Sniper Trial Defense Is Likely to Focus on Trying to Avoid Death Penalty, Experts Say

By JAMES DAO

VIRGINIA BEACH, Oct. 18 — When lawyers for John A. Muhammad present their opening statements in the Washington-area sniper trial on Monday, they are likely to begin a defense that is less about proving their client innocent than keeping him alive, legal scholars and defense lawyers say.

Mr. Muhammad has pleaded not guilty to charges that he murdered a Maryland man, Dean H. Meyers, at a Virginia gas station last October. If found guilty, he could face the death penalty under two Virginia laws.

Many defense lawyers and legal scholars say the prosecution's evidence against Mr. Muhammad, though largely circumstantial, appears compelling, potentially placing the defendant at the scene of several shootings and tying him to the high-powered rifle used in the killings.

Moreover, the intensity of the news coverage of the three-week rampage, combined with the fact that there have been no similar shootings since Mr. Muhammad and his co-defendant, Lee Malvo, were arrested, have created a powerful perception that the pair was responsible for the crimes, experts said.

As a result, the experts said, it may be extremely hard for Mr. Muhammad's three lawyers to persuade a jury that their client had nothing to do with the killings. Instead, they said, the defense may largely concede that Mr. Muhammad played a role, but raise questions about what that role was in an effort to reduce his sentence to life in prison without parole.

"It's going to be pretty tough to show he wasn't there," said James O. Broccoletti, a defense lawyer from Norfolk who has handled 50 capital murder cases. "It's a strong circumstantial case that he was involved. The question is going to be the degree of his involvement."

The prosecution has said it will try to show that Mr. Muhammad, 42, was the brains and chief instigator of the 13 shootings — 10 fatal — in the Washington area, while Mr. Malvo, 17 at the time, was merely a junior accomplice under his sway.

Calling Mr. Muhammad the "captain" of a "killing team," commonwealth attorneys have charged him under two death penalty statutes. One makes the willful, deliberate and premeditated killing of more than one person in a three-year period a capital offense.

The second makes it a capital crime to kill a person during an act of terrorism intended to intimidate citizens or influence their government. The prosecution has charged that Mr. Muhammad sought to extort $10 million from the government in exchange for ending the killings.

The antiterrorism law is crucial to the prosecution's death penalty case because it provides an exemption from what is known as Virginia's triggerman rule, which requires that a defendant be the immediate perpetrator of a killing in order to be sentenced to death.

A possible strategy of conceding some involvement.

The antiterrorism law gets around the triggerman rule by authorizing the death penalty for a person who ordered an underling to kill as part of a terrorist scheme. The exemption is important to prosecutors because they appear to lack clear evidence that Mr. Muhammad fired the weapon that killed Mr. Meyers.

Mr. Muhammad's lawyers have argued that Mr. Malvo fired that shot, and the prosecution has hinted that they might be right. But prosecutors are trying to build a case that Mr. Muhammad effectively ordered Mr. Malvo to fire the killing shot, and so deserves death.

"Even assuming that Mr. Malvo pulled the trigger, Mr. Muhammad was still an active participant, enabling him to commit the crimes," Commonwealth Attorney Paul B. Ebert, the lead prosecutor, said in The Washington Post.

Mr. Muhammad's lawyers have begun countering those charges by arguing that their client did not control Mr. Malvo. During jury selection over the past week they foreshadowed this argument, asking potential jurors if they could consider the idea that a teenager could act independently of an older man.

The defense has also argued that the antiterrorism law was devised to fight highly structured terrorist organizations like Hamas or Al Qaeda, and not a two-man team in which the older man was more of a father figure than a commanding officer.

"The defense view is that this provision is about organizational structure, and not psychological relations," said Richard J. Bonnie, a law professor and death penalty expert at the University of Virginia.

Finally, Mr. Muhammad's lawyers will probably contend that without evidence that Mr. Muhammad fired the rifle, the jury cannot find him guilty of capital murder under the state's multiple-murder law.

But implicit in all those defenses is the possibility that Mr. Muhammad was somehow involved in the shootings. The prosecution's evidence may have forced the defense to concede that point, experts said.

