fact that the federal government had put into bankruptcy the very corporations which owed the monies, thus prohibiting them from being able to pay back loans. In reality, Flannery noted, most of the loans which Rochelle Ascher took—which were cited in this case—were not due until *after* April 1987, when the federal government unilaterally shut down the corporations at issue. So don’t blame Rochelle Ascher for the fact that lenders were not repaid, he said. Blame the federal government—it prevented the payment!

Ascher: ‘I am innocent under God’s law’

Immediately before Judge Penn’s sentence was pronounced on June 5, Rochelle Ascher made the following statement to the court.

I stand before you today to assert my innocence under God’s law, as I know I am innocent in His eyes.

I stand here also to assert my innocence under the U.S. Constitution and Bill of Rights—the closest thing to God’s law created by man.

I believe not only that I am innocent, but that both in the eyes of God and man, I have been unjustly accused and convicted.

I have spent the better part of the last 20 years of my life studying the Constitution, and the fight of our Founding Fathers to establish and preserve this republic. I have in fact attempted to dedicate my entire adult life to those very fundamental and inalienable rights which Americans have given their lives to defend, both for ourselves, and for the rest of mankind. I especially include those 10,000 Chinese students who died for these principles over this weekend.

Originally the government argued that this trial had nothing to do with these policies. As the trial progressed, they modified their position. They conceded in fact, this political association did publish what we said we published, did campaign the way we said we campaigned, etc.—but they argued that this was merely a *device* by which this supposed scheme to defraud was carried out.

The irony of this whole case is that I have dedicated my

entire life to the exact opposite purpose. My concern, from a very early age, has been that of the underprivileged, the hungry, the poor, and those suffering from tyranny and oppression. Since it has been conceded that I did not do anything for my own personal gain, the implication is that I did it “for the LaRouche organization” or to maintain Mr. LaRouche’s “lavish lifestyle.” Despite repeated assurance by the government that Mr. LaRouche and his supposed lavish lifestyle were not on trial, this was in fact exactly what they said in closing. But I happen to know that this is wrong. I happen to know that not only I, but no one else in the LaRouche organization has ever benefitted financially from anything that we have done—quite the contrary, what is difficult for most people in this day and age to understand is a philosophical association which has no “ulterior” motive—a group of people, including Mr. LaRouche, who have made great sacrifices in order to try to better this world.

Or take the question of my intent, which is what transforms this supposed misdemeanor into a felony. I know that when I took these loans, that an intent to defraud never entered my mind. This organization’s entire purpose for existing, is to combat injustice, evil, and poverty. This organization since its inception has been one of the most controversial political organizations in the history of this country because we directly took up a fight against evil, against the most powerful institutions and families. We never made any attempt to hide this. To argue that people did not know the risks of associating with this organization, and loaning us money, given what I told them, is wrong. This is like arguing that the people who loaned George Washington money at the time of the American Revolution did not understand the risk that they were taking!

The Commonwealth said, because I said that the banks were failing, and that it was safer to put money with this organization, that this was fraud. The banks *are* failing, the whole U.S. economy is on the brink of collapse, the country is collapsing economically as well as morally. I recently read a pamphlet which Benjamin Franklin wrote in 1777. He was in Paris, stating that a French loan to America, which had no money in its till at the time, was more sound than a loan to Great Britain, which was the world’s premier financial, military, and political power. I don’t consider this fraud. When my father-in-law left Austria in 1939, he left with \$2.30 in his pocket. He tried to convince his parents, who had their money and possessions safe in a bank, to leave, too. But they said their possessions were in a safe place, and refused to leave. They were murdered by the Nazis at Auschwitz shortly thereafter.

Which was safer?

The individuals who made these loans, and also made substantial contributions, understood this at the time. They made loans and gifts despite massive pressure from family, friends, stockbrokers, financial advisers, and others who told them that it is more important to keep the money for yourself than to dedicate your life to save the country. There was once

a time when patriots pledged their lives, their sacred honor, and their fortunes.

Under the Constitution

I do not consider myself above the law—quite the contrary. I consider myself totally dedicated to upholding the law when it is the Constitution itself which is under attack.

