# U.N. gets LaRouche rights case

## *The case of the unjustified political prosecutions of Lyndon LaRouche and associates is now before the United Nations. Part III of a series.*

*The Paris-based Commission to Investigate Human Rights Violations and Helga Zepp-LaRouche, wife of political prisoner Lyndon LaRouche, filed a second petition to the Commission on Human Rights of the United Nations in Geneva, Switzerland on Feb. 2, 1990, seeking U.N. action against human rights abuses committed against LaRouche and his political movement by federal, state, and court authorities in the United States. A first petition had been submitted at the end of May 1989, but has yet to be deliberated upon.*

*Part II of this series described the unsuccessful attempts to overturn the unjust conviction of LaRouche and six associates in the Alexandria, Virginia federal prosecution. The section which follows takes up two of the most outrageous cases in American legal history: the Virginia state prosecutions of Michael Billington and Rochelle Ascher. Billington, whose own lawyer attempted unsuccessfully to have him declared mentally incompetent because of his insistence on a jury trial, was sentenced to 77 years in prison for securities violations. Ascher was sentenced by a jury to 86 years, though the sentence was later reduced by the judge to 20 years.*

### 2. The case of Michael Billington

Michael Billington is one of the six people tried and convicted with Lyndon LaRouche in Alexandria, Virginia, and sentenced to three years in federal prison in January 1989. He is also the second of 16 individuals and five corporations to face trial in the Commonwealth of Virginia, on charges that the political loans they raised were "securities."

Delegates from the International Commission to Investigate Human Rights Violations, who observed Mr. Billington's trial in Roanoke, Virginia, characterized this procedure as maybe the most blatant example of "Soviet-style justice" conducted in a Western country.

Michael Billington was charged in Virginia on nine counts, carrying a maximum sentence of 90 years. The charges, based on the same evidence as the Alexandria charges, stem from Virginia's co-sponsorship of the 400-man federal and state raid on LaRouche political headquarters on Oct. 6, 1986. On Oct. 24, 1989, the jury in Roanoke, after deliberating seven and a half hours, returned a guilty verdict on all nine counts of selling unregistered securities, failure to register as a securities broker/dealer, fraud, and conspiracy, and recommended *a sentence of 77 years in prison*. On Dec. 1, trial Judge Clifford Weckstein confirmed this sentence!

The indictment in this case dates from Feb. 17, 1987. At that time the Commonwealth of Virginia had not yet ruled that political loans were securities. A temporary restraining order against further loans was issued two days after, but it was not until March 1987 that the State Corporation Commission ruled, after some initial hesitation, that the notes of indebtedness issued for political loans were "securities," and the state authorities issued a "cease and desist" order against further issuance of such notes.

The trial for Mike Billington in Virginia was scheduled for April 1989 in Leesburg, scene of the October 1986 raid, where the local press had run a four-year hate campaign against anyone linked to Mr. LaRouche. The full impact of that contamination of any possible jury became clear when in April 1989, Rochelle Ascher was convicted on all counts and sentenced to 86 years in prison. (*See* section B. 3. *infra*.) The judge in the case was Carleton Penn, who in February 1989 grudgingly agreed that there was no such thing as a fair jury in Loudoun County for defendants linked to LaRouche, and granted Billington's motion to move his case to a different location. Trial was set for July 5, 1989.

At a pre-trial hearing before Roanoke Circuit Court Judge Clifford R. Weckstein on June 7, Billington's counsel, Jim Clark, filed a motion to withdraw, citing differences that had arisen concerning the conduct of the defense, in particular, "the witnesses to call in [Billington's] own defense," and emphasizing that the differences involved "more than trial strategy." At that time, attorney Clark refused to reveal the precise nature of the differences, saying they would "implicate the attorney-client privilege" and "could reveal all or part of [Billington's] theory of defense."

Judge Weckstein accepted a motion for Brian Gettings to step in as Billington's attorney of record. Gettings stated for the record that he did not have the same difficulty that Mr. Clark had, a clear reference to trial strategy. At that time, the trial was rescheduled for Sept. 19, 1989. At the June hearing, Judge Weckstein made clear that a defendant is uniquely responsible for three decisions in his case: whether to plead guilty or innocent; whether to have trial by jury; whether to testify on his own behalf.

