duct stands exposed by the decision is U.S. District Judge Albert V. Bryan. Bryan was told by the companies targeted for the forced bankruptcy, that he was the more appropriate judge to hear the constitutional issues involved, including the potential violation of the Fifth Amendment protection against self incrimination, the companies were targets of a federal criminal investigation *before* the bankruptcy occurred. But Bryan said that the bankruptcy proceeding should stay in bankruptcy court, and that it was in good faith.

Then, in the criminal case, the same Judge Bryan granted a pre-trial *in limine* motion presented by the government, which excluded from the trial all mention of the U.S.-instigated forced bankruptcy. Thanks to this motion, "the defendants were forced to *lie* in court about the bankruptcy, by not being allowed to say the government bankrupted them," Hamerman pointed out. "Hudson cleverly shaped the indictment to end on April 19, 1987"—two days before the bankruptcy—he went on, but "there is no way that LaRouche and his friends would have been indicted if the bankruptcy had not occurred."

He promised, "This decision will have a tremendous effect on the appeals for the defendants" in the Alexandria case, which is currently before the Fourth Circuit Court of Appeals.

Vindication

"Lyndon LaRouche and his political movement have constantly said, especially over the past half-decade, that the federal government of the United States has engaged in an unlawful series of actions to put a political movement out of business," Hamerman noted. "I am overjoyed that this press conference is taking place in the First Amendment room of the National Press Club, because Judge Bostetter's decision defends, by implication, a basic constitutional principle. A scientific association and a national newspaper were put out of existence simply because of their political agreement with Lyndon LaRouche's ideas."

Although the First Amendment issue was not explicitly

1987 bankruptcy: first stop on the railroad

The following is adapted from the opening section of Chapter 2 of the book, Railroad! U.S.A. vs. Lyndon LaRouche et al. *(Washington, D.C., 1989), pp. 219-251.*

To understand the Alexandria case, it is first necessary to understand the government's unprecedented use of an involuntary bankruptcy against the LaRouche political movement.

This was the opening shot of the Alexandria trial. First, the Alexandria U.S. Attorney shut down three publishing companies, operated by associates of LaRouche, throwing over a hundred employees out of work and freezing the business's debts. This action was upheld by Judge Albert V. Bryan. Then, the very same U.S. Attorney indicted LaRouche and six associates for not repaying the companies' debts—the same debts which the companies were legally prohibited from paying! And then Judge Bryan ordered the defendants to lie about what had happened in the bankruptcy.

Three court documents summarize the facts of the bankruptcy. One is Judge Bryan's July 15, 1987 order on the bankruptcy. The second is the opening section of the pre-trial brief filed by attorneys for the three victimized companies. This memorandum was filed just prior to the trial of the bankruptcy case, which ran from May 4-9, 1988. The other is the "Proposed Findings of Fact" filed after the trial by attorneys for the three companies. These provided a documented, detailed, step-by-step description of how the U.S. Department of Justice planned and carried out the involuntary bankruptcy, in which every proposed finding is documented by reference to testimony or other evidence adduced at trial.

The central argument presented is that the bankruptcy—a civil proceeding—was actually conducted as part of the government's criminal prosecution against the LaRouche movement. The involvement of the Alexandria prosecution team—U.S. Attorney Henry Hudson, Assistants Kent Robinson and John Markham, and FBI agent Tim Klund—in the planning and execution of the bankruptcy, is documented from the evidence presented at the bankruptcy trial.

Prosecutor John Markham confirmed the truth of this argument when he subsequently declared that the bankruptcy had helped to accomplish the prosecutorial objectives of the government. Shortly after the Alexandria convictions the Boston U.S. Attorney submitted a motion to Judge Keeton in Boston seeking to dismiss the Boston indictment. In addition to the Alexandria convictions of LaRouche, Spannaus and Billington, and over 20 other indictments, he cited the shutdown of Campaigner Publications, Caucus Distributors, and the Fusion Energy Foundation as evidence of "the interests of the United States in effective law enforcement having thus been served from the point of view of both deterrence and punishment." Later in the same memorandum, under the section captioned "Deterrence Has Been Achieved," the argument says: "Three . . . of those entities have been placed in bankruptcy and their assets have been seized." Campaigner and Caucus had been indicted in Boston. All three were targets of the Alexandria grand jury investigation at the time of the bankruptcy.

raised in the bankruptcy trial, the illegal federal action shut down *New Solidarity* newspaper and *Fusion* magazine, each of which served over 100,000 subscribers. Judge Bostetter did rule that the Fusion Energy Foundation and Caucus Distributors, Inc. cannot be the subject of an involuntary bankruptcy proceeding. As "eleemosynary" institutions, whose primary purpose was the dissemination of educational ideas and political views, they are not "truly commercial in nature," the judge wrote.

