the Federal Emergency Management Agency (FEMA), which is responsible to the National Security Council, the ultimate authority for all national emergency planning.

How it all began

The legal motion argues that the targeting of the LaRouche political movement, and the conspiracy and concerted action designed to implement it, began no later than 1982. At that time former U.S. Secretary of State Henry A. Kissinger wrote two letters to then-FBI Director William Webster, raising questions of funding and control by a foreign intelligence service. Kissinger's efforts were supplemented by his attorney, William D. Rogers. Kissinger's complaints were raised shortly thereafter at a Jan. 12, 1983 meeting of the President's Foreign Intelligence Advisory Board (PFIAB).

The disputes between LaRouche, Kissinger, and others in and out of government allied with Kissinger, were over policy questions, including Third World development and international monetary reform. Many of the disputes and conflicts dated from the 1970s. As an example, recently declassified government documents, most explicitly a "National Security Study Memorandum 200" (NSSM 200, Dec. 10, 1974), reveal the targeting of 13 Third World nations for radical depopulation programs and disparage the efforts of the movement for a New World Economic Order for encouraging economic optimism and resistance to depopulation plans. Kissinger was national security adviser at that time, and LaRouche was a leading opponent of these plans. The scope of the federal investigations, including E.O. 12333 and the activities undertaken under its authority are not known. Until recently discovered evidence revealed a LaRouche file under E.O. 12333, the government had denied and concealed its existence. The file has still not been revealed despite demands upon President Bush for its release.

Along with the main motion to vacate LaRouche's sentence, two additional legal documents were filed.

One document was a motion by LaRouche counsel Odin Anderson and Virginia local attorney Scott Harper to recuse or disqualify the trial judge, Judge Albert Bryan, Jr., from deciding this matter, because of his personal bias and prejudice previously demonstrated. According to American law, the trial judge is automatically assigned to hear motions of the type LaRouche has now filed. Judge Bryan had, in fact, made significant legal decisions approving the bad-faith forced bankruptcy back in the summer of 1987, over a year before LaRouche's Alexandria trial. Secondly, Judge Bryan's history as a member of the Foreign Intelligence Surveillance Court and his Classified Information Procedures Act rulings at trial mean that he cannot fairly judge the claims raised pertaining to E.O. 12333. The other legal motion requests that the government be ordered to hand over all of the exculpatory material it is still concealing and that the court hold evidentiary hearings to get to the bottom of the prosecution's flouting of the law and ongoing concealment of key evidence.

The LaRouche '2255' motion: excerpts

Below are extracts from the "Motion to vacate, set aside, correct sentence under 28 U.S.C. 2255, or, in the alternative, grant a new trial under Rule 33 by persons in federal custody" filed by Lyndon LaRouche, two co-defendants, and his attorneys on Jan. 22. References to the extensive appendices have been omitted in order to ease the reader's way through the main arguments.

1. The judgments of conviction were entered in the U.S. District Court for the Eastern District of Virginia, Alexandria, Division.

2. The judgments of conviction were entered on Dec. 16, 1988.

3. a) Petitioner LaRouche was sentenced to 5 years on each of 13 counts, with Counts 1 through 4 to run concurrently with each other, Counts 5 through 9 to run concurrently with each other, and Counts 10 through 13 to run concurrently with each other. These three groupings of concurrent sentences were then ordered to run consecutively for a total of 15 years to be served. . . .

4. The nature of the offense as to:

Count 1: conspiracy to commit mail fraud, 18 U.S.C. §371, 18 U.S.C. §1341.

Counts 2-12: mail fraud, 18 U.S.C. §1341.

Count 13: conspiracy to impede and obstruct the functioning of the Internal Revenue Service, 18 U.S.C. §371.

5. All petitioners pleaded not guilty to all counts charged. . . .

The grounds that make LaRouche's detention unlawful

A. The convictions were obtained as a direct result of prosecutorial misconduct . . . including illegal acts and overreaching, which deprived petitioners of their liberty without due process of law.

B. The convictions were obtained by means, including outrageous government misconduct during its investigation, that denied petitioners fundamental fairness that is shocking to the universal sense of justice and violates due process of law.

C. The convictions were obtained by the unconstitutional suppression and concealment of evidence and deceptive and misleading acts and statements by the prosecution and by the prosecution's failure to disclose to petitioners evidence favorable to the defense.

D. The convictions were obtained on the basis of false

and misleading testimony knowingly presented by the prosecution.

E. The convictions were based on prosecution misconduct that deprived defendants of their Sixth Amendment rights to confront witnesses against them, to obtain witnesses in their favor, and to the effective assistance of counsel.

F. The convictions were obtained on the basis of fundamental defects in the trial that inherently resulted in a complete miscarriage of justice.

G. The convictions were obtained on the basis of omissions in the trial that were inconsistent with rudimentary demands of fair procedure.

H. The convictions were obtained by prosecution misconduct that denied petitioners their rights to invoke the supervisory powers of the Courts derived from Article III of the Constitution to protect their rights.

I. The convictions were obtained by the action of a petit jury which was unconstitutionally selected and empaneled, and petitioners were denied an impartial jury guaranteed by the Sixth Amendment. . . .

Introduction to the government conspiracy

1. Petitioners have been imprisoned, despite their innocence of the charges, because they were targeted for prosecution and incarceration by a conspiracy among, and concerted action by, various prosecutorial and other public and private entities and individuals using unlawful and unfair acts to convict and imprison them as a means of destroying their political movement. The targeting, and the conspiracy and concerted action designed to implement it, began no later than 1982. At that time, former U.S. Secretary of State Henry A. Kissinger wrote two letters to then-FBI Director William Webster raising questions, *inter alia*, of funding and control by a foreign intelligence service. Kissinger's efforts were supplemented by his attorney, William D. Rogers. Kissinger's complaints were raised shortly thereafter at a Jan. 12, 1983 meeting of the President's Foreign Intelligence Advisory Board (PFIAB). Edward Bennett Williams, a PFIAB member who had hand-delivered the second Kissinger letter to Webster . . . and others raised the "question of sources of funding" the network of organizations associated with LaRouche, with the suggestion that the funding came from a "hostile intelligence service.". . .

2. These acts manifested an interest in focusing an investigation on petitioners and might have triggered the commencement of a "National Security Investigation" under the authority of Executive Order 12333. We now know that a file exists pursuant to this Executive Order. . . .

