

Barnabei's Execution: His Death May Help End Capital Punishment

by Marianna Wertz

Virginia death-row inmate Derek Rocco Barnabei, 33, was executed Sept. 14 for the 1993 rape and murder of his 17-year-old girlfriend, Sarah Wisnosky. He went to his death proclaiming his innocence, and warning Gov. James Gilmore (R) that his execution will "haunt" Gilmore "to the end of his days." "I stand on the firm foundation of innocence, and I will not waver," Barnabei said in an interview with the *Richmond Times-Dispatch* two days before his execution.

Barnabei has become the latest in a series of *causes célèbres* on America's death rows, of men and women whose lives have been championed and their deaths mourned by our leading European allies, not only because they might have been innocent, but because the nations of Europe are committed to ending the barbaric practice of capital punishment in America. Nations which have themselves stopped executing people are rightfully pointing to the hypocrisy of the United States, which proclaims its own human rights record while leading the world both in its rate of executions and the number of its citizens in prison.

Jane Barnabei, the prisoner's mother, is an Italian citizen, and has been mobilizing an outpouring of concern and opposition against the execution in her native land. Three Italian parliamentarians visited Derek Barnabei on Sept. 11 on death row, in response to his mother's exhortations. She told a press conference outside the courthouse on Sept. 11 that she is "ashamed for the state of Virginia"; earlier, she had called it a "police state," where, she charged, she was constantly surveilled by authorities during her son's trial. "My son was convicted by evidence that was planted," she said. "They gave us test results from evidence that was tampered with."

On Sept. 13, Pope John Paul II, who has been the leading voice in the international opposition to America's death penalty practice, renewed his earlier call for clemency for Barnabei, following the refusal of a Federal judge, on Sept. 11, to stop the execution. "I make an appeal for Derek Rocco Barnabei, condemned to death," the Pope said in impromptu remarks that drew applause during his weekly public audience in St. Peter's Square. Invoking the "spirit of clemency," John Paul said he was "again uniting my voice to that of all those who ask that Derek Rocco Barnabei's life not be taken away."

More broadly, John Paul continued, "I hope still, in a more general sense, that we reach the point where capital punishment is renounced, given that nations today have other means of efficiently repressing crime without definitely tak-

ing away the possibility of self-redemption."

The European Union, which has also taken a leading role in mobilizing opposition to the American death penalty, released a statement on Sept. 11, calling on Governor Gilmore to "exercise all powers vested in your office to commute Mr. Barnabei's sentence to any penalty other than capital punishment." The letter, signed by the Ambassador of France (which is the current EU president), the Ambassador of Sweden (the next EU president), and Gunter Burghardt, head of the Delegation of the European Commission to the U.S., states that "public opinion in Europe, especially in Italy . . . is keenly sensitive to his fate. . . . Convinced that throughout the proceedings his case raised many serious questions when scrutinized under the international standards governing the use of capital punishment, prominent Europeans from our member-states and members of the European Parliament in several resolutions have solemnly called on the competent American authorities not to execute Derek Barnabei."

Was Evidence Compromised?

Barnabei had demanded for years that there be a DNA test done on fingernail clippings from the murder victim. He said that the alleged rape was consensual sex (his semen was found in the victim's body), and that the murder was committed by someone else after the two had sex. He argued that the DNA of the murderer would be found under Wisnosky's fingernails.

However, on Aug. 29, two weeks before his scheduled execution, that evidence came up missing from a locked cabinet at the Norfolk Circuit Court. It was found again on Sept. 1, in another room of the courthouse, in a different cabinet. Barnabei's attorneys, the Norfolk lawfirm of Covington & Burling, demanded that Governor Gilmore allow them to inspect the evidence and that a DNA test be conducted on it, and the execution be delayed for the results.

Gilmore, under pressure because of the botched handling of the evidence, reluctantly ordered the DNA test, the results of which he announced on Sept. 12, saying that only Barnabei's and Wisnosky's DNA were found. He did not allow Barnabei's attorneys to examine the evidence.