Up until two days before the trial started, there was a

clear outline of the strategy, tactics, and witnesses to be called by the defense agreed upon by Mr. Billington and his attorney. Both were committed to use the trial in Roanoke to present a complete defense to the jury that had been prevented in the mistried Boston case (where Billington had been a defendant, too), as well as in Alexandria.

In a pre-trial hearing on Sept. 14, Judge Weckstein denied the convincing defense motion to dismiss the case on grounds of double jeopardy. The judge ruled that even though the acts cited in the Virginia indictment derived from the same evidence on which Billington was convicted in Alexandria, the state of Virginia nevertheless had the sovereign right to bring its own charges against the defendant. Ultimately, the exact same witnesses, testifying on the exact same evidence, testified against Billington in Roanoke.

Judge Weckstein suggested to Brian Gettings, that Billington should consider waiving the right to a jury trial because, "judges in this part of Virginia do not set aside jury sentences." After that hearing, attorney Gettings told his client, that he could not wage the kind of defense Billington wanted unless he gave up his fundamental constitutional right to a jury trial. Gettings argued that a judge would be more lenient than a jury in sentencing, were Billington found guilty. Billington asked for time to consider and consult with other lawyers and friends.

This he did, and concluded that the only acceptable result was total acquittal, which he believed could only be possible in Virginia with a jury trial. He refused to be intimidated by the threat of a 90-year sentence, and insisted that presenting the whole truth was the only chance for justice.

Mr. Gettings strangely reacted to his client's decision with rage and insults, accusing him of offending his professional pride, denouncing him as mad and acting under orders from LaRouche, although he admitted at the same time that the choice of a jury trial is entirely up to the defendant and that the trial was moved out of Loudoun County in the hopes of finding a fair jury elsewhere.

At an emergency hearing on Sept. 18, the eve of scheduled trial, Brian Gettings introduced a motion to withdraw from the case, charging that "irreconcilable differences of opinion now exist" as to how to proceed in defending the case. "These differences are fundamental . . . Counsel . . . now has reason to believe that . . . Mr. Billington's free will is so impaired that he cannot intelligently assist counsel in making decisions as to how best to try the case."

Gettings's motion was carefully crafted to invoke the Virginia statute calling for Billington to be declared incompetent by the court. On the suggestion of the prosecution, Gettings seconded a proposal for Billington to undergo psychiatric evaluation, against which the defendant protested.

At the same time, the second track of egregious violations of civil liberties came into play. During the trial, Billington was detained at the Roanoke County jail, since on or about Sept. 8, 1989, when he had been moved from a lowest level

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*Michael Billington: stabbed in the back by his own attorney, and sentenced by the judge to 77 years in prison.*

federal security facility. For reasons never explained, Billington was immediately placed in solitary confinement, and allowed to make phone calls only to his attorney. He was held in a 9-by-12 cell 24 hours a day, given only three hours a week in the gym to exercise, and no calls but to his lawyer. He was not even allowed to call his wife, who could talk to him through a glass window only two days a week for 15 minutes. On Sept. 16-17, while Billington was considering the issue of a jury trial, Sheriff Cavanaugh suddenly withdrew paralegal visitation rights to the two people who had worked on his case for two and a half years. On Sept. 23, the sheriff issued orders to prevent Billington from having telephone contact with any attorney other than Brian Gettings. So he was effectively cut off from contact with everyone except an attorney who was committed to proving his client mentally incompetent to assist in his own defense. On Sept. 30, a third and the last remaining paralegal allowed to visit Billington, Sanford Roberts, found his permission was denied. Even several weeks after sentencing, Billington was still held in solitary confinement, from which he was released no earlier than Dec. 21, 1989, and returned to federal custody!

On the evening of Sept. 18, Billington did allow local psychiatrist Dr. Conrad Daum to interview him for one hour in the jail. The examination included many questions about Billington's political beliefs. The following morning, the local newspaper blared: "LaRouche aide trial delayed: Billington to undergo mental test," and quoted Mira Boland, director of the Fact-Finding Division of the Anti-Defamation

League, which had attacked the LaRouche movement for the last 20 years, describing it as a "cult" directed by LaRouche.

On Sept. 19, Dr. Daum testified in court that Michael Billington was competent to stand trial. Under questioning from both prosecutor Russell and Gettings, Daum said a second opinion was necessary to determine if Billington suffered from "shared delusional beliefs" and that he was not an expert in cults and therefore would welcome a second opinion. Prosecutor and defense attorney joined forces and immediately demanded a second, in-depth psychiatric examination to be conducted at the Institute of Law, Psychiatry and Public Policy (ILPPP) at the University of Virginia in Charlottesville. A full day's examination was scheduled for the next Monday, Sept. 25.

