EIR Feature

The human rights issues in the Virginia LaRouche cases

by Barbara Boyd

This article originally appeared in the Aug. 10, 1998 issue of The New Federalist, *and has been updated. We republish it here because of the importance of the Virginia "LaRouche" cases, and the usefulness of the article, especially for our international readers.*

In the Republic, Plato paints the following picture of the "perfectly unjust man":

> Similarly, the unjust man who attempts injustice, rightly must be supposed to escape detection if he is to be altogether unjust, and we must regard the man who is caught as a bungler. For the height of injustice is to seem just without being so. To the perfectly unjust man, then, we must assign perfect injustice and withhold nothing of it, but we must allow him, while committing the greatest wrongs, to have secured for himself the greatest reputation for justice, and if he does happen to trip, we must concede to him the power to correct his mistakes by his ability to speak persuasively if any of his misdeeds come to light, and when force is needed to employ force by reason of his manly spirit and vigor and his provision of friends and money.

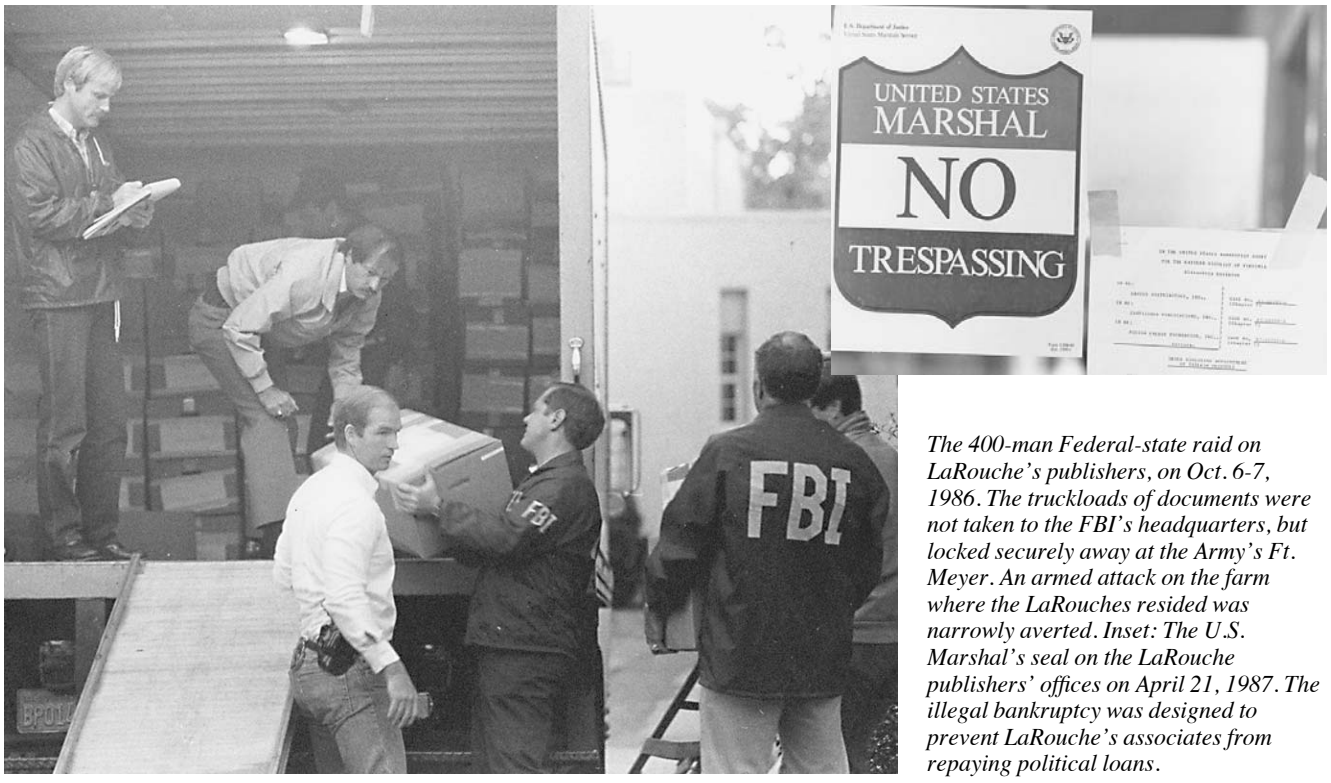
So it has been, to date, with the coverup of the injustices committed in the political prosecutions of Lyndon LaRouche and his associates. Some in the United States dare to lecture the rest of the world loudly and sanctimoniously about human rights violations. Yet, the failure of the United States to exonerate LaRouche and his associates demonstrates that, to date, the United States remains "perfectly" unjust.

The most recent manifestation of this perversion occurred on July 16, when the United States Court of Appeals for the Fourth Circuit sustained the conviction of LaRouche associate Michael Billington against Billington's *habeas corpus* challenge. Billington is presently serving a 77-year sentence in a Virginia prison for alleged securities fraud violations. The *habeas* petition is the last legal remedy, after all appeals have failed, that an innocent person has to overturn a conviction by proving his basic Constitutional rights have been violated.

The history of Billington's case makes clear, however, that his only "crime" was his association with Lyndon LaRouche, and his effort to seek vindication for LaRouche and his associates through the notoriously barbaric Virginia court system. Billington's co-defendants, Anita Gallagher, Paul Gallagher, and Laurence Hecht, remain in Virginia prisons, serving sentences of 39, 34 and 33 years, respectively, for the same alleged crime. Don Phau and Rochelle Ascher were also convicted by Virginia state courts and sent to prison. They have been released on parole.

Mike Billington will now appeal his case to the U.S. Supreme Court. Anita Gallagher, Paul Gallagher, Laurence Hecht, and Don Phau have petitions for *habeas corpus* pending in Federal district court in Virginia, challenging their convictions under the U.S. Constitution. Their state appeals have been rejected.

Former Attorney General Ramsey Clark, who was LaRouche's attorney for the appeal of his railroad conviction, said of the LaRouche case that it was the "number one" case of injustice, in his experience, based on its "complex and pervasive utilization of law enforcement, prosecution, media and non-governmental agencies focussed on destroying an enemy." The Virginia cases represent the crudest side of the



The 400-man Federal-state raid on LaRouche's publishers, on Oct. 6-7, 1986. The truckloads of documents were not taken to the FBI's headquarters, but locked securely away at the Army's Ft. Meyer. An armed attack on the farm where the LaRouches resided was narrowly averted. Inset: The U.S. Marshal's seal on the LaRouche publishers' offices on April 21, 1987. The illegal bankruptcy was designed to prevent LaRouche's associates from repaying political loans.

operation referenced in Clark's statement. Only by publicly exonerating LaRouche, purging the political and institutional networks which promoted and tolerated these atrocities, and freeing the LaRouche political prisoners incarcerated in Virginia, can the United States ever assert again that it aspires to actual justice. Any illusion to the contrary is destroyed by comparing what actually happened in these cases to the principles set forth in the United States Constitution and Bill of Rights.