3. The disputes between LaRouche, Kissinger, and others in and out of government allied with Kissinger, were over policy questions, including, *inter alia,* Third World development and international monetary reform. Many of the disputes and conflicts dated from the 1970s. As an example, recently declassified government documents, most explicitly a "National Security Study Memorandum 200" (NSSM 200, Dec. 10, 1974), reveal the targeting of 13 Third World nations for radical depopulation programs and disparage the efforts of the Movement for a New World Economic Order for encouraging economic optimism and resistance to depopulation plans. Kissinger was the National Security Adviser at that time, and LaRouche was a leading opponent of these plans. The scope of the federal investigations, including E.O. 12333, and the activities undertaken therein are not known. Until recently discovered evidence revealed a LaRouche file under E.O. 12333, the Government had denied and concealed its existence. The file has still not been revealed despite demands on President Bush for its release.

4. Petitioners were active members of a political movement which engaged in a broad range of political, philosophical, and cultural activity. Beginning in the 1960s and continuing through all periods relevant herein, the movement espoused positions and took action on nearly every major issue of public interest, including many areas in which they opposed the policies of the U.S. Government and powerful interest groups nationally and internationally. During the late 1970s and early 1980s, petitioners were deeply involved in addressing the financial interests that supported international drug traffic through money laundering. It was in 1978, upon publication of *Dope, Inc.*, a book describing drug trafficking and money laundering, that petitioners came into conflict with the Anti-Defamation League of B'nai B'rith (ADL), which has characterized the LaRouche movement as anti-Semitic since that time.

5. Much has been recently discovered that reveals the composition and activities of government agencies and of the conspiracy between governmental and non-governmental forces, including concealment of evidence and other outrageous misconduct. The ongoing coverup of relevant materials constitutes a continuing effort by Government and those acting in concert with it to deprive petitioners of evidence, which proves petitioners were denied due process and a fair trial, and which led to their wrongful conviction and imprisonment.

6. Petitioners' political movement and its activity, which the conspiracy intended to destroy, was conducted through several organizations, including:

- *National Caucus of Labor Committees* (NCLC), a voluntary philosophical and political association;
- *National Democratic Policy Committee* (NDPC), a multi-candidate political action committee which has fielded thousands of candidates for public office over the last decade;
- *Campaigner Publications, Inc.*, a publishing company which published newspapers, news magazines, theoretical journals, special reports, pamphlets, and other materials for dissemination to the public;
- *Caucus Distributors, Inc.* (CDI), a not-for-profit distribution corporation involved in the dissemination of political literature published by Campaigner and others;

Stuart Lewis

HENRY A. KISSINGER

OUTSIDE SOURCE

August 19, 1982

Dear Bill:

I appreciated your letter forwarding the flyer which has been circulated by Lyndon LaRouche, Jr. Because these people have been getting increasingly obnoxious, I have taken the liberty of asking my lawyer, Bill Rogers, to get in touch with you to ask your advice, especially with respect to security.

It was good to see you at the Grove, and I look forward to the chance to visit again when I am next in Washington.

Warm regards, 16 SEP 23 1982

Henry A. Kissinger

Mr. William H. Webster
Director
Federal Bureau of Investigation
Washington, DC 20535

HENRY A. KISSINGER
SUITE 400
1800 K STREET N. W.
WASHINGTON, D.C. 20006

Stuart Lewis

Henry Kissinger (above) wrote to FBI director William Webster (left) in 1982 demanding that action be taken to stop LaRouche. In this letter, Kissinger also refers to their carousing at California's all-male elite resort, the Bohemian Grove.

- *Fusion Energy Foundation* (FEF), a tax-exempt scientific foundation dedicated to the promotion of thermonuclear fusion power in particular and the general advancement of scientific policies and education;
- Executive Intelligence Review News Service (EIRNS), an international political intelligence news service with a readership among influential government, military, business, labor, and other circles;
- *Schiller Institute,* a political and cultural institute established to promote and strengthen the alliance between the United States and Western Europe, and to foster the development of the values of Western civilization;
- *Club of Life,* an organization set up to counter the Malthusian genocidalist policies of the Club of Rome and its co-thinkers;
- *New Benjamin Franklin House,* a publishing company which published paperback books; and
- *Publications and General Management, Inc.* (PGM), a management company providing bookkeeping and business management services.

During the 1980s, this movement and its associated organizations enjoyed an unprecedented growth in political influence, electoral success, and a corresponding expansion of the subscriber base to its publications. Mr. LaRouche and many of his associates met with high-ranking government officials to discuss and promote the Strategic Defense Initiative, the war on drugs, international monetary reform, and other important policy issues. The number of paid subscribers to FEF's *Fusion* magazine and *New Solidarity* newspaper, published by Campaigner Publications, exceeded 100,000 in April 1987, when FEF and Campaigner were destroyed by the U.S. Government's illegal involuntary bankruptcy seizure.

7. The electoral campaigns associated with the movement were spearheaded by Lyndon LaRouche's 1980, 1984, and 1988 bids for the Democratic Party presidential nomination and his independent post-primary candidacy in the 1984 and 1988 general presidential elections. In each of these campaigns, Mr. LaRouche qualified for matching funds under the Federal Election Campaign Act and appeared on numerous half-hour national television broadcasts which were purchased by his campaign committees (15 such broadcasts were done in 1984 alone). The National Democratic Policy Committee, begun in the wake of the 1980 Democratic National Convention, grew to 30,000 members in 1983 and ran hundreds of candidates for public and party office in each year from 1983 through 1988. Prominent successes of NDPC candidates include:

- Steve Douglas won 20% of the vote in the 1982 Democratic primary for Governor of Pennsylvania, finishing second in a field of 4 candidates. Douglas polled 30% of the vote in his home base of Philadelphia and won in 18 of the city's 66 wards;
- Debra Freeman won nearly 20% of the vote in a 1982 congressional primary in Maryland's 3rd District against well-known incumbent Barbara Mikulski;
- Mel Klenetsky won 14% of the vote in a two-way race in the 1982 New York Democratic senatorial primary against incumbent Daniel Patrick Moynihan. Senator Moynihan admits to spending at least $1.5 million to defeat Klenetsky in the primary;
- In 1984, Don Scott won a contested primary for the Democratic nomination for Congress in Ohio's 7th District;
- In March 1986, Mark Fairchild and Janice Hart won contested primaries for the Democratic nomination for the offices of Lieutenant Governor and Secretary of State in Illinois;
- In 1988, Donald Hadley won a contested primary for the Democratic nomination for Congress in the 5th District of the State of Pennsylvania;
- In 1988, Claude Jones beat an incumbent and was elected Chairman of the Harris County Democratic Party in Texas. Harris County, which includes the city of Houston, is one of the most populous counties in the United States. . . .

