U.S. bankruptcy action disrupts government's 'LaRouche' prosecutions

The U.S. government's unprecedented action in throwing three LaRouche-identified companies into involuntary bankruptcy on April 20, is having major disruptive effects on criminal cases brought by the government against individuals and organizations linked to the three companies.

In a hearing in Boston on June 1, Federal Judge Robert E. Keeton again warned the government that he would dismiss federal indictments there if any action were taken by the Bankruptcy Court which impaired the rights of defendants in his case. Judge Keeton had ordered the Interim Trustees in the bankruptcy proceedings to appear on June 1 to explain the status of the lawyers for Campaigner Publications and Caucus Distributors, defendants in the Boston case which have both been thrown into involuntary bankruptcy by the federal government.

Defense attorneys have asked Judge Keeton to dismiss the Boston indictments because of the government's violations of the Sixth Amendment's guarantee of the assistance of counsel. There are two principal grounds for this motion:

1) The U.S. government invaded the joint defense by bringing the bankruptcy action and obtaining the emergency appointment of Interim Trustees. Since in bankruptcy a Trustee can waive the attorney-client privilege, this meant that potential defense strategy and discussions could become known to the U.S. government.

2) During the course of the April 21 seizure of offices, U.S. Marshals seized the legal office in Leesburg, Va. out of which the joint defense in the Boston case was being conducted.

At the first post-bankruptcy hearing in Boston, on May 4, where the government's invasion of the defense camp and seizure of the legal files was first presented, Judge Keeton warned the government that they had better be building a "Chinese Wall" between the bankruptcy case and the criminal case, or else he might have to dismiss the criminal case.

Whose counsel?

The major issue addressed in the June 1 hearing in Boston was the question of who can authorize the lawyers for Campaigner and Caucus to continue in the case. Since the government took over management of the allegedly bankrupt companies on April 21, the lawyers for these companies were uncertain of their authority to continue representing their clients.

The attorneys for the Interim Trustees, who had traveled to Boston to appear at the hearing, were unable to shed any light on this problem. They said they had no authority to authorize the existing lawyers to continue, but that they had no authority the other way either.

When Judge Keeton pressed them on this issue, citing the Bankruptcy Court order which put them in charge of running the businesses, the Trustees attempted to shift the issue to that of access to the seized legal documents. Judge Keeton sharply rebuked them: "My question is who has the authority, if anybody, to say to counsel of record in this case, 'You are or are not to continue to represent Caucus and Campaigner in this criminal trial'? That's the question I want answered, and I will not be diverted from that question."

The Trustees argued that they did not have any such authority, and that perhaps only the bankruptcy judge has it. The current attorneys for Campaigner and Caucus pointed out that their status was uncertain because of the Trustees' power to waive the attorney-client privilege. Judge Keeton's response was that although he can not control what the Trustees or the Bankruptcy Court do, he can control what goes on in his courtroom.

"I have no concerns about my power to enter the orders necessary to protect the rights of the defendants in this case. And if somebody undertakes to do something that so prejudices your rights as to make this prosecution impossible to go forward on a fair basis, I will dismiss it. That's the ultimate sanction."

In response to defense attorneys pressing the issue of the power of the bankruptcy trustees to waive the attorney-client privilege, Judge Keeton continued:

"And if he [the trustee] does, and if I find that that waiver has prejudiced the rights of the defendant in that case, and there's no way I can redress that prejudice short of dismissal, I dismiss. Why isn't that adequate power to protect the rights of the defendants?"

Judge Keeton added that if it were possible to redress any prejudice by a means short of dismissal, then he would do that instead.

No precedent

The bizarre nature of the government's action poses a situation in which all sides agree there is no legal precedent.

The Justice Department's action in throwing the three "LaRouche" companies into bankruptcy is the first time in which the government itself has filed a petition to throw a company into bankruptcy (an unusual step normally taken by private, commercial creditors). It is also the first time in U.S. history in which the government has utilized the bankruptcy laws to aid in a criminal prosecution. Defense attorneys in the Boston case have argued that the Justice Department was fully aware of the consequences, when it chose this novel course of action.

At the conclusion of the argument on this issue, Judge Keeton ordered that the current attorneys for Campaigner and Caucus are authorized to continue representing those companies. He further directed that they are to consult with the persons designated by those companies, not with the Interim Trustees, thus removing the bankruptcy trustees and the bankruptcy court from playing any role in the criminal defense.