The context for the Virginia prosecutions

The main action in the LaRouche prosecutions was conducted by the Federal government and led, ultimately, to the Oct. 14, 1988 Virginia Federal indictment and conviction of LaRouche, personally, on trumped up charges. Under way since 1982, this operation deployed the Justice Department, a government-sanctioned media salon run by Manhattan financier and intelligence spook John Train, and the ever-present Anti-Defamation League of B'nai B'rith (ADL), and reached its first stage of fruition between the months of October 1986 and February 1987. On Oct. 6, 1986, four hundred armed agents swept into Leesburg, Virginia, seizing every extant piece of paper in the offices of LaRouche's publishers. Unlike any other search and seizure, the seized documents were hauled off pursuant to classified orders, to the military base at Ft. Meyer, for examination.

Deployments were put into motion, that same day, Oct. 6, for an armed foray into the Leesburg farm where LaRouche resided. Called off at the very last moment, this assault surely would have resulted in the long-sought physical "elimination" of LaRouche.

Between October and December 1986, the Justice Department arrested and detained five of LaRouche's long-time associates without bail on obstruction of justice charges brought by a Boston Federal grand jury. According to comments published in the *Washington Post,* the objective was to "break" these individuals and obtain testimony against LaRouche.

As part of the same psychological warfare offensive, Mike Billington was repeatedly incarcerated. First arrested on Oct. 6 on the Boston Federal charges, he was released on bail and promptly incarcerated again in Loudoun County, Virginia, on securities charges issued by the State of Missouri. He was not released until late January 1987, when the Missouri charges were dropped.

Saturation levels of black propaganda media coverage, nationally and internationally, demonizing LaRouche and anyone associated with him as participants in a violence-prone criminal cult, were again mobilized, based upon the raids and arrests.

While the Federal assault on the LaRouche movement was calculated and brutal, the activities of Virginia Attorney General Mary Sue Terry and her law enforcement cohorts, members of the same Federal/state "get LaRouche" task force, can only be described as crass.

In documents released under the Freedom of Information Act, long after the Virginia state and Federal trials even FBI

Lyndon H. LaRouche, Jr. at his first public appearance in February 1994, after being paroled from prison. With him is his wife Helga, and civil rights veteran Amelia Boynton Robinson.

Rochelle (sentenced to 10 years) and John Ascher

Donald Phau (sentenced to 25 years)

and Justice Department officials characterize Terry as "politically motivated" in her pursuit of LaRouche's associates. These documents show Terry holding up the Federal raids in order to assure a more prominent media presence for herself, while high Justice Department officials wring their hands and court a compromise with the Virginia maenad.

In subsequent admissions, Loudoun Sheriff's Deputy Don Moore, who played an integral role in Terry's operations, provided a less sanitized version of the major topic of discussion in the immediate pre-raid period. According to Moore, he spent the time manically lobbying Federal officials for an armed assault on the farm where LaRouche stayed. Moore detailed plans to enter the farm and "take out" various LaRouche security personnel under the guise of arresting LaRouche.

On the night of Feb. 17, 1987, Terry finally had her chance at center stage. She dispatched state police and local sheriffs and a flock of media groupies throughout Loudoun County, Virginia and Baltimore, Maryland to arrest 16 associates of LaRouche on securities fraud charges. At a press conference, Terry claimed that her actions had the full backing of Virginia Governor Gerald Baliles. The Governor's office, of course, is not normally a party to criminal proceedings. The *Washington Post* noted that Terry's actions were also backed by prominent Northern Virginia business figures—individuals who could advance Terry's political aspirations. Avowed LaRouche-haters in Northern Virginia included super-wealthy members of the local gentry such as Sir Paul Mellon, media magnate and former CIA propagandist Arthur Arundel, Magalen Ohrstrom Bryant, Langhorne Washburn, the du Ponts, and other leading lights of the nearby Middleburg Hunt Country set.

While Terry garnered public attention, the main event on Feb. 17 took place behind closed doors. Federal officers stationed themselves in the Loudoun County Courthouse that night, offering free passes out of jail to those arrested if they would tell Federal prosecutors what they wanted to hear about LaRouche.

At the time, the Justice Department, desperate to add fraud charges (involving loans by supporters to LaRouche-related political activities) to those already pending in Boston, had concluded, as of December 1986, that they could not bring these charges because the lenders were unwilling to make claims of fraud. They still believed they would eventually be repaid.

To enhance the Federal bargaining position, Terry had issued charges against the 16 individuals which would subject them to sentences ranging from 30 to 100 years in Virginia's

prison system if they failed to cooperate with Federal prosecutors. Despite the threat of decades-long sentences, none of LaRouche's associates arrested on Feb. 17 agreed to "cooperate."

On April 20, 1987, the Federal government, with the help of Virginia authorities, made its next move. In secret and unprecedented proceedings, the Justice Department moved, in Federal court, to bankrupt LaRouche's publishers, securing the appointment of interim trustees to take over the companies and close them down. The Chapter 7 (liquidation) forced bankruptcy ended any possibility of loan repayments. On the same day, the FBI and state law enforcement agents began systematically to contact lenders throughout the country, to see whom they could intimidate and coerce into making claims of fraud against LaRouche.

The combination of the brutal, nationally publicized legal assault, the ongoing vilification of LaRouche in the media (reminiscent, in its effects, of the hysteria created by the 1950s McCarthyite witch-hunts), and the fact that funds which had been loaned by supporters to LaRouche political campaigns, were now lost forever, thanks to the imposed bankruptcy, provided fertile ground for witness recruitment. While some lenders immediately lost their nerve and surrendered to prosecutors, others stood their ground and continued their support. Many supporters simply broke contact, shunning both LaRouche and prosecutors. Other lenders, as we shall see, were subjected to coercion, pressure, and lies from law enforcement agencies, from irate family members, and others, finally resulting in conversion to the prosecution side.

