
Interview: Gerald T. Zerkin, Esq.

Virginia withheld evidence that may prove Joe Giarratano's innocence

February 22 has been set as the date for the execution of Joe Giarratano in Virginia. Giarratano was convicted of the February 1979 rape and murder of Michelle Kline and the murder of Barbara Kline and was sentenced to death. The case has become a cause célèbre internationally for three reasons: There is substantial evidence that Giarratano is innocent of the crimes; Virginia Attorney General Mary Sue Terry has willfully withheld evidence which exculpates Giarratano; Giarratano has become a model prisoner, doing groundbreaking legal work on behalf of other inmates. Gerald T. Zerkin of Richmond is a private attorney for Mr. Giarratano. He gave this interview to Marianna Wertz.

EIR: Can you say something about Mr. Giarratano?

Zerkin: He is extraordinary. In my number of years of representing many prisoners and many criminal defendants, both on and off death row, I can say that he is unique.

You have to understand this in the context of the time that he was convicted of these crimes: Although only 19 or 20 years old, he was a long-term drug addict, alcohol abuser, school dropout, and petty criminal. He is now extremely well-read—politically, philosophically, legally, generally. His legal opinion is highly respected by scholars in the field of capital punishment and habeas corpus law, among others—genuinely respected.

He has enormous concern for his fellow human beings, including those on death row, and is very perceptive of the issues of poverty and race. He's an Italian-American, but he is very conscious of the issue of racism and poverty as it affects the criminal justice system and the death penalty in particular. To give you some glimpse, Joe initiated the litigation to try to force the Commonwealth [of Virginia] to provide counsel in post-conviction proceedings in capital cases. He started this *pro se*. He did it at a time when he *had* counsel, but did it because others on the row did not. And he was aware of the extreme difficulties in getting counsel at that point. . . .

Perhaps even more significantly than that, Joe has developed an extraordinary ability to live his life with integrity in an environment which is designed to do the exact opposite. Clearly, prison in general and death row in particular are not intended to make people live according to their beliefs and

principles. Joe in fact lives his life with integrity. When he thinks the administration does something wrong, he stands up to them nonviolently, but on principle. He takes the consequences of that. He fights the consequences of that, within the legal means that are available to him. But he ultimately is prepared to take the consequence of what he does. . . .

EIR: According to the statement by the Virginia Coalition on Jails and Prisons, which lists you as staff attorney, "additional evidence has come to light which strongly suggests his innocence and shows that not a single piece of evidence ties Mr. Giarratano to the rape and murders." The statement also charges that the Attorney General's Office has "persistently fought a new trial and refused to disclose evidence in the possession of the state which could further exonerate Mr. Giarratano." Could you elaborate on that?

Zerkin: Certainly. As to the latter, the state is in possession of a driver's license found at the scene of the crime, which is not Joe's nor that of the victims, and which was never turned over to the defense. In addition, they refused to turn over the forensic expert's notes or anything else in her file, other than the reports that were actually provided to the defense, which are incomplete. They refused to provide photographs of the crime scene that were not introduced into evidence. All of those are things which they have which they refused to turn over. The crime scene photographs are of particular importance for a couple of reasons. One is that we think that the body in fact was moved in a significant manner and that the other photographs might in fact show that.

Perhaps more importantly, a videotape of the crime scene has been removed from the court file, which was introduced into evidence. It disappeared from the court file at the time we started making our allegations as to Joe's innocence and specifically focusing on some things in the crime scene. That has disappeared. Apparently no one has a copy of that. But that makes the other photographs of the crime scene of particular importance. . . .

The other important thing about these lab notes is that they show this is idle speculation. What happened is that, to tie Joe to the crime scene, they lied on the two drops of blood on one of his boots, which we now know, number one, were not there at the time he was arrested. Number two, they used



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Support Grows for New Trial

Doubts Raised In Virginia Death Row Prisoner Case

Jan Elvin

Capital punishment: the ultimate, the irrevocable penalty. At least 23 people are believed to have been wrongfully executed in this country since the turn of the century, according to an article published two years ago in the *Stanford Law Review*.

Doubts abound regarding the use of the death penalty, its morality, its constitutionality, and its fairness. But surely there is one thing upon which all people will agree: for the state, operating under "color of law," to take the life of an innocent man or woman, would be a monstrous thing which would ill serve the cause of justice.

In the case of Joseph Michael Giarratano, an innocent man may well be executed, unless the Commonwealth of Virginia reverses its rush towards "finality." Giarratano is now on Virginia's death row, having confessed to a crime he does not remember committing, and to which no physical evidence links him.

Background

Ten years ago Joseph Giarratano, then 22 years old, pleaded guilty to a rape and the double murder of Barbara Kline and her teenage daughter in Norfolk, Virginia. A drug addict and alcoholic, Mr. Giarratano suffered from frequent blackouts, delusions and hallucinations. A victim of serious child abuse, he was addicted to drugs by age 11, and first attempted suicide at age 15.

Joe Giarratano had lived with the

moved out around February 3, then visited the home a few nights later. He awakened from a drug and alcohol-induced blackout to discover their dead bodies. Although Giarratano had no memory of having committed the crimes, in his daze and panic he thought he must have, and fled to Jacksonville, Florida.

"While on the bus," he recently recalled, "I remember feeling like I was going out of my mind. By the time I got off the bus in Jacksonville I had decided I

New evidence has been uncovered in 32-year-old Joe Giarratano's case which could prove his innocence, but so far the Attorney General's office in Virginia has refused to grant a new trial.