The hearing concluded with the judge denying Billington's request to change counsel and insisting that attorney Gettings was doing a fine job of defending him.

In a hearing before Judge Weckstein on Sept. 21, Billington submitted a written communication asking to have Gettings released as his defense attorney. Weckstein refused, and reissued an order for a second psychiatric examination despite Billington's objections. The judge did not allow Billington to speak on his own behalf.

On Sept. 24, a *pro se* motion from Billington was delivered to Judge Weckstein's home. In the motion, Billington asked the judge to stop the psychiatric examination and let Billington hire another attorney.

On Sept. 25, Billington was transported to the Institute of Law, Psychiatry and Public Policy in Charlottesville, Virginia. He refused to participate in the second examination and was brought back to Roanoke.

On Sept. 26, Brian Gettings brought in his own lawyer Harvey Cohen to argue his motion to withdraw. Both argued that Gettings could no longer represent Billington, and that Billington was not competent to stand trial, that he was a dupe, being used in a conspiracy of LaRouche and associates while the defendant still had no counsel to protect him against these charges.

After the prosecutor did a total about-face and protested profusely his firm belief in Mr. Billington's competence, the judge declared he found "not an iota or scintilla of evidence" of incompetence. Weckstein upheld Billington's concerns that the ILPPP was not a "disinterested party": In fact, the Institute for Law, Psychiatry and Public Policy is financed by the U.S. Department of Justice and the Virginia Attorney General's office—the prosecutors against Michael Billington—plus the FBI, and enjoys a strong relationship with the latter two; the ILPPP director, Richard Bonnie, prides himself as a forerunner of the movement to decriminalize drugs in the United States, a role that had been exposed and sharply attacked by political friends of LaRouche in the late 1970s.

Judge Weckstein then refused to let attorney John Flannery substitute for Gettings and ordered the trial to begin the next day, with Gettings representing Billington. Despite the judge's finding as to Billington's competency, Gettings said even though he could not prove it, he believed Billington was not using his free will. He even suggested to send his client off to a state mental institution for 30 days' observation.

On Sept. 27, jury selection began. Judge Weckstein conducted most of the *voir dire* of two 35-person panels, all of whom said they had heard of LaRouche and several of whom had read publicity concerning the Billington case. There had been extensive television coverage the night before of attorney Gettings's charges in court that he had been "set up" by individuals in the LaRouche organization concerning his representation of Billington. On the same day the jury was sworn in.

On Sept. 28, the defendant was escorted into the courtroom by three sheriff's deputies, in front of the jury.

From this point forward, Gettings's overriding concern seemed to be to argue for his view that his client was "directed" in his approach to the case, instead of defending him against the criminal charges. The rest of the trial, from jury selection to closing arguments, was an agonizing effort to simply get evidence introduced. The prosecution proceeded to fill the record with the prejudicial hearsay evidence, including, not direct testimony from lenders, but testimony of their children and lawyers.

Billington filed no fewer than four separate motions *pro se*, pressing for substitution of counsel. Two of the motions requested mistrial on the grounds that he could not exercise his constitutional right to testify in his own behalf or to call witnesses, when his own lawyer was looking for any opportunity to prove his incompetence at trial.

The following part of objections which Billington filed Oct. 3 documents how attorney Gettings acted against the interests of his client: "(1) My request that a motion for a change of venue be filed following a full week of TV, radio, and newspaper coverage of my lawyer's efforts to have me declared incompetent and the ADL accusations about 'cults' thereby facilitated in the *Roanoke Times and World News*, was refused by Mr. Gettings. (2) Repeated requests for legal actions to break the complete cut-off of contact with paralegals who have worked on the case for three years and one year have been refused. I am not allowed to speak with the paralegal who is in court during the trial. This is particularly damaging since Gettings continues to maintain I am mentally incapable of assisting counsel. (3) On Wednesday [during the initial jury selection—ed.], I was brought out before the entire body of 24 potential jurors in the custody of deputies. I approached Gettings and objected that the entire panel had observed my entry in custody. Mr. Gettings did not object to this until after the entire jury had been chosen and excused. The court ruled that it was too late to object."