"The evidence is going to be overwhelmingly that he committed some crime," said Andrew A. Protogyrou, a defense lawyer from Norfolk who has handled 30 capital murder cases. "So then the question becomes: how do you try to mitigate the sentence?"

The commonwealth's evidence is likely to include the blue Chevrolet Caprice, seemingly modified to conceal a shooter, that Mr. Muhammad and Mr. Malvo were arrested in last October; a laptop computer found in the car that had maps and a diag that seemed to place the pair at th scene of several shootings; and a Bushmaster hunting rifle, also foun in the car, that investigators say ha been linked by ballistics tests to th bullets that killed Mr. Meyers an other sniper victims.

Scott E. Sundby, a law professo and death penalty expert at Wash ington & Lee University's School o Law, said that defense lawyers wh faced powerful evidence against their clients risked losing credibilit with juries if they tried to argu innocence.

"What many lawyers do in suc cases is "plead guilt slowly," Mr Sundby said. That is, they gradually acknowledge their client's culpabil ity during the trial, while also intro ducing arguments for why the pen alty should be life in prison.

That may be what Mr. Muham mad's lawyers have already begu to do, he said. "The most successfu defenses in sentencing were thos that from the very first day assume they'd be arguing death and life t the jury," Mr. Sundby said. "Even i the guilt phase, the strategy wa geared toward convincing the jury t come back to life."

month.

"The goal of the site is to promote

Hadden's classroom is equipped with computers for each student and

opinion about religious groups without just going on what I've heard or

movements, said his group looks to Hadden's Web site as a model.

Inmate chooses electric chair over lethal injection

The Associated Press

RICHMOND

Russel W. Burket, scheduled to be executed next week for murdering a woman and her 5-year-old daughter with a crowbar, has chosen to die in Virginia's electric chair instead of by lethal injection.

"It's his way of ending a life he hasn't wanted with an exclamation mark," his lawyer, Andrew A. Protogyrou of Norfolk, said Friday in a telephone interview. "Rusty has never been real happy with the world, never been real happy with himself."

"Rusty has always wanted to die, and he's got someone doing it for him," Protogyrou said.

Burket had tried to commit suicide at least five times before the 1993 slayings of Katherine Tafelski and her daughter, Ashley, in their Virginia Beach home, Protogyrou said. Burket was their next-door neighbor.

Since Virginia gave inmates a choice between electrocution and lethal injection in 1995, only Burket and Kenneth Manuel Stewart Jr., who was executed in 1998, have chosen the electric chair. The other 51 inmates chose injection.

Burket, 32, is scheduled to die at 9 p.m. Wednesday at the Greensville Correctional Center in Jarratt.

In 1993, Burket smashed the skulls of the Tafelskis with a crowbar. He sexually assaulted Katherine Tafelski with the crowbar before killing her.

Burket, who pleaded guilty to the crimes, has an appeal pending before the U.S. Supreme Court and has asked Gov. Jim Gilmore for clemency.

Protogyrou said his client is severely mentally ill and was not competent to stand trial.

"He was so mentally incompetent that the jail medical records state that he had been hallucinating and talking to shadows and monsters" before his preliminary court hearing in 1993, Protogyrou said, adding that Burket has schizophrenia and a personality disorder.

Defense attorneys also say Burket's trial lawyer never explored the possibility that Burket's brother may have committed the crime.

A blue washcloth found at the scene had sperm stains, and DNA testing at the time did not rule out Burket or his brother, Lester Burket, as the killer. Lester Burket was questioned by police but never charged.

In the clemency petition, Protogyrou asks for a more sophisticated DNA test "that would hopefully narrow the scientific probability between Rusty and Lester."

Former Virginia Beach Commonwealth's Attorney Robert Humphreys, who prosecuted Burket, never thought Burket was mentally ill.

"I always thought he was pretty cagey for someone who's supposed to be substandard," Humphreys said in a 1998 interview. "It's obvious he's just kind of jerking around the system."

Virginia Beach Judge Alan E. Rosenblatt said he was impressed with Burket's mental faculties as he watched Burket's videotaped confession in 1994.