By Franklin Photography

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Stuart Lewis

Left: A newsletter highlights the Giarratano case. Virginia Attorney General Mary Sue Terry (right) has willfully withheld evidence which exculpates Giarratano.

that to infer that Joe's boots had made some bloody shoeprints that were found at the scene. We now know from the serologist who testified at the trial that she knew that Joe's boots did not make those prints. She had no idea that they were attempting to draw that inference, because she had tested his boots and clearly they did not make those prints.

What's important is that the Attorney General's response to all of this is to say that the blood could have gotten onto him from Michelle Kline (who wasn't the stabbing victim, she was strangled), that she bled vaginally and that that could have been the source of blood on his boots. But, for example, the sheet that she was found on was put into the lab. No report ever came out. If she had bled vaginally, obviously there would be blood on the sheet. It's real important for us to be able to see the forensic notes from the lab in order to debunk the Commonwealth's rationalizations.

EIR: Has the Attorney General made any statement with

respect to the case outside of her rulings?

Zerkin: Her assistant has written to me saying that he won't give us the stuff because we've raised absolutely no question as to guilt and innocence that would justify it! The Attorney General has made public statements at political meetings saying that she has absolutely no question as to guilt or innocence and, quite frankly, in those speeches, misrepresents in fact what the evidence is. She told a group of Northern Virginia Democrats some time ago that just walking by the body you wouldn't have known that Barbara Kline had been stabbed because there was no blood. In fact there was this enormous pool of blood that came from her right there. This is gross misrepresentation. . . .

I think it's . . . a sign of a system unwilling to concede that it could possibly make a mistake. I think it's a really perverse notion. Rather than taking the position that the Attorney General's office remains a safety net in capital cases, such that when legitimate questions of guilt or innocence are

raised, they will take a responsible position, and therefore reduce the risk of executing innocent persons; instead, they seem to abide by the philosophy that if we admit that it's possible for a mistake to have been made, then that will undermine people's faith in the death penalty. . . . We're the only state in the country that makes no exception for what's called the contemporaneous objection rule in capital cases. The only one. We apply it absolutely strictly. If there's no contemporaneous objection, no objection at the time of trial, then you can't raise the issue [on appeal], no matter how fundamental it is. We make no exceptions in capital cases. . . . Their great tool and their whole theory of litigation is never, ever let the court reach the merits of an issue if you can possibly help it. Get everything knocked out on procedural grounds. And so if you loosen the procedural rules even a bit, you're taking away one of their weapons and you create the possibility that courts might actually reach the *merits* of a claim. And they don't want to see that.

EIR: Let me go back to the merits on this case. Joe Giarratano actually confessed to the killings on five separate occasions in contradictory testimony, and subsequently asked to be killed through the death penalty. How does he feel today about those confessions?

Zerkin: Joe is convinced, as anyone would be, that he essentially made them up, that he was trying to make things make sense. On the first four confessions, he had convinced himself pretty much that he had done it. That's before he discovered the drops of blood on his boot, which really convinced him of it. But he recognizes that he was trying to make all of that make sense. He clearly felt an enormous amount of guilt, because these people were his friends. The fifth confession, the only one with any details, is the one given after the police basically told him what they knew about the crime scene and had a long discussion with him. Then they took down this very detailed confession. Joe recognizes them for what they are, which is that they reflect in his delusional, drug-induced state, what he thought at the time, and recognizes they're a product of his then-mental illness.

EIR: What would you ask the public to do in the remaining month and do you hold out any hope that Governor Wilder will respond?

Zerkin: Yes, indeed, we do hold out hope that he will. But the critical factor from the public's standpoint is to continue the extraordinary demonstration of support, by writing and calling to the governor's office, to demonstrate the fact that they consider this unacceptable, that Joe deserves a new trial, because that is what we're asking for; that he deserves a new trial and the state deserves for him to have a fair trial; that that's what justice requires; and that people are very conscious of the governor's responsibility for what happens here. People need to continue to let him know that.

ADL spying targets anti-war movement

by Herbert Quinde

The Anti-Defamation League (ADL) is playing an aggressive role in support of the Anglo-American war effort against Iraq by targeting persons and organizations opposed to the war for police state-style repression.

The ADL has provided the CIA and FBI the excuse for opening a 1990s "Anti-War Suspects File," similar to the Vietnam-era COINTELPRO operation, by demanding an investigation of "potential terrorists" and "anti-Semitic" organizations, using the ploy of concern for U. S. national security or civil rights.

The tactic includes the use of *agents provocateurs*, including ADL-financed "counterterrorism" specialists, who are assigned to whip up, largely through media interviews, hysteria over the threat of Iraqi terrorism in the United States. The use of paid ADL operatives infiltrated into neo-Nazi and right-wing sectlets, which are controlled by the intelligence community, to spout anti-Jewish and isolationist propaganda, is also part of the ADL's repertoire of dirty tricks.

FBI Director William Sessions has announced that his agents are on the search for the terrorists, although he admits that the possibility of a terrorist incident in this country is "low." Arab-American groups are already charging that FBI activity is harassment.

Who is John Rees?

John Rees of the Maldon Institute is one such agent who has surfaced as a so-called terrorism expert with a Jan. 22 "Counterterrorism" White Paper that is making the rounds of the intelligence, law enforcement, and business communities. The theme of the White Paper is that Saddam Hussein, who plans to make America "swim in its own blood," probably has a terrorist in *your* backyard. The report points out that numerous terrorist groups, including Abu Nidal, have "had infrastructures in the United States and Canada for years." The report targets numerous Palestinian groups based in the U.S., as well as the Nation of Islam, led by Minister Louis Farrakhan, as potential terrorists or terrorist sympathizers who should be targeted for repression.

Besides receiving monies from the ADL, the Maldon Institute gets funding from the Allegheny Foundation and the Carthage Foundation. Both are creatures of Richard Mellon