8. Throughout the investigation and during the trial, the prosecution, in collaboration with others and in furtherance of the conspiracy, engaged in a course of conduct intended to conceal or otherwise prevent the discovery of evidence of petitioners' innocence; concealed or otherwise prevented the discovery of other exculpatory evidence and evidence relevant to the defense; falsely characterized facts or evidence in an effort to mislead the court, the jury, and the defense; solicited and presented false testimony; and obtained a false conviction by wrongful and deceptive acts.

9. New evidence has been discovered by numerous means and from numerous sources. Some of it was developed by investigations conducted during the post-trial period. Much of it emerged during testimony at a series of state trials in New York, Virginia, and elsewhere, or in connection with those prosecutions subsequent to the instant case, and some arose during civil lawsuits, agency hearings, or other proceedings. Some was discovered as a result of Freedom of Information Act (FOIA) disclosures made post trial, and some emerged, directly or indirectly, from the judicial opinions in the involuntary bankruptcy proceedings illegally initiated by the same U.S. Attorney's office that prosecuted petitioners. Most of the newly discovered evidence could not have been discovered pre-trial by any method. Some of it might have been discovered in time for use at trial, but for two factors. First, despite detailed and specific discovery requests, the prosecution failed to comply with its discovery obligations and concealed relevant and exculpatory information. This misconduct was aided by the District Court's rulings on petitioners' discovery motions and the Court's granting the prosecution's motion *in limine*, which barred introduction of evidence essential to the defense even if discovered. Prosecution tactics misled the District Court to deny petitioners' rights to discover exculpatory evidence and to present their defense. Second, the rush to trial, 34 days after arraignment, the bulk of which time was spent on pre-trial motions, deprived the defense of sufficient time to prepare for trial. Just 11 days before trial, the Court effectively precluded the defense that government misconduct prevented loan repayments, enabling the Government to argue petitioners never intended repayment. This defense, which involved evidence of government misconduct, was being prepared, when the Court granted nearly the entire motion *in limine* filed by the Government the day before. This impossible time limitation prevented both effective opposition to the motion *in limine* and the discovery and comprehension of materials and information that might have otherwise been available in light of defenses allowed by the Court, including amounts of out-

Suzanne Klebe

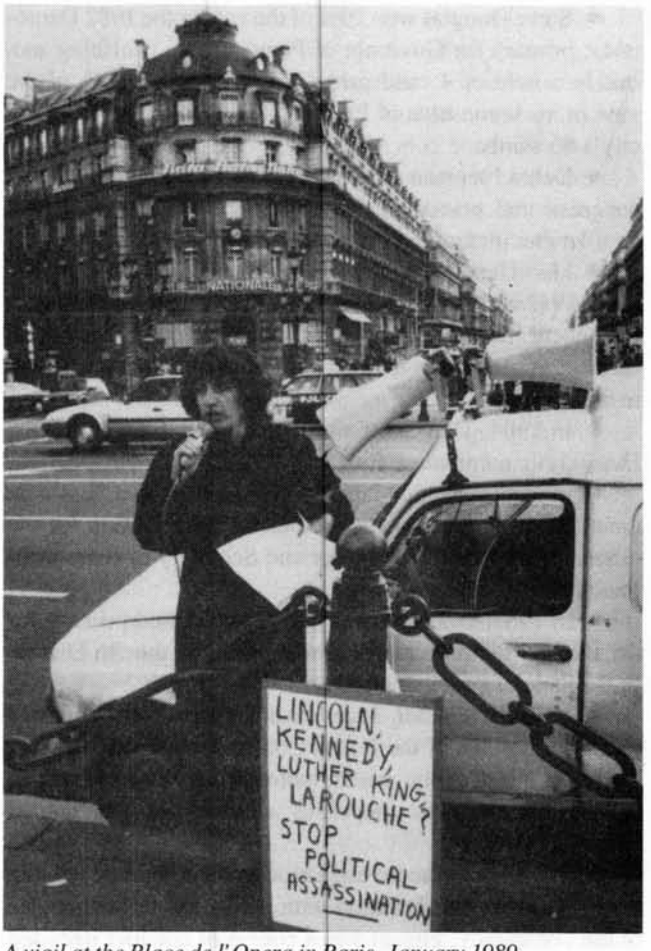
A demonstration at the U.S. Supreme Court June 1990, in support of LaRouche's appeal to the Court. The appeal was rejected.

standing loans, due dates, extensions agreed upon, interest rates, contributions as opposed to loans, loan repayments from all sources, and rates and amount of interest accrual. . . .

B. The prosecution conducted and participated in a conspiracy and concerted action with others to wrongfully convict petitioners by engaging in outrageous misconduct, including financial warfare which prevented loan repayment.

11. The politically motivated prosecutorial conspiracy against LaRouche that began no later than 1982, became a multi-jurisdictional, public/private enterprise during 1983 and grew in size, composition, and function through the ensuing years up to and including the trial of this case. The defense had detected individual acts and begun to develop some evidence of concerted action by some members of this prosecutorial conspiracy during 1987 and 1988 while preparing for and defending Mr. LaRouche and others in a federal prosecution in Boston, which was a part of that conspiracy. It had attempted to discover further evidence before the trial in Alexandria. The efforts were largely thwarted by government concealment and misrepresentations. False and misleading statements by the prosecution, including denials of knowledge of exculpatory evidence, led to rulings by the District Court on government motions opposing discovery and for an *in limine* order limiting evidence, which precluded access to and use of vital evidence to prove petitioners' innocence. . . .