Proposal could triple prison time for sex offenders

The Associated Press

RICHMOND

State legislators are considering a proposal to link prison sentences for sex offenders not just to the severity of their crimes, but to the likelihood that they will repeat their offenses.

The policy, recommended by the

safety subcommittee Thursday.

Under the proposal, the recommended sentence would be based on how offenders fare on a "risk assessment" score sheet evaluating factors that studies have shown predict recidivism.

For example, offenders would be assessed points if they are under age

well-grounded research," he said.

The commission tested the assessment on 600 sex offenders who were released from prison between 1990 and 1993 and found recidivism rates of 100 percent for people who scored 44 points or higher, up to 92 percent for people scoring between 34 and 43, and up to 61 percent for

Are we really going to propose giving longer sentences to less-educated people just because they're less educated?"

The sentencing increases would be recommendations only, Kern said, subject to the discretion of judges.

One No

Gilmore Reviews Double Slaying

New DNA Test Is Sought for Man Scheduled to Die Tonight in Electric Chair

By JOSH WHITE
Washington Post Staff Writer

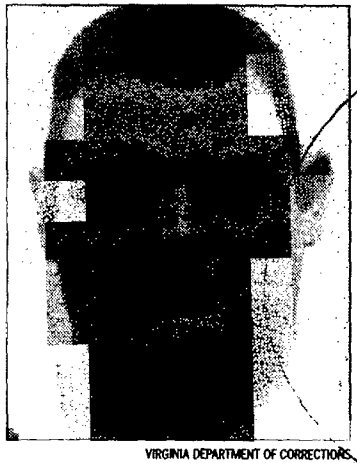
Amid growing national concern that innocent people are being condemned to death, Virginia Gov. James S. Gilmore III has asked to see DNA and forensic evidence in the case of a Virginia Beach man who is scheduled to die in the electric chair tonight.

Gilmore's request comes just two weeks after he ordered new DNA tests in another murder case.

Gilmore (R) has not ordered new DNA tests in the case of Russel W. Burket, 32, who chose the electric chair over lethal injection. But Burket's attorney said yesterday that he hopes the governor will consider making use of new testing technology that could exonerate Burket. It is one of Burket's final hopes. The state Supreme Court yesterday rejected his request for a stay of execution.

Burket pleaded guilty to killing his Virginia Beach neighbor and her 5-year-old daughter in 1993.

Previous DNA tests of semen taken from a washcloth at the crime scene narrowed the possible suspects to 7.8 percent of the white population and did not rule out Burket or his brother Lester, who also was a suspect.



VIRGINIA DEPARTMENT OF CORRECTIONS

Russel W. Burket is scheduled to die for the murder of a Virginia Beach woman and her 5-year-old daughter.

Burket has been characterized by his attorney, Andrew A. Protogyrou, as a mentally ill man who was hallucinating and seeing monsters in the days before he pleaded guilty.

Protogyrou said Gilmore's staff on Monday requested copies of the DNA certificate, forensic lab reports, a draft of Burket's confession to police and copies of newspaper reports from the time of the double murder.

Protogyrou said he has asked the governor to allow new DNA tests to further narrow the possible suspect pool. He said he hopes Gilmore will stay tonight's execution at least long enough to complete a new round of testing.

"Governor Gilmore is a governor, but people also forget that he is a trial lawyer," Protogyrou said yesterday. "Any trial lawyer understands evidence and the importance of getting it right. I think that [Gilmore's staff is] going to examine everything and come up with an intelligent decision, and I am 100 percent confident in that."

The governor's office declined to comment specifically about Burket's clemency petition. But Lila White, a spokeswoman for Gilmore, said the governor and his staff are conducting a "very extensive review" of the evidence. White said the governor's recent decisions to look at DNA evidence are based solely on the circumstances of the two cases and don't necessarily indicate a trend.

"It's very important to take each case as it comes and to treat it individually," White said. "If a case warrants individual testing, the governor has indicated that he will ask for it. It could very likely come back inconclusive, and it's not always the accurate predictor that we hope it might be."