It could be called poetic justice, Hamerman remarked, that Judge Bostetter cited precisely the same paragraph from an internal memorandum that had been repeatedly used in the trials against LaRouche and his associates to charge fraud, as evidence that "the debtors strived more to expose the world to its political viewpoint than attain private monetary gain. While the government has alleged that their methods of fund raising were reprehensible, that alone does not change the debtors' status and provide the appropriate basis for the invocation of *this* Court's jurisdiction."

'Courageous, scholarly decision'

"Judge Bostetter has made a courageous and scholarly decision," attorney David Kuney said. "He had to resist tremendous pressure by the government, which was asserting that because the cited companies were linked to someone they considered a 'political extremist,' they are therefore not entitled to the protections of the Bankruptcy Code.

"The government will probably defend itself by saying they lost on a mere technicality," Kuney went on. In fact, in his public statements after the decision, U.S. Attorney Hudson has tried to present it in that light. "But the three creditor requirement is not a technicality; it is what prevents the oppressive use of the Code."

Moreover, Kuney pointed out, Judge Bostetter also found that the government failed to fulfill another requirement of the Bankruptcy Code, as it failed to prove its contention that the three companies were not paying their debts.

Also, although Judge Bostetter made an "almost academic" distinction between the "objective" and "subjective" bad

Involuntary bankruptcy

A word of explanation, as to how an involuntary bankruptcy proceeding works, is in order. It is normally initiated by a petition of three or more creditors, and is opposed by the "alleged debtor"—called "alleged" because the allegations of the petitioning creditors that the debtor is insolvent must be proven in court. It is an adversary proceeding, operating like a civil case, with pre-trial discovery and a trial. Normally, only after the debtor is proved insolvent (either through summary judgment, or at trial) is the debtor company liquidated.

Here, in a highly unusual procedure, the three alleged debtor companies were seized and shut down before any trial; Bankruptcy Judge Martin V.B. Bostetter ordered the companies padlocked in a secret, *ex parte* proceeding, of which the companies had no notice.

At the May 1988 trial, the chief arguments made in opposition to the government's petitions were:

1) that the procedure was illegal because there was only one petitioning creditor (the United States government), not three as required by law;

2) that the petition was brought in bad faith, and for an improper purpose;

3) that two of the three debtor companies were nonprofit organizations, therefore not subject to an involuntary bankruptcy.

A critical aspect of the bankruptcy proceeding was the government's efforts to use it to extract and compel testimony from the officers of these companies. Many of the officers were already under indictment, and all were under investigation by Hudson's office. Because of the pending criminal proceedings their lawyers all advised them not to testify when the government tried to take their depositions. But if they exercised their Fifth Amendment right not to testify, their silence could be used against them—and the companies—in the civil (bankruptcy) proceeding. This issue, among others, came before Judge Bryan.

Bryan was an active participant in the bankruptcy proceeding, fully aware of what the government was doing, and indeed, approving it. The Bankruptcy Court in which the case was brought is part of the Eastern District of Virginia federal court, where Bryan is the Chief Judge. He personally made two rulings in the bankruptcy case. (Decisions of a Bankruptcy Judge, like decisions of a U.S. Magistrate, are first appealed to the U.S. District Court before going to the Court of Appeals.)

The first motion before Bryan was to appeal the April 20-21 *ex parte* order and seizure. The grounds for appealing Judge Bostetter's order included the secret *ex parte* nature of the proceeding, and the fact that the U.S. government was exercising prior restraint against these companies' First Amendment rights to publish. The hearing was so secret that it was not even stenographically recorded as is standard operating procedure. Judge Bryan denied the motion.

Later, attorneys for the debtor companies sought to utilize a provision which allows the entire case to be "removed" to federal court, when important legal or constitutional issues are involved. This motion was also heard by Judge Bryan. The major argument for removal was the constitutional conflict created by the efforts of the U.S. Attorney to compel testimony of company officers in the bankruptcy proceeding, at the same time the U.S. Attorney was conducting an active grand jury investigation of those same companies and individuals. Judge Bryan denied the motion for removal on July 10, 1987, saying he would consider the matter anew if it later became a problem.