12. The common purpose and concerted action of the conspirators was to secure criminal convictions of petitioners, and by their imprisonment to destroy their political movement. The major technique of the conspiracy was activity to destroy the ability of entities associated with petitioners to repay loans taken to finance publication and distribution of the political views of the petitioners' movement and their other political activity. Techniques included widespread defamation to deter contributors and lenders, to create doubts about the uses of funds and repayment of loans, a vigorous campaign of financial warfare against petitioners' political movement to diminish its ability to raise money and to repay loans, and illegal use of the bankruptcy laws to foreclose repayment and alienate lenders. The prosecution knew that it could not convict petitioners of use of the mails to defraud lenders while loans were being repaid and had to prevent repayment in order to wrongfully convict petitioners. This outrageous government financial warfare severely reduced the ability of firms associated with petitioners to raise funds and repay loans. The prosecution successfully concealed, suppressed, and failed to divulge evidence of the conspiracy and its wide-ranging activities. It deceived the trial court by falsely denying the existence of exculpatory and other evidence relevant to the defense and rejected discovery requests it knew it was required by law to provide. By this



A vigil at the Place de l'Opera in Paris, January 1989.

strategy, it prevented the defense from presenting evidence that the Government caused its inability to repay loans. The prosecution's falsely premised and last-minute motion *in limine,* which was filed and granted by the Court before petitioners could file a written response, directly prohibited the introduction of the evidence of the government's financial warfare, which was available to petitioners despite government concealment and the rush to trial.

13. Principal among the co-conspirators and those acting in concert were the federal prosecution teams, including attorneys in the Department of Justice and U.S. Attorney's offices, the federal investigative agencies, involving the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), the Internal Revenue Service (IRS), the Federal Election Commission (FEC), *et al.*, other federal attorneys and investigators, including those handling the involuntary bankruptcy proceeding against companies associated with petitioners, agencies investigating, developing, compiling, and distributing, and otherwise acting in relation to Executive Order 12333, agents and agencies of Loudoun County, Virginia, and of other counties and states, including Virginia, Massachusetts, New York, *et al.*, the Anti-Defa-

mation League of B'nai B'rith (hereinafter "ADL"), the National Broadcasting Company (hereinafter "NBC"), other media companies, and private persons, including federal government consultants. . . .

14. Evidence concealed by the prosecution that would have enabled petitioners to present their defense through government documents and admissions and would have precluded the filing and granting of the prosecution's motion *in limine* has been discovered at different times since the trial, and as recently as Dec. 31, 1991. This evidence establishes government conduct intended to destroy the finances of petitioners' political movement, most particularly its ability to repay its loans. The prosecution also recognized that petitioners' fundraising was for political purposes, including presidential campaigns, other federal, state, and local campaigns, and for publishing and communicating political information and ideas. . . . The prosecution recognized petitioners were engaged in a major campaign to reduce loans which had become unmanageable primarily because of government directed financial warfare. . . . The prosecution conspiracy included, *inter alia*, all the parties named above who shared information and coordinated activity, including coordinating and conducting the huge seizure of approximately 2 million documents on Oct. 6-7, 1986, and the improper use of documents seized, the bankruptcy petitions and seizures, and the nationwide efforts to coerce and persuade, through false and misleading information, political and financial supporters of petitioners to stop their support, denounce, sue and testify against petitioners. The Alexandria prosecution was a continuation of the strategy to prosecute, convict, imprison, and destroy petitioners' political movement. After the mistrial of the Boston case, the Government moved the prosecution to Alexandria to utilize the prejudice in the Alexandria Division and the overwhelming presence of federal employees and those otherwise associated contractors, vendors, etc. within the jury pool to deny petitioners a fair trial, and the Court's "rocket docket" to limit the ability of petitioners to prepare and present a defense. Investigative agency documents disclosed in October and December 1991 reveal specific FBI-imposed limitations on information prosecutors in Boston were allowed to divulge in Court, and the decision to dismiss the prosecution in Boston to avoid disclosure of information as constitutionally required. . . . An FBI document released to petitioners on Dec. 31, 1991 demonstrates that AUSA John Markham sought to avoid receipt of materials containing exculpatory evidence so as to avoid his Brady obligations. . . .

B1. The U.S. Government filed an illegal and fraudulent involuntary bankruptcy petition in bad faith to prevent repayment of loans that provided the basis for this indictment.

15. On April 20, 1987, the U.S. Government filed involuntary bankruptcy petitions before Judge Martin V.B. Bostetter in the Eastern District of Virginia at Alexandria, seeking the liquidation of three companies—the Fusion Energy Foundation (FEF), Campaigner Publications, Inc. (CPI), and Caucus Distributors, Inc. (CDI)—which were part of petitioners' political movement and were engaged in publishing and other First Amendment activities. CDI held all the loans specified in the indictment. . . . The Government filed its petitions, as the sole petitioning creditor, in a secret, *ex parte* proceeding, obtained the appointment of interim trustees, and seized control of the three companies knowing that the law required at least three petitioning creditors. Before the bankruptcy petitions were filed, the companies were making substantial efforts to reduce loan indebtedness. As of the date of seizure, the companies' First Amendment, non-profit, and business activities ceased, the companies were destroyed, and their legal and financial ability to repay loans was terminated. The companies remain defunct.

16. Despite U.S. Attorney Henry Hudson's statement that the bankruptcy was "the only vehicle we have to ensure that these citizens will be properly paid and the government has an opportunity to collect its judgment" . . . this was not the motivation and he knew that these would not be the results. The Government knew that the companies had little to no assets and that they were dependent on daily income for all revenues. They also knew that the government's judgments would be subordinate to all of the other debts of the companies. The Government was neither seeking to obtain payment for lenders nor to collect its judgment; it was seeking to destroy three companies and a political movement.

17. On Oct. 25, 1989, thirty months after the publishing companies were seized, and ten months after the trial in this case, Judge Bostetter issued a lengthy opinion dismissing the government's involuntary petitions and finding that the entire bankruptcy action was illegal *ab initio* because the Government had intentionally violated a federal statute, filed its petitions in "objective bad faith," and had perpetrated a "constructive fraud" on the Bankruptcy Court. . . . Judge Bostetter's opinion was affirmed by U.S. District Judge Claude M. Hilton on July 19, 1990. His decision became final after the Solicitor General of the United States declined to approve any further appeal on Sept. 27, 1990. This decision is a judicial finding against the U.S. Government of fraudulent use of its power, which resulted in the destruction of the companies that engaged in activities protected by the First Amendment.

