The Roanoke railroad: Judge rejects Billington motion for a mistrial

In one of the most extraordinary trials in U.S. legal history, a judge, prosecutor, and defense attorney in Roanoke, Virginia have all joined forces to assure the speedy conviction of a defendant who is facing up to 90 years in prison for political fundraising.

Michael Billington, a political activist and associate of Lyndon LaRouche, filed a motion for a mistrial on Oct. 13, in the "securities fraud" trial currently under way against him in Roanoke County Circuit Court. Billington argued that the conflict that exists between himself and his lawyer, Brian Gettings, has effectively muzzled his defense. Gettings had sought unsuccessfully to withdraw from the case and to have his own client declared mentally incompetent the day before the trial was set to begin on Sept. 28, because Billington had insisted upon his constitutional right to a jury trial.

Billington's *pro se* motions—that is, motions filed on his own behalf—were denied by Judge Clifford Weckstein. Billington's efforts to call a crucial witness on his behalf were also denied. The case is expected to go to the jury shortly.

Billington is already serving a three-year prison sentence as one of the "LaRouche Seven" convicted in federal court on hoked-up "fraud" charges last December.

His efforts to fire Gettings and retain another lawyer, John P. Flannery, were already denied by the judge.

We publish below excerpts from Billington's motion and from an *amicus curiae* ("friend of the court") brief filed at his request by Attorney Flannery.

Statement of Michael Billington

. . .[N]ow I am confronted with my most important decisions at this trial, 1) Whether to take the stand (which I wish to do) and 2) Who to call as witnesses on my own behalf (and there are several I wish to call).

As the government concludes its case, I am about to put on my defense. I am sorry to say that we are no better prepared now, than we were at the outset of this trial. My distrust of Mr. Gettings is at its height, based particularly on what has transpired within the last few weeks. He has asked me to sign notes confirming what each of us has said in our confidential discussions. And these recent events, including this "note-taking" exercise, are all the more disturbing as they confirm that Mr. Gettings still stands by his demeaning opinions about me, the client he is charged to defend, particularly as to the undue influence he alleges others exert over me, claiming as a result, I lack free will.

In my opinion, Mr. Gettings' opinions and statements of "the facts," concerning me and my actions in the past years, as he disclosed them to this Court and to the public at large, are at odds with the views I hold, the testimony I would give from the witness stand, and otherwise make it impossible for Mr. Gettings to call me as a witness or to call many of the individuals I've asked him to summon to my defense. . . .

1. At the outset of this trial, Mr. Gettings charged that Mr. LaRouche (a) "direct[ed]" my decision to insist on a jury trial as well as other decisions . . . (b) masterminded a "set up" conspiracy to "gum up" this trial by manipulating me . . . and (c) implicitly threatened Mr. Gettings, albeit by asking that he be treated charitably, making Mr. Gettings "uncomfortable". . . . Mr. Gettings therefore has an interest in demonstrating that he is correct, that these things are true.

2. The problem is that the government wants to prove the same thing is true, that I am directed by Mr. LaRouche, even as I deny that this is the case. . . .

4. It must be manifest that Mr. Gettings can hardly advise me whether or not to call Mr. LaRouche in my own defense, although pre-trial Mr. Gettings said he intended to debrief Mr. LaRouche for that purpose, to prepare him to testify and told me he intended to summon Mr. LaRouche here to Salem by *habeas* to prepare him further to testify in my defense. But then, just before this trial began, Mr. Gettings publicly attacked Mr. LaRouche as responsible for what was in fact my decision, to be tried by a jury, rather than a judge. Mr. Gettings' personal animus toward Mr. LaRouche was very plainly expressed, as was his distrust of my judgment. There is no doubt that now Mr. Gettings has a stake in how Mr. LaRouche is perceived. And it is independent of his responsibility to me. For Mr. Gettings to put Mr. LaRouche on the stand, he would have to vouch for a witness who would contradict the representations he made to this Court about that witness. Under these circumstances, Mr. Gettings cannot render a disinterested opinion, certainly not one upon which I could rely, and he plainly cannot call LaRouche as a witness.

5. Worse, there is evidence Mr. Gettings' distrust continues unabated. Most recently, on Thursday, October 5, 1989, at the Roanoke County Jail, I met with Mr. Gettings and Mr.

