

## Wilder commutes death sentence of famous prisoner

by Nancy Spannaus

Responding to pleas for clemency from a wide spectrum of individuals and groups, Virginia's Governor Douglas Wilder acted on Feb. 20 to save the life of death row prisoner Joseph M. Giarratano. Giarratano, who was convicted of two murders back in 1979, had been scheduled to be murdered in the electric chair on Feb. 22. He would have been the fourth Virginia prisoner to be executed since Wilder took office in January 1990.

Governor Wilder denied the request of Giarratano's lawyers for a conditional pardon, by which he would have been saved from death pending the outcome of a new trial on evidence which has been suppressed by the Commonwealth.

Yet the governor's action has raised hopes in the anti-death penalty community that the barbarous practice, which has been eliminated in most Judeo-Christian nations, can be defeated in the United States.

### International mobilization

Wilder's commutation came after an international mobilization on behalf of Giarratano, whose rehabilitation from a drug-addict to a highly successful jailhouse lawyer brought him significant acclaim. Giarratano's case had even become a big issue in Western Europe.

On May 17, 1990, the European Parliament in Strasbourg, France concluded its study of the death penalty in the U.S. by issuing the following statement:

"The European Parliament

"A. recalling its previous resolutions on the death penalty,

"B. whereas an independent study has shown that at least 100 people have been executed in the U.S.A. this century,

"C. whereas the most cogent argument against the death penalty is the risk of convicting and executing an

innocent person,

"D. whereas in particular:

"(a) Joseph M. Giarratano, who has been on 'death row' in Virginia since 1979, was condemned to death on the basis of very controversial testimony,

"(b) in the State of Louisiana in the United States a death sentence is to be carried out on Dalton Prejean, a 30-year-old black U.S. citizen, who was sentenced in May 1978 for the murder of a white policeman; noting also that evidence to the effect that Prejean had suffered brain damage, was borderline mentally retarded, and under the influence of alcohol and drugs at the time of the murder was not presented at the sentencing hearing; stressing that the Louisiana Board of Pardons and Paroles has recommended that his sentence be commuted to life imprisonment,

"1. Calls on the Governor of Virginia, L. Douglas Wilder, to ensure that the case of Joseph M. Giarratano is reopened and that the fresh evidence is assessed in open court in order to avoid the possibility of executing an innocent man;

"2. Appeals to the Governor of Louisiana to commute the death sentence;

"3. Calls on the various States of the Union in which capital punishment is still used to review their legislation with a view to abolishing the death penalty;

"4. Instructs its President to forward this resolution to the Commission, the Council, and the Governors of the States concerned."

Mr. Prejean was not saved from the death penalty, but Giarratano now has been, in a halfway measure by the governor. This fact is not unrelated to the domestic mobilization on Giarratano's behalf, which brought together a grouping of white and black, conservative and liberal, public and private

individuals to demand that he get a chance to confront, and challenge, evidence against him which he did not have the opportunity to challenge in his first trial.

The leading members of GRACE, the Giarratano Review Action Committee, include such diverse figures as the Hon. Ramsey Clark, Joseph Rauh, Jr., Richard Viguerie, James J. Kilpatrick, and actor Mike Farrell. The group carried out major publicity campaigns in the United States, which succeeded in getting four programs on CBS's *Nightwatch* and a segment on ABC's *20/20*.

### Focus on Mary Sue Terry

The governor's action commuting Mr. Giarratano's death sentence to life imprisonment with a possibility of parole after 25 years, explicitly left the decision about whether the prisoner would be granted a new trial in the hands of Attorney General Mary Sue Terry. She promptly announced on Feb. 22 that she would take no such action.

"Mr. Giarratano has received the benefit of exhaustive legal review and Governor Wilder has shown compassion in sparing his life through the clemency process," said Terry in a prepared statement. "Like Governor Wilder, I am intimately familiar with the facts in the case, and I am convinced that Mr. Giarratano committed the crimes of which he stands convicted. He is not entitled to a new trial, and I shall initiate no further legal proceedings."

In a recent interview published in *EIR*, Gerald Zerkin, Mr. Giarratano's attorney, said that Miss Terry has been withholding evidence which would prove his client's innocence. "It is a sign of a system unwilling to concede that it could possibly make a mistake," said Mr. Zerkin at the time. "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. I think their position is nonsensical."

On Terry's decision against a new trial for Mr. Giarratano, Mr. Zerkin said, "Obviously, we're disappointed. It's unfortunate that [Terry] decided to do this without even waiting for the petition [for a new trial] to be filed. Of course, we will not stop now. We will proceed, but it will take us some time to determine what our options are, and to make a decision as to how to proceed."

Governor Wilder, unlike the Attorney General, stated that he recognized the merits of the case. Walter A. McFarlane, a lawyer for Wilder's policy office, said that the governor "looked upon [the case] as an appellate court would, taking into account all the facts and law. . . . People will say that many people knocked on the door and that that was political pressure. But that was not the case."

The governor stopped short of reining in his Attorney General. In his six-page decision, Governor Wilder fell back on the proposition that there had never been an instance "in which any governor in the United States or any U.S. President has ever extended his clemency powers in a manner that

has either granted or allowed a new trial for any person convicted of a crime."

But there is ample evidence to demand a new trial. In a statement earlier this year, The Virginia Coalition on Jails and Prisons criticized the Attorney General's office, for having "persistently fought a new trial and refused to disclose evidence in the possession of the state which could further exonerate Mr. Giarratano."

The new evidence, said Mr. Zerkin on Feb. 22, "falls into three categories. One category is genuinely evidence that wasn't known at the time at all. A second category would be evidence the significance of which was not properly understood, and can only be properly understood in light of some newly discovered evidence. And, the third part is evidence which was there, but which was just misunderstood."

As examples, Mr. Zerkin said, "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."

Additionally, "The crime scene photographs are of particular importance. . . . We think that the body in fact was moved in a significant manner and that the other photographs might in fact show that. . . . 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. Apparently no one has a copy of that."

And, said Mr. Zerkin, "We have an expert who thinks that this was done by somebody who is right-handed. Not only is Joe opposite-handed, but he has a neurological deficit on that side, of longstanding and of some significance. We think the stabbing of Barbara Kline was committed from behind and the whole position of the body then becomes critical to the question of how that murder was committed. . . ."

"To tie Joe to the crime scene, they relied 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 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."

Despite this new evidence, said Mr. Zerkin, Mary Sue Terry's 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 misrepresents in fact what the evidence is."