18. The Government knew, at the time of the bankruptcy, that petitioners were involved in political activity and that the contributions and loans solicited were for political purposes. The Government also knew that the loans were subject to flexibility in their terms based upon agreements between solicitors and lenders. The Government used its illegal bankruptcy action to prevent the ability of petitioners to service or make repayments on loans and to shatter the political

relationships underlying the loans at issue.

19. The involuntary bankruptcy seizures culminated a long series of efforts by the Government and others acting in concert with it to financially incapacitate the companies associated with petitioners. The prosecution knew petitioners were engaged in a major effort to reduce reliance on loans and manage debt during this period. The bankruptcy forced an end to these efforts. The Government then selected from the pool of victims created by its actions. It even suggested using these lenders for background in the Boston proceedings, which would allow for a preview of their performances as witnesses for Alexandria. . . .

20. The Government alleged in the indictment that the conspiracy to commit loan fraud by use of the mails ended on the day before the illegal bankruptcy petitions were filed. . . . This artificial device was a strategy designed to support its planned motion *in limine*, which sought to block introduction of evidence of the bankruptcy role of the Government as irrelevant, because the conspiracy ended before the petition was filed. As a necessary element of this bad faith device, the Government further falsely claimed all loans in the indictment matured well before the bankruptcy seizure. . . . For prosecutorial advantage, the conspirators made a game of both the truth and the law in their effort to conceal their role in the bankruptcy, and those goals they sought to achieve through the bankruptcy. . . .

23. In material first available to petitioners in February 1989, petitioners discovered that on Sept. 3, 1986, John Horton, an investigator for the California Attorney General, acting in concert with members of the federal prosecution team, interviewed Patrick Sainsbury, the Fraud Division Chief of the King County District Attorney's Office in Seattle, Washington. Mr. Sainsbury was investigating allegations of loan fraud by petitioners or their organizations, including one alleged victim subsequently named in the indictment in this case, Alan Rither. Mr. Sainsbury informed Investigator Horton "that he did not find sufficient potential [for criminal prosecution] based on a continuing belief in repayment by a number of elderly lenders.". . . The illegal bankruptcy seizures were brought to end such belief, to prejudice lenders against petitioners, and to obtain lender witnesses for trial.

24. On Oct. 11, 1990, petitioners first discovered that on April 20, 1987, *the day* of the illegal bankruptcy filing, Special Agent Timothy Klund, the FBI's case agent in Alexandria, dispatched an airtel to FBI offices across the nation. The airtel stated in part:

> Alexandria believes that substantial lead coverage of these loan victims is necessary to show the extent of the fraud and the entire spectrum of lenders has been covered, including those who are still supporters of the organization and may not consider themselves a victim, despite not having received repayment on their loan as scheduled and promised. . . .

The airtel further advises interviewers to expect hostility and unwillingness to be interviewed, but that the FBI agent should persist:

> Anyone covering these victim leads should anticipate that some of the persons being contacted may be hostile to the inquiry and not readily agreeable to an interview. Efforts to conduct the interview should nevertheless be made. . . .

25. This airtel reflects the government's recognition that many lenders remained loyal to the LaRouche movement despite repayment problems, and did not consider themselves to be victims of fraud. It demonstrates the government's intention to persuade political and financial supporters to abandon petitioners and testify against them. The timing of these interviews was intentionally coincidental with the filing of the involuntary bankruptcy petitions. Despite the fact that Klund had the leads set forth in this airtel as of January 1987 . . . the interviews of lenders were purposely delayed until the bankruptcy had been filed, thus providing the FBI the ability to state that any hope of repayment by petitioners was

Claudio Rossi

Near the Coliseum in Rome, the poster reads, "Also in the U.S.A., there are political prisoners."

extinguished by the bankruptcy. The Government's unlawful destruction of petitioners' companies created precisely what the prosecution intended. Petitioners were unable to make repayment of the loans, and a pool of lenders was created with nowhere to turn for help but to the Government.

26. Agent Klund admitted in May 1990 to using the bankruptcy seizures to "turn" witnesses to testify for the Government in his criminal investigation. According to his testimony in *Commonwealth of Virginia v. Welsh* . . . one of a series of criminal cases involving other members of the political movement in the Commonwealth of Virginia in April 1990, Agent Klund, along with IRS agents Larry Lucey and Mary Balberchak, made a series of calls to selected members of petitioners' political organization on or about the night of the bankruptcy seizures in an effort to obtain their cooperation with the criminal investigation. The purpose of these calls was acknowledged by Agent Klund:

Q. Well, as a result of what was apparent, the bankruptcy action and the results of the bankruptcy petition, did you try and take advantage of that opportunity to see if you could turn some people from inside the organization?

A. That is possible, sure.

Q. The purpose of the calls was to see if they would cooperate with your investigation, correct?

A. That is correct, yes.

Q. To get an interview?

A. Yes. . . .

27. On Oct. 11, 1991, petitioners learned for the first time that the standard interview forms used in those interviews contained a ninth page which called for the agent's assessment of the "witness potential" of the lenders interviewed. This page was excised from the questionnaire out of concern "for selecting potential court witnesses on the basis of a subjective assessment which might include factors pertaining to any political affiliation the victim witness might have with the LaRouche organization." Instead, the information obtained for page 9 was to be forwarded in a separate administrative section. . . . These assessments were never disclosed to the defense, despite the certainty that they contained exculpatory information supportive of petitioners' contentions concerning the political nature of the loans, the flexibility of their terms, the disclosures made to lenders by solicitors concerning the risks involved in loans to a controversial political movement, and the use of the bankruptcy and subsequent interviewing process by law enforcement to bias lenders against petitioners. . . .

29. Throughout this case and the bankruptcy proceeding, the Government contended that the extraordinary *ex parte* bankruptcy proceeding and seizures were necessary to prevent dissipation and conversion of assets and that the civil bankruptcy proceedings had no relationship to the criminal proceeding, claiming the Government created a "Chinese wall" to separate the two proceedings. . . . These assertions are now demonstrated to be false.