The Commonwealth has also argued that I supposedly believe that the ends justify the means. They say that even if it is true that I sincerely believe in these principles, I would do anything, including illegal acts, to secure these “ends.” This is wrong. This is the exact opposite of what I and my associates have dedicated our lives and our association to—the Judeo-Christian ethic of man made in the image of the living God, and the role of government to secure these God-given inalienable rights for all mankind.

As to the plea bargain question to one of my co-defendants, he was told that if he would simply plead guilty to an Alford plea, that he would serve a three-year sentence concurrently with his current three-year sentence imposed by a federal court—i.e., no additional jail time if he would simply plead guilty. I have refused to plead guilty because I am innocent, and I cannot spit on the principles to which I have dedicated my life, even though it would go much easier for me personally.

This also makes any argument denying me bail absurd. Why would I flee, if I am willing to risk everything to prove my innocence and assert those principles that I have lived my life for?

So, in closing, I ask the Court to understand why I must assert my innocence and fight to preserve my reputation and my honor and that of this organization.

‘Virginia has become a fascist state’

The following are excerpts from a speech given by Rochelle Ascher before a conference of the National Caucus of Labor Committees and the Schiller Institute on May 28, 1989.

. . . This jury sentence is the most severe sentence ever handed down to a “first offender” in the history of the Commonwealth of Virginia. Now, Lyndon LaRouche recently stated that the state of Virginia has crossed the line to become an overtly fascist state. I stand here today to make clear exactly what he means by this.

Imagine a state in which grand juries meet in secret—there are no transcripts or written records of any kind. This is the state of Virginia. In comparison, in the New York case, after the judge reviewed transcripts of the grand jury proceedings, he dismissed over 70 of the 89 counts of the in-

dictment. In Virginia, there are no such transcripts to review.

Imagine a state in which juries, not judges, do sentencing; and those juries are not allowed by law to run sentences concurrently. Virginia is one of only six states to uphold jury sentencing, despite numerous challenges that it is unconstitutional.

Imagine a state in which until 18 months ago there were *no* courts of appeal. If you were found guilty, your only remedy was to appeal to the State Supreme Court, which did not have to hear your appeal. In the last 18 months, the judge who will sentence me has been reversed 13 times.

Imagine a state in which the law says that you do not have the right to be told in advance who the witnesses are against you, what evidence will be brought against you, or who are your so-called “co-conspirators.” Unindicted “co-conspirators” can be added at will, whether or not you have even been charged with conspiracy.

This is the state of Virginia, or more properly as they call it, the Commonwealth of Virginia. And one more thing: Unlike in any other state, where judges are either elected or appointed by merit, in Virginia they are selected by the old blueblood Confederate families who run the General Assembly.

Now the specifics of this case. I go through this so that you can actually know firsthand what was done, to be able to understand how far this fascist process has gone in the United States of America. Also, because it is the same exact ID-format case brought by the same “Get LaRouche” task force that ran the Boston and Alexandria trials.

I was arrested on the night of Feb. 17, 1987 along with 14 others who are sitting in this audience today, and Mike Billington, who is in the Alexandria Detention Center. Maryland and Virginia State Police knocked on our office door. We were handcuffed and taken to jail. The charge: “securities fraud.”

We were later told the nature of our crime—we should have registered as stockbrokers when taking loans for political campaigns. We should have registered these loans with the State Corporation Commission as “securities”—stocks and bonds. Fine—except that the statute in question, the Virginia Securities Statute, had never been used against any politician or political organization in the history of the state of Virginia. If it had, Governor Gerald Baliles, Senators John Warner and Charles Robb, and the entire state legislature would also be in jail. Even more incredible, at the time of our arrest, there was no such crime.

This is the way that “law” works in the Soviet Union. First you are arrested, then they create the crime. But they are more honest about it in the Soviet Union: They call you an enemy of the state. In our case, the “crime” was manufactured three months after we were arrested. The State Corporation Commission met three months after we were indicted to “debate” whether or not the promissory notes in question were or were not in fact “securities” under *their* law. This fact was brought before the judge during pre-trial motions,

since it is illegal to indict and then *ex post facto* create a crime to fit.

The *ex post facto* motion was dismissed out of hand.

‘Thought crime’

I was also charged with a “thought crime”—intent to defraud—to increase these charges to felonies, carrying a maximum sentence of 10 years each. The argument of the Commonwealth is that at the time these loans were taken, we never intended to repay them. What the court refused to hear—they actually passed an *in limine* motion [motion to limit what evidence can be introduced] to this effect in the Alexandria case—was a very simple fact.