Through the looking glass: political loans = securities

At the center of the Virginia prosecutions was the novel allegation by prosecutors, that political loans advanced for political programs and campaigns, were investment securities, subject to the securities registration and securities fraud provisions of state law. No court had ever declared this prior to the Virginia prosecutions. In fact, the Virginia courts uniformly declared, at the time these loans were taken, that in order for a loan obligation to qualify as a security, it had to be an "investment" for profit—characteristics singularly absent in political loans.

As the lawyers for Paul and Anita Gallagher and Larry Hecht argue in their Federal *habeas* petitions now pending in the Western District of Virginia Federal Court, any attempt by the Commonwealth to actually apply the Virginia securities laws and regulations to the cases of political loans made to the LaRouche movement, presented at their trial, would demonstrate clearly that these loans are not securities.

The loans considered by the Gallagher/Hecht jury went to finance events and campaigns which emerged in the context of fast-paced political developments. Loans were sought to finance an international conference bringing together various institutions and individuals fighting the war on drugs, publica-

Michael (3 years Federal; 77 years state) and Gail Billington

Anita and Paul Gallagher (sentenced to 39 years and 34 years)

Laurence (sentenced to 33 years) and Marjorie Hecht

tion campaigns putting time-sensitive literature on the desks of Congress, political rallies, and lobbying campaigns to educate Congress. Typical of the non-profit, non-investment nature of these transactions was the loan check from a lender named in two counts of Anita Gallagher's indictment. It states in the memo line, "repayable contribution."

The *habeas* petition notes that if the securities statutes apply, each new political organizing thrust for which loans were sought would have to be registered and approved by the state before it could be undertaken. Registration would involve a separate registration statement for each such campaign, including detailed financial statements by everyone involved, an opinion of legal counsel, pre-approval by regulators for "suitability" of all literature used, among other requirements. Prior to any solicitation, political organizers would have to qualify to become professional securities dealers, taking examinations for that profession and passing them. Alternatively, the political organizations seeking the loans would have to hire securities dealers to solicit for political causes. Detailed lists of supporters and their activities would have to be kept and would be open to inspection by state regulators at all times. Regulators could withhold approval of any planned political activity.

In short, applying securities laws to political activities not only results in a Kafka-esque absurdity, it also *violates the First Amendment to the U.S. Constitution,* which outlaws burdensome regulation of political speech and association, as well as state censorship.

Following the arrests on Feb. 17, Terry vowed to the media that she would use Virginia's State Corporation Commission to "shut down" all of LaRouche's operations. The SCC, which enforces and interprets Virginia's securities statutes, initially balked at its assignment—namely to issue a ruling that loans to a beleaguered, openly controversial and cash-starved political movement were, in fact, investment securities. The SCC refused to issue the immediate injunction Terry demanded, and, through its chairwoman, Elizabeth Lacy, asked for further legal briefing on this "issue of first impression," alluding to obvious First Amendment problems.

The SCC's reluctance produced panic in the prosecution camp. "State law enforcement" sources told the *Richmond Times-Dispatch* that Terry's prosecution might go "down the tubes." Following the forceful intervention into the SCC proceeding by the Attorney General's office Lacy changed her tune, however, and declared, somberly, that political loans were, after all, securities, and that there were no problems under the First Amendment to the U.S. Constitution with this status. Soon thereafter, Lacy was nominated to become the first woman Virginia Supreme Court Justice. In a further demonstration of her bona fides for Virginia's corrupt high appellate court, Lacy adamantly refused to recuse herself as a Supreme Court Justice from hearing appeals on the issue of whether political loans were securities in the LaRouche cases.

It is an axiom of appellate law that judicial officers cannot sit in appellate review of their own decisions. But as one seasoned Virginia attorney commented, the LaRouche cases demonstrate just how far the current judicial establishment is willing to go to achieve a desired political result. "It is as if the courts went out of their way to shock, knowing that people will think you're crazy when you factually tell them what actually happened in these cases."

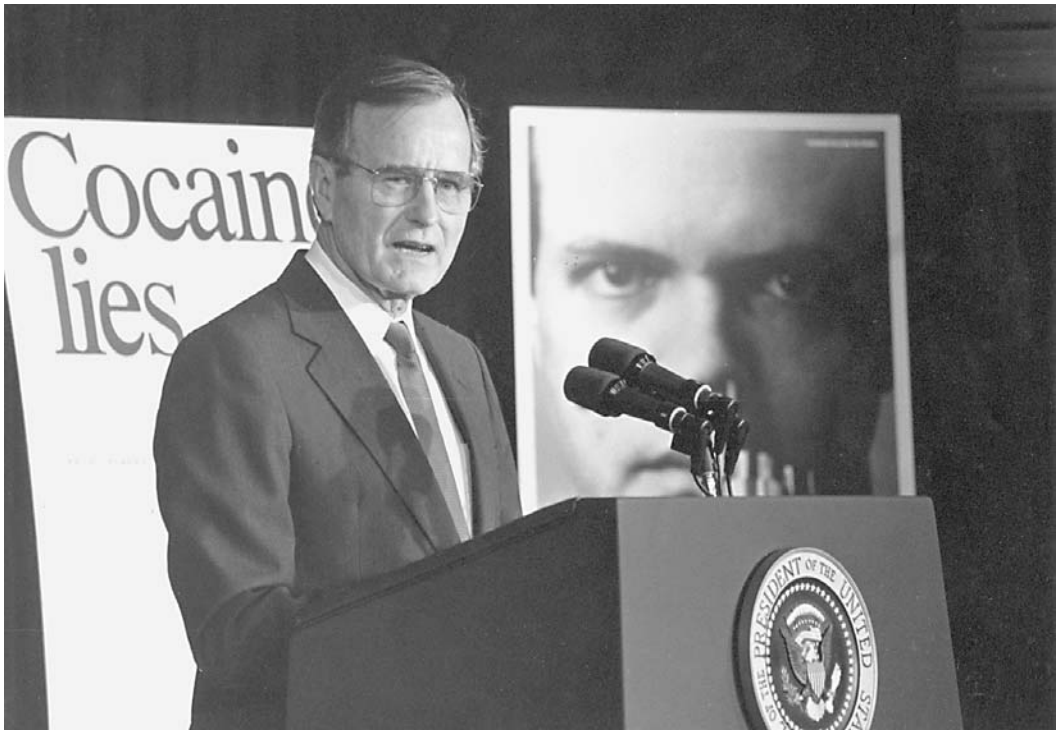
Lacy's ultimate decision for the SCC did note that political loans had never, prior to her decision, been declared to be securities by Virginia, and that the law defining securities was unclear. The SCC ruling postdated by years all the loans set forth in the Virginia indictments. Yet, the indictments uniformly charged that the defendants sold unregistered securities and failed to register themselves as securities broker-dealers or agents—knowingly, willfully and with intent to defraud—counts which were worth 20 years in each indictment.

