

Last Plea by Condemned Inmate Who Has Rare Blend of Defenders

By B. DRUMMOND AYRES Jr.

Special to The New York Times

RICHMOND, Feb. 15 — With a week to go before Joseph M. Giarratano is to die in Virginia's electric chair, an unlikely coalition of conservatives and death-penalty opponents is intensifying the pressure on Gov. L. Douglas Wilder to spare him.

The group, whose members range from Amnesty International to the conservative columnist James J. Kilpatrick, agrees with Mr. Giarratano that there is reasonable doubt that he killed a woman and her teen-age daughter in 1979.

The State Attorney General says there is no reason to overturn Mr. Giarratano's death sentence, and Mr. Wilder, who spoke out against capital punishment decades ago but changed his position in recent years, has given no indication whether he will intervene. But the case has clearly put the Governor and his national political ambitions in a tight political spot, forcing him to take sides on the highly inflamed issue.

Mr. Giarratano, a beefy 33-year-old eighth-grade dropout and former drug addict, has been on death row for 12 years. In a recent interview in the death row at the old State Penitentiary at Richmond, he said, with a glint of gallows humor, that he was "hanging in there."

Seeks Final Look at Evidence

All he asks, he said, is a final re-examination of the evidence presented at his trial, as well as other evidence that turned up later. He contends this evidence will show conflicting confessions and an absence of physical evidence connecting him to the victims.

Mr. Giarratano (pronounced JAR-TAHN-o) has built a national reputation as a "jailhouse lawyer," framing not only his appeals but also those of other inmates, some in prisons in other states. Recently, an article he wrote on prisoner appeals was accepted for publication by The Yale Law Journal.

His plea to Governor Wilder is his final appeal, the ultimate test of his self-acquired legal skills as well as the skills of lawyers who have helped him in his pleadings.

His plea is also the final test of the persuasiveness of the ideologically diverse group that has come together on

Blocked due to copyright.

Timothy Wright for The New York Times

Joseph Giarratano, a "jailhouse lawyer" who is awaiting his final appeal on death row. An article on prisoner appeals by Mr. Giarratano may be published in the Yale Law Journal.

his behalf over the past few years. Its members tend to steer clear of arguments about capital punishment, since they come down on both sides of the issue. What they agree on is that Mr. Giarratano should not have been convicted on the basis of the evidence, and that evidence that came to light after his trial makes his conviction even more suspect.

"Under the law, the Commonwealth had to prove Joe's guilt 'beyond a reasonable doubt,'" Mr. Kilpatrick wrote in a recent column. "I have spent hours brooding over the record. I am filled with reasonable doubts."

In arguing that he should be granted a new trial, Mr. Giarratano at no point insists that he was innocent. He acknowledges that he has a long record of crime, including grand larceny, assault and escape, and that he was in Norfolk with 35-year-old Barbara Kline and her 15-year-old daughter, Michelle, on that cold February night in 1979 when they were raped, stabbed and strangled. But he says he was too high on drugs and alcohol to remember what happened, though shortly after the murders he confessed to them.

He and his defenders say a number of factors lead them to believe that somebody else may have killed Ms. Kline and her daughter, and that the various appellate courts have never adequately considered them. They say Mr. Giarratano made not one confession but five, all under the influence of drugs and while he was in a suicidal state, and every confession laid out a different sequence of events. They say some of the hair, blood and other body fluids found at the scene did not come from him or the victims. They say the evidence suggests that the murders were committed by a right-handed person; Mr. Giarratano is left-handed.

"I don't believe I'm guilty — I hope I'm not guilty — but I really don't know," he said. "What I do know is that I've never really had my day in court. That's why I want a new trial. It's an unusual final plea, but that's all I have left."

Law-enforcement officials argue that Mr. Giarratano has had a full and fair hearing. They say they are impressed by his grasp of the law and by his effort to better himself and help others while in prison, but they insist that he is guilty of a heinous crime.

"The trial was a fair trial and there is no new evidence, only old evidence, something every appeals court has so found," said Bert L. Rohrer, a spokesman for Attorney General Mary Sue Terry. "That said, our reading of the law is that the Governor has the executive power to pardon or commute but cannot invade the judicial world and order a new trial."

Rejections Over Last Decade

Governor Wilder has refused to comment on the case, beyond saying he will make a decision "as soon as possible." In three earlier cases, he ignored or

turned down the last-minute appeals of prisoners headed for the electric chair.

In the 1960's, as Virginia's only black State Senator, he opposed the death penalty, saying it was applied unfairly to blacks. In later years, he dropped that opposition, saying he felt the penalty was being applied fairly as a result of various legislative and legal rulings.

Mr. Giarratano's appeals over the past decade have been rejected all the way up the state legal system, then all the way up the Federal judicial ladder to the Supreme Court.

Other than his guards, he is alone in the decrepit penitentiary, where he was transferred last week to be near the state's only electric chair.

If his final plea fails, Mr. Giarratano will be strapped into the chair at 11 P.M. next Friday and will be killed by a jolt of electricity so strong that, just as in the movies, the lights on death row will dim when the executioner throws the switch.

"I don't know how much longer I can hold up," he said, his voice tinny and

A 'jailhouse lawyer' makes a final appeal.

distant from behind the dirt-streaked window of bulletproof glass that separated him from visitors and, beyond, the world of the uncaged.

Of the 2,400 men and women on death row in this country, few if any have more people watching their case than Mr. Giarratano.

"That's a real comfort to me," he said. "I just hope it all works out. If not, well, come about 11:07 next Friday night, I'll be dead."

11:07?

"That's how long it takes," he replied.

The door behind him swings open. He rises, turns, then halfway through the doorway turns back and waves.

The door shuts. Beyond there is the faint clanking and slamming of steel and the sound of voices growing more distant.