

Letters to the Editor

More about Virginia judicial barbarism

The cover story from the most recent *EIR* [Vol. 18, No. 49, Dec. 20, 1991, "Virginia: A case study in judicial barbarism"] you sent is very good. Though one case was cited with a slight factual error: Jimmy Clark is white, not black. Also a significant feature of this case was overlooked, specifically as it pertains to [Attorney General Mary Sue] Terry, and another death row case (Wilbur Evans, who is now legally dead). Terry was so enraged by Jimmy's case that her office doggedly sought to change the law, and achieved their goal.

At the time the trial judge reversed his death decision, Virginia law mandated that the prisoner receive life in prison. Ultimately Jimmy survived. But Terry sought to change the law at which time there was another case, which was overturned on a sentencing issue (Evans). Terry's office appealed the decision to keep the [Evans] case alive until the law was changed, and for no other reason. Terry managed to get the legislature to change the law, to allow for a new sentencing hearing instead of the automatic life sentence. As soon as the law passed, she dropped her original challenge in Evans's case, confessed error, and agreed to allow a new sentencing hearing. Evans was removed from the general prison population and resented to death under the new law. The application of *ex post facto* laws is forbidden under both the Virginia and U.S. Constitutions. Yet, through procedural manipulation and subterfuge, Terry succeeded. After it was too late, evidence surfaced, in writing, that Terry planned all of this with malice aforethought.

I noticed another error. In the case of *Murray v. Giarratano*, the [Supreme] Court did not hold that death row prisoners "enjoyed no right to effective counsel after his first round of appeals." That issue had been decided earlier in the case of *Ross v. Moffitt*. What the Court decided in *Giarratano* was that the prisoner had *no right to counsel* period (illiteracy and mental retardation notwithstanding). I initially filed that case to assist Earl Washington, whom Terry's office sought to legally murder before he could even begin the appeals process (Earl is men-

tally retarded). Earl was told to file his own appeal or die. Earl Washington is innocent, and we are going to prove it. His case is much like mine. Terry's office is using procedural default to kill him. Only this time they made a major mistake and we have outsmarted her: The Fourth Circuit just remanded Earl's case back for a hearing. Earl isn't out of the woods yet. The Fourth Circuit in its order stated that if Earl's trial lawyer can explain why he failed to present the "clearly exculpatory evidence" he had in his possession to the jury, then the District Court could dismiss the appeal! The lawyer didn't present it because he was incompetent. Yet, though he is convinced Earl is innocent, this particular lawyer is now a judge. Will he now admit that he was incompetent or will he cover himself by saying it was a tactical decision? Because he's charged with ineffectiveness, he now becomes a witness for Terry's office, and is considered hostile from our standpoint. Will the good judge admit he was incompetent? We will soon see.

Another point I wish to raise concerns the "American Declaration of Human Rights" (OAS). The new federal crime bills that expand the death penalty are in direct violation of the provisions of that Declaration, which bars the expansion of the death penalty. The U.S. is a signatory to that treaty. Someone should raise this issue with the OAS. The lack of counsel on appeals also violates the same.

Another issue that I would like to see publicized. For over a century now, the legal establishment in general and judges in particular have been lying to juries in criminal cases. Judges tell juries that it is their duty to find the facts in a particular case, but that it is the *judge's* job to decide the law; and that they must follow those instructions. This is false historically and wrong under current law. The legal establishment knows this, but refuses to tell a jury of its power; and will not let a criminal defendant do so (or his attorney). Jurors have the inherent right and duty to *judge the law as well as the facts*. And if a jury exercises this power it will be recognized by the court[s], and upheld. But no court will tell a jury by instruction or otherwise that it possesses this power. Instead they will openly lie to the jury and say that it is for the judge to decide

the law, and then they bar the defense from telling the jury the truth under pain of penalty. And they get away with it!

Joe Giarratano
Craigsville, Virginia

Editor's Note: We are pleased to print these clarifications. As reported in our article, Joe Giarratano is serving a life sentence in a Virginia correctional facility. He was on Virginia's death row until February 1991. Less than 48 hours before his date with the electric chair, an international mobilization on Joe's behalf led Gov. Douglas Wilder to commute Joe's sentence to a 25-year life sentence, based on substantial new evidence that could prove him innocent in a new trial. Virginia Attorney General Mary Sue Terry has categorically refused to consider a new trial. In his 13 years on death row, Joe was transformed from a drug addict into a world-renowned jailhouse lawyer, specializing in capital law. He has worked on the appeal of 100 death-row cases, with positive results in 97 of them.

Not enough about LaRouche

A few years ago I heard of Lyndon LaRouche but then he dropped out of the news, and I was amazed to learn that he is a political prisoner.

The reason for this letter is that Lyndon LaRouche is *not* well known, and your paper, though very interesting, says little about him. I do not get the regular newspapers because they do not give the truth in the ongoing events.

Mrs. Patricia Boyd
South Dartmouth, Mass.

The Editor replies: Lyndon LaRouche speaks best for himself, through his writings. Your complaint is justified, but it is really against the powers who put LaRouche in prison, a situation which has sharply curtailed his ability to write. The 69-year-old statesman has, however, penned three books in prison, now printed in one volume as *The Science of Christian Economy*. *EIR* will soon publish a major news story about his 1992 presidential campaign, including the many endorsements it has received.