Despite the fact that the SCC balked, post-indictment, at calling these loans securities, and admitted the law was unclear in its ultimate ruling, the indictments asserted that the defendants knew the loans were securities and deliberately did not register them in order to pull the wool over the eyes of political supporters and state regulators.

The second *ex post facto* aspect of the Virginia prosecutions involves the fraud counts in the indictments. If the loans are securities, then detailed information disclosure requirements can be retroactively imposed on political solicitation calls which actually occurred under very different circumstances. Rather than simply asking for a loan to support a rally or similar political cause, the securities law would have political organizers providing detailed financial prospectuses such as those provided in stock offering. The Virginia defendants were convicted for not making such detailed financial disclosures, while never knowing that they were required to do so.

This sleight-of-hand is all the more troubling because *no lender ever testified that they were misled about the financial risk involved in loaning funds for a political fight*. It is akin to being prosecuted for not disclosing that we are standing on planet Earth in the course of discussing more sophisticated propositions.

In their petitions for *habeas* relief now pending in Federal court, Anita Gallagher, Paul Gallagher, and Laurence Hecht challenge their Virginia prosecutions under the due process clause to the U.S. Constitution, which requires that criminal liability can only be imposed based upon violations of pre-existing and clear legal mandates, i.e., a law cannot be written, or reinterpreted to cover an act which has already occurred, as was done in the matter of political loans as securities. They also challenge their prosecutions as violations of the First



President George Bush, whose drug-pushing Iran-Contra operations ran afoul of LaRouche's exposés. Bush et al. ran the entire illegal operation against LaRouche from 1982 on, under a "national security" cover.

Amendment. The Virginia state courts uniformly rejected these challenges at trial and on appeal.

Rigging the trials

On May 4, 1988, the Federal prosecution against LaRouche in Boston collapsed, following months of hearings on government misconduct in the case. The case ended in a mistrial when the defense forced the prosecutor's hand and sensational evidence, in the form of classified documents, emerged showing the involvement of the George Bush-Oliver North secret government apparatus in the LaRouche prosecution. The government was also shown to have used evidence fabricated and planted by the prosecutor in its presentation to the jury. Jurors interviewed following the mistrial told the press that they had taken a vote and would have acquitted all the defendants. At the point of the mistrial, the prosecutors had presented the entirety of their credit card fraud case. Judge Robert Keeton, in ruling on various post-trial defense motions, found "systemic and institutional presecutorial misconduct."

The response of the Justice Department and their Virginia cohorts to the Boston developments was to eliminate any pretense of due process or any chance for acquittal from future trials. LaRouche was indicted in October 1988 in the Eastern District of Virginia, a district notorious for pro-prosecution juries, national security prosecutions and convictions, and petty judicial vindictiveness. Under a timetable which the judge conceded was "short" even for this court's notorious "rocket docket," the case went to trial *28 days after indictment*. There was no time to prepare the defense. The time given to jury selection was *one morning*. In Boston, this process took weeks, because Judge Keeton recognized that the poisonous, inflammatory publicity surrounding LaRouche would necessarily bias jurors. Major lines of defense were barred from the jury's consideration by Virginia Federal judge Albert V. Bryan—the same judge who approved the Federal government's initial bankruptcy action! For example, the defense was banned from even telling LaRouche's jury that the U.S. government brought the bankruptcy. Prosecutors withheld reams of exculpatory evidence.

Five weeks after LaRouche's Federal conviction and one week prior to Federal sentencing of LaRouche and his co-defendants in Alexandria, Virginia, Mary Sue Terry's railroad moved into the trial stage with jury selection in Rochelle Ascher's case.

Ascher's trial, conducted in Leesburg, had all the subtlety of the Ox Bow Incident lynching. For the four years prior to the trial, Leesburg and surrounding Loudoun County, had been saturated with anti-LaRouche propaganda. At the time, Loudoun County had a voting population of 37,225 people. Years after the Virginia trials, a leading state investigator, former Sheriff's Lt. Don Moore, admitted some of the illegal operations to an FBI informant during an FBI investigation of a plot by Moore and others to kidnap a LaRouche associate, Lewis du Pont Smith.

Moore bragged about "black-bag jobs" on the offices of

LaRouche publishers. He admitted posing as a deputy registrar of voters when members of the LaRouche movement registered to vote, in order to gain personal data from the applications. He admitted to using the Sheriff's Department to organize a covert community campaign, "a citizen's underground" to threaten and intimidate any local individual or merchant associating with LaRouche.

Moore admitted that the Sheriff organized local merchants (including a photo development service, which provided copies of personal photographs to the Sheriff's office), banks and others to illicitly provide data on individuals and organizations associated with LaRouche. Telephone lines on the farm where LaRouche stayed, and at the offices of his publishers, were illegally tapped in collusion with the phone company. Although backed by state and Federal law enforcement, much of this activity was financed privately by political opponents of LaRouche, such as Newbold and Stockton Smith of the Philadelphia du Pont family, and the ADL, which received, in return, copies of the accumulated "LaRouche files."

The jurors who were assembled for Ascher's trial had been subject to an unrelenting anti-LaRouche hate campaign by former CIA propagandist Arthur Arundel every week from 1985-1988 in Loudoun's local newspaper, the *Loudoun Times-Mirror*. A slightly more high-brow version of the smear campaign appeared regularly in the pages of the *Washington Post* under the by-line of Don Moore's "good friend" John Mintz. According to FBI documents released long after the trials, reporters for the *Times-Mirror* served as "confidential informants" to Virginia state law enforcement on the LaRouche case. Local, state and Federal law enforcement provided "anonymous" and fabricated background briefings to the *Times-Mirror* and the Post—uniformly painting LaRouche as extreme, irrational, violent, and guilty. During Ascher's jury selection itself, potential jurors read the details of LaRouche's Federal sentencing proceeding. Judge Carleton Penn neglected to instruct potential jurors—as the law requires—not to read anything about LaRouche during jury selection.

