Defendants in New York 'LaRouche' case file motion for new trial

On Nov. 13, attorneys representing Marielle Kronberg, Robert Primack, and Lynne Speed filed a motion for a new trial before New York Supreme Court Justice Stephen G. Crane. The three defendants are associates of Lyndon LaRouche and were convicted Aug. 31, after a four-month trial before Judge Crane, of one count of scheme to defraud. Primack was also convicted on one count of conspiracy; Kronberg and Speed were acquitted on that count. A fourth LaRouche associate on trial with them, George Canning, was acquitted on both counts.

In part, the motion cited as new evidence requiring a new trial, the Oct. 25 decision by Federal Bankruptcy Judge Martin V.B. Bostetter, Jr., in which Bostetter found that the federal government had acted in bad faith in filing a petition, back in April 1987, to force three companies associated with Lyndon LaRouche into bankruptcy, Bostetter termed the government's actions against the three companies a "constructive fraud on the Court."

The relevance to the New York case of Bostetter's decision is, in part, as follows. The case, brought by New York Attorney General Robert Abrams, and prosecuted by Assistant Attorneys General Dawn Cardi and Rebecca Mullane, revolved around the prosecution's false claim that the defendants had schemed to defraud by raising loans from political supporters for three LaRouche-associated publishing and distribution companies—Campaigner Publications, Caucus Distributors, and New Benjamin Franklin House—loans which the prosecution claimed they never intended to repay.

The defense asserted that, in fact, the inability to repay loans was a result of government actions, including government seizures and destruction of defendants' financial records, and the April 1987 ex parte *petition filed by the federal government to force Campaigner, CDI, and Fusion Energy Foundation into involuntary bankruptcy. On April 21, 1987, the companies were closed down.*

The motion for a new trial, filed by Primack's lawyer Jeffrey C. Hoffman on behalf of all three defendants, reads in part:

2) I make this affirmation on behalf of all of the defendants, in support of their motion pursuant to CPLR 330.30(3) to set aside the verdict on the grounds that, "new evidence has been discovered since the trial which could not have been produced by the defendant at trial even with due diligence on his part, and which is of such character as to create the probability that had such evidence been received at the trial, the verdict would have been more favorable to the defendant."

3) The primary defense offered at trial was that the United States Government engaged in a pattern of conduct geared to destroying the financial welfare of the LaRouche-related entities and interfering with their ability to defend against criminal charges. This defense was directly relevant on the issue of intent to repay the loans.

4) Subsequent to the trial, the United States Bankruptcy Court for the Eastern District of Virginia rendered a decision dated October 25, 1989, dismissing the involuntary bankruptcy proceedings against Caucus Distributors, Inc., Campaigner Publications, Inc., and Fusion Energy Foundation, Inc. The decision is annexed hereto as exhibit "A." Chief Judge Martin Bostetter expressly found that the United States Government had filed the involuntary bankruptcy petition against these entities in *objective bad faith* (Decision at p. 91). The Court found that the Government filed the petition with knowledge that the entities had more than twelve creditors, and concluded that such action "despite that knowledge constituted an improper use of the involuntary bankruptcy statute and consequently an improper invocation of this court's jurisdiction. . . ." (Decision at p. 47).

5) Annexed hereto as Exhibit "B" is a sworn affidavit of former Assistant United States Attorney John Markham, executed on August 30, 1989, one day prior to the verdict in this case. The defendants sought to call Markham as a witness at trial in order to demonstrate to the jury that an agent of the United States Government, Richard Egan, acted in bad faith and in violation of a judicial directive in destroying critical documents of Caucus Distributors, Inc. and Campaigner Publications, Inc. (TR. 7829-7831; 7874-7876).

6) Agent Richard Egan testified in substance at trial that he had in fact destroyed boxes of documents, but that he did so unaware of any request, order, or direction to preserve them (TR. 7447-7635). In his August 30th affidavit, Markham states that he communicated to Agent Egan that "he could not throw away any documents belonging to Caucus, Campaigner, or Fusion because Slade Dabney had told me that they were

wanted back for the bankruptcy." (Markham affidavit, p. 6, paragraph 14). Markham further states that he believed that Egan was present in the Boston Courtroom when preservation of the documents was ordered, because he had just spoken to Egan in the Courtroom about "how he wanted to handle Mr. Anderson's expressed concerns about 'Agent Egan . . . playing games with authorization' . . . of those who might come to pick up the documents" (Markham affidavit, p. 6, paragraph 15).

'. . . the involuntary bankruptcy . . . allowed prosecutors to recruit witnesses with the psychological incentive that lenders had no other recourse but to put the defendants behind bars.'

7) At trial, the defendants requested a brief adjournment to produce Markham as a witness, which application was denied. Mayer Morganroth, attorney for Marielle Kronberg, represented to the court that he had spoken to Markham and Markham told him that his testimony would be "materially" different from Egan's, although he would not divulge specifics (TR. 7829-7830, 7874-7875). Not until the defendants received the attached affidavit did it become clear that Markham would have unequivocally testified that he witnessed a demonstration of bad faith, obstructive conduct on the part of a government agent vis-à-vis the LaRouche organization.