Thrasch. While discussing trial strategy that I had earlier reviewed with Mr. Gettings long before this trial, Mr. Gettings responded by questioning me in a very sarcastic tone, asking me whether this was my opinion "or someone else's." It was in fact "my opinion," and I asked Mr. Gettings to treat me in a civil manner. He then feigned amazement that I, who "had been found sane by the Court," he said, could embrace such an insane trial strategy. As if that wasn't enough, Mr. Gettings then said, "We've got to get this down," and began writing on a sheet of yellow paper. When he finished, he shoved the sheet with his handwritten declaration across the table toward me, instructing me, "Sign this!" I asked Mr. Gettings if he was doing this, asking me to sign this statement, so he could prepare some legal action against me. He said, "I don't know." I refused to adopt the language he wrote. I wrote instead my own account of the matter, and signed that, emphasizing that this aspect of my proposed trial strategy had not changed since we first discussed it, that is, last Spring, before I had retained Mr. Gettings.

6. As Mr. Gettings' position is coincident with the Commonwealth's position, for different reasons, it is in direct conflict with my defense. . . . Mr. Gettings has told me that he will agree to put me on the stand. But I have learned enough about a jury trial to know you cannot just speak your mind when you're on the stand. Consider the fact that I cannot trust my counsel when he's cross-examining the principal government witness. How can I trust him to prepare me to testify? . . .

Conclusion

Under the circumstances, I think the only remedy is for a mistrial. I respectfully ask this Court to grant such application based on what has transpired including the account contained in this statement.

In support of Billington's motion

This memorandum was submitted on Oct. 18 by Attorney John P. Flannery. It was not accepted by Judge Weckstein as part of the court record.

. . . [I]t does now appear that this Court has insisted on Mr. Billington's right to a speedy trial in denigration of other constitutional protections. As a result, [he] is assured of nothing more than that his trial shall be quickly begun and concluded. . . .

13. Until Sunday, September 17th, Mr. Gettings and Mr. Billington had a cordial relationship including the ability to discuss, debate and resolve upon trial strategy. Mr. Gettings had, in fact, agreed to substantial aspects of Mr. Billington's proposed defenses. . . .

14. But then Mr. Gettings reported to Billington that the Court, following a denial of Mr. Billington's double jeopardy motion, urged a bench trial, in a chambers discussion with Gettings. Mr. Billington was not present for this discussion, nor was the conference recorded. According to Gettings, the Court cited a reluctance to reduce jury sentences as its reason for suggesting the bench trial. Billington gave the matter consideration . . . consulted with associates about his decision, and rejected it, insisting on his right to a jury trial, the reason his case was transferred from Loudoun to Roanoke County.

15. Over Billington's strenuous objection, Gettings filed a motion to withdraw on Monday . . . claiming that Billington's decision was not the product of a free mind. His motion tracked the language of the Virginia competency statute. Gettings therefore invoked statutory language to have his client declared incompetent for deciding to exercise a constitutional right. . . .

31. Thus, by frivolously invoking an incompetency hearing of Mr. Billington (this Court found not one "iota" of evidence that Billington was incompetent or could not assist in his own defense), Mr. Gettings unnecessarily opened privileged matters to the prosecution and the public, injecting further prejudicial publicity to potential jurors by his own actions, and otherwise he failed to withdraw from the case in a manner consistent with the ethical rules, that is, protecting the interest of his client. . . .

32. Billington's distrust stemmed from the fact that through no action of his own making—he exercised a Constitutional right—his attorney espoused against him the same prosecutive theories and innuendo concerning the [LaRouche movement] which Billington heard repeated in Boston (without success) and since in other courtrooms.

34. In summary, Billington was unrepresented at his hearing, his rights were in conflict with an attorney attempting to protect his own ethical dilemmas at this point and subsequently in the process, his attorney became a witness against him, in the most fundamental sense.

42. When the critical Commonwealth witness, Wayne Hintz testified, Gettings did not appear to actively pursue a second major defense . . . that nonrepayment was caused by significant government and private interference with the finances of the corporations under indictment. Hintz testified in New York that negative publicity generated from government actions and the March, 1986 Illinois primary had an extremely significant impact on the ability to repay loans. Mr. Gettings was quoted in the *Roanoke Times* on October 9th to the effect that a government interference defense was "not in the best interest" of his client. According to Billington's objection . . . Gettings refused to pursue these lines of inquiry. . . .

43. Since Gettings has apparently rejected this defense publicly and adopted substantial aspects of the Commonwealth's contentions concerning the "beliefs" of [LaRouche's associates] . . . any effort by Gettings to now put on such a defense has already been prejudged by Billington's only advocate of record.

Argument

This Court has a unique opportunity to put at an end the injustice Mr. Billington has suffered by declaring a mistrial. . . .