

PUBLIC

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Death penalty / Legal concern

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USA (Virginia) Lee Boyd Malvo, a.k.a. John Lee Malvo (m), black, Jamaican national, aged 18

At a trial scheduled to begin on 10 November in the Commonwealth of Virginia, the prosecution is intending to seek a death sentence against Lee Boyd Malvo for a murder he is alleged to have committed when he was 17 years old. International law, binding on all countries, prohibits the use of the death penalty against child offenders – defendants who were under 18 at the time of the crime.

John Allen Muhammad, aged 42, and Lee Boyd Malvo are charged in 10 sniper killings that occurred over a three-week period in October 2002 in Virginia, Maryland and Washington DC. At Lee Malvo's forthcoming trial, the teenager will be tried for the murder of Linda Franklin who was shot dead in Fairfax County, Virginia, on 14 October 2002. John Muhammad has not yet been brought to trial.

Following the arrests of the two suspects, US Attorney General John Ashcroft announced that he had ordered federal agents to transfer Lee Malvo from federal custody to the local authorities in Fairfax County, Virginia. He said that his decision was based on a number of considerations, including that "the first prosecutions should occur in those jurisdictions that provide the best law... and the best range of available penalties". He added that it was "imperative" that the death penalty be an option. Neither federal nor Maryland law provides for the death penalty for those under 18 at the time of the crime, but Virginia law does. Virginia is known for the relative speed at which it takes capital defendants from conviction to execution, and has executed three child offenders since 1998.

Lee Malvo's trial, which is expected to last for more than a month, will be held in the City of Chesapeake after the judge granted a defence motion for a change of venue from Fairfax County. The charges against Lee Malvo include murder "in the commission of an act of terrorism", and his defence lawyers argued that under this theory all residents of Fairfax County (from whom the jury would be selected) were victims in this high-profile crime and would therefore not be impartial. The judge decided to transfer the trial to a jurisdiction out of the immediate area where "many citizens lived in fear during the month of October 2002 as a result of the crimes with which the defendant is charged".

Last month, the judge denied a motion in which the defence sought to have the death penalty excluded from the case in line with international law. In an editorial, the *Washington Post* wrote: "[W]hatever one thinks of capital punishment, it ought not be applied to children, whose personalities and capacities for judgment are not yet fully formed. Government takes on, in general, a protective role with respect to children... It is an abdication of that protective role for state governments, even in prosecuting terrible crimes, to respond to youth crime by seeking execution. To sentence someone to die for a crime committed as a child, one has to believe that – in the long natural life the defendant would otherwise have before him – meaningful change and some measure of redemption are either impossible or unimportant. There are good reasons why the rest of the world has rejected executions of children...". The paper described such use of the death penalty as an "abhorrent policy".

BACKGROUND INFORMATION

The imposition of the death penalty against people who were under 18 at the time of the crime is prohibited by international law, and has been roundly condemned by United Nations bodies and experts. The Geneva Conventions, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Convention on Human Rights and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, all have provisions exempting this age group from execution. In October 2002, the Inter-American Commission on Human Rights concluded: "The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard

have been vigorously condemned by members of the international community... [T]his proscription binds the community of States, including the United States”.

Since 1990, the USA has executed 19 child offenders, compared to 14 such executions reported in the rest of the world combined. These 14 occurred in Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen. Yemen and Pakistan have now abolished such use of the death penalty in law. Iran is reported to be considering such legislation. The USA is responsible for 13 of the 18 executions of child offenders known to have been carried out worldwide since January 1998, and for all four of such executions reported since January 2002. In October 2002, four of the nine US Supreme Court Justices wrote that the execution of people for crimes committed when they were under 18 years old was "a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.”

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Linda Franklin and the other nine victims of the sniper shootings, explaining that you are not seeking to minimize the gravity of these crimes or the suffering they have caused;
- expressing deep concern, however, that Fairfax County intends to pursue the death penalty against Lee Boyd Malvo in the event of his conviction, in violation of a fundamental principle of international law respected around the world;
- urging the Commonwealth’s Attorney (prosecutor) to offer human rights leadership and to respect international legal principles by dropping pursuit of a death sentence in this case, in the interest of the reputation of the Commonwealth of Virginia and the USA as a whole.

APPEALS TO:

Robert F. Horan, Commonwealth’s Attorney
4110 Chain Bridge Road, Room 123, Fairfax, VA 22030, USA

Fax: +1 703 691 4004 (this fax works intermittently, you may wish to send mail instead)

Salutation: Dear Commonwealth’s Attorney

You may also write to: (1) Attorney General Ashcroft, protesting his direct complicity in this violation of international law, and urging him to use his influence to stop the death penalty in this case; and (2) Secretary of State Powell, urging that the State Department oppose this violation of US obligations.

(1) John Ashcroft, Attorney General, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, USA. **Fax: +1 202 307 6777. Salutation: Dear Attorney General.**

(2) Colin Powell, Secretary of State, 2201 C Street, N.W., Washington, DC 20520, USA.

Fax: +1 202 261 8577. Salutation: Dear Secretary of State.

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

You may write brief letters (not more than 250 words) to “Letters to the Editor” at: (1) *The Virginian-Pilot*, P.O. Box 449, Norfolk, VA 23501-0449, USA. **Email: letters@pilotonline.com. Fax: +1 757 446 2051;** or (2) *Richmond Times-Dispatch*, Box 85333, Richmond, Virginia 23293, USA. **Fax: +1 804 819 1216. Email: letters@timesdispatch.com.**

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 20 November 2003.