The same government prosecuting us for allegedly not intending to repay, is the government that ran financial warfare, infiltration, entrapment, and finally placed the not-for-profit corporations and tax-exempt foundations affiliated with Mr. LaRouche in Chapter 7, involuntary bankruptcy in April 1987—making it illegal and impossible for us to repay one cent.

In a police-state action unprecedented in American history, these companies were placed under U.S. government trustee—all bank accounts and assets were illegally seized, all offices closed. This means it was legally impossible to repay. All the loans named in the substantive counts of my indictment were due *after* the government-forced bankruptcy. The fact of the so-called “non-payment” was then made an element of my crime, “proving” my “intent to defraud.”

Eighteen months after I was indicted for securities fraud, an additional indictment was handed down against me and my co-defendants. Without revisiting the grand jury, the government charged me with conspiracy.

This is the mark of an overtly fascist state. In the Nazi legal code, the Nazis called this “guilt by analogy,” “guilt by association,” “thought crime.” Under conspiracy law in the state of Virginia, anything goes. The government can name anyone as an “unindicted co-conspirator”; right in the middle of the trial, they can add names at will. You are not given these names before trial, and you have to defend yourself against these people on the grounds that you are, as a co-conspirator, responsible for their thoughts and their actions. This included testimony from Judases who lied, were granted immunity from prosecution for their testimony, and then named my co-conspirators!

My case was tried in Leesburg, Virginia—the international headquarters of the LaRouche movement. This town has been the center of the most vicious press lies, attacks, and publicity against LaRouche, culminating in a pre-dawn raid against our headquarters involving 400 members of the FBI, Alcohol Tobacco and Firearms, (ATF), IRS, Secret Service, and the Virginia State Police, armed with Uzis, accompanied by helicopters, and an armored personnel carrier. We filed dozens of pre-trial motions for two years to change the venue—only to be told by the judge that “people don’t read newspapers”!

Lynch mob atmosphere

So we began jury selection in the middle of this charged, lynch mob atmosphere, the same week that LaRouche and his six co-defendants were sentenced to 15 years in prison for the same “offense.” Of course, the judge “forgot” to tell the prospective jurors not to read the newspapers. This was the longest jury selection in the history of the county, possibly in the state. The judge finally resorted to the following formulation: “This case involves the fundraising practice of individuals and organizations associated with Lyndon H. LaRouche, Jr. I am sure that you have read something about this in the newspapers, or heard something of this in the media. Can you put aside everything that you have heard and judge this case solely on the basis of its merit?”

On this basis, jurors who expressed the most vile bias were seated if they could assure the judge that they could put this out of their mind for the purpose of this trial. The only difference between this and the LaRouche case in Alexandria, where the jury selection took under two hours, is that we got to hear the filth pour out of people’s mouths for two weeks before they were seated: People who said LaRouche is an extremist, anti-Semitic, racist, neo-Nazi, a threat to the country—but sure, your Honor, I can put my personal “opinion” about the man and his organization aside to sit on this jury!

By the way, five days into the trial, the judge then changed his mind and invited a change of venue motion for the other cases. All 15 other cases have been moved out of Leesburg to Roanoke. I supposedly got the last 12 honest people in the county.

The judge’s charge

I will not force you to listen to what went on daily for 13 weeks. However, the final straw, which you should know about, was the judge’s charge to the jury. This proves the ultimate nature of a police state: There was really nothing for the jury to decide. First, the judge ruled that any piece of paper indicating indebtedness was a security, eliminating even the language in the statute “unless the context otherwise specifies,” which clearly exempts political fundraising guaranteed under the First Amendment. This was a directed verdict on the misdemeanor, leaving only the question of my “intent” for the felony count.

But this was even more incredible. Instruction No. 35 from the judge stated that all the jury had to find was that I had “participated in *any* way to bring about this crime, whether such crime was originally contemplated or not.”

Innocence is no defense in the state of Virginia! To be found guilty of intent, which makes this a felony, you did not have to have any intent. The indictment says I did this “knowingly and willfully.” The charge says I “participated in any way to bring about this crime whether such crime was originally contemplated or not.” The state of Virginia has gone over the edge to full-fledged fascism. But this is not a mere aberration. . . .