The judge also noted that the Boston trial originally scheduled for April 6 and now scheduled for July 8, may be further delayed.

Should the bankruptcy trustees or the bankruptcy court attempt to interfere in the criminal proceeding, Judge Keeton's implication was clear that he would consider dismissing the indictments altogether.

Trial delayed

The trial of the Boston case will probably be still further delayed by the after-effects of the bankruptcy proceeding. When the first set of Boston indictments were issued on Oct. 6, 1986, trial was set for December. Then, after additional, or "superseding," indictments were issued on Dec. 16, the trial was delayed until January, then to April 6. When it became clear that resolution of the more than 200 pre-trial motions would take additional time, the trial date was postponed to June 1.

The government's institution of the bankruptcy proceeding, five weeks before the scheduled start of the trial, has caused further delays. At the first hearing following the bankruptcy proceedings, Judge Keeton rescheduled the trial for July 8, and reserved the June 1 date for evidentiary hearings. However, June 1 was taken up with procedural matters arising from the bankruptcy, and now the next hearing is set for June 15.

The first matter to be taken up on June 15 is that of defense

'Chinese wall'

On May 4, Judge Robert E. Keeton warned government prosecutors as follows regarding the relationship between the bankruptcy case (a civil proceeding) and the Boston prosecution (a criminal case):

Well, now, let me just express a concern about their [the bankruptcy trustees] handing anything to you. I am quite serious in saying to you that you better be building a Chinese Wall because there are serious conflict of interest problems here. And if anything is done that impairs the rights of a defendant in this criminal proceeding, there may not be a remedy for it.

. . . I think there is a serious question about whether this Court and the criminal matter before it has jurisdiction to enjoin or stay a bankruptcy proceeding in another jurisdiction or to order things to be done in that bankruptcy proceeding. It seems to me it's probable that I do not have that kind of jurisdiction, and the jurisdiction I do have is the jurisdiction to protect your clients by appropriate orders with respect to this proceeding if anything is done by them that impairs the rights of the defendants in this proceeding . . . it seems to me the answer to the arguments you are making about the need for protection is, of course, the Court has the authority to give you that protection by the ultimate sanction of dismissal if there are such interferences with those interests that that is required.

motions to dismiss the case due to governmental misconduct in harassing defense lawyers. Defense lawyers have charged that the government has systematically attempted to intimidate defense lawyers, including by threatening the lawyers themselves with investigation and possibly being indicted.

At the June 1 hearing, Judge Keeton also heard additional arguments on the standards to be applied in hearing this motion. He stated that he will now decide whether or not to hold an evidentiary hearing on this matter. "I think the matter is of sufficient importance that I want to have more time to consider it," he said. "If it takes more time and I then conclude that I should have an evidentiary hearing, it very likely will delay our trial date."

Defense attorneys have asked for a number of other evidentiary hearings as well. The most important of these concern:

- Motions to suppress evidence, based on the unconstitutional and illegal nature of the Oct. 6 search and seizure in Leesburg, Va.;
- Motions to dismiss the indictments on grounds of selective and vindictive prosecution, arguing that the defendants were singled out and targeted for prosecution because of their political views and because certain factions in the government were opposed to policies they advocate. One of these motions cites specifically the renegade National Security Council operation under Lt. Col. Oliver North, which was directly competing for fundraising dollars with the LaRouche movement. These motions also charge that the defendants were targeted for dirty tricks under a renewed "Cointelpro" program pursuant to Executive Orders 12333 and 12334.
- Motions to dismiss the indictments on grounds of grand jury abuse and illegal leaks of secret grand jury information. These motions cite particularly the barrage of news stories about the Boston grand jury investigation which surfaced following the victory of two LaRouche Democrats in the March 1986 primary elections in Illinois.

Other cases delayed

State criminal prosecutions against numbers of LaRouche associates in Virginia and New York have also been delayed by the effects of the bankruptcy case. In Virginia, a hearing on a motion to dismiss based on a Virginia "double jeopardy" statute has been delayed until June 23. This was postponed from May 22 after the government's seizure of the legal defense files on April 21. A number of federal prosecutors and agents have been subpoenaed to testify at the June 23 hearing. The first testimony for this hearing will be taken on June 9, when Assistant U.S. Attorney John Markham from Boston will voluntarily appear to have his deposition taken by defense attorneys in the Virginia case.