30. On Aug. 6, 1990, petitioners first learned that on Oct. 22, 1986, Martha Sosman, then Chief of the Civil Division in the U.S. Attorney's Office for the District of Massachusetts, sent a letter to Benjamin Flanagan of the Justice Department's Criminal Division, General Litigation and Legal Advice Section, regarding the collection of the civil fines that were the basis for the money claim the U.S. asserted in its involuntary bankruptcy petitions. The letter was written while the Clerk was "refraining to certify" the judgments. After discussion with AUSA John Markham, Ms. Sosman advised that no discovery in any civil case "should be issued without prior consultation with the prosecutors." She also recommended that Mr. Flanagan contact AUSA Markham "for information he has about the contemnors' assets or other LaRouche assets that could be reached by piercing the corporate veil.". . . Nine days later, Peter Gelhaar, an associate of Ms. Sosman's, wrote a follow-up letter to Mr. Flanagan reporting on potential sources of collection using information, including bank accounts with account numbers provided by Special Agent Egan, the case agent in the criminal investigation. . . .

31. The series of FOIA documents first available to petitioners on Oct. 11, 1991 demonstrate that the FBI conducted asset searches concerning the companies put into bankruptcy, had determined that as of September 1986 the companies had few recoverable assets, and planned the improper use of criminal search warrants to locate recoverable assets. . . . They conducted their search on Oct. 6 and 7, 1986, but found none. The Government knew, both at the time it sought the contempt judgments and at the time of the bankruptcy filing, that petitioners were entirely dependent on day-to-day revenues for generation of income and loan repayments. Knowing the financial circumstances of petitioners' movement, the prosecution used the civil contempt fines and the bankruptcy as a means of financial warfare against petitioners.

32. The FOIA documents received on Oct. 11, 1991 include a redacted version of the government's Interim Prosecutive Report prepared in May 1988. A section of that report, captioned prosecutive status, is devoted to the Government's purportedly civil bankruptcy action. . . . The use of the bankruptcy for prosecutorial purposes was otherwise admitted by AUSA Markham in May 1990. He testified in *Welsh,* that the prosecution team thought "it was conceivable that new management [the interim trustees] would give us some documents that we were looking for and may enter pleas [by the corporations]. We discussed that possibility.". . .

33. During the bankruptcy proceedings, the Government portrayed the involvement of the FBI agents assigned to the criminal case as merely passive assistance to FBI Agent Lytle, who was assigned to the bankruptcy case. . . . The scope of Agent Klund's involvement in the bankruptcy was also deliberately concealed. Agent Klund has subsequently acknowledged that he provided further assistance in the bankruptcy case by preparing documents for production in the

Laurent Manet

"Freedom for LaRouche," reads this poster in Frankfurt, Germany.

bankruptcy proceeding during 1988. . . . Agent Klund's principal assistant on the criminal case, Special Agent Ed Gibson, acknowledged in *Welsh,* that he assisted Agent Lytle. . . .

34. On Jan. 27, 1989, the day of the petitioners' sentencing in Alexandria, AUSA Markham moved to dismiss the Boston indictment announcing that the government's prosecutorial goals had been met through, *inter alia,* the involuntary bankruptcy. In an introductory section of the motion, he wrote that the Government was seeking dismissal because "the interests of the United States in effective law enforcement [have] been served from the point of view of punishment and deterrence.". . . Direct and indirect references to the bankruptcy are repeated throughout the closing section, subtitled "Deterrence Has Been Achieved," citing the fact that certain "entities have been placed into bankruptcy and their assets seized" as an example of the deterrence. . . . The prosecution is well aware of the role the illegal bankruptcy played in wrongfully convicting petitioners.

35. The Interim Prosecutive Report discussed in paragraph 32 also demonstrates that the government's investigation showed Caucus Distributors, Inc. to be making a profit through 1984 and showed a combined profit for Campaigner, New Solidarity International Press Service, Caucus, Executive Intelligence Review Research, and New Benjamin Franklin House of $1.6 million for the same years. . . . This is directly contrary to its presentation in its bankruptcy petition, in the indictment (27(d)), and its presentation at trial. . . . This demonstrates the Government's outrageous misconduct and bad faith in bringing the bankruptcy, and in alleging and arguing at trial to the jury that when loans were solicited, petitioners well knew that there was no ability to repay them.

36. Prior to trial, the petitioners requested disclosure of exculpatory material related to the involuntary bankruptcy proceeding. The defense sought evidence that the bankruptcy was undertaken for an improper purpose. . . ; evidence regarding statements about the bankruptcy made to lenders and contributors. . . ; evidence of government monitoring of petitioners' finances. . . ; and evidence of instructions to interviewing agents, such as the recently revealed Klund airtel. . . . The Government failed to disclose this exculpatory evidence.

37. On Nov. 7, 1988, shortly before trial, the Government filed an *in limine* motion, to preclude, *inter alia,* the defense from presenting evidence that the Government was the sole petitioning creditor in bankruptcy. The prosecution argued that this would open the door to rebuttal evidence of the reasons for its action. . . . The District Court ruled "that admission of testimony that United States was the sole petitioning creditor would necessitate inquiry into the nature of the debts owed the United States as a result of contempt proceedings, and would divert the jury from the issues raised by the indictment.". . .

38. At the time of the trial, the prosecution was aware of the evidence specified above. Despite specific requests by the petitioners for exculpatory evidence relative to the bankruptcy, this evidence was suppressed by the Government in violation of the Due Process clause.

39. The Bankruptcy Court's decision establishes the government's bad faith filing and improper conduct in bringing the involuntary bankruptcy action, which denied the petitioners a fair trial in violation of the Due Process Clause of the U.S. Constitution.

40. The District Court, relying on the false and misleading representations of the prosecution and without full knowledge of the abuse of the bankruptcy laws perpetrated by the prosecution, decided that under the balancing test of Federal Rule of Evidence 403, petitioners could not introduce evidence that the Government was the sole petitioner. This ruling, induced by government misconduct, deprived petitioners of due process of law, effective assistance of counsel, and compulsory process for obtaining witnesses.

41. Discovery and an evidentiary hearing are necessary to fully present the facts concerning the outrageous prosecutorial misconduct, bad faith, and suppression of exculpatory evidence encompassed in the government's illegal bankruptcy filing and subsequent action, including its representations

to the Court at the trial of this action. . . .

J. New evidence reveals that petitioners' convictions were obtained as a result of an unconstitutionally selected jury and that petitioners were denied an impartial jury.

188. Despite massive negative publicity over a 10-year period, and the widely known and controversial activities of the petitioners, the District Court conducted a perfunctory *voir dire*, which did not probe for prejudice and failed to uncover juror bias. A great deal of the prejudicial pre-trial publicity, including many false allegations, was generated by the prosecution and those acting in concert with it. This fact was concealed by the prosecution at trial.

