

# Court will hear Billington's appeal

The Virginia Court of Appeals on March 19, granted Michael O. Billington, an associate of presidential candidate Lyndon LaRouche, the right to file an appeal of his 1989 conviction for "securities fraud." The granting of the petition sets the basis for overturning Billington's conviction and barbaric 77-year sentence, in a trial before Roanoke Circuit Court Judge Clifford Weckstein.

Billington was the second defendant to be tried in Virginia Attorney General Mary Sue Terry's "Get LaRouche" prosecutions, and the second to be granted the right to a review of his conviction. On July 26, 1990, Rochelle Ascher, convicted in Loudoun County Circuit Court, had her appeal petition granted. Argument on her appeal was heard in February 1991. Ascher and Billington are both free on bond pending appeal.

The fact that both Ascher and now Billington have been granted the right to appeal is significant. Unlike most states, Virginia does not grant an automatic right to appeal in felony convictions. An appeals court was only established in 1985; prior to that, a mere handful of cases was taken up by the Virginia Supreme Court. Even today, only 24% of all appeals from criminal convictions to the Virginia Court of Appeals are even heard.

"The appeals court's decision to accept Billington's petition is a substantial victory," said Mark Summers of New York, Billington's chief counsel on the appeal. Seven of the 11 issues sought for appeal were granted. The fact that Billington's petition for the right to an appeal was granted, and like Ascher, on the number and types of issues raised, has significant implications for the continuing prosecutions by Terry's office. Trials of eight other associates of LaRouche are still pending, along with five corporations indicted in March 1987. Appeals of convictions in the trials of five others before Judge Weckstein are currently pending, with four yet to be filed, and the court of appeals yet to rule in one, the conviction of Donald Phau.

## Issues for review

The court has agreed to review both constitutional and statutory double jeopardy issues, based on Billington's being tried twice for the same acts, once in federal court and once in Virginia. Both the Virginia Constitution and state statute, as well as the Fifth Amendment to the U.S. Constitution, bar prosecution for the same crime twice. The court will also review the definition of securities given by the trial judge to

the jury, which Billington's attorneys argued misled the jury into determining that a political loan was a security. The court will also consider whether it was necessary for the defendant to have had knowledge that he was selling a security for a finding of guilt.

The court agreed to review whether hearsay testimony that the defense argued was untrue, as well as hearsay testimony of professionals and relatives substituted for lenders who did not testify themselves, was proper. Billington's attorneys argued that this was improper, violating his constitutional right to effectively rebut the evidence presented against him.

The court will also review whether the *voir dire* examination of the potential jurors by the judge prior to their seating adequately probed for bias. The issue of pretrial publicity and community bias in attempting to seat a jury in Ascher's trial—which took place in Leesburg, where LaRouche lived—was the reason Billington's trial was transferred 200 miles south to Roanoke. As in every other case in prosecutions of members of the LaRouche movement, the issue of the massive adverse, inflammatory, and prejudicial press coverage of LaRouche and his associates, was a prominent one in Billington's case. The court will also review evidence on whether there was proper venue on three of the nine counts on which Billington was convicted.

The court declined to review issues concerning the competency of Billington's counsel which arose at trial; they also affirmed the constitutionality of jury sentencing, and the propriety of using demonstrative aids such as charts and boards.

Besides preparing the appeal, Billington is in the process of filing a writ of *habeas corpus* to seek relief on those injustices which the Court of Appeals rejected: the politically sensitive issue of the gross misrepresentation by his counsel, and of Judge Weckstein forcing Billington to go to trial with a lawyer who had effectively joined with the "Get LaRouche" task force and openly aided the prosecution. It was these issues that turned Billington's trial into the travesty of justice that it was, with not just the prosecutorial task force and the trial judge's adverse decisions as adversaries, but his own defense counsel. In this sense, Billington was not only deprived of his constitutional right to the effective assistance of counsel, but essentially had two prosecutors, one of whom was privy to his defense strategy.

In the Ascher case, the appeal issues reviewed also included jury prejudice, the trial judge's instruction that all promissory notes were securities, and the judge's instruction to the jury to consider conflicting "conspiracy" (requiring intent) and "concert of action" (not requiring intent) charges.

With both the Ascher and Billington cases, the fact that Attorney General Terry's office got convictions based on novel legal theories, such as arguing that political loans are securities, could now be overturned by the Virginia appeals court.