The Ascher jury was fully aware that they faced certain social ostracism for any favorable impression of LaRouche, openly stating as much in the *voir dire* (questioning of jurors). Ascher wasn't even guaranteed that members of her jury weren't part of Don Moore's covert anti-LaRouche "underground." One juror, for example, told the court initially in *voir dire* that she had no strong opinion about LaRouche. When confronted by defense counsel with the fact that she had signed a petition stating that because of LaRouche's presence in Loudoun County she feared for "herself, her family and her animals" she admitted she did have strong feelings. Jurors were seated who admitted a deep hostility to LaRouche but claimed they had no feelings about Ascher, whom they did not know. Prosecutors told the judge and the jury that hostility to LaRouche was irrelevant—that the trial would not concern LaRouche, only Rochelle Ascher. LaRouche, of course, then became the centerpiece of the prosecutor's case, who argued to the jury, over repeated motions for mistrial, that LaRouche directed Ascher's every activity.

Ascher moved four times prior to trial to change venue, citing the extreme prejudice against LaRouche in Leesburg. These motions included detailed surveys of community sentiment and affidavits by community leaders. Judge Carleton Penn refused to change venue, claiming that people did not read the newspapers. The *Loudoun Times-Mirror* even editorialized against the change of venue motion, dubbing it an attempt to "flee the nest where the deeds were done" and claiming that the Loudoun community "deserved" the trial. A special courtroom was built by the county to accommodate the proceedings.

Immediately after selecting the biased jury which heard Rochelle Ascher's case, Judge Penn spontaneously ordered a change of venue for the rest of the Virginia defendants, citing the "extreme difficulty" in selecting Ascher's jury. Any remaining doubt about Ascher's fate was removed when Penn issued jury instructions dictating that the jury *must* find that the loans were securities, and that Ascher *did not have to know the loans were securities in order to be convicted of multiple felonies*. Penn instructed the jury that "any note" was a security—contrary to all securities law before or since the Ascher verdict. This jury instruction, nonetheless, was sustained by the Virginia Supreme Court. Proving the inflammatory impact of the media and law enforcement propaganda, not to mention the judge's instructions, the Ascher jury returned a guilty verdict and a sentence of 86 years, later reduced by Judge Penn to 10 years in prison.

Down the rabbit hole: the Roanoke trials

The Virginia Supreme Court moved the remaining Virginia prosecutions south to Roanoke for trial by Judge Clifford Weckstein. There was nothing accidental about the selection of the judge or the location.

Unlike any other potential site in Virginia, Roanoke had also experienced saturation levels of negative media coverage of LaRouche. Between 1984 and April 1989, when venue was officially changed, the *Roanoke Times* printed over 180 virulent articles, including editorials, about LaRouche. This extraordinary attention occurred despite the fact that there were no LaRouche activists in Roanoke.

The *Roanoke Times,* however, took its anti-LaRouche filth directly from the ADL and Virginia Attorney General Mary Sue Terry, even publishing ADL press releases. An editorial in the paper called the LaRouche movement an "affront to decency" and a "threat to civil order." Judge Weckstein's father-in-law was the former managing editor of the newspaper. His brother-in-law was its political editor.

Mike Billington's trial was first. Convicted with

LaRouche in the Alexandria Federal trial and sentenced to three years in prison, Billington faced 90 years in prison on Mary Sue Terry's hoked-up indictment involving the very same alleged activities. Terry and Federal prosecutors successfully evaded the double jeopardy provisions of the U.S. Constitution and a Virginia state statute implementing them by labeling Billington's alleged crime "securities fraud" rather than the mail fraud conspiracy charged by Federal prosecutors in Alexandria.

On the eve of trial, Judge Weckstein told Billington's lawyer that if Billington would give up his right to a jury trial, he would convince the Virginia Attorney General to go along with a bench trial. By having the judge try the case, Billington would be guaranteeing a guilty verdict, the general outcome of bench trials in Virginia, but would be assured of a light sentence. Judge Weckstein also told Billington's lawyer that if Billington did not accept a bench trial, he would not reduce any sentence imposed by the jury, as Judge Penn had done in Ascher's case.

Billington refused to throw in the towel. He insisted on presenting the political defense to the charges—something which had not been allowed in the Virginia Federal trial. Billington's lawyer, Brian Gettings, responded by going berserk.

Gettings moved to withdraw from the case on the eve of trial and to have Billington judged mentally incompetent. There followed extraordinary and bizarre proceedings in which Gettings:

- concocted charges against Billington and his colleagues, including that Billington was attempting to obstruct the trials, and that Gettings had been "set-up" as part of a "Ludlum-esque plot," Gettings also stated that he had received a death threat: In his deranged state of mind, Gettings concluded that advice to Mike Billington from Lyndon LaRouche to treat Gettings charitably constituted a death threat. Gettings subsequently admitted, on the record, that there was no basis for these charges, despite the fact that his statements were aired publicly to potential jurors in Roanoke;
- worked with the prosecutor and Mira Lansky Boland of the ADL to brew up a mental diagnosis for Billington of "shared delusional disorder" after a psychiatrist examining Billington found him to be perfectly sane—this "disorder" is not even a recognized as a formal psychiatric diagnosis. The hokey diagnosis nonetheless resulted in an order for a second psychiatric examination of Billington;
- argued forcefully that it was in Billington's best interest to be committed to a state mental hospital, despite the fact that Billington was perfectly sane;
- compromised Billington throughout the pre-trial and other proceedings by sharing Billington's thoughts and statements with the judge and the prosecutor, contravening the attorney-client privilege.

Judge Weckstein refused to allow Billington a substitution of counsel, despite the fact that another lawyer stood ready to try the case, and despite the fact that the proceedings before him resembled the worst sort of Soviet human rights abuses. While repeatedly recognizing on the record that Gettings' allegations of incompetence had no basis, Judge Weckstein ordered the competency proceedings forward while castigating Billington for "gamesmanship" and "gumming up the works." Thus, on the eve of trial, Billington was falsely portrayed in the local press, repeatedly, by his own lawyer, as a member of a criminal cult and a "go-along tool" for the alleged arch-criminal, LaRouche.

In the evidentiary hearings conducted on Billington's Federal *habeas* petition it was demonstrated that Gettings assumed he could get Billington to plea bargain, and had not, therefore, prepared for trial. He never disclosed the secret agenda to Mike Billington, however, and insisted to Billington that he was preparing his defense for a jury trial. It was also revealed that the prosecutor had never even agreed to Weckstein's bench trial proposal, supposedly the precipitating cause for the wild pre-trial proceedings. A bench trial could not occur without the prosecutor's agreement.