On June 1, Gilmore ordered new DNA tests in the case of Earl Washington Jr., who was sentenced to death after he confessed to the 1982 stabbing of a Culpeper County woman. Washington's sentence was commuted to life in prison in 1994 because of doubts about his guilt.

Washington's case was the first in which Gilmore ordered post-conviction DNA testing. The results are pending. Washington has been in prison for more than 17 years.

White said Gilmore will not make a decision regarding a stay in Burket's case until all of Burket's court appeals have been exhausted.

An appeal before the U.S. Supreme Court argues that Burket was incompetent to stand trial and that he was not properly represented at the time of his confession and guilty plea.

CIA Analyst, Slain in Robbery, Is Mourned

By ARTHUR SANTANA
Washington Post Staff Writer

When John Muskopf Jr. was about 4 years old, he already had begun to amaze his father. The el-

John Muskopf Jr., 28, was shot dead near his home in

from his Arlington apartment to Northwest Washington, where he wanted to help revitalize the neighborhood, starting with his new house.

"He saw the neighborhood was

job. "Sometimes, you'd get a phone call, and you'd say, 'Where are you?' and he'd say, 'I can't tell you,' " his father said. "I know he was working with very sensitive information."

October 19, 2000

DC Home Page

Court Watch
US Supreme Court
DC Federal Courts
4th Circuit
Federal Circuit
DC Courts

Resources
Legal Business
Gov't & Lobbying
Technology Reports
Northern Virginia
Ethics Alert
Practice Focus

Search
DC Archives

Legal Times
Classifieds
Help: FAQ
Subscriptions
Advertising Info
Practice Directories

Special Features
Benefits Survey
Every 6 Minutes
Round Tables
IP Magazine
D.C. 20
Metro D.C. 100
Century Issue
Associate Salaries

From the LT Archives

Virginia Appellate Report

By Jennifer Bier
Monday, September 25, 2000

Thursday, Sept. 14, was a very good day for convicted murderer Walter Mickens Jr. Seven years after he was first sentenced to die, and long after his habeas petition was shot down by the state court, the U.S. Court of Appeals for the 4th Circuit granted Mickens a new trial.

Defense attorneys in death penalty cases believe that Sept. 14 may also end up being a very good day for others facing capital charges. While the circumstances of Mickens' case are not likely to be replicated, the scrutiny that the 4th Circuit gave his claims offered a glimmer of hope for those who argue that there are problems with representation of Virginia defendants.

Charged with the 1992 sodomy and murder of teen-ager Timothy Hall, Mickens was appointed counsel. A Newport News Circuit Court jury found him guilty and sentenced him to death. His sentence was overturned by the U.S. Supreme Court in 1994, but he was later sentenced to death again, and his request for state post-conviction relief was denied.

While preparing for Mickens' federal habeas petition, his appellate lawyer, Robert Wagner of Richmond's Wagner & Wagner, made a chance discovery: Mickens' trial counsel, Newport News' Bryan Saunders, had been serving as Hall's counsel at the time of the murder. No one had told Mickens about the dual representation, and Wagner only found out about it when a court clerk accidentally gave him Hall's confidential juvenile record.

The revelation did not sway the U.S. District Court for the Eastern District of Virginia. But the 4th Circuit didn't like the way Mickens' case looked, and overturned Judge Robert Payne's denial of his habeas petition - a first for the appellate court in a Virginia capital case, says Wagner.

In Mickens v. Taylor, Judge M. Blane Michael, joined by Judge Diana Gribbon Motz, expressed concern that the relationship that Saunders developed with Hall hindered Mickens' defense. "Saunders had an actual conflict because he could not even consider an investigation into

actual conflict because he could not even consider an investigation into Hall's character or background," wrote the judge.

Judge H. Emory Widener Jr. dissented.

Saunders did not return calls for comment.

The state now has 180 days to retry Mickens or the district court must set him free. The attorney general's office declined comment on the ruling, citing the prospect of further legal action.

The facts made this "a very unique case," acknowledges Wagner. "It involved a conflict of interest that I had never seen before."

