

THE RUTHERFORD INSTITUTE

JOHN W. WHITEHEAD
Founder and President

INTERNATIONAL HEADQUARTERS
Post Office Box 7482
Charlottesville, VA 22906-7482
U.S.A.

Telephone 434 • 978 • 3888
Facsimile 434 • 978 • 1789
E-Mail • staff@rutherford.org
Internet • www.rutherford.org

INTERNATIONAL OFFICE
CENTRAL AND EASTERN EUROPE
Budapest, Hungary

November 17, 2009

Via Facsimile & U.S. Mail: (804) 371-6351

The Honorable Timothy M. Kaine
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor Kaine:

During Chief Justice Earl Warren's last day on the United States Supreme Court, three decisions were handed down with the Chief Justice in the majority in each. As the *New York Times* recounted, "All three were criminal cases, and in each the Court broke new legal ground in enlarging the rights of the accused." It was a fitting end to a tenure on the bench that was undergirded by the belief that "it is the spirit and not the form of law that keeps justice alive. The beginning of justice is the capacity to generalize and make objective one's private sense of wrong."

As your time in the governor's mansion draws to a close, you, too, have a unique opportunity to act with justice enlivened by the spirit of the law. I refer to the plea for clemency and a re-trial by Joseph Giarratano, an inmate in the custody of the Virginia Department of Corrections (VDOC) who has worked tirelessly over the past 30 years to improve prison conditions for other inmates and exonerate those wrongfully convicted, such as Earl Washington.

Giarratano's time in prison serves as a model for what true rehabilitation and reform are all about. Indeed, he has so significantly transformed his life and character through public service, scholarly achievement and inmate advocacy programs that he deserves to have his case looked at more closely.

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Although the facts of Giarratano's case are well known, new evidence has emerged since his initial trial which renders the case made against him demonstrably weak and his subsequent conviction highly questionable.

The more salient facts of Joseph Giarratano's case are as follows:

After a hurried half-day trial, Giarratano was tried, convicted and sentenced to death for the 1979 murder of 44-year-old Barbara Kline and her 15-year-old daughter, Michelle. Despite the fact that he was unable to remember the events of that day and unsure of what had happened, Giarratano turned himself into the police and confessed to the murders. The conviction was based on circumstantial evidence and five mutually contradictory confessions from the drug-addled Giarratano, none of which are consistent with the evidence. In addition, it is now believed that the stabbing and strangulation were committed by a right-handed person. Giarratano is left-handed.

The circumstantial evidence in the case has been shown to be extremely flimsy. For example, although bloody shoe prints were found in the apartment by police after the murders, none of the prints match footwear belonging to Giarratano. Moreover, the blood which was found on Giarratano's boots did not match that of Barbara Kline, and of the 21 sets of fingerprints found at the scene, only one set—found at the opposite end of the apartment to where the women were murdered—matched his. Similarly, of the hairs found on or near Michelle Klein's body, a number of them were never identified, and only one was shown to be consistent with Giarratano's hair. Moreover, the prosecution did not make any claim, nor did it demonstrate, that the sperm cells found in Michelle belonged to Giarratano. Finally, although the driver's license of another individual was found at the scene of the murders, the Commonwealth has repeatedly refused to turn this evidence over to Giarratano's defense team.

Despite these highly questionable facts, Joseph Giarratano was convicted of capital murder and sentenced to death. An eleventh-hour intervention by Governor Douglas Wilder in 1991 led to Giarratano's sentence being commuted to life in prison without the possibility of parole. Unfortunately, the courts have been so procedurally limited by way of laws created by the Virginia legislature that no court has ever considered all of the evidence casting doubt about Giarratano's guilt.

At the very least, Joseph Giarratano, who has been a tireless champion of civil rights, writing for the *Yale Law Journal* and acting as a tenacious advocate for others in jail, deserves the chance to stand before a judge and jury and attempt to prove his own innocence. Indeed, Giarratano's case bears a number of startling similarities to that of Earl Washington, who served 17 years on death row for a murder he did not commit, including the fact that Washington willingly confessed to the crimes, and his confessions were the only credible link between him

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and the crimes he was alleged to have committed. Furthermore, like Giarratano, Washington was time barred by Virginia law, which allowed a defendant 21 days to introduce new evidence.

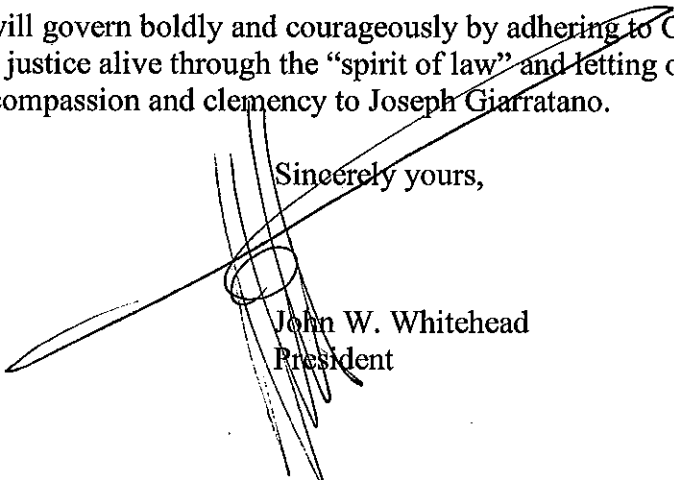
For the reasons outlined above, I urge you to act in the manner which justice demands and grant Joseph Giarratano his much-deserved day in court.

It is a hard road the United States judicial system must walk in doling out judgment. Yet as our leaders strive to uphold the rule of law, I believe we must endeavor to be willing to acknowledge the flaws within our judicial system and government and work to fix them.

As Anthony Barkow of NYU School of Law, writing for the *Washington Post* in January 2009, observed, "It takes a brave governor to recognize that sound government sometimes means having the guts to tell people that the criminal justice system has gone too far. Kaine's critics can use all the tough-on-crime rhetoric they want to try to get elected. But Kaine actually has to govern."

It is my hope that you will govern boldly and courageously by adhering to Chief Justice Warren's advice about keeping justice alive through the "spirit of law" and letting one of your final acts of office be to show compassion and clemency to Joseph Giarratano.

Sincerely yours,



John W. Whitehead
President