At trial, Gettings refused to let Billington take the witness stand in his own defense, never prepared his testimony, and continued to insist that Billington was deranged. The *habeas* proceedings carried Gettings's admission that the only reason he believed Billington was crazy was because he invoked his right to a jury trial. When Billington filed a mistrial motion, citing his constitutional right to testify, and the fact that Gettings would not allow him to do so, Gettings wrote a note to Billington suggesting that he now could hire a different lawyer to put him on the witness stand. Billington's expert at the *habeas* proceeding, legal ethics professor Roy Simon, characterized this suggestion by Gettings as "bizarre" and "way outside legal norms."

Gettings otherwise conceded huge chunks of the prosecutor's case, failed to present any real defense to the charges, and cited his own lack of preparation for the case on the record.

Federal Judge Richard Williams, after initially expressing concern about the denial of Billington's Sixth Amendment right to counsel, and ordering an evidentiary hearing on Billington's *habeas* petition in 1996, changed course during the hearing itself. Williams actually ruled on July 26, 1996, that Billington's zealous devotion to LaRouche justified Brian Gettings' actions, and that Gettings was only attempting to protect Billington from himself!

If Gettings's actions weren't enough to send Mike Billington to prison for years, Billington's prosecutor, John Russell, had a backup insurance policy in the form of his concealment of exculpatory materials. Russell put before the jury a witness, Marie Fincham, who, at the time of her testimony, was suffering from Alzheimer's disease. He argued that Mike Billington manipulated the feeble Fincham, and that this justified the

jury imposing the maximum sentence. Jurors wept during Fincham's testimony.

All the time, prosecutor Russell knew that he was presenting a completely false picture to the jury. In testimony produced during the *habeas* proceedings, and in documents which had been previously concealed by the prosecutor, it was demonstrated that *Fincham was fully competent and in charge of her affairs at the time of her dealings with Billington*. It was only manipulation and coercion by Virginia state prosecutors and hostile family members which resulted in her decision to cooperate in any respect in the prosecution of Mike Billington.

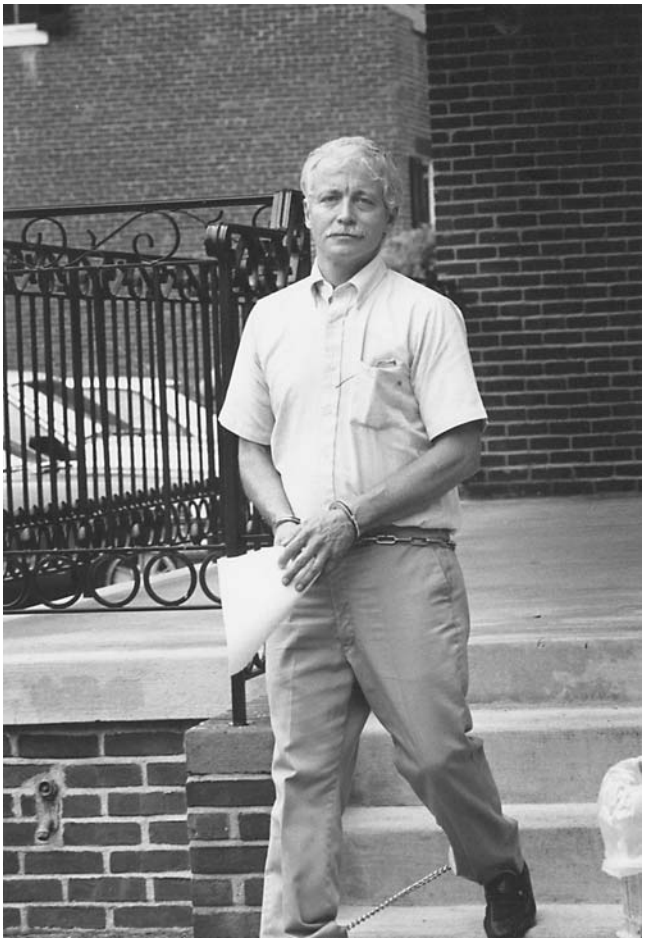
In her initial statements to prosecutors, withheld from the defense, Fincham denied that she had been defrauded, that Billington misled her, or that she considered her political loans "investments." The prosecutor's memorandum noted that it took a whole lot of talking over a two-day period to convince Fincham to "come around." Judge Williams refused to even hear this claim from Billington's *habeas* petition—a decision now sustained by the Fourth Circuit.

Don Phau's Roanoke trial, which followed that of Billington, also involved lawyers rolling over and playing dead—in this case quite literally. Phau was assured by his attorneys, Jay Sekulow and Pat Monaghan, that they understood the political nature of the prosecutions, and that they were uniquely qualified to present Phau's defense. According to this presentation, no stone would be left unturned in defending Phau's innocence. Both lawyers had been associated with the defense of the Right-to-Life Movement and Operation Rescue. Sekulow was at the beginning of a masterful public relations campaign in which he puffed himself into overblown national prominence as the First Amendment guru of the conservative movement.

Phau's Federal *habeas* petition now pending in the Eastern District of Virginia before U.S. District Judge James Spencer, shows that Monaghan and Sekulow withheld several critical facts about themselves in their initial discussions with Phau.

Monaghan never told Phau that he had been in-house counsel to an organization which publicly attacked LaRouche during Monaghan's tenure, and which claimed to be fully mobilized against LaRouche following victories of two LaRouche associates in the March 18, 1986 Illinois primaries. Sekulow never told Phau that his familiarity with securities fraud charges stemmed, in part, from the fact that he was being sued for securities fraud, as the lead defendant, by disgruntled investors in a real estate and tax scheme in the Northern District of Georgia. Neither disclosed that they were beholden to financial angels on the Christian right, Paul and Jan Crouch of Trinity Broadcasting and religious charlatan Pat Robertson.

At the time of Phau's trial, both Monaghan and Sekulow were about to sign on as lead players in Pat Robertson's newest fundraising gimmick, the American Center for Law and Justice. Neither told Phau that they had profound religious disagreements with the LaRouche movement, viewing LaRouche's idea of the perfectibility of man and of the universe as the heart of evil.



Former Loudoun Sheriff's Deputy Donald Moore, leaving the Federal courthouse for prison after sentencing. A key player in the Get LaRouche case, he tried to parlay his dirty tricks skills into the kidnap-for-hire business, with Galen Kelly. It was a short-lived career.

Ultimately, Sekulow did not even show up for Phau's trial. He claimed he could call the shots in the courtroom by telephone, long distance, after being briefed by Monaghan and a young associate. Monaghan bungled his way through the entire trial from jury selection forward, either not cross-examining prosecution witnesses or reiterating the prosecutor's points through his cross-examination.