But Wagner believes that it may cause people "to take a closer look at the lawyers representing death penalty folks, and at the competency of these lawyers."

Andrew Protogyrou of Protogyrou & Rigney in Norfolk, who served as appellate counsel for recently executed Virginia prisoner Russel Burket, sees an even larger benefit. "The general issue - conflict of interest - goes to the fundamental fairness" of the defendant's trial, he says.

Protogyrou raised a similar issue before the 4th Circuit this spring, questioning the simultaneous representation by trial counsel of **Burket** and his brother, who was also a suspect in the 1993 murders of Katherine and Ashley Tafelski. The 4th Circuit refused to consider the issue, ruling that an unsigned affidavit detailing the conflict was inadmissible hearsay. **Burket** was executed Aug. 30.

"I do believe that the 4th Circuit would have looked at **Burket** closer if we had had the affidavit endorsed by Russel's father, or if the District Court had given us an evidentiary hearing on the contents of the father's affidavit," says Protogyrou. "I feel they would have been very good to us in a ruling."

Expecting the AG to seek rehearing or appeal the decision, Wagner remains hopeful: "We are so pleased that Walter Mickens will be able to get a fair trial."

Health Tip

Avoiding one big migraine of a tax bill, Reston Hospital found its victory in a tax struggle with Fairfax County ensured by the Virginia Supreme Court on Sept. 15.

Unhappy with the county's property tax assessments on Reston Hospital in the early 1990s, HCA Health Services of Virginia Inc. challenged them in the county circuit court and won. Judge Jane Roush reduced the assessments from between $22 million and $25 million per year to an average of $12.5 million, for a total reduction of $57 million.

Earlier this month, the Virginia Supreme Court unanimously upheld the trial court. The high court also scolded the county for its

the trial court. The high court also scolded the county for its calculations, saying it did not consider market forces in the health care industry or "actual construction costs . . . even though the county's own evidence showed that such costs should be considered."

The county attorney's office declined comment. The hospital's counsel, James Downey of D.C.'s Wilkes Artis, is obviously "pleased with the result."

The win coincides with a time when many hospitals are feeling a financial crunch due to the Balanced Budget Act of 1997. But Susan Ward, vice president and general counsel of the Virginia Hospital and Healthcare Association, cautions against making generalizations. Regardless of a hospital's finances, she says, "there isn't a taxpayer in this country who wants to pay more than they believe they're responsible for."

"Virginia Appellate Report" appears every other week in "Northern Va." Jennifer Bier can be reached at jbier@legaltimes.com.

dailypress.com
HAMPTON ROADS, VIRGINIA October 23, 2002 12:07 PM

Currently: 63° F
Clear
Humidity: 72%
Chance of precip: 7%
FORECAST

Marketplace
• White & Yellow Pages
• Careers • Homes
• Cars • Classifieds

The Daily Press
• Subscribe • Customer
• Place an Ad Service

NEWS
National News
Virginia
Middle Peninsula
South of James
Williamsburg
Obituaries
Special Projects
Columnists
Daily Poll
PAGE ONE
NEWS
BUSINESS
SPORTS
OBITUARIES
LIFESTYLES
ENTERTAINMENT
DINING
OPINION
TRAVEL
HOME & GARDEN
HEALTH
ABOUT US
REGISTER
CONTACT US
CUSTOMER SERVICE
SUBSCRIBE
ADVERTISER INDEX
INDEX

LOCAL

Man recants rape confession

In hearing, he blames others

Email thi
Printer fr
Search a

By Patti Rosenberg
Daily Press

Published October 23 2002

WILLIAMSBURG -- Jerry T. Jackson confessed to police that he raped an 88-year-old woman at the Rolling Meadows apartments 14 months ago and smothered her to death with a pillow.

But at a pretrial hearing Tuesday, six days before his scheduled trial, Jackson took the witness stand and testified that most of what he previously told police was a lie.

Jackson, 21, still admitted to entering Ruth Phillips' apartment and stealing money from her purse, but he said he was with two other men.

It was one of them who held the pillow over the victim's face, Jackson said Tuesday.