In New York, 15 LaRouche associates were indicted on March 3 on trumped-up charges of "securities fraud" similar to those brought by the Commonwealth of Virginia. Both cases have taken the completely novel and unprecedented approach that loans made to political organizations and publishers are in fact "investments" which should be governed by state "blue sky" securities laws.

In the New York case, Judge Stephen Crane ordered that court-appointed attorneys be retained for many of the defendants who had previously been employed by the bankrupt companies. New lawyers have been appointed for a number of the defendants, and the next status conference has been scheduled for June 12. No trial date has yet been set for the New York case.

Seek bankruptcy dismissal

Meanwhile, attorneys for the three companies which were petitioned into involuntary bankruptcy on April 20 have filed

FBI on the rampage

Henry E. Hudson, the U.S. Attorney in Alexandria, Virginia, has reportedly been taking his lumps for having damaged the government's criminal cases by his initiation of the bankruptcy proceeding. His response has been to deploy hordes of FBI agents across the country to harass contributors and supporters of presidential candidate Lyndon H. LaRouche. It is believed that hundreds of contributors have been visited in their homes or places of work by FBI agents, who have warned them about lending and contributing funds, subscribing to publications, and even about signing telegrams to the Attorney General protesting the treatment of LaRouche's friends and associates.

Some FBI agents have gone so far as to tell contributors and lenders that if they cooperate with the FBI, they can get their money back, or that they should hire lawyers to collect their money. What these lying G-men have failed to tell their victims is that the Justice Department has thrown three "LaRouche" companies into bankruptcy, thereby ensuring that no one who lent money can have it repaid. In fact, under the terms of the bankruptcy order, it is now illegal *for Campaigner Publications, Caucus Distributors, or the Fusion Energy Foundation to repay any lenders, no matter what hardship this causes. So much for the Justice Department's concerns about "little old ladies"!*

Some of the contributors who have been harassed by the FBI are now seeking legal assistance to sue the FBI, for violations of their own constitutional rights.

motions to dismiss the involuntary bankruptcy petition. The three companies include the Fusion Energy Foundation, a tax-exempt charitable and educational organization, as well as Campaigner Publications and Caucus Distributors.

The grounds for dismissal include:

1) that the U.S. government was the sole petitioning creditor on the involuntary bankruptcy petition, although the law clearly requires that three creditors bring the petition;

2) that Fusion Energy Foundation is immune from the involuntary bankruptcy law, which legally applies only to commercial, not non-profit, organizations;

3) that the bankruptcy petition was filed in bad faith and for improper purposes by the government—i.e., to aid in a criminal prosecution.

A hearing on the motions to dismiss the petition will be held in U.S. Bankruptcy Court in Alexandria, Va. on June 15.

At the June 1 hearing in Boston, the Interim Trustees raised the possibility that the bankruptcy petition might be dismissed. They emphasized that there has been no formal "adjudication of bankruptcy" as of yet, and that the debtors are resisting the adjudication of bankruptcy.

Under normal circumstances, a company is not declared bankrupt and shut down until after a trial is held on the petition seeking involuntary bankruptcy. This can take many months. The filing of the petition acts like the filing of a complaint in a civil case; the other side has a chance to answer the move to dismiss, but no action is taken until a trial on the merits on the petition or complaint.

In this case, the Justice Department, acting as petitioner, secretly went to the bankruptcy judge on April 20 and obtained an *ex parte* hearing, at which the judge signed an order appointing Interim Trustees and directing that the Trustees and U.S. Marshals seize the offices of the three companies. Thus, the first that the companies or their lawyers knew of the bankruptcy was when federal marshals seized the offices during the early morning of April 21.

In fact, the Justice Department's action was so irregular that there was not even a court transcript of the April 20 *ex parte, in camera* hearing. The Justice Department argued the hearing should be completely off-the-record because "confidential" matters were being discussed.

The secret, off-the-record nature of the appointment of the Interim Trustees is one of the grounds for an appeal of the order appointing the Interim Trustees and directing the seizure and shutdown of the three companies. This appeal is now pending before the U.S. District Court for the Eastern District of Virginia.

The appeal seeks dismissal on grounds that the secret, *ex parte* proceeding was in violation of the bankruptcy statute and the due process guarantees of the U.S. Constitution, and also that the shutting down of *New Solidarity* newspaper (published by Campaigner) and *Fusion* magazine violates the First Amendment to the U.S. Constitution.