Although the transactions at issue in all of Phau's charges were completely exempt from the securities laws, Monaghan argued the wrong statutory exemptions and otherwise did not pursue this complete defense to the charges. When LaRouche was summoned from Federal prison by Phau's lawyers to Roanoke for testimony in the case, the charade completely

Virginia Attorney General Mary Sue Terry, at a press conference in Richmond on Oct. 9, 1986. Even the Feds complained that her political ambitions were getting in the way of their corrupt LaRouche frameup.

collapsed. Monaghan confessed that he endorsed the prosecutor's view of LaRouche and would not call LaRouche to the witness stand. During a scheduled meeting with LaRouche, Phau, and others, Monaghan arrived and promptly rolled himself up into a ball in the corner of the room, refusing any entreaty to discussion.

Phau's Federal *habeas* petition is a detailed account of lawyer incompetence and betrayal. According to the affidavit of Phau's jury foreman, the lawyers' buffoonery was such that the jury freely commented about it. The petition also demonstrates that the prosecutors withheld critical exculpatory evidence concerning the prosecution's witnesses.

In the state proceedings on Phau's *habeas,* his former lawyers sided completely with prosecutors. They presented lying affidavits, asserting that their bungling was justified in every case because Phau had supposedly "agreed" not to defend himself on the charges, and there was, in fact, no defense to the charges. According to these affidavits, the assertion of any defense would only make the judge and the jury angry at Phau!

Phau's prosecutors argued, in turn, that their withholding of crucial exculpatory materials could not have affected the result of the trial—an element which must be proved to obtain relief on *habeas*—because Phau's lawyers would not have used the exculpatory information. As the affidavits of Phau's lawyers stated, the planned "strategy" was not to cross-examine prosecution witnesses or present a defense. The Virginia Supreme Court denied Phau the opportunity to even contest his lawyers' lying affidavits, although Phau submitted materials thoroughly discrediting their claims.

The Gallagher-Gallagher-Hecht trial

Between the time of Phau's trial in January 1990 and the last Virginia case tried before a jury, that of the Gallaghers and Larry Hecht (November 1990-January 1991), Judge Weckstein also revealed the pedigree which caused the Virginia Supreme Court to pick him to try the LaRouche cases. Known in legal circles for pomposity, ambition, and intellectual mediocrity, Weckstein was the perfect bureaucrat to preside over a judicial atrocity. What was unknown to the defendants was his overt and direct anti-LaRouche agenda.

Richard Welsh, facing trial as the next LaRouche case after Phau, filed a motion to recuse Weckstein based upon Weckstein's relationship to ADL national committee member and Richmond legal honcho Murray Janus, Weckstein's conduct of the Billington trial, and Weckstein's relationship to the ADL's anti-LaRouche propaganda rag, the *Roanoke Times*. Acknowledging the ADL's extraordinary animosity to LaRouche, Weckstein had magnanimously recognized the obvious in the Billington case. He ruled that jurors who had any relationship to the ADL would be unfit to sit in the LaRouche cases.

In the course of proceedings on Welsh's motion, Weckstein admitted that he had clandestine communications with the ADL and Janus about the cases. By his own startling admission, Weckstein had received ADL progaganda against LaRouche, including a motion to appoint a Jewish justice to the Virginia Supreme Court which the ADL believed would be of "special interest" to Weckstein, who is Jewish. He engaged in communications with the ADL concerning Weckstein's need for ADL "protection" following wide circulation by LaRouche's associates of leaflets criticizing the judge's brutal machinations in Billington's case.

Forced into hearings on Welsh's motion based upon Weckstein's own admissions, Weckstein fawned all over Janus when the Richmond lawyer appeared under defense subpoena to testify. Judge Weckstein declared Welsh and his attorney in contempt of court, levied illegal sanctions against them which Janus suggested; Weckstein then vacated the same sanctions after Janus left court, since he had had the opportunity to reflect upon how his impulsiveness would play on the court record.

Despite these developments, Weckstein refused to recuse himself in either the Welsh proceeding or for the subsequent Gallagher/Hecht trial. At that trial itself, he gave full vent to his bias, blustering ahead on the apparent theory that a rigged guilty verdict would trump the clumsy revelations about his own corrupt role. The *habeas* petition cites the following demonstrations of Weckstein's bias:

- Despite the prosecutors' saturation of the jury pool with

inflammatory publicity, including national television appearances by prosecutors and witnesses on the eve of trial, Weckstein refused to allow the defense to ask potential jurors what they had seen or heard about LaRouche or the defendants, strenuously rehabilitated (intervened to advise) potential jurors who expressed outright bias so that they could sit on the jury, and seated jurors who equated LaRouche and the defendants with fascism, fraud, and violence.

• Weckstein refused to adequately explore accusations by overwrought Roanoke jurors that they were bribed by the defense based on a mix-up in the lunch bills at a local restaurant; treated the jury's presentation of an article to him about the famous Texas hanging Judge, Roy Bean, as a harmless joke; and held an unrecorded secret meeting with jurors concerning their fears about four Muslims who briefly attended the trial, never revealing the meeting to the defense.

• Defense subpoenas to prosecution witnesses and for defense witnesses were summarily denied by Weckstein with no legal basis. Prosecutors in this trial deliberately picked loans from supporters who had died between between the time the loan was taken and the trial. They then paraded hostile lenders' relatives, lawyers, and bankers, to testify about the loans of the former political supporters.

Hunt Country resident Langhorne Washburn, for example, testified that Anita Gallagher took advantage of his eccentric sister who, he lied, was barely competent at the time she loaned funds to LaRouche causes. Weckstein barred the defense's efforts to summon a witness who would testify that Washburn, formerly associated with Richard Nixon's Committee To Re-Elect the President (CREEP) apparatus, was himself suggesting that others solicit his sister at the time she was talking to Mrs. Gallagher. Unstated was the fact that Washburn wanted his sister to provide funds for Oliver North's White House Contra operations rather than for LaRouche.

Other materials sought would have showed the anti-LaRouche bias and personal financial interest of the "surrogate" prosecution witnesses.

Weckstein intervened to rehabilitate prosecution witnesses who had been seriously discredited by defense cross-examination while attacking the credibility of Larry Hecht and Paul Gallagher when they took the witness stand in their own defense.