As far as he knew, he said, no one rape

Jackson said he didn't know how her ni pulled up, but he said he pulled it down up with a blanket before the trio left.

Leaving her exposed "was not right," Ja said the woman "reminded me of my gr

Investigators say Mrs. Phillips was foun nightgown pulled up, and with bruising a indicated that she'd been raped. In addition, lab tests have determined that pubic hair found on Mrs. consistent with Jackson's.

Jackson said he didn't know how his pubic hair might have gotten on her body - though his attorney, Protogyrou, suggested that it could have occurred as a result of Jackson touching his genitals while bathroom at Mrs. Phillips' apartment.

Regarding why he would have initially confessed to raping Mrs. Phillips, Jackson said he made it up evidence that James City County Investigator Eric Peterson said he had.

The main purpose of Tuesday's hearing was to decide whether Jackson's confession to Peterson sh as evidence. The defense argued that Peterson used trickery to manipulate Jackson into confessing

The 21/2-hour-long interview between Peterson and Jackson - which took place Dec. 28 at the Jam Police Department - was videotaped. The videotape wasn't played in court Tuesday, but Circuit Jud

TOP ST

CW to ho military

Suspects shooting

Tuition mi W&M

New Kent 2nd refer pass

Referend timing for

Powell was provided a copy in advance and watched it over the weekend.

Jackson started out denying any involvement in the crime - until Peterson confronted him with the fa fingerprint had been found on a scrap of paper in Mrs. Phillips' purse. Jackson then admitted that he purses from cars. But Peterson pointed out that the purse was found inside Mrs. Phillips' apartment, Jackson's admission to the burglary.

Protogyrou focused on statements that Peterson made, such as "I will be in your corner," "Help us a yourself included," and "I'll be with you to the end." Peterson also held Jackson's hand at one point that he would help Jackson find a job, Protogyrou said.

"He said he was there for me, and he was going to help me out," Jackson said on the stand. He sai if he admitted to the crime, the punishment wouldn't be as bad.

His client didn't realize that "the end" that Peterson referred to could be the electric chair for him, Pr though technically, Virginia now uses lethal injection to execute people.

Prosecutors countered that Jackson had been arrested and read his Miranda rights many times bef familiar with the drill, could read and write, had signed the form saying that he understood his rights them, and has an IQ of 100, prosecutors said.

The judge ruled in favor of the prosecution, calling Peterson's interview "a model interrogation," free or intimidation.

Jackson, formerly of the 100 block of Tarleton Bivouac in Grove, is scheduled to begin trial Monday, selection is expected to probably consume the whole first day. Prosecutors are seeking the death p

Jackson is now serving 12 years and five months in prison for other crimes, which include stealing h and breaking into another woman's apartment and stealing her purse. That burglary occurred two d Phillips was found.

Mrs. Phillips was apparently asleep, though wakened by someone in her bedroom, testimony at the hearing indicated. Despite Jackson's testimony Tuesday, prosecutors say, there is no evidence that was involved in the crime.

The victim in the earlier burglary had also gone to bed early. But her cat woke her up, and she was r she heard a noise outside her ground-floor apartment, got dressed and was standing in the hallway the screen being ripped out of her bedroom window. She grabbed her car keys and drove to a conv where she called 911.

Patti Rosenberg can be reached at 229-5751 or by e-mail at prosenberg@dailypress.com

COMMUNITY

Suspect gets extra legal help

By Crystal Sessoms

WILLIAMSBURG — The t-appointed attorney for a ...nes City teen accused of murdering two of his family members says he needs more help to defend his client.

Attorney Andrew A. Protogyrou asked Circuit Judge Samuel Powell III on Friday to allow him to hire additional counsel and expert witnesses for the case. The request came in part because prosecutors want to try both cases simultaneous and seek the death penalty for Protogyrou's client, 19-year-old Marquis Russell.

The case has changed drastically since Protogyrou was appointed in August. At that time, Russell faced one charge of first-degree murder, accused of killing his great-uncle, Willie Russell. Since then, Russell has been charged in the death of his great-aunt, Annie Mae Banks. The charges were also upgraded to capital murder.

