Governor Denies Jurors' Pleas Moved Him

By MIKE ALLEN

RICHMOND, Va. — Commutation of 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 them "to reverse their 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 Payne Sr., on the day he learned while watching the 6 p.m. news that his execution by lethal injection, scheduled for 9 p.m., had been canceled. Mr. Allen commuted the death sen- tence 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 H. Khouly, of Washington. "This is certainly preferred over execution."

Richard C. Dieter, the executive director of the Death Penalty Information Center, a nonprofit group in Washington, said that about 35 death penalty cases are pending in the United States since the Supreme Court imposed a moratorium on death penalty in 1976. Recently, the pace has been about a year one, he said.

"It's been a dangerous decision," Mr. Dieter said. "Commutation has been a highly political. Governors are campaigning on the death penalty issue and reaching out to office prom- ising to justice to victims' families. Com- mutation has been hard for them. It seems like a mark of weakness.

Mr. 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 identified as a witness against Mr. Payne. "There was more than sufficient evidence to show he was guilty, but there was considerable doubt," Mr. Allen said on conference on Friday, "I was able to see the statement that I know the judges and juror did not want to see the evidence came after the trial."

"It's bound to happen" in the 1986 murder of another prisoner, Da- vid W. Duenford, who was doused with lighter fluid before being shot in the head and burned. Mr. Duenford signed a confession letter without naming his attacker.

That day, Mr. Payne was serv- ing a life sentence for the murder and robbery of a store owner in 1981. The victim's wife, the only witness who saw 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 three-judge panel rejected that mor- thm. But in a statement announc- ing his decision, Mr. Allen said he "did not doubt that those three judges re- ceived extensive evidence coverage and reviewed the entire sen- tence of death based on any consider- ation.

"There was no other way to reach the purporting to be recently obtained "second thoughts" by a few jurors in there to support the finding of your mind."

However, Mr. Payne's wife, Ann, said last week, "I married him while he was on death row, said she thought the public campa- ign had helped. "It's like sitting in a courtroom when testimony is strick- ing down everything that comes into your mindset."

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

The investigators took along a ro- tary public, also a woman, to create on-the-spot affidavits from jurors who changed their vote. "Women are less intimidating," Mr. Khouly said. The lawyer wanted to find out, "If you had heard this evidence during trial, what impact would it have had?"

One juror, Phyllis Joan Forrester, said she had read the inmates who had testified against Mr. Payne. "We did not be- lieve much of what any of those guys said," she wrote. "Our decision to find him guilty was based on the crime was based on more than a gut feeling we all shared.

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. Any such rights, he or his family- ies are to go to a program to benefit victims of crime and their families.

Mr. Dieter of the Death Penalty Information Center criticized the require- ment that Mr. Payne waive a new trial. "We may be using our head, hanging over your head, that's a bit too close," Mr. Dieter said.

"I don't think the Governor should be the one to say the crime was being served life without parole."

Mr. Dieter added, "Clarence is splitting the middle of guilt and innocence. If Jo- seph Payne to innocent, he should be serving life without parole."

The death house building with the name of a building that was perfor- med, at Greenville Correction Center, 60 miles south of Richmond. State officials said he would be moved to a regular cell in about a week.