8) It is submitted that the bankruptcy decision and the sworn statement of John Markham constitute new evidence which create a probability that the verdict would have been more favorable to the defendants had the evidence been received at trial. The primary defense offered at trial, from opening statements forward, was that the defendants were subjected to a pattern of government activity which interfered with their ability to repay loans and raise revenues in order to do so. This defense included evidence of the government seizure of documents without which the organization could not administer loan repayments; evidence of adverse publicity which affected the ability to raise contributions with which to repay loans; and, finally, evidence that the United States Government shut Caucus and Campaigner down by filing an unprecedented petition for involuntary bankruptcy. The Bankruptcy Court's finding that the government acted in objective bad faith and the testimony of John Markham that he witnessed intentional, obstructive conduct by a government agent are persuasive, concrete examples of the pattern of government activity urged by the defendants at trial.

9) This pattern, now provable by direct evidence, clearly impacts upon the issue of the defendants' intent. The inferential manner in which improper government activity was presented at trial allowed the People to argue that the defense of government harassment, including the involuntary bankruptcy, was "yet another catchy alibi" and "excuse" characteristic of the defendants' cavalier attitude toward lenders (TR. 8609-8613). Indeed, the prosecution affirmatively argued that "this [harassment] did not happen out of the blue, but as another direct consequence of the defendant's illegal conduct" (TR. 8610). As such, the prosecutor used the theory of the defense in order to draw a further inference of guilt, which would not have been possible if the powerful evidence of government misconduct, described herein, had been available at trial.

10) Not only is the bankruptcy decision new evidence crucial to the theory of the defense, but it is important for another reason. Wayne Hintz testified to a number of measures that were undertaken through the spring of 1986 in order to manage the loan debt, including ceilings, repayment budgets, and renegotiations (see, e.g., TR. 3721-3725). There was no evidence at trial of any loans taken after September 1986. The involuntary bankruptcy occurred on April 20, 1987, and the Bankruptcy Court found that "the government has failed to establish that the debtors generally were not paying their debts as they became due as of April 20, 1987, the date the petitions were filed" (Decision, p. 82). All the government had shown was that "the debtors had major financial difficulties from early 1984 through September 1986" (Decision, p. 81). Thus, the involuntary bankruptcy summarily prevented the defendants from establishing, in fact and at subsequent criminal trials, a continuing commitment to honor their obligations and it allowed prosecutors to recruit witnesses with the psychological incentive that lenders had no other recourse but to put the defendants behind bars.

11) Virtually every lender witness at trial was asked if he or she was *ever* repaid. . . . Since the prosecutor used non-repayment-to-date as proof of guilt, it was essential, in order to engender reasonable doubt, that the defendants offer proof of reasons other than intent not to repay *ab initio*, obviously an amorphous and therefore difficult concept to rebut. Given that an ordinary juror does not presume bad faith on the part of its government, proof of an involuntary bankruptcy alone was not enough. Without the new evidence of an improperly initiated bankruptcy, the jurors could too easily conclude that the bankruptcy occurred because the entities were in fact bankrupt and had achieved that state in reckless disregard of their creditors' interests.

12) The testimony of John Markham is also direct evidence of government misconduct. It would not simply be offered to impeach or contradict Agent Egan's testimony. Egan was called primarily to establish that he had in fact destroyed documents, including, as demonstrated by other evidence, loan repayment materials. As a matter of course, his testimony included the self-serving claim that he did not do so knowingly and intentionally and the defense attempted

to establish otherwise. Markham, on the other hand, could testify as a witness to precisely the kind of government conduct which interfered with repayment of loans and which interfered with the ability to defend against criminal charges. Finally, Markham's testimony would also "prove the lie," as it were, on the part of a government agent under oath, and constitute further proof of improper government conduct with respect to members of the LaRouche organization.

13) It is therefore submitted that the bankruptcy decision and the Markham testimony constitute new evidence, not available at trial, which create the probability of a more favorable result for the defendants. The jury in this case obviously struggled with the question of individual criminal responsibility, as demonstrated by their disparate verdicts. Clearly they did not believe there was an organization-wide criminal intent. Thus, the proof certainly was not overwhelming and the evidence brought to light herein probably would have created a more favorable result. . . .

5 million leaflets to tell of Bostetter ruling

The Commission to Investigate Human Rights Violations announced Nov. 14 that it has ordered the printing of 5 million flyers for immediate distribution in North America, to announce the decision of Judge Martin V.B. Bostetter and its importance for American jurisprudence. The flyer is titled "Judge Finds U.S. Government Acted 'In Bad Faith,' Committed Fraud in LaRouche Case."

"This is a victory, not only for the LaRouche movement, but for the rule of law in the United States," announces the flyer. "It opens up a significant opportunity to crack apart the American police-state law enforcement apparatus which is being used increasingly to crush all independent resistance to the dictates of the U.S. Establishment—from trade unionists to the right to life movement, from defense contractors to clergymen."

The Commission is also seeking to purchase advertisements in prominent newspapers around the nation and in Europe.

The Paris-based Commission has actively promoted countermeasures to government harassment and fraud against the political movement associated with Lyndon LaRouche, since conducting a wide-ranging inquiry into the matter in 1987, prompted, in part, by the brutality of this bankruptcy decision itself, now overturned.