189. The entire jury selection process, which included only eleven questions, took less than two hours. Only four of the impaneled jurors were questioned individually as to their answers to any question. Since the time of trial new evidence has come to light that demonstrates the incompetence of the *voir dire*, reveals false answers to questions posed, exposes suppression of evidence by the prosecution that would have required greater care in examining jurors for prejudice, and demonstrates the presence of actual bias on the jury.

190. Evidence described previously herein suppressed by the prosecution reveals that the Government and persons acting in concert with it, engaged in extensive activity designed to poison public opinion in the Alexandria Division of the U.S. District Court for the Eastern District of Virginia.

191. Petitioners are now in possession of new evidence that shows that jury foreman Buster Horton withheld information about himself, which, had it been known, would have caused the defense to seek his removal from the jury for cause.

192. On the juror information card made available to the defense the Friday before jury selection, Mr. Horton listed his occupation as "U.S. Civil Service/U.S. Dept. of Agriculture" (USDA). . . . During the *voir dire*, the Court instructed prospective jurors to respond only if the answer to the question asked was affirmative. Mr. Horton failed to respond to any of the Court's questions, including the question: "Have you or any member of your immediate family ever worked for a law enforcement agency or been connected with a law enforcement agency of any type whatsoever?" While Mr. Horton remained silent, other prospective jurors interpreted the phrase "connected with a law enforcement agency" very broadly, responding:

A juror: Matthew Zeikel. My brother works for the United States Department of State, Security. . . .

A juror: Regeanne Woodworth. My brother-in-law works for the State Police Office in New Mexico. . . .

A juror: Dennis Schabacker. I am with the Internal Revenue Service. . . .

A juror: My name is Michael Pearse. My uncle is a former Internal Revenue Service agent. . . .

A juror: Yes, sir. Edward Young. I am with the Central Intelligence Agency. I have extensive dealings with the DEA and the FBI.

The Court: Would that affect your ability to be an impartial juror in this case?

The juror: Yes, sir, I believe it would.

The Court: It would?

The juror: Yes, sir.

193. Since the trial, it has been revealed that juror Horton is a member of an elite, interagency apparatus composed of approximately 100 specialists from various federal departments and agencies, including the Department of Justice, the Federal Bureau of Investigation, and the Central Intelligence Agency, whose primary function is to ensure the "continuity of government" during any federal emergency. This interagency apparatus is coordinated under the aegis of the Federal Emergency Management Agency (FEMA), which is responsible to the National Security Council, the ultimate authority for all national emergency planning. FEMA must necessarily have a close relationship to investigative and other government activity under E.O. 12333 since they deal with national security matters. Petitioners have been unable to determine the precise relationship between FEMA and E.O. 12333, but have discovered that petitioner LaRouche is the subject of an E.O. 12333 investigative file. . . .

194. Petitioners now know that at the time of trial juror Horton was deputy to the Chief of Emergency Programs, Office of Personnel, U.S. Department of Agriculture. Juror Horton's USDA Emergency Programs unit was initially located in the Intergovernmental Affairs Office, Office of Governmental and Public Affairs, and was subsequently transferred to the Office of Personnel. Horton is one of two specialists who have "overall program direction and coordination" for the entire nationwide emergency programs of the United States Department of Agriculture.

195. The 1988 USDA Directory of Emergency Personnel states that FEMA provides a "single point of accountability for all federal emergency preparedness, mitigation and response activities," and that Horton's Emergency Programs office "serves as the primary point of contact with FEMA at the Headquarters (USDA) level." FEMA maintains a Special Facility which functions as a national command center during national security emergencies to which Horton and other emergency preparedness specialists from a select group of federal departments and agencies deploy. A "TOP SECRET" clearance and a "NEED TO KNOW" are required for admittance.

196. Through Horton's activities with FEMA, he had contact with law enforcement of all different kinds. Horton attended FEMA's First Annual Symposium of National Emergency Coordinators in Leesburg, Virginia with a select

group of specialists from the CIA, FBI, DOJ, U.S. Park Police, Federal Protective Service, and District of Columbia Police Department. According to the published summary of this symposium, among the databases to which emergency management personnel had access was the FBI's "investigative data bases on organized crime, general investigative matters, foreign counter-intelligence, and terrorism." The significance of this access is highlighted by the new evidence that reveals extensive investigative files involving LaRouche, Wertz, Spannaus, and other movement members have been compiled. Juror Horton had access to FBI files pertaining to petitioners.

197. In 1983, FEMA established the Emergency Information and Coordination Center (EICC), a 24-hour command and information center ready to mobilize and coordinate an interagency response to any emergency. EICC's 1985 contact guide listed Horton as an "emergency preparedness specialist" assigned to "preparedness" and "response," and a member of FEMA's Interagency Emergency Coordination Group, a standing committee of Emergency Coordinators, including those from the FBI and DOJ who met, in part or in full, to deal with "topical, multi-agency issues or problems, especially those having to do with mobilization preparedness." The EICC's 1985 contact guide listed the same individuals on the Interagency Emergency Coordination Group for the FBI and DOJ who attended the 1983 First Annual Symposium of Emergency Coordinators with Horton.

198. Horton's contacts with law enforcement date from 1972. As USDA's Defense Facilities Coordinator, he maintained defense records for emergency mobilization and corresponded with the Office of Inspector General (OIG) concerning review of documents and updating OIG Delegation of Authority file. As stated in 7 CFR §2610.1-2, OIG has a multitude of law enforcement responsibilities, including investigations of fraud, issuing subpoenas, making arrests, and carrying firearms. It collaborates with the Department of Justice, the FBI, Secret Service, Interpol, and other federal, state, and foreign law enforcement organizations. The OIG also provides protection for the Secretary and other principal USDA officials and manages a comprehensive physical security protection program for the Department.

199. Juror Horton works directly with the Secretary of Agriculture. Mr. Horton was on the USDA Emergency Executive Team with the Secretary and was second in command at USDA to receive a FEMA alert, which was then communicated to the Secretary. He was involved in correspondence with presidential Cabinet members concerning the promulgation of Executive Orders. He was on 24-hour call to respond to emergencies and was a member of an Emergency Team that would deploy, under certain alerts, for "several days or longer." Juror Horton's job responsibilities meant that he would have been required to remove himself from the trial for an indefinite period of time if an emergency arose. This fact should have been revealed to the Court and petitioners.

