

# Doctor Won't Be Retried In Virginia Abortion Case

March 29, 1985

**Original article found online at:**

<https://www.washingtonpost.com/archive/local/1985/03/29/doctor-wont-be-retried-in-virginia-abortion-case/dc2e84b1-2c7e-4c13-9cd2-58958c4d2a32/>

A judge today acquitted Culpeper physician Parviz Modaber of performing a second-trimester abortion on a teen-ager and said there was "no need" to retry the case despite a hung jury.

Circuit Judge Jerome James, after hearing arguments from defense and prosecution lawyers, granted a defense motion asking that Modaber be found not guilty.

"Based on the law, the evidence and the facts, I have decided to grant the motion," James said during the 20-minute hearing. "There's no need for me to retry this case. The community has spoken and I have their message."

Modaber, 54, was accused of performing a second-trimester abortion on a 15-year-old girl at the unlicensed American Women's Clinic.

Virginia law requires that abortions after the 13th week of pregnancy be performed in hospitals or licensed surgical facilities.

Jurors deliberated 5 1/2 hours Wednesday. But jurors told James shortly before 8 p.m. that they were "permanently deadlocked" on a verdict in the eight-day trial.

A delighted Modaber hugged Peter Decker, his attorney, after the decision this morning.

"It confirms my faith in the system," said Modaber, who was indicted Sept. 5. If convicted, he would have faced two to 10 years in prison.

The Virginia Board of Medicine still plans to hold a hearing on Modaber's license, but a state official said no date had been set.

"I disagree with the decision," said James Broccoletti, assistant commonwealth's attorney.

"Obviously, he James felt he was doing his duty and I respect him for that. But I feel we had proven the case because we obviously were able to convince some of the jurors," Broccoletti said.

Juror Lolita McInnis, 19, who said she favored acquittal, said the nine-woman, three-man panel was split 7 to 5 for acquittal.

During the trial that began March 18, Broccoletti presented medical experts who testified that the fetus had been at least 17 weeks old.

The case centered on measurements of the crushed fetal head that was removed from the teenager two days after her incomplete abortion at Modaber's clinic. Defense lawyers said the badly distorted fetal head could not be used to accurately determine the fetus' age.

Because of a pretrial ruling by James, the prosecution had to prove only that the fetus was more than 13 weeks old and not that Modaber actually knew that the fetus was beyond the first trimester.

Calling Modaber "a country doctor from Culpeper," Decker said his client was "a scapegoat" for problems at the now-closed clinic. The clinic's owner, Dr. Chris Simopoulos, is a fugitive on similar abortion charges.