Billington also objected against Gettings's refusal to utilize jointly prepared material in the examination and for the

impeachment of one of the main prosecution witnesses. At one point, the Roanoke newspapers quoted Gettings that a defense strategy citing "government harassment" was not in the best interests of his client! In one instance, Billington sought to call one of his Virginia co-defendants, Richard Welsh, who also was represented by Gettings, to the witness stand. At a hearing to determine the pertinence of the testimony and the conflict issues for Gettings, the prosecutor rallied to Gettings's defense and declared in open court that if calling this witness in Billington's case meant aborting the charges against the witness in Virginia, then he, the prosecutor, would make sure the witness was indicted and prosecuted elsewhere. Gettings was allowed to withdraw as counsel for Mr. Welsh, who was then left without counsel familiar with his case. The Welsh testimony would have been essential for Billington's defense, as Billington documented in a written statement filed with the court. Because of the unresolvable conflicts of interest, he moved for a mistrial, which was denied.

On Oct. 17, attorney John P. Flannery filed an *amicus curiae* brief arguing that the court-appointed counsel for Michael Billington, Brian Gettings, has "acted as a witness against his own client." The brief details the events as they unfolded in Billington's trial. It shows in particular, that no fewer than five off-the-record backroom conferences among prosecutor, judge, and Gettings occurred, in the process of which it was decided that Billington would be subjected to psychiatric examinations. Furthermore, in these conferences, attorney-client confidences between Gettings and Billington were revealed, and, once Billington had filed a motion requesting a mistrial on grounds of the Welsh conflict, judge, prosecutor, and Gettings collaborated behind doors on how Welsh would be summoned as a witness so as to avoid the conflict issue raised!

Judge Weckstein announced on the record, that he would accept the Flannery brief for the record; however, he "would not read it."

On Oct. 19, the court called Welsh to the stand. He invoked his Fifth Amendment privilege, referring to "advice formerly given to me by Gettings and repeated to me two nights ago by my former attorney." Now Judge Weckstein ruled that under the Virginia immunity statute he could not compel Welsh's testimony since it would not afford him the immunity he needed. Thus, Billington was denied an essential witness for his defense.

The jury trial lasted exactly 15 days, from selection to verdict. The coup de grace came with the closing arguments on Oct. 23, 1989. Brian Gettings told the jury that in some cases, these political loans were indeed securities, and implied that his client had committed fraud, but begged for leniency. His parting words were high praise for the prosecution. The judge concluded the day by telling the defendant that, were he in Mr. Billington's shoes, he could not have wished for a better closing argument than Mr. Gettings's. Brian Gettings left town the following morning, and was not in the courtroom when the jury, after only seven and a half hours of deliberation, convicted Michael Billington on all nine counts of securities fraud and assigned a sentence on each count, totaling 77 years. Sentencing was scheduled for Dec. 1, at which day Judge Weckstein confirmed the recommendation of the jury! Prosecutor John Russell, in arguing for the sentence, had said that "Michael Billington was told by his counsel that he had a choice as to whether to proceed with a judge or a jury . . . he chose a trial by jury and he must now live with those results." In addition, Russell had argued that upholding the 77-year sentence would "send a message" to "Billington's co-defendants, who also wish to exercise their right to a jury trial about the result of exercising that right" and it would "send a message to the LaRouche organization which continues to wreak havoc throughout the United States by continuing to raise funds."

Ironically, before trial, Billington had been offered an Alford plea: If pleading guilty as charged he would have received a three-year prison sentence to be served concurrently with his previous conviction in federal court, i.e., no additional jail term!

**Conclusion**

In this case, another political friend of Mr. LaRouche was

- denied constitutional protection against double jeopardy;
- effectively denied the right to jury trial by his attorney's action in filing his motion to withdraw and inflicting well-publicized competency proceedings against his own client;
- denied his Sixth Amendment right to testify on his own behalf, since it is tough enough to face one prosecutor, let alone three: judge, prosecutor, and your own attorney;
- denied his Sixth Amendment right to call witnesses in his own behalf;
- denied his right for counsel and free access to the courts.

## 3. The case of Rochelle Ascher

This sentence is the harshest ever handed down in the history of the courts of Loudoun County and resulted from the seating of a contaminated jury, prejudicial actions by the judge, and a host of serious violations in courtroom and prosecutorial procedure. After the verdict, Judge Penn described the 12 county residents, who had returned the verdict, as the "most conscientious, patient, and attentive jury that I have ever seen."