200. Horton is no ordinary Civil Service, or Department of Agriculture, bureaucrat. He is one of two individuals from USDA assigned to an interagency team responsible for the "continuity of government" in the face of a national security emergency, and, as with all EICC participants, has "TOP SECRET" clearance. In his FEMA position, he interacts regularly with high-level representatives of the CIA, DOJ, and FBI, among others. Given these connections, it was untruthful for Mr. Horton to have remained silent when asked if he was connected with a law enforcement agency "of any type whatsoever."

201. Horton's FEMA involvement has additional significance. New evidence suggests it is more than likely that Horton had contact with circles identified during the trial as having an adversarial relationship with LaRouche. Testimony during the trial discussed such a relationship between Oliver North, the Iran/Contra circles, and LaRouche concerning LaRouche's opposition to arming the Contras and competition over fundraising contacts. The 1985 FEMA EICC contact guide, which lists Horton as a USDA Emergency Coordinator, also lists Oliver North as an Emergency Coordinator from the National Security Council. According to a *Miami Herald* story dated July 5, 1987, North was tasked to upgrade the FEMA apparatus from 1982-1984 and "assisted FEMA in revising contingency plans for dealing with nuclear war, insurrection or massive military mobilization." In February 1984, Horton's office corresponded with Robert McFarlane, then Assistant to the President for National Security Affairs, concerning Emergency Mobilization Preparedness.

202. The defense called as an expert witness on security matters the former Director of FEMA, General Louis O. Giuffrida, who had been forced to resign from FEMA under allegations of misconduct and misappropriation of funds. New evidence reveals that juror Horton was involved in correspondence with Giuffrida, and that juror Horton was also involved in correspondence that was critical of FEMA under Giuffrida's direction. Horton's failure to reveal his ties to FEMA prevented the defense from evaluating whether he was prejudiced against a key defense witness in the case who testified to the legitimacy and minimal nature of expenditures for security.

203. New evidence reveals that Horton's FEMA responsibilities took him to Leesburg, Virginia and to the FEMA Alternate Facility at Mount Weather, Loudoun County, which is nearby. LaRouche and his associates lived and worked in Leesburg and Loudoun County during the period of Horton's travel, and there was much public controversy as well as concern about LaRouche by security and law enforcement officials. The father of Loudoun County Sheriff's Lt. J. Terrence McCracken, who supervised the LaRouche investigation, was Director of the Office of Emergency Readiness, Department of Commerce, and had contacts and coordinated with Horton's office.

204. Juror Horton's position within the USDA and FEMA was of vital significance. If the facts had been known, the defense would have challenged Horton for cause, or failing that, have exercised a peremptory challenge to strike him from the panel.

205. In addition to the serious questions that arise from Horton's failure to disclose his role in FEMA and his law enforcement connections, his failure to respond to questions about pre-trial publicity is equally suspicious. One of the first questions posed to the venire was: "The defendants in this case have been in the publicity. For that reason, I ask whether anything you may have read or heard or seen has caused you to form any adverse opinion or belief about any of the defendants or about their guilt or innocence in their case.". . . Eight jurors answered yes and were excused. The Court then asked: "There has been some publicity about this case. Have any of you read or heard or seen anything about this case?". . . Eighteen of the 33 jurors in the pool at that time answered yes and were examined. Their answers indicated a very broad interpretation of the question. Jury foreman Horton responded to neither question. Given his FEMA role and extensive law enforcement-connected activities, it is inconceivable that he had not been exposed to any of the massive negative publicity involving the defendants on this case.

206. Newly discovered evidence about juror Horton requires discovery and an evidentiary hearing to determine all of the relevant facts concerning whether his participation as foreman denied petitioners an impartial jury, and why he failed to disclose his FEMA connections and activities.

207. Newly discovered evidence also reveals several jurors gave false answers to the question, "Have you or any member of your immediate family ever been the victim of a crime or participated in a criminal case or in any other capacity?" The evidence was obtained by an examination of public records conducted at the request of counsel. . . . This information could not possibly have been discovered before trial by the exercise of due diligence.

208. The evidence shows that:

1. Juror Vicki A. Araujo plead guilty to a "bad check" charge on or about Nov. 18, 1980.

2. Alternate juror Melville plead guilty to an interference with arrest charge on or about Oct. 7, 1982. He was also previously charged with public drunkenness—the disposition of those charges was a dismissal.

3. The son of venireman Norman P. Horn (defense preemptory strike) was tried on or about Dec. 12, 1979 on two misdemeanor charges.

209. None of these jurors responded to the Court's question regarding "participation in a criminal case." An evidentiary hearing must be held to determine why the jurors failed to respond and to determine the existence of bias or other predicates for this failure.

210. The newly discovered evidence about foreman Horton and several other jurors was properly obtained after the Court prohibited any communication with juror or members of the array. It demonstrates the total inadequacy of the *voir dire* and the probability that actual prejudice existed among the jurors, which was not discovered because no meaningful effort to detect prejudice was made. Discovery and an evidentiary hearing are necessary to determine if petitioners were denied an impartial jury.

From the conclusion of the motion

211. The wrongful convictions and detention of petitioners must be set aside, and minimally they must be granted new trials. This entire prosecution, and those actions preceding and succeeding it, were so corrupted by politically motivated misconduct and bad faith as to have overwhelmed any pretext of due process and fairness in the trial. The petitioners were targeted for prosecution, harried by economic warfare, subjected to a crusade of numerous media attacks, and wrongfully convicted as a result of a conspiracy and concerted action by public and private forces dedicated to their elimination. Relevant and exculpatory materials were intentionally and routinely withheld by the Government in an effort to preclude defenses, prevent discovery of the truth, and cover up the conspiracy and concerted action in which the Government was engaged. The actions taken by the Government and its co-conspirators were designed and intended to force massive investigations under any pretext, including national security, to destroy the financial and political base of the movement and prevent the servicing of loans, so as to allow those loans to become the basis of the indictments. For all of the reasons and on all the grounds herein stated, these convictions must be set aside if the terms "due process" and "fair trial" are to have continued meaning in the United States of America.