Andrew A. Protogyrou, one of Barnabei's attorneys, told *EIR* on Sept. 8, before the Governor had announced he would allow a DNA test, that they had filed a civil rights claim on Barnabei's behalf in the Norfolk Federal District Court, in the

Eastern District of Virginia, stating that the relevant officials were put on notice repeatedly within the last three years, that testing was sought in this case. "Now we are requesting a Federal court to step in and inform us — because we believe a cloud has been placed on the evidence — to tell us if it's testable," Protogyrou said.

"At this point, we're saying that the execution has to be stayed, because we have no guarantees that it is testable. . . . These people have known about it, we've told them about it through various letters, and they didn't take adequate safeguards to prevent what could be a destruction or tampering with evidence," said Protogyrou.

At a press conference on Sept. 12, following Gilmore's announcement of the DNA results, DNA expert Barry Scheck said that Gilmore should have allowed Barnabei's attorneys or an independent group to see the evidence before it was tested. "This is one of the most unfortunate courses of conduct I've seen in all of the years I've been doing this," Scheck said. He said that Gilmore's secrecy, in not allowing any inspection of the evidence while it was tested, "is more reminiscent of what goes on in the Kremlin than in the United States court systems, and we've had this problem now in Virginia, particularly with this governor, now for some time."

Attorney and civil libertarian Alan Dershowitz told the press conference that "no one [should] make the mistake of believing that the possible presence of the defendant's DNA under the fingernail of the victim is in any way conclusive proof of guilt."

Innocence Not the Real Issue

Derek Barnabei may be guilty of the crime for which he was executed, despite his protestations to the contrary. Even if the fingernail DNA evidence were tampered with, blood evidence tested for DNA before his original trial had also incriminated Barnabei, as had the fact that, after the murder, Barnabei had disappeared for three months, surfacing with an assumed name, after which he was captured and tried.

The real issue was touched upon by Governor Gilmore himself, in his Sept. 11 press conference announcing the result of the DNA test. Responding to the pressure coming from Europe, Gilmore said, "Now that the guilt of Barnabei has been confirmed, there remains the generalized assault on capital punishment by many in this country and foreign countries. I believe we are entitled to set a moral standard that violent murder will not be tolerated by a civilized people. The rule of law requires that at some point the community is likewise entitled to justice."

The real issue is not innocence. It is justice. As Pope John Paul II insists, there is no reason, in the modern world, to execute anybody in order to achieve justice. Our prison system is fully capable of guaranteeing that those who are guilty will spend the rest of their lives behind bars. EU Commissioner for Human Rights Emma Bonino put it this way, in a Sept. 13 interview with France Antenne 2 television: Guilt or

innocence is not the issue; the death penalty itself is the offense.

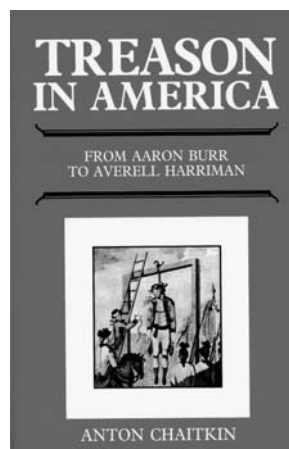
The Pope points to a more fundamental notion of justice, that which derives from the tradition of Western, Platonic-Christian civilization: When the state executes someone, it is taking away forever the possibility of self-redemption, which would provide actual justice to the crime victim. The criminal's admission of guilt, combined with remorse for the crime and a commitment to becoming a better person, serves justice far better than another life being taken.

The cycle of violence which begins with a murder can never be broken with another death, be it state-sanctioned or not. The evidence is clear in America itself: This nation is the last so-called civilized nation to carry out the death penalty, and yet its level of murder and other violent crimes far surpasses that of any of our allies, which have renounced capital punishment.

Hopefully, Derek Barnabei's death, and the outrage it has provoked both abroad and here, where hundreds of people turned out at vigils on the night of his execution, will have taken this nation further down the road to the abolition of the death penalty. If it does so, it will not have been in vain. If it also leads toward passage of the Innocence Protection Act, and moratorium legislation, both now stalled in the U.S. Congress, it will have achieved a real good for humanity.

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