At a formal sentencing hearing on June 5, 1989, Judge Penn denied all post-trial motions and modified the sentence to 20 years, 10 of them suspended, with restrictions barring political activity by Ascher. (For the incredibly high punishment see section C of this amendment.) During sentencing,


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*Rochelle Ascher: sentenced by a jury to 86 years in prison, the harshest sentence ever handed down in Virginia's Loudoun County.*

Penn announced that he considered the jury verdict "sacred." He denied Ascher's request to be freed on bond pending appeal, because Ascher's conduct was "willful," evidence of guilt was "overwhelming," and "she expresses no remorse." Ascher was arrested in the courtroom and immediately sent to jail, although, under state law, in order to deny bail the judge was required to find that Ascher would not appear when directed, or that she was a danger to herself or to the public.

Judge Penn also announced he was considering a contempt citation against her attorney, John P. Flannery of Leesburg.

Two days later, on June 7, the Virginia Court of Appeals overruled Judge Penn and ordered that Ascher be freed on bond. "We hold that the trial judge abused his discretion in denying bail," the Appeals Court ruled. Some weeks later, in a further attempt, the Commonwealth requested that the Appeals Court reconsider, arguing that Ascher's continued political activity was itself evidence of criminality and a "danger to the public. . . . The record reveals that Mrs. Ascher exercised considerable influence within the LaRouche organization and will continue to do so if conditions are not placed on her bond." Noting that Ascher had been a highly effective fundraiser for the LaRouche movement, Assistant Attorney General John Russell continued: "There must be some restrictions imposed on the defendant's bond, to cut off her activities within the organization."

On July 19, 1989, the Appeals Court denied the Commonwealth's demand; on July 21 a three-judge panel ruled that Mrs. Ascher be allowed to remain free on bond. Ascher's attorney filed notice of appeal on July 3. The appeal is still pending. In Virginia, though, unlike most states, an appeal is not a matter of right. The defendant must first petition the court to grant the appeal.

Both the indictment and the way the trial itself was conducted are highly unconstitutional:

- The indictment charged that Mrs. Ascher was in effect selling securities when she accepted loans from political supporters of Mr. LaRouche. The Commonwealth of Virginia charged the failure to register the securities, to register herself, and the misrepresentations that these loans would be repaid amounted to securities fraud; the Commonwealth contended, and the Court so instructed the jury, that any note or evidence of indebtedness was a "security." In fact however, such political loans had never before been considered securities in Virginia, and the State Corporation Commission only got around to ruling that they were, three months after indictments were handed down on Feb. 17, 1987. The trial judge virtually directed the verdict by instructing the jury that any note was a security, and that Ascher did not have to know that the notes were securities!
- Despite documentation about a four-year history of pre-trial publicity, the majority generated by statements of federal and state prosecutors, which so inflamed the Loudoun community that it was impossible to get an impartial jury, the trial judge denied a pre-trial motion requesting a change of venue. The court forced Ascher to go to trial, even as the sentencing of Lyndon LaRouche and six other Alexandria defendants blared in the area media. "The Commonwealth repeatedly told veniremen that this case was not about LaRouche, although LaRouche's name was invoked no less than 1,500 times throughout the trial," said Ascher's defense attorney John Flannery. Virtually every juror finally selected to sit on Mrs. Ascher's case said he or she had formed an unfavorable opinion about Mr. LaRouche.
- During the trial, there was massive juror misconduct, which was confirmed by post-trial interviews with jurors. The jury misconduct itself should have led to a mistrial.
- Most of the loans in question were not due until after April 1987, when bankruptcies were imposed (please compare section B.1.e. on the bankruptcy issue) on the debtor entities. Nevertheless the judge instructed the jury that in order to come to a guilty verdict, the jury did not have to find that Rochelle Ascher personally intended to violate the law.
- The prosecutors failed to produce exculpatory material known to them prior to trial and did not give notice of the evidence they intended to present, resulting in an "ambush."
- Other issues argued in Ascher's appeal include the court restricting cross-examination of the prosecution's chief insider witness and refusing to grant subpoenas which would have produced evidence to refute him, and allowing the testimony of a witness whom the prosecution cited for three counts of the indictment, although the woman had a stroke and could not remember the financial transactions at issue.