

# Virginia Prisoner Receives Rare Mercy on Death Row

## Governor Denies Jurors' Pleas Moved Him

By MIKE ALLEN

RICHMOND, Nov. 9 — Commuting death sentences has become political poison for governors, sure fodder for some future opponent's attack ads. But Gov. George F. Allen of Virginia, a conservative Republican, granted that rare gift this week after a highly publicized campaign by a condemned man's lawyer, who tracked down jurors in the case and persuaded several to renounce the verdict.

One juror acknowledged in a sworn statement that she had voted to convict based on "a gut feeling" rather than on convincing evidence.

The final meal had been delivered to the inmate, Joseph P. Payne Sr., on Thursday when he learned while watching the 6 o'clock news that his execution by lethal injection, scheduled for 9 P.M., had been canceled.

Mr. Allen commuted the death sentence to life in prison without possibility of parole. The relief came at a cost. Mr. Payne, who has maintained his innocence, was required to sign a statement saying he would not seek a new trial.

"I told Joe when we started this clemency effort that this would be the best he could possibly hope for," said Mr. Payne's lawyer, Paul F. Khoury, of Washington. "This is certainly preferable to the alternative."

Richard C. Dieter, the executive director of the Death Penalty Information Center, a nonprofit group in Washington, said that about 35 death sentences had been commuted in the United States since the Supreme Court reinstated the death penalty in 1976. Recently, the pace has been about one a year, he said.

"This was a courageous decision," Mr. Dieter said. "Commutation has become highly political. Governors are campaigning on the death penalty and coming into office promising justice to victims' families. Commutation is hard for them. It seems to fly in the face of these promises."

Governor Allen, who persuaded the State Legislature to abolish parole in 1994, said his decision was based on a broad review of the case. Doubts were raised by a lie-detector test by the Virginia State Police of an inmate who was the chief witness against Mr. Payne.

"There was more than sufficient

evidence to show he was guilty, but there were some questions as far as I was concerned," the Governor said at a news conference on Friday. "I was able to get some information that I know the judges and jurors did not necessarily receive. Some of the evidence came in after the trial."

Mr. Payne, 40, was convicted of the 1985 murder of another prisoner, David W. Dunford, who was doused with paint thinner and set on fire while padlocked in his cell. The prisoner died nine days later without naming his attacker.

At the time, Mr. Payne was serving a life sentence for the murder and robbery of a store owner in 1981.

In recent weeks, the mother of the burned prisoner asked the Governor

***A politician who strongly supports capital punishment stops an execution.***

to spare Mr. Payne, and 4 of the 12 jurors said they had changed their minds. But in a statement announcing his decision, Mr. Allen said he had ignored those pleas, which received extensive news coverage.

"I am not commuting Payne's sentence of death based on any consideration whatsoever of the affidavits purporting to be recently obtained 'second thoughts' by a few jurors in the original trial," he wrote.

However, Mr. Payne's wife, Ann Payne, a physical therapist who married him while he was on death row, said she thought the public campaign had helped. "It's like in a courtroom when testimony is stricken," she said. "It can't help but color your mindset."

As part of the campaign to clear Mr. Payne, Mr. Khoury, his lawyer, found three dozen inmates, often working only from nicknames like Jubilee and Superfly, who had seen or had information about the prison attack. Then he hired three female investigators to visit the jurors and present the new evidence.

The investigators took along a notary public, also a woman, to create on-the-spot affidavits from jurors who had changed their minds. "Women are less intimidating," Mr. Khoury said. "The aim was to find out, 'If you had heard this evidence during trial, what impact would it have had?'"

One juror, Phyllis Joan Forrester, said in an affidavit that she doubted the inmates who had testified against Mr. Payne. "We did not believe much of what any of those guys said," she wrote. "Our decision to find him guilty of this crime was based on more of a gut feeling we all shared that he was guilty."

Mr. Payne signed the conditions of his commutation on Friday. He agreed not to make money from book, film or television rights to his story. Instead, any such fees or royalties are to go to a program to benefit victims of crime and their families.

Mr. Dieter of the Death Penalty Information Center criticized the requirement that Mr. Payne waive a new trial. "With the death penalty hanging over your head, that's a bit too much coercion," he said.

"I don't think the Governor should be afraid of a new trial," Mr. Dieter added. "Clemency is splitting the middle of guilty and innocent. If Joseph Payne is innocent, he should not be serving life without parole."

On Friday, Mr. Payne was still in the "death house," the building where Virginia executions are performed, at Greensville Correction Center, 60 miles south of Richmond. State officials said he would be moved to a regular cell in about a week.