Weckstein ruled that the jury could not hear the actual tape of an interview conducted with a prospective witness by the prosecution's lead investigator, Charles Bryant, which the defense had obtained. Prior to the interview, Bryant used the witness's son to warn her that if she did not claim fraud by Larry Hecht, she could go to jail. When the witness denied there was any fraud, Bryant lied that Hecht had used her loan proceeds to feed Helga LaRouche's dogs and pummeled her with other outrageous claims in order to change her mind.

Weckstein also issued jury instructions which erased the prosecutor's burden of proof. He told the jury that the prosecutor did not have to prove that the defendants knew the loans were securities and acted deliberately to evade the securities laws, despite the fact that the Virginia statute and the indictments clearly required this proof for conviction of a felony. The jury instructions issued by Weckstein were appropriate to Virginia's definition of a misdemeanor securities offense—a strict liability offense not requiring a criminal state of mind.

As in all of the LaRouche prosecutions, prosecutors deliberately withheld exculpatory information and knowingly presented false testimony at the trial. The Gallagher/Hecht Federal petitions contain many egregious instances of blatant prosecutorial misconduct. To cite but a few:

The lead prosecution witness, Christian Curtis, a former LaRouche associate, was "deprogrammed" by professional deprogrammers before he took the witness stand. Such brainwashing, the petitions demonstrate, rendered unreliable anything Curtis said. Curtis plotted with prosecutors to forever bury an immunity agreement insuring that he would never be prosecuted but would, in fact, go to law school under prosecutorial sponsorship. Prosecutors and Curtis discussed the fact that disclosure of this agreement would undermine Curtis's credibility. Instead prosecutors presented Curtis to the jury as a conscience-stricken truth teller who was willing to "let the chips fall where they may."

Curtis was also involved, with full knowledge of the prosecution, in a plot to kidnap Lewis du Pont Smith, a member of the LaRouche movement and a witness at the Gallagher/Hecht trial. Curtis conducted surveillance of Smith for kidnappers Galen Kelly and Don Moore.

Prosecutors hid their own studies showing that their claims of $30 million in loans due and owing, based on testimony of prosecution witness Wayne Hintz, were totally false and fraudulent. They also concealed prior statements by Hintz, finally made available after years of Freedom of Information Act (FOIA) litigation, which flat out contradicted Hintz' trial testimony.

To buttress their phony "securities" claims, prosecutors presented lender-witnesses who testified, straight-faced, that the reason they put thousands of dollars at risk in a loan to a political organization was that they could earn $10 or $20 more in interest than what they could if they kept funds in a bank. The lenders' prior statements, never produced to the defense, never mentioned any concern with interest rates and stated that loans were advanced for purely political reasons. Interviewed post-trial, lenders uniformly disavowed that they had a "profit motive" in making the loans, despite their trial testimony implying the contrary.

One lender, involved in two counts of Anita Gallagher's indictment, told the Virginia State Police that he had absolutely no problems with his loans—that he gave them knowingly and freely to causes he believed in, and that he did not believe he had been defrauded. After being threatened with loss of his job because of his association with LaRouche, the

same lender completely changed his tune, testifying at trial that he and Anita Gallagher had detailed discussions about the interest rate his loan would carry. He claimed Gallagher had defrauded him. Neither the original State Police statement or the job-loss threat, to which prosecutors were privy, were disclosed to the defense.

Before the trial took place, a pre-trial agreement was reached between the prosecution and the defense in this case. Prosecutors agreed that they would not object to the defense that prosecutorial and law enforcement actions severely compromised the ability of the LaRouche movement to repay loans. This was the defense which had been outlawed by Judge Bryan in the Federal LaRouche trial. In return for this concession, the defendants gave up their legal right to separate trials under Virginia law.

Despite this agreement and exculpatory evidence requests addressed to the "financial warfare" defense, prosecutors lied and covered up their own activities at trial, ultimately mocking the defense's claims to the jury with the yelp: "where is the evidence?"

Prosecutor John Russell claimed to the Gallagher/Hecht jury that Virginia prosecutors had nothing to do with the Federal bankruptcy action—yet FOIA documents revealed long after trial show Russell and his cohorts plotting every move in the bankruptcy action with the feds, and offering access to private police networks for the action.

Former lead investigator Don Moore confessed, years after trial, that prosecutors, the ADL, and law enforcement planned criminal and civil legal offensives and media mobilizations with the explicit purpose of disrupting and draining the LaRouche movement's finances throughout the years 1985-87. Moore elaborated further that there were no complaints from lenders when he and the ADL started their actions against LaRouche—law enforcement and the ADL created the evidence for the criminal case.

Finally, the Gallagher/Hecht *habeas* petitions, based on post-trial investigation, demonstrate that jurors who heard the case were biased. One juror, who otherwise confessed that he made up his mind before the defense presented its side of the case, read newspapers about the case despite admonishments not to do so, and felt that the defendants wanted to threaten the jury, blurted out to a defense investigator that "I should have been off that damn jury in the first place." It turns out that the juror had been a neighbor of lead prosecution investigator Charles Bryant, a major witness and focus of the trial. The juror discussed Bryant's participation in the case with a neighbor, herself a close friend of Bryant, during the trial. Despite the prosecution's full knowledge of this situation well prior to direct appeal, it was never disclosed to the defense, even when the defense challenged the bona fides of this juror in post-trial motions.

The Virginia Supreme Court ruled that the Gallaghers and Hecht actually knew about all of the exculpatory materials, which only came to light after years of deliberate prosecutorial concealment, defendants' FOIA litigation and the fortuitous 1994 confessions of Don Moore to an FBI informant, at the time of trial in 1990! Hence, the Virginia Supreme Court asserted, it was not necessary to address the claims on their merits because the defendants defaulted them—they did not present them on time. The Supreme Court did not even attempt to support this ruling with evidence or to explain its metaphysical possibility, since there is not a scintilla of evidence to support it. Alternatively, the Supreme Court argued that defendants could have discovered the exculpatory materials which the prosecutors took such pains to hide, by being "more diligent."

The same arguments were pressed by prosecutors in Federal court to dismiss the *habeas* petitions. In addition, prosecutors argued that under the new *habeas* law, signed by President Clinton in 1996 after years of lobbying by states' rights conservatives—all decisions of the Virginia Supreme Court must be rubber-stamped by the Federal courts, even if unreasoned and without record support. According to proponents of the new *habeas* law, this promotes "finality" in the criminal justice process and appropriate relationships between the state and Federal governments, ideas which are more important than factual innocence or constitutional violations.

Federal Judge Jackson Kiser bought the prosecutors' arguments. His Oct. 9 decision will be appealed to the U.S. Circuit Court of Appeals for the Fourth Circuit.