Powell granted the request for additional counsel, as well as up to $1,000 for a private investigator. The investigator will most likely have experience with homicide investigations.

Powell said he does not normally appoint investigators, but made an exception because of the seriousness of the case.

"He (Marquis Russell) could stand to lose his life," Powell said.

No ruling has been made on whether the prosecution can try the cases together, or separately since the murders took place months apart. A date for that hearing could be set next week.

The body of Banks was found in the rubble of her burned home on Brick Bat Road in May 2000. A few months later, the investigation was turned over to police when forensics revealed Banks had been bludgeoned and the fire had been intentionally set.

Willie Russell, who lived next door to Banks, was shot to death in his driveway in January 2001.

Marquis Russell is currently being held in the Virginia Peninsula Regional Jail without bond. He also faces arson and robbery charges.

...ggers: Be wary

Derek Barnabei executed

Man put to death for 1993 rape and murder

The Associated Press

JARRATT

Derek Barnabei was executed Thursday night for the 1993 rape and murder of a college girl whom he had dated.

Hours earlier, the U.S. Supreme Court had twice refused to grant a stay in the case, which was closely followed in Italy.

BARNABEI

WISNOSKY

Barnabei, 33, was put to death by injection at the Greensville Correctional Center for the slaying of Sarah Wisnosky, a 17-year-old Old Dominion University freshman.

Wisnosky was last seen alive in Barnabei's room in a house that he shared with other young men in Norfolk.

Her nude and beaten body was later found floating in the Lafayette River.

Barnabei was the sixth person executed in Virginia this year and the 79th since 1982, when the state resumed executions after a 20-year hiatus.

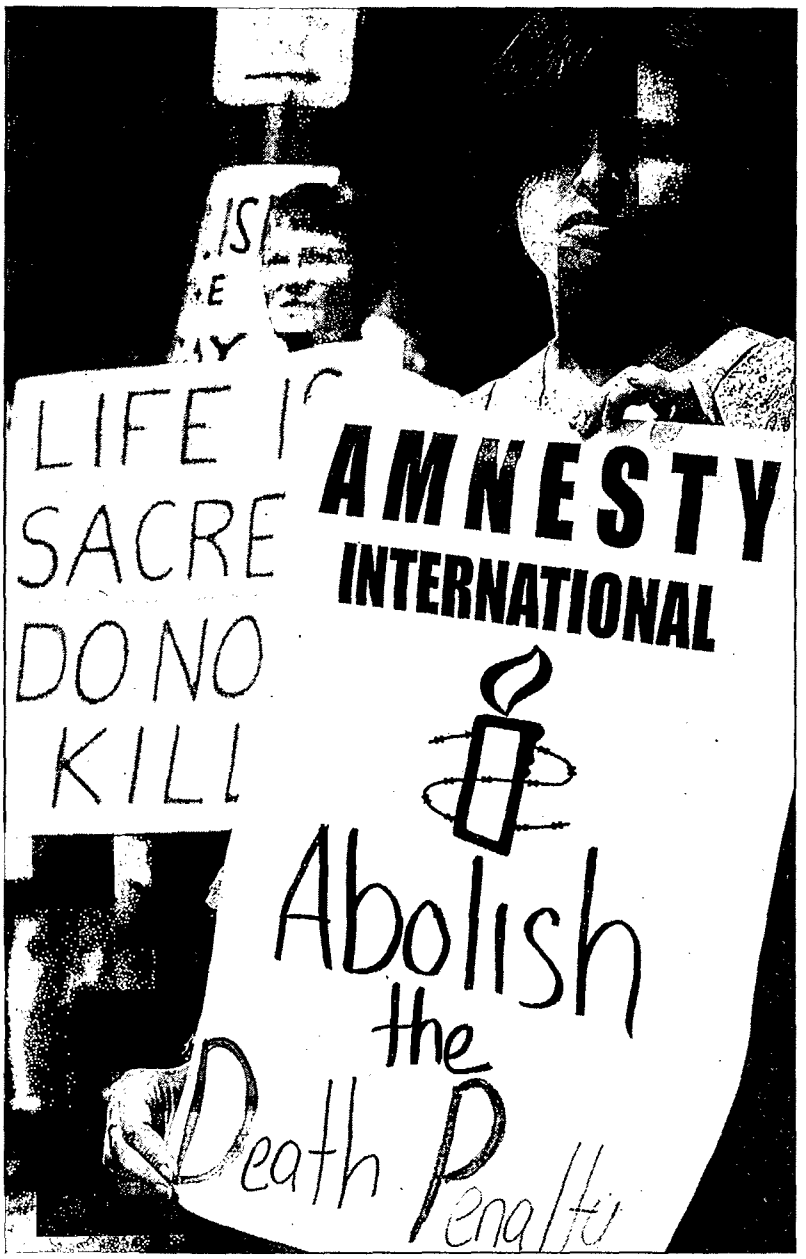
The Supreme Court's denial of two stay requests followed rulings against Barnabei by the 4th U.S. Circuit Court of Appeals and U.S. District Judge James Spencer in Richmond.

