

USA (Virginia)Derek Rocco Barnabei, white, aged 33

Derek Barnabei is scheduled to be executed in Virginia on 14 September 2000. He was sentenced to death in 1995 for the rape and murder of 17-year-old university student Sarah Wisnosky in Norfolk, Virginia, in 1993.

Wisnosky's body was found in the Lafayette River in Norfolk on 22 September 1993. She died from multiple blows to the head and there were signs of strangulation. Barnabei, with whom Wisnosky had a sexual relationship in the weeks before her murder, was arrested in December 1993 in Ohio, where he was living under an assumed name.

Forensic investigation established that Wisnosky had been attacked in Barnabei's room in the house he shared with four other young men. DNA analysis established that semen found in the victim was Barnabei's. No other physical evidence connected him to the crime. Although the victim's fingernails contained traces of hair, fibre and blood, these were not DNA tested. One expert said that the police investigation, which appears to have focussed on Barnabei from the outset to the exclusion of any other suspect or explanation, was "inadequate and incomplete".

From the time of his arrest, Derek Barnabei maintained that he neither raped nor killed Sarah Wisnosky. He claimed that they had consensual sex on 21 September, that he left her watching television in his room in the company of one of his house-mates and another friend, and that when he returned a few hours later she was gone.

At his trial in May and June 1995, the state presented evidence from the five people present in the house that night, who testified that Barnabei behaved unusually on 21-22 September. However, none of them claimed to have seen or heard a dispute, a struggle, or the disposal of a body. At the sentencing phase, the state presented testimony that Barnabei had acted violently towards other women, and that he was therefore a future threat and should be executed. The defence presented witness testimony to the contrary, including from former girlfriends stating that he had not been violent towards them.

For Barnabei to be eligible for the death penalty, the state had to prove that he had raped as well as killed Wisnosky. Murder without the aggravating factor of rape was not a capital offence. The prosecution presented testimony from the medical examiner arguing that the victim's vaginal bruising indicated that the sex between her and Barnabei on 21 September had not been consensual. Despite the fact that this aspect of the crime could mean the difference between life and death for his client, the defence lawyer made little attempt to challenge the medical examiner's theory and presented no expert testimony or evidence.

On appeal, Barnabei's lawyers presented evidence, such as medical research and affidavits from experts, undermining the state's assertion that Wisnosky was raped. In 1999, a federal District Court found that Barnabei's trial lawyer's performance had been "unreasonable" in not using such evidence to rebut the medical examiner, saying that "if counsel had investigated further, he perhaps would have discovered objective medical evidence casting substantial doubt on [the medical examiner's] testimony as to how the bruising occurred." However, the court ruled that the lawyer's failure had not affected the outcome of the trial and denied the appeal.

Derek Barnabei continues to maintain his innocence. He is seeking DNA testing on the fingernail evidence and on other items from the crime scene, which he claims could point to another person as the murderer. He is also seeking modern DNA-testing of the vaginal swabs taken in 1993, which two experts have stated could possibly reveal evidence that another man had sex with Wisnosky before she died. Three jurors from the original trial have signed affidavits supporting DNA testing.

BACKGROUND INFORMATION

Amnesty International opposes the execution of Derek Barnabei regardless of his guilt or innocence in this undoubtedly heinous crime. It believes that the death penalty is a cruel and brutalizing punishment that has no place in modern day society, as reflected in the number of countries (108) that have abolished it in law or practice. Every execution is a symptom of, not a solution to, a culture of violence, including violence against women.

Since executions were stopped in Illinois because of its "shameful" record of wrongful convictions, the US death penalty has come under increasing scrutiny. The debate within the USA has focussed mainly on the risk of executing the innocent, yet this inescapable risk is only one of the US death penalty's flaws. The US capital justice system remains a lottery: who lives and who dies depends as much on where the crime was committed, who the victim was and who the trial defence lawyer was as it does on the heinousness of the crime.

Since 1977, 77 of the 658 executions in the USA have been carried out in Virginia, more than in any other state except Texas. State legislation and the conservative nature of both the Virginia Supreme Court and the US Court of Appeals for the 4th Circuit have made Virginia's appeals process one of the most accelerated in the USA with one of the lowest rates of reversal.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language, in your own words, using the following guide:

- expressing sympathy for the family and friends of Sarah Wisnosky and acknowledging the seriousness of the crime;
- noting the doubts that surround Derek Barnabei's conviction, which was based on circumstantial evidence, and noting the increasing concern about the reliability and fairness of the US capital justice system as a whole;
- arguing that the risk of fatal error can only be eradicated with the abolition of the death penalty, a move undertaken by more than half the countries of the world;
- urging the Governor to grant clemency to Derek Barnabei, and to endorse efforts to establish a moratorium on executions in Virginia.

APPEALS TO:

The Honourable James Gilmore
Governor of Virginia
State Capitol, Richmond, VA 23219, USA
Telegrams: Governor Gilmore, Richmond, VA, USA
Fax: +1 804 371 6351
Tel: +1 804 786 2211
Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

You may also write brief letters of concern (not more than 250 words) to:
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