The courts dismissed defense arguments that the state tampered with evidence and that more DNA testing should be done because some evidence disappeared from Aug. 29 to Sept. 1 at the Norfolk Circuit Court clerk's office.

Barnabei had his final meal at 5:06 p.m., but prison officials — at Barnabei's request — declined to reveal what he ate.

About two hours before the execution, Barnabei wrote out a will by hand. Andy Protogyrou, one of Barnabei's attorneys, declined to identify Barnabei's beneficiaries.

Barnabei's spiritual adviser, the



AP

Michele Mattioli of the Charlottesville Quaker Friends Meeting attends an anti-death-penalty rally Thursday in Charlottesville. The group conducted a vigil for Derek Barnabei, who was executed Thursday night for the 1993 rape and murder of Sarah Wisnosky.

our lives and fight," Craig said.

"I hope this is not for nothing," Craig quoted his brother as saying. "I hope people take a hard look at my case."

Barnabei also wanted his body cremated, but his mother talked him out of it, his brother said.

After the face-to-face meeting, Barnabei talked to his mother, who w[illegible]aying at a nearby motel, by te[illegible]hone for more than an hour until about 25 minutes before he was

execution chamber at 8:54 p.m. He glared at Virginia corrections director Ron Angelone, who was on a red phone linked to Gov. Jim Gilmore's office. Barnabei wore a blue shirt, dungarees, white socks and blue shower slippers.

The Rev. Jim Gallagher, a Roman Catholic priest, spoke to Barnabei briefly in the execution chamber and then entere[illegible]e witness booth, where he [illegible]ispered prayers throughout the execution.

The three people were Vigni, a member of the It liament who came to Vi meet Gilmore; Patrizia Italian woman writing a b Barnabei; and Tony DiF Italian-American from I who offered a reward fo who found evidence th exonerate Barnabei.

Lethal chemicals bega into Barnabei's left arm a Barnabei continued talkin lip movement suddenly st was pronounced dead at 9

Barnabei repeatedly sa innocent. The case was c lowed in Italy because he ian-American and that opposes the death penalty.

In an interview Wednes abei said, "I don't want t it's unjust that I die. If th God wants, then so be it. I Who am I to question the design?"

Barnabei had asked tests on some evidence – material on Wisnosky's fi — in effort to prove that else committed the crime.

Instead, the tests sh DNA matched Barnabei's

On Thursday, Barnabei' filed a clemency petiti Gilmore.

"Serious doubts still s this case," lawyer Seth Tu in a petition.

He argued that Barnabe n't be executed while a State Police investigation c into the temporary disap of evidence in the case.

"It would do a disservice to Derek Barnabei, but al people of the Commonweal ginia, to continue with an e when there is still no concl to who moved the eviden they did with it, and why," wrote.

But the governor had s day that he wouldn't grant c because new DNA testing c that Barnabei was guilty.

Gilmore said Thursday was sure nobody tampered evidence that was tested nosky's fingernail clipping were in a sealed envelope th been opened.

He also said plenty of o dence was considered at tri Barnabei's appeals.